DOCKET FILE COPY ORIGINAL

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

RECEIVED

MAR 2 7 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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 BELL ATLANTIC
ON FURTHER NOTICE

Lawrence W. Katz

1320 North Court House Road, 8th Floor
Arlington, Virginia 22201
(703) 974-4862

Attorney for the Bell Atlantic
Telephone Companies

Edward D. Young, III
Michael E. Glover
Of Counsel

March 27, 1998

TABLE OF CONTENTS

		PAGE
I.	Introduction and Summary	1
II.	Over A Decade of Experience Proves That Allowing Bell Companies to Provide Information Services on an Unseparated Basis Has Not Impeded Competition.	4
III.	There Is No Justification For Imposing Additional Restrictions on Bell Company Provision of Information Services.	7
IV.	Existing Computer Inquiry III Burdens Should Be Removed or Reduced..	11
	A. *CEI Plan Requirements Unreasonably Delay New Services, Retard Innovation, Impede Competition, and Should Be Repealed*	11
	B. *ONA Requirements Should Be Phased Out Over Three Years.*	14
	C. *Services In Which the Subscriber's Information Is Delivered Without Change In Form Or Content Are Telecommunications, Regardless of Any Protocol Conversion.*	19
	D. *During the Transition Until ONA Is Eliminated, ONA Reporting Should Be Streamlined.*	20
CONCLUSION		24

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

RECEIVED
MAR 27 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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 BELL ATLANTIC[1]
ON FURTHER NOTICE

I. Introduction and Summary

A decade of actual marketplace experience demonstrates conclusively that competition has flourished ever since the Bell companies have been allowed to provide information services on a structurally unseparated basis. In light of this experience, the Commission should reduce, rather than increase, the costly regulatory burdens imposed uniquely on information services offered by these companies.

For the last decade, the Bell companies have been providing information services on a structurally unseparated basis. Contrary to the speculative "Chicken Little" predictions of impending doom by opponents of relief, the sky has not fallen – far from it. According to the U.S. Department of Commerce, the information service business has blossomed into one of the

[1] The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

largest, fastest-growing and most competitive segments of the U.S. economy. Information services produce tens of billions of dollars in revenues for major providers such as Microsoft, EDS, AT&T, IBM, American Airlines, and Hewlett-Packard. While the Bell companies have injected additional competition into previously under-served sectors, they remain niche players and under no stretch of the imagination has their entry harmed competition. On the contrary, prices have fallen and output has increased – the opposite of what would be expected if they had impeded competition. In short, far from falling, even the sky has not limited the robust expansion of these services or of the competing new distribution systems, including satellites as well as terrestrial facilities, that now transmit information services around the globe.

Given this experience, the Commission has correctly concluded that there is no conceivable basis to impose previously rejected restrictions on information services provided by the Bell companies, such as by returning to the days of structural separation or by imposing restrictions on joint marketing. On the contrary, these types of restrictions would serve only to impose additional costs on consumers and impede investment in new services, with absolutely no countervailing public benefits.

By the same token, this experience demonstrates that there is no justification for imposing additional unbundling requirements. Existing rules have allowed information service providers to obtain all the services they need on an unbundled basis. These rules are now supplemented by the requirements of the 1996 Act, which ensure that competing local exchange carriers have access to unbundled elements of the incumbent's network for use in providing

competing telecommunications services to information service providers, as well as their other customers.

Instead of considering new restrictions, the Commission should immediately begin to reduce the costly regulatory burdens imposed uniquely on the Bell companies. Doing so will promote efficient competition to the benefit of consumers. In particular: (1) The Commission should eliminate immediately the requirement to obtain advance approval of a comparably efficient interconnection ("CEI") plan in order to offer a new interstate information service. This requirement has routinely delayed the introduction of new competitive services – by periods of up to a full year – but provides no corresponding benefit. (2) The Commission should adopt a concrete schedule to phase out its open network architecture rules over a set period. With the passage of the 1996 Act and the development of competing distribution systems, both wireless and wireline, the rules that were adopted to suit a prior era have been overtaken and should be repealed. (3) The Commission should bring its own definition of "basic" services into line with the definition of telecommunications services in the Act, which includes protocol processing that does not change the information content. (4) The Commission should eliminate the rafts of burdensome and unnecessary ONA reporting requirements, which pile on paperwork and costs with no competitive benefit.

These proposals will satisfy the Ninth Circuit's concerns that led to the current remand, are fully consistent with the 1996 Act, and are good public policy. The Commission should promptly adopt them.

II. Over A Decade of Experience Proves That Allowing Bell Companies to Provide Information Services on an Unseparated Basis Has Not Impeded Competition.

A dozen years ago, the Commission lifted the structural separation requirement for the Bell companies because it recognized that the "inefficiencies and other costs to the public associated with structural separation significantly outweigh the corresponding benefits."[2] Five and one-half years later, the Commission reaffirmed its conclusion that permitting the Bell companies to provide information services subject to non-structural safeguards will "result[] in the wider availability of enhanced services to the public, while effectively ensuring that BOC participation in enhanced services does not adversely affect basic service rates or harm ESPs due to BOC anticompetitive conduct."[3]

Experience has proven that the Commission was right. In the period since the Bell companies were allowed to provide information services on an unseparated basis, competition "has continued to increase markedly as new competitive ISPs have entered the market."[4] By 1994, the information services industry already accounted for $135.9 billion in revenues, and the Commerce Department termed it "among the fastest growing sectors of the

---

[2] *Amendment of Section 64.702 of the Commission's Rules (Third Computer Inquiry)*, 104 F.C.C.2d 958 at ¶ 46 (1986) ("*Computer III Order*").

[3] *Computer III Remand Proceedings*, 6 FCC Rcd 7571, ¶ 98 (1991) ("*Computer III Remand*"). On this score, the Commission was upheld by the Ninth Circuit. *See California v. FCC*, 39 F.3d 919, 932-33 (9th Cir. 1994) ("*California III*").

[4] *Further Notice of Proposed Rulemaking*, FCC 98-8 at ¶ 36 (rel. Jan. 30, 1998) ("*Further Notice*"). The term "information services" is used here throughout rather than "enhanced services;" the Commission has found that the two terms are synonymous. *See Further Notice* at n.17.

economy."[5] That rapid growth has continued through the present. Today, according to the Commerce Department, the United States is "the world's largest producer and consumer of information technology products and services."[6] Eight out of the top ten information services companies in the world are United States companies, and none is a Bell company.[7]

Moreover, just as competition has thrived for information services as a whole, it also has thrived in the segments of the business where the Bell companies have focused their energies – namely, Internet access and voice messaging services.

a. Internet Services. The fastest-growing segment of the industry today is Internet-based information services. The number of Internet users already has increased from about 2.5 million in 1990 to about 62 million today.[8] And by 2000, estimates of Internet users range from 130 million to one billion.[9] This Internet habit is being fed by some 4,300 Internet

---

[5] United States Department of Commerce, *U.S. Industrial Outlook 1994* at 25-1.

[6] United States Department of Commerce, DRI/McGraw-Hill, and Standard and Poor's, *U.S. Industry & Trade Outlook '98* at 26-1.

[7] *Id.* at 26-1 to 26-2.

[8] *See* Breakthroughs, U.S. News and World Report, Dec. 25, 1995 at 101-104, 106-108; IntelliQuest Press Release, Latest IntelliQuest Survey Reports 62 Million Americans Access the Internet/Online Services, Feb. 5, 1998.

[9] *See* P. Rolfes, Novell CEO: Networks Put a Face on Internet, Columbus Dispatch, Nov. 20, 1997 at 1F (130 million); J. Welsh, "Father" of Internet Expects Bright Future for Technology, Wisconsin State Journal, Nov. 18, 1997, at 1C (300 million, according to Vint Cerf); B. Metcalfe, CamCon 97 Draws Out to Digerati to Ponder the Future of the Internet, InfoWorld, Nov. 17, 1997, at 187 (one billion, according to Nicholas Negroponte).

service providers, more than triple the number since the beginning of 1996.[10] According to one estimate, Internet service providers already account for nearly $6.5 billion in revenues, compared to less than $1 billion just two years ago,[11] and the number is expected to grow to a whopping $50 billion by 2000.[12] While some of the Bell companies, including Bell Atlantic, provide Internet access services, none is a major player, and their role is dwarfed by the likes of Microsoft, America Online, Prodigy, AT&T, and others.

b. Voice messaging. The primary information service that has been provided by the Bell companies is voice messaging. Yet, here as well, output has increased as prices have fallen. By the Commission's own estimate, the number of subscribers to electronic voice messaging services increased from 60,000 in 1990 to more than five million by early 1995[13] -- and the number continues to grow. At the same time prices have fallen by more than half, from just under $30 in 1990 to $8 in 1994.[14] And while the Bell companies have provided a valuable service to the previously under-served mass market – for example, Bell Atlantic has some 3

---

[10] J. Rickard, Boardwatch Directory of Internet Service Providers (Fall 1997). This figure is also substantially higher than the Commission's estimate of 3,000 Internet providers in the Fall of 1996. *Further Notice* at ¶ 36.

[11] P. Elstrom, New Boss, New Plan, Business Week, Feb. 2, 1998 at 122; Terrestrial Services Market Reaches $218.3 Billion, According to IDC, PR Newswire, Jan. 21, 1997.

[12] P. Vadlamudi, Amid the Churn and Change, ISP Market Keeps on Growing, Investor's Business Daily, Nov. 13, 1997 at A8 (citing Maloff Group estimate).

[13] *Notice of Proposed Rulemaking*, 10 FCC Rcd 8360 at ¶ 37 (1995).

[14] J.A. Hausman and T.J. Tardiff, "Benefits and Costs of Vertical Integration of Basic and Enhanced Telecommunications Services," at 9 and 14, April 6, 1995 ("Hausman and Tardiff"). This filing was appended to the April 7, 1995 comments filed by Bell Atlantic and NYNEX in this proceeding.

million residential and business voice messaging customers.[15] – they have by no means dominated the market. On the contrary, no Bell company accounts for more than about a 3 percent share of the electronic and directly competing CPE-based voice messaging businesses.[16]

In short, actual experience, as opposed to speculative claims by opponents of relief, demonstrate that unseparated Bell company entry has not in any way impeded the growth or competitiveness of the information services business.

III. There Is No Justification For Imposing Additional Restrictions on Bell Company Provision of Information Services.

The Commission is correct that it should continue to allow the Bell companies to provide intraLATA information services on a structurally unseparated basis. *Further Notice* at ¶ 48. As shown above, a decade of experience demonstrates that there is no justification for re-imposing a structural separation requirement. This conclusion is all the more true, of course, in the wake of the 1996 Act and the growth in competition that the Commission has recognized is now occurring in the local exchange business.[17] Indeed, the growth in competing data services

[15] *See* Declaration of Richard J. McCusker, Jr., at ¶ 3 ("McCusker Decl."). This declaration appears in Attachment B.

[16] Hausman and Tardiff at 10.

[17] Remarks by William E. Kennard to Legg Mason (Mar. 12, 1998) ("We see competition in New York City, where over 20% of the business market is being served by carriers other than the incumbent Bell Company.").

has been particularly rapid, including the ongoing deployment of cable modems and the availability of local and satellite wireless data services.[18]

Moreover, a return to structural separation would cause serious public harm. By imposing enormous costs on the Bell companies, it would lead to higher prices for their existing information services and deter investment in innovative new services.

For example, in the case of voice messaging services, the expense alone of moving Bell Atlantic's operations into a separate subsidiary would be at least $100 million, with capital costs at least $30 million more. *See* McCusker Decl. at ¶ 8. This would increase Bell Atlantic's costs, and ultimately the prices it would have to charge, by some 25% for residential customers and 20% for business customers. *Id.* at ¶ 6. These increases, in turn, would likely reduce residential and business demand in 2002 by more than 1 million customers below the expected subscribership under the existing rules. *Id.* at ¶ 7. Or to put it another way, one million customers would be deprived of a desirable service because Bell Atlantic was not allowed to conduct its business in an efficient manner.

In addition to the absolute price increases, the lost consumer welfare that would result from a return to structural separation is likely to be enormous. As a surrogate for future lost consumer welfare, MIT Professor Jerry Hausman recently examined the cost to the public of

[18] Cable modem deployment is doubling every three months, according to Gary Arlen of Arlen Communications. D. Mitchell, Cable Firms Run a Two-Way Race, Red Herring Online, Jan. 21, 1998. Similarly, the number of subscribers to wireless data services have grown 40% in the past year, from 1.6 to 2.2 million, and are projected to grow another fourfold to 9 million in the next four years. 1998 MultiMedia Telecommunications Association Market Review and Forecast 155 (1998).

the previous structural separation rule that prevented the Bell companies from providing voice messaging on a structurally integrated basis.[19] Dr. Hausman estimates the public welfare loss from the resulting five to seven-year delay in the introduction of network-based voice messaging services at $1.27 billion. Hausman at 14. By preventing or delaying the introduction of new information services by the Bell companies, a return to structural separation is likely to produce similar losses in consumer welfare.[20]

Despite these facts, some parties have claimed that, because the Act already requires the Bell companies to provide interLATA information services through a separate subsidiary, the cost of separating intraLATA information services will be minimal. This is wrong. First, this boils down to a claim that, because consumers will have to pay the added cost of providing some information services in an uneconomical way, they should pay the added cost of providing all services in the same way. This is nonsense. Second, the separate affiliate requirement for interLATA information services sunsets in less than two years. 47 U.S.C. §§ 272(f)(2), 274(g)(2). There is no conceivable basis on which to require consumers to bear the massive cost and expense of returning to structural separation for less than two years -- particularly where experience has proven that structural separation serves no purpose to begin

[19] Jerry A. Hausman, "Valuing the Effect of Regulation on New Services in Telecommunications," BROOKINGS PAPERS ON ECONOMICS, MICROECONOMICS 1997 ("Hausman"). This article appears in Attachment A.

[20] By comparison, the ten year delay in the introduction of cellular telephone service caused by delays in the regulatory licensing process produced even larger consumer welfare losses – to the tune of $16.7-24.3 billion per year. *Id.* at 23.

with, and an unbroken line of Commission cases since 1986 have concluded that structural separation for intraLATA information services is not in the public interest.[21]

Nor should the Commission impose restrictions on joint marketing of telecommunications and information services, as some parties have proposed in the past. *See Further Notice* at ¶ 128. Again, the simple fact is that the Bell companies have been permitted to engage in joint marketing for the last decade, and competition has flourished. There is no reason to change that policy now.

Nonetheless, a trade association of competing voice message providers previously claimed that the Bell companies have engaged in "a pattern" of anticompetitive conduct. Their claims, however, were based upon a handful of isolated and undocumented incidents that occurred prior to 1991. None of these allegations was the subject of a complaint to the Commission, and the Commission has not found that any of the allegations was valid.[22] Even if they were true, moreover, a few isolated mistakes of this type that can and do occur in any business, and which date more than seven years ago when the Bell companies were adjusting to the complex new ONA rules, simply cannot support a restriction on joint marketing –

[21] Of course, to the extent that are some services that a Bell company concludes can be most efficiently operated on a combined interLATA/intraLATA basis, or there are electronic publishing and other information services that can be most efficiently provided through a single affiliate, they should be free to do so, free from the nonstructural safeguards that currently apply to unseparated provision of information services.

[22] The only specific allegation that involved Bell Atlantic was that in 1989, one service representative misstated to one customer the applicability of message unit charges to voice messaging service. This minor error was quickly corrected.

particularly when the objective marketplace facts proves conclusively competition has flourished.[23]

IV. Existing Computer Inquiry III Burdens Should Be Removed or Reduced.

One of the major thrusts of the 1996 Telecommunications Act is to eliminate unnecessary regulatory burdens. Section 10, for example, affirmatively requires the Commission to forbear from applying any regulation that is unnecessary to ensure that rates for telecommunications services are reasonable or to protect consumers, and that are not in the public interest. 47 U.S.C. § 160. Likewise, Section 11(b) requires the Commission to eliminate "any regulation it determines to be no longer necessary in the public interest." 47 U.S.C. § 161(b). Here, several of the existing regulatory burdens imposed on the Bell companies fall within the scope of these provisions, and should be revised or repealed as described below.[24]

A. *CEI Plan Requirements Unreasonably Delay New Services, Retard Innovation, Impede Competition, and Should Be Repealed.*

The principal effect of requiring Bell companies to obtain approval of CEI plans before offering new information services is to delay the introduction of new services, and to deprive consumers of the benefit of added competition. As the Commission recognizes, "CEI

[23] The trade association's petition also discussed a 1991 case in which the Georgia PSC found that BellSouth had engaged in certain anticompetitive practices. The validity of the findings in the Georgia case was fully refuted in the current proceeding, *see* BellSouth Comments at 32-50 (filed Apr. 7, 1995), and the Commission should give them no weight.

[24] The revisions adopted here should apply equally to information services and to payphones. *See Further Notice* at ¶ 77. Under the Act, payphone nonstructural requirements should track those adopted in Computer Inquiry III, 47 U.S.C. § 276(b)(1)(C), including any revisions to those rules that are adopted here.

plans were always intended to be an interim measure," *Further Notice* at ¶ 61, and it is time to abolish them once and for all.

Examples of the unnecessary delay caused by the CEI process abound. A classic example is the amendment that Bell Atlantic filed to its already-approved CEI plan for Internet access. The amendment would do nothing more than extend to the former NYNEX states the same service that Bell Atlantic has been permitted to provide in the pre-merger Bell Atlantic states. But this one simple amendment has now been pending for nearly *eleven months*, and the one year deadline for Commission action (*see* 47 U.S.C. § 157(b)) is rapidly approaching without so much as a hint of relief.[25]

Even where there is no opposition, the CEI process produces interminable delays. For example, Ameritech's unopposed plan for Electronic Vaulting Service was delayed for ten months.[26] And Bell Atlantic's unopposed plan for Intranet Management Service remains pending nearly 6 months after it was filed.[27]

Not only do these purposeless delays add to the billions of dollars in lost consumer welfare gains calculated by Dr. Hausman, but they also demonstrate that the CEI requirement is inconsistent with the 1996 Act. The CEI plan approval process is both

---

[25] *See* Amendment to Bell Atlantic CEI Plan To Expand Service Following Merger With NYNEX, CCB Pol. 96-09 (filed May 5, 1997). The Commission approved Bell Atlantic's initial Internet CEI plan in *Order*, 11 FCC Rcd 6919 (1996).

[26] *Ameritech's Comparably Efficient Interconnection Plan for Electronic Vaulting Service*, CCBPol 97-03, DA 97-2715 (CCB, rel. Dec. 31, 1997).

[27] Offer of Comparably Efficient Interconnection to Intranet Management Service Providers, CCBPol 98-01 (filed Oct. 3, 1997).

unnecessary given the Commission's other existing rules and the obligations imposed upon the Bell companies by the 1996 Act, and affirmatively harms the public interest. It should be quickly eliminated.[28]

Removal of the CEI plan requirement will affirmatively serve the consuming public. New Bell company information services will become available sooner, and consumers will be given another source of existing services. This additional competition can help reduce prices for information services and force incumbent providers to improve their service. And, as history has shown, all with no anticompetitive effects on the market.

When it lifts CEI requirements for new services, the Commission should also dismiss as moot all of the pending CEI plans and waiver requests. If new plans are not required for the Bell companies to initiate information services, there is no reason to hold pending plans hostage. Similarly, any conditions on CEI plans and waivers that are no longer required under the Commission's remaining ONA requirements should be eliminated. There is no reason why a Bell company's existing information service should be subjected to greater restrictions than it would be if it were newly offered.

[28] Current rules also deprive the Bell companies of the ability to use underlying basic services that are available to all of their competitors. For example, Bell Atlantic was forced to withdraw a request to use a state-tariffed underlying telecommunications service in connection with Internet access because, under one scenario, there could be an interstate, intraLATA application (and therefore the underlying service would need to be federally-tariffed). As a result, every one of the thousands of Internet access providers operating in Bell Atlantic territory *except Bell Atlantic* can use its state-tariffed service to provide such a service.

B. *ONA Requirements Should Be Phased Out Over Three Years.*

Competition and unbundling requirements imposed by Section 251 of the 1996 Act have obviated the need to retain most of the existing ONA requirements. Accordingly, the Commission should establish a firm schedule for eliminating those requirements which are not otherwise imposed under the 1996 Act.[29]

In 1986, when the Commission adopted the ONA requirements, it found that nonstructural safeguards were needed because of the very limited amount of competition the Bell companies faced, and the considerable market power they allegedly could exercise for local exchange services used by information service providers to deliver their services.[30] This is no longer the case. The rapid growth of local competition, further spurred by the interconnection and unbundling requirements of the 1996 Act, the continuing growth of alternative distribution technologies ranging from cable modems to wireless local and satellite data transmission services, coupled with the utter dearth of anticompetitive abuses during the dozen years since that finding and the deregulatory thrust of the 1996 Act, all dictate phasing out of the existing ONA requirements. Accordingly, all ONA requirements, other than those involving CPNI and network disclosure which are required by the 1996 Act, should cease to have effect for any BOC on the earlier of three years from adoption of a Report and Order in this proceeding, or when that

[29] This phaseout would not affect the statutory obligations under Section 222 of the 1996 Act to restrict access to customer proprietary network information or those of Section 251(c)(5), under which incumbent local exchange carriers must disclose network changes. It will also not affect, of course, the basic obligation of all common carriers to provide any existing service upon reasonable request. *See* 47 U.S.C. § 201(a).

[30] *Computer III* 104 F.C.C.2d 958 at ¶¶ 129-31.

Bell company is found by the Commission to satisfy the 14 point checklist in Section 271 of the Act.

Such a phaseout is consistent with the sunset provisions of the 1996 Act. Congress specified that its special requirements relating to BOC provision of information services would sunset four years after enactment of the 1996 Act, or February 6, 2000, less than two years from now. *See* 47 U.S.C. §§ 272(f)(2) (interLATA information services), 274(g)(2) (electronic publishing).[31] By specifying a three-year sunset period for ONA, the Commission will retain the ONA requirements for more than a year after the statutory structural separation provisions will have expired, to allow for a transition, unless the BOC obtains Section 271 relief in the interim.

By finding that the combination of growing local competition and the requirements of the 1996 Act obviate the need for ONA regulations, the Commission will also meet the Ninth Circuit remand requirement to explain why "fundamental unbundling" of the BOCs' networks is no longer needed. *California III*, 39 F.3d at 930. In the *Further Notice*, the Commission tentatively concludes that the "unbundling requirements imposed by Section 251 and our implementing regulations ... are essentially equivalent to the 'fundamental unbundling' requirements" of Computer Inquiry III. *Further Notice* at ¶ 31. The needs of information service providers are being fully met today,[32] and as a result of additional competition and the

[31] The Commission may extend the period for interLATA information services but not for electronic publishing.

[32] Bell Atlantic is unaware of any complaint alleging that an ISP was unable to offer an information service because a carrier was unable to meet its telecommunications needs.

requirements of the 1996 Act, their needs will continue to be met, either from the Bell companies or from competitors using their own facilities and/or unbundled network elements. The increased local competition which the 1996 Act will help stimulate can be expected to produce a wide variety of service offerings designed to meet the needs of all customers, including ISPs. *Id.* at ¶ 33. As a result, the marketplace, not unnecessary ONA mandates, will ensure that ISPs' needs are fully met.

As the Commission acknowledges, under the Act, only telecommunications carriers, not ISPs, may request or subscribe to unbundled network elements, *id.* at ¶ 32, and it should not attempt to extend Section 251(c)(3) to cover ISPs. Congress established a mechanism for carriers to supplement their own facilities with network elements obtained from incumbent local carriers in order to promote local telecommunications service competition. *See* 47 U.S.C. § 251(c)(3). The information services market is already highly competitive, and their telecommunications needs are already being met. Therefore, Congress properly confined the unbundled network element process to carriers.

The Commission also asks whether ONA has been effective, whether ISPs use the ONA process, and whether the existing ONA mechanisms are useful and should be retained. *Further Notice* at ¶¶ 85-91. The short answer is that, during the period that ONA has been in effect, every information service provider has had available all of the telecommunications

services it has needed, but extremely few have taken advantage of the process.[33] This provides further confirmation that the Commission should phase out the ONA requirements.

There is also no need to change the ONA process in light of the growth of new information services, such as Internet access. *See id.* at ¶ 90. In fact, Bell Atlantic has been deploying new telecommunications services that will be useful to ISPs (particularly Internet service providers) without commercial success. The inability to induce customers to use these new, more efficient, offerings are not due to any shortcomings of ONA but to other Commission policies.

For example, Bell Atlantic has offered Internet Protocol Routing Service for nearly two years but has no major nonaffiliated customers. This is because most ISPs continue to subscribe to less efficient, but lower-priced, local business services, as a result of the "ESP exemption" which allows ISPs to use such local lines for their interstate access, and the resulting state misinterpretations of the reciprocal compensation provisions of the Act and interconnection agreements. Until the Commission eliminates this 14 year-old exemption, the BOCs will be wasting money in attempting to develop and deploy new services that are intended to meet ISP needs. Therefore, it is not the ONA process that needs reform, but other Commission policies, such as the "ESP exemption," that discourage development of innovative telecommunications services.[34]

---

[33] Bell Atlantic and the former NYNEX have together received fewer than a dozen new ONA requests in the ten years since ONA has been implemented.

[34] *See, also*, Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC 98-11 (filed Jan. 26, 1998).

During the transition that ONA remains in effect, the "common ONA model" should be retained. All parts of the industry are comfortable with the nomenclature used in the model and the process for obtaining services. In addition, there is no purpose in requiring the Bell companies to separate optional features from the underlying services on which they ride, as the Commission suggests. *Id.* at ¶ 86. Most of these features are software functions provided in the same equipment that is used to provide the underlying transmission and could not physically be separated from the underlying transport facilities. Moreover, it is simply not true that the ONA model requires information service providers to purchase unnecessary functions that may be embedded within other ONA services. *Id.* Upon *bona fide* request, Bell Atlantic has unbundled all of the optional features to the degree that is economically and technically feasible.

Likewise, there is no reason to revise the 120-day process for requesting new ONA services. Bell Atlantic has promptly filled technically and economically feasible requests, or responded within the prescribed period when requests were not feasible.

Finally, during the transition, the ONA process should apply only to telephone companies and unseparated affiliates. Fully separated affiliates under Section 272 or 274 can exercise no market power and are already subject to significant restrictions in their relationship with the Bell companies. Those affiliates are comparable to the separate affiliate required by the Commission's Computer Inquiry II rules, 47 C.F.R. § 64.702, which were not subject to the non-structural restrictions.

C. *Services In Which the Subscriber's Information Is Delivered Without Change In Form Or Content Are Telecommunications, Regardless of Any Protocol Conversion.*

The Commission also should modify its definition of "basic" services to comply with the definition of telecommunications services in the 1996 Act. In particular, the Commission should make clear that a net code or protocol conversion that is integral to a transmission service in which the content of a subscriber's information remains unchanged from end-to-end, and is not stored for later retrieval, is part of a telecommunications service. *See Further Notice* at ¶ 41.

Congress defined "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153(43). "Telecommunications service" is "the offering of telecommunications for a fee directly to the public," 47 U.S.C. § 153(46). These definitions turn on whether or not there is a change to the form and content of the *information* that a user generates, such as a message composed at a computer terminal, not whether the "envelope" surrounding that message changes to facilitate communication. As two of the authors of the 1996 Act recently stated, "[c]hanges that are made to the user's information during transmission--for example the addition of information regarding message routing or protocol conversion <u>to enable the message to be transmitted</u> between two computers, two phones, or some combination thereof -- are not relevant to the determination of the provider's status [as a

telecommunications carrier or an ISP]."[35] As a result, code and protocol conversion "were deliberately not included in the statutory criteria" of what constitute information services.[36]

Accordingly, under the statutory definition, if a protocol conversion during transmission is for the purpose of allowing the message to be received unchanged at the recipient's terminal, the transmission remains a telecommunications service.

In contrast, defining protocol conversion as something other than a telecommunications service will inhibit development of advanced services, in violation of Section 706. Packet switched communications already may pass through multiple networks, and undergo multiple protocol conversions, before they are delivered. As these innovative data communications technologies evolve, protocol conversions will continue to proliferate. By retaining the present definition, the Commission will be ignoring the current state of technology.

D. *During the Transition Until ONA Is Eliminated, ONA Reporting Should Be Streamlined.*

Since 1988, the BOCs have filed annual ONA reports that contain detailed information in eleven different areas. *See Further Notice* at ¶ 103. All of these reports will be moot once the ONA requirements sunset. However, during the intervening period, the information that remains relevant can be provided in a much less burdensome manner without an annual reporting requirement. Bell Atlantic addresses each of the current filing requirements in turn.

---

[35] Letter dated January 26, 1998 from Senators Ted Stevens and Conrad Burns to the Honorable William E. Kennard in CC Docket No. 96-45 at 4 (emphasis added).

[36] *Id.*

1. Projected Deployment of ONA Services (Item 1 in the annual report). There is no reason an "ONA service" should be treated any differently from any other telecommunications service. The only reason a service becomes an ONA service is that a particular customer -- an information service provider -- requests it and identifies that the service will be used to provide an information service. As a result, every federal- and state-tariffed service that Bell Atlantic offers is potentially an ONA service, and, unless an information service provider identifies it as such, Bell Atlantic would have no way of knowing that one of its customers happens to be an information service provider. To the extent that a service is offered at the interstate level, it should be subject to the same regulatory requirements as any other interstate service (including price caps, if applicable). If the service is intrastate, it is under exclusive state jurisdiction, and any reporting should be limited to that required by the state commission. If the Commission nevertheless retains reporting requirements during the interim period until the ONA rules sunset, the reports should be limited to a one-time filing of a deployment schedule at the time of the filing of a new service (if it can be identified at the time as an ONA service), as the Commission suggests. *Id.* at ¶ 104.

2. Disposition Of ONA Service Requests (Items 2, 3, and 4). There are few, if any, new ONA requests each year. In the event a new service request is made and not met, the Commission's complaint processes are available to a requester who believes that the carrier's action was unreasonable. Therefore, these reports should be eliminated.

3. Deployment of ISDN, SS7 and IN (Items 5 and 6). These reports, that single out certain technologies deployed by certain carriers for special treatment, have little value. New technologies and services are being introduced frequently by many service providers, and to single out the Bell companies to provide information on a few particular technologies provides no relevant information to the Commission or the public. These reports should be eliminated, as the Commission suggests. *Id.* at ¶ 105.

4. Progress in Industry Forums on Uniformity Issues (Item 7). With competition increasing, carriers have an interest in distinguishing their services from those of their competitors. As a result, there is likely to be less uniformity, not more, over time. The goal of uniformity of ONA services is, therefore, incompatible with increased competition. For this reason, there has been little recent activity in industry forums focusing on ONA uniformity. In the event that any activity takes place in the NIIF, the NIIF should be asked to report the results to the Commission. There is no reason to impose a reporting obligation on the Bell companies, however. *See id.* at ¶ 106.

5. Billing and Operations Support Systems (Items 8, 9, and 10). Bell Atlantic already makes available to information service providers the billing information, call detail, and operations support systems that the information service providers have requested. Therefore, there is no need for these reports, which have engendered no

comment from any information service providers in recent years. The Commission's complaint processes are available to any information service provider that believes it should have additional billing or operations support capabilities that are not made available upon reasonable request.

6. List of ONA Services Used By the Bell Company's Own Information Services (Item 11). The Bell companies' information services should be allowed to use any service that any carrier offers, just as their competitors are. So long as the Bell company makes its telecommunications services available to the public on a nondiscriminatory basis, there is no justification for singling out the Bell companies, unique among competitors, by requiring them to disclose the specific telecommunications services that they have chosen to use in providing their unregulated information services.

The Commission also asks whether to retain the voluminous semi-annual reports that include a matrix of all ONA services, references to the federal and state tariffs in which they are offered, paper and diskette copies of data on tariffs, and the ONA User Guide. *Id.* at ¶¶ 108-111. As the Commission recognizes, these reports have changed little over the years. *Id.* To Bell Atlantic's knowledge, no party uses these reports. Nonaffiliated information service providers have access to all available services from all carriers to offer their information services, whether or not they are termed "ONA services," and affiliated information service providers should have the same right. Requiring detailed reporting of those services that happened to be defined as ONA services serves no purpose, and the reports should be eliminated.

In addition, the Commission should eliminate the quarterly non-discrimination reports for information services as unnecessary paperwork, just as it has for CPE.[37] In ten years, Bell Atlantic is unaware of any complaint by any competitor that any Bell company is discriminating in the installation or maintenance of underlying telecommunications services. An

[37] *Revision of Filing Requirements, Report and Order*, 11 FCC Rcd 16326 at ¶ 12 (CCB, 1996).

annual affidavit by a responsible officer that no discrimination has occurred should suffice to protect competitors, and even that requirement should be eliminated as an unnecessary regulation when the ONA rules sunset. If, however, the Commission chooses to retain the nondiscrimination reports, it should reduce their frequency to annual filings during the transition until the other ONA requirements are eliminated.

Finally, the Commission asks whether to retain separate ONA network disclosure requirements. *Further Notice* at ¶¶ 122-123. The broader network disclosure rules promulgated pursuant to Section 251(c)(5) of the Act, 47 C.F.R. §§ 51.325-51.335, specify the disclosure obligations for all incumbent local exchange carriers in connection with all types of interconnection and should completely supersede the ONA obligations applicable to network changes that affect only information services. Therefore, the separate ONA disclosure obligations should be eliminated, just as the Commission recently eliminated the separate ONA obligations regarding customer proprietary network information.[38] Carriers that are not subject to Section 251(c)(5) because they are not incumbent exchange carriers should continue to be subject to the All Carrier Rule to disclose network changes a reasonable time prior to deployment.[39]

---

[38] *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115. FCC 98-27, ¶ 180 (rel. Feb. 26, 1998).

[39] *See Computer II Reconsideration Order*. 84 F.C.C. 2d 50. ¶ 95 (1980); *Further Notice* at ¶ 119.