

produced by several competing manufacturers. The bundling the Commission allowed, therefore, was by independent retailers assembling packages that combined customer-selected CPE with transmission service.<sup>22'</sup> In the interexchange market, however, the point of sale typically occurs not with the independent CPE retailer, but with the carrier, who can choose which CPE to provide to its customers.<sup>23'</sup> Thus, whatever the Commission believes the benefits of cellular bundling have been, the conditions under which that bundling was permitted are different in crucial respects from the conditions present in the interexchange market.

D. Bundling Decreases Consumer Choice

Bundling inevitably leads to a reduction in consumer choice. First, customers are forced to choose among carrier-determined service/CPE packages, none of which may represent the customer's ideal.<sup>24'</sup> Second, since bundling allows the development of proprietary CPE, customers will have difficulty switching carriers, and may be unable to use the same CPE to access services provided by different carriers.<sup>25'</sup>

As MCI correctly observes, "the true cost of CPE is hidden in a bundle, thus depriving consumers of the ability

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<sup>22'</sup> See IDCMA at 40.

<sup>23'</sup> IDCMA at 40-41.

<sup>24'</sup> See Coalition at 5-6.

<sup>25'</sup> See, e.g., US WEST at 8.

to make independent decisions based on features and price. In addition, bundling locks customers into a vendor and perhaps even a technology, thus diminishing the vitality of marketplace competition. This is especially true when the technology is proprietary to the supplier or when the total cost of the equipment is high relative to the transmission component."<sup>26/</sup> Under the Commission's proposal, an IXC could make transmission service available only to customers that agreed to obtain carrier-provided CPE; an IXC might also provide transmission service at a lower price to customers that agreed to obtain carrier-provided CPE.<sup>27/</sup> US WEST observes that (in either case) this would significantly impact the interconnection framework envisioned by the 1996 Act, which grants interconnection rights to carriers, but not to the end users.<sup>28/</sup>

Moreover, were the Commission to adopt its proposal, carriers would inevitably seek to partner with a small number of CPE vendors. Those that are without carrier alliances would inevitably exit the market because they would lack the ability to use the carrier's basic service revenue to cross-

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<sup>26/</sup> MCI at 24 n.38. As the PaPUC explains, "Competitive choices are only good for consumers if they understand their choices at a level which allows them to exercise wise purchasing decisions." PaPUC at 13. Bundling CPE and service eliminates the ability of consumers to understand what their true choices are.

<sup>27/</sup> IDCMA at 14; US WEST at 8.

<sup>28/</sup> US WEST at 8.

subsidize their CPE offerings. Thus, the success or failure of any individual CPE provider would not turn on its ingenuity, customer care, or product quality, but instead on its ability to "cooperate" with carriers in creating discounted packages.<sup>29/</sup>

In such a situation, the vendors allied with the carriers would be dependent on their carrier-patrons rather than end-user customers. "As a result, they would be unlikely to have the incentive or ability to develop equipment that competes 'intermodally' against network-based facilities or services."<sup>30/</sup> Carriers could also manipulate their interface and other operating specifications to induce such cooperation and further limit competition.<sup>31/</sup>

Thus, instead of the current CPE market in which a large number of manufacturers compete to sell equipment to end-users, "a new oligopoly/oligopsony market would arise in which a handful of manufacturers would sell equipment to a few carrier-purchasers."<sup>32/</sup>

API argues nevertheless that such bundling is necessary to meet the needs of large, sophisticated companies, and that the bundling prohibition hinders such companies' efforts "to

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<sup>29/</sup> See IDCMA at 19-20; ITAA at 5-6.

<sup>30/</sup> IDCMA at 20.

<sup>31/</sup> ITAA at 5-6.

<sup>32/</sup> IDCMA at 37-38.

obtain innovative system-wide telecommunications solutions."<sup>13/</sup> API contends that a service/equipment package purchased from a carrier offers: "(1) a single point of responsibility, control and billing for all services and facilities; (2) cost savings due to volume purchases and long-term commitments; and (3) timely access to and the flexibility to implement new services and technologies."<sup>14/</sup>

API does not explain why unsubsidized packages, which can today be offered by carriers, do not meet these needs. But even if they do not, the Commission should think carefully before taking an action which would primarily benefit the largest, most sophisticated customers to the detriment of other interexchange customers.

API seeks to convince the Commission that opponents to the proposal are those who, "rather than operate in a fully competitive market, . . . would prefer to operate in a market distorted by regulatory constraints."<sup>15/</sup> But, in fact, it is the antibundling rule that prevents market distortions. As ITAA explains, the antibundling rule places CPE providers on a level playing field.<sup>16/</sup> Some carriers, and large customers such as API, want to tip that field to their advantage. While API argues that bundling opponents "brandish" the

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<sup>13/</sup> API at 14.

<sup>14/</sup> API at 15-16.

<sup>15/</sup> API at 13.

<sup>16/</sup> ITAA at 4.

antibundling rule "as a regulatory shield against competition,"<sup>37/</sup> it is wide-open manufacturing and retail competition that the Coalition is trying to preserve and promote -- competition that will wither if the Commission adopts its proposal.

**E. The Commission's Proposal Is At Odds With The Telecommunications Act Of 1996**

The proposal to allow bundling is contrary to the concern expressed by Congress in the Telecommunications Act of 1996 about the anticompetitive effects of bundling, especially for independent manufacturers and vendors.<sup>38/</sup> IDCMA echoes this theme, and explains, "The Commission proposal to retreat from its long-standing unbundling policy reflects a disturbing disregard for the clear policy choices made by Congress" in the 1996 Act.<sup>39/</sup>

The only bundling supporter arguing against this position is API, which merely asserts that the bundling proposal "is envisioned by the 1996 Act, which clearly enunciated a 'pro-competitive, de-regulatory national policy framework.'"<sup>40/</sup> The Coalition agrees with API's characterization of the 1996 Act as pro-competitive and de-regulatory, but observes that Congress chose to pursue those

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<sup>37/</sup> API at 12.

<sup>38/</sup> Coalition at 11-12.

<sup>39/</sup> IDCMA at 20-21.

<sup>40/</sup> API at 13.

pro-competitive policies by extending the antibundling rule to video CPE in newly enacted Section 629(a) of the Communications Act.<sup>41/</sup> Thus, API's argument serves merely to support the Coalition's point that the best way to promote competition is to ensure a viable CPE market through retention of the antibundling rule.

**F. The Proposed Amendment Would Inevitably Result In Wholesale Repeal Of The Rule**

If the Commission adopts its proposed "amendment" of the antibundling rule, it would soon lead to wholesale repeal of the rule, since the Commission could not justify for long having such a rule in place for IXCs and not for LECs, or for interexchange services, and not for the local exchange services of the same carrier.<sup>42/</sup>

The comments filed by other parties bear this out. Bell Atlantic, NYNEX, SBC, and USTA all make the case that the Commission could not justify repeal of the rule for the IXCs and not the LECs.<sup>43/</sup>

Further, AT&T argues that IXCs should be permitted to bundle interexchange with enhanced services, while MCI assumes that the proposed amendment would allow bundling of transmission with enhanced services as well as CPE or "any

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<sup>41/</sup> See Coalition at 11; IDCMA at 20.

<sup>42/</sup> Coalition at 11-12; see also IDCMA at 23.

<sup>43/</sup> See Comments of NYNEX at 6; Bell Atlantic at 5; SBC at 7; Comments of United States Telephone Association ("USTA") at 3-4.

other product or service that the carrier chooses to include in a bundle."<sup>44</sup>

These comments demonstrate the slippery slope that the Commission is proposing to start down with its amendment of the antibundling rule. The Commission cannot view its proposal as an isolated action, since once it takes this step evisceration of the rule is inevitable. For this reason alone, the Commission should not take the step it is proposing today based on the record before it.

**II. IF THE COMMISSION AMENDS § 64.702(e) IT ALSO MUST REQUIRE INTEREXCHANGE CARRIERS TO CONTINUE TO OFFER SEPARATELY, UNBUNDLED SERVICES ON A NONDISCRIMINATORY BASIS AND TO DISCLOSE CARRIER INTERFACES**

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The Coalition's comments showed that, in the event the Commission amends the rule to allow nondominant interexchange carriers to bundle service and equipment, it also must require carriers offering bundled packages to continue to offer separately, unbundled, unsubsidized interstate, interexchange services on a nondiscriminatory basis. All bills and marketing materials should separately state the price being paid for the transmission service and the price being paid for the equipment.

The vast majority even of those parties supporting the proposal to allow bundling recognize the dangers inherent in allowing carriers to offer only bundled packages, and thus

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<sup>44</sup> AT&T at 28; MCI at 22-23 n.33.

urge the Commission to require carriers that bundle to offer separately, unbundled services on a non-discriminatory basis.

GTE explains that requiring carriers to make the service component of the package available on an unbundled basis "gives consumers the ability to determine whether to purchase the bundled service or create their own packages," thus "encourag[ing] competition in the CPE market."<sup>45/</sup> NYNEX similarly says that requiring carriers to offer both unbundled and bundled services "will provide customers with a choice of equipment vendors for CPE," and will "further advance the Commission's pro-competitive policies in the equipment marketplace."<sup>46/</sup> The PaPUC, which points out the competitive abuses it has encountered in situations where bundling is permitted, suggests that, "at a bare minimum, the Commission must require carriers to offer unbundled service offerings along with any bundled service offerings which are permitted."<sup>47/</sup>

The Commission, however, must go farther than simply requiring the offering of unbundled services; it must also require that the unbundled components be offered on nondiscriminatory terms. USTA explains that requiring carriers to offer separately unbundled services on a nondiscriminatory basis would increase consumer choice by

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<sup>45/</sup> GTE at 11.

<sup>46/</sup> NYNEX at 7.

<sup>47/</sup> PaPUC at 12 (emphasis in original).

"preserving opportunities for competitors to utilize their own equipment to provide competitive services and CPE/service packages through resale, or to provide resold services to customers who already have their own CPE."<sup>48/</sup> LDDS adds that such a requirement is necessary to prevent anticompetitive activities by carriers.<sup>49/</sup>

Section 202(a) of the Communications Act, in fact, requires such a nondiscriminatory unbundling provision.<sup>50/</sup> "Nondiscrimination" means that a carrier cannot be permitted to offer stand-alone transmission service at the same price at which it offers a service/CPE package, since under such terms the customer that does not take the CPE is paying a higher charge for the same service. This constitutes unjust and unreasonable discrimination in violation of the Communications Act.

MCI correctly states that the practical effect of assuming consumers will benefit from "packages" is that many consumers will end up paying for a product they do not really want, and will accordingly be made to pay more for the product they really want.<sup>51/</sup> MCI therefore suggests that if the Commission allows bundling, it also require that carriers

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<sup>48/</sup> USTA at 4. See also Comments of Pacific Telesis Group at 11; TRA at 41-42; US WEST at 9.

<sup>49/</sup> LDDS Worldcom, Inc. at 18-19.

<sup>50/</sup> See IDCMA at 39-40.

<sup>51/</sup> MCI at 25.

"grant credits to any consumer equal to the value of any unwanted, bundled equipment so that consumers would be in a position to purchase their equipment-of-choice."<sup>32/</sup>

The Coalition also agrees with those parties urging that not only must carriers offer services on an unbundled basis, but carriers also should be required to use public interfaces for their services and to give adequate public notice of any changes in those interfaces. "Such requirements would strike an appropriate balance between the policy goals of maximizing customer choice and preserving competition in the CPE market."<sup>33/</sup> NYNEX and US WEST similarly state that carriers should be required to disclose all interface specifications using existing industry guidelines and procedures.<sup>34/</sup>

Such a disclosure requirement is necessary because by denying the necessary technical information to unaffiliated manufacturers, carriers could preclude competition in the market for CPE competitive with that provided in the bundle. US WEST agrees that this would have potentially serious consequences in the CPE market, and also notes the vulnerability of the end users, who actually use the CPE, and

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<sup>32/</sup> MCI at 26 n.40.

<sup>33/</sup> Comments of the Ad Hoc Telecommunications Users Committee ("Ad Hoc") at 12-13.

<sup>34/</sup> NYNEX at 7; US WEST at 8.

who, unlike carriers, have no interconnection rights under the 1996 Act.<sup>15/</sup>

AT&T and Compaq alone oppose an unbundling requirement. AT&T asserts that the abundance of service and product providers will ensure that customers desiring unbundled service and CPE options will still have those options available, because if one provider does not offer unbundled components, its competitors will. There is thus no need, AT&T argues, for requiring carriers that bundle to also offer separately, unbundled services.<sup>16/</sup>

First, the Commission cannot take for granted that "if one provider does not offer unbundled components, its competitors will." In many areas of the country, consumers have a very limited choice of service providers from which to choose.

More importantly, AT&T's argument sidesteps the fact that providing service on an unbundled, nondiscriminatory basis is required by Section 202(a) of the Communications Act, as shown above. Complying with the nondiscrimination requirements of the Act is not a choice that carriers are free to make depending on the marketplace. If carriers are permitted to bundle CPE with service, then they must also provide service on an unbundled, nondiscriminatory basis.

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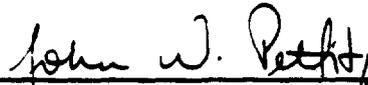
<sup>15/</sup> US WEST at 8.

<sup>16/</sup> AT&T at 27. See also Compaq Computer Corporation at 4-5.

**CONCLUSION**

The record in this proceeding shows the dangers of the Commission's proposed amendment of the antibundling rule, while demonstrating no benefits. The Commission therefore cannot justify adopting its proposal on the record before it. For the reasons stated above and in the Coalition's Comments, the Commission should not amend Section 64.702(e) of its rules to allow nondominant interexchange carriers to bundle CPE with interexchange service.

Respectfully submitted,



---

John W. Pettit  
Sue W. Bladek  
Richard J. Arsenault

DRINKER BIDDLE & REATH  
Suite 900  
901 15th Street, N.W.  
Washington, DC 20005-2503

May 24, 1996

Counsel for the Consumer Electronics  
Retailers Coalition

**CERTIFICATE OF SERVICE**

I, Marjorie Schroeder, hereby certify that on this 24th day of May, 1996, I caused a copy of the attached Reply Comments of the Consumer Electronics Retailers Coalition to be served by first-class mail, postage pre-paid to the following:

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Federal Communications Commission  
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Commissioner Susan P. Ness\*  
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July 5, 1996

Mr. Willaim F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 10554

RECEIVED  
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In re: Policy and Rules Concerning the Interstate,  
Interexchange Marketplace, CC Docket No. 96-61

Dear Mr. Caton:

The Woolworth Corporation wishes to express its opposition to the Commission's proposal to allow interexchange carriers to bundle customer premises equipment ("CPE") with interstate, interexchange service.

The Commission's existing antibundling rule provides significant benefits to consumers, allowing them to obtain innovative, state-of-the-art equipment at reasonable prices from a large number of suppliers. The rule permits consumers to purchase the equipment of their choice and connect it to the transmission service they prefer, creating a CPE/service package designed exactly to suit each individual user's needs.

Some carriers are suggesting that users do not wish to retain the flexibility of creating their own CPE/service package. These carriers assert that users would prefer to have carriers assemble the package for them, so that consumers can have the convenience of "one-stop-shopping." Carriers, however, already have the option of offering this convenience to those users who prefer it. Under the Commission's existing antibundling rule, carriers may assemble and offer packages of CPE and service as long as they do not subsidize the cost of the CPE with service revenues. There is, therefore, no benefit arising to the consumer from repeal of the antibundling rule.

There are, on the other hand, disadvantages to the consumer that would result from the repeal of the antibundling rule, primarily in the form of a reduction in choice. For example, users may be forced to choose among carrier-determined service/CPE packages rather than being able to create their own.

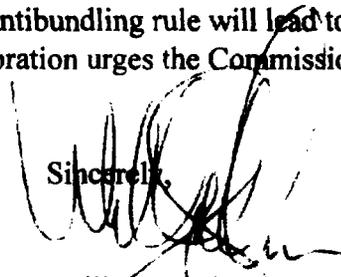
Also, since bundling allows the development of proprietary CPE, customers will have difficulty switching carriers, and may be unable to use the same CPE to access services provided by

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different carriers. Finally, the inevitable partnering of carriers and their favored vendors will have the effect both of driving other vendors from the market, thereby decreasing the number of suppliers of CPE, and of making the favored vendors dependent on pleasing the carriers rather than the end-users.

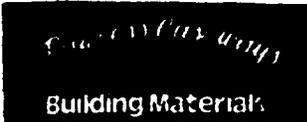
Users of CPE and communications services such as the Woolworth Corporation have a major stake in ensuring that as many options as possible continue to exist for meeting their communications needs. Abolishing the antibundling rule will lead to fewer, and less desirable, choices. Therefore the Woolworth Corporation urges the Commission to retain its antibundling rule in its existing form.

Sincerely,

A handwritten signature in black ink, appearing to read 'William J. Johnson', is written over the typed name and title below.

William J. Johnson  
Director Telecommunications





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July 9, 1996

Mr. William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M. Street, NW  
Washington, DC 10554

In re: Policy and Rules concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61

Dear Mr. Caton:

Payless Cashways, Inc. wishes to express its opposition to the Commission's proposal to allow interexchange carriers to bundle customer premises equipment ("CPE") with interstate, interexchange service.

The Commission's antibundling rule provides significant benefits to consumers, allowing them to obtain innovative, state-of-the-art equipment at reasonable prices from a large number of suppliers. The rule permits consumers to purchase the equipment of their choice and connect it to the transmission service they prefer, creating a CPE/service package designed exactly to suit each individual user's needs.

Some carriers are suggesting that users do not wish to retain the flexibility of creating their own CPE/service package. These carriers assert that users would prefer to have carriers assemble the package for them, so that consumers can have the convenience of "one-stop-shipping." Carriers, however, already have the option of offering this convenience to those users who prefer it. Under the Commission's existing antibundling rule, carriers may assemble and offer packages of CPE and service as long as they do not subsidize the cost of the CPE with service revenues. There is, therefore, no benefit arising to the consumer from repeal of the antibundling rule.

There are, on the other hand, disadvantages to the consumer that would result from the repeal of the antibundling rule, primarily in the form of a reduction in choice. For example, users may be forced to choose among carrier-determined service/CPE packages rather than being able to create their own. Also, since bundling allows the development of proprietary CPE, customers will have difficulty switching carriers, and may be unable to use the same CPE to access services provided by different carriers. Finally, the inevitable partnering of carriers and their favored vendors will have the effect both of driving other vendors from the market, thereby decreasing the number of suppliers of CPE, and of making the favored vendors dependent on pleasing the carriers rather than the end-users.

Users of CPE and communications services such as Payless Cashways, have a major stake in ensuring that as many options as possible continue to exist for meeting their communications needs. Abolishing the antibundling rule will lead to fewer, and less desirable, choices. Therefore Payless Cashways urges the Commission to retain its antibundling rule in its existing form.

Sincerely,

John A. Anheier  
Director of Information Systems Services

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President  
Hardlines  
Dept. 702HL

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

The Honorable Reed Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, NW, Room 814  
Washington, DC 20554

Dear Chairman Hundt:

On behalf of Sears, Roebuck and Co., I am writing to express our opposition to the proposal pending for consideration by the Commission which would reverse long-standing policy and allow interexchange carriers to bundle customer premises equipment ("CPE") with interstate, interexchange service. Sears is concerned about this proposal from two perspectives - both as a nationwide retailer and as a large user of CPE.

As a retailer, obviously we do not want our ability to sell CPE to be unfairly impaired. Allowing interchange carriers to bundle customer premises equipment with interstate, interchange service where the equipment is subsidized by the service does not provide the customer with the opportunity to make an informed choice, will negatively impact our sales and runs contrary to our concept of a competitive market.

We feel strongly that the adoption of the original anti-bundling rule has been a critical factor in the development of new CPE technology. Manufacturers, assured of multiple CPE retail outlets, have invested heavily in research and development which has led to the production of innovative new products for consumers. We are concerned that the bundling proposal before the FCC would slow the development of new technology and limit consumer choice, resulting in decreased consumer satisfaction.

As a user of CPE and communications services, Sears is also concerned that this proposal would damage our ability to meet our communications needs. Today, Sears purchases approximately \$350 million in CPE and voice/data services. Our CPE vendor base consists of over 100 suppliers and we utilize over 200 facilities providers. This diverse and competitive community of vendors allows us the opportunity to review a wide array of options. The equipment and service we purchase are for a very diverse family of retail businesses, ranging from small, off-the-mall stores and large mall department stores to large call center operations. Each of these separate entities has different equipment and applications needs.

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Bundled CPE and services would lead to the elimination of manufacturing sources. It could taint and weaken the effectiveness of the RFP environment that we currently employ to meet our communications needs. We need a telecommunications environment which affords us the ability to consider myriad options, assess the competition, and independently arrive upon sound, customer serviceable applications.

We would also note that there is nothing in the existing rule regarding bundling that prohibits interexchange operators from "packaging" equipment and services, so long as they separately charge for each component and do not subsidize the provision of equipment from the charges for service. The existing rule allows for flexibility.

On a final note, it is clear that the passage of the Telecommunications Act of 1996 will result in enormous changes in the industry, with distinctions between long-distance and local operators becoming increasingly blurred. Given these changes, moving precipitously to dismantle the anti-bundling rule could result in unintended consequences that could be very harmful to users of CPE and communications services such as Sears.

Again, let me emphasize that Sears strongly opposes the CPE interexchange bundling proposal. The current rule has well served American's consumers. We urge the Commission to carefully consider the concerns we have raised. The proposal should be dropped or, at a minimum, its consideration should be postponed until the impact of the Telecommunications Act is understood with more certainty.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Wm. L. Salter". The signature is written in a cursive, slightly slanted style.

William L. Salter



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