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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

REQUEST FOR FURTHER COMMENT TO UPDATE AND REFRESH RECORD ON COMPUTER III REQUIREMENTS	CC DOCKET NOS. 95-20; 95-10 COMMENTS OF THE AMERICAN ISP ASSOCIATION
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The American ISP Association (“AISPA”) hereby submits these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Request for Further Comment to Update and Refresh Record on *Computer III* Requirements, issued March 7, 2001.

AISPA is a group of information service provider (“ISP”) trade associations, independent ISPs and others who have a common interest in advancing the independent ISPs’ ability to deliver Internet access and related information services to American consumers. AISPA’s supporters are generally not competitive local exchange carriers but are enhanced service providers of information services. As such, they are dependent upon interconnection with incumbent local exchange carriers (“ILEC”) to the extent competition has not yet developed for ILEC’s products and services.

The Commission has requested comment from ISPs on whether they can obtain, under the ONA framework, the service inputs necessary to provide Internet service, such as DSL, and to discuss whether a more effective and efficient approach might exist for obtaining those services. AISPA's comments are in large part a compilation of comments that it has received since 1998 from small unaffiliated ISPs.¹ Most of the commenting ISPs are located in the service areas of Verizon, BellSouth Telephone Company ("BST"), Qwest (formerly US West), and SBC Communications Inc. ("SBC")²

These independent ISPs are able to obtain essential service inputs as Basic Service Elements or Basic Service Arrangements under the ONA framework, including ISDN, ATM network access, digital switched services, dedicated transport and DSL. With very few exceptions, AISPA has not received reports that the BOCs' service offerings are not appropriately combined or unbundled, or that the technical characteristics of service are inadequate.

In accordance with the FCC's request for comment, AISPA also will offer comments on the effect of CEI plans on the ISPs' access to DSL for their end-user subscribers. AISPA will also comment on network disclosure requirements, on the FCC's enforcement procedures as they apply to CEI plans, and briefly on the sunset of Section 272 and 274 of the Telecommunications Act.

¹ Among those ISPs are the Coalition of Utah Independent Internet Service Providers (CUIISP), IgLou Internet Services, Inc., and L A Bridge Internet & DSL, Inc. The reports AISPA has received from other ISPs consist of anecdotal experiences and are related in this Comment in general terms without identifying the individual ISP.

² Southwestern Bell, Ameritech, Pacific Bell, SNET and Nevada Bell are branded services of SBC.

A. ADEQUACY OF CEI PLANS.

The FCC no longer requires structural safeguards for enhanced service providers,³ but requires instead that the Bell operating companies (“BOC”) develop and submit to the Commission a comparably efficient interconnection (“CEI”) plan and post the plan on the BOC’s web site.⁴ Each BOC’s CEI plan must contain a discussion of nine parameters that are intended to create a level playing field for enhanced service providers. While the BOCs are no longer required to file CEI plans with the FCC for prior approval, they must publicly post plans on the Internet for each enhanced service offered.⁵ CEI plans for information services were meant to inform independent ISPs of how the BOCs will operate their ISP services within nine prescribed parameters.⁶

It appears that most BOCs offering ISP services have now filed CEI plans. ISPs who have commented to AISPA state that some BOCs, notably Qwest and BellSouth, were offering

³ *In the Matter of Computer III Remand Proceedings: Bell Operating Company Provision of Enhanced Services, 1998 Biannual Regulatory Review of Computer III and ONA Safeguards and Requirements*, cc docket numbers 95-20, 98-10, 14 FCC Red 4289, rel. March 10, 1999 (“*Computer III Order 1999*”). Under *Computer II*, a BOC wishing to enter the market for interLATA information services by complying with the FCC’s *Computer II* orders requiring the affiliate to operate independently in furnishing enhanced services and customer premises equipment. 47 CFR § 64.702. The *Computer II* regulations also required the ISP affiliate to maintain its own books of account, have separate officers, utilize separate operating, marketing, installation and maintenance personnel and utilize separate computer facilities in the provision of enhanced services. 47 CFR §64.702(c)(2). Through these safeguards, among others prescribed by FCC orders and federal regulations, the BOCs were precluded from discriminating against independent ISPs in the provision of services essential to offering information services, but for which BOCs held essential facilities or market share.

⁴ *Computer III Order 1999* ¶ 43; *In the Matter of Computer III, Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, CC Docket No. 95-20, 1998 Biennial Regulatory Review—Review of *Computer III and ONA Safeguards and Requirements*, CC Docket No. 98-10, FCC 98-8, Further Notice of Proposed Rulemaking, ¶ 2 (January 30, 1998).

⁵ *Computer III Order 1999*, ¶ 17-20.

⁶ *Id.* at ¶ 13.

ISP services two and four years respectively before posting their CEI plans on the Internet. Even when these BOCs did post their plans, it was quite some time before they were accessible from the BOCs' home pages. Even now, ISPs report that BellSouth's CEI link is available only via a "pull-down-menu," a function not common to all browsers. It is possible, therefore, that some ISPs still do not have access to BellSouth's CEI plan. The ISPs depend upon reasonably simple access to those plans. They suggest that if pull-down-menus are used, the BOC should adapt its web page to detect browsers without pull-down capability and re-render the page so that the link appears.

Qwest and BellSouth also initially informed ISPs that their CEI plan for Internet services was subsumed in CEI plans for other enhanced services. Even assuming all elements of ISP service were covered in other CEI plans, an ISP seeking information about how the BOC provided its own Internet services would not have been able to find the necessary information. BellSouth and Qwest now have separate plans for Internet access services.

SBC posts a CEI plan for Internet services on its SBC main page. The CEI plan is entitled "Southwestern Bell Telephone Company's Comparably Efficient Interconnection Plan for Internet Access Services."⁷ SBC's affiliates, Southwestern Bell, Ameritech, Pacific Bell, Nevada Bell, and SNET have their own web pages, but no CEI plan is accessible from their web pages. ISP customers have had a difficult time finding the SBC CEI plan and, when they do, they have no way of knowing whether they are viewing the correct plan for their service area.

⁷ [http://www.sbc.com/PublicAffairs/PublicPolicy/CEIplans/NetAcc CEI.doc](http://www.sbc.com/PublicAffairs/PublicPolicy/CEIplans/NetAcc%20CEI.doc) (April 16, 2001).

For the most part, the ISPs find that once they locate the CEI plan, it is helpful in explaining how the BOC will undertake to provide service to ISPs. The ISPs urge the FCC to continue requiring the BOC to post CEI plans. A number of ISPs commented that the plans are not followed, however, or that the BOC has found means to comply with the letter of the CEI requirement and still engage in practices that disadvantage the independent ISPs. AISPA has included those comments in the following discussion of the nine parameters of CEI plans.

1. Interface Functionality

The Commission has required that a BOC must “make available standardized hardware and software interfaces that are able to support transmission, switching and signaling functions identical to those utilized in the enhanced service provided by the carrier.”⁸ The BOCs’ CEI plans for Internet services affirm that the services provided to competitive ISPs will access the Internet through existing standard network interfaces the same as those through which the BOC will offer Internet services. Some ISPs who have used CEI plans, commented it would be helpful for the BOC also to direct the competitive ISPs to technical specifications. A URL link in the CEI plan document to technical specifications would be helpful in disseminating information about network interfaces.

2. Unbundling of Basic Services.

The Commission requires the BOCs to “unbundle, and associate with a specific rate in the tariff, the basic services and basic service functions that underlie the carrier’s enhanced

⁸ *Computer III Phase I Order*, 104 FCC 2d at 1039, ¶ 157; *Computer III Order 1999*, ¶ 13.

service offering.’⁹ CEI plans for ISP services typically state that the basic services used in conjunction with the BOC’s Internet services are available under tariff to all ISPs. They further state that the BOC will not use any network functions for its Internet services that are not generally available to the ISPs at the same rates and under the same terms and conditions.

ISPs report for the most part they find that unbundling and/or combining of network elements is appropriate. One ISP, however, did report that BellSouth has not sufficiently unbundled its ADSL product. One component of that product is access asynchronous transfer mode service (XAATMS). This service would allow an ISP to access the ATM network to provide, for example, point-to-point T1 service for its customers. Even though the ISP’s proposed use of XAATMS was technically feasible and in fact simple, it is apparent that this type of ATM connection has been bundled exclusively with BellSouth’s DSL product. The alternative solution for the ISP is to duplicate facilities at significant expense. A similar situation exists in SBC’s territory, where SBC appears to have constructed technical barriers for competitive ISPs in its DSL offering. Those ISPs are required to purchase redundant T1s in order to reach DSL customers served by different central offices within the same LATA. It appears that the BOC-ISP is not bound by the same technical limitations.

The FCC has consistently encouraged through its policies and regulations technological innovation, especially regarding advanced communications services. In some instances, such innovation may be the product of non-affiliated Internet service providers. The ISPs suggest that

⁹ *Computer III Phase I Order*, at 1040, ¶ 158; *Computer III Order 1999*, ¶ 13.

when there is little burden on the BOC to do so, it should be required to unbundle to the extent feasible rather than only to the extent the BOC unbundles to provide its own ISP services.

3. Resale.

The Commission's *Computer III* Orders require the BOC's ISP ("BOC-ISP") to take the basic services used in its enhanced service offering at their unbundled tariffed rates as a means of preventing improper cost shifting to regulated operations and anti-competitive pricing in unregulated products.¹⁰ The BOCs' CEI plans invariably recite that the BOC-ISP will take service under the tariffed rate.

Independent ISPs find CEI plans informative as to the BOC's obligation to take services at tariffed rates. Many ISPs, however, have commented that the rate at which a BOC's ISP offers an Internet access package suggests that BOCs are not always paying tariffed rate for the underlying telecommunication services. SBC's affiliated ISP, for example, was offering DSL service bundled with Internet access at \$39.95 per month when the tariffed price for basic DSL service is \$39.00 per month. It is difficult for the ISPs to imagine the business case supporting a BOC-ISP's offering the non-regulated (Internet) components for 95 cents, particularly when the BOC-ISP customers are also provided with a \$200 modem free of charge. Similar complaints have arisen regarding Qwest's affiliated ISP and BellSouth.¹¹

¹⁰ *Computer III Order 1999*, ¶ 13.

¹¹ A group of Utah ISPs reported in March of 2000, that Qwest, formerly US West, was offering a package of services for \$79.95 that included basic local exchange service with additional popular enhanced services, wireless service, and Internet access at a price that seemed to be below cost for the services. The stated retail price of the separate services included in the package was approximately \$50.00 for the basic exchange services and popular enhanced services, and approximately 40.00 for the wireless service. If the retail price of these services totaling

ISPs also report that some BOCs are attempting to avoid the CEI resale obligation by structuring the tariff to provide discounts for volume sales of DSL. Small, independent ISPs who cannot achieve volumes, must pay more for exactly the same service. In BellSouth's territory, the Kentucky Public Service Commission concluded that BellSouth's tariff discriminated against most Kentucky independent ISPs since the smaller ISP simply could not purchase the services in the volume necessary to receive price discounts.¹²

Many ISPs are concerned because it appears the BOCs may be offering Internet services at a loss subsidized by their regulated operations. While the ISPs understand that Part 32 Accounting Requirements would forbid cross-subsidization, an investigation into compliance with Part 32 is beyond the ability of most small ISPs. Certainly, the numbers lead the ISPs reasonably to believe that the BOC-ISP is offering service to end-users below cost. While AISPA believes the resale information in CEI plans is vital to inform ISPs of the BOCs' obligations, the only avenue open to most ISPs in enforcing those obligations may be to rely on the FCC to perform its own audits and to correct any abuses.

4. Technical Characteristics.

The Commission's *Computer III* Orders require the BOC to provide basic services with the same technical characteristics as those used for its own enhanced services.¹³ This provision

\$90.00 were reduced by 12% (a reasonable rate of return for a public utility), Qwest would have to offer Internet access entirely free of charge to meet the \$79.95 advertised package price.

¹² *In the Matter of IgLou Internet Services, Inc. v. BellSouth Telecommunications, Inc.*, Case No. 99-484 (Ky. P.S.C. November 30, 2000), Order at p. 9.

¹³ *Computer III Order 1999*, ¶ 13.

is meant to ensure “that a competitive ISP can base its enhanced offering on telecommunication services that are of equal quality to those which the BOC’s customers receive.”¹⁴

Yet since inception of the BOC-ISPs, independent ISPs have reported examples of the BOC-ISP trading on the name and good will of the regulated company to imply better quality of service and reliability. One ISP in BellSouth’s territory, for instance, commented that BellSouth’s advertising suggests that its DSL service is somehow different and superior to DSL obtained through an independent ISP even though both products are identical. If that were true, the BOC would be in violation of *Computer III* Orders.¹⁵

AISPA believes this CEI parameter is an important statement of a BOC’s obligations that should be retained.

5. Installation, Maintenance and Repairs.

The BOC must provide the same time period for installation, maintenance and repair of services to independent ISPs as it provides for its own ISP operations.¹⁶ From the perspective of nearly every ISP who commented on CEI parameters, parity in installation time is inextricably dependent on the ordering process. If installation time is not measured from the time of customer contact, a BOC is encouraged to hold orders or to provide a less efficient ordering process for non-BOC ISPs than for itself. AISPA recommends that the FCC consider the

¹⁴ *Id.*

¹⁵ BellSouth touts: “As your telecommunications provider, we own and operate the phone lines that most other Internet services rent.” CD Rom distributed to BellSouth’s Internet customers, 2001. The clear implication in the mind of the consumer is that BellSouth’s service is technically superior to the service of independent ISPs.

¹⁶ *Computer III Order 1999*, ¶ 13; *Memorandum Opinion and Order on Reconsideration*, 3 FCC Rcd. 1150, 1160 76.

ordering process as part of this parameter of CEI and require the BOCs to include in their plans a statement and description of the ordering methods used for the BOC-ISP.

(a) Ordering and Installation Services.

While all BOCs make access to competitive ISPs available through loops configured to carry DSL, the means of ordering and provisioning DSL differ depending on whether DSL is provided for the BOC-ISP's customer or for an independent ISP's customer. A number of independent ISPs report that the time period for providing DSL is faster for a customer who selects a BOC-ISP. Sometimes the BOCs will facilitate electronic ordering with web-based tools but, even in such cases the ordering process is not equivalent. Independent ISPs in SBC's area (PacBell) note that the BOC has access to automated ordering systems (ASOS) while the independent ISPs must go through the BOC's "ISP Support Center" resulting in delay in provisioning the independent ISPs' customers. Customers who contact a BOC representative for DSL are immediately given an order confirmation number and an installation date because the BOC representative has ASOS access. Customers who order DSL through an independent ISP wait at least two workdays before receiving order confirmation. The installation date is typically one week later for the ISPs' customers than the BOC-ISPs customers.

Another ISP in SBC's service area reported that in May 2000, the BOC was unable to fill the ISP's orders requested for a number of customer DSL lines in certain central offices. These same customers, however, reported to the ISP that when they contacted the BOC directly for DSL, their orders were promptly processed and their DSL activated. The BOC's stated reason for this obvious disparity was that the BOC had access to internal systems and was able to

reserve for the BOC-ISP DSLAM ports in wire centers that were running short of capacity. DSLAM reservation is not available to independent ISPs.

All of the BOCs' CEI plans for Internet access services assert that installation, maintenance and repair of basic services is accomplished for the BOC-ISP in the same way as for other ISPs. At the same time, because the BOC-ISP is subsumed within the BOC under *Computer III*, the independent ISPs have no effective way of verifying the validity of those assertions. It is the perception of many ISPs that the provisioning of DSL is not equivalent. As discussed below, the ISPs could not find any mention of DSL installation, repair or maintenance in any BOC's non-discrimination reports.

The ordering methods available to the ISPs are qualitatively different from those used by the BOC. BOC-ISP's customers order DSL directly from the BOC, saving a step over the independent ISP's customer. If the ISPs were to have access to the same ordering system (as CLECs have access to OSS), they would be able to check the availability of DSLAM ports and to give their customer an order number and installation date just as the BOC does for customers of the BOC-ISP. AISPA believes that until there is parity in ordering, there can be no parity in installation. It urges the Commission to consider extending CEI requirements to allow ISPs access to BOC ordering systems for DSL and other Internet services ONA offerings.

(b) Maintenance and Repair.

Many ISPs report that when their customers contact the BOC to report trouble with their DSL connection, they are often informed that the problem lays with the ISP rather than the BOC. In most instances, this turns out not to be the case. Nevertheless, the BOC directs the customer

to contact the ISP, who of course cannot fix the problem. The ISP must either send the customer back to the BOC or report the trouble to the BOC on behalf of the customer. In either case, from the customer's perspective, the ISP is providing inadequate repair and maintenance. One ISP reported that the BOC informed customers reporting trouble with DSL that if the customer had used a BOC-ISP, the customer would not be experiencing service difficulties.

AISPA believes that the posting of information on installation, maintenance and repair is essential to the ISPs. The requirement should not only be retained, but it should also include information showing how the BOC intends to provide equivalence in ordering Internet access services for end users.

6. End User Access.

This parameter requires that the BOC must provide to all end users the same abbreviated dialing and signaling capabilities needed to activate or obtain access to enhanced services.¹⁷

No ISP reporting to AISPA stated that they used abbreviated dialing and signaling capabilities in connection with the provision of Internet services.

7. CEI Availability.

“The BOC must make its CEI offering available and fully operational on the date that it offers its corresponding enhanced service to the public, and provide a reasonable period of time when prospective users of the CEI offering can use the CEI facilities and services for purposes of testing their enhanced service offerings.”¹⁸

¹⁷ *Computer III Order 1999*, ¶ 13.

¹⁸ *Id.*

Among ISPs operating in service areas where the BOC offers DSL, AISPA has received a number of comments that the BOC's DSL offering was not generally available to ISPs on the day the BOC rolled out DSL for its own customers. In some instances, where the service was available, the BOC had not installed necessary circuits for ISPs to take advantage of it. To AISPA's knowledge, the BOCs have never offered a period of testing for ISPs before the service became available for customers of the BOC-ISP.

In many areas where BOCs offer DSL, the ISPs have reported that they do not receive adequate notification of the BOC's plans expand geographically its DSL by installing digital subscriber line access multiplexers ("DSLAMs") in additional central offices. This failure to notify ISPs gives the BOC-ISP important lead time in the expanding market for DSL subscribers. ISPs are put at a competitive disadvantage by the BOC initiating service to the BOC-ISP before it makes the necessary interconnections with competitive ISPs.

AISPA believes this CEI parameter is essential and should be retained. The problem some ISPs are having with notification of new services is addressed below in the section on access to network information.

8. Minimization of Transport Costs.

This CEI parameter requires the BOCs to provide competitors with interconnection facilities that minimize transport costs.¹⁹ Most BOCs have elected to impute to the BOC-ISP the cost of transport over two miles to the BOC's central office.

AISPA has no comment on the adequacy of this provision.

¹⁹ *Id.*

9. Availability to All Interested ISPs.

The Commission has stated that BOC's must not restrict availability of CEI to any particular class of customers or enhanced service competitor.²⁰ Most CEI plans for Internet access state that all services used by the BOCs enhanced service provider are available on a tariffed basis to all users for any lawful purpose. Most independent ISPs find that they are able to obtain under tariff the basic services they need to provide competing information services on the same terms and conditions as any other independent ISP.

One exception seems to be BellSouth's tiered tariff that offers a volume discount for DSL. This tiered tariff has spawned an association of ISPs in the state of Florida who are allowed to aggregate DSL line counts from ISPs throughout BellSouth's territory for purposes of the discount. ISPs who do not participate in the association do not receive the price discounts. The same tariff prompted IgLou Internet Services, Inc., a Kentucky based Internet service provider to file a formal complaint against Bell South before the Kentucky Public Service Commission ("Kentucky PSC") regarding Bell South's pricing structure, among other things.²¹ The Kentucky PSC found that Bell South's tiered pricing structure "has provided preferential and discriminatory service to itself to the detriment of other customers specifically the small ISPs, in violation of Kentucky Revised Statutes § 278.170."²² Reportedly, the justification for the discriminatory tiered pricing structure was that some national ISPs had requested it.

²⁰ *Id.*

²¹ *IgLou v. BellSouth*, supra note 12.

²² *IgLou v. BellSouth*, at 11.

The ISPs have found CEI plans to be a valuable source of information as they compete with the BOCs in offering ISP services. As the Commission has observed, there is substantial benefit in informing non-BOC ISPs of their interconnection rights and methods of interconnection in a practical and accessible form.²³ The ISPs do not believe that the need has diminished over the last several years. To the contrary, as the number of small ISPs increase, CEI plans remain an important safeguard to competition.

In this information age, the burden on a BOC of filing and maintaining a CEI plan is minimal compared to the benefit to competition that derives from universal accessibility by independent enhanced service providers. AISPA encourages the Commission to retain CEI requirements and to require the BOCs to add to their CEI plans URL links to technical specifications, network disclosures, tariffs, ONA reports and non-discrimination reports.

B. NON-DISCRIMINATION REPORTS.

Under *Computer III*, BOCs are required to submit a report of discrimination and an affidavit stating that they are in compliance with the *Computer III* requirements.²⁴ A typical non-discrimination report in a CEI plan may contain a statement describing the format and information contained in such a report. The report tracks installation dates and maintenance time intervals for basic services and provides those via field identifier codes contained in the service order process. The CEI non-discrimination reports include the percentage of installation orders for which the promised time intervals were met, and the average duration of reported troubles or

²³ *Computer III Order 1999*, ¶ 19.

²⁴ *Phase Two Reconsideration Order*, 3 FCC Rcd. at 1160, ¶ 76.

outages for the BOC and ISP competitors.²⁵ These reports contain information aggregated with other BOC services offered pursuant to other CEI plans and across all LATAs served by the BOC.

The kind of information required in non-discrimination reports should be precisely the kind of information that many ISPs would find useful in tracking a BOC's compliance with CEI requirements. Unfortunately, none of the ISPs who have reviewed their BOC's non-discrimination reports could glean from them any helpful information. Because the information is aggregated over all ESP services, the reports do not show which services were provided to BOC-ISP and independent ISP as opposed to providers of other enhanced services. Likewise, the ISPs are unable to tell whether services provided in the geographic regions in which they conduct operations were provided in parity with service provide to the BOC affiliate. The non-discrimination reports therefore are not a reliable indicator of whether the BOC may be discriminating *vis-à-vis* providers of ISP service.

The ISPs who reviewed non-discrimination reports also found a conspicuous absence of any reference to DSL. The non-discrimination reports currently filed by the BOCs do not compare installation, maintenance and repair data for DSL provided to the independent ISPs' end users with similar data for DSL provided to the BOC-ISPs' end users. Perhaps this is because there is some confusion as to whether DSL is provided to the ISP or to its end-user customer. Customers of the BOC-ISP order DSL from the BOC. It seems likely that the BOC considers

²⁵ See e.g., *Qwest Corporation's Comparably Efficient Interconnection Plan for Internet Access Services*, posted August 9, 2000, at p. 17.

itself to be providing DSL to the end-user, not to the BOC-ISP affiliate, and thus does not report DSL in its non-discrimination reports. In the case of independent ISPs, the BOC either provides and bills end-user customers for a DSL configured loop over which the independent ISP provides and bills for Internet access, or ISPs rent the DSL configured loops from the BOC and bill the end-user for the data portion along with the ISPs Internet access fees. In either case, because DSL is provided for an enhanced service offered by a competitor, the BOC should include data on the DSL provisioning in the reports. The potential for discrimination against the ISPs exists as long as the BOC is not held accountable for providing equivalent installation to all DSL end-users.

As a result of the omission of DSL data, and because non-discrimination reports are aggregated, competitors of the BOC-ISPs do not have any practical means of verifying whether the BOC is in compliance with *Computer III* for installation, maintenance and repair of Internet access services.

AISPA suggests that BOCs should be required to post on their websites non-discrimination reports specific to each type of enhanced service or CEI plan, to identify all services provided in connection with CEI Internet access plans, including DSL, and to show such information separately for each LATA in which the BOC operates.

C. ACCESS TO NETWORK INFORMATION

The Commission previously has addressed network disclosure requirements both under *Computer II* and *Computer III*, recently concluding that network disclosure requirements could

be streamlined by conforming to Section 251(c)(5) requirements.²⁶ The Commission concluded that Section 251(c)(5) superceded both the *Computer II* and *Computer III* network disclosure rules except that the Commission preserved in its Section 51 rules the requirement “that incumbent LECs must disclose network changes that could affect the manner in which CPE is attached to the interstate network.”²⁷

Most BOCs seem to acknowledge the obligation to disclose the installation of DSLAMs in wire centers, by posting information about planned installations on the BOC website. ISPs report, however, that the information is often incomplete and out-of-date. Virtually all of the ISPs commenting to AISPA complained that they are not given sufficient advance notice of the installation of DSLAMs in central offices for them to prepare their networks or to market their services to potential new customers. The BOCs evidently do not sufficiently amend notice to accurately identify the roll-out date.²⁸

In addition, independent ISPs universally complain that they do not have access to information about local loops served by wire centers with DSL capability. DSL is available only

²⁶ *Computer III Order 1999* ¶ 44. Section 251 of the 1996 Act provides that an incumbent local exchange carrier has the duty to provide:

... reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier’s facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

47 U.S.C. § 251(c)(5). That duty is owed to not only competitive local exchange carriers, but to the public in general, including enhanced services providers like the independent ISPs. *See also, Computer III Order 1999* ¶ 43. The Regulations implementing Section 251(c)(5) require disclosure to the public of any network change that will “affect a competing service provider’s performance or ability to provide service.” 47 CFR § 51.325(a)(1).

²⁷ *Id.* ¶ 44. For incumbent LECs offering enhanced services through a separate affiliate, the regulation at 47 CFR § 64.702(d)(2) has been preserved. *Id.*

²⁸ The provision at 47 CFR § 51.329(b) requires an incumbent LEC to keep notice of planned network changes available for public inspection, “and to amend the notice to keep the information complete, accurate and up-to-date.”

on certain loops that are within a certain distance from the wire center and that have been conditioned to render them free from technical impediments to a DSL signal. The BOCs have information about the number of loops in each central office, how many are qualified to carry DSL, and who the potential customers are at the end of these qualified loops. With that information, they can plan the nature and extent of the BOC-ISP's marketing efforts, assess the potential for new customers, and efficiently promote DSL to customers with qualified loops. Moreover, when a customer contacts the BOC to order DSL, the BOC can use this information to instantly inform the customer whether DSL is available and can begin the installation process. Independent ISPs are greatly disadvantaged by the lack of similar information.

ISP comments in earlier proceedings of this docket contended that incumbent LECs must disclose planned deployment of DSL on a wire-center basis, and provide adequate notice on the status of line conditioning for a given customer or group of customers.²⁹ Unfortunately, the FCC received these comments too late to be able to consider them in its Order on Reconsideration, and thus declined to adopt additional requirements at that time.³⁰

²⁹ *In the Matter of Computer III Remand Proceedings: Bell Operating Company Provision of Enhanced Services: 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 95-20, 98-10, *Order on Reconsideration*, December 17, 1999, 14 FCC Rcd 21628, Comments of the Commercial Internet Exchange (“CIX”).

³⁰ In its Order on Reconsideration, the Commission suggested that failure to disclose information about network changes associated with the implementation of DSL would be a violation of *Computer III* rules. It stated:

[I]f a carrier fails to disclose network information that enables other entities to interconnect to the carrier's telecommunications facilities and services in a just and reasonable manner, such action would violate section 201 of the Act. In addition, the BOCs are still subject to our *Computer III* rules, which require that they provide Internet service providers with nondiscriminatory access to the telecommunications services.

14 FCC Rcd 21628 at ¶ 5.

The ISPs contend that because the installation of DSL in wire center changes the network in a way affects its interoperability, the BOC is required to disclose the change under Section 251 and 47 CFR Part 51.³¹ By these Comments, AISPA reiterate the request that the Commission clarify that Section 251 disclosure requirements extend to wire centers in which DSLAMs are to be installed and to the loops over which DSL may be carried.

AISPA notes that the BOCs have a variety of means available to them for publishing notice of network changes.³² AISPA has suggested elsewhere in this Comment that the BOCs should have to post network disclosures on the Internet with URL links from their CEI plans, a small burden since most BOCs already post network disclosures somewhere on a publicly accessible Internet site. For those BOCs, it would also seem relatively simple to keep those notices up-to-date as required under the Regulations.³³ The ISPs are concerned that BOCs may believe they have no obligation to keep the notices up-to-date because the Commission's earlier orders did not expressly address wire centers.

AISPA also notes that the Regulations prescribe different timing of notice of network changes depending on whether the service can be implemented within six or twelve months of the make/buy point.³⁴ When the change can be implemented within six months, the Regulations do not require the BOC to post network change on the Internet, only to file the notice with the Commission and serve it upon "each telephone exchange service provider that directly

³¹ 47 U.S.C. § 251(c)(5); 47 CFR § 51.325.

³² 47 CFR § 51.329(a)(2).

³³ 47 CFR § 51.329(6).

³⁴ 47 CFR § 51.331, 51.333.

interconnects with the incumbent LEC's network."³⁵ To AISPA's knowledge, the ISPs do not receive those notices.³⁶ AISPA recommends that the Commission consider a requirement that BOCs must include in their Internet CEI plans URL links to the BOC's web page disclosing up-to-date network changes, whether or not those changes can be implemented within six months.

D. ENFORCEMENT.

The Commission has requested comment on whether the safeguards adopted in this proceeding may be made more self-enforcing, or otherwise structured so they can be implemented by all parties in a timely, efficient manner.

There are a number of alternative methods to obtain enforcement of ONA and CEI requirements. Aggrieved parties may bring an action before the federal courts or the Commission under Section 207 of the Communications Act. For small, independent ISPs, formal complaints are generally not practical. In most instances, the cost of litigation could swallow the damages. For a large number of small ISPs with a few hundred, or even a few thousand DSL subscribers, a Section 207 complaint is not a practical option.

The FCC offers rapid treatment of formal complaints under the Commission's accelerated docket. Although litigants eligible for accelerated adjudication may obtain quicker relief, most ISPs do not perceive the accelerated process to be any more economically efficient than the traditional path.

³⁵ 47 CFR § 51.333.

³⁶ See definition of telephone exchange service at 47 CFR § 51.5.

The number of ISPs that participate in trade organizations such as AISPA are growing. AISPA believes that in such organizations, there is a potential for independent ISPs with a common problem to pool their resources and try to obtain relief through currently prescribed processes. At the same, the issues faced by ISPs across the country differ from one BOC territory to the next, and commonality of interest is difficult to achieve. For that reason, AISPA sees the current Further Remand Proceeding as an important means to achieving non-discriminatory access to the BOCs' network and services.

The Commission has stated:

We believe that competitive ISPs will themselves monitor CEI compliance vigilantly, and will call the Commission's attention to any failure by a BOC to follow through on its CEI responsibilities. . . . The Commission will not hesitate to use its enforcement authority, including the Accelerated Docket or revised complaint procedures to review and adjudicate allegations that a BOC is falling short of fulfilling any of its CEI obligations.³⁷

AISPA commends the Commission for its stated commitment to enforcement and believes as the Commission does that ISPs will monitor and report infractions of CEI compliance. The FCC Enforcement Bureau also has expressed its willingness to investigate informal complaints brought to the attention of the Investigations Division and, if the allegations have merit, the Investigations Division can bear the burden of prosecuting the claim.

³⁷ *Computer III Order 1999*, ¶ 15.

The ISPs have been disappointed at the response of the Enforcement Bureau to informal complaints of CEI violations brought to its attention.³⁸ To AISPA's knowledge the Enforcement Bureau has never prosecuted an ISP's claim to an adjudication. It did investigate the informal request of one ISP group that stated specific violations of the Regulations, but it was not forthcoming with the results of its investigation.

AISPA believes that the ISPs would be more vigilant in reporting CEI infractions if they were more aware of the remedies available to them. Most ISPs do not know there is any informal process, that the Accelerated Docket exists, or that "revised complaint procedures" are available to them.³⁹ AISPA recommends that the Commission consider requiring the BOCs to include in their Internet access CEI plans a simple statement that those who are served under the CEI plan may seek remedies for CEI violations under Sections 207 and 208, as well as other informal procedures before the FCC.

AISPA believes that the ISPs would be more vigilant in reporting and seeking enforcement of CEI-related violations if they were better informed of the remedies available. In addition, the Commission should continually strive to simplify informal enforcement procedures and facilitate communications between BOCs and ISPs in hope of inexpensively and quickly resolving disputes.

³⁸ See, e.g., *Request of the United States Internet Service Providers Alliance and the Coalition of Utah Independent Internet Service Providers for an Investigation into the Practices of U S West Communications, Inc. in Offering InterLATA Information Services*, filed on March 23, 2000.

³⁹ See, *Computer III Order 1999*, ¶ 36.

E. STRUCTURAL SEPARATION.

The Commission has asked for comments on the sunset of the provisions in Sections 272 and 274 related to structural separation between BOCs and their affiliates offering InterLATA information services. AISPA believes that the sunset on structural separation has worked to the detriment of competition among ISPs and also competition among competitive local exchange carriers (“CLEC”) who offer DSL in competition with incumbent LECs.

It seems clear that Congress imposed the structural safeguards embodied in Sections 272 and 274, among other reasons, to prevent the Bell monopolies from obtaining undue advantages when competing with enhanced service providers. The structural separations provided a measure of transparency to BOC transactions with their ISP affiliates. Without the structural safeguards required under Sections 272 and 274, as implemented by the Commission at 47 CFR § 64.702, discriminatory practices can be more easily concealed.

It also seems obvious that the necessity of structural separation will not diminish until local markets are open to competition. As long as the BOCs have market power in the inputs for local Internet service, competition is threatened. AISPA notes that in the last six months, a number of CLECs who offered DSL in competition with the BOCs either have become extinct through insolvency or have severely curtailed their operations to the point that it appears now that there are few alternatives to BOC-supplied DSL.⁴⁰

⁴⁰ AISPA realizes there are other broadband alternatives for broadband internet access, including cable. The vast majority of independent ISPs are at present unable to access proprietary cable networks that would provide their end-users with high-speed cable access to the internet.

Structural separation for affiliates offering interLATA information services should not have been relaxed until the incumbent LEC complied with all of the requirements of Section 271 and obtained InterLATA long distance authority. In that respect, AISPA agrees with comments already made in the Commission's docket to consider the sunset of Section 272.⁴¹

CONCLUSION

The ISPs find that CEI plans are indispensable in informing them of the practices of BOCs in providing service. In the case of many smaller ISPs, those CEI plans are the only source available to inform them of their rights of connecting with the BOC in a manner comparably efficient to the BOC-ISPs. For the reasons stated above, AISPA believes the CEI plan requirement for Internet services should be retained. Moreover, AISPA respectfully requests that the Commission consider the following changes with respect to the subject matter of this docket:

1. Clarify that the network disclosure requirements under Chapter 51 and associated Regulations require BOC to identify the wire centers in which DSL capability will be installed and to identify all local loops that will be accommodate DSL.

2. Require non-discrimination reports to show:

- a. installation, repair and maintenance statistics for each CEI plan by LATA;

and

⁴¹ *In the Matter of Request for Extension of the Sunset Date of the Structural, Non-Discrimination, and Other Behavioral Safeguards Governing Bell Operating Company's Provision of h-Region Inter-LATA Information Services*, CC Docket No. 96-149, Summary of Ex Parte Presentation of the United States Internet Service Providers Alliance and the Coalition of Utah Independent Internet Service Providers.

b. installation, repair and maintenance details for DSL provided to the BOC-ISP or its end user customers on one hand, and to all other ISPs and their end-user customers on the other.

3. Require CEI plans to contain URLs linking the user to web pages where the BOCs must post the following:

- a. Technical specifications required for interface functionality;
- b. ONA plans;
- c. Tariffs for the service offerings included within the CEI plan;
- d. Non-discrimination reports;
- e. Up-to-date notice of network changes; and
- f. A statement of remedies for CEI violations.

4. Require BOCs to allow ISPs access to the same ordering systems used by the BOC to order DSL and other products supplied to the BOC-ISP or its end-users customers.

5. Require BOCs to unbundle basic services to the extent reasonably feasible rather than only to the extent that the BOC unbundles to provide BOC-ISP services.

DATED this 16th day of April, 2001.

AMERICAN ISP ASSOCIATION:



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