Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

FURTHER REPLY COMMENTS OF SBC COMMUNICATIONS INC.

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Summary

As would be expected, the comments filed in response to the Commission's Public Notice to refresh the record in this docket can be divided between the Bell operating companies (BOCs) — on whose shoulders the *Computer III* and ONA obligations fall — and the Information Services Providers (ISPs) and interexchange carriers (IXCs). SBC and the other BOCs made cogent arguments that the time is past due to eliminate the one-sided Open Network Architecture (ONA) regulations that do not provide ISPs any real benefits. The ISPs comments raise a number of complaints, but miss the mark because they fail to address the core issue: Are these regulations necessary to provide ISPs the essential transmission services needed to provide information services? As they are not, these regulations should be eliminated, or, if not eliminated, at least pared down to a less onerous level.

Certain commenters act as if nothing has taken place in the last 15 years since the Commission first proposed non-structural alternatives to the *Computer II* regime. Since that order was released, the information services market has expanded and diversified, becoming healthier and more robust; the Internet has blossomed,[1] becoming a regular feature of most homes and businesses; and, the 1996 Act has opened the local exchange markets to competition, putting market pressures on the BOCs and other ILECs to improve products and services. Yet, in the face of these changes, certain commenters would have the Commission ignore the facts and drag the Commission and the BOCs back to the 1980s — back to structural separation.[2]

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[1] "Internet usage has grown steadily and rapidly, especially since the development of the World Wide Web in 1989. According to one survey, *there are currently more than 4,000 Internet service providers and 40 national Internet backbones operating in the United States.* According to data presented at our en banc hearing on February 19, 1998, Internet service provider market revenues are projected to grow from under four billion dollars in 1996 to eighteen billion dollars in the year 2000." *In the Matter of Federal-State Joint Board on Universal Service, Report to Congress*, 13 FCC Rcd 11,501 ¶ 65 (1998). (Emphasis supplied.) The growth in the Internet and in the number of Internet service providers is even greater than the Commission projected. *See* Comments of United States Telecom Association, p. 6.

[2] Comments of AT&T Corp. (AT&T), p. 5; Initial comments of the California ISP Association, Inc. (CISPA), p. 30; Comments of EarthLink, Inc. (EarthLink), p. 19; Comments of eVoice, Inc. (eVoice), pp. 35-36; Comments of the Information Technology Association of America (ITAA),

Those commenters who urge the Commission to take this giant leap backward do so, not because *Computer III* and ONA are needed to provide ISPs access to basic transmission services or because they are needed to guard against illegal cross-subsidization or discriminatory provisioning, but because these commenters do not share the Congress's vision of a deregulated marketplace. These commenters embrace a return to old and/or additional regulation not as a way of promoting competition in a marketplace that the Commission has repeatedly found to be fully competitive but as a way of impeding competition by burdening a competitor. The Commission should look past the self-serving comments of those who seek to re-impose structural separation or seek to pile even more onerous and costly regulations on the BOCs to the future of deregulation.

The burden falls to the commenters seeking to undue the Commission's work to justify the continued need for these burdensome ONA regulations. As demonstrated in these reply comments, those who would seek to continue these regulations — or worse, impose additional regulations or revert to structural separation — have not carried their burden. With respect to ISPs generally, there is no evidence of any lack of access to needed basic transmission services. The scant number of allegations of BOC defects with compliance shows that, over the past 15 years, BOC have satisfied the needs of the information services market. The fact that the information services market is vigorous and varied in spite of evidence that the regulations generate unread reports and unused resources is telling proof that the regulations are not needed.

With respect to Internet Service Providers, in particular, the commenters raise many allegations of misconduct. Yet, these allegations, which are addressed in these reply comments, are unsubstantiated and untrue. Commenters seek to bamboozle the Commission into believing that more regulation is needed to curb the "bad acts" of the BOCs. In fact, these commenters seek only to impede competition by unnecessarily restricting the freedom of a competitor.

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p. 3; Comments of the United States Internet Service Providers Alliance (USISPA), p. 12; Further Comments of WorldCom, Inc. (WorldCom), p. 6.

Some commenters have felt the necessity of going far afield. Many raise matters beyond the purview of these proceedings or, even worse, matters that have been decided against them in other Commission proceedings. These commenters fail to make a case that the Commission needs to consider these issues in this docket. If there is any merit to these issues, which SBC Contends there is not, then they ought to be considered in the appropriate dockets.

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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 ONA Safeguards and Requirements	)))	CC Docket No. 98-10

FURTHER REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. (SBC)[1] files the following reply comments:

I. General Introduction

Under *Computer III*, the Commission recognized that the cost of structural separation was too great and that the public would benefit from the full participation of the BOCs in the information services market:

> [O]ur experience with structural separation shows that it inhibits BOC provision of enhanced services. Under structural separation, the BOCs provided few enhanced services, and structural separation apparently completely foreclosed BOC provision of voice mail service. Essentially, structural separation prevents the BOCs from using their existing substantial resources to provide enhanced services, requiring instead separation and/or duplication of facilities and personnel to provide both enhanced and basic services. It imposes direct monetary costs, and results in loss of efficiencies and economies of scope. The BOCs have submitted significant evidence of the financial and operational efficiencies that would be lost under structural separation. Costs for voice mail services could be up to 68% percent higher under structural separation necessitating price increases of up to 30% and 80%.[2]

[1] SBC files these comments on its own behalf, as well as on behalf of its Bell operating companies: Illinois Bell Telephone Co., Indiana Bell Telephone Co., Michigan Bell Telephone Co., Nevada Bell Telephone Co., The Ohio Bell Telephone Co., Pacific Bell Telephone Co., Southwestern Bell Telephone Co., and Wisconsin Bell Telephone Co.

[2] *In the Matter of Filing and Review of Open Network Architecture Plans*, CC Docket No. 88-2, Phase I, *Memorandum Opinion and Order on Reconsideration*, 8 FCC Rcd 97, ¶ 8 (1993).

None of the parties commenting in these proceedings has presented any evidence that should disturb this finding. The ONA regulations were part of the structure deemed necessary back in the 1980s to guarantee ISPs access to basic transmission services:

> We viewed, and still view, ONA as involving more efficient network designs and tariffing practices that will make it possible to replace our service-by-service CEI regulation of BOC participation in enhanced services markets. We stated that properly designed ONA networks should be characterized by efficient interconnections and unbundled offerings that will limit a carrier's ability to engage in discrimination and be hospitable to the competitive offering of enhanced services.[3]

If, as the BOCs contend, ONA is no longer needed to guarantee access to basic transmission services and if the BOCs' ability "ability to engage in discrimination" is already limited, then these regulations should fall.[4]

By enacting the 1996 Telecommunications Act (1996 Act), the Congress intended to move telephony toward a deregulated future. Part and parcel with this was the statutory directive to the Commission to "repeal or modify any regulation it determines to be no longer necessary in the public interest."[5] The regulations under consideration in this docket fall into this regulatory-reform domain. Indeed, in recent comments, Chairman Michael Powell understands both that the 1996 Act commits the Commission to this regulatory-reform process whereby useless regulations are discarded and the importance of it:

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[3] *In the Matter of Filing and Review of Open Network Architecture Plans*, CC Docket No. 88-2, Phase I, *Memorandum Opinion and Order*, 4 FCC Rcd 1, ¶ 4 (1988).

[4] *See In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act, 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 No. 96-61; CC Docket No. 98-183, *Further Notice of Proposed Rulemaking*, 13 FCC Rcd 21,531, 21,534 (¶ 5) (1998) ("[A]s a general matter, we seek to eliminate any existing regulatory requirement that no longer makes sense in light of current technological, market, and legal conditions. As a guiding principle, we believe that allowing competitive markets to be driven by market forces, rather than unnecessary regulatory requirements, will produce maximum benefits for consumers, companies, and the nation's economy.")

[5] 47 U.S.C § 161(b).

> The Telecommunications Act of 1996 was a remarkable and important shift in telecommunications policy. Its purpose was to move from a regulated model of telecommunications to a deregulatory competitive markets model. The Act's preamble declares that it purpose is to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers."
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> The collapse of centrally-planned economies around the world (most notably the Soviet Union) can be attributed to many things, but perhaps most central is the lack of oxygen they provide for innovation and entrepreneurs. In a Schumpeterian New Economy where such forces are the engines of prosperity, we must foster competitive markets, unencumbered by intrusions and distortions from inapt regulations. And, most importantly, we have to be careful to see speculative fear and uncertainty in this innovation-driven space for what it is, and not prematurely conclude we are seeing a market failure that justifies regulatory intervention.[6]

This deregulatory spirit springs from the fact that the 1996 Act has opened local exchange markets to competition. The bottleneck, which was at the heart of the *Computer III* and ONA regulations, has been uncorked. ISPs, who once had to rely solely on the transmission services of the BOCs, can now enjoy the fruits of this competitive marketplace either by engaging the services of competitive local exchange carriers (CLECs) or by becoming CLECs themselves.

Competition means more than just choice of a provider. It is itself a guarantor of access to transmission services by BOCs. While it was always in the best interests of the BOCs to sell these services to ISPs and to make innovations to its services to attract and keep ISPs as customers, it is even more so in a competitive local exchange market. As the BOCs are in the business of selling telecommunications services, they have no incentive to discriminate against ISPs. Rather, the incentive is to attract ISPs as customers and to sell them services.

As if that were not enough, ISPs can still access the necessary basic transmission services from the BOCs or their affiliates. Both state and federal laws guarantee non-discriminatory

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[6] Powell, Michael K., Chairman, Federal Communications Commission, THE GREAT DIGITAL BROADBAND MIGRATION, Remarks Made Before The Progress & Freedom Foundation, Washington, DC, December 8, 2000.

access to these services.[7] This means that, even without *Computer III* and ONA, ISPs have a mechanism available to them to insure they have the wherewithal to compete in the information services market.

In their comments, those opposing the efforts of the Commission to eliminate unnecessary regulation have sought to blind the Commission to the unfairness of these regulations. By alleging a series of "bad acts," these commenters hope to convince the Commission that the "monopolist" BOCs still need to be restrained, while their competitors remain unfettered. Yet, these allegations are by and large untrue and unsubstantiated. As will be demonstrated below, information service providers, generally, and Internet service providers, in particular, have the means necessary to compete in this market place and to bring to consumers the services and innovations made possible through competition.

II. The General Information Services Market, Excluding The Internet Service Providers

To get past all the blue smoke and mirrors proffered in the allegations and proposals of many commenters, it is important to divide the ISP world between Information Service Providers, generally, (ISPs) and Internet Services Providers, specifically (Internet ISPs).[8] Viewed from this perceptive, it is clear that ISPs, generally, are not encountering problems in acquiring basic transmission services or in competing with the BOCs' information services activities.

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[7] Because ISPs are not common carriers, they obtain "line side" services just like any other customer of the Local Exchange Carrier. As "line-side" users of telecommunications services, ISPs are assured non-discriminatory access to interstate and intrastate telecommunications services. The anti-discrimination provisions of 47 U.S.C. §202 apply to prohibit "unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services, for or in connection with like communication service" and "undue or unreasonable preference or advantage to any particular person, class of persons, or locality. . . ." The states apply similar nondiscrimination provisions. *See, for example,* California Public Utility Code Section 453 which precludes public utilities from subjecting any corporation or person to any unreasonable preference or disadvantage with respect to rates, charges, services, or facilities.

[8] Most of the commenters represent Internet-SPs: e.g., AISPA, Brand X Internet LLC (Brand X), CISPA, Commercial Internet Exchange Association (CIEA), EarthLink, ITAA, New Hampshire ISP Association (NHISPA), and USISPA. The Commission's use of ISP — as opposed to the former ESP designation — as an acronym for information service providers clouds the fact that not all ISPs are providing access to the Internet.

Indeed, ISPs would look foolish to suggest this were not true. The information services marketplace is large, varied, and not dominated by the BOCs.

In spite of the success that the robust information services market represents, SBC believes it is not attributable to *Computer III* and ONA. BOCs would have, have been, and will continue to provide ISPs basic transmission services because it is good business to do so. Additionally, as repeatedly pointed out in the comments, under present circumstances, both the BOC tariffs and the non-discrimination provisions of state and federal law guarantee such access. Hence, it makes no sense to argue, as some do, to add more Byzantine structures to the non-structural safeguards of *Computer III* and ONA in order to achieve a result that would have been achieved had they never been proposed in the first place.

Focusing for now on the general ISP market and setting aside the discussion of the Internet market, the Commission should be gratified by the lack of evidence that ISPs are being denied either basic transmission services or access to new and innovative services. Over the last 15 years, the *Computer III* and ONA structures have gone under-utilized. Verizon reports that it has "received no new complete requests for ONA services since 1995 and only a handful in the past decade."[9] This is consistent with the experience of the other BOCs. The Rube-Goldbergesque contraption that is the *Computer III* and ONA scheme serves no purpose other than generating worthless reports that go unread.

Even eVoice, who reports having difficulty in obtaining LATA-wide SMDI from Pacific Bell,[10] admits that "[i]f a BOC currently provides the service, eVoice has had relatively little trouble in obtaining it from the BOC."[11] This reported difficulty involving LATA-wide SMDI remains the exception and not the rule.[12] There is a complete absence of proof that BOCs have

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[9] Comments of Verizon (Verizon), pp. 6-7.

[10] See eVoice, pp. 6-7n.11.

[11] Comments of eVoice, Inc. (eVoice), p.25.

[12] eVoice's difficulty is now the subject of an Accelerated Docket request pending before the Enforcement Bureau. Pacific Bell has provided eVoice with a proper response to its new ONA

systematically rebuffed ISP requests for basic transmission services or for new ONA services. ISPs have had 15 years to gather evidence of such improper activity and have produced nothing. A record of this nature does not support the continuation of these regulations, much less an inflation of them, as some propose.

In spite of having only one problem to report,[13] eVoice proposes several new and onerous *Computer III* and ONA requirements. These proposals include copying the Commission on responses to new ONA service requests, posting ONA requests on the Internet, automatic notification of failure of ONA compliance, requiring a date certain in the new ONA service request, limiting the technical-unfeasibility and market-demand defenses, instituting a 90-day service availability rule, instituting binding arbitration, and requiring non-compliant BOCs to pay fines to ISPs.[14] While these proposals add costs and other burdens to BOCs, they provide no additional protection to ISPs.[15] Today, even without *Computer III* and ONA, ISPs are in a position to know when and if services are not being provided to them, to notify the Commission of any such failure to provide service, and to seek resolution through the informal and formal

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service request and has expressed a desire to resolve the dispute without necessity of litigation. It should also be noted that counsel for eVoice and certain other key eVoice personnel are former employees and agents of Pacific Bell Telephone Company's (Pacific Bell) voice-mail affiliate, Pacific Bell Information Services. SBC believes that if called to testify, these former employees would confirm that Pacific Bell Information Services had requested the LATA-wide SMDI service from the ILEC, who had declined to provide the service due to technical and financial feasibility limitations, proving that the ILEC treats affiliated and non-affiliated ISPs alike.

[13] eVoice attempts to make the alleged problem larger than it is. It reports a problem with its request for LATA-wide SMDI[13] and claims that BOCs are not correctly reporting ISP requests. In fact, for Pacific Bell, these two claims are only one. eVoice claims Pacific Bell failed to respond to a 1999 new ONA services request for LATA-wide SMDI and that Pacific Bell failed to report that request in its April 2000 ONA Report. eVoice also claims that Southwestern Bell failed to respond to a similar new ONA services request. Southwestern Bell denies this claim. Regardless, in a 15-year history of *Computer III* and ONA obligations, this represents an excellent record of compliance.

[14] eVoice, pp. 28-33.

[15] SBC does not want to suggest that these proposals have any intrinsic merit, either. They do not. SBC simply wishes to emphasize that these proposals represent more "sound and fury signifying nothing." *See* Further Comments of SBC Communications Inc. (SBC Comments), p. 6 n.13.

complaint processes.[16] Given the 15-year history of these regulations, the alleged benefit to ISPs does not justify these or any other additional regulations or safeguards.

The record in this docket — and certainly the record as reflected in the latest spate of comments in response to the March 7 Public Notice — does not justify continuing *Computer III* or ONA requirements, much less returning to *Computer II* structural separation or adding to those requirements. The total absence of any evidence that such requirements are needed to guarantee ISPs access to basic transmission services is proof alone that deregulation, and not re-regulation, is called for. The variety, health, and scope of competition in the information services marketplace belies any claims by ISPs that BOCs, and BOCs alone, need to shoulder these regulations anymore.

III. Internet Service Providers

In their comments, the subcategory of Information Service Providers, known as Internet Service Providers (Internet ISPs), seek to justify continuing and augmenting *Computer III* and ONA requirements or alternatively abandoning them entirely in favor of structural separation by raising a host of alleged "bad acts." Generally, these "bad acts" include alleged discriminatory treatment in ordering, provisioning, and maintaining DSL services;[17] allegations of "price squeezes"; [18] and maintenance of volume discount plans to favor affiliated Internet ISPs.[19] None of these allegations have any merit. Ironically, these allegations are leveled at SBC in this

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[16] Some commenters make much of the need to change or bolster the Commission's enforcement activities. The fact is that the Commission has already beefed up enforcement, enacting new formal complaint procedures, including the introduction of an Accelerated Docket, and creating a separate Bureau to address enforcement concerns. These enforcement mechanisms have not been tried and found wanting, rather they have not been necessary to ensure access to basic transmission services.

[17] AISPA, pp. 9-12; CISPA, pp. 10-11, 14-15, 21-22; EarthLink, pp.15-16.

[18] AISPA, pp. 7-8; Brand X Internet LLC (Brand X), p. 5-6; CISPA, p. 16-18; EarthLink, p. 10-11.

[19] Brand X, p. 10; CISPA, p. 16; EarthLink, p. 11; and WorldCom, p. 4.

docket; yet, as explained in more detail below, many of the DSL-related "bad acts" are the direct consequence of having to move SBC's DSL services to section 272-like, structurally separate affiliates.[20]

SBC views many of these "bad act" complaints as stemming from the growing pains of a nascent technology and the creation of a separate CLEC operation. SBC concedes that, in the past, its DSL service operations have not met all the service goals they set for themselves. In large part, this can be attributed to the convergence of many factors, including those normally and reasonably to be expected from the implementation of a new and advanced technology, introduction of a new service in a dynamic and volatile economic market, significant market demand for the services, and a contested and unsettled regulatory environment.[21] These factors, coupled with SBC's efforts to manage the logistics of structurally separating the DSL service operations from the SBC BOCs, made necessary under the SBC-Ameritech Merger Conditions, explain past failures to meet service goals.[22] Regardless, the critical point is that Internet ISPs in SBC's service areas have access to DSL services on par with that experienced by the SBC-

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[20] SBC is not suggesting that it is necessary for BOCs to maintain a section 272-like separate subsidiary to provide DSL services, nor that the Internet Access services are being provided by a 272-like affiliate. Rather, SBC is merely pointing out that it is ironic that these sorts of charges are being leveled at SBC when it does maintain a separate subsidiary. SBC reserves the right to move DSL services back into the separate telephone companies when and if permitted under the Merger Conditions.

[21] More than a year and a half after the Commission issued its order instituting structural separation requirements for SBC's DSL operations, the Court of Appeals vacated that order, resulting in the sunset of certain structural separation requirements after a nine month waiting period and the requirement to implement certain other non-discrimination requirements. *Association of Communications Enterprises v. FCC,* No. 99-1441 (D.C. Circuit, Jan. 9, 2001) (*Ascent v. FCC).* In addition, regulatory proceedings are still pending is several states in which SBC provides, or is planning to provide, DSL services.

[22] *In the Matter of AMERITECH CORP. and SBC COMMUNICATIONS INC. for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules*, CC Docket No. 98-141, *Memorandum Opinion and Order*, 14 FCC Rcd 14712 (1999) (Merger Conditions).

affiliated Internet ISPs. Neither *Computer III* nor the ONA regulations are needed for non-affiliated Internet ISPs to obtain access to such services on a nondiscriminatory basis.

a. SBC's Separate, Section-272-like Affiliates

As a result of Merger Conditions, SBC has two, affiliated CLECs providing DSL services: SBC Advanced Services, Inc. (ASI) and Ameritech Advanced Data Services, Inc. (AADS).[23] For the purposes of these reply comments, SBC will use ASI as exemplary. The Merger Conditions permitted Pacific Bell Telephone Company (Pacific Bell), Southern New England Telephone (SNET), Southwestern Bell Telephone Company (SWBT) to provide to ASI the ADSL service derived from the integrated combination of an unbundled loop, a DSLAM, and spectrum splitters at each end of the unbundled loop where the unbundled loop is also used to provide voice-grade service,[24] until line sharing was provided to unaffiliated providers of "Advanced Services"[25] within the same geographic area.[26] Pacific Bell, SNET, the Ameritech operating companies, and SWBT have now made line sharing available to unaffiliated providers of advanced services; ASI now provides ADSL service in their territories in place of those four ILECs.

During that period before the transfer of "Advanced Services" to ASI, Pacific Bell and SWBT offered DSL transport services in their states as a tariffed product, following the guidelines laid out in the documented and effective interstate tariff filed with this Commission. Pacific Bell and SWBT offered DSL transport to any Internet ISP that wished to purchase the service at a rate that ranged from $30 to $59 per month. The range in DSL transport pricing

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[23] AADS also does business as ASI.

[24] Referred to in the Merger Conditions as "Interim Line Sharing." *See* Merger Conditions, Appendix C, at paragraph 3(d); 4(n).

[25] *See* The Merger Conditions, defined in "Conditions."

[26] *See* Merger Conditions, Appendix C, at paragraph 3(d); 8(a).

varied based upon term and volume commitments, criteria that were documented and approved in the tariff filings.

The volume discount plan, which required higher annual volume commitments, and the basic price were documented in tariffs filed with this Commission. A price point of $30 was available to any Internet ISP willing to meet the term and volume criteria at the highest level of this plan.[27] This pricing structure, made effective as part of the tariff filings, was intended to provide a reasonable and competitive pricing structure for small, medium, and large Internet ISPs. At least five, non-affiliated Internet ISPs took advantage of the volume discount plan. It is not true that the plan benefits SBC's affiliated Internet ISPs alone, as there are numerous non-affiliated Internet ISPs whose market share could easily justify volume and term commitments at the highest discount levels.[28] Regardless, responding to demands from some Internet ISPs, ASI has eliminated volume discount plans on a going-forward basis resulting in a price decrease for ISPs generating smaller volumes. SBC's affiliated Internet ISPs continue to be entitled to discounts under the terms and conditions of the volume discount plan, but nonetheless have chosen to pay the higher rate applicable to Internet ISPs who have no term or volume commitments.[29]

After the transfer of Advanced Services from Pacific Bell and SWBT to ASI, ASI continued to adhere to the pricing outlined in the approved tariffs. In August 2000, ASI instituted changes to the standard price structure for DSL transport, with prior notification to Internet ISP customers. Under the new volume structure, ASI reduced the range to $30 to $37,

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[27] Lesser discounts were available for lower volume and term commitments.

[28] For example, AOL Time Warner, NetZero, BlueLight.com, MSN, RoadRunner, Excite@Home and Mindspring/EarthLink are reported to have subscriber levels greater or comparable to that of SBC's affiliated Internet ISPs.

[29] Previously executed volume discount plan subscription agreements remain in force. Therefore, the SBC-affiliated Internet ISPs continue to be liable for any shortfall liabilities under the volume discount plan. The decision to pay the higher rate for the DSL services was made to neutralize concerns over the mere possibility of price discrimination favoring SBC's affiliated Internet ISPs.

closing the gap between small and large Internet ISP customers. On April 4, 2001, ASI lowered its prices again, lowering them for non-affiliated customers without volume commitments. ASI prices for ADSL service now range from $35 to $89. With the passage of time, SBC hopes that certain efficiencies and improvements may allow for even more price changes.

b. The "bad act" allegations are unsubstantiated and untrue.

In their comments, several Internet ISPs allege that SBC has engaged in a so-called "price squeeze," suggesting that the difference between the price charged Internet ISPs for the DSL service and the price the SBC-affiliated Internet ISP charged consumers for the DSL Internet access service was not sufficient to cover costs of providing the Internet access service.[30] The commenters are simply wrong, and they are intentionally misleading the Commission. The monthly recurring price paid by Internet access consumers is not the sole source of revenue for any Internet ISP. Potentially, they can receive revenues from a myriad of sources, including, but certainly not limited to:

Internet advertising fees;

- vertical-service offerings, such as personal web pages, additional electronic mailboxes, static IP addresses, domain name registration services, and electronic publishing services;
- up-sale opportunities, such as higher bandwidth, web hosting services, electronic commerce services, and home networking solutions;
- direct-marketing opportunities, such as the sale of software, CPE, telecommunications services, and subscriber lists.

The monthly recurring charge is merely one source of revenue used to cover the cost of providing the Internet access service.

The commenters also fail to point out that the retail price for the Internet access service is substantially constrained by market forces. In those locations where consumers have a choice

[30] EarthLink at 10-11; CISPA at 16-18.

between Cable Modem Services and DSL Internet access services, Cable Modem Service providers, e.g., Excite@Home and RoadRunner, have set the market expectation for high-speed Internet Access below or comparable to the prices charged by the SBC-affiliated Internet ISPs. In the current Internet marketplace, competition is a significant factor in setting price. It is unclear what the Internet ISPs would have SBC do. Some would urge SBC to raise it DSL Internet Access price; yet, this is impractical given the market expectation created by competitive offerings from the Cable Modem ISPs. Others would urge SBC to lower price of the DSL service; yet, this, of course, ignores the cost of providing the service and the market effect of comparable service offerings from CLECs, such as Covad Communications, IP Communications, and others. The "price squeeze" allegations are merely deceptions intended to lead the commission to impose structural separation and other unnecessary regulations that would do nothing other than hamstring competition by BOC-affiliated Internet ISPs.

EarthLink alleges SBC engaged in unreasonable business practices and price discrimination when it allegedly required that SBC be its exclusive DSL provider in SBC's service area, and that the SBC be permitted to market services to the EarthLink's subscribers using CPNI provided by the ISP.[31] Again, EarthLink's allegations are without merit. SBC offered the same volume and term discounts to all Internet ISPs, whether or not they used SBC as the exclusive provider of DSL service in the SBC service areas. In addition, SBC offered sales commissions at various rates to Internet ISPs who had not executed a volume discount plan subscription agreement in exchange for exclusive and non-exclusive commitments to market SBC's DSL services. SBC did at one point make the offer to reduce the price of the DSL service if EarthLink would agree to, among other things, allow SBC to make up the lost revenue by direct marketing products to EarthLink's customers. EarthLink declined that offer and opted to continue to purchase DSL service under the terms of their existing volume discount plan

[31] EarthLink at 13.

subscription agreement. EarthLink's allegations of unreasonable business practices are simply unfounded.

Some commenters allege illegal cross-subsidy and other accounting misconduct. Such allegations reflect a fundamental lack of understanding of the regulatory realities. The financial backing of SBC-affiliated Internet ISPs is provided solely by SBC's shareholder — not its ratepayers. It is well established that the accounting safeguards assure that the expense, investment and revenues associated with the provision the Internet access service is removed from the "ratemaking mechanism," whether the SBC-affiliated Internet ISPs is integrated into, or structurally separated from, the BOC.[32] Under a "Price Caps" form of rate regulation, which applies in some form in all SBC states and in the interstate jurisdiction, there is no opportunity to raise rates for "monopoly" services because such rates for those services are "capped." The potential for cross-subsidy is significantly overstated, and, given the years of experience and the opportunity for audit, such allegations are not appropriate grounds for imposing structural separation requirement or additional unnecessary regulations.

CISPA alleges discrimination because SBC-affiliated Internet ISPs could afford to loose more than unaffiliated Internet-ISPs. Many Internet ISPs, such as AOL Time Warner, AT&T Worldnet, MSN, and RoadRunner, are backed by large domestic and international corporations, who, like SBC, look to shareholders to fund Internet access lines of business. Most of these ISPs are not subject to the accounting safeguards to prevent cross-subsidy. It is absurd to assert that the simple fact that an Internet ISP has a strong corporate backing is unfair. Put another way, when it comes to fairness in business, size alone does not matter.

Some commenters allege certain pricing and billing practices are predatory or discriminatory. Some of the allegations center on SBC's

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[32] The accounting safeguards are designed to assign, attribute and allocate costs so as to remove direct and indirect costs and investment associated with any information service offering from the results of operations prior to calculating the rate of return from so-called "monopoly" operations. As a result, "monopoly" ratepayers never bear the cost of the information service offering.

- reducing commission payments made to ISP for use of SBC's DSL services;
- imposing service order charges on manually processed orders;
- imposing installation fees where customers do not self-install the DSL services; and
- eliminating "split-billing" arrangements.[33]

As with any new business, product or service, it was necessary to experiment with the pricing practices in order to recover costs, recover costs from cost-causation, and create incentives to encourage or discourage certain cost-related activities. SBC has offered the DSL service under the Merger Conditions as a permissibly detariffed service, and has learned over the first year of its operations that certain pricing arrangements were increasing its cost. In order to keep the price for the DSL service down, SBC made decisions such as those enumerated above.

These business decisions make sense in context. SBC reduced one-time commission payments to allow it to reduce the recurring price of the DSL service for the smaller Internet ISPs with the aim of encouraging them to keep the DSL service installed for longer periods. SBC imposed service order charges on manual order as an incentive to Internet ISPs to mechanize their order processing activities in order to allow SBC to reduce the need for high cost labor. SBC imposed and increased charges for technician-assisted installations in order to shorten the installation period and decrease labor costs. SBC eliminated the split-billing arrangement in order to reduce costs as well. By billing Internet ISPs for the DSL service, the customer will receive one bill for the DSL service and the Internet access service, which reduces the potential for record keeping error and reduces the cost of billing, collection, and inquiry activities. Internet ISPs who wish to obtain billing and collection services from SBC may obtain such services on the same rates, terms and condition available to SBC's affiliated Internet ISPs.

All the measures of which the commenters complain are rationally related to a legitimate effort to reduce costs, improve service, and compete effectively with CLECs and Cable Modem

[33] "Split-billing" is where the DSL service provider bills the end-user for the DSL services (instead of billing the Internet ISP), and the Internet ISP bills the end-user separately for the Internet access service.

providers in the market for broadband services. They are not predatory acts or unfair business practices, but rather they are the normal consequence of a competitive marketplace. Structural separation or other regulatory measures will do nothing to alter the need for experimentation and cost reduction, and it is inconceivable that the public interest could be served by imposing additional burdensome regulation.

c. ASI is not discriminating in favor of its affiliated Internet SP.

Claims of discriminatory treatment with respect to provisioning and maintenance are unjustified, as well. SBC has generated data that shows that SBC's affiliated Internet ISPs and unaffiliated Internet ISPs received comparable treatment with respect to provisioning and maintenance.[34] Attachment A depicts the results of a study to determine ASI's performance in meeting the original objective due date (OBJ DD) of new connect ADSL orders for affiliated and unaffiliated Internet ISPs in its states. The study period covers September 2000 to March 19, 2001. As can be seen from Attachment A, the "on time" performance for affiliated and unaffiliated Internet ISPs is essentially the same. While the volume of orders for a given period may vary between affiliated and unaffiliated Internet ISPs, the "on-time" performance for each remains essentially the same.

Attachment B depicts the "mean time to repair" performance for affiliated and unaffiliated Internet ISPs in its states. As can be seen from Attachment B, the Mean Time to Repair ("MTTR") performance for affiliated and unaffiliated Internet ISPs, while not precisely the same, is non-discriminatory. The volume of repair request for a given period may vary between affiliated and unaffiliated Internet ISPs. This variance in volume accounts for the asymmetrical performance between affiliated Internet ISPs and unaffiliated Internet ISPs in these

[34] SBC notes that some commenters have tried to dilute the value of these performance measures in anticipation of their being produced. Other than by using unreliable anecdotal "evidence," SBC is unsure how these same commenters would intend to prove that SBC's affiliates have acted discriminatorily. SBC's records are reliable evidence that they, SBC's affiliates, have acted well within the law.

states. The "MTTR" performance for each entity averaged over the four-month period clearly does not favor the affiliated Internet ISPs.

ASI's billing practices do not discriminate in favor of SBC's affiliated Internet ISPs, either. Typically, ASI bills the Internet ISP for its ADSL service since ASI's customers are almost exclusively Internet ISPs. Since ASI began providing service, ASI has encountered billing problems beyond its original estimates. These problems are generally associated with the "start up" of new processes and systems, and more resources and effort were required to correct system problems than ASI's original business plan contemplated. A few customers have received duplicate bills. In some instances, end users were billed for the ADSL service when the correct billing entity should have been the Internet-SP. ASI has put in place the necessary resources and management controls to rectify its billing problems and ASI expects billing operations to return to normal this quarter (the first quarter of 2001). At no time during the "start up" period were unaffiliated Internet ISPs singled out for discriminatory billing practices. The billing errors that occurred during this period affected both affiliated and unaffiliated Internet ISPs equally.

ASI is a CLEC and as such is required to and does deal with Pacific Bell or SWBT in the same fashion as unaffiliated CLEC's. This means ASI must place orders for UNEs and Special Access utilizing the same interfaces as are made available to unaffiliated CLEC's by Pacific Bell or by SWBT. Since the end of "Interim Line Sharing" as specified in the Merger Conditions, ASI has used the same "line sharing" UNE offered to all CLECs, provided by Pacific Bell and SWBT, in order to provision its ADSL transport service. Since ADSL is a designed service, each individual order must be designed based on the individual Internet ISP's requirements. When an end user decides to switch from one Internet ISP to another, both of which utilize ASI's ADSL transport service for high speed Internet access, ASI must transmit one order to Pacific Bell or SWBT that disconnects the existing service and a separate order that reflects the new design of the alternate Internet ISP and connects the new service. This is necessary to maintain the synchronization of the ASI provisioning and maintenance databases with Pacific Bell's or

SWBT's provisioning and maintenance databases. While this process may be considered by some to be burdensome, it is the only process available to any Internet-SP, affiliated or unaffiliated, and does not result in discriminatory treatment since any end user switching from one Internet ISP to another must encounter the same process whether switching from a SBC-affiliated Internet ISP to an unaffiliated Internet ISP or between unaffiliated Internet ISPs.

ASI adopted the SBC Code of Business Conduct (Code) for its employees. All of the provisions of the SBC Code of Business Conduct apply to all ASI employees. Attachment C, which is a document that was prepared to reinforce the Code and later covered with all ASI service technicians, makes it quite clear that ASI's policy is

- to prohibit the disparagement of any Internet-SP's service;
- to prohibit the sale or promotion of an Internet ISP or its services while installing ADSL service for another Internet-SP; and
- to prohibit installation of, or offering to install, computer software used by one Internet ISP when installing ADSL service for another Internet-SP.

Moreover, Attachment C makes it clear that violations of this policy shall result in disciplinary action, up to and including dismissal of the employee or termination of the contractor. ASI periodically reviews the Code with all service technicians to maintain continuity of the work force. Whenever an employee was found to have violated the Code, serious disciplinary action followed, and efforts were undertaken to address the complaining Internet ISP's concerns.

Commenters allege that SBC has engaged in discriminatory marketing practices. Again, these allegations are both unsubstantiated and untrue. CISPA alleges that SBC is "gaming the loop qualification system." Aside from the fact that they offer no evidence whatsoever to support the allegation, it is patently untrue. CISPA's "gaming" allegation is that unaffiliated Internet ISPs have received responses from SBC's loop qualification system that DSL service

was not available to a particular end-user, and that SBC's affiliated Internet ISP then used that information to contact the end-user a month later.[35] SBC denies this charge.

First, it would be a violation of SBC's Code of Business Conduct to use ISP information in this manner, and had the Internet ISP brought a specific instance to SBC's attention, it would have been investigated and disciplinary action would have been taken against the employee. Second, the loop qualification system provided for use by Internet ISPs is constantly being updated to reflect network changes and deployment of remote terminals under SBC's Project Pronto, and, as a result, a loop that was not "qualified" on a particular day, could later become qualified. Third, customers shop for service; thus, it would not be surprising that a customer, who called an unaffiliated ISP on a particular day before DSL service was available, would call the SBC-affiliated Internet ISP on a later day when DSL service became available. What CISPA alleges as misconduct is more likely the impact of the customer exercising his right to choose an Internet ISP. There is nothing discriminatory about it.

CISPA alleges anecdotally that SBC has a "greater ability to have line conditioning issues resolved" than competing Internet ISPs, and that an affiliated Internet ISP has the ability to "make a single blanket request" for service while unaffiliated ISPs have to request service on a "CO-by-CO [central-office-by-central-office] basis."[36] The performance metrics for Original Due Date Met and MTTR discussed above do not support the assertion that line conditioning issues get resolved faster for affiliated Internet ISPs than for unaffiliated Internet ISPs. ASI, as a CLEC, orders line-sharing UNEs from the ILEC using the same processes available to competing CLECs, and the intervals for provisioning the line-sharing UNE for affiliated and unaffiliated CLECs are tracked and reported to the Commission as a "Performance Metric." ASI

[35] It is unclear whether CISPA is referring to the loop qualification system that provide theoretical loop length information or whether they are referring to ASI's CPSOS system that overlays DSLAM deployment data over the theoretical loop length to indicate that DSL is, in fact, available to a particular end user.

[36] CISPA at 14-15.

receives conditioning on line-sharing UNE loops that is no better or worse than that which is experienced by unaffiliated CLEC. As a consequence of the ILEC's obligation to provision the line-sharing UNE on a nondiscriminatory basis, ASI provides DSL service using line-sharing UNEs on the same nondiscriminatory basis to unaffiliated and affiliated Internet ISPs. The allegation of favoritism is more than mere allegory, it is pure fiction.

EarthLink alleges that system used by unaffiliated Internet ISPs to place orders for DSL services is inferior to the ordering system available to SBC's affiliated Internet ISPs. It is unfortunate, but true, that ASI experienced some difficulties with the systems used to order and provision DSL services for a period of time following the transfer of service to ASI. Nevertheless, to the extent problems existed, they were experienced by affiliated and unaffiliated Internet ISPs alike. Affiliated and unaffiliated Internet ISPs use the same systems for processing orders for DSL services. Personnel of the affiliated Internet ISPs do not have any systems access superior to that made available to unaffiliated ISPs. To the extent the process in lengthy, cumbersome, manual, mechanized, or prone to error (manual processes are particularly prone to error), it is equally so for all Internet ISPs. ASI has gone to some length and expense to accommodate Internet ISP of any size, and has consciously created both manual and mechanized processes in recognition that some smaller Internet ISP may not have or desire to develop the tools to exchange records electronically. EarthLink would like the Commission to believe that ASI diverted resources to solve the problems experienced by its affiliated Internet ISPs at the expense of unaffiliated Internet ISPs. Perhaps EarthLink held that inaccurate and unsubstantiated belief because that is what it would have done as an unregulated service provider, but ASI, as a common carrier, did not have that option. EarthLink's experience with ASI's order systems was not unique to EarthLink or to unaffiliated Internet ISPs. None of the remedies proposed by EarthLink with respect to ordering system parity, had they been in effect in 2000, would have improved EarthLink's experience. And they would do nothing but add complexity, cost, and the potential for error. Accordingly, they should be rejected.

In sum, opposing commenters have failed to prove their allegations of misconduct and they have failed to demonstrate that the elimination of the *Computer III* and ONA regulations would impede their access to DSL transmission services. Indeed, without evoking either *Computer III* or the ONA regulations, certain commenters have been able to air, and in certain cases resolve, their alleged grievances.[37] Regardless, mechanisms are in place, coupled with the realities of the marketplace, that guarantee continued, non-discriminatory access by Internet ISPs to DSL services from the BOCs or, in the present case with SBC, from a non-BOC affiliate.

IV. Irrelevant Issues and Issues Outside the Scope of These Proceedings

Several commenters proposed issues that fall outside the scope of this docket and/or have already been aired before the Commission in other proceedings. The issues include the request to the Commission to grant ISPs access to "dry copper,"[38] to allow access to AIN Triggers,[39] to assert its authority to "investigate and sanction" section 251 violations,[40] to preserve the so-called "reciprocal" compensation scheme,[41] and to require ILECs to "hand-off aggregated data

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[37] CISPA has a proceeding pending before the California's Public Utility Commission; EarthLink has requested that the Enforcement Bureau consider a possible section 201/202 formal complaint for the Commission's Accelerated Docket; and the Texas ISP Association, while not a commenter in these proceedings, has successfully resolved certain DSL-service related issues with ASI to the benefit of its membership.

[38] Comments of New Hampshire ISP Association (NHISPA), p. 2. The short answer to this is that "dry copper" is another term for "local loop" and loops are unbundled network elements (UNEs). To get UNEs, Internet-SPs need to be telecommunications carriers. *See* SBC Comments, pp. 9-12.

[39] Comments of Low Tech, Inc., p. 2. Low Tech has admitted in its own comments that the Commission has considered this request and rejected it. *See In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Third Report and Order*, 15 FCC Rcd 3696, 3877 (¶ 407) (1999). Low Tech offers no justification for raising this matter in this proceeding and offers no reason that the Commission ought to reconsider its prior ruling. Low Tech's insertion of this issue in this docket amounts to an inappropriate petition for reconsideration out of time.

[40] USISPA, p. 13. SBC knows of no facts that suggest that the Commission has been anything less than diligent in enforcement efforts under the 1996 Act, especially as they pertain to local competition. As stated above, the Commission has taken steps to build up its enforcement muscles and has not shown itself shy in flexing them.

traffic that originates on a DSL-equipped loop to a D-CAP [Data-oriented Competitive Access Provider] at the ILEC's central office."[42] The insertion of these issues in these proceedings is, at best, inappropriate.

SBC was encouraged to see that non-BOC commenters recognized both that the Commission lacks authority to provide ISPs with section-251-type unbundling[43] and that ONA "unbundling" is fundamentally different from section 251 unbundling.[44] Some commenters, recognizing that section 251 is limited to telecommunications carriers and not wishing to propose bad public policy but also not wishing to support "BOC positions," chose to remain silent on this issue.[45] After all was said and done, while some ISPs may want section 251 unbundling, they

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[41] ITAA, p. 24. Recently, in Dockets Nos. 96-98 and 99-68, the Commission announced new rules "to clarify the proper intercarrier [sic] compensation for telecommunications traffic delivered to Internet service providers." FCC News Release, "Federal Communications Commission Resolves Carrier Compensation Rules for Internet Traffic," April 19, 2001. These rules were issued to address matters on remand from the District of Columbia Court of Appeals. The Commission also announced a Notice of Proposed Rulemaking in CC Docket No. 01-92 (FCC 01-132) "to begin a fundamental examination of all forms of intercarrier [sic] compensation." FCC News Release, "FCC Initiates A Broad-Ranging Proceeding to Explore Ways of Reforming Intercarrier Compensation Rules," April 19, 2001. *See In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Notice of Proposed Rulemaking*, FCC 01-132 (rel. April 27, 2001). Concerns about reciprocal compensation are best addressed within the context of those proceedings.

[42] *Id.*, at p. 26. This proposal is beyond the scope of this proceeding. As with similar suggestions, this proposal is best discussed within the context of CC Docket 96-98, concerning the appropriate unbundling required for telecommunications carriers under section 251 of the 1996 Act.

[43] USISPA, pp. 10-11.

[44] AT&T, p. 7 ("As the Commission observed in its *1998 FNPRM*, the Commission's section 251 unbundling regulations and the ONA unbundling obligations differ significantly in both scope and purpose. 'Unbundling under section 251 includes the physical facilities of the network,' and is designed to make it possible for new entrants to purchase those facilities and compete with the ILECs in the provision of telecommunications services. *1998 FNPRM*, 13 FCC Rcd. at 6090-91 (¶93). 'Unbundling under ONA, in contrast, emphasizes the unbundling of *basic services*, not the substitution of underlying facilities in a carrier's network.' *Id.* (emphasis added).") SBC notes that it is more than ironic and truly scandalous for AT&T to lecture BOCs about the need to unbundle their network services to ISPs (meaning Internet-SPs) when AT&T has fought so hard to keep from having to open up its cable network to the same group. This in spite of AT&T's lion's share of the cable market.

[45] *e.g.*, WorldCom.

failed to make a case either that such was necessary or that the Commission has authority to provide it.

V. Conclusion

The vast majority of the comments from non-BOC parties came from Internet ISPs, claiming various problems with DSL service. These comments do not support continuation of the *Computer III* and ONA regulations. Not only are the allegations untrue, they miss the point of the proceeding. *Computer III* and the ONA requirements are unnecessary to insure that Internet ISPs have access to broadband telecommunications services. Other existing statutory and regulatory rules already provide for that access. What's more, with the growth in local telephone exchange competition, the market itself will be the guarantor of such access. It is clearly in the best interests of telephone companies, like the BOCs, to make sure that DSL and any future broadband telephonic service is the most ubiquitous means of accessing the Internet. This demands that the BOCs facilitate DSL service, even in the hands of CLECs.

If there has been any failure on the part of BOCs to fully maintain all aspects of the *Computer III* and ONA obligations, such as the publication of CEI plans, it probably results from non-use. Having saddled the BOCs with these onerous regulations, the ISPs have ignored them. This shows that they were not necessary when first enacted and that they are not necessary now. The fact that any alleged failure in this regard has not impeded competition in the information services markets one iota speaks louder than the comments filed in these proceedings against lifting these burdens. Not content with ignoring the present regulations, these ISPs seek to have the Commission impose additional regulations they, the ISPs, and others can ignore in the future. Such is the way of the old regulatory paradigm now rejected by Congress. The future is de-regulation and the level playing field where market forces, and not regulations, prevail.

Respectfully submitted,

SBC Communications Inc.

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Its Attorneys

April 30, 2001

ASI-Central ADSL ISP Study

ASI-Central (5-State) Results:

Month	September	October	November	December	January	February	March (Thru 03/19)	Cumulative
Combined								
Total Orders	10944	12242	10929	12263	13877	22984	14717	97956
Orders OBJ DD Met	7212	7785	9360	11511	11070	21096	13679	81713
% Met	**65.90%**	**63.59%**	**85.64%**	**93.87%**	**79.77%**	**91.78%**	**92.95%**	**83.42%**
SBC Affiliate								
Total Orders	10442	11369	9751	11019	13245	20480	13146	89452
Orders OBJ DD Met	6859	7127	8282	10304	10595	18757	12173	74097
% Met	**65.69%**	**62.69%**	**84.93%**	**93.51%**	**79.99%**	**91.59%**	**92.60%**	**82.83%**
Non Affiliate								
Total Orders	502	873	1178	1244	632	2504	1571	8504
Orders OBJ DD Met	353	658	1078	1207	475	2339	1506	7616
% Met	**70.32%**	**75.37%**	**91.51%**	**97.03%**	**75.16%**	**93.41%**	**95.86%**	**89.56%**

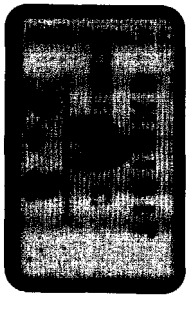
Note: Totals exclude any DSL orders completed prior to OBJ DD and all D Orders.

ASI-West ADSL Study

Cumulative Results:

Month	September	October	November	December	January	February	March (Thru 03/19)	Cumulative
Combined								
Total Orders	2666	30430	35367	22367	22560	30096	32682	176168
Orders OBJ DD Met	2022	24804	27390	16939	18440	21266	23251	134112
% Met	**75.84%**	**81.51%**	**77.45%**	**75.73%**	**81.74%**	**70.66%**	**71.14%**	**76.13%**
SBC Affiliate								
Total Orders	2114	24082	26827	18273	18837	23643	26531	140307
Orders OBJ DD Met	1601	19678	20737	13810	15342	16309	18106	105583
% Met	**75.73%**	**81.71%**	**77.30%**	**75.58%**	**81.45%**	**68.98%**	**68.24%**	**75.25%**
Non Affiliate								
Total Orders	552	6349	8540	4094	3723	6453	6151	35862
Orders OBJ DD Met	421	5127	6653	3129	3098	4957	5145	28530
% Met	**76.27%**	**80.75%**	**77.90%**	**76.43%**	**83.21%**	**76.82%**	**83.64%**	**79.55%**

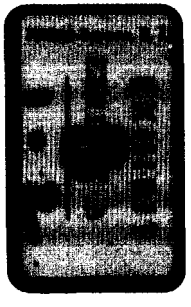
Note: Totals exclude any DSL orders completed prior to OBJ DD and all D Orders.



ASI-Central
ISP Mean Time to Repair (MTTR) Study

Month	September	October	November	December	January	February	March (Thru 03/19)
Combined							
Total Trouble Reports	404	603	457	579	1922	7757	4378
MTTR (Hours)	**41.17**	**33.38**	**56.69**	**58.51**	**59.83**	**49.67**	**68.23**
SBC Affiliate							
Total Trouble Reports	335	529	378	504	1839	7354	4115
MTTR (Hours)	**47.21**	**35.96**	**60.93**	**60.71**	**59.93**	**49.44**	**64.31**
Non Affiliate							
Total Trouble Reports	69	74	79	75	83	403	263
MTTR (Hours)	**11.81**	**15.41**	**36.4**	**43.72**	**57.41**	**53.89**	**65.13**

Note: Study based upon Trouble Ticket closures for the calendar month.

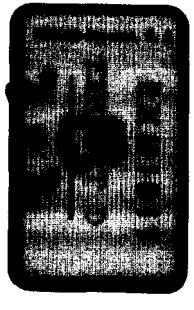


ASI-West
ISP Mean Time to Repair (MTTR) Study

Cumulative Results:

Month	September	October	November	December	January	February	March (Thru 03/19)
Combined							
Total Trouble Reports	2442	1107	2811	2638	3066	4004	2662
MTTR (Hours)	**59.76**	**65.02**	**115.77**	**39.29**	**47.62**	**37.78**	**42.12**
SBC Affiliate							
Total Trouble Reports	1855	768	2064	1909	2177	2744	1888
MTTR (Hours)	**61.36**	**54.27**	**123.55**	**40.59**	**52.63**	**36.72**	**29.93**
Non Affiliate							
Total Trouble Reports	587	339	747	729	889	1260	781
MTTR (Hours)	**54.68**	**89.37**	**94.27**	**35.88**	**35.35**	**40.08**	**41.54**

Note: Study based upon Trouble Ticket closures for the calendar month.



ASI Policy Regarding Conduct During Installation and Maintenance of ADSL Services

SBC Code of Business Conduct

As an employee of SBC Advanced Solutions, Inc. (ASI), you have previously read, acknowledged and agreed to the SBC Code of Business Conduct (Code). This Code, especially the provisions relating to compliance with the Law and Fair Competition, applies to all ASI employees installing and maintaining ADSL services, whether on behalf of ASI, an affiliated company or an unaffiliated Internet Service Provider (ISP).

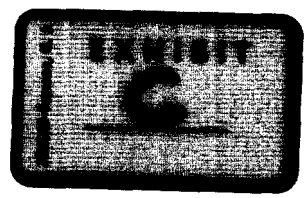
Policy

ISPs are a valued and valuable customer for, and sales channel of, ASI ADSL services. ASI technicians or contractors installing ADSL services for an ISP shall maintain the highest professional and ethical standards. The end user is the customer of the ISP and that customer ISP relationship must be honored. ASI's policy is to (i) prohibit the disparagement of any ISP's services; (ii) prohibit the sale or promotion of an ISP or its services while installing ADSL service for another ISP; and (iii) prohibit installation of, or offering to install, computer software used by one ISP when installing ADSL service for another ISP. The violation of these rules shall result in disciplinary action, up to and including dismissal of the employee or termination of the contractor.

Identification of the ISP

To ensure compliance with the foregoing policy, each time a service order for installation, repair, maintenance or troubleshooting for ADSL is handled by an ASI technician or contractor, the ISP must be identified. This is critical when contact with the ISP customer is involved.

The following examples show a service order where ISP ABC INC. is the ISP who has resold the service. The field is shaded where the ISP is identified.



Identification on the DOIWR Screen

```
COMMAND                    WFADO: POTS INST WORK REQUEST
(DOIWR)      /FOR
CENTER SWBASISSDAC          COMM 08 04 00 0500P              07/27/00 11:37
CDT
JOBID N628715SW    TERM 01 OF 01 #CKTS 01 JSTAT PAC HDLG OK  JT
ISJRX  ES
TN/CKTID T 45/ACGS/817/861/3310
REACH 8178613310
NAME ISP ABC INC.                          ACC A  A 0800A B 0500P
ADDR 1301 BENNETT DR ARLINGTON TX    WC 817274  RTE DEF   DAA/AA
274 1001 LNP
LOC                                        CSU HFR    PRICE 000:00 TECH
PRICE 000:00
ORD ORIG NA4M62R  TSP
ASSIGNED          TEC     SVY N STDT 08 04 00 MCN NONE
PST N
LAST UPD 07 15 00 1239P SUPP   ORDSTAT P     FDD          TDD
RRSO
 RO
CRO
COMMENTS SELF INSTALL

JOBPRI 0
CKT      TN/CKTID             CSU     TEST RESULTS
RCVD
 1 45/ACGS/817/861/3310     HFR
USOCS
 2
I 01 HFR
 3
I 01 AJABE
 4
 5
 6
 7
F1    CBL DRI         PR 0001          CBL             PR      OVRVST
DS   RJ
DOS006I FIND SUCCESSFUL
```

Identification on the OSSOI2 Screen

```
COMMAND          WFAC: ORDER INFORMATION (OSSOI2)
/FOR

07/27/00  11:51 CDT
 ORD N628715SW                      CKT T 45/ACGS/817/861/3310
 TRK SWS188877001              OLD CKT
 CAC SFV2WW2  WK                    ACT A   OST P   TSP          PON
 RCLO                                                ASSOC ORD
 CRO                                                       RO
 RCSO                    PROJ WINEXP                  AOD
 CUS/BTN    817 861 3310          ESV                              AVN
 CUS ACCEPT/ADV
 N ISP ABC INC.                 1301 BENNETT DR ARLINGTON TX
 P1
 P2 ELIZABETH SPOONER       1301 BENNETT DR ARLINGTON TX
817 861 3310
 WC   817274  CS                CSU HFR          CS#                DOC
20BM OBJ   06:00
 IMSC          S/T              ACCT          RTI N SUB_DM N SUB_NA N
OWNER   OCS
 LATA SW552 MCOI N              TOS ¬            TEST Y MEASBY OQS
MEAS Y        MACT A  IA
 INSV                                SERVING LINKS 001 002
 -------  INST WORK UNITS  ---------       :       --------  MAINT WORK UNITS  ---
-----
 FORM#                               :
 LINE                                :
 COUNT                               :
 RMK

 SSC783I  FORWARD COMPLETED
```

Identification on the DOSOI Screen

```
COMMAND                WFADO: SERVICE ORDER IMAGE (DOSOI)
/FOR
 CENTER SWBASISSDAC  TECH EC       ASGN         TECH PRC 000:00
07/21/00 13:06 CDT
 JOBID N628715SW     TERM 01 OF 01  SUPP     JOBSTAT PAC  HDLGCODE
OK    JT ISJRX

 START PG 001 ******* PAGE 002 OF 005   | ******************** PAGE
003 OF 005
 ANR    L,C,M                           |        999 999-9999
 ZANR   L,C,M                           | SID    07-14-00
 SOPY   SOPAN                           | EIRD   07-18-00
 IDSA   ASL                             | AD     07-25-00
 ZWC    817274                          | RID    07-25-00
 TRAK   ZSWB                            | WOT    07-27-00/FCD 07-31-
00
 ---LSTG                                | PTD    08-02-00
 INP    (NON-PUB) ISP ABC INC.            | ECO    SS2/OCO MWD/CCO
MWD
 ILA    4675 MACARTHUR CRT              | ZTPM  13
        /DZIP 92660                     | ---DIR
 ISA    1301 BENNETT DR,                | IDEL  NONE
        ARLINGTON,TX                    | ---BILL
        /DZIP 76013                     | IBN1 ISP ABC INC.
 ZTPA   JONG JACKSON                    | IBA2  4675 MACARTHUR CRT
 ---CTL                                 | IBA3  STE 1400
 WCO    GHQ ASI CPSOS MOG               | IPO   NEWPORT BEACH,CA
92660
        999 999-9999                    | IZBTN 057 003-0771
 SLSN   NONE                            | IBILP 03
 DOS233I FORWARD/BACK SUCCESSFUL

 COMMAND                WFADO: SERVICE ORDER IMAGE (DOSOI)
/FOR
 CENTER SWBASISSDAC  TECH EC       ASGN         TECH PRC 000:00
07/21/00 13:24 CDT
 JOBID N628715SW     TERM 01 OF 01  SUPP     JOBSTAT PAC  HDLGCODE
OK    JT ISJRX

 START PG 001 ******* PAGE 004 OF 005   | ******************** PAGE
005 OF 005
 PG     1                               |            /XCLS
45.HFGS.984525.
 817 861-3310                           |            .SUV
 N628715                                |            /VCI 454I.35Z
 ITAR   ARN                             |            /VPI 02I.00Z
 ICNUM B10D                             |            /PROV CO LS
 IDI    00000000000180080825            |            /SN JONG
JACKSON
 IPCL   A                               |            /LQ 13
 ---RMKS                                |            /MTP N
 RMK    MECH DSL ORDER                  |            /ADSR
 ---S&E                                 |            /LCON
ELIZABETH
```

```
 I      HFR    /EAC A                          |                SPOONER
               /LSO 817 274                    |                817 861-3310
               /ANR L,C,M                      |                /TN 817 861-
3310
               /CLT 45.ACGS.817.               | I      D3EVP
               861.3310                        | I      AJABE /LSO 817 274
               /UNN1 SWB                       |                /ANR L,C,M
               /XPOI FTWOTXCRH03               |                /SPP VT1/TA
12
               /IHST BROADDIGITAL ISP          | PG     2L
 DOS233I FORWARD/BACK SUCCESSFUL (END REACHED)
```

Identification on the OSSTRE Screen

```
COMMAND                WFAC: TROUBLE REPORT ENTRY (OSSTRE)
/FOR
      BU                        *MESSAGE*                        EB
07/21/00 13:05 CDT
 CKT T 45/ACGS/817/861/3310                              ST P  W
NPUB
                                                      PN
 TR#           CTR SBCASITXDSC FLC      GRP#                      HFR
CHRONIC   00
                                     RECD
MCO SBCASIMWDSC
                                                              MCN NONE
                                                                    PND
ORD 08/04/00
 N ISP ABC INC.                                      1301 BENNETT DR
ARLINGTON TX
 P1
 P2 JONG JACKSON          1301 BENNETT DR ARLINGTON TX
817 861 3310
 P2LOC


 UC
 RPTD BY                        TEL
 REPORT

 RPTCAT CR IR    EXP    AMR    DISP AUTH Y TEST Y OVR    TC  ¬
CTTN
 TYPE       SS       NA/DM    FR                 TO                 WK
ROUTE
 MPC           OBJT 07/21/00 19:05        ACC F/T              OS
EXC    OPT
 RMK

 TAS001I  FIND      SUCCESSFUL
```

NOTE: Had this been an installation for SBCIS it would have been noted in the shaded fields. It would have read as "SBC Internet Services".

Understanding What is Different about Installation of ADSL Service for ISPs

- The ISP software should be shipped prior to the installation date.
- The ISP's customer should perform installation of this software.
- If assistance is required, the customer should contact the ISP for support.
- If the customer does not have ISP software, the customer should be instructed to contact the ISP to request that software.
- If the customer does not know who the ISP is, the ASI technician or contractor should reference one of the WFA documents noted above to provide the ISP customer with this information.

The only software installed by the ASI technician or contractor in the instances noted above would be a software driver required due to the installation of a NIC card.

The Technician should check any packages carried onto the customer premise and insure that no ISP software has been placed within the CPE package.

Questions regarding this policy should be directed to Alan Klossen 210-246-8820.

Date Covered: _____

Manager Responsible for Coverage: _____

Technicians in Attendance:

_____

_____

CERTIFICATE OF SERVICE

I, Regina Ragucci, do hereby certify that on this 30t[h] day of April 2001, Further Reply Comments of SBC Communications Inc. in CC Docket No. 95-20 and 98-10, was served via hand delivery(*) and first class postage pre-paid to the parties listed below:

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