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Re: CC Docket No. 96-61

Dear Ms. Salas:

Enclosed are the original and four copies of the Comments of the Internet Service Providers' Consortium for filing in the above-referenced docket.

Kindly date-stamp and return the extra copy of this cover letter.

If there are any questions about this filing, please call me at the number above.

Respectfully submitted,



Mitchell Lazarus

Counsel for Internet Service Providers' Consortium

ML/dd

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- cc: Service List
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Before the  
Federal Communications Commission  
Washington DC 20554

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In the Matter of	)	
	)	
Policy and Rules Concerning the	)	CC Docket No. 96-61
Interstate, Interexchange Marketplace	)	
	)	
Implementation of Section 254(g) of the	)	
Communications Act of 1934, as amended	)	
	)	
1998 Biennial Regulatory Review —	)	CC Docket No. 98-183
Review of Customer Premises Equipment	)	
and Enhanced Services Unbundling Rules	)	
in the Interexchange, Exchange Access	)	
and Local Exchange Markets	)	

**COMMENTS OF THE  
INTERNET SERVICE PROVIDERS' CONSORTIUM**

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## SUMMARY

Most subscribers reach the Internet through an Internet Service Provider (ISP). The ISP/C is the largest trade association for small to mid-size ISPs — companies whose primary business is providing Internet services, unlike divisions of telephone companies like Pacific Bell, on-line content providers like AOL and CompuServe, or software companies like Microsoft. The ISP/C includes about 260 company members, and has emerged as the voice of independent ISPs.

The ISP/C urges the Commission to maintain its prohibitions against bundling of enhanced services with local exchange and exchange access services.

The incumbent LECs, particularly the RBOCs and GTE, not only are competitors of the independent ISPs for the same retail ISP customers, but are also essential providers to most ISPs, which depend on the RBOCs or GTE for local loops and data lines. This combination gives the RBOCs and GTE both the incentive and the opportunity to discriminate against independent ISPs.

The bundling rules were instituted to help prevent a carrier from using its facilities monopoly to unfairly advance its position in the market for enhanced services. The Commission's current proposal to relax the prohibitions makes sense only when that facilities monopoly no longer exists — when the local telephone market has become fully competitive. That day has not yet arrived.

The bundling rules serve an additional need in the case of the RBOCs and GTE, in facilitating enforcement of those carriers' Computer III obligations. To permit bundling would make Computer III abuses much harder to detect, by making it difficult, if not impossible, for an

independent ISP to determine whether an RBOC or GTE is making available to competitors the same services it offers to its own ISP operation, and at comparable rates.

Taking into account the other competitive advantages available to the incumbent LECs, particularly joint marketing to still-captive customers, to allow bundling would further distort the market for ISP services and unfairly disadvantage non-ILEC ISPs in their efforts to continue providing individualized service to local communities.

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**COMMENTS OF THE  
INTERNET SERVICE PROVIDERS' CONSORTIUM**

The Internet Service Providers' Consortium (ISP/C) hereby submits these Comments in response to the Further Notice of Proposed Rulemaking the above-captioned proceeding.<sup>1</sup>

**I. INDEPENDENT ISPs ARE A VITAL PATHWAY BETWEEN END USERS AND THE INTERNET.**

Today most subscribers reach the Internet through Internet service providers (ISPs), which are in the business of providing retail-level access to the Internet to anyone with a computer and a phone line (or other means of connection).<sup>2</sup> Without the ISPs, only entities large

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<sup>1</sup> Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, Further Notice of Proposed Rulemaking, FCC 98-258 (released Oct. 9, 1998) ("Further Notice").

<sup>2</sup> The Commission sometimes uses the abbreviation ISP to mean "information service provider." In this pleading, ISP/C adopts a narrower meaning, "Internet service provider."

enough to maintain their own networks could have Internet access. ISPs make the Internet universal and ubiquitous.

Independent ISPs are companies whose primary business is providing Internet services. The independents are ISPs *other than* divisions of telephone companies like the RBOCs and GTE, on-line content providers like AOL and CompuServe, or software companies like Microsoft. In addition to serving consumers, independent ISPs typically work with the small businesses of their communities — companies and organizations that lack their own information services personnel and Internet expertise, and hence often demand considerable attention and resources from their ISPs. Many of these subscribers require assistance with individualized installations and employee training, and depend on web sites designed and maintained by the ISP for their presence on the Internet. Some ISPs specialize in serving particular industries (health care, for example), and are able to offer industry-specific subject-matter expertise along with conventional Internet services. Together, small-business subscribers and individuals average about 85% of an independent ISP's customers.

The independent ISPs can offer their subscribers levels of time and energy that the large providers could never muster. Reaching out to their communities, independent ISPs create classes, software, and texts to assist the elderly, youth, and other populations who tend to be late or underfunded entrants to the Internet. Many independent ISPs have long translated their concern for community affairs into Internet access for local governments, schools, and libraries. Typically the independent ISPs also provide technical support and training, sometimes through reduced-charge or free accounts. Their work has often given these community institutions their first Internet outreach. In short, the independent ISPs focus closely on their local communities

and respond to local needs.<sup>3</sup> A Commission official has informally (but accurately) described the independent ISPs as “mom-and-pop shops who get grandmas online.”

Independent ISPs are a small-business success story in their own right. From only a handful of ISPs in 1995, the industry has grown to between 5,000 and 7,500 independent ISPs in the United States today. About 85% are themselves small businesses, with average revenues of about \$375,000. Most have between one and ten employees, and are growing. Collectively, all independent ISPs account for 50 percent of the U.S. ISP market. They also create an increasing number of highly skilled technical positions in the United States and abroad.

The independent ISPs have led the expansion of the Internet into the fastest-growing communications medium in the history of civilization. Years before the telephone companies

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<sup>3</sup> From one independent ISP:

"We're the homey company with a local office who gives free classes for all the retirees and we let them bring in their computers if they don't work and we'll fix them. They can call and ask us all kinds of stupid questions . . . . They can come in and tell jokes and ask what kind of modem they should buy and they send us the neatest compliments and tell us how great we are. What great subscribers we have! The oldest is 92 and she golfs every day and uses the internet at night.

"We'll go to people's homes and set them up at no charge if they are handicapped. The biggies can't touch us. We also teach other 'Interest Seminars' like how to do genealogy on the internet or how to set up your financial portfolio. We also teach how to use search engines and how to upload & download as well as how to do web pages. Once they take that class they usually hire us to do the web pages.

[ . . . ]

"No big outfit wants to come here - there just isn't enough volume. We even sell our service as the cheaper option to paying long distance charges to AOL. They can dial in to us, lower their AOL bill to \$9.95 per month and our \$25 makes their \$X00 phone bills look like the national budget."

and other large providers showed any interest, it was the independent ISPs — some of them launched by the same people who helped to create the Internet — that risked their own assets to develop the growth market of the decade. They are still the only means of access to the Internet by a local call in most rural and small-market areas. Everywhere, the independent ISPs contribute more than their share of the vitality and diversity that enables millions of people to use the Internet daily to improve and enrich their lives.

*About the Internet Service Providers' Consortium.* The ISP/C is the largest trade association for small to mid-size ISPs and other members of the Internet services industry. (A list of members is attached as Appendix A.<sup>4</sup>) Founded in 1996, the ISP/C now includes about 260 company members, up 200 percent in the last year alone. ISP/C members provide local and backbone Internet access, online content, and hardware and software for the industry. Members of ISP/C have over 1 million subscribers in the aggregate, with headquarters in more than 42 U.S. states and 10 countries. Most members serve local or regional markets, and increasingly specialize in services for specific industries and personal attention for those who need it.<sup>5</sup>

The ISP/C welcomes members regardless of size and geographic location. It has emerged as the voice for independent ISPs.

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<sup>4</sup> Not all members listed in Appendix A have individually reviewed and approved this pleading.

<sup>5</sup> Additional information about the ISP/C is available at <http://www.ISPC.org>.

**II. THE COMMISSION SHOULD NOT PERMIT INCUMBENT LECS, ESPECIALLY THE RBOCs AND GTE, TO BUNDLE ENHANCED SERVICES WITH TRANSMISSION AND SWITCHING.**

The Commission asks, among other things, whether it should permit the bundling of enhanced services with local exchange and exchange access services. The answer is plain: Not yet.<sup>6</sup>

The incumbent LECs serving most of the American public, including all of the RBOCs and GTE, are themselves in the ISP business, and compete directly with independent ISPs for the same retail Internet customers. But, at the same time, the independent ISPs depend on these companies for the multiple local loops, and other facilities, that customers must use to reach the ISP, and for data lines that connect the ISPs to the Internet backbone. A local carrier thus has every opportunity — and every incentive — to misuse its facilities monopoly to discriminate against independent ISPs in order to build up its own ISP business.

Prior Commission decisions help to create a level playing field by requiring:

carriers that own common carrier transmission facilities and provide enhanced services [to] unbundle basic from enhanced services and offer transmission capacity to other enhanced service providers under the same tariffed terms and conditions under which they provide such services to their own enhanced service operations.<sup>7</sup>

---

<sup>6</sup> The Commission also asks about changes to the rules that prohibit bundling of CPE by all carriers, and of enhanced services by interexchange carriers. The ISP/C takes no position on these issues. The ISP/C notes, however, that some interexchange carriers currently bundle ISP services with interexchange service in apparent violation of the Commission's Rules.

<sup>7</sup> Independent Data Communications Manufacturers Ass'n, 10 FCC Rcd 13717, 13719 (1995), *cited in* Further Notice at ¶ 33.

The bundling prohibitions were instituted to help prevent a carrier from using its facilities monopoly to unfairly advance its position in the market for enhanced services. **The Commission's current proposal to relax the prohibitions makes sense only when that facilities monopoly no longer exists.** That may indeed be true today of the interexchange market. In the case of local exchange and exchange access services, however, assumptions of a competitive market are plainly premature. The Commission has repeatedly held that the RBOCs do not yet have sufficient competition to justify permitting their entry into the interexchange market. There is no basis for a different conclusion in the context of the bundling rules.

Absent restraints, any carrier's exercise of rational self-interest, coupled with its facilities monopoly, will inevitably lead it to discriminate in order to hinder competition. Indeed, the carrier's duty to its shareholders requires it to maximize profit — within regulatory constraints. The Commission has long recognized that anticompetitive behavior on the part of carriers must be restrained through appropriate regulation, at least until competition becomes strong enough to exert control through market forces. Controls on bundling are required until real competition for local telephone service is established, in order for the market to function without distortions imposed by monopoly providers.

It is important to note that the bundling prohibition does not in any way disadvantage an LEC relative to its competitors. To the contrary, the bundling prohibition merely requires the carrier to compete for ISP business under the same conditions as other participants in the market, including the independent ISPs.

There is a separate and equally compelling reason to maintain the prohibition against bundling enhanced services in the case of the RBOCs and GTE. These carriers are subject to

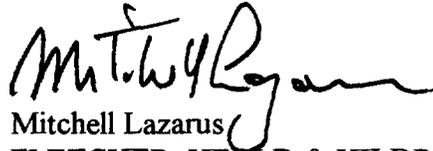
Computer III nonstructural safeguards to prevent abuse of their facilities monopoly in the enhanced services market, including ISP services. The independent ISPs rely on the Computer III safeguards in their efforts to maintain a reasonably competitive ISP market in the presence of the RBOCs and GTE. But the independent ISPs have had continuing difficulties in enforcing their Computer III rights against the RBOCs and GTE, particularly their rights to acquire underlying telecommunications facilities under nondiscriminatory rates, terms, and conditions. Many ISPs can provide detailed accounts of RBOC and GTE behavior that an impartial observer would have to describe as intentional discrimination. To permit bundling would make these abuses much harder to detect. Bundling would make it difficult, if not impossible, for an independent ISP to determine whether an RBOC or GTE is making available to competitors the same services it offers to its own ISP operation, and at comparable rates.

Taking into account the other competitive advantages available to the incumbent LECs, particularly joint marketing to still-captive customers, to allow bundling would further distort the market for ISP services and unfairly disadvantage non-ILEC ISPs in their efforts to continue providing individualized service to local communities.

**CONCLUSION**

For the reasons given above, it would be premature for the Commission to relax the enhanced services bundling rules as to incumbent LECs, particularly the RBOCs and GTE.

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November 23, 1998

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 Insync Internet Services, Inc.  
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Nothin But Net, LLC	Len Pikulski, Mt. Laurel, NJ, US
NYCPORT Networks	John Kenney, New York, NY, US
One Church Communications, L.L.C.	Melanie I. Becnel, New Orleans, LA, US
On-Line Systems	Jay Griffiths, Palatine, IL, US
Pact Communication Group, Inc.	Camilo Pereira, Ft. Lauderdale, FL, US
Palmer Divide Communications	Joseph M. Beggs, Monument, CO US
Pampa Cyber Net	Douglas Locke, Pampa ,TX, US
Panda Communications LLC	Harry Landers, Santa Cruz, CA, US
PAXnet Communications Inc.	James J Mundy, Greenville, SC, US

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 PEG Labs  
 Penncom Internet Company  
 Pennsylvania Online LTD.  
 Pinellas Internet Services  
 Plantaganet Internet Services  
 PMH Network Services, Inc.  
 Poulton Associates  
 PressEnter  
 Priori Networks  
 Private I, LLC  
 Progressive Telecom  
 QDO  
 Rocky Mountain Internet Junction  
 Rural Communications, Inc.  
 SBBSNET  
 Scescape, Inc.  
 Sentient Networks, Inc.  
 Seren Innovations  
 ShreveNet, Inc.  
 Silicon Beach  
 SkyCache, Inc.  
 SLIP.NET  
 SoftAplic S/C Ltd.  
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 SONET Communications  
 Sonoma Systems  
 Southern Star  
 SouthNet Inc.  
 Southwest Cyberport  
 SoVerNet  
 SparkNET Corporation  
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 SpringSips  
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 Surfari Internet Provider Services  
 Sutter Yuba Internet Exchange - SYIX.COM  
 System Resale Solutions IV Ltd.  
 TDI Internet, Inc.  
 Telalink Corporation  
 Teleport Internet Services  
 Televolve, Inc. (San Francisco Online)  
 Texas Networking, Inc.  
 The Binary Bin  
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I, Delphine I. Davis, a secretary with the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 23th day of November, 1998, I caused copies of the foregoing "Comments Of The Internet Service Providers' Consortium" to be delivered by hand to the following:

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A handwritten signature in cursive script, appearing to read "Delphine I. Davis", written in black ink.

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Delphine I. Davis