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Federal Communications Commission

DA 97-563

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Ameritech Petition for Waiver of)
Computer III Rules for)
Reverse Search Capability)

CC Docket Nos. 85-229, 90-623,
✓95-20

ORDER

Adopted: March 24, 1997

Released: March 24, 1997

By the Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On October 25, 1996, Ameritech filed a petition for a waiver of the Commission's comparably efficient interconnection (CEI) requirements in order to provide a reverse-search capability in conjunction with its existing electronic white pages service, Ameritech Directory Search (ADS).¹ In this Order, we grant Ameritech a limited waiver of the *Computer III* CEI plan and CEI equal access parameter requirements² to provide reverse-search capability with its ADS service. We condition the waiver on Ameritech's compliance with the Commission's joint cost rules,³ appropriate amendments to Ameritech's cost allocation manual (CAM),⁴ and compliance with the *Computer III* customer proprietary network information (CPNI) requirements, as

¹ Ameritech Petition for Waiver of *Computer III* Rules for Reverse Search Capability, filed Oct. 25, 1996 (Ameritech Petition). The Commission subsequently issued a public notice establishing a pleading cycle for the Ameritech petition. *Pleading Cycle Established For Comments On Ameritech's Petition For Waiver of Computer III Rules For Reverse Search Capability*, Public Notice, CC Docket Nos. 85-229, 90-623, 95-20 (rel. Nov. 5, 1996).

² See *infra* n.12.

³ 47 C.F.R. § 64.901.

⁴ See 47 C.F.R. § 64.903(b); *Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities; Amendment of Part 31, the Uniform System of Accounts For Class A and Class B Companies To Provide Nonregulated Activities and To Provide for Transactions Between Telephone Companies and Their Affiliates*, Report and Order, 2 FCC Rcd 1298 (1987), modified on recon., 2 FCC Rcd 6283 (1987), modified on further recon., 3 FCC Rcd 6701 (1988), *aff'd sub nom. Southwestern Bell Corp. v. FCC*, 896 F.2d 1378 (D.C. Cir. 1990).

amended by the 1996 Act.⁵

II. BACKGROUND

2. *Regulatory framework.* Pursuant to the regulatory scheme established in its *Computer II* proceeding, the Commission has traditionally classified communications services as either basic or enhanced services.⁶ In that proceeding, the Commission defined "basic" services as those that provide a "pure transmission capability over a communications path that is virtually transparent in terms of its interaction with customer-supplied information."⁷ The Commission has defined "enhanced services" as "services offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information, provide the subscriber additional, different, or restructured information, or involve subscriber interaction with stored information."⁸ Unlike basic services, enhanced services are not regulated under Title II of the Act.⁹ In the *Computer II* proceeding, the Commission established rules to govern the provision of enhanced services, including a requirement that the then-integrated Bell

⁵ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act). Section 702 of the 1996 Act added section 222 to the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.* (the Act), which, among other things, restricts the use of CPNI that telecommunications carriers obtain in the course of providing telecommunications service to customers. See 47 U.S.C. § 222. In response to requests from local exchange carriers for a clarification of their CPNI obligations, the Commission has commenced a proceeding to implement the requirements of section 222. *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Notice of Proposed Rulemaking, 11 FCC Rcd 12513, 12513-14, ¶ 1 (1996) (*CPNI NPRM*). In the *CPNI NPRM*, the Commission clarified "that the CPNI requirements that the Commission previously established . . . in the *Computer II* and *Computer III* proceedings for the provision of enhanced services" remain in effect to the extent that they do not conflict with the 1996 Act, pending the outcome of the CPNI rulemaking. Moreover, the Commission stated that "[t]o the extent that the 1996 Act requires more of a carrier, or imposes greater restrictions on a carrier's use of CPNI, the statute . . . governs." *Id.* at 12515-16, ¶ 3.

⁶ *Amendment of Section 64.702 of the Commission's Rules and Regulations*, Final Decision, 77 FCC 2d 384 (*Computer II Final Decision*), recon., 84 FCC 2d 50 (1980) (*Computer II Reconsideration Order*), further recon., 88 FCC 2d 512 (1981), *aff'd sub nom. Computer and Communications Indus. Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983) (referred to collectively as the *Computer II* proceeding).

⁷ *Computer II Final Decision*, 77 FCC 2d at 420, ¶96. In the *NATA Centrex Order*, the Commission discussed characteristics of "adjunct to basic services" that facilitate the use of traditional telephone service but do not alter the fundamental character of telephone service. See *North American Telecommunications Association, Petition for Declaratory Ruling Under Section 64.702 of the Commission's Rules Regarding the Integration of Centrex, Enhanced Services, and Customer Premises Equipment*, Memorandum Opinion and Order, 101 FCC 2d 349, 359-61, ¶¶ 23-28 (1985) (*NATA Centrex Order*), recon., 3 FCC Rcd 4385 (1988).

⁸ 47 C.F.R. § 64.702(a).

⁹ *Id.*

system establish separate subsidiaries for the provision of enhanced services.¹⁰ Following the divestiture of AT&T, the Commission extended the structural separation requirements of *Computer II* to the Bell Operating Companies (BOCs).¹¹

3. In the *Computer III* proceeding, the Commission established a regulatory framework through which BOCs could offer integrated enhanced and basic services.¹² In October 1994, the United States Court of Appeals for the Ninth Circuit remanded portions of the *Computer III* proceeding to the Commission.¹³ Following that remand, the Common Carrier Bureau issued an *Interim Waiver Order*, pursuant to which BOCs are permitted to continue to provide enhanced services on an integrated basis.¹⁴ BOCs are required to file CEI plans for each proposed enhanced service offering or receive a waiver of the Commission's CEI requirements,

¹⁰ *Computer II Final Decision*, 77 FCC 2d at 475-86, ¶¶ 233-60; *Computer II Reconsideration Order*, 84 FCC 2d at 75-86, ¶¶ 72-105; 47 C.F.R. § 64.702.

¹¹ *Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Equipment by the Bell Operating Companies*, Report and Order, 95 FCC 2d 1117, 1120, ¶ 3 (1984), *aff'd sub nom. Illinois Bell Telephone Co. v. FCC*, 740 F.2d 465 (1984), *aff'd on recon.*, FCC 84-252, 49 Fed. Reg. 26056 (1984), *aff'd sub nom. North American Telecommunications Ass'n v. FCC*, 772 F.2d 1282 (7th Cir. 1985).

¹² *Amendment of Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85-229, Phase I, Report and Order, 104 FCC 2d 958 (1986) (*Phase I Order*), *recon.*, 2 FCC Rcd 3035 (1987), *further recon.*, 3 FCC Rcd 1135 (1988) (*Phase I Reconsideration Order*), *second further recon.*, 4 FCC Rcd 5927 (1989) (*Phase I Second Further Reconsideration Order*); *Phase I Order* and *Phase I Reconsideration Order* vacated, *California V. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*); Phase II, 2 FCC Rcd 3072 (1987) (*Phase II Order*), *recon.*, 3 FCC Rcd 1150 (1988), *further recon.*, 4 FCC Rcd 5927 (1988); *Phase II Order* vacated, *California I*, 905 F.2d 1217 (9th Cir. 1990); *Computer III Remand Proceeding*, 5 FCC Rcd 7719 (1990) (*ONA Remand Order*), *recon.*, 7 FCC Rcd 909 (1992), *pets. for review denied*, *California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (*California II*); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order*), *BOC Safeguards Order vacated in part and remanded*, *California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*), *cert. denied*, 115 S. Ct. 1427 (1995) (referred to collectively as the *Computer III* proceeding).

¹³ *California III*, 39 F.3d 919.

¹⁴ *Bell Operating Companies' Joint Petition for Waiver of Computer II Rules*, Memorandum Opinion and Order, 10 FCC Rcd 1724 (Com. Car. Bur.) (*Interim Waiver Order*), *recon.*, 10 FCC Rcd 13758 (Com. Car. Bur. 1995). In response to the *California III* decision, the Commission initiated a rulemaking proceeding to review the current nonstructural safeguards for BOC provision of enhanced services on an integrated basis. *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, Notice of Proposed Rulemaking, CC Docket No. 95-20, 10 FCC Rcd 8360 (1995). This further remand proceeding is pending, and the Commission has indicated that it intends to issue a further notice in the proceeding to address issues raised by the passage of the 1996 Act. *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-149, FCC 96-489, at ¶ 133 (rel. Dec. 24, 1996).

if they wish to offer an enhanced service on an integrated basis and the service is not the subject of a previously-approved CEI plan.¹⁵ In their CEI plans, the BOCs must demonstrate that they provide interconnection opportunities to other enhanced service providers (ESPs) on an "equal access" basis, thus making basic facilities available on an unbundled and functionally equivalent basis.¹⁶ The Commission imposed the CEI plan requirements, in addition to its joint cost rules and CAM requirements, as nonstructural safeguards to prevent BOCs from subsidizing enhanced services with revenues from basic services and to prevent discrimination against competing ESPs with respect to the rates, terms, and conditions of access.¹⁷

4. *Previous waivers.* In November 1995, the Commission granted a waiver of its CEI plan requirements to U S WEST, permitting the carrier to offer a reverse-search capability in conjunction with its Electronic White Pages (EWP) service.¹⁸ The Commission conditioned that waiver on U S WEST's compliance with the Commission's joint cost rules, CAM requirements, and *Computer III* CPNI requirements, as amended by the 1996 Act.¹⁹ In July 1996, we granted Southwestern Bell Telephone Company (SWBT) and BellSouth Telecommunications, Inc. (BellSouth) waivers of the CEI requirements, subject to the same conditions, to provide reverse-search capability in conjunction with their EWP services.²⁰

¹⁵ *Interim Waiver Order*, 10 FCC Rcd at 1728-30, ¶¶19-31.

¹⁶ *Phase I Order*, 104 FCC 2d at 964-65, 1035-36, ¶¶ 4-5, 147 & n.210. The Commission mandated that CEI plans comply with a series of "equal access" parameters, including requirements that the "basic service functions utilized by a carrier-provided enhanced service . . . be available to others on an unbundled basis, with technical specifications, functional capabilities, and other quality and operational characteristics . . . equal to those provided to the carrier's enhanced services." *Id.* at 1036, ¶ 147.

¹⁷ *Computer III Remand Proceedings: Bell Operating Company Safeguards; and Tier 1 Local Exchange Company Safeguards*, Notice of Proposed Rulemaking and Order, 6 FCC Rcd 174-75, ¶ 9 (1990). For a more complete review of the history of the *Computer II* and *Computer III* proceedings, see *U S West Communications, Inc. Petition for Computer III Waiver*, 11 FCC Rcd 1195, 1195-97, ¶¶ 2-10 (Com. Car. Bur. 1995) (*U S WEST Order*).

¹⁸ *U S WEST Order*, 11 FCC Rcd 1195.

¹⁹ *Id.* at 1200, ¶ 34.

²⁰ *U S West Communications, Inc. Petition for Computer III Waiver; BellSouth Petition for Waiver of Computer III Rules for Reverse Search Capability; Southwestern Bell Telephone Company Petition for Waiver of Computer III Rules for Reverse Search Capability*, Memorandum Opinion and Order on Reconsideration, 11 FCC Rcd 7997 (Com. Car. Bur. 1996) (*Reverse Search Reconsideration Order*). In the *Reconsideration Order*, we also affirmed our decision that U S WEST's reverse-search capability is an enhanced service. *Id.* at 8003-5, ¶¶ 11-17. Prior to that Order, we granted BellSouth's waiver petition, in part, in order to permit BellSouth to provide reverse-search capabilities solely to the Federal Bureau of Investigation. *BellSouth Petition for Waiver of Computer III Rules for Reverse-Search Capability*, Order, 11 FCC Rcd 12068 (Com. Car. Bur. 1996).

5. *Ameritech's petition.* Ameritech requests relief identical to that accorded to U S WEST, BellSouth, and SWBT in the *U S West Order* and the *Reverse Search Reconsideration Order*.²¹ Specifically, Ameritech seeks a waiver to permit it to provide reverse-search capability as an integrated part of its ADS offering, on the grounds that technological constraints do not permit it to offer the service economically on an equal access basis.²² No other party has filed comments in this proceeding.

6. Currently, Ameritech offers ADS as a tariffed basic service, which customers use in an electronic directory assistance environment. Ameritech states that its "current system: (1) provides access to a database of telephone subscribers' names, addresses, telephone numbers, and, in some cases, zip codes; (2) includes no other data in the databases that would be available to customers; (3) enables searches by name only; (4) enables searches of a single name or multiple names at a time; and (5) enables customers to request the data via a personal computer and modem."²³ In addition, Ameritech represents that the service does not permit ADS users to obtain non-published and non-listed information. Ameritech asserts that the ADS reverse-search capability that it proposes to offer would enable customers to search the same database by telephone number, rather than only by name, but that customers would not be able to search the database by address.²⁴

7. Ameritech agrees to comply with requirements that the Commission imposed on U S WEST, BellSouth, and SWBT upon granting them waivers of the CEI requirements to provide reverse-search capabilities. Specifically, Ameritech represents that it would remove all of the costs associated with providing reverse-search capability from its regulated accounts in accordance with the Commission's joint cost rules. In addition, Ameritech states that it would file revisions to its CAM to identify reverse-search capability as a non-regulated offering and to establish appropriate cost pools. Finally, Ameritech has pledged to comply with the Commission's *Computer III* CPNI requirements.²⁵

8. Ameritech estimates that development of a stand-alone search capability consistent

²¹ Ameritech maintains that its proposed reverse-search capability is properly classified as an adjunct to basic function. However, in light of the Commission's ruling affirming its decision that U S WEST's reverse-search capability is an enhanced service, Ameritech requests a waiver of the Commission's CEI rules. See Ameritech Petition at 2 n.3; *Reverse Search Reconsideration Order*, 11 FCC Rcd at 8003-5, ¶¶ 11-17.

²² Ameritech Petition at 1-2. Ameritech indicates that its reverse-search service is offered only on an intraLATA basis. See Letter from Michael S. Pabian, Senior Counsel, Ameritech, to William F. Caton, Acting Secretary, Federal Communications Commission, March 20, 1997.

²³ *Id.* at 2.

²⁴ *Id.* at 2-3.

²⁵ *Id.* at 3.

with the Commission's CEI requirements would take between one and one-half and two and one-half years to develop and cost approximately \$700,000 to \$750,000. Moreover, Ameritech asserts that reverse-search capability is typically provided as an incremental feature of traditional electronic directory assistance services, rather than as a stand-alone capability.²⁶ Indeed, Ameritech asserts that competition is flourishing in the directory services market and that competing providers offer services that are functionally equivalent to ADS reverse-search capability via on-line services, as well as other CD-ROM products that allow users to perform a variety of similar functions.²⁷ Therefore, Ameritech states that competing providers of electronic directory services do not require interconnection with Ameritech's existing ADS application.²⁸

IV. DISCUSSION

9. The Commission may grant a waiver of a provision of its rules "if good cause therefor is shown."²⁹ To establish good cause, a petitioner must demonstrate that "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."³⁰ The petitioner "must clearly demonstrate that the general rule is not in the public interest when applied to its particular case and that the grant of the waiver will not undermine the public policy served by the rule."³¹ Accordingly, as we found in our previous CEI waiver orders, a petitioner seeking a waiver of the Commission's CEI requirements carries the burden of demonstrating that a waiver is in the public interest by establishing that a grant of a waiver is unlikely to permit the petitioner to engage in unlawful discrimination or cross-subsidization and is likely to produce benefits for consumers.³²

10. We find that Ameritech has met its burden of demonstrating that the waiver is in the public interest because Ameritech has shown on the record that the Commission's grant of

²⁶ *Id.* at 4, Attachment A.

²⁷ *Id.* at 3-4.

²⁸ *Id.*

²⁹ 47 C.F.R. § 1.3.

³⁰ *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972)); *see also Industrial Broadcasting Co. v. FCC*, 437 F.2d 680, 683 (D.C. Cir. 1970).

³¹ *See American Telephone and Telegraph Co. Petition for Waiver of Section 64.702 of the Commission's Rules and Regulations*, 88 FCC 2d 1, 5 (1981).

³² *See, e.g., U S WEST Order*, 11 FCC Rcd at 1200, ¶ 32.

the waiver is unlikely to permit Ameritech to engage in unlawful discrimination or cross-subsidization. Further, we find it significant that no party opposes granting Ameritech a waiver in this proceeding. Moreover, no party has challenged Ameritech's assertion that competition is flourishing in the directory services market and that competing providers offer services that are functionally equivalent to ADS reverse-search capability via on-line services, as well as other CD-ROM products that allow users to perform a variety of similar functions.³³ Thus, the record indicates that other companies do not require access to Ameritech's basic service offerings in order to provide competing reverse-search capabilities. We condition the grant of this waiver, however, on Ameritech's compliance with the Commission's joint cost rules,³⁴ CAM requirements,³⁵ and the *Computer III* CPNI requirements, as amended by the 1996 Act.³⁶

11. We also conclude that the waiver is likely to produce benefits for consumers. We believe that the costs of complying with the CEI requirements in this case outweigh the benefits, given that compliance with those requirements is not necessary to allow competing providers to offer reverse-search services. In addition, no party has challenged Ameritech's assertion that compliance with the Commission's CEI requirements would delay Ameritech's introduction of its proposed service by as much as two and one-half years and create substantial costs that could be avoided by integrating the telephone number search capability into Ameritech's ADS system.³⁷ Thus, we find that granting the waiver benefits consumers by promoting competition.

12. Accordingly, we conclude that Ameritech has established good cause for granting a limited waiver of the *Computer III* CEI plan and CEI equal access parameter requirements for the reverse-search capability offered in conjunction with Ameritech's ADS offering. We limit this waiver to the reverse-search capability as described in Ameritech's petition.

V. ORDERING CLAUSE

13. IT IS HEREBY ORDERED that Ameritech's petition for a waiver of the *Computer*

³³ Ameritech Petition at 3-4. We note that we found similar competitive conditions to exist when granting previous waivers. *Reverse Search Reconsideration Order*, 11 FCC Rcd at 8007, ¶ 24; *U S WEST Order*, 11 FCC Rcd at 1200, ¶ 33.

³⁴ 47 C.F.R. § 64.901.

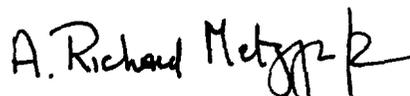
³⁵ See *supra* n.4.

³⁶ See *supra* n.5.

³⁷ See *id.* at 4, Attachment A.

III CEI requirements for Ameritech's ADS reverse-search capability IS GRANTED subject to the conditions and requirements established herein.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink that reads "A. Richard Metzger, Jr." with a stylized flourish at the end.

A. Richard Metzger, Jr.
Deputy Bureau Chief,
Common Carrier Bureau