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Washington, DC 20405

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April 23, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

CC 96-262

Subject: Access Charge Reform CC Docket No. 96-262
and Usage of the Public Switched Network
by Information and Internet Access Providers
CC Docket No. 96-263

Dear Mr. Caton:

Enclosed please find the original, eighteen copies and a computer diskette of the General Services Administration's Reply Comments for filing in the above-referenced proceeding.

Sincerely,

Michael J. Ettner

Michael J. Ettner
Senior Assistant General Counsel
Personal Property Division

Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of	
Access Charge Reform	CC Docket No. 96–262
Price Cap Performance Review for Local Exchange Carriers	CC Docket No. 94–1
Transport Rate Structure and Pricing	CC Docket No. 91–213
Usage of the Public Switched Network by Information Service and Internet Providers	CC Docket No. 96–263

REPLY COMMENTS ON NOTICE OF INQUIRY of the GENERAL SERVICES ADMINISTRATION and the UNITED STATES DEPARTMENT OF DEFENSE

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April 23, 1997

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Summary

In the Telecommunications Act of 1996, Congress recognized the importance of a national policy to preserve the competitive market for the Internet and other interactive computer services. As the Commission's Office of Plans and Policy has observed, information services have proliferated with minimal regulatory intervention. In its initial comments, GSA/DOD urged the Commission to maintain the highly competitive nature of this industry and not burden evolving markets with costs or other regulatory constraints that would stifle innovation or the development of additional information services.

In these reply comments, GSA/DOD responds to the claims by some parties that information services should be subject to usage–based access charges and possibly additional regulation or fees. As GSA/DOD explains, information service providers should not be considered as common carriers for any regulatory purpose, including access charges.

GSA/DOD urges the Commission to recognize that contrary to the claims of some local carriers, information service providers and their customers are more than meeting their obligations under the existing access charge regime. The providers and their customers are subject to subscriber line charges (mostly at the higher multi-line rates) on all of the access facilities that they use. Information service providers and their customers also supply local exchange carriers with revenues from local loops and message unit charges which are generally far above the carriers' costs.

In these comments, GSA/DOD also counters assertions by incumbent local carriers that access charges are needed to stimulate the investment necessary to

accommodate the growth in data services. In addition, GSA/DOD rebuts claims that information services are responsible for congestion in the public switched network.

While the Commission should refrain from imposing extra obligations on providers and users of information services, as some parties suggest, GSA/DOD explains that there are some very important actions for the Commission to take at this time. Through pro–competitive and technology–based initiatives, the Commission can take a major step to aid the development of information services. First, the Commission should focus on the need for more facilities–based competition. Second, the Commission should require local exchange carriers to meet the unbundling requirements described in its August 1996 Interconnection Order, and carry these a step further by also disaggregating the local loop into its sub–elements. Finally, the Commission should establish regulations and service standards to ensure that local exchange carriers to not stifle investment and competition in the information services markets.

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REPLY COMMENTS ON NOTICE OF INQUIRY of the GENERAL SERVICES ADMINISTRATION and the UNITED STATES DEPARTMENT OF DEFENSE

The General Services Administration and the United States Department of Defense ("GSA/DOD"), on behalf of the customer interests of all Federal Executive Agencies ("FEAs"), submits these Reply Comments in response to the Commission's Notice of Inquiry ("NOI") released December 24, 1996. The NOI was released with the Commission's Notice of Proposed Rulemaking ("NPRM") concerning the structure and level of interstate access charges by the incumbent local exchange carriers. In the NOI, the Commission requests comments and replies addressing the status of interstate information services, including the Internet and other on–line services, under the current access charge structure and under the structure that may evolve from the Commission's current access charge proceeding.

I. INTRODUCTION

Pursuant to Section 201(a)(4) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 481(a)(4), GSA is vested with the responsibility to represent the customer interests of the FEAs before Federal and state regulatory agencies. The FEAs are substantial users of interexchange and local telecommunications services throughout the nation. From this perspective, GSA/DOD has consistently supported the Commission's efforts to bring the benefits of competitive telecommunications markets to all consumers.

The rapid development of the Internet and other information services raises many important policy questions concerning the future of the public switched network.[1] One important issue identified in the NOI is whether information service providers should be subject to interstate access charges.[2] The NOI also requests comments on additional actions required to meet concerns regarding network management and other technical requirements for information services.[3] In addition, the NOI seeks comments on actions necessary to remove barriers that may impede the development of information services.[4]

On March 24, 1997, GSA/DOD submitted comments addressing many of the issues identified in the NOI. More than 40 additional parties filed comments addressing these issues, including:

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1 NOI, para. 311.

2 *Id.*

3 *Id.*, paras. 312–313.

4 *Id.*, para. 314.

10 Regional Bell Operating Companies and other Incumbent Local Exchange Carriers;

2 Competitive Local Exchange Carriers;

4 Interexchange Carriers;

10 Internet Providers and Groups of Firms Providing Information Services;

4 Associations Representing Telecommunications Carriers; and

13 Information Service Users and Parties with Specialized Telecommunications Interests.

In these Reply Comments, GSA/DOD responds to the positions advanced by these parties in their comments.

II. INFORMATION SERVICES ARE A GLOBAL RESOURCE FOR PRIVATE AND PUBLIC USERS.

From its inception 25 years ago as a military and academic research tool, the Internet has expanded to become a major global resource providing information to millions of individuals and organizations every day.[5] Commercial, government, and private users of the public switched network employ Internet Service Providers ("ISPs") and Enhanced Service Providers ("ESPs") as gateways to obtain the information they need for commerce, education and recreation. As the Internet User Coalition explained in its comments:

> The Internet . . . seamlessly facilitates both speech and commerce, so that the expansion of each of them assists the expansion of the other. In fashioning its policies, the FCC must recognize and accommodate this extraordinary attribute of the Internet.[6]

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5 FCC Office of Plans and Policy Working Paper "Digital Tornado: The Internet and Telecommunications Policy," March 1997, ("OPP Paper"), p. i.

6 Comments of the Internet User Coalition, p. iv.

GSA/DOD can attest to the vital role of electronic information services in the activities of Federal agencies. Each year, millions of individuals access data at nodes or "web sites" maintained by these agencies. In addition, the agencies share data to increase efficiency, while Federal employees communicate with each other and with the public through E–mail and other information services.[7] The Internet links vendors with Federal procurement activities.

As major users, Federal agencies view electronic information services as indispensable in performing their work. From this perspective, GSA/DOD urges the Commission to take any actions necessary to ensure that the information industry continues to provide an expanding array of services to workplaces and homes throughout the nation.

III. THE COMMISSION SHOULD FOREBEAR FROM ADDITIONAL REGULATION OF INFORMATION SERVICES.

A. Information services have proliferated with minimal regulatory intervention.

A primary conclusion of a study released last month by the Commission's Office of Plans and Policy is that limited regulatory intervention is a major reason why information services have proliferated in this country.[8] GSA/DOD concurs with this conclusion, and urges the Commission to continue to forebear from regulation of information services.

Many local exchange carriers advocate increased regulation of information services provided by other companies. For example, US West requests that the Commission establish an "expedited NPRM" to eliminate the "exemption" of firms

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7 Comments of GSA/DOD, p. 3.

8 OPP Paper, p. i.

providing enhanced services from the access charge regime.[9] The Rural Telephone Coalition asserts that the Telecommunications Act of 1996[10] requires greater regulation of information service providers. According to the Coalition, this legislation does not allow the Commission to prolong its "preferential treatment" of ESPs as a fledgling industry.[11]

GSA/DOD explained in its previous comments that regulation of information service providers as common carriers is not appropriate.[12] The Commission squarely addressed the question of whether information service providers should be considered "consumers of communications services" or "communications carriers" by its order in the *Computer II* decision.[13] The Commission concluded that information service providers are not common carriers because they do not offer transmission capability to their customers.[14] Information service providers meet the definition of firms providing enhanced services because they use computers to act on the format and content of information and instructions provided by their own end users and provide their customers with additional or restructured information in an interactive format.

With the increasing complexity and sophistication of information services, the distinctions that the Commission noted more than 15 years ago are even more valid

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9 Comments of US West, Inc., Summary, p. 3.

10 Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et seq. ("1996 Act").

11 Comments of the Rural Telephone Coalition, pp. 5–6.

12 Comments of GSA/DOD, p. 5.

13 *Id.*, p. 5 citing *Final Decision*, 77 FCC 2d 384 (1980), *Memorandum Opinion & Order*, 84 FCC 2d 50, *further reconsideration* 88 FCC 2d 512 (1981) *aff'd*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

14 *Id.*, p. 6.

today. Additional regulatory constraints, fees, or access charges are not justified by the structure of the system for providing information services.

Furthermore, any claim that the recent legislation justifies greater regulation of information services turns reality on its head. As CAIS, Inc. ("CAIS") noted in its comments, Congress recently made clear that it is the policy of this country to:

> [p]reserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.[15]

Greater regulation of information services is not consistent with the need to promote more competition. Furthermore, as CAIS observes, greater regulation will reverse the growth of competition among service providers, which would impair the development of new services in this industry.[16]

To ensure the development of more competition that will benefit all end users, GSA/DOD strongly urges the Commission to forebear from additional regulation and to take any action necessary to prevent state regulators from adopting potentially conflicting regulations that could hamper firms in providing local information services.

B. The comments do not provide any economic basis for additional access charges.

Information service providers and their customers are now paying more than their share of access charges.

GSA/DOD has explained that there is no economic basis for additional access charges on ISPs or ESPs. Firms providing information services and their customers are already paying more than their share of access charges.[17]

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15 Comments of CAIS, p. 8, referencing the 1996 Act, Section 230(b)(1).

16 *Id.*, p. 5.

17 Comments of GSA/DOD, p. 8, and pp. 15–17.

The Telecommunications Resellers Association ("TRA") is among the parties asserting that ESPs and firms providing Internet access should be subject to access charges. This group claims that it is time for these companies to join other entities "that once benefited from interstate access charge exemptions in stepping up to like obligations to pay switched access charges to originate and terminate interstate, interexchange telecommunications services traffic."[18]

TRA's request is not justified, because information service providers and users of information services are already meeting their obligations. These users are connected to the switches of local exchange carriers through the same types of access facilities that are used for voice messages. For example, most information services providers and large end users of information services obtain access through dedicated DS–1 capacity (1.544 Mbps) facilities that provide 24 voice–grade (64 kbps) channels over a coaxial cable or multiple copper pairs.[19] Smaller end users, including individuals wanting access in their homes, may either use the second path of an Integrated Services Digital Network ("ISDN") connection,[20] lease an extra individual telephone line, or share their present access facility with voice service by obtaining information services on a dial–up basis.

For all of these configurations, the access facilities are presently subject to subscriber line charges ("SLC"). Therefore, information service providers — like all other end users — already pay for access to the public switched network through

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18 Comments of the TRA, p. ii.

19 Comments of GSA/DOD, p. 7.

20 ISDN provides multiple channels on a single access facility. The "Basic" configuration is two 64 kbps voice or data channels, plus a 16 kbps channel for control and signaling information. Local exchange carriers are offering ISDN access to business and residence users in most exchanges.

monthly subscriber line charges on all of the access facilities that they obtain from the incumbent local exchange carriers.[21]

In fact, as GSA explained in its previous comments, information service providers and many consumers of information services now pay more than their fair share of access charges because the SLC cap for multi–line services is greater than the SLC cap for single line services.[22] The SLC cap for residence and single–line business users is $3.50 monthly, while the monthly cap for multi–line business users is $6.00, in spite of the fact that the cost of a line does not depend on the amount of traffic it carries.[23]

Local exchange carriers already receive adequate revenues from information services.

LECs do not need additional revenues from information service providers or their customers because their charges for leased access facilities and network usage substantially exceed their costs.[24] In the first place, LECs receive substantial monthly revenues from access facilities used to connect information service providers and their customers with local wire centers. In addition to the revenue from the information service providers, the LECs obtain substantial revenue from monthly service charges paid by residential and business users for additional lines. In the period 1990 through 1995, LECs collected more than $3.5 billion in additional revenues for lines added by residential subscribers primarily for access to information service providers.[25]

Furthermore, as GSA has explained, flat rate local service is not available to business users in most areas. Business users of local exchange services — all

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21 Comments of GSA/DOD, pp. 7–8.

22 *Id.*, pp. 7–8.

23 *Id.*

24 *Id.*, p. 15.

25 *Id.*, pp. 15–16.

information service providers and many of their customers, including government users — typically must pay local message charges for all voice and data messages that transit the local network. The state–regulated charges for local usage are commonly set far above costs, so that information services are profitable for the LECs.[26]

In summary, information services now provide LECs with substantial incremental revenues, with minimal costs. One study concludes that data communications traffic has generated revenues for LECs that exceed the incremental costs they incur to carry this traffic by a factor of six.[27] With this margin, LECs do not require any additional compensation from information service providers or their customers.

As an additional issue, Bell Atlantic and NYNEX complain in their joint comments that ISPs lease standard business telephone lines, or ISDN services, which carry no usage charges for terminating traffic.[28] This complaint has no justification at all. In the first place, local access facilities are dedicated to individual subscribers, so that their costs do not depend on traffic volume. Secondly, message charges (both timed and untimed) have always been assessed at the originating terminal for all types of local traffic. Finally, since Internet traffic is very unbalanced directionally, with the overwhelming majority of calls originated by Internet subscribers, and terminated at ISPs, rather than the reverse, local exchange carriers receive substantial message revenues for calls originating at ISP customer locations. In most metropolitan areas, flat rate local exchange service is not even available to business or government subscribers. In these places, the local exchange carriers receive local message

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26 *Id.*, p. 16.

27 *Id.*

28 Joint Comments of Bell Atlantic and NYNEX, ("Bell Atlantic/NYNEX"), p. 3.

revenues on all calls originated by business and government subscribers, as well as residence subscribers who elect measured service options available to them.

Additional access charges would not stimulate network investment.

Some carriers incorrectly assert that access charges are required to generate investment for expansion of the networks needed to provide information services. For example, Cincinnati Bell Telephone Co. ("CBT") contends that the current access charge procedures have inhibited the transition to efficient data networks because local exchange carriers are hesitant to invest in the new technologies, believing "that under the current rules, they will not be able to recover their investments."[29] As a result, according to CBT, some customers are being denied access to the increased bandwidth networks that will enable them to transact business more efficiently, while other users are being delayed in their efforts to tap the vast quantities of information that the Internet holds for them.[30]

GSA/DOD believes that the evidence demonstrates that Cincinnati Bell's concerns are misplaced. In the first place, the current telecommunications networks must be extremely efficient, or they could not have accommodated the increases in both voice and data traffic in the past decade.

Secondly, local exchange carriers have been investing in their networks without extraneous incentives. According to data maintained by the FCC, the reporting local exchange companies collectively added about $20 billion of new plant in each of the recent three years.[31]

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29 Comments of CBT, p. 6.

30 *Id.*

31 The aggregate plant investments were $18.9 billion in 1993, $21.0 billion in 1994, and $20.4 billion in 1995. "FCC Statistics of Common Carriers," 1993/94 edition, 1995 edition, and 1996 edition, Table 2.7.

Furthermore, assuming that local exchange carriers were granted additional revenue from new usage–based access charges, it is not clear that the carriers would designate the funds to improve facilities for accommodating information services.

Finally, GSA/DOD has explained that any additional access charges on information service providers would likely be passed on fully to their customers.[32] As a result, the monthly costs of the services would increase dramatically.[33] The increased cost would retard subscriber growth and encourage some users to terminate service, ironically to the detriment of local exchange carriers who now receive substantial revenues from access facilities dedicated to information services.

Competition, as well as alternative access arrangements and other innovative techniques provide the best means to accommodate increases in the requirements for information services in the longer term.[34] The application of usage–based access charges on information service providers will not provide better networks or more services.

C. The comments do not indicate any engineering basis for additional access charges.

Just as additional access charges are not the appropriate means for local exchange carriers to obtain additional capital, they are not the means for reducing the network congestion that several commenting parties attribute to information service providers.

Bell Atlantic/NYNEX and Pacific Telesis have asserted that information services traffic is causing significant congestion in switches and interoffice trunks which could

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32 Comments of GSA/DOD, pp. 8–9.

33 Id., p. 9.

34 Comments of GSA/DOD, p. 12.

otherwise be used for different subscribers or services.[35] Bell Atlantic/NYNEX claims that it has significant congestion on switches to which ISPs are connected and on unspecified interoffice trunk facilities.[36] Pacific Telesis asserts that the extent of its congestion problem is "broad."[37]

As GSA/DOD explained in its previous comments, information services are not responsible for significant congestion in the shared elements of the local exchange carrier's networks.[38] It is surprising that Bell Atlantic/NYNEX and Pacific Telesis make this assertion, because both of these parties have conducted studies showing that Internet usage was substantially off peak.

A Bell Atlantic report to the Commission in June 1996 demonstrates the off–peak nature of information services.[39] In that report, Bell Atlantic provided data on the busy hour for four different customer groups in nine of its wire centers during a four–week period.[40] For these wire centers, the aggregate busy hour for all traffic was 4:00 PM. In contrast, the two major groups of information service providers — ISPs using single business lines and ISPs using ISDN lines — had busy hours of 11:00 PM and 10:00 pm, respectively.

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35 Joint Comments of Bell Atlantic and NYNEX, pp. 4–7; and Comments of Pacific Telesis, p. 29.

36 Joint Comments of Bell Atlantic and NYNEX, pp. 4–7.

37 Comments of Pacific Telesis, p. 29.

38 Comments of GSA/DOD, pp. 13–15.

39 Comments of GSA/DOD, pp. 14–15, referencing "Report of Bell Atlantic on Internet Traffic" attached to letter by Joseph J. Muliere, Director – FCC Relations of Bell Atlantic, to James D. Schlichting, Chief of the FCC Competitive Pricing Division, June 28, 1996.

40 *Id.*

A similar study by Pacific Telesis demonstrated the same differences in usage patterns. In that company's study, the average busy hour was 4:00 PM for all central offices surveyed, while the average busy hour for Internet access was 10:00 PM.[41]

GSA/DOD submits that traffic five or six hours off of the busy hour is hardly responsible for significant or broad network congestion. From the comments, it appears that any instances of congestion that can be traced specifically to information services are rare indeed. CAIS describes an analysis of outage reports investigated by a Federal advisory committee under the direction of the Commission.[42] Of 300 reports analyzed, only one case related to congestion that could be specifically traced to a group of end users. Interestingly, that outage did not result from ISP traffic at all. In that case, dial tone delays resulted from network congestion caused by calls placed to purchase tickets for the first playoff game of the Cleveland Indians in 40 years. As CAIS observes, there are no empirical reports corroborating claims that the switched network is strained from Internet demand.[43] Consequently, alleged network congestion does not justify additional access charges on information services.

IV. PRO–COMPETITIVE AND TECHNOLOGY–BASED INITIATIVES ARE THE MOST IMPORTANT STEPS TO AID DEVELOPMENT OF INFORMATION SERVICES.

While it is important to refrain from regulation of the information services industry and the imposition of additional access charges on providers and users of these services, there are several positive steps that the Commission should take at this time. Several pro–competitive and technology–based initiatives that GSA/DOD and

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41 Comments of GSA/DOD, p. 15, referencing "Crying 'uncle' or crying 'wolf'?," *America's Network*, December 1, 1996.

42 Comments of CAIS, p. 9.

43 *Id.*, p. 9.

other end users have advocated for all telecommunications services will also foster development of better information services for all consumers.

A. The Commission should focus on the need for more facilities-based competition.

Market forces and network connectivity have nourished the expansion of information services.[44] Indeed, the Internet was grounded in the open exchange of traffic through efficiently interconnected facilities to create the "network of networks" that exists today.

In their Joint Comments, Bell Atlantic/NYNEX assert that exclusion of information service providers from the access charge system provides a "disincentive" for them to embrace new network technologies.[45] According to Bell Atlantic/NYNEX, the information service providers are not motivated to subscribe to new services or develop their own facilities because they can simply order additional business lines from the incumbent local exchange carrier to accommodate increased demands.[46]

The assertion by these companies misses the mark. In the first place, Bell Atlantic/NYNEX neglect to mention that they are now receiving access charge revenues on all of these "additional business lines" as explained previously in these comments. Furthermore, the argument by Bell Atlantic/NYNEX fails to recognize that users of information services have received substantial benefits from the fact that the information services industry is competitive and <u>not</u> heavily dependent on the incumbent local exchange carriers.

The information services industry itself demonstrates the benefits of competition. Although many segments of the telecommunications industry as a whole are

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44 Comments of America Online, Inc., ("America Online"), p. 6.

45 Joint Comments of Bell Atlantic and NYNEX, p. 12.

46 *Id.*

dominated by large participants, many information service providers are smaller businesses, acting as resellers in this large market. Indeed, more than 2,000 companies offered Internet access through their own facilities or resale in mid–1996.[47] The Commercial Internet eXchange Association observed in its comments that 64 percent of reporting companies had average gross revenues of less than $1 million in the past three years.[48]

Unfortunately, the level of competition among providers of information services is not matched by the availability of competitive local exchange facilities. The lack of local exchange competition harms end users because the goal of accommodating increased data traffic lies in more alternatives and the deployment of more data–friendly networks.[49] In a competitive environment, new entrants will offer facilities and services that can accommodate data traffic more efficiently. Furthermore, actual competition, or even the threat that a competitor will attract customers from an incumbent carrier's revenue–generating customer base, will motivate incumbent carriers to invest in the facilities needed to offer better services for all customers.[50]

The comments by information services providers identify many alternatives that will provide additional network capacity for data services. For example, the Internet Access Coalition points to a number of technical modifications that will allow more data traffic to be handled by switching facilities at the originating and terminating exchanges.[51] These improvements are more likely with open competition because

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47 NPRM, Comments of America Online, p. 7.

48 Comments of the Commercial Internet eXchange Association, p. 3.

49 Comments of GSA/DOD, p. 11.

50 Comments of the Internet User Coalition, pp. 8–9.

51 *Id.*, pp. 10–12.

new facilities–based local exchange carriers are more likely to deploy facilities that are designed specifically for data services.

New competitors will also provide more options for data transport. As the Internet Access Coalition explains, cable companies, wireless firms, and satellite competitors will have the ability to provide data transport services within the next few years.[52] In fact, some firms are already beginning to offer access to ISPs through satellite–based services.[53]

In summary, more facilities–based competition will foster additional information services at lower costs. GSA/DOD strongly urges the Commission to ensure that its policies facilitate the interconnection of all firms that can handle the expanding requirements for information services in the future.

B. The Commission should require local exchange carriers to disaggregate the local loop into its sub–elements.

In its Interconnection Order in CC Docket Nos. 96–98 and 95–185, the Commission required local exchange carriers to unbundle their networks into their principal elements: local loops; network interface devices; local and tandem switches; interoffice transmission facilities; signalling and call–related database facilities; operations support systems; and information, operator and directory assistance. The Internet Access Coalition points out that many of the newer data–appropriate technologies can be deployed only if this level of unbundling is implemented.[54] Therefore, the unbundling required to provide facilities to competing local exchange carriers will have the major additional benefit of aiding the development of information services.

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52 *Id.*, pp. 31–35.

53 NPRM, Comments of Pennsylvania Internet Service Providers, January 27, 1997, p. 22.

54 Comments of the Internet Access Coalition, p. 42.

To implement more unbundling, the next important step is to disaggregate the local loop itself into its constituent sub–elements – feeder plant, distribution plant, and the feeder/distribution interface. This step will also aid competing carriers and information service providers, as demonstrated by comments filed in this proceeding. The Access Internet Coalition points out that xDSL and similar technologies for data transmission require the installation of equipment at the customer's premises, paired with equipment in the LEC's network.[55] The paired equipment can only operate if it is connected by transmission lines that do not exceed certain specified lengths.[56] Because a significant percentage of customer loops now exceed these maximums, many potential data customers can only be served by placing an xDSL remote terminal in the loop plant between the end user and the LEC central office. Unbundling of the local loop into distribution and feeder sub–elements is necessary for the Internet access providers to deploy these remote terminals at such intermediate locations.

Finally, unbundled access offerings would allow an entirely new group of local exchange carriers — competitive data service providers — to provide their own services through direct connections to end users. Competitive data service providers will be able to operate more efficiently by supplementing their own facilities with unbundled local access that they obtain from the incumbent local exchange carriers. As a result, end users will enjoy more benefits of competitive data markets and innovative high bandwidth data services.

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55 *Id.*, pp. 45–47.

56 *Id.*, pp. 45–47.

C. The Commission should ensure that incumbent local exchange carriers do not stifle new investment and competition in the broadband network services markets.

The Commission's policies must prevent the incumbent carriers from using their market power as a means to impede the ability of independent providers to participate in the information services markets. Almost all incumbent local exchange carriers have launched efforts or announced plans to offer Internet access service.[57] Nevertheless, several large incumbent carriers complain that the "exemption" of enhanced service providers from the existing access charge regime unfairly benefits competitive local exchange carriers. One RBOC states that the present system even prevents the incumbent local exchange carriers from "having the opportunity to recover their costs."[58]

Even more pointedly, another RBOC cites its ability to use its existing monopoly telephone rate base — and the infrastructure funded by that rate base — to facilitate its entry into the broadband services market.[59] However, there are no assurances that incumbent carriers will fully reflect the costs that they incur in their own rates. On the other hand, their competitors would be incurring tariffed transmission charges, which are likely to be well above economic costs, in addition to the costs associated with the other components of their Internet service offerings.

GSA/DOD also urges the Commission to reject arguments by incumbent local exchange carriers that they should not be required to give enhanced service providers access to ISDN and discounted second lines that the carriers will offer to their own

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57 Comments of America Online, pp. 36–37.

58 Comments of Pacific Telesis, p. 24.

59 Comments of America Online, p. 38.

Internet service customers.[60] At the minimum, the entry by incumbent local exchange carriers into the on–line service business underscores the need to assure compliance with the nondiscrimination and equal access provisions of the 1996 Act, as well as the Commission's Open Network Architecture ("ONA") and Comparably Efficient Interconnection ("CEI") rules.

Furthermore, the Commission should prevent the incumbent carriers from inflating the costs incurred by information services providers by tying the acquisition of needed services to unnecessary components. The incumbent local exchange carriers have the ability to bundle value–added services and other extra services with the services actually required by end users such as firms providing information services. Also, the incumbent carriers have the power to delay provisioning of facilities and services to competing information service firms, or to provide these firms with access facilities and services that are functionally inferior.

It is particularly important to detect such potential abuses of market power, because the incumbent carriers are seeking to differentiate themselves in the on-line services market by claiming that their own services are superior to those provided by independent firms.[61] To help prevent such anti–competitive practices, GSA/DOD urges the Commission to establish and enforce standards ensuring that local exchange carriers do not discriminate in providing access lines or other facilities required for information services.

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60 Comments of America Online, p. 38, referencing CCBPol No. 96–09, Bell Atlantic's Opposition to Petition for Reconsideration, August 9, 1996, pp. 5–6.

61 Comments of America Online, p. 42.

V. CONCLUSION

As a major user of telecommunications services, GSA/DOD urges the Commission to refrain from imposing additional access charges on Internet Service Providers or Enhanced Service Providers, and to take the additional pro–competitive actions outlined in these comments.

Respectfully submitted,

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