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February 17, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Proposed Abolition of the All-Carrier Network Disclosure Rule
Computer III Remand and 1998 Biennial Regulatory Review,
CC Docket 95-20 & 98-10
Ex Parte Presentation

Dear Ms. Salas:

On Wednesday, February 17, 1999, Jonathan Jacob Nadler, on behalf of the Information Technology Association of America ("ITAA"), submitted the attached letter concerning the above-titled matter to Chairman William E. Kennard. The letter expresses ITAA's opposition to any proposal that would abolish the Commission's All-Carrier Rule. A copy of the letter to the Chairman was also submitted to Thomas Power and Carol Mattey. In addition, the same letter (but individually addressed) was sent to Commissioner Susan Ness (and a copy to Linda Kinney); Commissioner Harold Furchtgott-Roth (and a copy to Kevin Martin); Commissioner Michael K. Powell (and a copy to Kyle Dixon); and Commissioner Gloria Tristani (and a copy to Paul Gallant).

Pursuant to Section 1.1206 of the Commission's Rules, an original and three copies of the letter (two for each docket referenced) are being filed with your office for inclusion in the public

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record in the above-referenced proceeding. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

Jonathan Jacob Nadler

Counsel for the
Information Technology Association
of America

JJN/beb

Attachment

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February 17, 1999

BY HAND
Hon. William E. Kennard
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Proposed Abolition of the All-Carrier Network Disclosure Rule
Computer III Remand and 1998 Biennial Regulatory Review,
CC Docket 95-20 & 98-10

Dear Chairman Kennard:

The Information Technology Association of America ("ITAA") is both surprised and disappointed to learn that the Commission is considering adoption of an order at its February 25th meeting that would abolish the All-Carrier Rule. Such an action would be a striking and unwarranted departure from the *Computer III Remand NPRM,* which tentatively concluded that this important network disclosure requirement should be preserved. *See Computer III Further Remand Proceedings*, Notice of Proposed Rulemaking, 13 FCC Rcd 6040, 6111 (1998). As we understand the matter, the Commission currently intends to find that Section 251(c)(5) of the Communications Act – which imposes network disclosure requirements on incumbent local exchange carriers – should provide the only legally binding carrier disclosure requirement. ITAA urges that the Commission not adopt this approach.

As the leading association of information service providers, ITAA has consistently supported the Commission's efforts to establish a pro-competitive regulatory regime that provides American consumers with a significant array of choices in the information services and customer premises equipment markets. ITAA also has supported the Commission's efforts – in this proceeding and elsewhere – to eliminate regulations that are unnecessary or unduly burdensome. Indeed, in its comments in this docket, ITAA supported the elimination of a variety of disclosure and reporting rules that have outlived their usefulness. At the same time, however, ITAA has consistently opposed proposals – such as the present one – that would result in deregulation-for-deregulation's sake.

The All-Carrier Rule, which has been in effect since 1980, imposes minimal obligations. It simply requires "all carriers . . . to make information necessary to intercarrier interconnection as well as interconnection and operation of CPE [*i.e.*, customer premises equipment] and enhanced [*i.e.*, information] services available in a timely manner and on a reasonable basis." *Computer and Business Equipment Manufacturers Association Petition for Declaratory Ruling*, Report and Order, 93 F.C.C.2d 1226, 1228 (1983). The Rule has played a key role in fostering the growth of a vibrant, competitive market for information services and customer premises equipment.

ITAA does not believe that a satisfactory – much less compelling – rationale has been advanced for eliminating this rule. In the NPRM, the Commission tentatively concluded that:

> the all-carrier rule should continue to apply to all carriers owning basic transmission facilties because it is broader in certain respects than section 251(c)(5). First, it applies to all carriers, whereas section 251(c)(5) just applies to incumbent LECs. In addition, the all-carrier rule requires, among other things, the disclosure of network changes that affect end users' CPE, whereas our rules interpreting section 251(c)(5) only require the disclosure of information that affects "competing service providers."

Computer III Further Remand NPRM, 13 FCC Rcd at 6111.

The Commission's tentative conclusion received wide-ranging support in the comments. Indeed, the only significant opposition came from AT&T. The carrier made three basic arguments: (1) disclosure rules are not required in competitive markets; (2) elimination of the All-Carrier Rule is consistent with the "Commission's statutory obligation to eliminate regulations that are 'no longer necessary in the public interest'"; and (3) a disclosure requirement could impede bundling of basic and enhanced services. AT&T Comments at 18-20. None of these assertions provides a basis for abolition of the All-Carrier Rule.

The growing competitiveness of some sectors of the telecommunications market does not provide a basis to eliminate the All-Carrier Rule. From the start, the Commission has recognized that the Rule is more than a safeguard against anti-competitive conduct by dominant local exchange carriers. Rather, it is a pro-competitive "rule of the road" that seeks "to ensure that entities designing equipment or services that rely on the network have sufficient information to make effective use of it." *Furnishing Customer Premises Equipment and Enhanced Services by American Telephone & Telegraph Company*, Report and Order, 104 F.C.C.2d 739 (1986). To the extent market forces generate the optimal level of disclosure, the Rule impose no additional requirements on carriers. To the extent such forces do not ensure "reasonable" and "timely" disclosure of network information, however, the Rule will provide an important back-stop.

Nor would eliminating the Rule advance congressional intent. While Congress clearly sought to eliminate unnecessary regulation, the primary focus of the Telecommunications Act is the promotion of competition. Only last year, the Commission concluded that extending the telecommunications carrier disclosure regime to multi-channel video distribution systems is necessary to achieve Congress' goal of promoting competition in the market for equipment used in conjunction with such systems. *See Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Report and Order, 13 FCC Rcd 14775, 14787-88 (1998); 47 C.F.R. § 76.1205. The Commission plainly cannot advance

congressional intent by *abolishing* in this proceeding the very obligation that it *extended* in the *Navigation Devices* proceeding.

Finally, the need to preserve the All-Carrier Rule will be especially great if, as the Commission has proposed, non-dominant carriers are allowed to bundle telecommunications services with information services and CPE. *See 1998 Biennial Review: Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access, and Local Exchange Markets*, Notice of Proposed Rulemaking, 13 FCC Rcd 21531 (1998). A carrier that is allowed to bundle telecommunications services with enhanced services and/or CPE plainly will have an incentive not to disclose information to CPE manufacturers or information service providers whose products are not included in the carrier's bundled offering. If bundling and non-disclosure were to become wide-spread, independent manufacturers and service providers would be less likely to make the investments required to develop offerings that can interoperate with the carriers' regulated telecommunications service. The end-result would be to reduce the number of competing CPE and information services, leaving consumers with little practical choice but to accept the carriers' bundled offerings.

In light of the above, ITAA believes that the Commission should use the present proceeding to eliminate rules that are either burdensome or that no longer serve a significant purpose. At the same time – given the absence of any compelling justification, and the significant risks – the Commission should adopt its tentative conclusion and preserve the All-Carrier Rule. *Cf. Competition in the Interstate, Interexchange Marketplace,* Report and Order, 6 FCC Rcd 5880, 5911 (1991) ("[W]e are convinced that the risk of an adverse impact on competition or reduced consumer choice resulting from changes in [the Commission's disclosure rules] currently outweighs the potential benefits that the suggested changes offer."). As market conditions evolve, the Commission will have ample opportunity to revisit the question of whether the Rule continues to serve the public interest.

Sincerely,

Jonathan Jacob Nadler

Counsel
Information Technology Association of America

cc: Thomas Power
Carol Mattey
Magalie Roman Salas