

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

In the Matter of)	
)	
Computer III Further Remand Proceedings)	CC Docket No. 95-20
Bell Operating Company Provision of)	
Enhanced Services)	
)	

**COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION AND QWEST**

INTRODUCTION AND SUMMARY

The United States Telecom Association¹ (USTelecom), on behalf of its members and Qwest Corporation² (Qwest), urges the Federal Communications Commission (FCC or Commission) to eliminate remaining Open Network Architecture (ONA) requirements, including requirements to file ONA reports and post Comparably Efficient Interconnection (CEI) plans on company web sites. These requirements are imposed solely on the former Regional Bell Operating Companies and GTE (the Companies). In light of the dramatic evolution of technology in recent years and today's highly competitive environment, there is no basis for continuing to impose these requirements on a small subset of providers of broadband or transport services. Elimination of outdated regulatory requirements, such as the filing of multiple ONA reports and posting of CEI plans, is one of the fundamental purposes of the Paperwork Reduction

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data, and video over wireline and wireless networks. AT&T, BellSouth, and Verizon are members of USTelecom.

² Qwest Corporation is Qwest's incumbent local exchange carrier.

Act of 1995³ (the Paperwork Reduction Act). Moreover, these information collections are unnecessary in today's highly competitive communications market. They are not necessary to ensure competition among service providers or consumer choice, and they provide no other public benefit. They divert resources that would otherwise be invested in improved customer service, development of new services, and entry into new markets to the compilation and presentation of information that is either already available to the public or provides no demonstrable public benefit. Furthermore, these information collections have no practical utility for the Commission itself. The Commission should, therefore, eliminate these information collections.

DISCUSSION

I. A Fundamental Purpose Of The Paperwork Reduction Act Is To Ensure That The Greatest Possible Public Benefit Comes From The Collection, Use, And Dissemination Of Information.

Upon signing the Paperwork Reduction Act into law, President Clinton said, "This Paperwork Reduction Act helps us to conquer a mountain of paperwork that is crushing our people and wasting a lot of time and resources, and which actually accumulated not because anybody wanted to harm the private sector, but because we tend to think of good ideas in serial form without thinking of how the overall impact of them impacts a system that is very dynamic and very sensitive to emerging technologies, but which government does not always respond to in the same way."⁴ More specifically, the Act itself states that among its purposes are

³ 44 U.S.C. §§ 3501-20.

⁴ Press Release, The White House, Remarks By The President At Signing Ceremony For The Paperwork Reduction Act (May 22, 1995).

minimizing the paperwork burden on the public⁵ and—perhaps more important—ensuring that the greatest possible public benefit comes from the collection, use, and dissemination of information collected from the public.⁶

The purposes of the Paperwork Reduction Act are not being served by continuing to require the Companies to file annual, semi-annual, and quarterly ONA reports and to post CEI plans on their web sites. These requirements were conceived and implemented to incubate competition in a fledgling information services industry, and are now outdated. In today's competitive communications environment, burdensome regulations are no longer required to ensure that Internet service providers (ISPs) or other enhanced service providers have non-discriminatory access to basic transmission services. Furthermore, the Commission has not relied on these reports for any policy or enforcement purposes, and the public does not use them to obtain information regarding services offered by the Companies. There is no public benefit from the collection, use, and dissemination of the information required in these reports and plans. For this reason alone, the Companies should not be required to file these reports and plans.

II. No Public Benefit Comes From The ONA And CEI Information Collections Because The Information Collected Is Not Necessary To Ensure Competition And It Does Not Protect Consumers.

The Commission's requirement that the Companies file ONA reports and post CEI plans is based on history rather than an analysis of contemporaneous market conditions. The FCC originally required the Companies to provide information services through fully separate

⁵ *Id.* § 3501(1).

⁶ *Id.* § 3501(2).

affiliates. Under *Computer Inquiry III*,⁷ the Companies were permitted to integrate enhanced and telecommunications services subject to non-structural safeguards and reporting requirements, such as filing ONA reports and posting CEI plans. The purpose of the *Computer Inquiry III* requirements was to allow the Companies to compete in unregulated information services markets while preventing them from using their local exchange market power to engage in improper cost allocation and unlawful discrimination against ISPs. The concern was that the Companies would use existing market power in local exchange services to obtain a competitive advantage in information services markets by improperly allocating to their regulated core businesses costs that would be properly attributed to their competitive ventures and by discriminating against rival, unaffiliated ISPs in the provision of basic network services in favor of their own information services.⁸

Competition Exists

The Commission should recognize that due to robust competition both for basic as well as information services, the reasons for filing ONA reports and posting CEI plans no longer exist. Competition is strong. Information services is a multi-billion dollar industry, populated by some of the largest corporations in the world. While the Companies have contributed to this robust competition, they are not the market leaders. In many segments of the information services market, the Companies are not even participants. Competition in retail and wholesale markets for basic communications services has also taken hold. In this environment, it is not in

⁷ *Amendment of Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986).

⁸ *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, 1998 Biennial Regulatory Review—Review of Computer II and ONA Safeguards and Requirements*, CC Docket Nos. 95-20 and 98-10, Further Notice of Proposed Rulemaking ¶ 9 (rel. Jan. 30, 1998).

the Companies' business interest to engage in anticompetitive practices. The Commission's conclusions with respect to broadband in the Broadband 271 Forbearance Order are applicable here: competition from multiple sources and technologies will pressure the Companies to use wholesale customers, such as ISPs and other enhanced service providers, to grow their share of the markets and retain their business.⁹ Ironically, the ONA restrictions place the Companies at a competitive disadvantage to all other incumbent and competitive local exchange carriers, as well as cable and wireless companies, who operate without having to comply with ONA and CEI reporting requirements. These restrictions divert resources that would otherwise be invested in improved customer service, development of new services, and entry into new markets to unproductive information collections.

Competition Protects Consumers

Consumers are best protected by a competitive market. A competitive market ensures consumers a choice of services from among a variety of providers. Not only are outdated *Computer Inquiry III* requirements unnecessary to protect consumers, they are actually harmful to consumer welfare because they raise consumers' costs and undermine the benefits of competition that consumers now enjoy. The Commission itself has recognized that "unnecessary filing and reporting requirements impose[] administrative costs upon carriers" that can "lead to increased rates for consumers."¹⁰ Furthermore, requiring only the Companies—and no other carriers—to comply with these reporting requirements puts the Companies at a competitive

⁹ See *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. 160(c)*, WC Docket Nos. 01-338, 03-235, 03-260, 04-48, Memorandum Opinion and Order, 19 FCC Rcd ¶ 26 (rel. Oct. 27, 2004).

¹⁰ *Implementation of Section 3(n) and 332 of the Communications Act, Second Report and Order*, 9 FCC Rcd 1411, ¶ 171 (1994).

disadvantage, which affects the prices consumers pay and limits the variety of services from which they may choose.

III. The Information Collected In ONA Reports And CEI Plans Has No Practical Utility.

The Commission asks whether filing ONA reports and posting CEI plans is necessary for the proper performance of the functions of the Commission—whether these requirements have practical utility. They do not. The Commission should not require the Companies to file ONA reports and post CEI plans because these reports and plans contain little useful information and are not widely used. Five years ago, Verizon commented to the Commission that ISPs appeared to be receiving the capabilities they desired without relying on ONA requirements.¹¹ Verizon noted that it had received only a handful of requests for ONA services in the past decade. AT&T (formerly SBC) has recognized the same thing, saying, “Besides the fact that, as far as SBC can tell, no one makes any use of these reports, if there is a problem with the areas covered by the reports, ISPs are free to seek enforcement through the Commission’s complaint process.”¹² The same can be said of CEI plans, which are redundant because basic transmission services are available through tariffs, and ISPs are adequately protected against discriminatory treatment by state and federal statutes. As Qwest has pointed out, “it is impossible to tell what

¹¹ *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, 1998 Biennial Regulatory Review—Review of Computer II and ONA Safeguards and Requirements*, CC Docket Nos. 95-20 and 98-10, Comments of Verizon (April 16, 2001) at 6.

¹² *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, 1998 Biennial Regulatory Review—Review of Computer II and ONA Safeguards and Requirements*, CC Docket Nos. 95-20 and 98-10, Further Comments of SBC Communications, Inc. (April 16, 2001) at 8.

the FCC does with these reports when it receives them, and whether they provide any valuable information at all.”¹³

ONA Reports

More than 14 years of filing ONA reports clearly demonstrates that the Companies deal with competitive providers of enhanced services on a non-discriminatory basis. The Companies must file seven of these reports each year—annual, semi-annual, and quarterly reports. Annual ONA reports are massive documents, running to hundreds of pages and requiring dozens of hours to prepare. They must include detailed information about deployment of each ONA service on a LATA-by-LATA basis and CLLI code by CLLI code within each LATA, even though those services have had few takers. They include detailed information about new requests for ONA services, which have been extremely rare in recent years. They contain information regarding deployment of common channel signaling, integrated services, digital networks, and intelligent network capabilities—technologies that were only beginning to be deployed in the 1980s but are widely deployed today and are quickly being surpassed by even newer technologies and capabilities. The reports must include a discussion of joint industry activities to implement new ONA services despite the fact that these joint efforts have been long since completed. In short, the annual ONA reports contain no relevant or useful information to justify the resources required to prepare them.

Similarly, semi-annual ONA reports contain no unique information and are rarely, if ever, used. These reports include a matrix of all ONA services, references to state and federal

¹³ *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, 1998 Biennial Regulatory Review—Review of Computer II and ONA Safeguards and Requirements*, CC Docket Nos. 95-20 and 98-10, Comments of Qwest Corporation (April 16, 2001) at 12.

tariffs in which the services are offered, and the ONA user guide. Nonaffiliated enhanced service providers have access to all available telecommunications services from all carriers to offer their enhanced services, whether or not the telecommunications offerings are termed ONA services and information about those services is easily accessible on providers' web sites. Requiring detailed reporting of those services that happen to be defined as ONA services is redundant and, therefore, should be eliminated.

Finally, quarterly nondiscrimination reports are not useful. These ONA reports detail the quality of service, installation, and maintenance intervals for each ONA service provided by the Companies. In order to prepare these reports, the Companies must track which orders come from affiliated enhanced service providers and which come from other customers. But for the reporting requirement, the Companies do not ascertain whether or not an installation or maintenance order is from an affiliate. This fact alone should alleviate concerns about discrimination by the Companies. Furthermore, USTelecom and Qwest are unaware of any complaint by a competitor that the Companies have discriminated in the installation or maintenance of underlying telecommunications services. Finally, in valid cases of discrimination, the Commission has a clear remedy under section 202(a) of the Act,¹⁴ which subjects all carriers—the Companies included—to non-discrimination requirements.

CEI Plans

The Companies must post their CEI plans and amendments on their web sites. CEI plans deal with how a Company's non-structurally separate enhanced services operate with the Company's basic network services. A CEI plan consists of a description of the Company's

¹⁴ 47 U.S.C. § 202(a).

enhanced service and the underlying basic telecommunications services that it plans to use. All of these telecommunications services are either tariffed at the federal or state level, in which case their rates, terms, and conditions are a matter of public record, or they are sufficiently competitive that they have been or should be de-regulated. The CEI plan gives a Company's competitors an unfair competitive advantage by revealing how the Company intends to provide its competitive unregulated services and impedes the deployment of new and innovative services by the Companies. Of these plans, the Commission has said, "The CEI standards were intended to be an interim measure, necessary only until the [Companies] had Commission-approved ONA plans in place."¹⁵ Twenty years after first requiring CEI plans—far longer than any interim period would reasonably be expected to last—the Commission still requires the Companies to post these plans. The requirement to prepare and post CEI plans has outlived its usefulness.

CONCLUSION

Continuing to require the Companies to file ONA reports and post CEI plans on their web sites does not serve the purposes of the Paperwork Reduction Act. These information collections are no longer necessary to serve the public interest. They divert resources that would be better invested in improved customer service, development of new services, and entry into new markets to compiling and producing reports and plans are of no use to the public or the Commission. The Commission, therefore, should no longer require these information collections.

¹⁵ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271. Report and Order and Notice of Proposed Rulemaking (rel. Sept. 23, 2005) ¶ 26.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

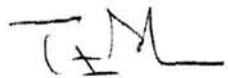
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