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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Computer III Further Remand Proceedings
Bell Operating Company
Provision of Enhanced Services

1998 Biennial Regulatory Review —
Review of *Computer III* and ONA
Safeguards and Requirements

CC Docket No. 95-20

CC Docket No. 98-10

REPLY COMMENTS
of the
GENERAL SERVICES ADMINISTRATION

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April 30, 2001

Table of Contents

	<u>Page No.</u>
Summary.....	1
I. INTRODUCTION.....	1
II. THE COMMISSION SHOULD NOT HEED CLAIMS THAT STRUCTURAL SEPARATIONS IS UNNECESSARY.....	3
A. Incumbent carriers contend that structural separations discriminates against BOCs and impairs growth of information services.....	3
B. Competitive LECs concur with firms in the information services industry in describing the need to continue requirements for structural separations.....	5
III. CONTRARY TO ASSERTIONS BY INCUMBENT CARRIERS, THE COMMISSION SHOULD ADOPT PROPOSALS TO GIVE ISPs ACCESS TO UNBUNDLED FACILITIES AND SERVICES.....	9
A. LECs assert that ISPs have ample opportunities to obtain facilities, and contend that the right to access UNEs should be confined to common carriers.....	9
B. ISPs explain the importance of access to UNEs in allowing them to compete with incumbent LECs.....	10
IV. CONCLUSION.....	14

Summary

GSA responds to comments concerning the need for structural separation of entities providing conventional and enhanced services, and the need for ISP access to the switched telecommunications network.

First, GSA urges the Commission to reject claims by incumbent LECs that structural separations is no longer necessary. Incumbent carriers contend that structural separations requirements discriminate against BOCs and impair growth of information services. However, competitive LECs and numerous parties in the information services industry explain the role of separations in allowing firms to compete on an equal basis with the former Bell companies.

Several comments demonstrate the dual role that BOCs play as (nearly) monopoly providers of local telecommunications services and also providers of diverse information services. Structural separations is necessary to ensure arm's length transactions between these functions, and to ensure that the revenues and costs for unregulated information services can be distinguished from the revenues and costs for regulated telecommunications services.

Second, GSA addresses claims by incumbent LECs that non-structural safeguards — particularly reporting requirements — have also become outmoded. ISPs acknowledge that reporting requirements have become weak and generally ineffective. However, they explain that competition will be served best by tightening non-structural safeguards, rather than discarding them as the BOCs suggest.

Finally, GSA explains that, contrary to assertions by incumbent carriers, the Commission should adopt proposals to give ISPs access to unbundled facilities and services. Several LECs contend that ISPs have ample opportunities to obtain facilities, and contend that the right to access UNEs should be confined to common carriers. However, ISPs describe the need for access to local loops, as well as ordering and billing systems. In addition, competitive LECs explain that the Telecommunications Act does not restrict provision of UNEs to common carriers.

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GENERAL SERVICES ADMINISTRATION**

The General Services Administration (“GSA”) submits these Reply Comments on behalf of the customer interests of all Federal Executive Agencies (“FEAs”) in response to the Public Notice in CC Docket Nos. 95–20 and 98–10 (“Notice”) released on March 7, 2001. The Notice seeks comments and replies on the need for structural safeguards to equalize opportunities for provision of enhanced telecommunications services by all carriers, and issues concerning access to the switched network by information service providers (“ISPs”).

I. INTRODUCTION

The Telecommunications Act of 1996 requires the Commission to take steps necessary to promote innovation and investment in the telecommunications markets

and to stimulate competition for all telecommunications services.¹ In addition, the legislation contemplates that the Commission will prescribe policies to ensure the most efficient infrastructure for provision of broadband and advanced telecommunications services.²

On January 30, 1998, the Commission released an order with an accompanying notice seeking comments on possible changes in regulatory provisions in view of competitive developments since passage of the Telecommunications Act.³ The Commission asked parties to address questions including (1) whether developments resulting from the Telecommunications Act alleviate concerns with unbundling requirements; (2) whether open network architecture (“ONA”) has been effective in providing access to basic telecommunications services to ISPs; and (3) whether the Commission should extend to ISPs some or all unbundling rights available under section 251 of the legislation.⁴ More than three years have passed, and through its recent Notice the Commission is seeking to update and refresh the record on these issues.⁵

On April 16, 2001, GSA submitted Comments in response to the Notice. In those Comments, GSA urged the Commission to continue requirements on former Bell operating companies (“BOCs”) to provide any information services that they offer through entities that are structurally separated from the entities they employ to provide

1 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, amending the Communications Act of 1934, 47 U.S.C. § 151 *et seq.* (“Telecommunications Act”).

2 *Id.*, section 706.

3 CC Docket Nos. 95-20 and 98-10, Further Notice of Proposed Rulemaking, released January 30, 1998, (“Further Notice”).

4 Notice, p. 1.

5 *Id.*, pp. 1-2.

regulated retail telecommunications services to the public.⁶ Also, GSA stated that independent firms providing information services should be permitted to access unbundled network elements (“UNEs”), and use those facilities to serve their own subscribers.⁷ GSA explained that these steps would help equalize opportunities for provision of enhanced telecommunications services by all types of firms, expand the number of services available to consumers, and reduce costs.⁸

In addition to GSA, 15 parties submitted comments in response to the Notice.

These parties include:

- 5 incumbent local exchange carriers (“LECs”) and groups of these carriers;
- 2 other carriers; and
- 8 ISPs.

In these Reply Comments, GSA responds to the positions advanced by those parties.

II. THE COMMISSION SHOULD NOT HEED CLAIMS THAT STRUCTURAL SEPARATIONS IS UNNECESSARY.

A. Incumbent carriers contend that structural separations discriminates against BOCs and impairs growth of information services.

Incumbent LECs assert that the Commission should eliminate or streamline functional and organizational requirements on BOCs concerning access to information services. For example, the United States Telecom Association (“USTA”) states that “BOCs and all incumbent LECs should have the same opportunities as their

⁶ Comments of GSA, pp. 5-8.

⁷ *Id.*, pp. 3-5.

⁸ *Id.*, pp. 3-8.

unregulated competitors to structure their information services in the manner that they see fit without being subject to special conditions for which there is no market need.”⁹

Similarly, Verizon states that the rapidly growing market for broadband services is dominated by cable modem providers, with satellite and fixed wireless services increasing in importance.¹⁰ According to Verizon, broadband competitors operate in a “largely deregulated environment.”¹¹ In contrast, “Bell Companies are the new entrants in the broadband business.”¹²

Also arguing against targeted prohibitions on incumbent LECs, Qwest states that a separate subsidiary requirement for provision of enhanced services by the large incumbent carriers “would cause tremendous inefficiencies and losses to the public.”¹³ This carrier claims that incumbent LECs are meeting the needs of ISPs in a “reasonable and timely manner.”¹⁴ Thus, according to Qwest, if there are allegations of anti-competitive conduct, the Commission should examine the evidence in detail before acting.¹⁵

Another major incumbent carrier, BellSouth, carries its opposition to safeguards a step further. This LEC states that the Commission should not only find that the benefits of structural relief outweigh the advantages of separate subsidies, but also eliminate the application of non-structural safeguards for the provision of enhanced services by the former Bell companies.¹⁶ In particular, according to BellSouth, the

⁹ Comments of USTA, p. 7.

¹⁰ Comments of Verizon, p. 2.

¹¹ *Id.*

¹² *Id.*, pp. 2-3.

¹³ Comments of Qwest Corp. (“Qwest”), p. 6.

¹⁴ *Id.*, p. 4.

¹⁵ *Id.*, p. 6.

¹⁶ Comments of BellSouth, p. 6.

Commission should abolish all BOC-specific regulation of enhanced services, and particularly reporting requirements under the ONA rules, which are especially onerous.¹⁷

B. Competitive LECs concur with firms in the information services industry in describing the need to continue requirements for structural separations.

Competitive LECs and parties in the information services industry demonstrate the need to continue structural separations to allow other firms to compete on an equal basis with the former Bell companies. For example, WorldCom explains that firms characterized as data local exchange carriers ("DLECs") attempted to enter the market with ambitious plans to provide high bandwidth connections to end users and ISPs by collocating digital subscriber line ("DSL") equipment at the BOC central offices and ordering unbundled loops pursuant to section 251(c) of the legislation.¹⁸ However, the BOCs responded with an array of anti-competitive strategies, including inflated charges for local loops and other necessary facilities, dysfunctional operation support systems ("OSS"), and discriminatory actions concerning provision of collocation and UNEs.¹⁹ Consequently, WorldCom states:

Unless the Commission finds that alternative methods of conduct-oriented regulation are at least as effective as structural separation in facilitating the development of competition and ensuring that ISPs obtain non-discriminatory access to capabilities the BOCs use to provide competing information services, the Commission is legally obligated to retain the structural separations requirement.

GSA concurs with WorldCom on the importance of continuing structural separations.

In its comments, AT&T counters BellSouth's claim that non-structural safeguards are unnecessary. AT&T explains that non-structural safeguards are as

¹⁷ *Id.*

¹⁸ Comments of WorldCom, p. 3.

¹⁹ *Id.*

important today as in the past.²⁰ Moreover, AT&T recommends that the Commission implement a much more extensive separations program — with a functional split of all BOC activities, operations and services into wholesale and retail units.²¹

ISPs present a persuasive case for structural separations. For example, the Information Technology Association of America (“ITAA”), whose membership includes hundreds of firms providing network-based information services, states that structural separations is the only effective means to prevent BOC anti-competitive abuse.²² In addition, the association concurs with GSA that structural separations is necessary to ensure that the revenues and costs for unregulated information services can be distinguished from the revenues and costs for the carrier’s regulated telecommunications services.²³ Moreover, the association explains that growth of the Internet sharply reduces operational benefits of having the same firm provide transport and information services.²⁴

ITAA also addresses BellSouth’s complaints with the ONA reporting obligations that are placed on major incumbent LECs. The association states that “current reporting obligations have been too weak, not enforced, and ineffective.”²⁵ However, from a user’s perspective, reporting requirements should be strengthened, and not discarded as the BOCs suggest.²⁶

20 Comments of AT&T Corp. (“AT&T”), p. 5.

21 *Id.*, pp. 5–6.

22 Comments of ITAA, p. 18.

23 *Id.*, pp. 18–19; and Comments of GSA, p. 6.

24 Comments of ITAA, p. 20.

25 *Id.*, p. 16 (emphasis supplied.)

26 *Id.*

Separately, another group of ISPs addresses the assertions by Verizon that the market for broadband services is dominated by unregulated cable modem providers that have more market power than the BOCs in the broadband market. The Commercial Internet eXchange Association (“CIX”) explains that in some cases an ISP may provide a retail customer with DSL and modems. In those instances, the line itself may be provided either by an incumbent LEC or a competitive LEC. However, in both configurations the connection will nearly always require some of the incumbent carrier’s facilities.²⁷ Since the BOCs are the incumbent carrier for the great majority of subscribers, they continue to be the “gatekeepers” for ISPs seeking to furnish wireline broadband services to their own customers.²⁸

Moreover, Qwest’s claim that it has “generally found” that incumbent LECs are meeting the needs of ISPs in a reasonable and timely manner must be viewed in the context of the fact that Qwest is both a major provider of local telecommunications services and a major provider of enhanced services. In its capacity as a major LEC, Qwest provided 17.6 million switched access lines in 14 states at the end of last year.²⁹ Moreover, the residents of those 14 states saw little competition because competitive LECs provided services over less than six percent of all access lines, including services through resale, services provided through UNEs, and services provided over the competitors’ own facilities.³⁰

27 Comments of CIX, p. 7.

28 *Id.*, p. 8.

29 ARMIS Report No. 43-08, Table III, Access Lines in Service by Customer for December 31, 2000. The 14 states are Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

30 Federal Communications Commission, Industry Analysis Division, *Local Telephone Competition Status as of June 30, 2000*, Table 5.

In its dual capacity as enhanced service provider, Qwest also plays a major market role. As described in its comments, Qwest offers numerous enhanced services, including:

- Audiotex services that allow customers to use their telephone to interact with voice information contained in a Qwest computer;
- Electronic Messaging services that give customers an array of services generally grouped under the category "e-mail";
- Enhanced Facsimile services that provide customers with a wide range of facsimile capabilities;
- Internet Access services that give customers basic access to the web as well as browser, page storage, and protocol processing capabilities;
- On-line Database Access services that allow consumers to store, retrieve, and manipulate data stored in Qwest computers; and
- Voice Messaging services that allow customers to leave, direct and retrieve voice messages.³¹

From an end user's perspective, these enhanced services are closely entwined with use of the local switched network. A claim by any BOC that incumbent LECs are providing facilities to independent firms to allow them to offer the same services in competition to their own operations must be viewed in light of actual data. Structural separations of BOC entities providing enhanced and basic telecommunications services are as necessary today as they were four years ago.

³¹ Comments of Qwest, p. 5.

III. CONTRARY TO ASSERTIONS BY INCUMBENT CARRIERS, THE COMMISSION SHOULD ADOPT PROPOSALS TO GIVE ISPs ACCESS TO UNBUNDLED FACILITIES AND SERVICES.

A. LECs assert that ISPs have ample opportunities to obtain facilities, and contend that the right to access UNEs should be confined to common carriers.

In its Comments, GSA explained that ISPs need access to unbundled network features and functionalities in order to provide more opportunities for them to compete with service offerings by the major incumbent LECs.³² Incumbent LEC parties disagree, asserting that ISPs have ample opportunities to obtain facilities without placing unbundling obligations on BOCs.

For example, USTA notes that in the recent Report and Order eliminating a restriction adopted in the *Computer II* proceeding, the Commission ruled that facilities-based carriers must unbundle basic services from enhanced services and offer transmission capacity to other enhanced service providers under terms and conditions under which they provide such services to their own operations — comparably efficient interconnections (“CEIs”).³³ According to USTA, there is no additional need for specific unbundling requirements applicable to BOCs.³⁴

In its comments, Qwest states that unbundling rights need not be available to enhanced service providers under section 251 of the Telecommunications Act.³⁵ According to Qwest, the legislation limits unbundling rights to entities using the

32 Comments of GSA, pp. 3-5, and p. 9.

33 Comments of USTA, pp. 3-4, citing *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Report and Order, released March 30, 2001.

34 *Id.*, p. 4.

35 Comments of Qwest, p. 10.

facilities to serve the public.³⁶ Unbundling requirements are “simply not authorized for those whom do not commit themselves to operate on a common carrier basis.”³⁷

B. ISPs explain the importance of access to UNEs in allowing them to compete with incumbent LECs.

Numerous organizations in the information industry urge the Commission to reject the claims by incumbent LECs that unbundling is unnecessary for ISPs. Users ask the Commission to take specific steps to counterbalance the continuing market power of the large incumbent LECs. For example, ITAA states:

Information Service Providers remain almost totally dependent on the BOCs for the telecommunications services they need to deliver services to their customers.³⁸

The association reports that it made this observation in comments to the Commission in this proceeding in 1998, and it remains as true today as it was a that time.³⁹

ITAA also emphasizes the importance of access to UNEs by explaining that BOCs have in fact expanded their dominant position through actions to impair the development of competition in the DSL market.⁴⁰ The association points to evidence that incumbent LECs are not giving competitors access to DSL-conditioned loops on a timely basis.⁴¹ Directives requiring incumbent carriers to provide configurations that meet ISPs’ needs would help foster competition in the emerging high-speed Internet access market.⁴²

36 *Id.*

37 *Id.*

38 *Comments of ITAA, p. 7.*

39 *Id.*

40 *Id.*, pp. 8-9.

41 *Id.*, pp. 9-10.

42 *Id.*

In addition, WorldCom notes that the lack of unbundling combined with excessive LEC prices has required ISPs to employ arrangements that are “second- or third-best alternatives.”⁴³ By and large, ISPs have succeeded by leasing business exchange lines, often from competitive LECs.⁴⁴ WorldCom states that this approach has sufficed in a world of dial-up Internet connections.⁴⁵ However, it will not be adequate in the high-speed world consumers are seeking and the Commission’s policies are intended to facilitate.⁴⁶

Also explaining the need for unbundled access, the California Internet Providers Association (“CISPA”) states that independent ISPs should have the same access to BOC ordering and billings systems as provided to the BOC-controlled ISPs.⁴⁷ Moreover, if BOCs cannot provide identical access and “electronic bonding,” they should be required to cooperate with ISPs’ technical personnel and also to help meet any electronic bonding expenses for ISPs.

In addition, Earthlink addresses the need for efficient operations support systems (“OSS”) from its perspective as a firm providing Internet access to nearly five million residential and business customers.⁴⁸ In its comments, Earthlink emphasizes that installation, maintenance, and repair procedures should be transparent across all ISP and BOC services.⁴⁹ Equal access to all OSS functions is necessary to help

43 Comments of WorldCom, p. 6.

44 *Id.*

45 *Id.*

46 *Id.*

47 Comments of CISPA, p. 32.

48 Comments of Earthlink, Inc. (“Earthlink”), p. 1.

49 *Id.*, p. 15.

ensure that competitive unaffiliated ISPs can offer their customers support services of equal quality to those that the BOCs' own customers receive.⁵⁰

GSA concurs with ITAA, WorldCom CISPAs and Earthlink on the need for unbundled access. The Report and Order referenced by USTA does not address the potential for BOCs to engage in anti-competitive actions. The order states, "Non-dominant interexchange carriers have no market power in either the CPE (customer premises equipment) or interstate, domestic, interexchange markets, making it virtually impossible for them to require consumers to purchase one bundled product in order to obtain the other."⁵¹ The Report and Order contains no premises or findings concerning the status of competition in the local exchange markets. The BOCs' capabilities for anti-competitive actions in the local markets should be effectively counterbalanced by obligations to provide UNEs to ISPs, which could employ these facilities to serve their own subscribers.

Finally, the Commission should not adopt Qwest's recommendation that it find section 251 of the Telecommunications Act is determinative in limiting the availability of UNEs to authorized common carriers. WorldCom explains that the Commission has authority to strengthen its unbundling rules under section 251 of the Telecommunications Act in order to require BOCs to provide non-discriminatory access at cost-based rates to all network elements, information, and OSS that competitors need to succeed in the DSL market.⁵² Section 257 of the legislation recognizes the importance of eliminating "market entry barriers for entrepreneurs and other small businesses in the provision of telecommunications services and

⁵⁰ *Id.*, p. 16.

⁵¹ *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Report and Order, released March 30, 2001, para. 23 (emphasis supplied.)

⁵² Comments of WorldCom, p. 9.

information services, or in the provision of parts or services to providers of telecommunications and information services.⁵³ Moreover, this section acknowledges the continuing value of this requirement by specifying the need for a review of its effectiveness every three years.⁵⁴

53 47 U.S.C. § 257 (a) (emphasis supplied.)

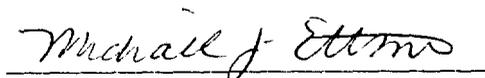
54 *Id.*, § 257 (c).

IV. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to implement the recommendations set forth in these Reply Comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, MICHAEL J. ETTNER, do hereby certify that copies of the foregoing "Reply Comments of the General Services Administration" were served this 30th day of April, 2001, by hand delivery or postage paid to the following parties.

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