Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of Wireline Competition Bureau Data Practices	)	WC Docket No. 10-132
	)	
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 Nos. 95-20, 98-10

COMMENTS OF VERIZON[1]

The Commission should adopt its proposal to eliminate the outdated and meaningless reporting obligations associated with the *Computer Inquiry* requirements for comparably efficient interconnection (CEI) and open network architecture (ONA).[2] The Commission should also eliminate all remaining CEI and ONA requirements. Like the reporting requirements, the underlying CEI and ONA obligations—which are now applicable only to narrowband services—have no utility whatsoever in the modern IP marketplace characterized by broadband services.

The *NPRM* correctly recognizes that the narrowband CEI and ONA reporting obligations suffer from a "lack of continuing relevance and utility." *NPRM* ¶ 1. The same is true for the substantive CEI and ONA requirements to which only certain local telephone companies and none of their competitors remain subject.[3] Indeed, the Commission acknowledged the

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[1] The Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

[2] *Review of Wireline Competition Bureau Data Practices 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*, Notice of Proposed Rulemaking, FCC 11-15, ¶ 1 (Feb. 8. 2011) ("*NPRM*").

[3] The *NPRM* generally references CEI and ONA requirements applicable to RBOCs, but some of these requirements apply more broadly and should be eliminated for all providers.

diminishing relevance of the entire *Computer Inquiry* regime when it eliminated CEI and ONA obligations for broadband Internet access services[4] and enterprise broadband services.[5] Reasoning that such obligations served as disincentives to new investment and innovation, the Commission freed broadband services from the burdens of the antiquated *Computer Inquiry* regime altogether. As a result, companies invested billions of dollars to deploy dynamic broadband networks and offer innovative broadband services that consumers actually want.

The Commission's decision to eliminate the ONA and CEI requirements for broadband services compels the elimination of all remaining *Computer Inquiry* requirements applicable to narrowband services—not just the associated reporting obligations. As the Commission correctly recognized, these requirements simply do not "make common sense in light of current technological, market, and legal conditions."[6] In any event, consumers, regulators, and the industry are all now squarely focused on innovation in the broadband and IP space, not on

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[4] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005) ("*Wireline Broadband Order*"), *aff'd*, *Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205 (3d Cir. 2007).

[5] *See Sprint Nextel Corp. v. FCC*, 508 F.3d 1129 (D.C. Cir. 2007) (upholding determination that Verizon's petition for forbearance from certain Title II and *Computer Inquiry* requirements for enterprise broadband services was deemed granted by operation of law); *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services; Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*, Memorandum Opinion and Order, 22 FCC Rcd 18705 (2007) ("*AT&T Forbearance Order*") (granting forbearance from *Computer Inquiry* requirements as related to AT&T's enterprise broadband services to provide AT&T parity with Verizon); *Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services*, Memorandum Opinion and Order, 23 FCC Rcd 12260 (2008) ("*Qwest Forbearance Order*") (granting similar forbearance relief to Qwest).

[6] *Computer III Further Remand Proceedings; Bell Operating Company Provision of Enhanced Services*, Further Notice of Proposed Rulemaking, 13 FCC Rcd 6040, ¶ 1 (1998) ("*Computer III Further Notice*").

backwards-looking refinements to narrowband services. It makes no sense to burden and discourage what innovation may still occur with respect to narrowband services.

Moreover, maintaining CEI and ONA obligations is directly at odds with the President's and the Chairman's commitment to easing regulatory burdens and eliminating unnecessary regulations. As President Obama recognized in January, and Chairman Genachowski echoed just last month, our regulatory system should "promot[e] economic growth, innovation, competitiveness, and job creation . . . .[and] use the best, most innovative, and least burdensome tools for achieving regulatory ends."[7] Similarly, the Chairman recognized that avoiding unnecessary and costly "red tape" and "remov[ing] barriers and eas[ing] the regulatory, where possible," are important steps that the Commission can take to encourage broadband investment and deployment. *Genachowski Speech* at 2. All CEI and ONA requirements should be eliminated.

DISCUSSION

In today's marketplace, ONA and CEI requirements are unnecessary to promote competition and innovation, and, in fact, have the opposite effect. As the Commission determined when eliminating these requirements for broadband services, ONA and CEI obligations impair the ability of carriers to meet customer needs and impose costs on companies to the detriment of their customers. The Commission previously has stated its desire to reduce and eliminate regulatory requirements when "competition supplants the need for such requirements to protect consumers and competition." *Computer III Further Notice*, ¶ 6. The CEI and ONA requirements have reached that point.

[7] President Barack Obama, Executive Order 13563 § 1 (Jan 18, 2011); Chairman Genachowski, "Prepared Remarks of Chairman Julius Genachowski at the Broadband Acceleration Conference," at 4 (Feb. 9, 2011) ("*Genachowski Speech*").

1. The Commission's ONA and CEI requirements derive from the *Computer Inquiry* proceedings, which began decades ago when the communications landscape looked nothing like the marketplace that now exists.[8] At that time, the Commission explained that telephone networks were the "primary, if not sole, facilities-based platform available for the provision of 'information services' to customers," and the CEI and ONA requirements were based on the "implicit, if not explicit, assumption that the incumbent LEC wireline platform would remain the only network platform available to enhanced service providers."[9]

It may be that, once upon a time, the only way for information service providers to reach their customers was over the local telephone network using traditional dial-up service. However, that is decidedly not the case today. Many separate and different technologies offered by the widest possible array of providers—including wireline, wireless, IP, and other intermodal providers—now compete for the same residential and business customers. Yet only a small subset of competitors—BOCs and other facilities-based wireline telephone companies—remain subject to the last vestiges of the anachronistic CEI and ONA requirements.

The Commission has recognized that CEI and ONA requirements increase the costs of providing information services and inhibit innovation. For example, in eliminating the CEI and

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[8] *Wireline Broadband Order*, ¶ 21 (2005)*; see also id*. ¶ 1 ("Those regulations were created over the past three decades under technological and marketplace conditions that differed greatly from those of today.").

[9] *Id.* ¶ 3; *see also id*. ¶ 47 (the *Computer Inquiry* rules were premised on the presence of a "single platform capable of delivering [enhanced] services ... and only a single facilities-based provider of that platform."); *Computer III Further Remand Proceedings*, Further Notice of Proposed Rulemaking, 13 FCC Rcd 6040, ¶ 43 (1998) (emphasis added); *see also id.* ¶ 9 ("one of the Commission's main objectives in the *Computer III* and ONA proceedings has been to ... prevent[] the BOCs from using their local exchange market power to engage in improper cost allocation and unlawful discrimination against" providers of information services). For an extended discussion of the ONA and CEI requirements, and the history of these rules, *see* Comments of Verizon, *Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau*, WC Docket No. 08-183 (Oct. 8, 2008).

ONA requirements applicable to wireline broadband Internet access services, the Commission concluded that such requirements "impede the development and deployment of innovative wireline broadband Internet access technologies and services." *Wireline Broadband Order*, ¶ 65. The Commission found that "vendors do not create technologies with the *Computer Inquiry* requirements in mind" and that broadband Internet access services "cannot be easily separated into discrete information services and telecommunications service components." *Id.* As a result, the CEI and ONA requirements compelled wireline carriers when deploying advanced network equipment to either "decide not to use all the equipment's capabilities" or "defer deployment" while the equipment was re-engineered "to facilitate compliance with the *Computer Inquiry* rules"—which, according to the Commission, were "less-than-optimal" outcomes, since they reduced "operational efficiency" and created "unnecessary costs and service delays." *Id.*

The Commission reached similar conclusions in the context of enterprise broadband services when confronted with multiple petitions seeking forbearance from the application of *Computer Inquiry* requirements to such services. For example, in granting forbearance to AT&T, the Commission found that continued application of the *Computer Inquiry* requirements to enterprise broadband services "constrains AT&T's ability to respond to technological advances and customer needs in an efficient, effective, or timely manner" because enterprise customers have "individualized needs" that AT&T must be able to meet through "innovative service arrangements that make full use of its networks' telecommunications and information service capabilities." *AT&T Forbearance Order*, ¶¶ 54 & 56; *see also Qwest Forbearance Order*, ¶¶ 55 & 57 (noting that eliminating the *Computer Inquiry* requirements "should benefit potential enterprise customers by giving them increased opportunities to obtain integrated service packages that meet their needs").

The *Computer Inquiry* impediments to innovation are not limited to broadband services. Many providers of local telephone services offer "follow me services" which require the interaction between the public switched telephone network and the Internet to provide advanced calling features, such as the ability to retrieve voice mail messages remotely via a computer. Functions such as these demonstrate that the difference between "enhanced" and "basic" services is rapidly blurring. The additional time necessary for carriers to determine what is enhanced versus basic and what functions must be offered separately under tariff consistent with the *Computer Inquiry* regime delays their ability to meet the needs of their customers and jeopardizes the potential viability of the services. *See Wireline Broadband Order*, ¶¶ 71-72; *AT&T Forbearance Order*, ¶ 54; *Qwest Forbearance Order*, ¶ 55.

The Commission's decisions to eliminate the application of CEI and ONA requirements to broadband services accomplished the Commission's desired objectives—increased innovation and flourishing competition in the broadband marketplace.[10] And, with continued innovation occurring primarily on the broadband platform—both at the broadband network level and in non-network broadband applications and equipment—no point is served in continuing to apply CEI and ONA requirements to narrowband services. *See Wireline Broadband Order* ¶ 70.

As the Commission repeatedly has recognized, narrowband services are under competitive attack from IP-based services. For example, according to the Commission's most recent data, 28 percent of all residential wireline connections were interconnected VoIP as of

[10] *See, e.g., Internet Access Services: Status as of June 30, 2010*, Industry Analysis and Technology Division, Wireline Competition Bureau, Table 7 (rel. March 2011), *available at* http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0321/DOC-305296A1.pdf (showing growth in Internet access from 2006 to 2010 by technology).

June 2010 and interconnected VoIP grew by 21 percent between June 2009 and June 2010.[11] During this 12-month time period, conventional switched access lines also decreased by 8 percent. *Id.* at 2. At the same time, wireless usage has skyrocketed. At the end of last year there were more than 300 million domestic wireless subscriber connections, and the wireless penetration rate stood at 96 percent of the total U.S. population.[12]

2. Not only do the CEI and ONA requirements hamper innovation, they also impose burdens that harm competition. The Commission's ONA requirements "apply to enhanced services generally and impose more specific and comprehensive unbundling requirements on BOCs, not unlike section 251's facilities unbundling obligations."[13] In addition, the Commission's ONA requirements obligate telephone companies to, among other things, specify the Operations Support Systems ("OSS") they offer enhanced service providers (ESPs) and provide the same access to OSS services to its affiliated enhanced service operations that the telephone company alone provides to unaffiliated ESPs,[14] and file nondiscrimination reports or annual affidavits demonstrating the nondiscriminatory service provided to unaffiliated ESPs.[15]

A telephone company must file a CEI plan, in which it describes how it intends to comply with the "equal access" parameters for the specific enhanced or information service it

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[11] *Local Telephone Competition: Status as of June 30, 2010*, Industry Analysis and Technology Division, Wireline Competition Bureau, 2-3 (rel. March 21, 2011) *available at* http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0321/DOC-305297A1.pdf ("*Local Telephone Competition Report*").

[12] *See* CTIA—The Wireless Association®, Media, *Wireless Quick Facts*, available at http://www.ctia.org/media/index.cfm/AID/10323.

[13] *NPRM* ¶ 4; *see also Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, Notice of Proposed Rulemaking, 10 FCC Rcd. 8360, ¶¶ 15-16 (1995).

[14] *Filing and Review of Open Network Architecture Plans, Phase I*, Memorandum Opinion and Order, 4 FCC Rcd. 1, ¶¶ 4 & 17 (1988).

[15] *Computer III FNPRM 1998*, 13 FCC Rcd. at 6100, ¶ 113.

intends to offer, which include: interface functionality; unbundling of basic services; resale; technical characteristics; installation, maintenance and repair; end user access; CEI availability; minimization of transport costs; and availability to all interested customers or ESPs.[16]

Rather than promoting competition, the substantive ONA and CEI requirements increase carriers' costs of providing information services—costs that are not borne by other competitors. This regime thus undermines the competitive process, as the Commission recognized when eliminating the ONA and CEI requirements applicable to wireline broadband Internet access services. *Wireline Broadband Order* ¶ 79 ("Requiring a single type of broadband platform provider (*i.e.,* wireline) to make available its transmission on a common carriage basis is neither necessary nor desirable to ensure that the statutory objectives are met"). This reasoning supports elimination of the remaining *Computer Inquiry* requirements.

3. While, as explained above, not going far enough, the Commission should indeed eliminate narrowband ONA and CEI reporting requirements, as proposed in the *NPRM*. These requirements necessitate that BOCs file reports to substantiate their nondiscriminatory practices and post "service-specific CEI plans" that demonstrate how competitors have equal access to a BOC's basic services. *Id*. ¶ 3. Under the ONA reporting obligations, BOCs must file extensive annual, semi-annual and quarterly reports, accompanied by sworn declarations. *Id.* ¶ 4; *see also Filing and Review of Open Network Architecture Plans*, Memorandum Opinion and Order on Reconsideration, 5 FCC Rcd 3084, ¶ 26 (1990).

The costs of these reporting requirements clearly outweigh any benefits. *See NPRM* ¶ 8. The industry consensus is that these requirements serve no purpose. *Id.* ¶ 9 (noting that no commenter had identified any utility to the ONA and CEI reports). Nor do ONA and CEI reports

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[16] *NPRM* ¶ 3, n.9; *see also Bell Operating Companies Joint Petition for Waiver of*

aid the Commission's policymaking in any way. *Id.* ("the Commission does not rely on any of these submissions in the course of its decision making").

The Commission has previously recognized that unnecessary "filing and reporting requirements … impose[] administrative costs upon carriers" that can "lead to increased rates for consumers" and have "adverse effects on competition." *Implementation of Sections 3(n) and 332 of the Communications Act*, Second Report and Order, 9 FCC Rcd 1411, ¶ 174 (1994). In light of the consensus that ONA and CEI reports serve no regulatory purpose, the Commission should promptly eliminate these reporting obligations.

Indeed, the Paperwork Reduction Act compels the elimination of ONA and CEI reporting obligations. The Paperwork Reduction Act requires the Commission to determine before collecting any data—and again before seeking Office of Management and Budget ("OMB") approval to renew any data collection, which the Commission must do at a minimum every three years for each collection—whether the data is truly "necessary" and has "practical utility." 44 U.S.C. § 3506(c)(3)(A). The Paperwork Reduction Act defines "practical utility" as "the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion." 44 U.S.C. § 3502(11). OMB's rules clarify that "practical utility means the actual, not merely the theoretical or potential, usefulness of information" and require that an agency establish a "plan for the efficient and effective management and use of the information to be collected." 5 C.F.R. § 1320.3(l), 5 C.F.R. § 1320.8(a)(7).

Here, by acknowledging that it "does not rely" upon the CEI and ONA reports "in the course of its decision making," the Commission concedes that such reports have no "practical utility" and that the Commission has no "plan" for using the information in such reports, which

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Computer III Rules, Order, 10 FCC Rcd. 13758, ¶ 35 (1995).

violates the Paperwork Reduction Act. Notably, the Paperwork Reduction Act violations inherent with any continued requirement to produce CEI and ONA reports are similar to those that led OMB to disapprove the Commission's rule that attempted to impose an information collection requirement on wireline and wireless carriers as part of a then planned emergency backup power source requirement. According to OMB, the Commission did not demonstrate the "practical utility" of the information collection because the Commission failed to "demonstrate[] … that the collection ha[d] been developed by an office that ha[d] planned and allocated resources for the efficient and effective management and use of the information collected." *See* Notice of Office of Management and Budget Action, ICR Reference Number 200802-3060-019, at 1 (November 28, 2008). OMB's reasoning applies equally here and is fatal to any requirement that carriers continue to produce CEI and ONA reports that the Commission does not use.

CONCLUSION

For these reasons, the Commission should eliminate the reporting requirements associated with CEI and ONA as well as all remaining CEI and ONA obligations.

Respectfully submitted,

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