DOCKET FILE COPY ORIGINAL

RECEIVED

APR 23 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Computer III Further Remand Proceedings: 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

REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

Frank W. Krogh
Mary L. Brown
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 887-2372

Dated: April 23, 1998

TABLE OF CONTENTS

Summary ii

Introduction 1

I. The BOCs' have failed to demonstrate significant public benefits resulting from structural integration 4

A. The BOCs' Showing of the Supposed Costs of Structural Separation Are Inadequate and Irrelevant 4

B. Because the BOCs' Presentations Are Based on a False Reading of History, They Fail to Demonstrate Any Public Costs From Structural Separation 18

C. The Classification of Protocol Processing as an Information Service Should Not be Changed 26

II. Recent BOC abuses and the incomplete protection offered by Section 251 and ONA underscore the continuing risks to ratepayers and competition presented by the elimination of structural separation 26

A. BOC Abuses Have Continued 27

B. Neither ONA Nor the 1996 Act Has Led to Significant Unbundling or Other Competitive Developments Benefitting ISPs 31

C. Other Competitive Developments Cited by the BOCs Do Not Justify the Elimination of Structural Separation . 36

III. The commission should undertake the additional unbundling indicated in MCI's initial comments as well as further steps to combat BOC discrimination 37

Conclusion 41

SUMMARY

The Comments in this proceeding confirm MCI's view that the Commission should retain its structural separation requirement regarding the Bell Operating Companies' (BOCs') local and intraLATA information services. The costs of this requirement are negligible and there are no adequate alternative safeguards. Accordingly, in performing the cost-benefit analysis required by the Court in California III, the Commission should decide in favor of the requirement.

The BOCs make a wholly unpersuasive case in disputing the costs of structural separation. The requirement in Section 272 of the Act that the BOCs must provide their interLATA information services through a separate affiliate invalidates the BOCs' cost demonstrations in this case. A substantial part of the costs identified by the BOCs are the one-time costs of establishing their information service subsidiaries. However, the BOCs would have to incur those one-time costs in any event in creating separate affiliates, as required by Section 272 of the Act, to provide interLATA information services. The ongoing costs of operating the Section 272 separate affiliate and providing interLATA information services also would greatly reduce the incremental ongoing costs of providing intraLATA information services. Moreover, a Section 272 affiliate would be a suitable substitute for the separate subsidiary required by Computer II and would satisfy all of the policy concerns for which structural separation was designed. Thus, the Section 272 requirement would

greatly reduce the costs attributable to the separated provision of intraLATA information services.

Furthermore, the BOCs can obtain exactly the same types of efficiencies they assert could be realized from structural integration by providing all of their information services -- interLATA and intraLATA -- jointly with their interLATA telecommunications services through their Section 272 affiliates. The provision of all of the BOCs' information services jointly with their interLATA telecommunications services will yield the same types of cost complementarities through joint operations, marketing, administration, R&D and facilities that the BOCs insist they will be denied under structural separation. Since the BOCs' cost presentations were predicated on the incorrect premise of a stand-alone local and intraLATA information service subsidiary, they are all invalid.

The Commission should dismiss the BOCs' claim that the Section 272 affiliate cannot be considered in any policy cost-benefit analysis because it will sunset in two years. The short answer to this argument is that the Commission has the authority to extend that sunset date as appropriate. In any event, the BOCs' professed cost claims of any separate subsidiary (even in the absence of a Section 272 affiliate) lack any detail, are greatly exaggerated and are based on the BOCs' bloated cost structures. The BOCs have provided no information on the total costs and profit margins of their information services so as to demonstrate any impact on their cost structures resulting from

providing those services on a structurally separated basis. Consequently, the Commission cannot accept the BOCs' claims that the structural separation requirement would lead to price increases in their information services. In any event, the BOCs have not demonstrated that they lack the ability to reduce their costs, like any rational business, while continuing to provide information services on a profitable basis, through a separate subsidiary.

Equally without merit is the BOCs' assertion that structural integration would provide more public benefits than structural separation. Contrary to the BOCs' assertions, the growth of non-BOC information services in recent years has not been the product of the BOCs' provision of information services on a structurally integrated basis. The growth of those services was occurring when the BOCs provided information service on a structurally separated basis and would have continued even if that requirement had not been waived by the Commission. The way to generate public benefits is not to eliminate structural separation but to require the BOCs to provide nondiscriminatory reasonably priced unbundled network access to other providers.

The Commission should dismiss the BOCs' claim that the development of local competition and the availability of unbundled network elements (UNEs), pursuant to Section 251 of the Act, have made it virtually impossible for them to discriminate in the provision of access services to ISPs or to cross-subsidize their information services if they provided information services

on a structurally integrated basis. In fact, as MCI and other parties have explained, the BOCs' dominance over local exchange services is undiminished and CLECs still cannot obtain UNEs for the full range of competitive information services needed by ISPs. Among other actions, the BOCs have been denying reciprocal compensation for traffic between their subscribers and ISPs served by CLECs and have been denying CLECs collocation to provide competing broadband services such as xDSL. Moreover, no BOC has yet satisfied the Section 271 checklist, which confirms that the local loop has not been opened to local competition, and no BOC has yet developed adequate Operational Support Systems (OSS).

In any event, MCI and other parties have explained that Section 251 cannot be a substitute for fundamental Open Network Architecture (ONA) unbundling. ONA unbundling focuses on switched services that have to be made available to ISPs, whereas Section 251 focuses more on the provision of physical elements of the network. Thus, because ISPs lack the network access they need to effectively compete with the BOCs' information services across the board, structural separation must be maintained.

In sum, since California III neither the 1996 Act, incipient local competition, the BOCs' interconnection agreements with CLECs, and the growth of the information services industry have not filled the gap left by the failure of ONA. As a result, given the absence of any significant public costs associated with continuing the separate subsidiary requirement and the lack of

any effective alternative safeguards -- i.e., local competition and unbundling -- the Commission should retain the structural separation requirement for the BOCs' local and intraLATA information services.

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

REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

Introduction

MCI Telecommunications Corporation (MCI) hereby replies to the initial comments filed in response to the Commission's Further Notice of Proposed Rulemaking in the above-captioned dockets[1] seeking additional comments in light of the Telecommunications Act of 1996 (1996 Act).[2] In spite of the Bell Operating Companies' (BOCs') emphasis on the alleged benefits of joint provision of BOC local and intraLATA telecommunications and information services, their presentations confirm MCI's view that structural integration (i.e., the elimination of structural separation) will provide no significant benefits to the public, whatever marginal financial benefits there may be for the BOCs. When this lack of public benefits is balanced against the continuing abuses discussed in MCI's and other parties' initial

---

[1] FCC 98-8 (released January 30, 1998).

[2] Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et seq.

comments, it is even clearer now than it was after the last round of comments was filed in 1995 that structural separation must be maintained.

The most striking aspect of the BOCs' initial comments is how little they add to their 1995 comments -- or to their comments in the Computer III Remand Proceeding,[3] prior to the last reversal by the Ninth Circuit in California III[4] -- concerning the supposed benefits of joint BOC telecommunications and information services, in spite of the intervening years of experience in providing such services. Even now, the BOCs' main success in information services is voice messaging, just as it was at the time of the Computer III Remand Proceeding and the 1995 comments. In fact, in discussing the BOCs' role in the information services market, US West simply attaches its 1995 Booz, Allen & Hamilton study with a new cover letter stating that its conclusions remain valid.

The BOCs also do not add much to their previous showings of cost savings resulting from the joint provision of services, which is surprising in light of the additional time they have had to conduct more in-depth analyses. Their showings of benefits from joint services are also undercut by their unwarranted

---

[3] See Report and Order, Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 7571 (1991) (Computer III Remand Order), partly vacated sub nom. California v. FCC, 39 F.3d 919 (9th Cir. 1994)(California III).

[4] 39 F.3d 919 (9th Cir. 1994).

assumption underlying their presentations on this issue -- namely, that they are the only possible source of certain categories of information services -- and by their failure to give adequate consideration to the need to set up separate affiliates to provide interLATA information services under Section 272 of the Communications Act.

The BOCs' comments concerning the other side of the cost-benefit balance -- the risks of anticonsumer and anticompetitive conduct resulting from the elimination of structural separation -- are essentially exercises in reality avoidance. The BOCs, for the most part, assume that local service competition has developed to the point where it is no longer possible to discriminate against information service providers (ISPs) in the provision of access or at least that Section 251 of the Communications Act has brought about the fundamental unbundling that Open Network Architecture (ONA) was supposed to create. They then assume that, accordingly, the concerns as to the inadequacy of ONA expressed by the Court in California III have been alleviated. They assert, incorrectly, that there is no record of abuses and thus no risk of anticompetitive behavior to weigh in the balance. Thus, the BOCs exaggerate the benefits and unrealistically discount the risks from the elimination of structural separation.

I. THE BOCs HAVE FAILED TO DEMONSTRATE SIGNIFICANT PUBLIC BENEFITS RESULTING FROM STRUCTURAL INTEGRATION

A. The BOCs' Showings of the Supposed Costs of Structural Separation Are Inadequate and Irrelevant

The BOCs devote even less effort to estimating the costs of structural separation than they did in the Computer III Remand Proceeding and in their 1995 comments. Those that at least go through the motions merely resubmit analyses originally filed with their 1995 comments, which have already been rebutted. As MCI has also previously explained, most recently in its initial comments, most of the costs presented by the BOCs, even if they had been properly supported, are irrelevant.

A large part of the costs alleged by the BOCs are the one-time costs of moving their information services to separate subsidiaries. SBC cites equipment relocation costs, service disruptions and investment in duplicate facilities.[5] BellSouth mentions the "costs and confusion caused by the transition to" a structurally separate environment, including obtaining and conditioning floor space to house its voice mailbox equipment, reconfiguring many of the circuits used to provide those services, duplicating facilities and platforms to minimize service disruptions during the transition and notifying customers of the new systems.[6]

---

[5] SBC Comments at 16-17.

[6] BellSouth Comments, Attachment B at 65-66.

US West resubmits a 1995 study by Clifford L. Fry et al. (Fry study) purporting to show that the one-time costs that would be incurred in establishing a separate subsidiary and transitioning information services thereto would be between $59 and $90 million.[7] Bell Atlantic attaches a Declaration stating that the one-time expenses of a transition of its voice messaging services to a separate subsidiary would be at least $100 million plus capital costs of at least $30 million.[8]

As MCI explained in its initial comments, however, the one-time costs of moving to structural separation are irrelevant in any proper cost-benefit policy analysis of this issue. Since California III returned the industry to the Computer II structural separation regime, the issue before the Commission is whether to eliminate structural separation.[9] Moreover, since structural separation is the currently governing legal regime, the BOCs already would have set up separate subsidiaries for their information services were it not for the interim waiver granted pending the outcome of this proceeding.[10] In being granted a waiver of the status quo -- structural separation -- the BOCs had no standing to object to a termination of the waiver

---

[7] US West Comments at 13 and Attachment B at 3.

[8] Declaration of Richard J. McCusker, Jr. at ¶ 8, Attachment B to Bell Atlantic Comments.

[9] See also, ITAA Comments at 10.

[10] Bell Operating Companies' Joint Petition for Waiver of Computer II Rules, DA 95-36 (CCB released Jan. 11, 1995).

returning them to the policy status quo. The costs of moving to the status quo, albeit temporarily waived, thus cannot be considered in determining whether the status quo itself should be changed.[11]

As MCI and other parties also explained in their initial comments, some of these start-up and transition costs also cannot be counted in any cost-benefit analysis of structural separation for BOC local and intraLATA information services because they would have to be incurred in any event on account of the Section 272 affiliates the BOCs are required to set up for their interLATA information services.[12] As the Further Notice points out, the cost of establishing a separate subsidiary with its own administrative overhead and capital investment would have to be borne in any event for those BOCs providing interLATA information services. The requirements of Section 272 would satisfy all of the policy concerns for which structural separation was designed. Thus, a Section 272 affiliate would be a suitable substitute for the separate subsidiary required under Computer II.[13] Thus, the overhead, administrative and facilities costs of setting up a separate subsidiary are doubly irrelevant.[14]

---

[11] See MCI Comments at 17-20.

[12] See MCI Comments at 25-26.

[13] See also CompuServe Comments at 11.

[14] Moreover, contrary to the suggestions of some of the BOCs, they cannot assume, in estimating the costs to be incurred in complying with a structural separation requirement, that they

In light of the passage of the 1996 Act, some of the BOCs now downplay their one-time separate subsidiary start-up costs and emphasize the increased ongoing costs they will allegedly incur as a result of compliance with a separate subsidiary requirement. Section 272 also greatly diminishes those costs as well, however, invalidating virtually all of the BOCs' cost demonstrations. In their presentations in support of the contention that ongoing costs of providing information services will be increased if the BOCs have to comply with the separate subsidiary requirement, the BOCs and their consultants have all assumed that such services would have to be provided on a stand-alone basis, without any other services. Thus, all of the costs arising from the operation of such a separate entity would be borne by the BOCs' local and intraLATA information services.

For example, the 1995 Fry study resubmitted by US West assumed that the "sole purpose" of the separate subsidiary would be "to deliver enhanced services to the public."[15] That study discussed the "cost complementarities" generated by joint provision of information and telecommunications services -- cost savings resulting from joint operations, marketing and R&D -- that would be lost under separation.[16] US West resubmits a

---

will obtain forbearance from the application of Section 272 to their interLATA information services. See, e.g., Ameritech Comments at 12-14.

[15] US West Comments at 13.

[16] Fry study at 5-11, Attachment B to US West Comments.

report by Jerry A. Hausman and Timothy J. Tardiff (Hausman/Tardiff Report),[17] which discusses the cost increases that would supposedly result from separate provision of information services. It assumes that separate sales channels and other operations would have to be established, advertising would have to increase and capital costs would be spread over a smaller volume in calculating the cost per unit of revenue. It also discusses the loss of economies of scope and ongoing duplicate facilities costs. Hausman and Tardiff estimate that unit costs would rise about 30%, or about $100 million annually for each BOC.[18]

The Declaration attached to the Bell Atlantic Comments also assumes that structural separation would require its voice mail service to be provided separately from all "other telephone services."[19] SBC discusses the loss of economies of scope that would result from separation, forcing the BOCs "to ignore the more favorable deployment considerations of providing an entire array of telecommunications and information services on an integrated basis...."[20] SBC repeats an argument from its 1995

---

[17] J.A. Hausman and T.J. Tardiff, Benefits and Costs of Vertical Integration of Basic and Enhanced Telecommunications Services (April 6, 1995).

[18] Hausman/Tardiff Report at 20-25, Attachment C to US West Comments.

[19] McCusker Declaration at ¶ 5, attached to Bell Atlantic Comments.

[20] SBC Comments at 17.

comments that only the BOCs are forced to provide information services through a separate subsidiary, while all of their competitors are permitted to provide a variety of services on an integrated basis. SBC argues that this uneven approach is detrimental to competition.[21]

In fact, however, as other parties point out, the BOCs can reap exactly the same types of efficiencies by providing all of their information services -- interLATA and intraLATA -- jointly with their interLATA telecommunications services through their Section 272 affiliates.[22] This is roughly how MCI provides its nationwide information services, namely, together with its long distance telecommunications services. SBC's wish for equivalent efficiencies is therefore within its grasp, even while keeping its intraLATA information services structurally separate from its local exchange services.

Provision of all of a BOC's information services jointly with its interLATA telecommunications services will yield the same types of cost complementarities through joint operations, marketing, administration, R&D and facilities that the BOCs insist they will be denied under structural separation. With so many more services and so much greater traffic volume to bear all of the joint and common costs, the per unit costs will be much lower than the BOCs represented. Because the BOCs' cost

---

[21] SBC Comments at 18-19.

[22] See, e.g., LCI Comments at 10.

presentations were all predicated on the incorrect premise of a stand-alone local and intraLATA information service subsidiary, they are all invalid and cannot be the basis for a rational cost-benefit analysis.[23]

Section 272 also undermines the BOCs' cost-benefit analyses in another way as well. The BOCs blame Section 272 and a variety of other restrictions for their problems in information services. BellSouth, for example, points out that it would like to give all of its voice messaging customers an 800 access number, but the Section 272 separate affiliate requirement makes that convenience too costly.[24] That simply underscores the point raised by others that it is difficult to differentiate local from interLATA information services, making it far more efficient to provide all BOC information services through the Section 272 affiliates.[25] Other BOCs assert that relief from the LATA restrictions is necessary in order for them to effectively compete in information

---

[23] In the case of a Section 272 affiliate that also provides local exchange service, however, MCI takes the position that such an affiliate should not also be permitted to provide local and intraLATA information services. MCI has petitioned for reconsideration of the Commission's decision in the Non-Accounting Safeguards Order to permit Section 272 affiliates to provide local exchange services. Because of the abuses that are possible with such BOC "CLEC" arrangements, a Section 272 affiliate that also provides local service should not be viewed as structurally separate from the BOC for information service purposes.

[24] BellSouth Comments at 20.

[25] See, e.g., CompuServe Comments at 11.

services.[26] If Section 272 and LATA boundaries are such an obstacle to BOC progress in information services, however, the elimination of structural separation for local and intraLATA information services will not yield significant public benefits.

One final way in which Section 272 undermines the BOCs' cost arguments results from the jurisdictional arguments in California III. As ITAA points out, the Commission successfully argued there that if the BOCs were required to comply with structural separation for one jurisdictional portion of their information services, considerations of economic and operational efficiency would almost certainly dictate that they offer all information services though the separate affiliate. Thus, intrastate structural separation rules would force the BOCs to provide their interstate information services through the same separate subsidiary, thereby thwarting the Commission's decision to eliminate structural separation.

There is no reason to expect that the operational efficiencies no longer operate the same way.[27] Thus, since all interLATA information services must be provided through a separate affiliate, it should still be more efficient than not to provide all other BOC information services through the same affiliate. Accordingly, structural separation for local and intraLATA information services is a net benefit, not a net loss,

---

[26] See, e.g., Ameritech Comments at 12-14.

[27] See ITAA Comments at 15-16.

for the BOCs, given the efficiencies of operating all information services together.[28] This is especially the case given the mixed interLATA and intraLATA aspects of many information service calls.[29]

Some of the BOCs also argue that since the Section 272 separation requirements sunset in less than two years, there is no point in taking the Section 272 affiliates into account in assessing the incremental costs of structural separation.[30] Just as the BOCs should not count on forbearance from Section 272 for purposes of these proceedings, they also should not assume that the application of Section 272 to either information or telecommunications services will sunset at any certain date, since that provision may be extended by Commission order.[31]

Finally, most of the increases in ongoing costs alleged to result from structural separation also have to be ignored because the BOCs' estimates of such increases assume that joint marketing would be impossible under structural separation. As BellSouth states, "most" of the increases in ongoing costs that it

---

[28] See also, America Online Comments at 13. There may be some additional costs to structural separation for local and intraLATA information services, but, if the Commission was right about the balance of efficiencies in California III, the savings resulting from putting all information services in one entity outweigh the additional costs.

[29] See CompuServe Comments at 11.

[30] See, e.g., Bell Atlantic Comments at 9.

[31] Section 272(f)(1), 272(f)(2).

attributes to structural separation involve marketing and sales.[32] The studies attached to US West's Comments also rely heavily on increases in marketing and sales costs, including advertising costs, as a basis for their cost estimates.[33]

As MCI pointed out in its initial comments, however, there would be nothing to prevent the information services subsidiary -- whether a stand-alone intraLATA information service subsidiary or a Section 272 affiliate -- from reselling the BOC's local services and jointly marketing those services with its own information services, as long as the BOC's local services were available for resale to all others on the same terms and conditions and all of the nonstructural safeguards apply. Under this approach, such joint marketing by the BOC information service subsidiary would meet all of the BOCs' legitimate efficiency goals without leveraging the BOC monopoly.

Such an arrangement is permitted for interLATA information services under Section 272, and MCI agrees with other commenters that a parallel joint marketing scheme for intraLATA information services would be appropriate.[34] Thus, the increases in marketing and sales costs supposedly caused by structural separation are doubly invalid -- both because joint efficiencies

---

[32] BellSouth Comments at 30.

[33] See Fry study at 7, Attachment B to US West Comments; Hausman/Tardiff Report at 21, 24-25, Attachment C to US West Comments.

[34] See ITAA Comments at 19.

are still possible under the Section 272 affiliate's combined operations and because joint marketing is possible under structural separation.[35]

Aside from the irrelevance of the various categories of cost increases alleged by the BOCs and the invalid assumptions upon which their presentations were based, those presentations, most of which have not been revised since they were first submitted in 1995, are superficial and unproven. A report by Hatfield Associates filed with MCI's Reply Comments in 1995 (Hatfield Reply), which is attached hereto as Exhibit A, analyzes the studies performed by the BOCs' consultants in 1995, including the Fry study and the Hausman/Tardiff Report attached to US West's recent comments.[36] As the Hatfield Reply explains, the supposed economies of scope arising from structural integration should be viewed with great skepticism and ought to be available without service integration. Such economies are doubtful partly because jointly used facilities under structural integration are often designed for information service needs and are therefore costlier than facilities needed only for regulated telecommunications services.

---

[35] MCI agrees, however, with those parties taking the position that such joint marketing should not be permitted if structural separation is otherwise eliminated. See America Online Comments at 20. Thus, if joint provision of BOC intraLATA telecommunications and information services is allowed, at least the marketing of the two should be separated.

[36] Hatfield Associates, Inc., The Benefits of Structural Separation: Reply (May 19, 1995).

The Hatfield Reply also rebuts the estimates of increased costs to the BOCs resulting from structural separation. Those costs are largely due to the BOCs' failure to meet their original ONA promises and to excess capacity in the BOCs' regulated operations.

The BOCs' recent comments are no more persuasive. BellSouth gives some overall estimated percentage increases in various cost categories but makes no effort to support those figures. SBC fails to quantify its presentation at all, except to cite to Hausman and Tardiff.[37] Ameritech says nothing at all on the subject of the costs of structural separation, although it does submit a study on the alleged consumer welfare costs of CEI/ONA overall. The Declaration attached to Bell Atlantic's Comments gives some estimates of increased voice mail costs under structural separation but provides no evidentiary or analytical support for such estimates. All in all, the BOCs appear to have made even less of an effort to demonstrate the costs of structural separation than they did in 1995 or in the Computer III Remand Proceeding.

Moreover, some of the alleged increased costs and inefficiencies do not seem realistic. For example, it is not clear why additional marketing and service personnel would be needed under structural separation. Since the current personnel handle both local telecommunications and information services,

---

[37] SBC Comments at 16-21.

separating the services ought to require a division of the current personnel, rather than additional personnel. Also, since there is no need to advertise or otherwise market local exchange services, the BOCs have not explained why any additional advertising or marketing will be necessary under structural separation, since all of the current marketing and advertising personnel and resources could only be useful to the information subsidiary.

The BOC and Hausman/Tardiff cost estimates are also invalidated by their reliance on the BOCs' own inflated costs. The BOCs are still burdened by bloated cost structures developed under rate-of-return regulation, which have not been significantly affected by price cap regulation. There is no reason to expect that BOC separate subsidiaries would be immune from the BOCs' bloated cost structures. Their estimates of the costs of structural separation thus are partly a self-inflicted burden, which should not be permitted to "tilt" the public policy cost-benefit analysis. That the BOCs' cost estimates, even if otherwise relevant and accurate, reflect unnecessarily excessive costs is confirmed by the existence of so many ISPs, all of which are completely separated from the BOCs' networks, but which are also not burdened by the BOCs' monopoly cost structures.

It is also unproven that these estimated cost increases, even if relevant and accurate, would make any difference in terms of the rates charged to consumers. Information as to the costs

and earnings of the BOCs' information services is not available, but there is no reason to believe that they do not enjoy tremendous profit margins on those services. If that is the case, cost increases of 100%-200% might not make any difference in terms of the prices that the BOCs would need to charge. Thus, it is quite possible that the BOCs' information services could still be made available to the public at the same rates. The BOCs' profit margins might be less but still more attractive than any alternative investment might be.

In any event, the BOCs have not provided any information on the total costs and profit margins in their information services so as to demonstrate the relative impact of their estimated cost increases. Instead, they affect a lack of certainty as to such data -- data that they surely possess -- or simply assert that cost increases would lead to price increases. For example, BellSouth states that, given the cost increases it claims would occur under structural separation, "BellSouth likely would not offer the service in some areas."[38] SBC vaguely states that by raising the BOCs' cost structures, structural separation "would exert unacceptable pressures on the BOCs to increase the retail prices of their information services."[39]

At the very least, the BOCs should be able to identify and support, in detail, the cost increases they claim would incur and

---

[38] BellSouth Comments at 31.

[39] SBC Comments at 17.

compare such increases with the current costs and retail charges of their information services. Otherwise, there is no reason to believe that whatever cost increases might occur would have any impact on rates charged to consumers. That the BOCs have been unwilling to present such an analysis, with supporting data, speaks volumes as to the credibility of their estimates.[40] It must be concluded that the BOCs have not presented a credible showing of increased costs resulting from structural separation that will have a significant impact on their information service offerings.

B. Because the BOCs' Presentations Are Based on a False Reading of History, They Fail to Demonstrate Any Public Costs From Structural Separation

Even putting aside all of the conceptual and evidentiary defects in the BOCs' cost presentations discussed in Part A above, those presentations would only show costs to the BOCs and perhaps some impact on the BOCs' information services arising from structural separation. That still would not constitute a rational basis for the elimination of structural separation. What must be shown is an impact on public welfare from such costs. The BOCs and their experts assume an automatic linkage between their own costs and public injury, but one does not

---

[40] If they do not want to reveal such details publicly, they should do so under seal, provided that all such confidential filings are made available to any party signing a reasonable protective agreement.