conditions to all competitive ESPs. Because this parameter is fully satisfied via the tariffing requirements, there is no need to retain it as a distinct obligation.

9. Recipients of CEI

The Commission prohibits carriers from restricting the availability of CEI to any particular class of customer or enhanced service competitor.[113] While the Commission recognized that there is some possibility of uneconomic effects if unbundled CEI services are utilized in markets other than for enhanced services, it found such possibilities to be speculative compared with the certain discrimination that would occur if it restricted CEI availability only to enhanced services vendors. In requiring CEI to be generally available, the Commission stated that it would continue to evaluate the effects of such availability on markets other than for enhanced services, and it encouraged the carriers and other affected parties to bring such effects to its attention.

U S WEST's ONA Plan provides that all BSEs will be generally available.[114] The basic access arrangements which must be utilized in order to purchase BSEs may have usage restrictions which are not modified by the ONA Plan. For example, the fact that a residential customer may purchase a BSE in conjunction with a flat-rated residential line does not mean that user and usage restrictions on such a line are superseded simply because it can be utilized with a BSE. The usage of the BSE is lawful only so long as the usage of the underlying access arrangement is lawful.

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[112] See Phase I Recon. Order, 2 FCC Rcd. at 3048 ¶ 92.

[113] Computer III Phase I Order, 104 F.C.C.2d at 1042 ¶ 165.

[114] U S WEST ONA Plan at 359.

In existing CEI plans, U S WEST demonstrates compliance with this parameter by stating that both U S WEST's enhanced services and the services of competing providers and end users may connect to the network through the same network interfaces. No interfaces, signaling, abbreviated dialing, derived channels or other unique capabilities will be provided to access U S WEST's enhanced services which are not available in tariffed, price list or catalog form. If any new arrangements are to be made available to U S WEST's enhanced services, they will be made available to competing providers at the same time, in the same jurisdictions, and on the same terms and conditions, and both the Commission and the industry will be notified. The basic services used by U S WEST's enhanced services are not restricted to any particular class of customers or ESPs.

As with the unbundling of basic services, resale, end-user access, CEI availability and minimization of transport costs parameters, U S WEST submits that the recipients of CEI parameter is satisfied by the tariffing of basic ONA services. This ensures their availability under the same terms and conditions to all subscribers. Because this parameter is fully satisfied via the tariffing requirements, there is no need to retain it as a distinct obligation.

In summary, the CEI parameters of interface functionality and technical characteristics are fully satisfied via the network disclosure safeguard and the filing of tariffs for basic ONA services. The unbundling of basic services, resale, end-user access, CEI availability, minimization of transport costs, and recipients of CEI parameters are fully satisfied through the tariffing of basic ONA services. Finally, the installation, maintenance, and repair parameter is satisfied through internal

practices that are described in U S WEST's ONA Plan and Amendment. Since the objectives of these nine CEI parameters have been fully satisfied through existing non-structural safeguards and tariffing requirements, they do not need to be retained as distinct regulatory requirements.

B. ONA Non-structural Safeguards

1. Network Disclosure

In the Computer III Phase I Order, the Commission concluded that, in order to provide ESPs with adequate time to develop new services based on changes in the network, the standard contained in the AT&T Structural Relief Order is the most appropriate trigger for disclosure of network information.[115] In that Order, the Commission required AT&T to begin the process of disclosing information at the time a "make/buy" decision occurred (i.e., when AT&T decided to make itself or to procure from some other entity software or hardware involved in implementing a network change or new network service).[116] In a later decision, the Commission clarified that the network information subject to disclosure does not include all network innovations made by carriers or all the technical characteristics of basic transmission service, but only network changes or new basic services that affect the interconnection of enhanced services with the network.[117] Interconnection is not limited to compatibility at the interface, but is also meant to include compatibility throughout the network.

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[115] Computer III Phase I Order, 104 F.C.C.2d at 1082-83 ¶ 250.

[116] Id.

[117] Phase II Report and Order, 2 FCC Rcd. at 3087 ¶ 111.

In a later docket, the Commission stated that new interfaces must be disclosed at least 12 months before implementation.[118] If the planned changes can be implemented within 12 months of the make/buy point, then public notice must be given at the make/buy point, but at least 6 months before implementation. If the planned changes can be implemented within 6 months, the incumbent LEC's certification or public notice filed with the Common Carrier Bureau also must include a certification of service.

U S WEST's ONA Plan states that U S WEST will disclose appropriate network information to ESPs external to U S WEST at the "make-buy" point -- that is, the point when a corporate decision has been made to add, modify, or delete a functionality or component of its basic network which has an impact or potential impact on network functionalities provided to ESPs.[119]

In existing CEI Plans, U S WEST demonstrates compliance with this non-structural safeguard by stating that all new interfaces offered by U S WEST have been and will be disclosed pursuant to the Commission's network disclosure rules. U S WEST has procedures in place to implement these rules.

U S WEST agrees with the Commission's tentative conclusion that the network information disclosure rules adopted pursuant to Section 251(c)(5) of the Act should supersede the Commission's previous network information disclosure

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[118] Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98 ¶¶ 214-15.

[119] U S WEST ONA Plan at 379-91.

rules established in the Computer III proceeding.[120] The Commission is correct that the 1996 Act's disclosure rules for incumbent LECs are as comprehensive, if not more so, than the Computer III rules. In addition, the 1996 Act's disclosure rules allow BOCs to utilize a short term disclosure process to address those instances where they have the ability to deploy a new interface on an expedited basis.

2. Non-Discriminatory Provisioning and Reporting Requirements

U S WEST notes that this safeguard encompasses the procedures for non-discriminatory provisioning, maintenance and repair of basic services used in the provision of enhanced services, as well as non-discrimination reporting requirements. The Commission has stated that the BOCs' compliance with CEI and ONA requirements should be sufficient to address the Commission's non-discrimination concerns.[121] The Commission thought it sufficient to require that the BOCs provided a detailed description in their CEI and ONA plans the specific procedures they proposed to utilize to ensure that they would not discriminate in their provision of basic network services, including the installation, maintenance, and quality of such services, to competitive enhanced service providers and their customers.

In addition, the Commission requires AT&T and the BOCs to file quarterly reports comparing the level of service they provide to their enhanced service

[120] Id. ¶ 122. In fact, U S WEST advocated this position in a July 1997 ex parte contact with the Commission.

[121] Phase II Report and Order, 2 FCC Rcd. at 3084 ¶ 88.

affiliates with what they provide to their enhanced service competitors.[122] These reports include the timing of installation and maintenance of basic services. The Commission has removed the quality reporting requirement, and simply requires that the BOCs file an annual affidavit regarding quality of service.[123] The Commission also requires semi-annual reporting of the BOCs' ONA services and annual reporting of their "progress in providing ONA capabilities to ESPs."[124]

U S WEST's ONA Plan provides a detailed description of its installation and maintenance procedures to demonstrate its inability to engage in quality-based discrimination.[125] In addition, U S WEST submits an annual affidavit attesting that it has followed these procedures and that it has not, in fact, discriminated in the quality of network services provided. U S WEST also describes in its ONA Plan how it will comply with the reporting requirements for installation and maintenance.[126]

In existing CEI Plans, U S WEST demonstrates compliance with this requirement by describing its procedures for tracking promised installation dates met and maintenance time intervals for basic services provided to U S WEST's enhanced services operations compared to those services provided to other ESPs.

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[122] Computer III Phase I Order, 104 F.C.C.2d at 1055-56 ¶ 192.

[123] ONA MO&O, 4 FCC Rcd. at 248 ¶ 481.

[124] See U S WEST Semi-Annual ONA Report at n.1; U S WEST Annual ONA Report at n.1.

[125] U S WEST'S ONA PLAN at 391-401.

[126] U S WEST ONA Plan at 401-3.

Further, to ensure compliance with the its obligations under the Computer III Rules, U S WEST assigns specific managers or departments with responsibility for the various compliance obligations (e.g., network disclosure, non-discriminatory provisioning, CPNI compliance, accounting allocations). These individuals and/or departments have managed the business practices that ensure U S WEST's continued compliance with the Commission's non-structural safeguards. In addition, U S WEST includes the Computer III Rules as part of its annual Code of Conduct and Business Ethics training for all employees. The procedures implemented and adhered to by U S WEST ensure non-discriminatory provisioning, maintenance, and repair of basic ONA services.

U S WEST believes that the non-discrimination safeguard should be retained and that existing procedures are sufficient to ensure compliance with this requirement. At the same time, however, U S WEST urges the Commission to reduce the burden on the BOCs by eliminating unnecessary non-discrimination reporting requirements. In the 10 years since ONA's inception, the Commission has had ample time to review its reporting requirement, and it should now conclude that many of its initial concerns did not materialize. For example, U S WEST's non-discrimination reports have never been challenged, nor has U S WEST received any complaints from ESPs alleging discriminatory provisioning or lack of access to basic ONA services. In addition, there is a certain amount of redundancy in the Commission's existing reporting requirements. Below, U S WEST reiterates its prior recommendations for simplifying and streamlining the ONA reporting

process.[127]

U S WEST proposes that the quarterly installation and maintenance parity reports be consolidated into the annual affidavit. The installation and maintenance report currently includes (1) the percentage of installation orders for which the promised intervals were met for basic services used by U S WEST's enhanced services operations and for all other ESPs, and (2) the average duration of reported troubles for basic services used by U S WEST's enhanced services operations and for all others. The annual affidavit should include a statement attesting that proper non-discrimination procedures have been followed and that no BOC personnel have discriminated in the provision of installation, repair or maintenance services.

Moreover, U S WEST proposes that the semi-annual reports and the Annual Report should be consolidated into a new Annual ONA Report.[128] The new Annual ONA Report should encompass all of the existing requirements of the semi-annual reports. The semi-annual ONA report currently includes the *ONA Services User Guide* and *Appendices A and B* of the *Cross-Reference User Guide* which are updated by the National Telecommunications Alliance, Inc. ("NTA") and made available by both NTA and the BOCs based on the information supplied by the BOCs. U S WEST recommends that the Commission eliminate any duplicative filing requirements.[129]

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[127] See Comments of U S WEST, CC Docket No. 96-23, filed Apr. 8, 1996.

[128] This proposal was raised by the National Telecommunications Alliance, Inc. in its April 1, 1997 ex parte presentation to the Commission.

[129] To the extent that the NIIF continues to make available the *ONA Services User Guide* and *Appendices A and B* of the *Cross-Reference User Guide* based on

The Commission also should streamline its current Annual Report in a number of respects. In particular, U S WEST proposes that the Commission retain Requirements (1) and (2), the annual projected deployment schedules for existing ONA service types (BSAs, BSEs, and CNSs) and the annual reporting on the disposition of new ONA service requests, respectively. Requirement (6), the NIIF Report Card, likewise should be retained.

In addition, U S WEST proposes that the new Annual ONA Report continue to include Requirements (4) and (5) with some modification. U S WEST believes that the NIIF could create an informational issue to determine if equivalent information is available via another report (e.g., the annual infrastructure report). The NIIF could then compare and contrast all other information and provide its findings to the Commission for its review. This would relieve the burden of duplicative reporting.

U S WEST proposes eliminating Requirement (3) regarding those ONA service requests previously deemed technically infeasible and their disposition. Information regarding NIIF issues and the 120-day request process for both national and regional requests are available to all interested ESPs, thereby eliminating the need for Requirement (3). Requirement (7), pertaining to progress in providing billing information -- including BNA, line-side CNI or possible CNI alternatives, and call detail services -- to ESPs, also should be eliminated. Any new NIIF issues and all Commission reporting on these topics would result in a

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information provided by the BOCs, then these users guides should simply be eliminated from the Annual ONA Report.

summary of the same information with minor updates and, therefore, are duplicative.

Further, U S WEST proposes eliminating Requirement (8), dealing with the progress in developing and implementing OSS services and ESP access to those services, because information in this report has matured and is stable. BOC members of the NIIF have been providing, and will continue to provide, via handout to other NIIF members and in the NIIF minutes, an annual OSS Matrix demonstrating currently available, planned and future OSS functionality. The NIIF will continue to require the OSS Matrix for as long as it views the document valuable to the ESP community. The Commission should accept the NIIF report as the replacement for this mandated item.

The information U S WEST provides in response to Requirement (9) addresses the progress on the uniform provision of OSS services. The majority of this information concerns standards efforts in ANSI T1 standards bodies and OSS issue work being accomplished in the NIIF. Because this work is national in scope and publicly available through the NIIF it should be eliminated as a requirement in the Annual Report.

Likewise, U S WEST proposes the elimination of Requirement (10), the listing of BSEs used in the provision of BOC's own enhanced services, because the ONA Users Guide provides sufficient detail on BSAs, BSEs and CNSs.

Finally, U S WEST proposes eliminating the new technologies information mandated under Requirement (11). Reporting on new technology changes is unnecessary due to the interconnection provisions of the 1996 Act and the onset of

competition.

With respect to the streamlining and simplification of the filing process, U S WEST recommends that the Commission eliminate the requirement to file the ONA Services User Guide documentation on both paper and diskette. Instead, BOCs should be allowed to utilize technological developments, and supply information on diskette, through a web page, by e-mail, or via other technologies that make non-paper filing possible. Recognizing the importance of consistency, U S WEST recommends that one technology be used to submit the proposed Annual ONA Report in its entirety.

C. ONA Amendments

U S WEST believes that paper filings and Commission approval of ONA amendments should be eliminated to minimize the disruption on the deployment of new enhanced services. When a new basic service is deployed, U S WEST's compliance with non-structural safeguards and tariffing requirements should be sufficient.

In the alternative, U S WEST proposes that a list of ONA services be available on an Internet homepage. When a new service is introduced, it would be added to the homepage and the Commission would be notified of the addition, similar to the process used today for short term network disclosures. Other information contained in a BOC's ONA Plan, such as installation and maintenance procedures, could also be published on the homepage. This would ensure that all information would be publicly available. BOCs could notify the Commission of the Internet address once or on an annual basis, possibly coincident with the Annual

ONA Report filing.

Absent streamlining of the ONA amendment process, the same delays in the introduction of new services that result from the filing and preparation of CEI plans are likely to occur. Clearly, such regulatory delays place U S WEST at a significant competitive disadvantage and also are extremely harmful to the public interest because they deprive customers of access to innovative new technologies.[130]

D. Interstate Tariffs

U S WEST recommends the elimination of the requirement that all ONA services be tariffed on an interstate basis and that the ONA services that are already offered pursuant to intrastate general exchange tariffs no longer be referenced in the interstate access tariffs. For ONA services which constitute general exchange type offerings, U S WEST proposes to offer these services only in intrastate general exchange tariffs (or otherwise in conformance with applicable state law and regulation). These intrastate offerings are available on a non-discriminatory basis and comply with all applicable ONA safeguards.

Because U S WEST does not discriminate in the price for intrastate ONA services purchased by ESPs and U S WEST's own enhanced services operations, it is in compliance with the Commission's equal pricing rules. This approach also ensures that the rates for basic ONA services are the same no matter what basic service arrangement they are associated with.

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[130] See SectionV supra.

Most, if not all, of the demand for ONA services by ESPs and U S WEST's own enhanced service operations exists at the intrastate level and not at the interstate level. Requiring that all ONA services, even those that are never purchased at the interstate level, be included in the interstate access tariffs unduly burdens the interstate tariffs with numerous exchange services that are duplicative of services available under the appropriate intrastate tariffs and/or public price lists.

To further support the appropriateness of removing the intrastate ONA services from the interstate access tariffs, the Commission's regulations state that access services include "services and facilities provided for the origination or termination of any interstate or foreign telecommunication."[131] Therefore, it is superfluous to retain the requirement to include in the interstate access tariffs ONA services that are intrastate in nature.

However, it also must be recognized that because basic ONA services will only be offered in conjunction with properly available network access (i.e., a basic serving arrangement), any strictly interstate basic ONA service (priced pursuant to federal rules) will be available only through interstate tariffs.

VIII. SOUTHWESTERN BELL'S BILL OF ATTAINDER LAWSUIT REQUIRES NO MODIFICATION OF THE COMMISSION'S APPROACH TO THE COMPUTER RULES

On December 31, 1997, the Federal District Court for the Northern District of Texas issued a decision invalidating sections 271 through 275 of the

[131] 47 C.F.R. § 69.2(b).

Communications Act.[132] The Court's logic is that these statutory sections, which prevented a named group of corporations from conducting the identical businesses which were lawful for all others, comprised an unconstitutional bill of attainder.[133]

In several locations in the Computer III Further Notice, the Commission asks about the impact of this decision on its approach to the Computer Rules.[134] The answer is that the bill of attainder lawsuit should have no effect on the Commission's activities in the instant proceeding. The statutory provisions at issue in the suit have little to do with any lawful activity of the government -- at least not the executive or legislative branches of the government. Affirmance of the Texas Court's decision -- which U S WEST feels is well nigh certain -- simply puts the named parties on the same footing as all other incumbent LECs.

Consistent with the Texas Court's decision, the rules adopted in this proceeding should not single out any particular category of telecommunications carriers for disparate treatment. The notion that the divested BOCs have some special capacity for malfeasance which demands (or justifies) more onerous regulation than other similarly situated parties was put into effect on an emergency basis immediately after divestiture.[135] On appeal, the reviewing court found the

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[132] SBC Communications, Inc., et al. v. FCC, et al., Civil Action No. 7:97-CV-163-X, Memorandum Opinion and Order, filed Dec. 31, 1997, Order Granting Stay and Denying Injunction, filed Feb. 11, 1998.

[133] Id. at 18.

[134] Computer III Further Notice ¶¶ 59, 68, 72, 74.

[135] See In the Matter of Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by

Commission's reasoning to be incredibly suspect, although it affirmed on the basis, among others, that the measure was interim only.[136] Similar reasoning by the Commission in its order subjecting GTE to the same ONA requirements as the BOCs was rejected by a reviewing court.[137] Ultimate affirmance of the Texas Court's decision should require no modification of the rules under consideration here, provided that the Commission adheres to the principle of parity of regulation.

IX. CONCLUSION

Throughout these comments, U S WEST sets forth as its most basic predicate that the focus of this docket should be almost entirely deregulatory in nature. The Computer Rules were written and implemented in an entirely different regulatory era. However, the essential premise of the Computer Rules -- that common carrier services should be equally available to all providers of non-common carrier services -- remains valid. At the same time, ESPs cannot obtain access to unbundled elements under Section 251 without satisfying the corresponding obligations of telecommunications carriers. The very nature of common carriage is offering to the public, and failure to maintain a line between a carrier's common carrier offerings and its other offerings would tend to make the nature of the common carrier offering meaningless. This principle applies to all carriers, regardless of size or

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the Bell Operating Companies, Report and Order, 95 F.C.C.2d 1117, 1138-39 ¶¶ 57-59 (1983).

[136] Illinois Bell Telephone Co. v. FCC, 740 F.2d 465, 469-77 (7th Cir. 1984).

[137] See California v. FCC, 905 F.2d at 1225 and n.10, 1236-38.

market power. U S WEST's long-term plans include a wide variety of services to competing ESPs regardless of the ONA rules ultimately adopted in this proceeding.

That said, the fundamental definitional issues discussed above are called into even sharper question. The difficulties arising out of the Computer Rules often have sprung from the definitions, which simply have not been able to keep pace with technological developments. In today's market, the original "bright line" between basic and enhanced services has become essentially meaningless, as new innovators structure their new services and technologies to meet the Commission's Computer Rules (and to obtain the benefits attendant to such classifications), rather than to reflect market or technological considerations.

Given the nature of regulation, it is difficult to imagine an easy way out of this dilemma. It seems unlikely that a regulatory definition of the dividing line between common carrier and non-carrier services can be implemented which does not, as is the case today, tend to lead technology rather than the converse. In the long run, the fact that carriers at all levels face competition will drive them to seek out the most advantageous relationships with ESPs, and the anti-trust laws will prevent actual anti-competitive behavior. In the meantime, the ONA principles established by the Commission (with minor modifications suggested herein) can continue to provide a basis for reasonable interaction between carriers and ESPs. However, for this structure to continue to work, carriers must be given the flexibility to include slightly more computer functions in their common carrier data

offerings than is the case today, particularly in the area of processing of communications protocols.

Respectfully submitted,

U S WEST, INC.

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March 27, 1998

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 27th day of March, 1998, I have caused a copy of the foregoing **COMMENTS OF U S WEST, INC.** to be served, via hand delivery, upon the persons listed on the attached service list.

Kelseau Powe, Jr.

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ATTACHMENT A

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ROBERT G. DOCTERS
Principal

September 2, 1997

Mr. Frank Hatzenbuehler
Vice President Pricing/Regulatory Strategy
U S WEST
1801 California Street
Denver, CO 80202

Dear Mr. Hatzenbuehler:

This letter regards Booz, Allen's 1995 study regarding the market for Enhanced Services.

We concluded on the basis of substantial market analysis that RBOC participation in the enhanced market was highly pro-competitive. Such participation tended to "legitimize" the market in the eyes of customers, tended to provide de-factor standards, and consequently benefited all participants in that market.

Based on ongoing material work on behalf of a variety of clients in this market (equipment manufacturers, RBOCs and alternative carriers) we believe that the conclusions contained in our 1995 study are equally valid today. We believe that the nature of this market is such that independent player continue to benefit from the participation of larger players. We believe that, just as in a number of other markets such as computer equipment, larger players can no longer dominate these markets. Indeed, enlisting smaller players as allies has become critical to large player success.

Should you have any questions, please do not hesitate to call me or Toby Dingemans (who led the initial study) at 212/551-6387.

Sincerely,

Response to FCC NPRM

THE BENEFITS OF RBOC PARTICIPATION IN THE ENHANCED SERVICES MARKET

USWEST

April 4th, 1995
Denver

This document is confidential and intended solely for the use and information of the organization to whom it is addressed

BOOZ•ALLEN & HAMILTON INC.

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I. INTRODUCTION