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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of:	)	
	)	
Computer III Further Remand Proceedings:	)	CC Docket No. 95-20
Bell Operating Company	)	
Provision of Enhanced Services	)	
	)	
1998 Biennial Regulatory Review --	)	CC Docket No. 98-10
Review of *Computer III* and ONA	)	
Safeguards and Requirements	)	
	)	

COMMENTS OF THE
UNITED STATES TELEPHONE ASSOCIATION

Its Attorneys:

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March 27, 1998

SUMMARY

USTA's comments are focused on two proposals contained in the Notice. The Commission asks: 1) whether it should require all facilities-based carriers that provide information services to unbundle their telecommunications services and offer them to other ISPs under the same tariffed terms and conditions under which they provide such services to their own information services operations; and 2) whether it can and should give pure ISPs the same rights of access to ILEC unbundled network elements as telecommunications services providers.

USTA asserts: that no showing has been made that either proposal, which increase the regulatory burdens on ILECs, is warranted; that it would be unlawful for the Commission to expand the scope of Section 251(c)(3) of the Communications Act; and that this proceeding is not the proper proceeding in which to consider either of these proposals. USTA urges the Commission to withdraw the proposals from consideration or, in the alternative, renotice the proposals in a more appropriate proceeding.

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COMMENTS OF THE
UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association (USTA),[1] through the undersigned, hereby files limited comments in response to the Federal Communications Commission's (Commission) Further Notice of Proposed Rulemaking (Notice)[2] in the above-captioned proceeding. The Commission issued the Notice in order "to address issues raised by the interplay between the safeguards and terminology established in the 1996 Act [Telecommunications Act of 1996] and the *Computer III* regime."[3] It seems logical to examine whether the body of *Computer III* rules,

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[1] USTA is the nation's oldest trade organization for the local exchange carrier industry. USTA currently represents more than 1200 small, mid-size and large companies worldwide.

[2] Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements, Further Notice of Proposed Rulemaking, CC Docket Nos. 95-20 and 98-10, FCC 98-8 (rel. Jan. 30, 1998).

[3] Id. at ¶ 5.

which were promulgated prior to the passage of the 1996 Act, are now necessary and consistent with the 1996 Act.

USTA is concerned, though, that while this rulemaking is ostensibly being conducted in order to reconcile or conform the Commission's *Computer III* regime, which applies to the former Bell Operating Companies (BOCs) and GTE, with the 1996 Act, the Commission also asks for comment on two matters that suggest it is considering expanding the scope of both its *Computer III* (ONA) rules and the unbundling requirements in the 1996 Act. Specifically, the Commission asks the following:

> ... whether the Commission's *Computer II* decision should now be interpreted to require facilities-based common carriers that provide information services to unbundle their telecommunications services and offer such services to other ISPs [information services providers] under the same tariffed terms and conditions under which they provide such services to their own information services operations.[4]

and

> ... whether ... we can and should extend some or all rights accorded by section 251 [of the 1996 Act] to requesting telecommunications carriers to pure ISPs.[5]

USTA is concerned that these two questions, which if answered in the affirmative will broadly impact incumbent local exchange carriers (ILECs), are being presented for comment and resolution in this proceeding. USTA is particularly troubled because the questions send the signal to the local exchange carrier industry that the Commission is contemplating increasing regulatory burdens on ILECs rather than aggressively seeking opportunities to lessen the regulatory burdens

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[4] Id. at ¶ 42.

[5] Id. at ¶ 96.

on them as competition increases in both the telecommunications and information services markets. Accordingly, USTA urges the Commission to withdraw these matters from consideration, at least with respect to this proceeding if not altogether.

DISCUSSION

The current environment for communications services, both telecommunication services and information services, is one of increasing competition. One may debate the level of competition or the speed at which it is increasing in any particular communications market, but the trend is clearly toward increased competition rather than decreased competition in virtually all relevant communications markets. In light of the current state of the communications market, it is particularly troublesome that the Commission is giving serious consideration to: 1) increasing the scope of its ONA unbundling requirements to apply to all facilities-based common carriers that provide information services; and 2) adopting rules that expand ILEC Section 251 unbundling obligations to include requests from nontelecommunications services providers such as pure ISPs.

The Commission has solicited comment on these matters without offering any evidence that barriers to competition exist for ISPs. No specific problem has been identified that would warrant expanding current facilities and services unbundling requirements. Absent significant, credible evidence that ISPs face competitive barriers that can only be addressed by increasing ILEC unbundling obligations, the Commission should refrain from pursuing such regulatory initiatives.

Where Congress has with specificity established requirements that define the extent of

ILEC unbundling obligations, it would be unlawful for the Commission, on its own, to expand the scope of those obligations. Congress explicitly differentiated between telecommunications services and information services in Section 3 of the Communications Act.[6] It must be presumed that Congress understood that pure ISPs would not have access to unbundled network elements under subsection 251(c)(3) when it limited access to ILEC unbundled elements to "any requesting telecommunications carrier."[7] It would be exceedingly bold for the Commission to negate Congressional judgment on this matter and proceed on its own to confer upon pure ISPs the right to demand unbundled network elements from ILECs. The Commission should exercise restraint and refrain from substituting its judgment for that of the Congress on this matter.

The Notice was released under two docket numbers -- CC Docket No. 95-20 that is associated with prior *CI-III* proceedings and CC Docket No. 98-10 that is captioned as the Biennial Review proceeding for *CI-III* and ONA safeguards and requirements. Section 11 of the Communications Act requires that beginning in 1998 the Commission review, every two years, regulations issued under "this Act" that are in effect at the time of the review and apply to the operations or activities of any telecommunications services provider.[8] It is further provided that the Commission must determine if any such regulation is necessary in light of competitive

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[6] See 47 U.S.C. § 153(20) and (46).

[7] 47 U.S.C. § 251(c)(3).

[8] 47 U.S.C. § 161(a)(1).

conditions,[9] and if a regulation is not necessary, it is to be repealed or modified.[10] It seems especially ironic that in a proceeding that is intended to identify regulations that are candidates for repeal or modification (presumably a modification that is deregulatory in nature) the Commission would be considering actions that will increase the unbundling obligations of ILECs. One would not anticipate that a Biennial Review proceeding would be a docket in which proposals by the Commission to increase ILEC regulatory obligations would be found. One would also not expect to find these two proposals in a *CI-III* proceeding that was held out to reconcile the differences between safeguards and terminology established in the 1996 Act and the Commission's *CI-III* regime since *CI-III* applies to the former BOCs and GTE -- not all ILECs.

Because the proceeding as captioned does not call attention to the scope of the two unbundling proposals presented by the Commission, USTA is concerned that there may be a significant number of potentially impacted parties who are unaware that the proposals are under consideration. USTA believes that proposals of this magnitude and breadth should, if considered at all, be considered in a proceeding where it is clear on the face of the notice that the entire ILEC industry may be affected by the matters under consideration. Accordingly, should the Commission decide to keep the unbundling proposals discussed above under consideration,

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[9] 47 U.S.C. § 161(a)(2).

[10] 47 U.S.C. § 161(b).

USTA encourages the Commission to renotice the proposals in a proceeding where is will be clear to all potentially affected parties that such broad-based proposals are under consideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on March 27, 1998 Comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

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