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June 23, 2003

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte Presentation, Appropriate Framework for Broadband
Access to the Internet over Wireline Facilities, CC Docket No. 02-
33; Review of Regulatory Requirements for Incumbent LEC
Broadband Telecommunications Services, CC Docket No. 01-337*

Dear Ms. Dortch:

Attached for inclusion in the record of the above-referenced proceedings pursuant to 47 C.F.R. § 1.1206(b) is a letter to Michelle Carey, Chief of the Competition Policy Division of the FCC's Wireline Competition Bureau, from the undersigned, counsel for MCI.

Sincerely,

/s/ Ruth Milkman

Ruth Milkman

Enclosure

cc: Carol Matthey
Brent Olson
Cathy Carpino
Kimberly Cook
William Kehoe
Terri Natoli

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June 23, 2003

Ms. Michelle Carey
Chief, Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Applicability of *Computer Inquiry* Rules to Wireline Broadband Services

Dear Ms. Carey:

The FCC has repeatedly rejected Bell Operating Company (BOC) claims that the Telecommunications Act of 1996 (1996 Act) rendered the *Computer Inquiry* rules unnecessary or obsolete. Following passage of the Act, several BOCs claimed that the *Computer II*, *Computer III*, and Open Network Architecture (ONA) requirements were unnecessary and redundant in light of the 1996 Act's new local competition provisions. The Commission disagreed, concluding that the preexisting *Computer* rules are consistent with the 1996 Act, and continue to govern the provision of information services.¹ The Commission explained that the *Computer Inquiry*-based rules are "the only regulatory means by which certain independent ISPs are guaranteed nondiscriminatory access to BOC local exchange services used in the provision of intraLATA information services."² Continued enforcement of these safeguards is necessary, the Commission concluded, and "establishes important protections for small ISPs that are not provided elsewhere in the Act."³

Later, in the *Advanced Services* proceeding, the Commission held that the BOCs remain obligated to unbundle and make available to competing information service providers:

(1) the network services that underlie the BOC's own information services (pursuant to the *Computer Inquiry* proceedings); and (2) additional network

¹ See *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, ¶ 132 (1996) (*Non-Accounting Safeguards Order*).

² *Id.* ¶ 134.

³ *Id.*

services that the BOCs do not use in their information service offerings (pursuant to ONA). We note that BOCs offering information services to end users of their advanced service offerings, such as xDSL, are under a continuing obligation to offer competing ISPs nondiscriminatory access to the telecommunications services utilized by the BOC information services.⁴

Recently, the Commission again confirmed that its *Computer Inquiry* rules apply to broadband Internet services. Specifically, in the *Wireline Broadband NPRM*, the FCC declared unequivocally that “the obligations deriving from [the *Computer II* and *Computer III*] proceedings currently apply to the provision of wireline broadband Internet access services by facilities-based telephone companies.”⁵ As a result, “BOCs that provide information services are required to offer the transmission component of the information service separately pursuant to tariff, and must also acquire such transmission for their own information service offerings pursuant to their tariff.”⁶ Despite repeated attempts to avoid these requirements, at least one BOC has acknowledged that the *Computer Inquiry* obligations apply to its broadband information services.⁷

⁴ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 24011, ¶ 37 (1998). These principles were reiterated in a later report in the same proceeding. There, the Commission concluded that what it called “bulk DSL services” sold to ISPs “are telecommunications services, and as such, incumbent LECs must continue to comply with their basic common carrier obligations with respect to these services.” *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Second Report and Order, 14 FCC Rcd 19237, ¶ 21 (1999). These obligations include “providing such DSL services upon reasonable request; on just, reasonable, and nondiscriminatory terms; and in accordance with all applicable tariffing requirements.” *Id.*

⁵ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Notice of Proposed Rulemaking, 17 FCC Rcd 3019, ¶ 22 (2002) (*Wireline Broadband NPRM*); *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, ¶ 44 (2002); see also *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Report and Order, 16 FCC Rcd 7418, ¶¶ 2-4 (2001) (noting continued application of *Computer Inquiry* rules to enhanced (now information) services, including “e-mail and other Internet services”).

⁶ *Wireline Broadband NPRM* ¶ 42.

⁷ Brief in Support of the Joint Application by Southwestern Bell for Provision of In-Region, InterLATA Services in Arkansas and Missouri at 61-62, CC Dkt. No. 01-194, *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri* (Aug. 20, 2001) (conceding that “the telecommunications component included in [Southwestern Bell Internet Services’]

Moreover, the FCC has also used its enforcement authority to ensure that carriers providing broadband enhanced (*i.e.*, information) services also offered access to the underlying wireline transmission services. In the *Frame Relay Order*, for example, the Common Carrier Bureau required AT&T and all other facilities-based carriers providing enhanced services utilizing frame relay service to file tariffs for the underlying frame relay services pursuant to the *Computer II* decision. These carriers were also ordered to acquire the underlying services for their own enhanced service offerings pursuant to those same tariffed terms.⁸ In addition, the FCC has required the BOCs since 1999 to post on their Internet websites service-specific Comparably Efficient Interconnection (CEI) plans for new or altered information services pursuant to the *Computer III* rules.⁹ On reconsideration, the FCC clarified that this requirement extended to existing CEI plans, including those for broadband Internet access services.¹⁰ In light of the FCC's recent pronouncements and its prior enforcement activities, it is indisputable that the *Computer Inquiry* rules apply to wireline broadband services.

If you have any questions, please contact the undersigned.

Sincerely,

/s/ Ruth Milkman

Ruth Milkman

information service offering . . . is subject to unbundling under the Commission's Computer III requirements"); *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri*, Separate Statement of Commissioner Kathleen Q. Abernathy at 7, 16 FCC Rcd 20719, 20890 (2001).

⁸ *Independent Data Communications Manufacturers Association, Inc. Petition for Declaratory Ruling That AT&T's InterSpan Frame Relay Service Is a Basic Service*, Memorandum Opinion and Order, 10 FCC Rcd 13717, ¶ 59 (Com. Car. Bur. 1995) (*Frame Relay Order*); see also *id.* ¶ 35 ("[U]nder the *Computer II* and *Computer III* decisions, competitive access has promoted the public interest by accelerating the development of emerging technologies such as frame relay.").

⁹ *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, Report and Order, 14 FCC Rcd 4289, ¶ 12 (1999).

¹⁰ *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, Order, 14 FCC Rcd 21628, ¶ 6 (1999); CIX Petition for Reconsideration and Clarification at 8-10, CC Dkt. No. 95-20, *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services* (Apr. 26, 1999).