

ORIGINAL

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

RECEIVED

NOV 23 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Policy and Rules Concerning the )  
Interstate, Interexchange Marketplace )  
)  
Implementation of Section 254(g) of the )  
Communications Act of 1934, as amended )  
)  
1998 Biennial Regulatory Review -- )  
Review of Customer Premises Equipment )  
and Enhanced Services Unbundling Rules )  
in the Interexchange, Exchange Access, )  
and Local Exchange Markets )

CC Docket No. 96-61

CC Docket No. 98-183

COMMENTS OF AT&T CORP.

Mark C. Rosenblum  
Seth S. Gross

Room 3252F3  
295 North Maple Avenue  
Basking Ridge, New Jersey 07920  
(908) 221-4432

Peter D. Keisler  
James P. Young

1722 Eye Street N.W.  
Washington, D.C. 20006  
(202) 736-8132

November 23, 1998

No. of Copies rec'd  
List ABCDE

016

AT&T Corp.

November 23, 1998

## TABLE OF CONTENTS

SUMMARY.....	ii
I. THE COMMISSION SHOULD PERMIT NONDOMINANT INTEREXCHAGNE CARRIERS TO BUNDLE INTEREXCHAGNE SERVICES WITH CPE AND WITH ENHANCED SERVICES .....	4
A. The Interexchange, CPE, And Enhanced Services Markets Are Fully Competitive, And Therefore The Commission's Restrictions On Bundling Are No Longer In The Public Interest.....	4
B. The Various Arguments In Favor Or Retaining the Bundling Restrictions Are Baseless .....	9
C. Removal Of The Restrictions On Bundling Would Not Require Other Rule Changes .....	12
D. The Commission Need Not Determine Now Whether BOCs Should Be Permitted To Bundle In-Region InterLATA Services With CPE Or Enhanced Services .....	15
II. THE COMMISSION SHOULD ALSO PERMIT NONDOMINANT LOCAL EXCHANGE CARRIERS TO BUNDLE LOCAL SERVICE WITH CPE OR WITH ENHANCED SERVICES .....	15
CONCLUSION.....	17

## **SUMMARY**

Nearly twenty years ago, the Commission determined that telecommunications carriers should not be allowed to bundle either customer premises equipment or enhanced services with telecommunications services. The prohibition on bundling was designed to protect the developing CPE and enhanced services markets, because of concerns that telecommunications service providers with market power in basic common carrier services could use bundling to restrict consumer choice and slow the development of the CPE and enhanced service markets. However, in the intervening years, the markets for interexchange services, CPE and enhanced services have undergone dramatic changes. Today, each market is competitive, so that the restrictions on bundling no longer serve any useful purpose when applied to nondominant interexchange carriers. Therefore, the Commission should adopt its tentative conclusion that where markets are competitive it is unlikely that nondominant interexchange carriers could engage in anticompetitive conduct that served as the basis for the bundling restriction.

Removal of the bundling restriction would serve the public interest by allowing nondominant interexchange carriers to offer innovative and more efficiently priced packages of goods and services than they otherwise offer today. Thus, because bundling by nondominant interexchange carriers will increase customer choice and not cause anticompetitive harms, the Commission should immediately remove the restrictions on bundling telecommunications services by nondominant interexchange carriers with CPE and with enhanced services.

The Commission should ignore the arguments by certain CPE industry groups that removing the bundling restrictions will require additional regulations in the area of network disclosure, demarcation point definition, and unbundled option rules. No additional regulations are necessary, as the removal of the bundling restriction will have no effect on nondominant carriers' network disclosure obligations under the "all-carrier rule" or on the demarcation point between a telephone company's facilities and CPE. Furthermore, there is no need for a rule requiring carriers that offer bundled packages also to offer the component parts on an unbundled basis, as firms have an incentive to offer services -- both bundled and unbundled -- that meet customer needs.

The Commission should not now adopt its tentative conclusion that Bell Operating Companies should be permitted to bundle in-region interLATA services with CPE or enhanced services, as none of the BOCs presently has authority to offer such in-region, interLATA services.

Finally, the Commission should allow nondominant interexchange carriers to bundle interexchange services with CPE or enhanced services even when the interexchange services are bundled with such competitive local exchange services as may develop.

RECEIVED

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

NOV 23 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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 AT&T CORP.**

Pursuant to Section 1.415 of the Commission's Rules, and its Further Notice of Proposed Rulemaking, FCC 98-258, released October 9, 1998 ("FNPRM"), AT&T Corp. ("AT&T") submits these Comments on the Commission's proposals to eliminate the restrictions on bundling of telecommunications services with customer premises equipment ("CPE") and with enhanced services.<sup>1</sup>

<sup>1</sup> The Telecommunications Act of 1996 does not use the Commission's basic/enhanced terminology, but instead refers to "telecommunications services" and "information services." However, the Commission has concluded that Congress sought to maintain the basic/enhanced distinction in its definition of "telecommunications services" and "information services," and that "enhanced services" and "information services" should be interpreted as covering the same services. FNPRM at ¶ 1 n.2.

Over two and a half years ago, the Commission tentatively concluded that nondominant interexchange carriers should be permitted to bundle interexchange services with CPE.<sup>2</sup> The Commission noted that the markets for interexchange services and CPE were strongly competitive, and therefore it was unlikely that any nondominant interexchange carrier could engage in the type of anticompetitive conduct that led the Commission to adopt the restrictions in 1980. A broad array of commenters -- including interexchange carriers, local exchange carriers ("LECs"), telecommunications customers, telecommunications resellers, state commissions, and an equipment manufacturer -- overwhelmingly agreed with Commission's conclusion. And as AT&T also showed, because the enhanced services marketplace is competitive, nondominant interexchange carriers should be permitted to bundle enhanced services with interexchange services.

Now the Commission seeks comment on the necessity of the bundling restrictions again, and, if anything, the case for removing these restrictions is even more compelling today. The bundling restrictions at issue were adopted in a vastly different era and have long outlived their usefulness. The markets for interexchange services, CPE, and enhanced services remain robustly competitive, and therefore any attempt by a nondominant carrier to "force" customers to buy unwanted CPE or enhanced services would simply drive those customers to the carrier's competitors. Indeed, in today's competitive environment these bundling rules serve only to *restrict* customer choice and to hamstring carriers in their ability to offer innovative and more efficiently priced packages of goods and services. Removing these restrictions is overwhelmingly in the public interest,

---

<sup>2</sup> *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, Notice of Proposed Rulemaking, 11 FCC Rcd 7141 (1996) ("*Interexchange Notice*").

and indeed Section 11 of the Act *requires* the Commission to eliminate all restrictions that are "no longer necessary in the public interest." 47 U.S.C. §161.

As shown below in Part I, nondominant interexchange carriers should be permitted to bundle interexchange services with CPE or with enhanced services. Bundling offers significant public benefits when the carrier lacks market power in each of the relevant markets. As shown below, the interexchange, CPE, and enhanced services markets are all strongly competitive, and bundling by nondominant firms can only improve customer choice, not cause anticompetitive harms. The predictable arguments of certain CPE industry groups to the contrary are baseless, and removing these restrictions will not require additional regulations in the area of network disclosure, demarcation points, or unbundled option rules. In contrast, the Commission should not and need not decide at this time whether the Bell Operating Companies ("BOCs") should be permitted to bundle in-region, interLATA services with CPE or enhanced services, because no BOC currently can offer such interLATA services.<sup>3</sup>

Finally, as shown in Part II, the Commission should also allow nondominant interexchange carriers to bundle interexchange services with CPE or enhanced services even when the interexchange services are bundled with such competitive local exchange services as may develop. However, *dominant* local exchange carriers should not at this time be permitted to bundle local service with CPE or enhanced services. Such bundling by dominant carriers would still present the

---

<sup>3</sup> Therefore, AT&T does not include BOC in-region, interLATA services in its use of the term "nondominant interexchange carriers" in these comments.

very risk of artificially extending monopoly power in one market to other competitive markets that the bundling restriction aims to prevent.

**I. THE COMMISSION SHOULD PERMIT NONDOMINANT INTEREXCHANGE CARRIERS TO BUNDLE INTEREXCHANGE SERVICES WITH CPE AND WITH ENHANCED SERVICES.**

The Commission should promptly lift the restrictions on the ability of nondominant interexchange carriers to bundle interexchange services with CPE and with enhanced services. Indeed, under Section 11, the Commission is *required* to eliminate all rules that are "no longer necessary in the public interest," and the bundling restrictions at issue here are classic examples of rules that have long outlived their usefulness. *See* 47 U.S.C. §161(a)(2). As shown below, the interexchange, CPE, and enhanced services markets are all robustly competitive, and therefore interexchange carriers would be unable to use bundling to engage in anticompetitive practices. Furthermore, the Commission need not decide now whether the BOCs should be permitted to bundle interexchange services with CPE or enhanced services.

**A. The Interexchange, CPE, and Enhanced Services Markets Are Fully Competitive, And Therefore The Commission's Restrictions On Bundling Are No Longer In The Public Interest.**

The Commission has recognized repeatedly that bundling can offer significant public interest benefits, as long as the relevant markets are competitive and carriers lack market power. "Packaged offerings are commonplace in a variety of industries in which customers can purchase a number of goods in a package at a lower price than the individual goods could be purchased

separately."<sup>4</sup> As the Commission notes in the FNPRM, it has previously found that bundling can be an "efficient distribution mechanism" and an "efficient promotional mechanism" that can allow consumers to obtain goods and services "more economically than if it were prohibited."<sup>5</sup> Indeed, removing the restrictions on bundling of interexchange services with CPE or enhanced services would allow carriers to create and offer innovative packages of goods and services that will provide customers with the value, efficiencies, and pricing that they demand.

As the Commission acknowledges (FNPRM at ¶ 2), many of the bundling restrictions at issue here were adopted in 1980, in a completely different day and age. At that time, the competitive markets for CPE and for enhanced services were in their infancy, and the Commission was concerned that firms with market power in basic common carrier services could use bundling to "restrict customer choice and retard the development of competitive CPE and enhanced services markets."<sup>6</sup> Most of these markets have undergone dramatic changes in the intervening eighteen years, however, and the bundling restrictions no longer serve any useful purpose when applied to nondominant interexchange carriers. Even in *Computer II* itself, the Commission found that there should be no anticompetitive effects from selling two services together in a bundle "[i]f the markets

---

<sup>4</sup> See *Bundling of Cellular Customer Premises Equipment and Cellular Service*, 7 FCC Rcd 4028, 4035 n.35 (1992) ("*Cellular Bundling Order*") (noting also that bundling is legal under the antitrust laws as long as it does not constitute an illegal tie-in or represent an unlawful exercise of monopoly power, citing cases).

<sup>5</sup> FNPRM at ¶ 14 (citing *Cellular Bundling Order*, 7 FCC Rcd at 4030-31).

<sup>6</sup> See *Amendment of Section 64.702 of the Commission's Rules and Regulations*, Final Decision, 77 F.C.C.2d. 384, 443 n.52 (1980) ("*Computer II Final Decision*").

for both components of the commodity bundle are workably competitive."<sup>7</sup> The Commission has properly adopted this analysis as the test for removal of the bundling restrictions in the FNPRM, and tentatively concludes that where both markets are competitive it is "unlikely that nondominant interexchange carriers could engage in the type of anticompetitive conduct that led the Commission to prohibit" bundling of interexchange services with either CPE or enhanced services. *See* FNPRM at ¶ 12.

Today the interexchange, CPE, and enhanced services markets are fully competitive. *See* FNPRM, ¶¶ 13, 36 (seeking comment). First, the Commission has found many times that the interexchange market is strongly competitive.<sup>8</sup> Over 600 carriers provide long distance services; at least 20 of these carriers had annual revenues exceeding \$100 million in 1997, and eight carriers had annual revenues exceeding \$1 billion.<sup>9</sup> As a group, "carriers other than the four largest long distance carriers have demonstrated annual growth rates exceeding 40 percent."<sup>10</sup> In 1995, the Commission reclassified AT&T as a nondominant carrier, based on the Commission's finding that AT&T lacked

---

<sup>7</sup> *Computer II Final Decision*, 77 F.C.C.2d at 442.

<sup>8</sup> *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 and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 21971 (¶ 136) (1997) ("*Non-Accounting Safeguards Order*").

<sup>9</sup> *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, ¶ 40 (rel. September 14, 1998) ("*MCI WorldCom Merger Order*").

<sup>10</sup> *Id.*

unilateral market power in the long distance market.<sup>11</sup> Just two months ago, the Commission found that the market trends that supported its conclusion that AT&T lacked market power in long distance services "continue today." *MCI WorldCom Merger Order*, ¶ 41.

Similarly, the Commission has repeatedly found that the market for CPE is "fully competitive." Indeed, in the *Computer II Final Decision* itself, the Commission concluded that the CPE market was "subject to an increasing amount of competition as new and innovative types of CPE are constantly introduced into the marketplace," which had already resulted in increased consumer choice and improved service and reliability. *Computer II Final Decision*, 77 F.C.C.2d at 439 (¶ 141). Since then, the Commission has made countless findings that this market is fully competitive.<sup>12</sup> The market for CPE is indisputably competitive, and no party to this proceeding has argued otherwise.

As for enhanced services, the Commission has long held that this market is vigorously competitive. The Commission's original decision in 1980 not to regulate enhanced services under Title II was based on a finding that such regulation was unnecessary given that the market was "truly competitive." *Computer II Final Decision*, 77 F.C.C.2d at 430, 432-33; 47 C.F.R. §64.702(a). The

---

<sup>11</sup> *Motion of AT&T Corp. to Be Reclassified As a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271 (1995) ("*AT&T Nondominance Order*").

<sup>12</sup> *E.g.*, *Implementation of Section 273 of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, CC Docket No. 96-254, Notice of Proposed Rulemaking, ¶¶ 4, 61 (1996); *Price Cap Performance Review for Local Exchange Carriers*, First Report and Order, 10 FCC Rcd 8961, 9122 (1995); *Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services*, 8 FCC Rcd 3891, 3891 (1993); *Furnishing of Customer Premises Equipment by the Bell Operating Companies and the Independent Telephone Companies*, Report and Order, 2 FCC Rcd 143, 147 (¶ 25) (1987).

Commission has reaffirmed that finding numerous times.<sup>13</sup> Notably, in its recent Report to Congress on Universal Service, the Commission observed that under the *Computer II* framework "enhanced services [have seen] exponential growth."<sup>14</sup> As the Commission noted, Internet usage has grown rapidly, and there are now more than 4000 Internet service providers and 40 Internet backbones operating in the United States. *Report to Congress*, ¶ 65. Internet service provider revenues are projected to grow from four billion dollars in 1996 to eighteen billion dollars in 2000. *Id.* Other enhanced services, such as electronic business information services, have also matured into highly competitive markets.<sup>15</sup>

Under these circumstances, the Commission's bundling restrictions serve only to limit customer choice and to hamstring nondominant carriers' ability to design and offer innovative and more efficient packages of goods and services. Therefore, these restrictions are "no longer necessary in the public interest" under Section 11; indeed, the relevant markets have been vigorously competitive for years and removal of these restrictions is long overdue. The Commission should therefore remove these bundling restrictions promptly from nondominant carriers.

---

<sup>13</sup> *E.g., Non-Accounting Safeguards Order*, 11 FCC Rcd at 21971-72.

<sup>14</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501 (¶ 45) (1998) ("*Report to Congress*").

<sup>15</sup> *See Access Charge Reform, et al.*, CC Docket Nos. 96-262, Comments of AT&T Corp. on Notice of Inquiry Regarding Information Service and Internet Service Providers, pp. 10-12 (filed March 24, 1997).

**B. The Various Arguments In Favor Of Retaining the Bundling Restrictions Are Baseless.**

As noted above, in 1996 the commenters overwhelmingly agreed with the Commission's tentative conclusion in the *Interexchange Notice* to permit bundling of interexchange services and CPE, and generally the only commenters to oppose the change were certain groups of CPE manufacturers and retailers and information service providers, such as IDCMA, ITAA, and CERC. These industry groups dredged up a series of time-worn arguments in an attempt to save these outdated controls on the ability of carriers to fashion more efficient arrangements for the distribution of their products, and the other commenters thoroughly refuted these claims. Nonetheless, the Commission now seeks comment on those arguments, and, as shown below, the industry groups' objections are still meritless.

Commenters, such as IDCMA, argue that interexchange carriers, "even if lacking market power, nevertheless might have the ability to force consumers of their interstate, interexchange service offerings to purchase CPE from that same interexchange carrier." FNPRM at ¶ 13. As should be obvious from the discussion above, such a concern is baseless. If a nondominant interexchange carrier attempts to "force" a customer to buy CPE from it as well, that customer has plentiful options in the interexchange market and can simply switch to another interexchange carrier. *See, e.g., AT&T Nondominance Order*, 11 FCC Rcd. at 3305-06 (¶¶ 63-65) (residential and business customers are highly price sensitive and will switch long distance carriers to obtain price reductions and desired features). IDCMA offers up the hypothetical that a carrier could price CPE so low that the only economically viable option is for the consumer to purchase the interexchange services and unwanted CPE together. *See* FNPRM at ¶ 13 n.36. Despite IDCMA's contention to the contrary,

the hypothetical supports removal of the bundling restriction, not its retention. If carriers are able to offer service and CPE at more attractive prices by offering the service and CPE in a bundle, that should be encouraged, not forbidden. Correspondingly, because the interexchange market is competitive and there is readily available wholesale long distance capacity, a CPE manufacturer can likewise offer similar bundles by buying wholesale long distance services and offering it together with its CPE.

More fundamentally, the notion that carriers without market power may nonetheless retain an ability to "force" customers to buy bundled products has no basis in law or in fact. Indeed, IDCMA's argument is based largely on a misreading of the Supreme Court's decision in *Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451 (1992). Although in that case the Supreme Court found that there was no evidence that Kodak had market power in the original equipment market for photocopiers, it did find that Kodak may have had market power in the replacement parts *aftermarket*, and on that basis it refused to grant Kodak summary judgment on the claim that it had abused that market power by tying replacement parts and repair service. Therefore, contrary to IDCMA's assertions, *Kodak* does not stand for the proposition that a firm without market power can nonetheless "force" customers to buy other products. Indeed, *Kodak* is consistent with a long line of cases finding that a tying claim must include a showing of market power in the tying market.<sup>16</sup>

---

<sup>16</sup> See, e.g., *Kodak*, 504 U.S. at 462 (a tying arrangement "violates §1 of the Sherman Act if the seller has 'appreciable economic power' in the tying product market and if the arrangement affects a substantial volume of commerce in the tied market"); see also *Jefferson Parish Hospital District No. 2 v. Hyde*, 466 U.S. 2, 12-14, 16-18 (1984) ("we have condemned tying arrangements where the seller has some special ability -- usually called 'market power' -- to force a purchaser to do something that he would not do in a competitive market").

Notably, IDCMA concedes that IXCs lack market power in interexchange services -- which IDCMA claims is the tying market -- and this forecloses under all relevant caselaw and policy the claim that there can be anticompetitive forcing or tying.

Similarly, IDCMA's arguments that bundling may violate Sections 201 and 202 are unfounded. *See* FNPRM at ¶ 16. First, IDCMA contends that a carrier might violate the nondiscrimination requirements of Section 202 if it offered a basic service *only* in conjunction with CPE (or with enhanced services). That is nonsense. To the extent that carriers offer both bundled and unbundled service offerings, Section 202 will continue to prohibit *unreasonable* price differences among like communications services regulated under Title II. Bundled products do not inherently violate Section 202. *See, e.g., Cellular Bundling Order*, 7 FCC Rcd. at 4031 ("evidence [has not] been submitted to support the claim that bundling [cellular service and cellular CPE] leads to discriminatory cellular service rates").

Nor would removal of the restrictions on bundling amount to "re-regulation" of CPE or enhanced services under Title II. *See* FNPRM at ¶ 17. To be sure, a carrier offering interexchange services bundled with CPE or enhanced services would likely refer to the CPE or enhanced services in its tariff, in order to comply with Section 203(c)'s prohibition against "rebates." The mere reference in a tariff to bundled services, however, would not in any way require the Commission to regulate those services under Title II. For example, today carriers are permitted to bundle cellular service with cellular CPE, but the Commission does not regulate the prices, terms, and conditions of providing cellular CPE as if it were a Title II service.

Finally, the removal of the Commission's bundling restrictions would not violate either the General Agreement on Trade in Services ("GATS") or the North America Free Trade Agreement ("NAFTA"). FNPRM, ¶ 22. The Commission is not proposing to allow carriers to restrict the interconnection of competitively-provided CPE, and therefore the proposed rule changes would not violate U.S. obligations to provide such interconnection rights under GATS and NAFTA. "Service suppliers" from other countries will still be able to "purchase or lease and attach terminal or other equipment which interfaces with the [public telecommunications transport] network and which is necessary to supply [their] services." Moreover, such language does not "imply" that the Commission should require carriers to offer basic services and CPE in an unbundled option. See FNPRM at ¶ 22.

In short, none of the CPE industry groups' attacks on the Commission's tentative conclusions is remotely persuasive. The bundling restrictions have outlived their usefulness and should be eliminated immediately.

**C. Removal Of The Restrictions On Bundling Would Not Require Other Rule Changes.**

The Commission also seeks comment on the extent to which removal of the restrictions on bundling would affect other rules or require the Commission to amend other rules. FNPRM at ¶¶ 18, 20, 21. In short, the Commission should not require additional network disclosure obligations, should not modify the demarcation point definition, nor should it adopt an "unbundled option" requirement.

First, bundling of interexchange services and CPE would have no effect on nondominant carriers' network disclosure obligations under the "all-carrier rule," 47 C.F.R.

§64.702(d)(2). The all-carrier rule requires all carriers reasonably to disclose information relating to network design insofar as such information affects intercarrier interconnection or the manner in which CPE and enhanced services will operate. This rule clearly applies to all interconnected CPE and enhanced services, whether sold as part of a bundle, offered separately by the carrier, or offered directly to consumers by an unaffiliated CPE manufacturer or distributor. IDCMA and CERC argue for additional (but undefined) disclosure obligations on the basis of a misplaced concern that carriers that offer bundled packages "will not provide independent or unaffiliated equipment manufacturers with the necessary technical interface information." See FNPRM at ¶ 20. These concerns are belied by current experience: Under the present rules, carriers can and do offer both interexchange services and CPE (albeit with separately stated prices), or align themselves with particular CPE manufacturers, and yet IDCMA and CERC have produced no evidence that such carriers do not comply with the all-carrier rule. Moreover, as a matter of good business practice, carriers have an incentive to make interconnection to their networks more, not less, available to all customers, no matter whose CPE is used. Therefore, there is no basis for finding that additional regulations are needed.

In fact, in view of the competitive interexchange services marketplace, which provides economic incentives to carriers to make interconnection to their networks available to all customers, there is no longer any need for a specific rule requiring nondominant carriers to release all information relating to network design. Rather, carriers should be permitted to release only that information necessary for all CPE and enhanced services to interconnect in a comparable manner with the carrier's network. Thus, to the extent the current rule can be construed to limit the use of proprietary interfaces, the Commission should find that the all-carrier rule allows a carrier's affiliates to use

proprietary interfaces, so long as the carrier releases information allowing non-affiliated CPE manufacturers and enhanced service providers comparable interfaces. Such a finding would benefit the public by allowing carriers to offer new innovative services that they otherwise would not offer due to concerns about unchecked access to their networks. The use of comparable interfaces would not harm the interests of CPE manufacturers and enhanced service providers as Section 202 of the Act prohibits unreasonable discrimination by carriers.

Second, the removal of the bundling restriction will have no effect on the demarcation point. Section 68.3 of the Commission's Rules defines the demarcation point between a telephone company's facilities and the customer's equipment. The offering of CPE as part of a bundle will not alter the definition of CPE or otherwise affect an end user's right to interconnect with a carrier's network under Part 68. IDCMA's suggestion that CPE will become part of the telephone network is entirely misplaced.

Third, there is also no need for an "unbundled option" rule -- *i.e.*, a rule requiring carriers that offer bundled packages also to offer the constituent products on an unbundled basis. *See* FNPRM at ¶ 21. In a competitive market, firms have an incentive to offer bundles that meet customer needs, not ignore them. If carrier meets those needs, there is no need for the proposed rule. If, on the other hand, a carrier does not meet those needs, there will be other carriers that will fill the void and offer customers what they want. Therefore, such a rule would be just the sort of pointless regulation Section 11 is designed to eliminate.

**D. The Commission Need Not Determine Now Whether BOCs Should Be Permitted To Bundle In-Region InterLATA Services With CPE Or With Enhanced Services.**

Finally, the Commission should not adopt its tentative conclusion that the Bell Operating Companies should be permitted to bundle in-region interLATA services with CPE. FNPRM at ¶ 25. None of the BOCs presently has authority to offer such in-region, interLATA services, nor is any of the BOCs close to satisfying the conditions for a grant of such authority under Section 271 of the Act. *See* 47 U.S.C. §271. If in fact Section 271 relief occurs only after a BOC loses its essential facilities monopoly, and meaningful local and access competition has developed, it would presumably be appropriate to extend unbundling relief to the BOC. But it cannot now be predicted with certainty precisely when and on what market conditions Section 271 relief will occur.

Therefore, the Commission need not decide now to what extent the BOCs should be subject to the existing restrictions on bundling interexchange services with CPE. When the BOCs ultimately obtain Section 271 authority and the Commission has gained practical experience with the implementation of Sections 271 and 272, the Commission will have a sounder basis on which to assess these issues. For the same reasons, the Commission should maintain the same restrictions on the BOCs' ability to bundle interLATA services with enhanced services that it adopted in the *Non-Accounting Safeguards Order*. *See* FNPRM at ¶ 36.

**II. THE COMMISSION SHOULD ALSO PERMIT NONDOMINANT LOCAL EXCHANGE CARRIERS TO BUNDLE LOCAL SERVICE WITH CPE OR WITH ENHANCED SERVICES.**

The Commission also seeks comment on the extent to which it should permit local exchange services to be included in bundles of interexchange services with CPE or enhanced services.

See FNPRM, ¶¶ 24-30, 39-42. In principle, there should be no anticompetitive effects from bundling interexchange services with CPE or with enhanced services when those interexchange services are, in turn, bundled with local exchange services, as long as the carrier is nondominant in *all* of the relevant markets. Carriers that are nondominant in both the interexchange and local exchange markets would have no ability to restrict customer choice by bundling interexchange and local exchange services with CPE or enhanced services, because customers would simply switch to competing carriers. Indeed, permitting such bundling would allow nondominant carriers to create innovative and more efficiently priced packages that could help jump-start competition in local exchange markets, which would manifestly be in the public interest.

On the other hand, there is no basis and no public interest rationale for permitting *dominant* incumbent local exchange carriers to bundle local exchange services with CPE or with enhanced services. See FNPRM, ¶¶ 27-30, 40. Incumbent LECs today have overwhelming market power in the local exchange market, and allowing these ILECs to bundle local exchange services with CPE or enhanced services would seriously threaten competition in both the CPE and the enhanced services markets. Although SBC claims that a prohibition on bundling local services with CPE would place it at a competitive disadvantage (*see* FNPRM at ¶ 27), such "disadvantages" are more than offset by the advantages SBC and other dominant LECs have due to their vast market power in the local exchange. The Commission should therefore retain the bundling restrictions as they apply to incumbent LECs' provision of local exchange services, at least for so long as those ILECs remain the dominant providers of local and access services.

**CONCLUSION**

The Commission should immediately remove the restrictions on bundling telecommunications services with CPE and with enhanced services to the extent explained above.

Respectfully submitted,

By *Seth S. Gross*  
Mark C. Rosenblum  
Seth S. Gross

Room 3252F3  
295 North Maple Avenue  
Basking Ridge, New Jersey 07920  
(908) 221-4432

Peter D. Keisler  
James P. Young

1722 Eye Street N.W.  
Washington, D.C. 20006  
(202) 736-8132

November 23, 1998