

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Review of)	
)	
Wireline Competition Bureau Data)	WC Docket No. 10-132
Practices;)	
)	
Computer III Further Remand Proceedings:)	CC Docket Nos. 95-20, 98-10
Bell Operating Company Provision of)	
Enhanced Services; 1998 Biennial Regulatory)	
Review – Review of Computer III and ONA)	
Safeguards and Requirements)	

COMMENTS OF CENTURYLINK, INC.

CenturyLink, Inc. (CenturyLink)¹ files these comments in response to the Federal Communications Commission’s (Commission) February 8, 2011 Notice of Proposed Rulemaking (*NPRM*) in which the Commission proposed the removal of the narrowband comparably efficient interconnection (CEI) and open network architecture (ONA) reporting requirements that currently apply to the BOCs.²

I. INTRODUCTION AND SUMMARY

The Commission should eliminate the narrowband CEI and ONA reporting requirements as proposed. In the *NPRM*, the Commission correctly finds that those requirements are remnants of an earlier monopoly era that have no relevance in today’s marketplace. It also correctly finds that the reporting rules impose significant cost on BOCs without any corresponding benefit. But,

¹ CenturyLink files these comments on behalf of itself and its wholly-owned Bell Operating Company (BOC) subsidiary, Qwest Corporation (QC), and QC’s operations in its legacy in-region territory.

² *In the Matter of 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*, WC Docket No. 10-132, CC Docket Nos. 95-20, 98-10, Notice of Proposed Rulemaking, FCC 11-15, rel. Feb. 8, 2011.

these findings apply as well to the broader CEI and ONA rules themselves, which, as a result of prior Commission rulings, currently apply only to older generation narrowband services.

Accordingly, the Commission should not only eliminate the relevant reporting requirements as proposed, but should eliminate all remaining CEI and ONA obligations.

II. DISCUSSION

In the *NPRM*, the Commission correctly characterizes the BOC CEI and ONA reporting requirements as remnants of an earlier monopoly era that have no relevance in today's marketplace. As the Commission notes, it initiated the *Computer Inquiry* proceedings more than 40 years ago and imposed CEI and ONA obligations in the *Computer III* proceedings over 20 years ago.³ In 2005, the Commission relieved the BOCs from CEI and ONA obligations with respect to wireline broadband Internet access services.⁴ Thereafter, it relieved the BOCs of CEI and ONA obligations in connection with enterprise broadband services.⁵ In each case, the Commission relied upon its findings that the CEI/ONA requirements unnecessarily constrained how the BOCs conducted their businesses and that removal of the obligations would promote competitive market conditions.⁶ These findings apply equally to BOC narrowband services.

The *NPRM* also correctly acknowledges that the CEI/ONA reporting rules impose significant costs on BOCs without any corresponding benefit.⁷ The rules require the filing of detailed quarterly, semi-annual and annual reports. They include such things as quarterly nondiscrimination reports that detail performance intervals for relevant services and related

³ *Id.* ¶ 2.

⁴ *Id.* ¶ 6.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* ¶¶ 8-9.

requirements for affidavits regarding non-discrimination in quality of service.⁸ And, the reports are voluminous. For example, each semi-annual report is over 500 pages in length.

Additionally, the reports are required to be filed in older, ASCII file formatting. The reports also must be prepared jointly with the other BOCs. As a result, in addition to the internal resources required for reporting compliance, the BOCs are required to incur the cost of an outside consultant in order to simply satisfy the formatting requirements.

The voluminous CEI/ONA reports clearly mandate a devotion of time and resources that is nowhere near commensurate to their utility to the Commission or BOC competitors. To begin with, the *NPRM* acknowledges that the Commission “does not rely on any of these submissions in the course of its decision making.”⁹ Nor has any party, in the many years that the Commission has been studying the possible elimination of the requirements, claimed any use of the data.¹⁰

The *NPRM* further documents that “no commenter to the *WCB Data Innovation Initiative Public Notice* has identified any utility to any service provider for the reports and filings that BOCs must generate to comply with CEI and ONA...”¹¹ Similarly, in both the 2006 and 2008 Biennial Review proceedings, where the BOCs sought elimination of the CEI and ONA reporting requirements pursuant to section 11 of the Act, “no commenter voiced any opposition to their elimination or advocated in support of their continued application.”¹² All of this is confirmed by

⁸ See United States Telecom Association 2006 Biennial Review Comments, WC Docket No. 06-157, filed Sept. 1, 2006 at 19 (USTA 2006 Biennial Review Comments); *In the Matter of Review of the Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, Report and Order, 6 FCC Red 7571, 7602 ¶¶ 67 n. 114 (1991), *vacated in part and remanded sub nom. California v. FCC*, 39 F.3d 919 (9th Cir. 1994), *cert. denied*, 514 U.S. 1050 (1995).

⁹ *NPRM* ¶ 9.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

the BOCs' own experience with the reports. By way of example, the annual report requires BOCs to report on "New ONA service requests from ESPs [Enhanced Service Providers] and their disposition, and disposition of ONA service requests that have previously been designated for further evaluation."¹³ Since 1998, the CenturyLink BOC entity, Qwest Corporation, has received four requests from ESPs through the 120-day process. The last request was received in 2004.

All of the above applies as well to the broader CEI and ONA obligations themselves. The 1996 Act itself significantly diminished the need for the *Computer III* requirements because competitors could obtain unbundled access and interconnection via Sections 251, 252 and 271 of the Act – adding to availability already provided by the Section 202 nondiscrimination requirements. The ONA rules are thus superfluous in the sense that an information service provider has, independent of those rules, access to all the telecommunication services needed to offer its information services.¹⁴ It is also noteworthy that the demand for ONA services has been low across the board.¹⁵ Additionally, the CEI plan requirement provides a BOC's competitors an undue advantage and provides disincentives to BOC innovation in the information service area.

In its elimination of *Computer Inquiry* obligations in the past, the Commission has already demonstrated the unnecessary burdens that the broader CEI and ONA obligations

¹³ *In the Matter of Filing and Review of Open Network Architecture Plans*, Memorandum Opinion and Order, 6 FCC Rcd 7646, 7677 Appendix B (1991).

¹⁴ See USTA 2006 Biennial Review Comments at 17.

¹⁵ *Id.* at 18-19 (noting that Verizon only received a handful of requests for ONA services in the past decade and that ISPs appear to be getting their necessary services outside of the ONA requirements; AT&T has been unable to discern any use of the ONA reports); Peter W. Huber, *et al.*, *Federal Telecommunications Law* at § 5.4.6 (2nd ed. 1999).

impose.¹⁶ In doing so, it has recognized that they impede the BOCs' ability to develop and deploy innovative products that respond to market demands and reduce their incentive and ability to invest in and deploy broadband infrastructure investment. These realizations, for example, led the Commission, in the *Qwest Enterprise Forbearance Order*, to forbear in 2008 from application of BOC-specific *Computer Inquiry* rules to Qwest's enterprise broadband services.¹⁷ In that proceeding, the Commission determined that the BOC-specific *Computer Inquiry* requirements for those services were not needed to ensure that the charges or practices associated with them are just, reasonable, and not unreasonably discriminatory.¹⁸ It also found that forbearing from those rules for those services served the public interest.¹⁹ Specifically, it found that the *Computer III* ONA and CEI requirements "unnecessarily constrain[ed]" how Qwest may offer its broadband transmission services to its enterprise customers.²⁰ The Commission also recognized that "[r]emoving these unnecessary constraints will promote competitive market conditions by increasing the competitive pressure on all enterprise services

¹⁶ See, e.g., *In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers, Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, 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, Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises, Consumer Protection in the Broadband Era, Report and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 14853 (2005), *aff'd sub nom., Time Warner v. FCC*, 507 F.3d 205 (3rd Cir. 2007). See also *In the Matter of Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to its Broadband Services*, Memorandum Opinion and Order, 23 FCC Rcd 12260 (2008) (*Qwest Enterprise Forbearance Order*).

¹⁷ *Qwest Enterprise Forbearance Order*, 23 FCC Rcd at 12289 ¶ 56.

¹⁸ *Id.*

¹⁹ *Id.* at 12286-87 ¶ 49.

²⁰ *Id.* at 12289 ¶ 58.

providers. . . [and] will increase Qwest's incentives to invest in advanced network technologies that will enable it to provide enterprise customers with increasingly innovative services."²¹

For all these reasons, the Commission should not only eliminate the relevant CEI/ONA reporting requirements as proposed, but should eliminate all remaining CEI and ONA obligations. The remnants of these requirements continue to require BOCs to maintain arcane regulatory processes which require tremendous resources for benefits that the Commission has repeatedly recognized are greatly diluted if not altogether non-existent.

III. CONCLUSION

For the reasons stated above, the Commission should take the action described herein.

Respectfully submitted,

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²¹ *Id.*

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF CENTURYLINK, INC.** to be: 1) filed via ECFS with the Office of the Secretary of the FCC in WC Docket No. 10-132, and CC Docket Nos. 95-20, 98-10; 2) served via e-mail on the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission at CPDcopies@fcc.gov; and 3) served via e-mail on the FCC's duplicating contractor, Best Copy & Printing, Inc. at fcc@bcpiweb.com.

/s/ Richard Grozier

April 1, 2011