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

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 SBC COMMUNICATIONS INC.

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November 23, 1998

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SUMMARY

SBC Communications Inc. strongly urges the Commission to eliminate the prohibition against the bundling of customer premises equipment ("CPE") and/or enhanced services with telecommunications services as it relates to all carriers. The competitive landscape has drastically changed in the nearly two decades since this restriction was adopted. In assessing whether the restriction remains in the public interest, the Commission should utilize an approach similar to that which it invoked in the Cellular Bundling proceeding, one in which the focus is the competitive impact of eliminating the restriction on the CPE and/or enhanced services marketplace. An analysis of each component comprising potential "bundles" to determine if each alone is competitive is an antiquated approach and fails to recognize the realities of today's marketplace. However, even if this analysis were employed, the local service market is competitive to the extent required for the granting of regulatory relief.

What the Commission must not do through this proceeding is to restrain incumbent local exchange carriers while permitting interexchange carriers to offer the discounted bundling of CPE and/or enhanced services with telecommunications services. Interexchange carriers and local exchange carriers generally compete for the same customers with respect to CPE and enhanced services offerings. To free only interexchange carriers would significantly disadvantage the marketing efforts of incumbent local exchange carriers and would violate the objective of competitive neutrality.

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COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc., on its behalf and on behalf of its subsidiaries, (collectively referred to as "SBC") files these Comments in response to the Further Notice of Proposed Rulemaking, released by the Commission in the above-captioned dockets on October 9, 1998 ("Notice"). The Commission should eliminate the prohibition against the bundling of customer premises equipment ("CPE") and/or enhanced services with telecommunications services in relation to *all* common carriers as no longer being in the public interest because of meaningful competition among the providers of telecommunications services. Conversely, the Commission by its actions in this proceeding could adversely alter the current competitive landscape if it allows only nondominant interexchange carriers the freedom to offer the public that which has long been in demand, i.e. the opportunity to obtain from a single source discounted packages of services and equipment responsive to individual needs without unnecessary and burdensome restraints. The Commission's stated approach that all components of a

potential bundling currently must be competitive in order for the bundling to be in the public interest is antiquated and misdirected; the true focus of the Commission's inquiry must be the final integrated products it proposes to create through this proceeding. All carriers compete with one another in the CPE and enhanced services arenas. If the Commission is to serve its objective of competitive neutrality, it must maintain parity among all of these carriers with respect to regulatory relief.

I. BACKGROUND

The Commission's prohibition against the bundling of CPE and enhanced services with telecommunications services was adopted nearly two decades ago as part of the Commission's Computer II proceeding.¹ The Commission adopted the restriction to foreclose any possibility of anticompetitive conduct related to the bundling of CPE and/or enhanced services with network exchange services. The Commission's primary concern was that consumers could be forced into purchasing unwanted and unneeded CPE and enhanced services in order to obtain basic telecommunications service.² In this context, the Commission set forth the standard that, "[If] the markets for components of [a] commodity bundle are workably competitive, bundling may present no major societal problems so long as the consumer is not deceived concerning the content and quality of the bundle."³

¹ In the Matter of Amendment of Section 64.702 of the Commission's Rules and Regulations, CC Docket No. 20828, Final Decision, 77 FCC 2d 384 (1980) ("Computer Inquiry II Final Order"), codified at §64.702(e) of the Commission's rules. See also, In the Matter of Amendment of Section 64.702 of the Commission's Rules and Regulations, CC Docket No. 20828, Memorandum Opinion and Order on Reconsideration, 88 FCC 2d 512 (1981).

² Computer Inquiry II Final Order, 77 FCC 2d at 443, n.52.

³ Notice, ¶13.

The marketplace as it existed then bears no resemblance to current competitive conditions. At the time of the Computer Inquiry II proceeding, the divestiture of AT&T from the Bell Operating Companies had not occurred, competition in the local exchange and long distance markets was nonexistent and alternative providers of CPE and enhanced services did not exist. There simply was no widely available option which would permit consumers to purchase CPE and enhanced services from any provider except AT&T.

The previous market paradigm is dead. The new competitive environment which has evolved was first recognized in the context of cellular communications in the Commission's proceeding related to the bundling of cellular CPE and cellular service. In its Cellular Bundling Order,⁴ the Commission's analysis of the state of competition acknowledged that a legally-imposed duopoly existed with respect to cellular services. Indeed, the Commission noted the comments of the Federal Trade Commission staff that the then-current Commission rules allowing no more than two facilities-based carriers per market place was "an absolute barrier to entry in the provision of wholesale cellular service" and concluded that resellers did not compete effectively with these providers.⁵

Yet, the Commission found that even if one were to assume that a facilities-based carrier had the potential to act in an anticompetitive fashion, it was unlikely that through bundling it could restrict competition in the CPE market. This factor, not the state of

⁴ In the Matter of Bundling of Cellular Customer Premises Equipment and Cellular Service, CC Docket No. 91-34, Report and Order, 7 FCC Rcd 4028 (1992) ("Cellular Bundling Order").

⁵ Cellular Bundling Order, 7 FCC Rcd at 4029.

competition with respect to *cellular service*, was the key. The Commission recognized that potential anticompetitive conduct through bundling was constrained by the ready availability of CPE from sources outside of the cellular service market.⁶ Moreover, the Commission noted that notwithstanding the state of competition in the cellular service industry, there was a significant public interest to be served through the bundling of CPE and service.⁷ Among other benefits, bundling was deemed to be "an efficient promotional device which reduces barriers to new customers and which can provide new customers with CPE and cellular service more economically than if it were prohibited."⁸ Thus, in that proceeding, in light of the new competitive marketplace, the Commission utilized an approach which weighed the benefits to the public against the potential for anticompetitive practices in the CPE arena, rather than requiring that each component of the bundling be deemed fully competitive.

Approximately four years later, Congress enacted the Telecommunications Act of 1996 (the "Act"). The Act establishes a framework for achieving competitive parity among the various telecommunications service providers. All telecommunications carriers have the general duty to interconnect, directly or indirectly with other providers.⁹ Local exchange carriers have further obligations to provide dialing parity, to employ nondiscriminatory conditions with relation to resellers of their telecommunication services, to provide number portability in accordance with the Commission's requirements, and to afford access to the poles, ducts, conduits and rights-of-way to its

⁶ Id. at 4030.

⁷ Id. at 4030-4031.

⁸ Id. at 4030.

⁹ 47 U.S.C. §251(a).

competitors.¹⁰ Inherent in this framework is the objective of competitive neutrality for purposes of the public benefit through facilitation of a fully competitive marketplace.¹¹

II. THE ELIMINATION OF BUNDLING RESTRICTIONS FOR ALL TELECOMMUNICATIONS CARRIERS, INCLUDING INCUMBENT LOCAL EXCHANGE PROVIDERS, IS WARRANTED.

The nearly two decades the bundling restrictions have been in effect have seen a dramatic evolution in the telecommunications field. Simple CPE is now available down the aisle from household products in most retail stores. New technologies un contemplated by the definitions of "enhanced services" and "basic services" have been developed. These technologies further blur the line between service and CPE functionality. On the regulatory front, the Commission has explored and adopted means other than absolute prohibitions to ensure that any potential for anticompetitive conduct, such as cross-subsidization, is foreclosed.¹²

By segregating its analysis to "nondominant interexchange carriers" and "local exchange carriers" in this proceeding, the Commission is failing to recognize the nature of the telecommunications marketplace, where interexchange carriers now have the means available to provide local exchange service. Moreover, the assumption that each component of a possible bundle of CPE and/or enhanced services with telecommunications service must be demonstrated as competitive by empirical evidence in order for bundled offerings not to pose an anticompetitive threat is misconceived.

¹⁰ 47 U.S.C. §251(b).

¹¹ Through the joint marketing provisions of the Telecommunications Act, Congress clearly supports the concept of "one-stop shopping" for both the wireless and wireline markets. See 47 U.S.C. §272(g).

¹² See, e.g. In the Matter of Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996).

In its Cellular Bundling proceeding, the Commission did not propose to allow only resellers of cellular service the opportunity to bundle their products while restraining duopoly facilities-based providers, despite the fact that resellers were nondominant in the cellular service market. The Commission held it sufficient that competition existed and that both facilities-based providers and resellers had the same abilities to offer bundles of benefit to the public.

Even if a competitive analysis of each component were appropriate, the local exchange market is sufficiently competitive within the context established in the Cellular Bundling proceeding. Nondominant interexchange carriers, as well as other competitive local exchange providers, are not subject to any legal restraints, and in fact are affirmatively aided by the law, in their provisioning of local service. Within SBC territory alone,¹³ the SBC telephone companies have lost approximately 1.86 million lines to competitive local exchange providers, including interexchange providers; approximately 686,000 of these lines were transferred to resellers while an estimated 1.2 million lines were captured by facilities-based providers. These lost lines represent a disproportionate revenue loss since the competitive local exchange providers have targeted their marketing efforts toward the more profitable "high value" users. In addition, the SBC telephone companies have signed 390 interconnection agreements with local wholesale customers and 286 of these agreements have been approved by the applicable state regulatory commissions. In light of the abilities of numerous providers to offer local service through resale, interconnection or unbundled network elements, competition clearly exists in the local service market.

¹³ The figures cited above relate to California, Nevada, Texas, Missouri, Kansas, Oklahoma and Arkansas and does not include SBC's operations in Connecticut.

Nor is competition in the local service market limited to traditional wireline telecommunications service providers. Alternative providers who are not subject to bundling restrictions are already competing with wireline local service. For example, AT&T Wireless is trialing an aggressive marketing plan in Texas which postures its wireless service as a viable alternative to wireline local service. Its market strategy utilizes a new pricing plan designed to encourage customers to purchase its wireless service rather than a second home line. In doing such, it already can offer customers the benefits associated with bundling which are denied to wireline local service providers.

Competition in the CPE and enhanced services markets is not distinguishable by type of carrier, except to the extent that interexchange carriers already enjoy a competitive advantage due to their abilities to offer the full range of telecommunications products and services. Interexchange carriers today offer customers packages of local, long distance and enhanced services together with related CPE. Imposing an artificial distinction in this proceeding which would dissect the analysis of the competition in the CPE and enhanced services markets between local exchange carriers and interexchange carriers is to ignore the realities of the marketplace and the inevitable trends of future technologies.

III. TO RELEASE SIMPLY NONDOMINANT INTEREXCHANGE PROVIDERS FROM BUNDLING RESTRICTIONS WOULD ADVERSELY LIMIT, RATHER THAN FACILITATE, COMPETITION.

While increased competition in the telecommunications marketplace has presented the public with a plethora of choices with respect to their service providers as well as the services and products available, it has also generated widespread customer confusion and frustration. It is undeniable that consumers prefer the convenience of having all of their telecommunications needs met by "one-stop" providers. In response,

various interexchange carriers are already offering combinations of interexchange, local and enhanced services as well as CPE through innovative packaging. A sampling of some of these offerings is attached as Exhibit I.

If the Commission denies all carriers the opportunity to bundle local service with CPE and enhanced services, but allows interexchange carriers to bundle interexchange services with them, the tenuous competitive balance which currently exists would be adversely affected. Without any ability to bundle the only telecommunications service it is permitted to offer, the SBC telephone companies cannot possibly compete with a carrier able to provide customers a discounted offering composed of long distance service, enhanced service and CPE, even if the carrier is not permitted to bundle local service. Rather than promote competition, the effect of such a decision by the Commission would be to effectively foreclose a BOC from competing in the CPE and enhanced services markets. The intent of the Telecommunications Act, and the Commission's decisions since its adoption, is to provide parity in order to facilitate competition. In today's environment, there is no valid, objective rationale which would support the conclusion that an incumbent local exchange provider would be in a position to engage in anticompetitive conduct in relation to the offering of CPE and enhanced services necessitating the continuing imposition of a competitive barrier in these markets. It cannot be argued that any of these entities individually control a dominant market share of the CPE or enhanced services markets.

Consumer benefits available through bundling can only be fully achieved by the freeing of all carriers. Bundling would result in a more efficient, lower cost transaction process, the efficiencies of which would be passed along to consumers. It would enable a

carrier to provide a turnkey service, from sale to installation to maintenance. Currently, carriers are placed in the position of only being able to offer customers "incomplete bundles" composed solely of the limited number of services and products that are permissibly offered on a bundled basis. This approach, while meeting certain customers' needs, fails to meet them all and places the burden on customers to know what is best for the network services and applications they want. Bundled solutions, which include CPE, would ensure compatible CPE and full availability of the customer's desired functionality. Moreover, bundling would facilitate the use of network services and features since such can be preprogrammed if bundled. Being able to preprogram features, including single button Call Forwarding options, three-way calling and voice mail, as part of the CPE will enhance the customers' ability to maximize the use of such features.

In addition, customers would benefit from pricing flexibility. Since bundling allows a larger revenue base, inclusive of network services and CPE, pricing arrangements and discounts can be uniquely tailored. Rather than the confusion caused by complex charges associated with the various components of a customer's telecommunications system, the customer could receive a simple, monthly composite charge for all of its products and services.

If the Commission does preserve the distinction between interexchange carriers and local service providers, and eliminates the bundling prohibition only with respect to interexchange carriers, the Commission must also release the Section 272 long distance affiliates of the BOCs from this restriction. These affiliates are nondominant with respect to interexchange service, within and outside of the BOCs' traditional local exchange

territories.¹⁴ As such, there is no justification for treating these carriers any differently than other interexchange carriers with respect to CPE/enhanced services bundling.

However, the Commission must bear in mind that the benefits to be derived from bundling can only be made widely available to the public if all carriers are permitted to compete on an equal footing, at least to the extent currently allowed with respect to service offerings. To further disadvantage local exchange carriers by permitting only nondominant interexchange carriers this freedom would be counterproductive and contrary to the goals of the Telecommunications Act.

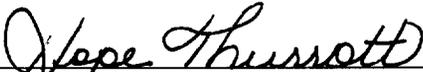
¹⁴ In the Matter of Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket Nos. 96-149 and 96-61, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, 15762-15764 (1997).

IV. CONCLUSION

SBC strongly urges the Commission to eliminate the prohibition against the bundling of CPE and/or enhanced services with telecommunications services as it relates to all carriers. This restriction is no longer necessary to guard against potential anticompetitive abuses given the current state of the competition. However, the Commission must not free interexchange carriers while continuing to impose the bundling restrictions on incumbent local exchange carriers. Interexchange carriers and local exchange carriers compete for the same customers. To release only interexchange carriers would upset the existing competitive balance and violate the Commission's objective of competitive neutrality.

Respectfully submitted,

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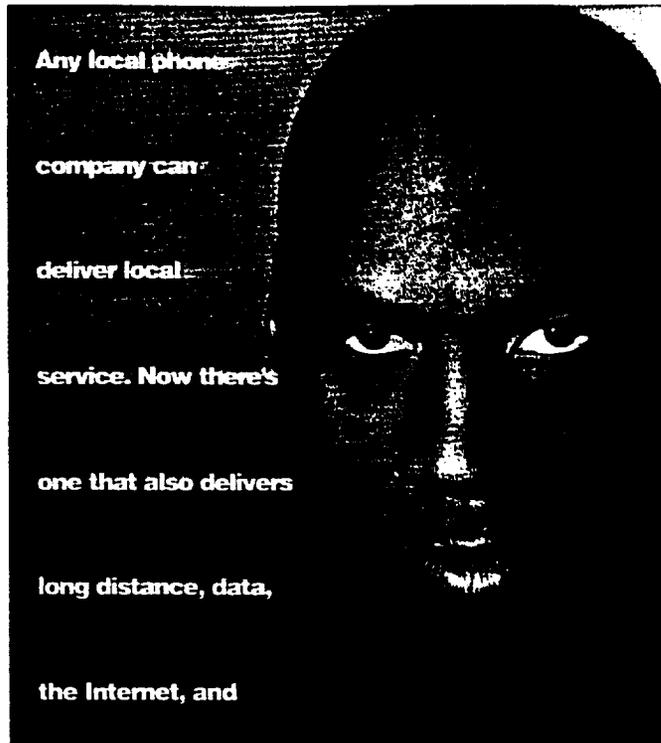
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Attorneys for SBC Communications Inc.
and its Subsidiaries

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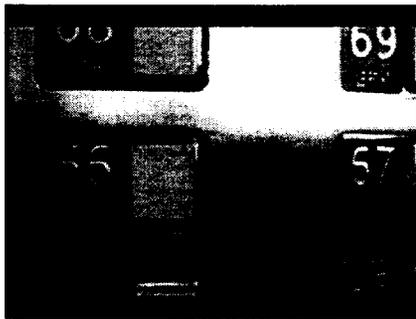
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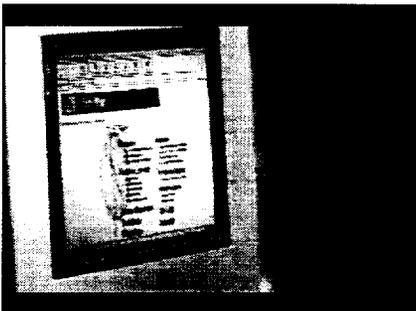
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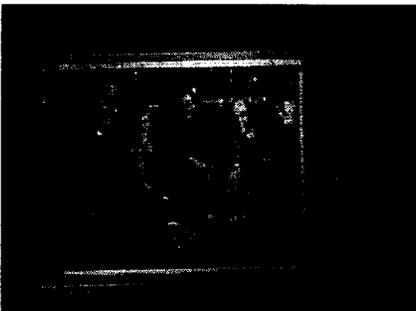
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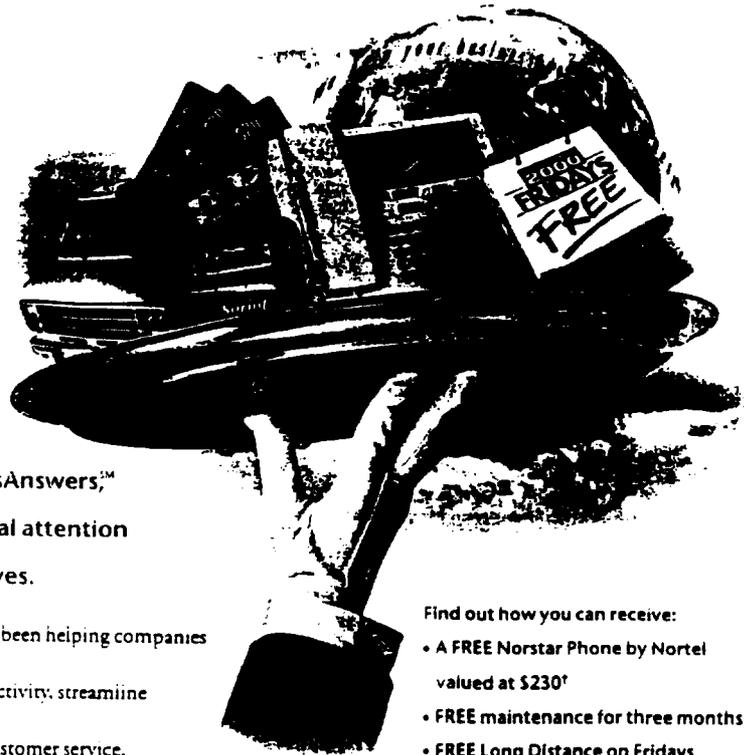


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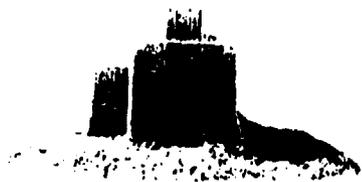
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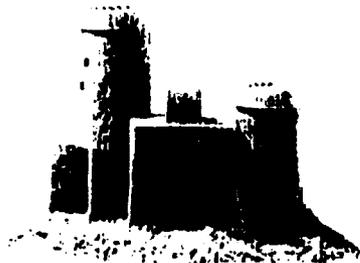


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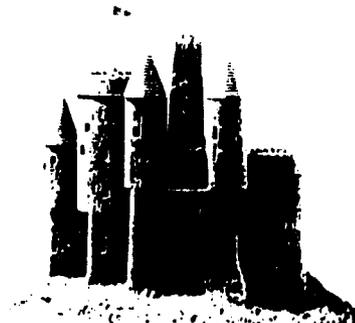
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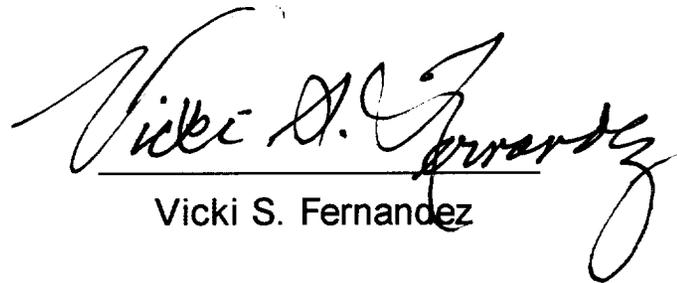
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CERTIFICATE OF SERVICE

I, Vicki S. Fernandez, hereby certify that the foregoing,
" Comments of SBC Communications, Inc.," in CC Docket No. 96-
61, 98-183 has been filed this 23rd day of November 1998, to
the Parties of Record.


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November 23, 1998

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