DOCKET FILE COPY ORIGINAL

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

RECEIVED
APR 23 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

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

ROBERT M. LYNCH
DURWARD D. DUPRE
MICHAEL J. ZPEVAK
ROBERT J. GRYZMALA

Attorneys for
SBC Communications Inc.

One Bell Center, Room 3532
St. Louis, Missouri 63101
(314) 235-2515

April 23, 1998

Table of Contents

SUMMARY i

I. COMPETITIVE AND LEGAL CONSIDERATIONS HAVE ELIMINATED THE NEED FOR ONA. 2

II. SECTION 251-TYPE UNBUNDLING RIGHTS NEED NOT AND SHOULD NOT BE EXTENDED TO PURE ISPs. 8

III. "TELECOMMUNICATIONS SERVICES" AND "INFORMATION SERVICES" ARE SEPARATE, NON-OVERLAPPING CATEGORIES OF SERVICES AND ONLY THE FORMER QUALIFY FOR RESALE. 12

IV. THE COMMISSION SHOULD RESPECT CONGRESS' DETERMINATION TO IMPOSE SEPARATE AFFILIATE REQUIREMENTS ONLY UPON INTERLATA INFORMATION SERVICES. 14

V. THE COMPARABLY EFFICIENT INTERCONNECTION ("CEI") PLAN PROCESS SHOULD BE ELIMINATED. 16

VI. CONCLUSION 20

SUMMARY*

The Telecommunications Act of 1996 ("Act") represents a new chapter in the Commission's treatment of information services to no less extent than the Commission's treatment of telecommunications services. In both, Congress called for de-regulation, not re-regulation. Against the backdrop of the already robustly competitive information services market, and an Act whose implementation has already led to continued growth in the number of competitors in the local exchange market, the Commission should write the next, and last chapter, by concluding that post-California III considerations are more than sufficient both to alleviate any concerns of the Ninth Circuit and to continue to allow the BOCs to provide intraLATA information services on an integrated basis.

The BOCs have made remarkable progress in their own offering of information services on an integrated basis, even while ISPs have continued to flourish without fundamental unbundling. Section 251 of the Act confers direct benefits only to telecommunications carriers, although any ISP is free to participate indirectly in the benefits of Section 251. In light of these and other considerations, there is no public interest, competitive or other justifiable reason to reimpose structural separation upon the BOCs' integrated provisioning of intraLATA information services, or to re-impose the ONA regime.

"Section 251-type" rights should not be extended to pure ISPs. Rather, in order to participate in the direct benefits of Section 251, ISPs should be obligated to become telecommunications carriers or at least to partner with such carriers. Otherwise, ISPs who

currently hold certificates to provide local exchange service would have an incentive to abandon them, and ISPs that might have applied for a certificate would be deterred from doing so. Consumers would be denied local exchange provider alternatives that are or could be available to them, without any offsetting benefits in the already robustly competitive information services market.

The plethora of interconnection and resale agreements entered into by SBC bear witness to the remarkable progress made by CLECs already. In these circumstances, it would be a grievous error for the Commission to override Congress' determination that, under Section 251, only requesting telecommunications carriers are directly accorded rights to interconnection and to obtain access to unbundled network elements.

The Commission should deny TRA's request that LECs be required to make information services available for resale. Only days ago, the Commission reported to Congress that telecommunications services and information services are separate and distinct categories within the meaning of the Act. Accordingly, the resale obligation -- which attaches only to telecommunications services and is owed only to telecommunications carriers -- is not owed in the circumstances of TRA's request.

The Commission also should adhere to Congress' determination to impose separate affiliate requirements only upon interLATA information services. In previous contexts, congressional silence has led to the Commission not to impose structural separation. The Commission should likewise conclude that BOCs are not required to abide by the separate affiliate

---

*Abbreviations used in this Summary are referenced within the text.

and other requirements of Section 272 of the Act in connection with their provision of intraLATA information services.

Finally, the CEI plan filing and approval process should be eliminated. The process has served virtually no meaningful purpose since the passage of the Act and, in fact, has only become but another vehicle by which some competitors have stalled the BOCs' introduction of worthwhile information services.

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

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

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. ("SBC"), on behalf of itself and its affiliates, hereby submits these Reply Comments in connection with the Commission's above-referenced CI-III Further Remand Proceeding. For very good reasons, the Commission for several years endeavored to eliminate structural separation for Bell Operating Company ("BOC") provision of information services. Yet again, a few information service providers ("ISPs") paint a bleak picture of the state of competition in the information services market. Now, they claim that failure of the Telecommunications Act of 1996 ("Act") to open the local exchange market to competition supports structural separation. The facts do not support them on either count.

In this proceeding, the misleading objections of a few should yield to the reality stated by many. The information services marketplace is teaming with competitors -- proving that there are no barriers to entry, and certainly none attributable to the BOCs. Congress' enactment of the Telecommunications Act of 1996 signals a desired shift to de-regulate, not to add layers of regulation on top of one another. And, in fact, the multitude of interconnection and resale agreements reached between SBC and CLECs, among other things, reflect a continuing growth of

competitors in the local exchange market. Finally, the Commission has recognized time and again the substantial costs and inefficiencies of structural separation.

These considerations are more than sufficient both to alleviate any concerns of the California III Court and to continue to allow the BOCs to provide intraLATA information services on an integrated basis. These considerations also militate against extending to ISPs any Section 251-type unbundling rights to ISPs which do not provide any telecommunications services ("pure ISPs").

I. COMPETITIVE AND LEGAL CONSIDERATIONS HAVE ELIMINATED THE NEED FOR ONA.

In its initial Comments, SBC demonstrated that whether viewed from the perspective of SBC, its competitors, or even the Commission, the information services marketplace has long since become robustly competitive.[1] SBC also demonstrated that enactment and implementation of the Act ensures the continuation of a truly competitive information services market.[2]

MCI, however, demeans each of these considerations. It argues that the proper starting point for analysis is complete structural separation under pre-Act Computer II rules.[3] MCI then attempts to minimize the benefits of integration by arguing that: the BOCs' integrated information service offerings have not made significant headway in the marketplace; implementation of Section 251 has not developed to the point where the risk of access discrimination has diminished

---

[1]SBC, pp. 3-5.

[2]Id., p. 11.

[3]MCI, pp. 17-19.

sufficiently to dispense with structural separation; and, matters such as the Joint Federal-State audit of Southwestern Bell Telephone Company mean that anticompetitive conduct still marks the BOCs' activities.[4] However, each of MCI's arguments must be rejected.

The California III Court held that the FCC had not explained why it authorized lifting structural separation when it recognized that its assumptions in Computer III regarding ONA had not proven correct, and that fundamental unbundling was not attainable at that time.[5] The Court observed that inasmuch as fundamental unbundling was no longer regarded as attainable, the Commission should have provided further support or explanation for some of its material conclusions regarding the prevention of access discrimination.[6]

The "further support or explanation" requested by the California III Court is now evident and was pointed out in detail by SBC in its comments. The Court did not and, indeed, could not have taken these specific considerations into account when it rendered its decision in 1994.

For example, the Court could not have anticipated, much less have taken into account, the continued explosive growth in competition within the enhanced services market during the several years following the California III decision.[7] As Bell Atlantic reports, by 1994, the information services industry, termed by the Commerce Department as "among the fastest growing sectors of the economy," had already accounted for $135.9 billion in revenues, and that rapid growth has

---

[4]Id., pp. 23, 29-30, 37-38, 45, 61.

[5]California III, 39 F.3d, 919, 930 (9th Cir. 1994).

[6]Id.

[7]SBC, pp. 3-11; U S WEST, pp. 9-10, 21; Bell Atlantic, pp. 4-5.

continued to the present.[8] The Commerce Department concludes that today, the United States is "the world's largest producer and consumer of information technology and services."[9] Eight out of the top ten information service companies in the world are United States companies, and none is a BOC.[10] Moreover, competition for information services has also thrived even in those segments of the business where the BOCs have tended to focus their principal energies, including voice messaging and Internet access services.[11]

To the extent that MCI argues that integration has not lead to the BOCs' having introduced even more new information service offerings, its criticism is misplaced. Any inability to induce customers to use these new, more efficient, offerings may be attributed to other policies than integration. For example, Bell Atlantic points out that its Internet protocol routing service, now offered for nearly two years, has no major nonaffiliated customers. Most ISPs subscribe to lower-priced, local business services, as a result of the "ESP exemption" which allows ISPs to use local lines for interstate access service. SBC agrees with Bell Atlantic that, until the Commission eliminates the ESP exemption, there will be a reduced incentive for the BOCs to attempt to

---

[8]Bell Atlantic, pp. 4-5.

[9]Id.

[10]Id.

[11]Id., p. 5. Similarly, U S WEST observes that a previous study conducted by Booz-Allen & Hamilton found that revenues for the ESP market (including voice messaging, audiotext, online database access and transaction processing, E-mail, EDI, and enhanced facts) grew at an annual rate of over 18 percent between 1991 and 1994, with a value of over $25.4 billion in 1994. Despite this significant growth, the study concluded that the BOCs collectively enjoyed less than 10 percent of the market and no specific BOC had more than 2 percent of the market. U S WEST, pp. 11-12.

develop and deploy new services intended to meet ISP needs.[12]

Another factor inhibiting the introduction of innovative services is the Commission's position with respect to remote databases employed in connection with an intraLATA information service. For example, when Southwestern Bell Telephone Company filed its Comparably Efficient Interconnection ("CEI") plan to offer Interactive Call Manager, a service allowing business end-users to provide their own customers customized voice announcements, disputes developed over whether the service was an interLATA offering. It was of little consequence that the calling party's call was not under any circumstance transmitted beyond the LATA in which the call originated; rather, the mere fact that the service relied in part upon a remote database was sufficient to cause Commission staff to conclude that it would be an interLATA service. This narrow construction of the definition of an interLATA service is unjustified, and distinctly counter to the perception of the user (because the network's potential interaction with a database is transparent to the user).[13]

Despite MCI's claims, the fact remains to the extent that other regulatory policies permitted them to efficiently do so, BOCs have offered several enhanced/information services to the public at large, thus proving that integration has been beneficial to the public interest. That is not to say that even more new and innovative services might not also have been introduced. However, to the extent that they were not, the Commission's CI-III regime allowing BOCs to offer such services on

---

[12]Bell Atlantic, p. 17.

[13]Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order, 11 FCC Rcd 21905 (1996), ¶¶115-121.

a integrated basis did not contribute to that circumstance.

MCI also fails to recognize that passage of the Act sufficiently alters the landscape so as to render the California III Court's concerns irrelevant. As BellSouth notes, through Section 251, Congress has spoken and defined the degree of unbundling applicable to all ILECs. Thus, whatever the Ninth Circuit said about the Commission's past unbundling standards, those standards themselves, as well as the Ninth Circuit's commentary on them, have been rendered moot by Congress' declaration.[14]

Section 251, unlike ONA, requires extensive unbundling of "network elements." The fact that Section 251 grants only "requesting telecommunications carriers" direct rights to request and obtain access to unbundled network elements does not render that section ineffective in meeting the concerns of the Ninth Circuit. Rather, what is important is that even ISPs who are not also telecommunications carriers, i.e., "pure ISPs," reap the benefits of the unbundling obligations established by Section 251.[15] Pure ISPs can avail themselves of Section 251 unbundling rights by either obtaining carrier certification, or by affiliating themselves with already certified carriers.[16] As a consequence of Section 251 and as Congress intended, there has been a dramatic increase in the number of competitors that can provide the basic network services that ESPs previously could obtain only from incumbent LECs.[17] Accordingly, the Commission should act on the Ninth

---

[14]BellSouth, p. 11.

[15]Id., pp. 13-14.

[16]Ameritech, p. 7; U S WEST, p. 21.

[17]U S WEST, p. 20.

Circuit's California III decision by concluding that passage of the Act has sufficiently mooted any concerns of the California III Court.

Finally, MCI's analysis of the Joint Federal-State audit of Southwestern Bell Telephone Company is both incomplete and skewed, thus providing no support for the proposition that the BOCs' offering of information services on an integrated basis presents any cross-subsidization or competitive concerns. Each of MCI's points were thoroughly rebutted by Southwestern Bell Telephone Company's June 21, 1996 ex parte presentation.[18]

SWBT's response demonstrated that while SWBT and the Commission held different opinions regarding joint marketing costs, the Audit Report also concluded that "nothing came to the attention of the audit team that would indicate that SWBT's nontariffed services rendered to affiliates and sales of assets to affiliates were not accounted for in a manner consistent with the applicable FCC affiliate transaction standards."[19] Similarly, MCI not only mischaracterized the Audit Report, it also ignored that the Commission's Audit Branch made a very positive determination regarding SWBT's CAM process implemented over a five year period. It concluded stated that "[b]ased on the audit work performed, nothing came to our attention to indicate that Southwestern Bell Telephone Company was not in compliance with our Commission's cost allocation rules. Also, our review of the implementation of CAM uniformity rules did not indicate

---

[18]Ex parte presentation, Letter of Southwestern Bell Telephone Company to William F. Caton, Acting Secretary, Federal Communications Commission, June 21, 1996 ("SWBT, June 21, 1996, Ex Parte Presentation") (Attachment A hereto).

[19]See, SWBT, June 21, 1996, Ex Parte presentation, p. 7.

anything unusual."[20]

MCI's continuing attempts to mischaracterize the BOCs' compliance with affiliate transaction and cost accounting rules cannot be countenanced. Instead, they serve only to highlight the self-interested and jaundiced view of MCI with respect to the entirety of the ONA proceedings.

In sum, the BOCs have made remarkable progress in the offering of information services on an integrated basis, and ISPs have continued to flourish without the fundamental unbundling MCI asks the Commission to impose. Section 251 of the Act confers direct benefits only to telecommunications carriers, yet any ISP is free to participate indirectly in the benefits of Section 251. Finally, there is no affiliate transaction or cost accounting consideration suggesting that the structural separation is required or appropriate. Given these considerations, there is no public interest, competitive or other justifiable reason to reimpose structural separation upon the BOCs' integrated provisioning of intraLATA information services, or to re-impose the ONA regime.

II. SECTION 251-TYPE UNBUNDLING RIGHTS NEED NOT AND SHOULD NOT BE EXTENDED TO PURE ISPs.

Although Section 251 obviates the need for ONA, "Section 251-type" rights need not and should not be extended to pure ISPs. Rather, as the Commission has itself suggested, in order to obtain such benefits, ISPs should be obligated to become telecommunications carriers or at least partner with such carriers.[21]

---

[20] Id.

[21] FNPRM, ¶95.

The notion that pure ISPs should become entitled to UNEs, if adopted, would necessarily mean that ISPs would not need to hold "carrier" status in order to take advantage of the direct rights conferred by Section 251. ISPs who currently hold certificates to provide local exchange service would have an incentive to abandon them, and ISPs who might have applied for them would be deterred from doing so.[22] These developments would stunt continued growth in the numbers of CLECs which provide necessary inputs to ISPs and the numbers of CLECs which themselves provide information services to the public.

Consequently, consumers of local exchange services would have fewer competitive alternatives made available to them. This consumer loss would not be offset by any substantial additional information services, for the information services market is already robustly competitive. Moreover, a policy, the effect of which would be to reduce alternatives in the local exchange market (where universal service considerations are paramount to consumers) by adding alternatives in the information services market (which is secondary to the local exchange market in importance to consumers), would be bad policy. In short, consumers would be denied local exchange provider alternatives that are or could be available to them were the Commission to provide pure ISPs with Section 251-type unbundling rights, without any offsetting benefits in the information services market.

Moreover, any ISP currently has the ability to obtain certification as a carrier under state law. It is not, as Western Regional claims, difficult to afford the expense and otherwise undertake

---

[22]Northpoint Communications, p. 2.

the efforts to qualify as a CLEC,[23] nor are the carrier obligations imposed on CLECs under state law overly burdensome. Indeed, a great number of companies have successfully done what Western Regional suggests it cannot.

The facts demonstrate that the number of interconnection and resale agreements has sharply escalated. In SBC's operating territory alone, at least 265 interconnection and resale agreements with CLECs are in place. SBC's BOCs are negotiating more than 370 additional interconnection and resale agreements. At this time, more than 160 CLECs are operational in SBC's in-region territory. Through the end of 1997, more than 560,000 access lines have migrated to CLECs, either through resale or through the establishment of new facilities-based service by CLECs in SBC's seven-state service area. SBC's operation support systems processed over 1.2 million service orders from CLECs in 1997 in its seven states. Southwestern Bell Telephone Company alone processed more than 730,000 orders in 1997 (over 130,000 orders in December alone), without a backlog.

In addition, SBC has provisioned more than 174,000 one-way and two-way interconnection trunks to CLECs in SBC's seven-state area, which allow CLECs to connect their networks to their customers. Approximately 108,000 of these trunks have been provisioned in California and 65,000 interconnection trunks have been provided to CLECs in SBC's five-state midwest territory.

---

[23]Western Regional, p. 1. Likewise, while ITAA does not believe that it is necessary or advisable for the Commission to give ISPs carrier-like Section 251 rights, its position seems to presume that ISPs having such rights would be required to shoulder carrier-like regulatory obligations. ITAA, pp. 24-25.

This remarkable progress by CLECs belies Western Regional's claim that it has only been with "great difficulty" that CLECs have been able to obtain portions of the public switched network for the transport and end use of their information services.[24] It is correct only to say that hundreds of CLECs have achieved what Western Regional says, without any factual foundation, is too difficult.

In these circumstances, it would be a grievous error indeed for the Commission to override Congress' determination that "[under] section 251, only 'requesting telecommunications carriers' are directly accorded rights to interconnection and to obtain access to unbundled network elements."[25] The Act is clear in this regard, and by ISPs' own admission, they have been excluded from participating in the direct benefits of Section 251 due to its express language.[26] Because Congress has already made a policy decision and enacted laws whose language reflects that policy choice, the Commission is without authority to "bestow upon" ISPs benefits which Congress affirmatively chose to deny them.[27]

---

[24]Id., p. 2.

[25]FNPRM, ¶32, citing, 47 U.S.C. §251(c)(2), (c)(3).

[26]Similarly, ALTS concludes that the 1996 Act is unmistakably clear in restricting UNEs only to carriers as carefully defined by the Act. SBC agrees with ALTS' view that the clarity of Congress' words suggests that the Commission should not change so recently its interpretation of Section 251 to carry out Congress' intention as written. ALTS, pp. 10-11. In addition, MCI agrees that "there would also appear to be statutory and jurisdictional problems in attempting to shoehorn ISPs by regulation into the Section 251 framework." MCI, p. 70 As MCI notes, "[t]here appears to be no authority under Section 251 itself to do so. If the Commission were to act under Sections 201 and 202, on the other hand, its reach would only extend to interstate access 'UNEs,' thus providing ISPs less than they seek in any event." Id.

[27]Western Regional, p. 2.

The Commission should not conclude that it has authority under Sections 201 through 205 of the Act to confer Section 251-like unbundling benefits upon ISPs. Sections 201 through 205 of the Act provide the Commission with authority to correct unjust, unreasonable or discriminatory charges, practices, classifications or regulations of a carrier.[28] Certainly, one might debate whether use of the authority granted by these sections is appropriate where a carrier engages in a practice about which Congress has not spoken. There is no debate here. Congress specifically stated that the ILECs' interconnection and resale obligations extend only to telecommunications carriers. No other part of the Communications Act of 1934, as amended, is specifically devoted to this subject. Neither Sections 201-205 of the Act, nor the Commission's general rulemaking authority, are sufficient bases on which to conclude that the Commission has authority to override this congressional determination. Section 251 is expressly limited in its application, and that limitation may not be eviscerated by the Commission's adoption of a contrary rule.

III. "TELECOMMUNICATIONS SERVICES" AND "INFORMATION SERVICES" ARE SEPARATE, NON-OVERLAPPING CATEGORIES OF SERVICES AND ONLY THE FORMER QUALIFY FOR RESALE.

TRA urges the Commission to require that ILECs make available for resale voice messaging services and other enhanced/information services. It reasons that the Commission can and should differentiate between "basic services" and "telecommunications services" so that the former should be viewed as a subset of the latter.[29] TRA's premise is fatally flawed, and thus its request must be denied.

---

[28] 47 U.S.C. §§201-205.

[29] TRA, pp. 9-10.

Only days ago the Commission concluded that Congress intended the categories of "telecommunications service" and "information service" to parallel the definitions of "basic service" and "enhanced service" developed in its Computer II proceeding.[30] This conclusion served to reaffirm several prior Commission conclusions to the same effect.[31] Notwithstanding TRA's protestations, basic services are not a subset of telecommunications services; rather, the two are one and the same; further, telecommunications services and information services are separate, non-overlapping categories which are mutually exclusive within the meaning of the 1996 Act.[32]

For this reason, voice mail and other information services are beyond the scope of Section 251(c)(4), which imposes upon incumbent local exchange carriers ("ILECs") the duty "to offer for resale . . . any telecommunications service that the carrier provides at retail. . . ."[33] As an information service, voice mail service cannot also be a telecommunications service.

---

[30]Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report to Congress, FCC 98-67, released April 10, 1998 ("Report to Congress"), ¶21.

[31]E.g., Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, First Report and Order, 11 FCC Rcd 21905 (1996) ("Non-Accounting Safeguards Order"), ¶102 (finding that the differently-worded definitions of "information services" and "enhanced services" extend to the same functions, and treating the category of information services as distinct from telecommunications); telecommunications carriers' use of customer proprietary network information and other customer information, CC Docket No. 96-115, Second Report and Order, released February 26, 1998 ("CPNI Order") (summarizing Commission precedent as indicating that "telecommunications services" and "information services" are "separate, non-overlapping categories, so that information services do not constitute 'telecommunications' within the meaning of the 1996 Act").

[32]Id.

[33]47 U.S.C. §251(c)(4) (emphasis added).

Moreover, even if voice mail service could be regarded as a telecommunications service, the resale obligation imposed by Section 251 is owed only to telecommunications carriers.[34] As the Commission has noted, the Act requires ILECs to negotiate agreements, including resale agreements, "with [a] 'requesting carrier or carriers' not with end users or other entities."[35] Accordingly, for this independent reason, TRA's request lacks any legal basis.

Accordingly, to the extent that the Commission considers TRA's request at all, it should reject that request.[36]

IV. THE COMMISSION SHOULD RESPECT CONGRESS' DETERMINATION TO IMPOSE SEPARATE AFFILIATE REQUIREMENTS ONLY UPON INTERLATA INFORMATION SERVICES.

Some commenters bootstrap what they regard as Congress' "preference" for structural separation into a Commission license to impose it in circumstances where Congress chose not to do so. Specifically, LCI and ITAA argue that the separate affiliate and other requirements applicable to the BOCs' provision of interLATA information services under Section 272 of the Act should be applied to the BOCs' provision of intraLATA information services.[37] Yet, ITAA's own

---

[34]47 U.S.C. §251(c)(5).

[35]Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, FCC 96-325, released August 8, 1996, ¶875.

[36]Moreover, as ITAA points out, in the almost two decades since the Commission established the basic services/enhanced services dichotomy, it has been enormously successful, promoting for its membership a vibrant, robustly competitive and growing information technology industry. ITAA, p. 4. For this additional reason, SBC urges the Commission to find yet again that the term telecommunications services includes services previously regulated as basic services under Title II of the Communications Act, as ITAA suggests. Id., at p. 7.

[37]LCI, pp. 3, 9; ITAA, pp. 13-14.

comments undercut both its and LCI's suggestions.

First, ITAA concedes that neither Section 272 (nor any other provision of the Act) specifically addresses the appropriate regulatory regime for BOC participation in the intraLATA information services market. This omission might be significant had Congress not prescribed the regulatory regime for BOC participation in the interLATA information services market. However, Congress spoke directly to the interLATA market, and its direct reference must be viewed as Congress' having declined to impose separate affiliate requirements upon the provision of intraLATA information services. Elsewhere, the Commission has interpreted Congressional silence regarding the need for structural separation as indicating that the Commission should not impose such a condition upon the provision of service.[38] The same interpretation should hold here.

It is legally irrelevant, and disingenuous in any case, to suggest that the BOCs, once Section 271 relief if obtained, will "game the system" by attempting to structure their information service offerings as intraLATA offerings.[39] To the extent that there may be network and other efficiencies associated with the provision of interLATA information services, BOCs are free under the Act to take advantage of them. Congress clearly did not conclude that BOCs should be denied the choice as to whether to structure their information services offerings as either intraLATA or

---

[38]For example, the Commission also interpreted Congressional silence so as not to impose a separate affiliate upon the provision of open video services. Implementation of Section 302 of the Telecommunications Act of 1996: Open Video System, CS Docket No. 96-46, FCC 96-249, Second Report and Order, released June 3, 1996, ¶249. Likewise, Congress imposed no structural separation requirements upon the provision of alarm monitoring services under Section 275 of the Act nor upon the provision of payphone services under Section 276 of the Act, and in neither context has the Commission imposed such requirements.

[39]ITAA, p. 14.

interLATA in nature, or even that Section 272 would necessarily apply in both contexts. Had it so intended, Congress could certainly have denied BOCs the authority to offer any intraLATA information services after obtaining Section 271 relief, or it could have required that all information services provided by BOCs be provided only by a structurally separate affiliate. Congress did neither.

V. THE COMPARABLY EFFICIENT INTERCONNECTION ("CEI") PLAN PROCESS SHOULD BE ELIMINATED.

Certain commenters oppose the Commission's proposed elimination of the CEI process.[40] However, as SBC pointed out it in Comments, the marketplace, administrative and other burdens associated with CEI Plan filing and approval far outweigh any incremental benefits.[41] Other commenters are in agreement.[42]

A principal objection to the current CEI regime is that it requires BOCs to publicly reveal detailed descriptions of every planned enhanced service offering, including all of the functions and intended customer uses of the service. These filings "telegraph" the BOCs' intentions to competitors, allowing them to introduce their own versions of the same service while the BOCs' await Commission approval of their CEI plans.[43] There is no justification that supports such an

---

[40]E.g., ALTS, p. 16.

[41]SBC, pp. 27-29.

[42]E.g., Ameritech, p. 7; BellSouth, p. 22; U S WEST, pp. 25-27.

[43]Ameritech, p. 9.

symmetrical process, so long as ISPs continue to be afforded access to the same basic services as those underlying the BOCs' own information service offerings.

Moreover, ONA and other nonstructural safeguards such as the CEI process were introduced only to operate as surrogates for natural competition. However, the presence of a plethora of ISPs, and the relationships some have established with competing local service providers, are among the many changed circumstances occasioned by the passage of the 1996 Act which warrant elimination of the CEI process.[44]

ALTS, however, opposes elimination of the CEI process, in part, based on its claim that the BOCs are currently violating it by declining to treat calls to ISPs as local calls for purposes of reciprocal compensation under local interconnection agreements.[45] ALTS' argument, however, is a red herring and flawed in any event.

First, there is no CEI parameter (or nonstructural safeguard) to which this point is even relevant. The CEI parameters are pertinent to the manner of a competing ISP's access to the BOC's basic services. They have nothing to do with an ISP's access to the services of a CLEC, which are at the heart of the interconnection dispute.

More fundamentally, the Commission has already asserted jurisdiction over information service provider traffic (including that of Internet service providers), has never considered ISP traffic to be a local service, and importantly, has regarded ISP traffic as predominantly interstate in nature. Consequently, for the reason that it is necessary that such traffic be assigned to the

---

[44]BellSouth, p. 24-25.

[45]ALTS, p. 16.

interstate jurisdiction in Part 36 jurisdictional separations procedures, such traffic cannot be regarded as the placement of a local call subject to compensation under local interconnection agreements.[46]

AirTouch Paging claims that the CEI regime remains integral to protecting against the BOCs' "heavy-handed" tactics in marketing enhanced services offerings, because CEI plans allow competing providers and customers to determine whether a BOC's actions comport with CEI requirements.[47] Air Touch's claims misses the mark for several reasons.

As a preliminary matter, CEI plans do not specify the means by which the BOCs propose to market their services, nor do the Commission's rules require that the BOCs disclose such matters. In any case, SBC's CEI-related experience of late suggests that competitors care little about whether the SBC's CEI plans meet CEI requirements than whether such plans can be strategically stalled by interposing Act-related objections. For example, in the CEI plans Southwestern Bell Telephone Company has filed within the last two years, no commenters have opposed on the basis of a legitimate CEI parameter or nonstructural safeguard objection. Rather, objections related to the Act have predominated, thus stalling SBC's introduction of worthwhile

---

[46]Ex Parte Presentation of SBC, CC Docket No. 80-286, Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; CC Docket No. 96-45, Federal-State Joint Board on Universal Service; CC Docket No. 96-262, Access Charge Reform; and CCB/CPD CC Docket No. 97-30, Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Internet Service Provider Traffic, filed March 24, 1998 (Attachment B hereto).

[47]AirTouch Paging, p. 4.

services that meet CEI-related requirements,[48] in markets which are manifestly competitive.

AirTouch Paging cannot have it both ways. The lack of a valid CEI-related objection may mean that the SBC CEI Plan filings indeed meet all of the CEI-related parameters and nonstructural safeguards. This circumstance suggests that the filing and review process itself serves little purpose. Alternatively, it may mean that competitors' means of stalling Commission approval of such plans has moved from emphasis on compliance with CEI requirements to emphasis on alleged violations of the Act. This circumstance suggests that the CEI Plan filing, review and approval process has been abused, in that objections have become a form of leverage that has supplanted the complaint process available to redress alleged violations of the Act. In either circumstance, therefore, the CEI process should be eliminated.

---

[48] See, SBC, at 28 & n. 69 (regarding SBC's CEI Plan filings for Security Service and Internet Access Support Services).

VI. CONCLUSION

SBC respectfully requests that the Commission proceed in accordance with SBC reply comments submitted herein.

Respectfully submitted,

SBC Communications Inc.

By _____
Robert M. Lynch
Durward D. Dupre
Michael J. Zpevak
Robert J. Gryzmala

Attorneys for
SBC Communications Inc.

One Bell Center, Room 3532
St. Louis, Missouri 63101
(314) 235-2515

April 23, 1998