

**Before the
Federal Communications Commission
Washington, D. C. 20554**

In the Matter of)	
)	
<i>Computer III</i> Further Remand Proceedings:)	
Bell Operating Company)	CC Docket No. 95-20
Provision of Enhanced Services)	
)	
1998 Biennial Regulatory Review--)	
Review of <i>Computer III</i> and ONA)	CC Docket No. 98-10
Safeguards and Requirements)	

FURTHER COMMENTS OF BELL SOUTH CORPORATION

BellSouth Corporation, for itself and its wholly owned subsidiaries (“BellSouth”), hereby submits its comments in response to the Commission’s request for comments to update and refresh the record in this proceeding.¹

INTRODUCTION

In 1998 the Commission sought comment on the appropriate regulatory policies it should apply to the enhanced service offering of Bell Operating Companies (“BOCs”), particularly in light of the passage of the Telecommunications Act of 1996 and the ensuing changes in telecommunications markets and technologies.² The Commission proposed to eliminate or reduce many of the then-current burdens imposed on BOCs' enhanced service operations in order to streamline BOCs' abilities to develop and deploy new technologies and innovative services that

¹ *Further Comment Requested to Update and Refresh Record on Computer III Requirements*, CC Docket Nos. 95-20, 98-10, *Public Notice* DA 01-620, released March 7, 2001 (“*Public Notice*”).

² *In the Matter of Computer III Further Remand Proceeding: Bell Operating Company Provision of Enhanced Services 1998 Biennial Regulatory Review – Review of Computer III and*

will benefit the American public. BellSouth wholeheartedly endorsed the Commission's initiative in this respect³ and in these further comments provides additional support for and further improvements to a number of the Commission's specific proposals.

I. THERE IS STILL NO EVIDENCE THAT LEC REGULATION IS REQUIRED TO ENSURE A COMPETITIVE MARKET FOR ENHANCED SERVICES

The record that the Commission seeks to update and refresh contains no evidence that any LECs have inhibited the development of enhanced service markets or competition within those markets. To the contrary, the application of remaining regulatory constraints on carrier participation in enhanced service markets continues to hinder the development of new services making them more costly or leaving them undeveloped. Moreover, and despite positive and welcome intervening streamlining developments undertaken by the Commission, the current regime still subjects only one set of market participants, the BOCs, to disclosure obligations. BellSouth again urges the Commission to eliminate or reduce these burdens that apply only to the BOCs.

BellSouth renews its request that the Commission go beyond the proposals in the 1998 *Further Notice*. For the reasons set forth in BellSouth's Comments and Reply Comments, no basis exists for continuing to subject only the BOCs to enhanced service safeguards, modified as they may be in this proceeding. The Commission therefore should use this proceeding to confirm that BOCs have the same opportunity as any other LEC to offer enhanced services on an integrated basis and subject to the same set of rules.

ONA Safeguards and Requirements, CC Dockets 95-20, 98-10, *Further Notice of Proposed Rulemaking*, 13 FCC Rcd 6040 (1998) ("*Further Notice*").

³ See Comments of BellSouth Corporation (filed Mar. 27, 1998); Reply Comments of BellSouth Corporation (filed April 23, 1998).

II. CURRENT SAFEGUARDS ARE NOT REQUIRED TO ASSURE ISP ACCESS TO TELECOMMUNICATIONS SERVICE INPUTS

The Public Notice asks whether ISPs can obtain, under the ONA framework, the telecommunications service inputs that they required from the BOCs, including Digital Subscriber Line (“DSL”) service.⁴ They can. BellSouth has complied with the Commission's ONA requirements, including unbundling its services and filing and obtaining approval of its ONA Plan and amendments.⁵ BellSouth's ONA Plan demonstrates BellSouth's ability to satisfy 118 ESP requested capabilities based upon the FCC's ONA criteria of technical and costing feasibility, utility as perceived by the ESP and market demand. BellSouth has offered and will continue to offer technically feasible capabilities where warranted by market demand.

All capabilities used by BellSouth's own enhanced service operations are available to independent ESPs on a non-discriminatory basis. Specifically, BellSouth's DSL services are available on a non-discriminatory basis to all ISPs pursuant to tariff.⁶ BellSouth also has a CEI Plan for Internet Access Service posted on the Internet, linked to and searchable from BellSouth's homepage.⁷ Moreover, ISPs are able to obtain DSL from competitive local exchange carriers (“CLECs”) and from so-called "digital" local exchange carriers (“DLECs”) by way of line sharing

⁴ *Public Notice* at 2.

⁵ *In the Matter of Filing and Review of Open Network Architecture Plans*, CC Docket No. 88-2 Phase I, *Memorandum Opinion and Order*, 8 FCC Rcd 2606 (1993); *Memorandum Opinion and Order*, 6 FCC Rcd 7646 (1991); *Memorandum Opinion and Order*, 5 FCC Rcd 3103 (1990); *Memorandum Opinion and Order*, 4 FCC Rcd 1 (1988). The Commission, in its *Public Notice*, asks BOCs to comment generally on the numbers and types of requests for ONA services they have received since 1998. This information can be found in the “Disposition of New ONA Service Requests” data contained in BellSouth’s annual ONA filings, including the data for 2000 filed simultaneously today with the Common Carrier Bureau.

⁶ See BellSouth FCC Tariff No. 1 (Access Service), Section 7.

⁷ The specific URL for the BellSouth Internet Access Service CEI Plan is:
<http://www.interconnection.bellsouth.com/notifications/carrier/isp_psp_notific.html>

arrangements pursuant to the Commission's rules,⁸ and they may team with other carriers in a line-splitting environment.⁹

BellSouth's established compliance with the Commission's CI-III and ONA requirements and the concomitant accelerated growth in the ISP market renders further retention of CI-III nonstructural safeguards to BOC provision of enhanced services unnecessary. As demonstrated in BellSouth's 1998 Comments, all vestiges of Computer III and ONA should be eliminated, including the ONA Reporting requirements, which do not apply to other ILECs and should not apply only to the BOCs. The Commission's recent decision to eliminate the Computer II CPE bundling restrictions provides further support for the proposition that there is no longer even a theoretical basis to support ONA reporting requirements applicable to BOCs alone.¹⁰ In reiterating the requirement that all facilities-based carriers that offer enhanced services must offer the telecommunications services underlying their information or enhanced services offerings to non-affiliated ESPs on a non-discriminatory basis with respect to the facilities-based provider's own operations, the Commission has essentially required "comparably efficient interconnection" of all LECs. Yet, BOCs alone, and no other ILEC or CLEC, are subject to the requirement to provide the Commission with nondiscrimination reports or unbundled service deployment reports

⁸ *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147, 96-98, *Third Report and Order* in CC Docket No. 98-147, *Fourth Report and Order* in CC Docket No. 96-98, 14 FCC Rcd 20912 (1999) ("Line Sharing Order").

⁹ *Further Notice* at 6062, ¶ 33; BellSouth Comments at 18.

¹⁰ *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 Nos. 95-61, 98-183 FCC 01-98, *Report and Order*, (rel. Mar. 30, 2001).

under current ONA reporting rules. There is no evidence in the record to support continuing this regulatory asymmetry.

The Telecommunications Act of 1996 wrought fundamental changes to the regulatory landscape and established Congress's last word on the extent of BOC network unbundling. The Commission's orders implementing Section 251 have defined the breadth of a BOC's legislatively mandated network unbundling obligations.¹¹ Although these orders have been the subject of further administrative and judicial action since the 1998 *Further Notice*, nothing about this process inherently affects the Commission's analysis in the *Further Notice* that the Commission's unbundling requirements promulgated pursuant to Section 251 should alleviate the 9th Circuit's concerns about the level of unbundling required under ONA. There is simply no need to retain any vestige of the Commission's pre-1996 efforts to establish artificial market controls in order to encourage the development of data service markets.

There is no reason for the Commission to change its decision in the 1998 *Further Notice* not to reimpose structural separation for intraLATA information services in light of the Section 272 sunset date. The Commission recently had an opportunity to develop findings as to whether such an extension was necessary, and the Commission found that it was not.¹² This finding is

¹¹ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *First Report and Order*, 11 FCC Rcd 15499, (1996) (“*Interconnection Order*”), *modified on reconsideration*, 11 FCC Rcd 13042 (1996), *vacated in part, Iowa Utilities Bd v. FCC*, 120 F.2d 753 (8th Cir. 1997), *aff’d in part, rev’d in part and remanded in part sub nom. AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366 (1999) *on remand, Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd 3696 (1999) (“*UNE Remand Order*”); *Line Sharing Order*.

¹² *In the Matter of Request for Extension of the Sunset Date of the Structural, Nondiscrimination, and Other Behavioral Safeguards Governing Bell Operating Company Provision of In-Region, InterLATA Informational Services*, CC Docket No. 96-149, *Order*, 15 FCC Rcd 3267 (2000).

consistent with the 1996 Act's decided bias in favor of eliminating structural separation requirements.¹³ BOC provision of such intraLATA information services should be pursuant to the business model of the BOC's choosing, subject only to the discipline of the competitive market and any applicable statutory mandates.

III. OUTSTANDING ISSUES IN THE FURTHER NOTICE SHOULD BE RESOLVED WITH A LIGHT REGULATORY TOUCH

For the reasons set forth in BellSouth's Comments and Reply Comments, the Commission should not extend to ISPs the rights of carriers under section 251.¹⁴ Not only should the Commission confirm that the net benefits of structural relief continue to outweigh any benefits of separate subsidiaries in the BOC provision of enhanced services, but the Commission should eliminate the continued application of CI-III nonstructural safeguards to BOC provision of enhanced services.¹⁵ The Commission should go on to eliminate all disparate, BOC-specific regulation of enhanced services, whether derived from CI-II, CI-III or ONA, particularly ONA reporting requirements, which are onerous.¹⁶

The Commission should take further deregulatory steps to benefit all carriers. In its 1999 CI-III Remand Order, the Commission eliminated the CI-II and CI- III network disclosure requirements, and streamlined its remaining requirements consistent with statutory obligations.

¹³ BellSouth Reply Comments at 6-8.

¹⁴ BellSouth Comments at 27-28, Reply Comments at 8.

¹⁵ BellSouth Comments at 9-10, 16-21.

¹⁶ Because under the Communications Act ESPs have always had access to common carriers' underlying basic transmission components on a non-discriminatory basis, the enhanced/information services market has grown tremendously and ESPs and ISPs have wide range of choice from which to obtain network capabilities from alternative providers. Annual and semi-annual ONA reports are simply no longer necessary to assure non-discriminatory access to telecommunications services inputs.

While a useful and encouraging first step, the Commission should further streamline these requirements by eliminating the FCC filing requirement associated with notices of network change. The only requirement should be to make the notices available on a carrier's website in a manner that is linked to and searchable from the carrier's Internet homepage.

CONCLUSION

As demonstrated in BellSouth's Comments and Reply Comments, and in these Further Comments, the Telecommunications Act of 1996 obviates the need for regulatory surrogates for competition in the enhanced services marketplace. The Commission should eschew disparate regulatory treatment of BOCs' enhanced services activities, and continue to streamline and eliminate vestigial regulatory burdens.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 16th day of April 2001 served the following parties to this action with a copy of the foregoing **FURTHER COMMENTS OF BELLSOUTH** by electronic filing and/or by placing a copy of the same in the United States Mail, addressed to the parties listed on the attached service list.

/s/ Juanita H. Lee
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