U.S. GENERAL SERVICES ADMINISTRATION
Office of General Counsel

March 27, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Subject: Computer III Further Remand Proceedings
Bell Operating Company
Provision of Enhanced Services
CC Docket Nos. 95-20 and 98-10

Dear Ms. Salas:

Enclosed please find the original and eleven copies of the General Services Administration's Comments for filing in the above-referenced proceeding.

Sincerely,

Michael Ettner

Michael Ettner
Senior Assistant General Counsel
Personal Property Division

Enclosures

cc: Ms. Janice Myles, Common Carrier Bureau
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OFFICE OF THE SECRETARY

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

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

COMMENTS
of the
GENERAL SERVICES ADMINISTRATION

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March 27, 1998

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Summary

Enhanced services extend the capabilities of the switched telecommunications network. Most of these services are offered by the incumbent local exchange carriers, but specialized groups of firms called enhanced service providers ("ESPs") or information service providers ("ISPs") have become major participants in these markets.

As the principal incumbent carriers in most areas, the Bell Operating Companies enjoy substantial power in the enhanced services markets. With this position, the BOCs can expand the opportunities for users to obtain more enhanced services at lower costs. However, GSA urges the Commission to recognize that BOCs will continue to play a dual role — first as the direct provider of enhanced services and second as the entity controlling facilities that independent firms need to offer services to their own customers.

Structural separations provides the best way to ensure that the BOCs meet the demands of this dual role without unfair advantage to their own operations or prejudice to their competitors. Competition for intraLATA services is not sufficiently intense or pervasive to depend on non–structural safeguards. From operational and marketing perspectives, information services and basic telephone services are often highly entwined. Structural separations are needed to ensure that accounting functions can be clearly disaggregated.

In addition to structural separations, GSA urges the Commission to continue to require BOCs to file Comparably Efficient Interconnection plans and to obtain Common Carrier Bureau approval of those plans. The plans provide detailed information on functionality, costs, and service availability schedules that are helpful to ensure that BOCs do not discriminate against ESPs and ISPs.

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COMMENTS
of the
GENERAL SERVICES ADMINISTRATION

The General Services Administration ("GSA") submits these Comments on behalf of the customer interests of all Federal Executive Agencies ("FEAs") in response to the Commission's order released on January 30, 1998.[1] In the Further Notice the Commission requested comments and replies on the requirements for structural safeguards with increases in competition for telecommunications services.

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 require substantial quantities of interexchange and local telecommunications services throughout the nation. From this perspective, GSA

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1 CC Docket Nos. 95–20 and 98–10, Further Notice of Proposed Rulemaking, released January 30, 1998, ("Further Notice").

has consistently supported the Commission's efforts to bring the benefits of competitive markets to consumers of all telecommunications services.

Enhanced services extend the capabilities of the switched telecommunications network by providing voice mail, E–mail, voice store–and–forward, data processing, access to on–line databases, and other services for businesses, government agencies, and private individuals. Initially these services were offered primarily by telephone companies. However, in recent years specialized groups of firms called enhanced service providers ("ESPs") or information service providers ("ISPs") have become major participants in these markets.

GSA provided comments to the Commission concerning structural separations for enhanced services in several proceedings. GSA submitted comments and reply comments in CC Docket No. 90–623. In those comments, GSA stated that structural separations were not necessary for enhanced services.[2] However, in comments submitted in the instant case four years later, GSA explained that it had reconsidered its position on this issue.[3] Because the enhanced services markets had matured, and the Bell Operating Companies ("BOCs") had greatly diversified their activities, GSA was convinced that structural separations would benefit consumers and assist in the orderly development of competition.[4]

The last three years have witnessed dramatic changes in telecommunications markets, technologies, and regulatory activities. Therefore, it is appropriate to revisit

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2 CC Docket No. 90–623, "Comments of the General Services Administration," March 8, 1991, p. 2; and "Reply Comments of the General Services Administration," April 8, 1991, pp. 15–23.

3 [illegible]

issues concerning the need for structural separations and the reporting requirements for enhanced services.[5]

II. STRUCTURAL SEPARATIONS OF ENHANCED SERVICES OFFERED BY BELL OPERATING COMPANIES IS NECESSARY TO ENSURE OPEN COMPETITION.

A. Competition for intraLATA services is not sufficient to depend on nonstructural safeguards.

The Commission notes that the Telecommunications Act of 1996 requires structural separations for BOCs offering in–region interLATA information services.[6] However, the Commission tentatively concludes that nonstructural safeguards are sufficient for intraLATA information services provided by these companies.[7] GSA does not agree with this conclusion.

Structural separations should be required for all information services — intraLATA as well as interLATA — absent a specific waiver by the Commission. The critical need to protect consumers and to promote the development of competition require separate affiliates, except in unique circumstances demonstrated on a case–by–case basis.[8]

In reaching the tentative conclusion that structural separations are not necessary for intraLATA services, the Further Notice relies on the view that competition

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5 Further Notice, paras. 5–8.

6 Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56, amending the Communications Act of 1934, 47 U.S.C. § 151 *et seq.* ("the Telecommunications Act"). At n. 18 on p. 6, the Further Notice observes that sections 271–275 of the Telecommunications Act, which include, *inter alia*, requirements for structural separations in certain instances, were held unconstitutional by the United States District Court for the Northern District of Texas on December 31,1997. However, as stated in that footnote, the analysis in the Further Notice assumes that a stay of that Court's order is continued.

7 Further Notice, para. 7.

8 CC Docket No. 95–20, "Reply Comments of the General Services Administration," May 18, 1995, p.10.

has developed to the point where market forces are the appropriate substitute for regulatory scrutiny of the incumbent carriers' activities in providing enhanced services.[9] However, GSA urges the Commission to rely specifically on the development of competition for intraLATA services in reaching a decision not to require structural separations of basic and enhanced services.

Although competition has existed for message toll and private line services for several decades, most competition has been for longer haul message traffic and longer haul dedicated circuits. Longer haul message toll and private line services were generally more profitable, and were therefore the primary targets of competitors. At almost every point in time and in almost every location, there has been much less competition for the shorter haul intraLATA services.

If the extent of competitive development is to be used as the criterion in determining whether or not structural separations is required, separations for intraLATA services is far more critical than for interLATA services. Since the Telecommunications Act views structural separations as a key for efficient and fair competition in providing in–region interLATA services, the Commission should adopt a parallel requirement for intraLATA services.

B. Structural separations are required for fair competition between BOCs and other firms providing information services.

In comments to the Commission submitted in the Access Charge Reform proceeding about a year ago, enhanced service providers stressed the continuing need to maintain a clear distinction between regulated basic communications services

9 Further Notice, paras. 6–7, 20.

and unregulated enhanced services.[10] These firms explained that the most effective way to provide such a clear distinction between these services when they are provided by the BOCs is to require these carriers to build, operate and offer them through structurally separate organizations.[11]

The Commission acknowledges that BOCs have the ability to engage in anti–competitive behavior against ISPs who must obtain basic network services from them in order to provide their own service offerings.[12] For example, telephone companies may deny ISPs access to facilities or provide ISPs with access that is inferior to that accorded their own operations.[13] Also, the BOCs may misallocate revenue requirements by shifting costs incurred to provide information services to the company's basic voice services.[14] Structural separations is by far the most effective accounting mechanism to detect any attempts to shift costs.

BOCs have greatly expanded their activities in enhanced services markets. To cite one example, Bell Atlantic set forth its plans in a press release in January 1997.

> This year, Bell Atlantic will move forward with the next generation of the Full Service Network ("FSN"). This robust switched broadband network will provide voice, high–speed data and video services over an integrated fiber–to–the–curb architecture. Initial deployment for voice service will occur in the Philadelphia area later this year; high–speed data and digital video services will follow in 1998. Bell Atlantic plans to role out its FSN in other key markets over the next few years.[15]

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10 CC Docket No. 96–263, NOI Initial Comments of CompuServe Incorporated and Prodigy Services Corporation, March 24, 1997.

11 *Id.*

12 Further Notice, para. 43.

13 *Id.*

14 *Id.*

15 Bell Atlantic 1996: Year in Review, January 8, 1997, available at http://www.ba.com.

The most salient feature of Bell Atlantic's activity is the focus on operational synergism of enhanced services and basic voice services. As expected, other BOCs have also built on their positions as providers of basic communications services in their operating areas to market their own Internet services. For example, SBC markets "Southwestern Bell Internet service" on its website.[16] Individuals may subscribe by providing their telephone number and credit card information. Subscription is limited to individuals residing in Arkansas, Kansas, Missouri, Oklahoma, or Texas.

The Commission should not prevent BOCs from full participation in enhanced services markets. With their expensive technical expertise and experience in providing a wide variety of services, BOCs can expand the opportunities for users to obtain more enhanced services at lower costs. However, GSA urges the Commission to recognize that BOCs will almost always play a dual role — first as the direct provider of enhanced services and second as the entity controlling facilities that independent firms need to offer services to their own customers. Structural separations provides the best way to ensure that the BOCs meet the demands of this dual role without unfair advantage to their own operations or prejudice to their competitors.

III. REQUIREMENTS FOR APPROVAL OF COMPARABLY EFFICIENT INTERCONNECTION PLANS SHOULD NOT BE ELIMINATED.

In the Further Notice, the Commission also tentatively concludes that it should eliminate the requirement for BOCs to obtain approval by the Common Carrier Bureau of Comparatively Efficient Interconnection ("CEI") plans before providing new

16 Welcome to the Southwestern Bell Internet software download site, available at http://www.swbell.com.

intraLATA information services.[17] Indeed, the Commission postulates that it could even eliminate the requirements for BOCs to file CEIs with the Common Carrier Bureau.[18]

GSA does not believe that these steps to significantly relax surveillance over interconnections for information services are wise at this time. CEIs provide information necessary to help ensure that BOCs do not discriminate against ISPs by providing inferior connections or support services.

A CEI plan details how a BOC proposes to comply with nine "equal access" parameters:

- interface functionality;
- unbundling of basic services;
- resale;
- technical characteristics;
- installation, maintenance, and repair;
- end user access;
- availability date, compared with the date that the BOC will be offering its own enhanced services to the public;
- minimization of transport costs; and
- availability to all interested ISPs.

Under the Commission's proposed plan, this basic information would no longer be available to regulators, competitors seeking access, or end users of the BOCs' services.

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17 *Id.*, para. 7.

18 *Id.*

In support of the tentative conclusion to abandon the CEI reports, the Further Notice states that BOCs are now subject to statutory requirements, including the unbundling requirements and network information disclosure requirements of Section 251(c) of the Telecommunications Act.[19] The Further Notice asserts that these requirements serve as further protections against access discrimination, by requiring the BOCs to open their markets to competition and also by ensuring that these carriers promptly disclose information about any changes that they make to their networks.[20]

GSA concurs that the legislation places these important obligations on the BOCs. However, the need for CEIs is not eliminated by these obligations. Indeed, the CEIs are a necessary tool for the Commission to employ in ensuring that the BOCs fulfill them.

Section 251(c)(5) of the Telecommunications Act is a statement of the "Notice of Change" obligation placed on all incumbent local exchange carriers. In its entirety, this section states that these carriers have:

> [T]he duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as any other changes that would affect the interoperability of those facilities and networks.[21]

This paragraph provides a <u>summary</u> of the information necessary. It does not eliminate the need for detailed information on functionality, costs and service availability dates contained in the CEIs.

Chairman Kennard noted in his recent Statement before the Subcommittee on Commerce, Justice, State, and the Judiciary of the Committee on Appropriations of the

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19 *Id.*, para. 62.

20 *Id.*

21 Telecommunications Act, Section 251(c)(5).

U.S. Senate that the development of competition has been "slow but steady."[22] The nation is, Chairman Kennard noted, "still in the very early stages of the development of local exchange competition."[23]

Chairman Kennard cited New York City as a location where more than 20 percent of the local business market is being served by carriers other than the incumbent Bell Company.[24] However, he cautioned that "too few residential consumers yet have the opportunity to choose among competing providers of local exchange services."[25]

As consumers of telecommunications services throughout the nation, the FEAs also can report that competition is developing slowly. The FEAs' experience has confirmed that competition has advanced most significantly in areas with very high densities of business subscribers. Of the three alternative methods of competitive entry provided under the Telecommunications Act — use of independent facilities, unbundled network elements ("UNEs"), and resale of services — most of the competition has developed using facilities owned by the new competitors. So far, at least, UNEs have not been a major vehicle for competition in serving business users.

Similarly, there is no evidence that BOCs have been providing efficient interconnections that would enable ESPs and ISPs to compete effectively with them. GSA urges the Commission not to abandon the requirement that BOCs provide the data contained in the CEIs. This data will allow the Commission to monitor progress in

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22 "Federal Communications Commission's Fiscal Year 1999 Budget Estimates," Statement of William E. Kennard, FCC Chairman, before the Subcommittee on Commerce, Justice, State, and the Judiciary of the Committee on Appropriations, U.S. Senate, March 19, 1998.

23 *Id.*

24 *Id.*

25 *Id.*

achieving balanced competition between BOCs and independent providers in offering enhanced services.

V. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to require structural separations for enhanced services provided by BOCs and to continue the requirements for these companies to obtain approved Comparatively Efficient Interconnection plans.

Respectfully submitted,

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March 27, 1998

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