

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

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

REPLY COMMENTS OF VERIZON

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I. Introduction and Summary

The comments here are like ships passing in the night. While the opponents of needed relief from the Open Network Architecture (“ONA”) requirements claim, without support, that the Bell companies have failed to comply with existing requirements, Verizon showed, based on published material, reports of record before the Commission, and other detailed evidence, that the Bell companies have provided all the services that information service providers have asked for in a non-discriminatory manner, without complaint. The factual record fully supports eliminating the ONA requirements and turning regulation in this area over to the competitive marketplace.

It is difficult to fathom how a \$300 billion industry that has been characterized as one of the fastest growing in the United States needs regulatory protection. But that is what the information service providers persist in claiming here. They argue that the Bell operating

companies have failed to provide the new services they need, yet they haven't asked for new services. They submit laundry lists of alleged anticompetitive acts by the Bell companies, yet they can provide no specifics, no documentation, and, for the most part, have not even identified the companies they claim have acted anticompetitively. Yet not one even asserts that it has been unable to offer any information service because of the inability to obtain a needed underlying telecommunications service. The information service providers, as they have since the mid-1980s, are simply trying to get the Commission to nullify the Bell companies as competitors. Instead, the Commission should recognize that the 15-year old open network architecture ("ONA") rules are obsolete and allow market forces to replace regulation in this competitive marketplace.

While the record fully supports eliminating the ONA requirements for the narrowband world, no valid basis exists for the claims of information service providers that the Commission should extend those requirements to the broadband world. Those providers want the Commission to increase regulation of digital subscriber line ("DSL") services, ignoring the fact that DSL, a broadband telecommunications service, is a minority part of a broadband services marketplace in which cable modem service has over 70% of the residential and small business market and is also populated by satellite service, fixed and mobile wireless service, and other services, all of which are largely unregulated. Nor does the record support the claims of small Internet service providers that the Bell companies engage in a "price squeeze" in their DSL tariffed rates. Any Internet provider that commits to a one-year term can receive a rate for Verizon's DSL that is little more than Verizon's own affiliate pays. In addition, Verizon's

¹ The Verizon telephone companies ("Verizon") are the local exchange carriers affiliated with Verizon Communications Inc. identified in the attached list.

affiliate subscribes to a minority of its volume and term-priced DSL lines, belying the claim that those prices are there only to benefit its affiliate.

II. Structural Separation Will Reduce Competition, Deter Innovation, and Delay New Services.

Several parties again press the Commission to re-impose structural separation for Bell company provision of information services. *See, e.g.*, ITAA at 5-6, AT&T at 5-6, American ISP Assoc. at 24-25. Those arguments should not be given serious consideration. As Verizon demonstrated in its opening comments, structural separation historically has served only to increase costs, deter innovation, and delay provision of new services. For example, the delays in providing voice messaging resulting from structural separation resulted in a public welfare cost of \$1.27 billion. *See* Verizon at 8. And the cost of moving just Verizon's voice messaging operations into a separate affiliate would be at least \$100 million. *See id.* at 7-8. Turning back the clock 15 years by returning to structural separation would not only re-impose costs such as these, but it would delay or prevent introduction of new Bell company information services. Given the robust nature of the information services industry (discussed below) and the lack of any evidence of anticompetitive practices, structural separation would provide the public with no benefit much less a sufficient benefit to override these immense costs.

Although some parties cite the 1996 Act as embodying a Congressional policy favoring structural separation, such separation was imposed only as a temporary measure in each instance. *See* 47 U.S.C. §§ 272(f)(1) and (2) and 274(g)(2). Congress very carefully limited such structural separation for information services to *interLATA* information services and to electronic publishing. It would be inconsistent with Congressional intent for the Commission to extend structural separation beyond those limits and reimpose it for *intraLATA* information services.

Accordingly, the Commission should reiterate yet again that, based upon experience since 1980 under both structural separation and integrated provision of information services, the cost of structural separation for Bell company provision of information services far outweighs any possible benefit.

III. Competitors' Claimed Bases For Keeping Or Strengthening the ONA Rules are Unsupported and Simply Wrong.

The information service providers ask the Commission – if it does not return to the dark days of structural separation – to retain or increase the existing non-structural ONA requirements, claiming that their industry is still struggling and needs special protection to survive. They claim they are being squeezed by the Bell operating companies, that they have no choice other than the Bell companies for their underlying telecommunications services, and that the Bell companies have thwarted every effort to obtain those services. *See, e.g.,* ITAA, California ISP Assoc., American ISP Assoc., EarthLink. In support, they paint a picture of the current information services industry that bears no resemblance to any marketplace reality and fail to provide a scintilla of support for any of their vague allegations of Bell company practices.

The fact is that the information services sector is a \$300 billion industry. *See* The McGraw-Hill Companies and U.S. Department of Commerce/International Trade Administration, *U.S. Industry & Trade Outlook 2000* at Chap. 26, Chart, “Revenue Growth of Information Services” (2000) (“Outlook 2000”). It has “grown by leaps and bounds during the last two decades,” during which “new products and services have multiplied and a plethora of markets has emerged to satisfy the seemingly insatiable needs of businesses and consumers.” *Id.* at 26-1. A component of information services, one whose proponents here claim a particular need for regulatory protection, Internet service providers, accounted for nearly \$24 billion in

revenue in 2000 and is expected to grow to over \$80 billion in 2005. S. Harris, *Internet Service Provider Market Forecast and Analysis, 2000-2005*, International Data Corp. (Dec. 2000).

Ignoring these facts, some parties point to the recent bankruptcies and financial difficulties experienced by a few competing local exchange carriers as “evidence” of Bell company anticompetitive activities. *See, e.g.*, AT&T at 5, EarthLink at 7, United States Internet Service Providers Alliance (“USISPA”) at 9. These difficulties can be attributed, however, not to Bell company practices, but to the failure of many of these carriers’ customers to pay for their services, to the normal market contraction in any new industry, and to the general economic slowdown. “Last year, the cash spigot closed as Wall Street stopped prizing growth over profits. ISPs stopped paying their bills just as their DSL partners were deep in the capital-intensive network deployments.” M. Fordahl, “Despite Demand, Competitive DSL Industry Struggling,” Associated Press Newswires (Apr. 22, 2001).²

Several information service providers, however, provide long lists of vague allegations against “the BOCs,” not one of which is documented and which largely fail to identify any specific instances or even the companies involved. *See, e.g.*, California ISP Association at 10-29, ITAA at 11-21, American ISP Assoc. at 16-17. ITAA even collaterally attacks a number of recent Commission orders as giving the Bell companies opportunities to act anticompetitively.

² Chairman Powell has confirmed his understanding that the competitors’ financial woes are not attributable to the Bell companies, as he recently stated with respect to their business problems, “[s]ome of it is poor implementation, some of it is poor execution.” P. Ross, *FCC Takes Market Turn with Powell*, CNET News.com (Feb. 6, 2001) (available at <http://news.cnet.com/news/0-1004-200-4731304.htm/>). The DSL carriers themselves have confirmed as much. *See, e.g.*, K. Hudson, *Jato’s Fall Reflects Industry Problems*, Denver Post, Dec. 30, 2000, at C1 (quoting founder of Jato: “[I]n hindsight, (there were) a lot of naive assumptions that capital would always be there to fund the business plan”); S. Woolley, *Highway to Hell*, Forbes, Feb. 19, 2001, at 100 (NorthPoint CEO Elizabeth Fetter: “We were highly incited by Wall Street to spend money like drunken sailors”); Morgan Stanley Dean Witter,

See ITAA at 12-16. These orders – including limited bundling and interLATA relief – reflected the Commission’s public interest findings based upon exhaustive analyses of the marketplace and the potential impact on competition. ITAA should not be heard here to attack these orders collaterally, and, in any event, they certainly provide no basis for increased regulation in this proceeding.

For example, in the bundling order, the Commission found that “consumers can benefit significantly by relying on the competitive markets that exist for the components contained in a bundle.” *1998 Biennial Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets*, CC Docket Nos. 96-61 and 98-183, FCC 01-98, & 9 (rel. Mar. 30, 2001). And, in granting Verizon’s section 271 application for Massachusetts, the Commission found that Verizon has met the checklist requirements under section 271, including those that prohibit discrimination against local service competitors. See *Application of Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, FCC 01-130, & 130 (rel. Apr. 16, 2001) (“Mass. 271 Order”). These findings, made after detailed analysis of the *factual* record, are contrary to the vague, unsupported allegations of discrimination made by the information service providers here.

In addition, the Commission has established procedures for airing claims that carriers have violated Commission rules or orders – filing complaints under section 208 of the Act. Yet,

Company Report, Covad (Dec. 14, 2000) (“Delinquent and ‘at-risk’ ISPs account[ed] for 58% of [Covad’s] total lines”).

despite the many unsupported allegations in the filings here *not one formal complaint has ever been filed against any Bell company claiming violation of the Computer III/ONA requirements.*

The reason is clear. In a complaint proceeding, the complainant must prove facts, not make vague unproven allegations. Here, the comments are devoid of facts, because the allegations are simply not true.

Two of the sets of claims made here are directly refuted by the facts already at the Commission's disposal. First, despite parties' claims of discriminatory treatment in provision of ONA services, the voluminous reports that each regional Bell company has submitted each quarter for more than a decade show no pattern of discrimination in installation or maintenance of any services used by information service providers.³ Second, despite vague claims that the Bell companies are not providing new services that the information service providers need, requests for those services have been largely non-existent – *Verizon has received no new requests at all in the past five years.*⁴

IV. DSL Is Part of the Competitive Broadband Market, and Its Pricing Is Fully Justified.

As Verizon fully demonstrated in its opening comments, even if the Commission were to retain the ONA requirements for narrowband services – which it most assuredly should not – there is no justification whatever for extending those requirements to emerging broadband services. *See Verizon* at 13-20. Several parties, however, in arguing for increased regulation, criticize the Bell companies' pricing of DSL services, claiming that the Bell companies' volume

³ Because the substance of the reports show no discrimination, some commenters are left to attack the format of the reports. *See, e.g., EarthLink* at 15-17. Instead of prescribing a format, the Commission should find the reports unnecessary and eliminate them.

⁴ The one specific allegation, by eVoice, Inc., that Verizon has not provided certain services it claims to have requested, is wrong, as addressed below.

and term discounts somehow discriminate in favor of their own Internet service provider affiliates and subject non-affiliated Internet providers to a price squeeze vis-à-vis the Bell companies' own Internet services. *See, e.g.,* California ISP Assoc. at 18, Commercial Internet eXchange Assoc. at 8 ("CIX"), Amer. ISP Assoc. at 7-8. This allegation is based on the faulty assumptions that volume and term pricing plans are unavailable to small Internet service providers, that DSL is used only by the Bell companies' Internet affiliates and a few other very large Internet service providers, and that DSL is the only broadband service available for use in connection with their Internet services.

The fact is that over 650 Internet service providers currently subscribe to Verizon's volume and term discounted DSL service, and fully 60% of Verizon's DSL lines are provided to non-affiliates of Verizon. A half-dozen non-affiliates subscribe to DSL at the lowest tariffed rate. In addition, any Internet service provider can receive a monthly DSL rate of \$32.95 – only \$3.00 above the lowest volume and term rate – simply by agreeing to take service for a one-year term, regardless of volume. Moreover, in some instances, small Internet service providers have formed consortia to pool their broadband needs to obtain steeper discounts than they could otherwise. Based on these facts, there is no basis for the claims of a price squeeze.

Nor is there any valid claim that the Bell companies dominate the Internet service provider market. The Commerce Department's latest published figures show that no Bell company is among the ten largest Internet service providers. *See* Outlook 2000 at 28-23.

Moreover, DSL technology is simply one of a number of competing broadband technologies, and DSL has but a minority position in that market. Cable modem service remains

dominant, providing at least 70% of the residential and small business broadband lines.⁵

Competing broadband services are also available from satellite providers, fixed and mobile wireless operators, and others, yet the parties ignore those other sources. There is no basis whatever for the Commission to impose pervasive regulation over a single technology that is part of a larger highly competitive market.

In any event, the volume and term discounts in Verizon's DSL tariffs are fully justified by cost differences and also reflect the need to compete with cable modem and other broadband services. Moreover, the Commission investigated the lawfulness of the volume and term tariffs when they were filed nearly three years ago. The same price squeeze issue was raised at that time, and the Commission approved the tariff without further examination. *See GTE Telephone Operating Cos.*, 13 FCC Rcd 22466 (1998); *Bell Atlantic Telephone Cos. et al.*, 13 FCC Rcd 23667 (1998).

Nor is there any validity to the unsupported claims that the Bell companies are failing to provide loops needed for DSL and are discriminating in favor of their Internet affiliates in the provisioning of DSL. When faced with similar allegations in Massachusetts, the Commission found that Verizon "is providing xDSL-capable loops in accordance with the requirements of checklist item 4," which requires provision of unbundled local loops. (Mass. 271 Order at & 130). It also found that Verizon was not discriminating between competing carriers and its own

⁵ The Precursor Group reported recently that 73% of residential broadband service was provided by cable modems. S. Cleland, "How Broadband Deployment Skews Economic/Business Growth at 1 (Feb. 22, 2001) (available at http://www.imapdata.com/n_studies/news/precursor.pdf). Data the Commission released in October confirmed that cable operators control 70% of residential and small business high-speed lines. Industry Analysis Division, Common Carrier Bureau, *High-Speed Services for Internet Access: Subscriberhip as of June 30, 2000*, at Table 3 (Oct. 2000).

retail operations in provisioning, *id.* at & 136, completion intervals, *id.* at & 139, quality, *id.* at & 146, or maintenance and repair, *id.* at & 150 of loops used for DSL.

The same allegations that the Commission found untrue in Massachusetts are repeated here (without any support) by the New Hampshire ISP Association for that state – that Verizon is making DSL-capable loops available to its own retail affiliate but not to competitors. *See* New Hampshire ISP Assoc. (pages unnumbered). There is no more validity to those allegations in New Hampshire than there was in Massachusetts, and the Association’s undocumented allegations should be completely discounted.

V. Unbundled Network Elements Are Available Only To Telecommunications Carriers.

Three parties ask the Commission to allow information service providers to subscribe to unbundled network elements under section 251 of the Act. *See* CIX at 4, GSA at 8-9, Destek at 2. Section 251(c)(3), however, imposes on incumbent local exchange carriers the duty to provide unbundled network elements “to any requesting *telecommunications carrier* for the provision of a *telecommunications service*.” 47 U.S.C. § 251(c)(3) (emphasis added). Information service providers are not telecommunications carriers, nor do they provide telecommunications services. As even proponents of increased restrictions on the Bell companies point out, authority under section 251 to subscribe to network elements is limited to telecommunications carriers and is not available to information service providers. *See, e.g.,*

AT&T at 7, USISPA at 10-11.⁶ The Commission should not by rule override the express policy choice that Congress made to limit the unbundling requirement to competing carriers. Therefore, the Commission should find that these requests are inconsistent with the express terms of the Act.

VI. Verizon Has Complied With Requirements For Responding to Requests For New ONA Services.

eVoice asserts that several Bell companies, including Verizon, have violated the requirement to respond to ONA requests within 120 days and have not provided requested services that it maintains are technically feasible. The requests that eVoice claims that it made to Verizon beginning in 1999, however, were not, until very recently, even identified as ONA requests. Instead, they were informal inquiries, typically made during telephone conversations or in brief electronic mail messages, as to whether certain capabilities were available in certain geographical areas. Those inquiries fell far short of the requirements the Commission long ago adopted for new “complete” ONA service requests. *See Filing and Review of Open Network Architecture Plans*, 5 FCC Rcd 3103, & 124 (1990) (“Each of the BOCs also describes its criteria for determining when an ESP request for a new ONA capability is complete or,

⁶ One party asks the Commission to require access to a certain AIN capability, claiming that some Bell companies use it to provide an information service. *See Low Tech Designs, Inc.* at 2-4. The privacy service that Low Tech cites, however, is not an information service but is an adjunct to basic telecommunications service. It allows customers to decide whether or not to accept a call based on the identity of the caller. The caller is identified by a spoken name, similar to the way a collect caller is identified. The Commission has long held that adjuncts to basic service are treated as telecommunications services, not information services, and the issues raised are not germane to this proceeding. *See North American Telecommunications Association*, 101 F.C.C.2d 349, & 23 (1985) (“we did not intend that our definition of enhanced services should be interpreted as forbidding carriers to use the processing and storage capabilities of their networks to offer optional tariffed features which facilitate use of traditional telephone service”).

alternatively, attaches a form to its amended plan that ESPs can use for future service requests.... [W]e approve this aspect of each BOC's amended plan"); *Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation*, 11 FCC Rcd 1388, & 31 (1995) (describing and approving a similar process proposed by GTE for reviewing new ONA service requests).

The information that all of the ONA plans specified for new requests, and which the Commission approved, is enough to meet the criteria the Commission established for assessing the viability of proposed new ONA services. These are "market demand, utility as perceived by the ESPs, and costing and technical feasibility." *Filing and Review of Open Network Architecture Plans*, 4 FCC Rcd 1, && 21 and 396 (1988). The information eVoice provided was both insufficient for Verizon to assess whether its request met those four criteria, and, until recently, not even identified as being made under ONA. Now that eVoice has informed Verizon that its request should be considered within the ONA process, Verizon is evaluating it under the Commission's criteria for such requests.⁷ If eVoice had identified its request at the outset as being submitted under ONA and had provided the information required under the Commission's orders, Verizon would have long ago had the opportunity to process the request under the ONA criteria.

⁷ In letters dated March 3 and April 11, 2001, and in an undated letter received on April 16, 2001, eVoice has asked Verizon for LATA-wide Simplified Message Desk Interface as an ONA service.

eVoice now wants the Commission to adopt a whole new procedure for ONA requests. Having been unable or unwilling to follow the procedures the Commission approved more than a decade ago, eVoice has provided no justification for keeping those procedures, much less replacing them with a more complex process.

VII. Conclusion

The information service providers have not shown that they need continuing regulatory protection. Instead, the Commission should find that one of the largest and fastest-growing industries in the United States and around the world is no longer a nascent business that needs special treatment and eliminate the existing ONA requirements.

Respectfully submitted,

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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.