

LAW OFFICES
BLOOSTON, MORDKOFKY, DICKENS, DUFFY & PRENDERGAST, LLP

2120 L STREET, NW
WASHINGTON, DC 20037

(202) 659-0830
FACSIMILE: (202) 828-5568

HAROLD MORDKOFKY
BENJAMIN H. DICKENS, JR.
JOHN A. PRENDERGAST
GERARD J. DUFFY
RICHARD D. RUBINO
MARY J. SISAK
D. CARY MITCHELL
SALVATORE TAILLEFER

ARTHUR BLOOSTON
1914 – 1999

April 3, 2013

AFFILIATED SOUTH AMERICAN OFFICES

ESTUDIO JAUREGUI & ASSOCIATES
BUENOS AIRES, ARGENTINA

ROBERT M. JACKSON
OF COUNSEL

PERRY W. WOOFER
LEGISLATIVE CONSULTANT

EUGENE MALISZEWSKYJ
ENGINEERING CONSULTANT

WRITER'S CONTACT INFORMATION

bhd@bloostonlaw.com
202-828-5510

**WRITTEN EX PARTE
VIA ECFS**

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Petition of the United States Telecom Association for Forbearance from Certain Legacy
Telecommunications Regulations, WC Docket No. 12-61

Dear Ms. Dortch:

The Alarm Industry Communications Committee (“AICC”) submits this letter to supply additional information warranting the denial of the Petition for Forbearance (“Petition”) filed by the United States Telecom Association (“USTA”).¹ AICC filed Comments and Reply Comments in the pleading cycle initiated by the Commission,² addressing in particular USTA’s request for forbearance of the Open Network Architecture (“ONA”), Comparably Efficient Interconnection

¹ *Petition for Forbearance of the United States Telecom Association*, WC Docket No. 12-61, filed February 16, 2012).

² *Pleading Cycle Established for Comments on United States Telecom Association Petition for Forbearance from Certain Telecommunications Regulations*, Public Notice, DA 12-352, WC Docket No. 12-61, released March 8, 2012. *See, also, Comments of AICC*, WC Docket No. 12-61, filed April 9, 2012; *Reply Comments of AICC*, WC Docket No. 12-61, filed April 24, 2012.

(“CEI”), and related Rules.

In a nutshell, AICC continues to object to lifting these important non-discrimination requirements applicable to the former Bell Companies. At the same time that these companies and/or their affiliates are, according to evidence garnered by AICC’s members, entering the alarm business, they are simultaneously seeking to do away with important regulatory safeguards. The efforts of these companies, most notably those of Verizon and AT&T, include not only the elimination of federal protections against anti-competitive conduct,³ but also an aggressive state level campaign for deregulation of their basic services. They already have had a fair degree of success in doing so.

In addition to doing away with state regulatory and tariffing requirements, which the FCC has found “essential to the implementation of ONA,”⁴ these same companies are planning to withdraw copper-based narrowband services⁵ that are utilized extensively by the alarm industry to provide “line security,” a functionality employed in high-security and/or high-value installations to detect a break or cut in a line between a protected premise and an alarm monitoring provider’s central station.⁶

In sum, the core purposes of the ONA framework – the creation of a non-discriminatory framework for Bell Company competition in the enhanced services sector, and the unbundling of

³ See, e.g., *Comments of Verizon*, WC Docket No. 12-61, filed April 9, 2012 (requesting the Commission forbear from applying Open Network Architecture and Comparably Efficient Interconnection).

⁴ *In the Matter of Filing and Review of Open Network Architecture Plans*, 5 FCC Rcd 3084, 3089 (FCC 1990).

⁵ See *Request to Refresh Record and Amend the Commission's Copper Retirement Rules*, WC Docket No. 12-353, RM 11-11358; *Comment Sought on the Technological Transition of the Nations Communications Infrastructure*, GN Docket No. 12-353.

⁶ Line security functionality was a principal focus in the alarm industry’s ONA unbundling requests to the former Bell Companies during the ONA/CEI unbundling process. As discussed later, the FCC earlier stopped one former Bell Company’s attempt to withdraw line security-based services.

their networks for enhanced service providers – are still as relevant and necessary today as they were originally. Together with USTA’s failure to make any threshold showing to the contrary, these facts warrant denial of USTA’s Petition.

The primary federal policy goal behind this Commission’s adoption of the ONA/CEI framework was to address the potential for anticompetitive conduct by the former Bell Companies in the enhanced (or information) services market.⁷ Cost allocation plans, network information disclosure requirements and Customer Proprietary Network Information procedures were all part of implementing this policy.⁸ The former Bell Companies were required to unbundle network elements requested by enhanced service industry sectors, including the alarm industry. Several of the elements requested by the alarm industry concerned the availability of line security, which included various forms of derived local channel (“DLC”) technology (e.g., “Ability to Detect Breaks in Telephone Line within 60 seconds,” “Derived Channels Compatible With ISDN,” and “Derived Local Channels”).⁹

Notably, Ameritech later withdrew DLC as an enhanced service offering, along with additional services dependent upon that technology.¹⁰ Against AICC’s complaints, the FCC noted its disapproval of Ameritech’s withdrawal of these services.¹¹ Shortly thereafter, Ameritech entered the alarm monitoring and installation business by acquiring SecurityLink, a Chicago based alarm services provider. Subsequently, Congress passed the Telecommunications Act of 1996, which excluded Bell Operating Companies and their affiliates from engaging in the

⁷ *In the Matter of Computer Inquiry III*, 104 FCC 2d 958, 1026 (FCC 1986).

⁸ *Id.* at ¶¶5-6.

⁹ *In the Matter of Filing and Review of Open Network Architecture Plans*, 4 FCC Rcd 1, 64 - 67 (FCC 1988).

¹⁰ *In the Matter of Filing and Review of Open Network Architecture Plans*, 6 FCC Rcd 7646, 7651 - 7652 (FCC 1991).

¹¹ *Id.* at para. 10.

provision of alarm monitoring services until five years after the '96 Act's date of enactment.¹²

Ameritech's SecurityLink transaction appears to have been grandfathered by the same section.¹³

Hardly sooner than the ink was dry on that transaction, Ameritech expanded its beachhead in the alarm industry through significant acquisitions. It justified its apparent violation of section 275 on the theory that the statute did not prohibit asset acquisitions, only stock acquisitions. The FCC later rejected a complaint by AICC,¹⁴ which in turn was reversed by the U.S. Court of Appeals.¹⁵ By this time, Ameritech had been acquired by SBC (now AT&T), and the assets were sold to a third party.

Throughout this period, up to and including to date, the alarm industry has remained reliant upon the former Bell companies' networks. In the post-divestiture proceedings in which the Bell companies were fenced-off from the information services market, the Court relied in part upon Dr. Peter Huber's findings that 70% to 90% of alarm service costs were "highly susceptible to misallocation."¹⁶ The Court made clear that the line of business restrictions in the AT&T Consent Decree were related to the BOCs' "bottleneck control" of essential facilities.¹⁷

Today, these same bottlenecks remain, particularly for the alarm industry which is, generally speaking, heavily dependent upon the legacy copper networks of the former Bell

¹² See 47 U.S.C. § 275. It bears mentioning that the alarm industry was the only enhanced service market segment which received a congressional carve out from the Bell company entry. During the legislative process, much attention was devoted to the Bell Companies' incentives and ability to harm competition in the alarm industry.

¹³ 47 U.S.C. § 275(a)(2).

¹⁴ *In re Enforcement of Section 275(a)(2) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, Against Ameritech Corporation*, 12 F.C.C.R. 3855 (FCC 1997).

¹⁵ *AICC v. FCC*, 131 F.3d 1066 (D.C. Cir. 1997).

¹⁶ *United States v. Western Elec. Co.*, 673 F. Supp. 525, 571 (D.D.C. 1987). Dr. Huber was the expert retained by the Department of Justice to advise on the continued necessity of line of business restrictions for the triennial review of the Consent Decree. The Court's Triennial Review Order, maintaining the information service line of business restriction applicable to the BOCs, was overturned on grounds not relevant to Dr. Huber's findings. See *United States v. Western Elec. Co.*, 900 F.2d 283 (D.C. Cir. 1990).

Companies. To be sure, wireless and other technologies are able to supplement and/or back-up primary transmission functions provided by the former BOCs. And, in some cases, alternative transmission modes have replaced legacy facilities. Mainly, however, newer technology such as cellular complements rather than replaces existing service and facilities.

The former Bell Companies' bottleneck control and its effect on the alarm industry can be illustrated by the deployment and subsequent withdrawal of DLC – a line security service – in certain markets. As discussed earlier, line security functionality and DLC were requested by the alarm industry as part of the initial ONA process. DLC in particular was seen as a very effective way, both technically and from a cost point of view, to provide line security.

Once deployed, however, several of the former BOCs began to dial back availability of the service. Ameritech's attempt to simply withdraw DLC was mentioned earlier. AICC is aware of at least one monitoring company in a major Verizon market which had several thousand high value premises protected by DLC over time. However, Verizon cut back its product support so severely that the alarm company was forced to migrate off of the product. Today, this particular company has several hundred of these circuits left. And, while AICC believes it to be generally true that line security solutions like DLC have been gradually withdrawn across the U.S., the alarm industry still needs these products. One company has reported to AICC that as many as 50% of its circuits are DLC equipped, while another reports that 75% of its circuits are DLC.

AICC respectfully submits that the apparent ease with which such unilateral service migrations have occurred within a regulated environment is cause for concern when considering what might happen were USTA's Petition granted. Will DLC, or some new form of line security, resurface when the alarm monitoring units of AT&T and Verizon want line security?

¹⁷ *United States v. AT&T*, 552 F.Supp 131, 170-~~5~~71 (D.D.C. 1982).

And what competitive market forces exist when telecommunications providers can simply withdraw a product offering upon which an industry segment is so dependent?

Unfortunately, none of these alarm industry specific issues were addressed in USTA's Petition, much less an examination of this important market on a geographic basis. As discussed following, neither did the USTA Petition address the state deregulation campaign being waged successfully by their members, despite this Commission's earlier finding that "dual tariffing" (i.e. state tariffing) "...is essential to the implementation of ONA ..."¹⁸

A recent report conducted by the National Regulatory Research Institute catalogs that extensive state deregulation of basic rates has occurred as of 2012. Between 2010 and April 30, 2012, state legislatures limited public utility commission ("PUC") regulation. Out of 21 state legislatures, it appears that 13 of state deregulatory laws were passed in AT&T territory. It further appears that approximately half of the states have either passed deregulatory legislation, or are considering such. Florida is listed as one example where all retail regulation has been eliminated. Even consumer complaints now avoid the Florida Public Service Commission, going instead to the Florida Department of Agriculture.¹⁹

It is hard to square such sweeping state deregulation (called "deregulation fever" by the NRRI report) with any notion that state regulation will protect enhanced service providers and users, like the alarm industry, in the absence of ONA.

In conclusion, the alarm industry, while evolving technologically, is still highly dependent upon the legacy networks of the former Bell Companies. Even with the Commission's ONA protections, the industry has watched while one regional BOC violated the

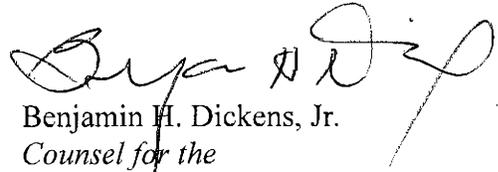
¹⁸ *In the Matter of Filing and Review of Open Network Architecture Plans*, 5 FCC Rcd 3084, 3089 (FCC 1990).

¹⁹ Lichtenberg, Sherry. *The Year in Review: Status of Telecommunications Deregulation in 2012*, National Regulatory Research Institute, June 2012, at iii, 6-8.

five year acquisition ban in section 275, and attempted to withdraw the ONA-related services. Other alarm companies have been migrated off of these services by poor or non-existent support, and approximately half of the U.S. is facing complete or substantial deregulation of the local services upon which they depend. USTA's Petition, in contrast, only seeks to portray telecommunications competition at the broadest level, which avoids examining competition in discrete markets, like alarm monitoring.

For these reasons, and those set forth in AICC's Comments and Reply Comments in this proceeding, USTA's Petition should be denied.

Sincerely,



Benjamin H. Dickens, Jr.
*Counsel for the
Alarm Industry Communications Committee*

CC: Ms. Jodie May
Ms. Jennifer Prime