

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Computer III Further Remand)
Proceedings: Bell Operating)
Company Provision of Enhanced)
Services)
)
1998 Biennial Regulatory Review --)
Review of Computer III and ONA)
Safeguards and Requirements)

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CC Docket No. 98-10

PETITION FOR RECONSIDERATION AND CLARIFICATION

Introduction and Summary

The Commercial Internet eXchange Association ("CIX"), by its attorneys and pursuant to Section 1.429 of the Commission's rules, files this petition for reconsideration and clarification of the Report and Order¹ in the above-captioned proceedings. CIX is a trade association that represents over 150 Internet Service Providers who handle over 75% of the United States' Internet traffic.² CIX works to facilitate global connectivity among commercial Internet service providers ("ISPs") in the United States and throughout the world. In CIX's view, the R&O substantially reaffirms the Commission's long-standing Comparably Efficient Interconnection

¹ FCC 99-36, 64 Fed. Reg. 14,141 (Mar. 24, 1999) ("R&O").

² The views expressed herein are those of CIX as a trade association, and are not necessarily the views of each individual member.

("CEI") policies of nondiscrimination and open competition among all competing ISPs: "[f]reely available information concerning interconnection helps make vigorous competition possible, which ultimately benefits consumers." R&O, ¶ 5. As described below, it is now critical for the Commission to ensure transparency of RBOC xDSL offerings. Transparency with regard to DSLAM deployment, line conditioning and CEI plans will help ensure that ISPs can effectively compete in the emerging broadband market.

The nondiscriminatory access provisions of CEI are an essential foundation for a competitive ISP market.³ Today, there are over 6,500 ISPs in the United States -- businesses small and large -- serving American consumers with a vast array of Internet-based communications and information. Indeed, it is estimated that 96% of the US population has local access to four or more ISPs,⁴ and this competitive universal service to all Americans has emerged directly from the competitive ISP industry, not government programs of oversight and subsidization. This market should continue to grow explosively; one recent study estimates that one-third of U.S. households have Internet access today, and that two-thirds of U.S. households will obtain access by the year 2003.⁵ The Bell Operating Companies and GTE ("RBOCs") also compete in the ISP market, even as they control the "last mile" used by independent competing

³ CIX also encourages the Commission to quickly resolve the issues concerning ISP access to unbundled network elements pursuant to ONA, which has been pending since the 1994 remand from California v. FCC, 39 F.3d 919 (9th Cir. 1994).

⁴ Shane Greenstein, *The Tale of Two Frontiers*, (October, 1998), *found at* <http://skew2.kellogg.nwu/~greenste/research/html>.

⁵ The Yankee Group, "Consumer Demand for Internet Access Booming," (Mar. 23, 1999), *found at*, www.yankeegroup.com.

ISPs to access the American consumer. The nondiscrimination rules of CEI provide an essential protection for all competing ISPs to operate in the market with the RBOC-affiliated ISPs. With effective CEI parameters and disclosure requirements in place, consumers of Internet services reap the benefits because ISPs can then compete on the basis of their Internet products and not on the basis of their affiliation with the dominant ILEC.

For these reasons, CIX believes it is appropriate for the Commission to further clarify or reconsider, as necessary, aspects of the R&O to promote transparent use of RBOC broadband facilities for all ISPs. *First*, the Commission should establish that incumbent LECs must disclose in advance and via their web-sites the planned deployment of DSLAMs on a wire-center basis, and adequate prior notice on the status of line conditioning and line conditioning changes. Information on the deployment of broadband telecommunications should be available to all competing ISPs, and should not be used as a means to favor the incumbent's affiliated ISP. *Second*, the entire CEI plan of the RBOC should be available on its web-site, so that all ISPs have ready information available concerning interconnection with the RBOC's "last mile" network. CIX believes these actions would improve the viability of continuing ISP competition. As broadband telecommunications grows as a vital link between the Internet and the American consumer, the competitive ISP industry must have ready and nondiscriminatory access to the information of such broadband telecommunications.

DISCUSSION

I. Competing ISPs Should Have Web Access To Adequate Information on Incumbent LEC DSLAM Deployment and Line Conditioning.

Deployment of DSLAMs at incumbent LEC wire centers and access to line conditioning information are critical for ISPs to compete in the emerging broadband market. ISPs must plan

for broadband service deployment through their procurement of necessary interconnection with the incumbent LEC's network (i.e., ATM or Frame Relay connection), strategic planning of services to be offered, as well as customer and marketing preparation. Just as the incumbent LECs plan their own broadband telecommunications roll-out, similar planning and preparation is necessary for the ISP industry that seeks to employ those same broadband telecommunications services. Since ISPs operate in a highly competitive business, they must plan their broadband services aggressively, to keep up with the emerging market. At the same time, ISPs are largely mid-size to small businesses that must expend their capital and business growth prudently,⁶ and focus resources on deployment of Internet services where the broadband telecommunications of the incumbent LEC will be actually available for use. Therefore, access to reliable information on incumbent LEC roll-out of broadband services is a critical component for the competitive ISP industry. CIX is concerned, however, that ISPs are not provided with accurate and advance information regarding the incumbent LEC's deployment decisions, and that such information may be unfairly shared with the affiliated ISP in order to offer a coordinated incumbent LEC-ISP package.

By the network disclosure principles, the Commission should clarify that all ISPs have a right to know, in adequate detail, this incumbent LEC deployment information well in advance of the incumbent's actual service deployment. In this way, all ISPs can prepare for the incumbent LEC's incremental broadband roll-out and can compete effectively and aggressively for customers with the incumbent's affiliated ISP. At ¶¶ 44-53 of the R&O, the Commission

⁶ R&O, ¶ 18, n. 58 ("Internet service providers are primarily privately-held, small and
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established generally that the Section 251(c)(5) network disclosure rules should supercede the Computer III disclosure rules, and should obligate incumbent LECs to provide ISPs with relevant information on changes to their network. CIX urges the Commission to further clarify that, pursuant to this obligation, incumbent LECs must provide information of sufficient detail on deployment of DSL equipment and on line conditioning to all ISPs, prior to the deployment of the service in a given area.

The nondisclosure obligations are intended to provide independent ISPs with adequate and timely network information in order to compete with incumbent LEC-affiliated ISPs. Section 251(c)(5) of the Communications Act obligates all incumbent LECs to provide ISPs with this “information necessary for transmission and routing.”⁷ Commission rules further provide that an incumbent LEC’s disclosure obligation is triggered when it decides to implement a change that affects “competing service providers’ performance or ability to provide service; or otherwise affects the ability of the incumbent LEC’s and a competing service providers facilities or network to connect, to exchange information, or to use the information exchanged.”⁸ As the Commission has explained, “a broad standard [of disclosure] is appropriate,” and incumbent LECs must provide public notice of “(1) the date changes are to occur; (2) the location at which

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very small businesses with revenues of less than \$1 million and few employees.”).

⁷ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd. 19392, ¶ 176 (1996) (“Second Report and Order”).

⁸ 47 C.F.R. §51.325.

changes are to occur; (3) types of changes; (4) reasonably foreseeable impact of changes to be implemented; and (5) a contact person”⁹

In order to compete effectively, ISPs must have accurate and relevant information concerning the RBOCs’ deployment of facilities and equipment used to offer underlying broadband telecommunications service, such as DSL service. Network disclosure on DSLAM deployment directly affects a competing ISP’s “performance or ability to provide service” since ISPs in a broadband market will face customers with entirely different demands, and will have to connect via the LEC network in an entirely different manner (i.e., a Frame Relay or ATM connection). Further, a change in the status of line conditioning affects the ISP’s “performance or ability to provide service” because the customer whose line is conditioned is able to purchase the broadband services offered by the LEC or the ISP.¹⁰ CIX believes that network disclosure for ISP purposes must be further clarified, and the approach of the R&O reconsidered, in two ways:

First, the incumbent LEC should be required to provide notice of DSLAM deployment on a wire center basis and notice to competing ISPs of the status of line conditioning for a given

⁹ Second Report and Order, ¶ 182, ¶ 188.

¹⁰ Line conditioning is unquestionably a change to the incumbent’s network that affects a competing ISP’s “performance or ability to provide service,” as well as the “incumbent LEC’s interoperability with the other service providers,” i.e., the ISP’s network. 47 C.F.R. § 51.325(a)(1)&(2).

customer or group of customers.¹¹ CIX notes that some incumbent LECs appear to provide Web access to information on wire center deployment of DSL service,¹² but some incumbent LECs do not.¹³ Information concerning the incumbent LEC's plan to engage in line conditioning to make DSL service available to customers is likewise unavailable to ISPs. However, it is critical for ISPs to have such information: as with DSLAM service deployment, line conditioning information will enable all ISPs, in advance, to understand the incumbent's network capability and to offer broadband connectivity and services in a competitive market. The denial of this information, by contrast, will impede competition in the ISP market, and undermine the public interest in speedy and competitive broadband access to all Americans.

Second, this DSLAM and line conditioning information should be available via the incumbent LEC's web site location. Section 251(c)(5) of the Communications Act demands "reasonable public notice of changes." 47 U.S.C. § 251(c)(5). While the Commission's rules allow for but do not generally mandate Internet web-site notice, 47 CF.R. § 51.325(a), it is imperative that the hundreds or thousands of ISPs in a given incumbent LEC area should have such reasonable access. Other means of public notice, such reliance on telecommunications

¹¹ Of course, the information should be disclosed in advance, as provided in Sections 51.331 and 51.333 of the Commission's rules. 47 C.F.R. §§ 51.331-333.

¹² See www.sbc.com/PublicAffairs/PublicPolicy/Disclosures/DPN19980000_1.html.

¹³ See www.bellatlantic.com/disclose/adsl_serv.Htm. Instead, Bell Atlantic merely provides a generalized description it "will offer AND service using DMT technology in New York and the Boston areas in 1Q99 and plans to expand service into other selected areas within the Bell Atlantic region." *Id.* This offers competing ISPs almost

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industry fora or FCC notice, may be appropriate for the telecommunications industry; however, the ISP industry is far more reliant on Internet sources of information. Further, as the Commission has noted, most ISPs are small businesses that cannot afford, and have no ready access to, the telecommunications industry publications or FCC files.¹⁴ Finally, Internet posting is not an excessive burden for incumbent LECs, as many already engage in such notification, and the Commission already requires companies to Internet-post both CEI plans and long-distance calling plans.¹⁵

II. Entire CEI Plans Should Be Placed on the RBOC Web Site.

With the same goal of transparency, CIX requests that the Commission clarify or, if necessary, reconsider that RBOCs are obligated to post a complete copy of all of their CEI plans on the web-site, as suggested by ¶ 20 of the R&O. CIX believes that it is likely that the Commission intends for RBOCs to web-post all of their CEI plans, as requested. See, e.g., R&O, ¶ 4 (“we will require the BOCs to post their CEI plans and plan amendments on their publicly accessible Internet sites”). However, further on, the language of the order raises some ambiguity by limiting the Internet posting requirement to “CEI plan[s] for any new or altered intraLATA information service offering.” R&O, ¶ 12.

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no concrete information on exactly when or where Bell Atlantic intends to deploy DSL services or to make line conditioning changes.

¹⁴ See n. 5, above.

¹⁵ “FCC Increases Consumer Access to Long Distance Rate Information,” CC Dkt. 96-61, Public Notice (rel. Mar. 18, 1999) (interexchange carriers with web-sites must post rate information “on-line in a timely and easily accessible manner”).

CIX believes that it is important for all CEI plans to be available via the RBOC's web-site, including those previously filed CEI plans such as Internet access plans. ISPs should have the benefit, as the Commission described, of all "plans accessible to ISPs at the click of a mouse." R&O, ¶ 19. Further, there is minimal burden to the RBOC for adding all of its plans to Internet sites. Id., ¶ 20. In addition, with all plans web-posted, the ISP may obtain a full copy of the entire CEI plan, even those that have been previously approved and then subsequently amended. By contrast, the posting of CEI plan amendments without the context of the full plan would make little sense, and would only detract from the intended ease and convenience of the web-posted CEI plan availability.

Unfortunately, some RBOCs appear to have taken a more narrow view, and are posting only plan amendments to their web-site.¹⁶ CIX requests that the Commission clarify that the public interest in a clear, complete, and readily available CEI interconnection plan for all competing ISPs.

Conclusion

CIX urges the Commission to clarify or reconsider the R&O, as discussed above, to allow competing ISPs to better use the incumbent LECs' emerging broadband telecommunications services. The American consumer now enjoys unparalleled competition in the narrowband Internet services market, and this same competition can be brought forward to the broadband market. Ready information on broadband deployment and CEI plans are critical to achieving

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See www.bellatlantic.com/disclose/cei/htm (Bell Atlantic only discloses the amendment to its Internet access CEI plan), and, www.uswest.com/policy/docs/cei.html (US West intends to post only amendments to CEI plans and new CEI plans to web-page).

this competition, and should be an explicit component of the Commission's Computer Inquiry orders and policies.

Respectfully submitted,

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