

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

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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)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
CC Docket No. 98-10

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**COMMENTS
OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA) respectfully submits its comments in the above-referenced proceeding. USTA is the nation's oldest trade association for the local exchange carrier (LEC) industry. USTA represents more than 1,200 telecommunications companies worldwide that provide a full array of voice, data and video services over wireline and wireless networks. USTA's membership includes those companies subject to the Computer III restrictions.

In a Further Notice of Proposed Rulemaking released January 30, 1998, the Commission asked parties to address several issues raised by the interplay between the safeguards and terminology established in the 1996 Act and the Computer III regime.¹ In its comments filed March 27, 1998 USTA supported the Commission's efforts to determine whether the body of Computer III rules promulgated prior to the passage of the 1996 Act are now necessary and consistent with the Act. USTA believes that the regulatory constraints that limit the incumbent LECs from fully participating in the enhanced services market should be eliminated. USTA

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strongly opposed any Commission action that would expand the scope of either the Computer III rules or the unbundling requirements in the 1996 Act. USTA stated that the Commission should not increase regulatory burdens on incumbent LECs and should, pursuant to the statutory mandate of Section 11 of the 1996 Act, aggressively seek opportunities to lessen regulatory burdens as competition increases in both the telecommunications and information services markets.

On March 7, 2001, the Commission released a Public Notice requesting parties to update and refresh the record in this proceeding. Nothing has changed to alter USTA's position. As USTA explained in its prior comments, the Commission has no legal authority to alter the specific limitations placed by Congress on the provision of unbundled network elements. Congress explicitly differentiated between telecommunications services and information services in Section 3 of the 1996 Act. Congress did not provide pure ISPs with access to unbundled network elements under Subsection 251(c)(3) and, instead, limited access to unbundled elements to any requesting telecommunications carrier. Congress clearly did not intend to confer any telecommunications carrier benefits upon pure ISPs, particularly when these entities bear no telecommunications carrier responsibilities. The 1996 Act clearly and specifically defines the degree of unbundling applicable to incumbent LECs. The Commission does not have the legal authority to alter the definitive statutory language and confer upon pure ISPs the right to demand unbundled network elements from incumbent LECs.

Likewise, nothing has changed to warrant expansion of the Computer III requirements and, in fact, the expanded market opportunities provided by the 1996 Act and the explosive growth of the information services market has certainly reduced and, in most cases, eliminated

¹ 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, *Further Notice of*

the need for these outdated regulations. The 1996 Act required that the local telecommunications market be opened to competition. Thus, the Act established the framework and provided ISPs and all customers with the opportunity to obtain services from competing providers. As the Commission itself noted in the Further Notice, the size of the already established participants in the information services market as well as the revenues to be derived from retaining them as customers provides a considerable check on the incentives a BOC or other incumbent might otherwise be perceived to have to discriminate against those giants in favor of its own relatively inchoate information service operations.² Section 272 of the Act also provided specific requirements applicable to BOC provision of interLATA information services. Congress specifically did not apply the Computer III ONA framework to those services. Congress wisely provided for the sunset of the Section 272 requirements after four years preferring that market forces replace regulation consistent with the deregulatory, pro-competition framework it had created.

The ONA/CEI nonstructural safeguards were established to ensure that if a BOC offered what was then referred to as an enhanced service, it must also offer network interconnection opportunities to competitive enhanced service providers (ESPs) that are comparably efficient to the interconnection that its own enhanced service operation enjoys.³ In its recent Order eliminating the bundling restriction adopted in the Computer II proceeding, the Commission confirmed, however, that facilities-based carriers that offer enhanced services must unbundle basic from enhanced service and offer transmission capacity to other ESPs under the same tariffed terms and conditions under which they provide such services to their own enhanced

Proposed Rulemaking, 13 FCC Rcd 6040 (1999). [Further Notice].

² Further Notice at ¶ 36.

³ See, Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III), Report and Order, CC Docket No. 85-229, Phase I, 104 FCC 2d 958, 1019 (1986).

service operations.⁴ Facilities based carrier provision of transmission capacity under the same tariffed terms and conditions under which the carriers provide such services to their own enhanced service operations is essentially comparably efficient interconnection. Thus, there is no need for a separate set of ONA/CEI unbundling requirements that would only be applicable to the BOCs.

Computer III nonstructural safeguards also included network disclosure rules for the BOCs that were later extended to GTE. Section 251(c)(5) of the 1996 Act requires all incumbent LECs to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that LEC's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks. While the Commission eliminated the Computer II and Computer III network disclosure requirements in 1999 and removed all network disclosure obligations for both IXC and CLECs,⁵ it maintains pages of regulations implementing the requirements of the Act.⁶ At a minimum, the Commission should eliminate the Commission's filing requirements included within these rules. The Commission could require ILECs to simply make notices of network changes available through their websites. This would provide some administrative relief from the onerous and unnecessary filing requirements.

⁴ 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, FCC 01-98, Report and Order, CC Docket Nos. 95-61, 98-183 (rel. Mar. 30, 2001). [Unbundling Order]. *See also*, Amendment of Section 64.702 of the Commission's Rules and Regulations, CC Docket 20828, Final Decision, 77 FCC 2d 384 (1980) at ¶ 231 (“Because enhanced services are dependent upon the common carrier offering of basic services, a basic service is the building block upon which enhanced services are offered. Thus those carriers that own common carrier transmission facilities and provide enhanced services, but are not subject to the separate subsidiary requirement, must acquire transmission capacity pursuant to the same prices, terms and conditions reflected in their tariffs when their own facilities are utilized.”).

⁵ Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, 1998 Biennial Review of Computer III and ONA Safeguards and Requirements, FCC 99-36, Report and Order, CC Docket Nos. 95-20 and 98-10 (rel. Mar. 10, 1999).

⁶ 47 CFR 51.325 through 51.335.

The Computer III nonstructural safeguards also included nondiscrimination requirements. BOCs were required to file Nondiscrimination Installation and Maintenance Reports, Annual ONA Reports regarding ONA capabilities and Semi-Annual ONA Reports listing state and federal tariffs of ONA services. Of course the Communications Act of 1934 contains specific nondiscrimination prohibitions in Sections 201 and 202 and provides a means by which parties may challenge alleged discriminatory practices through the complaint process required in Section 208. Section 251(g) of the Telecommunications Act of 1996 maintains equal access and nondiscriminatory interconnection restrictions and obligations previously imposed on incumbent LECs. The Commission no longer needs voluminous ONA reports to ensure that ISPs have access to the underlying basic transmission component on a nondiscriminatory basis. As the Commission recently observed, “Unlike in 1980, we now have no doubt that consumers who choose to purchase CPE or enhanced services on a stand-alone basis may do so from a myriad of suppliers. Coupled with this wide choice of CPE and enhanced services suppliers is now a wide choice of interexchange telecommunications carriers and a growing choice of local exchange carriers.”⁷ The Commission should eliminate the onerous reporting requirements or, at the very least, streamline these requirements.⁸

From a public policy perspective, eliminating or, at the very least, streamlining the restrictions of the Computer III rules as discussed above is justified. There is no dispute that the rapid deployment of high-speed, advanced telecommunications networks and services is in the public interest. There is no dispute that the information technology marketplace is highly competitive with market forces fueling consumer and business demands for expanded bandwidth capacity for data and Internet services. In the past five years, the Internet has experienced

⁷Unbundling Order at ¶ 10.

unprecedented growth rates. According to a study released by the Commission Office of Plans and Policy last year, in 1999 there were forty-two national backbones.⁹ The study observes that the increase in the number of backbones has been facilitated by the recent dramatic increases in the availability of fiber optic capacity. As more and more users are drawn to the Internet, the creation of more Web content is encouraged. New users and new providers of content require Internet access, encouraging the creation of more ISPs, which in turn encourages the entry of more Internet backbone providers and fiber providers to transport the additional data. The study states that in 1999 there were well over 5,000 ISPs, over one and a half billion web pages, and over 200 million users online worldwide. These numbers are growing. There is no evidence that the growth of information services provided over the Internet have been hampered. Furthermore, increasing numbers of users are accessing the Internet through broadband data services offered by cable operators using cable modems and cable systems. With multiple providers of Internet transport and access to ISPs over different technological platforms, there is no need to maintain disparate regulations, particularly when the offerings are functional equivalents.

The market and technology have moved the industry beyond the need for regulations that impede the ability of incumbent LECs to compete. The public interest demands that the Commission eliminate or at the very least streamline asymmetrical regulations that only serve to

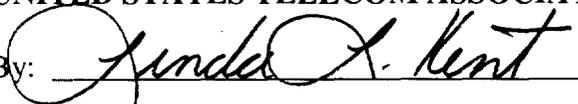
⁸ The Commission should eliminate the CEI Plans and the Semi-Annual Reports and, if needed, replace them with a simple listing of all basic network capabilities utilized by a carrier's enhanced service operations.

⁹ Michael Kende, "The Digital Handshake: Connecting Internet Backbones" Office of Plans and Policy, Federal Communications Commission (rel. Sept. 2000).

hamper competition and access to Internet services. The BOCs and all incumbent LECs should have the same opportunities as their nonregulated competitors to structure their information service operations in the manner they see fit without being subject to special conditions for which there is no market need.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

By:  _____

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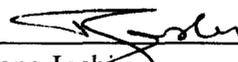
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April 16, 2001

CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on April 16, 2001, Comments of The United States Telecom Association was either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the attached service list.


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