

**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)	
)	
1998 Biennial Regulatory Review – Review)	CC Docket No. 98-10
of Computer III and ONA Safeguards and)	
Requirements)	
)	

**COMMENTS OF THE
ALARM INDUSTRY COMMUNICATIONS COMMITTEE**

The Alarm Industry Communications Committee (“AICC”), on behalf of its members, hereby submits these comments on the Commission’s *Further Notice of Proposed Rulemaking*¹ (FNPRM) dated May 17, 2013. These comments discuss the continuing importance of Open

¹ *Review of Wireline Competition Bureau Data Practices; Petition of Cincinnati Bell Telephone Company LLC for Waiver from Application of the Equal Access Scripting Requirement; Petition of United States Telecom Association for Waiver from Application of the Equal Access Scripting Requirement; Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering; Petition of Verizon for Forbearance, 47 U.S.C. § 160(c) from Enforcement of Certain of the Commission’s Recordkeeping and Reporting Requirements; Petition of Qwest Corporation for Forbearance from Enforcement of the Commission’s ARMIS and 492A Reporting Requirements Under 47 U.S.C. § 160(c); Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of ARMIS Reporting Requirements; and Petition of Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of the Commission’s ARMIS Reporting Requirements; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of the Commission’s ARMIS Reporting Requirements; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of the Commission’s Cost Assignment Rules; Petition of BellSouth Telecommunications, Inc. for Forbearance Under 47 U.S.C. § 160 from Enforcement of Certain of the Commission’s Cost Assignment Rules; Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission’s Rules; Computer III Further Remand Proceedings; Bell Operating Company Provision of Enhanced Services; 1198 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements, WC Docket Nos. 12-61, 10-132, 09-206, 08-225, 08-190, 07-273, 07-204, 07-139, 07-21, 05-342; CC Docket Nos. 02-39, 00-175, 95-20, 98-10, Memorandum Opinion and Order and Report and Order and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, FCC 13-69, released May 17, 2013.*

Network Architecture (ONA) services to the alarm industry and the concomitant need for continued scrutiny of applications to withdraw them by Bell Operating Companies (BOCs). These comments also discuss the Commission's proposal to streamline the process by which BOCs apply to withdraw narrowband access for enhanced services offered as part of their ONA plans. Specifically, AICC opposes the Commission's proposals to use a process similar to Section 214 discontinuance of service in the context of ONA services because the abbreviated 214 process would unfairly place the burden on the enhanced service providers (ESPs) to demonstrate the service should not be withdrawn, contrary to the Commission's intentions in implementing ONA in the first place.

I. Statement of Interest

AICC is comprised of representatives of the Central Station Alarm Association (CSAA), Electronic Security Association (ESA), Security Industry Association (SIA), Bosch Security Systems, Digital Monitoring Products, Digital Security Control, Telular Corp, Stanley Convergent (alarm division, formerly known as Honeywell Monitoring), Honeywell Security, Vector Security, Inc., ADT Security Services, Inc., AES- IntelliNet, Alarm.com, Bay Alarm, Intertek Testing, RSI Videofied, Security Network of America, United Central Control, AFA Protective Systems, Vivint (formerly APX Alarm), COPS Monitoring, DGA Security, Security Networks, Universal Atlantic Systems, Axis Communications, Interlogix, LogicMark, Napco Security, Alarm Detection, ASG Security, Protection One, Security Networks, Select Security, Inovonics, Linear Corp., Numerex, Tyco Integrated Security, FM Approvals, and the Underwriters Laboratories.

CSAA and ESA, representing the alarm monitoring and installation industry sectors, collectively have 2434 member companies providing alarm service to the public. Together with

these trade association members, AICC member companies protect a wide range of sensitive facilities and their occupants from fire, burglaries, sabotage and other emergencies. Protected facilities include government offices, power plants, hospitals, dam and water authorities, pharmaceutical plants, chemical plants, banks, schools and universities. In addition to these commercial and governmental applications, alarm companies protect a large and ever increasing number of residences and their occupants from fire, intruders, and carbon monoxide poisoning. Alarm companies also provide medical alert services in the event of medical emergencies

As AICC has demonstrated in the context of USTelecom's Petition for Forbearance, the alarm industry is still dependent upon narrowband services and facilities provided by the BOCs, and will continue to be for some time.² At the same time, the BOCs have historically shown no reluctance to enter the alarm industry, even in contravention of an Act of Congress, and are presently involved in state-level lobbying efforts to reduce or remove state regulation of their legacy networks, as well as the applicability of state regulations governing providers of alarm service.³ The Commission specifically recognizes in the FNPRM that the BOCs themselves continue to make use of their legacy facilities to provide their own enhanced services.⁴ As such, the unbundled features and functions and "level playing field" objectives of ONA are still relevant today. Therefore, the Commission should continue to analyze BOC requests to withdraw ONA services with great scrutiny.

² See, e.g., Written Ex Parte by AICC, *In the Matter of Petition of the United States Telecom Association for Forbearance from Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, filed April 3, 2013; Comments of AICC, *In the Matter of Petition of the United States Telecom Association for Forbearance from Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, filed April 9, 2012; Reply Comments of AICC, *In the Matter of Petition of the United States Telecom Association for Forbearance from Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, filed April 24, 2012.

³ Written Ex Parte by AICC, *supra* note 2, at p.2.

⁴ FNPRM at ¶27.

II. The Alarm Industry Still Makes Use of Narrowband ONA Services

The FNPRM seeks comment on specific service inputs that ESPs still may require.⁵ As AICC has discussed throughout its participation in ONA-related proceedings, dating back to the original ONA Orders, the alarm industry routinely makes use of narrowband ONA services, including 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").⁶ These services are used to varying degrees; 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.⁷

Although AICC supports the Commission's effort to collect information about the specific service inputs that ESPs may still require, its further proposal to simply eliminate the rest goes too far.⁸ Indeed, the Commission denied USTelecom's Petition for Forbearance because a blanket-style elimination of ONA protection is inappropriate. For one, such a system would be a dramatic departure from existing procedures for the withdrawal of ONA service. Second, as discussed later, it would unfairly shift the burden of proof from the BOC to the ESP. Third, ONA is more than just protecting existing service inputs; ESPs are also able to request ONA service offerings from BOCs under the ONA rules.⁹ Therefore, even if an ESP is not

⁵ FNPRM at ¶202.

⁶ Written Ex Parte of AICC, *supra* note 2, at p. 3.

⁷ *Id.* at p. 5.

⁸ FNPRM at ¶202.

⁹ FNPRM at ¶205, citing *Amendment of Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85-229, Phase I, 104 FCC 2d 958, 1068 (1986); see *Filing and Review of Open Network Architecture Plans*, CC Docket No. 88-2, Phase I, Memorandum Opinion and Order, 6 FCC Rcd 7646, 7654-55, ¶¶ 14-19 (1991).

currently the customer of a particular service, that does not mean it should lose its ability to request the service from a BOC under ONA.

Indeed, the Commission seeks comment in the FNPRM on the frequency of new ONA service requests that BOCs receive, and on the usefulness of the “120 day process” by which ESPs are able to request new ONA basic services.¹⁰ The “120 day process” remains important to ESPs, including the alarm industry, due to the rapidly accelerating transition by the BOCs from circuit-switched networks to IP-based networks. Specifically, the transition creates an increasing potential for both dislocation of existing services and innovation in new or modified ones. In such a climate of rigorous change, access to new ONA basic services is important as ESPs identify new alternatives.

Therefore, AICC urges the Commission to take a more measured approach which provides ESPs with an orderly notice and comment process to object to a withdrawal, as discussed below.

III. The Commission Should Not Reduce Scrutiny on Requests to Withdraw ONA

The Commission should continue to use the same criteria the Bureau has relied upon in reviewing past requests to withdraw ONA service and it should analyze the relevant competitive market for the ONA service before permitting a BOC to withdraw an ONA service. As the FNPRM recognizes, the Commission found in the original ONA proceedings that it would not be reasonable for BOCs to withdraw any services listed in their approved ONA plans and that it would not look favorably on requests for withdrawal.¹¹ And, while the Commission seeks to

¹⁰ *FNPRM* at ¶205.

¹¹ *FNPRM* at ¶206, citing *Filing and Review of Open Network Architecture Plans*, CC Docket No. 88-2, Phase I, Memorandum Opinion and Order, 6 FCC Rcd 7646, 7652-53 (1991).

provide relief from ONA requirements to the extent possible, nothing in the record supports the conclusion that a less searching procedure for withdrawing an ONA service is appropriate. Again, the Commission has recognized in this proceeding that the BOCs themselves continue to make use of their legacy facilities to provide their own enhanced services.¹² Therefore, the Commission should continue to evaluate the reasonableness of a withdrawal request to see if circumstances justify withdrawal using the same criteria as in the past. Such criteria should continue to include whether the BOC has existing customers for the service and whether suitable alternative services exist.

The Commission's analysis also should include a review of the effect of withdrawal of the service on competition, similar to the competitive analysis required to meet the forbearance standard. While AICC recognizes the standard defined by Section 10 is applicable to requests for forbearance only, the associated competitive analysis is an important element that should be retained in the Commission's analysis of requests to withdraw ONA services. Simply put, ONA and CEI were originally implemented to protect competition. It stands to reason that a competitive analysis should be part of any proceeding to withdraw an ONA service. As AICC has demonstrated in other filings on ONA, 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 their networks for enhanced service providers - are still as relevant and necessary today as they were when they were first adopted.¹³ Verizon and AT&T, among others, have lobbied vigorously (and successfully) at the state level to eliminate state regulatory and tariffing requirements, which the Commission found to be "essential to the

¹² *Id.* at ¶27

¹³ *See, e.g.*, Written Ex Parte of AICC, *supra* note 2; Comments and Reply Comments of AICC, *supra* note 2.

implementation of ONA.”¹⁴ Therefore, an analysis of the effects of a withdrawal of ONA service on the relevant competitive market should be a part of the Commission’s review.

IV. The Burden of Proof Should Be on the BOC, Not the ESP

Upon applying for withdrawal, any BOC wishing to withdraw ONA service should be required to demonstrate the reasonableness of its request under the Commission’s existing criteria (such as whether suitable alternative services exist) and to make a competitive analysis showing, rather than requiring affected ESPs to demonstrate that the ONA requirement should be maintained. The Commission’s proposal to use a process similar to the current Section 214 discontinuance process for the withdrawal of ONA services¹⁵ unfairly shifts the burden to the ESP to demonstrate why the service should not be withdrawn. Instead, the onus should be on the BOC to demonstrate that withdrawal of the ONA service is appropriate, with an opportunity for ESPs to refute that demonstration (if necessary).

Specifically, under the Commission’s proposal, a BOC that wishes to withdraw an ONA service would send a notice to all affected customers which includes the following statement:

The FCC will normally authorize this proposed withdrawal and discontinuance of service unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected.¹⁶

Contrary to the Commission’s assertion that such a process, “would set a threshold showing for a BOC to withdraw an ONA service,” the reality is that it becomes the ESP’s burden to demonstrate that the ONA service should not be withdrawn. The Commission’s proposal does

¹⁴ Written Ex Parte of AICC, *supra* note 2, at p. 2, citing *In the Matter of Filing and Review of Open Network Architecture Plans*, 5 FCC Red 3084, 3089 (FCC 1990).

¹⁵ *FNPRM* at ¶207-208.

¹⁶ *FNPRM* at ¶207.

not appear to require any showing whatsoever on the part of the BOC – rather, the BOC would merely indicate it plans to withdraw ONA, provide the required notices, and then wait for the Commission to act (or not, as the proposal also provides for automatic grant of any application without further action from the Commission after 60 days), leaving it up to the ESP to object and to prove that the withdrawal of the service is not in the public interest.

As the Commission correctly recognizes, “it is important for ESPs to have sufficient detail to understand the impact of any possible reduction in availability.” It makes logical sense, therefore, to require a BOC that applies to withdraw an ONA service to demonstrate among other things the availability of alternative services and the possibility of grandfathering existing customers, as discussed above. This would provide ESPs with the opportunity to evaluate the alternatives available and provide the Commission with an informed response during the period for public comment associated with the proposed system.

Furthermore, the current record does not support the Commission’s suggestion that it will “normally authorize” proposed withdrawals of ONA service. It is a well settled principle of administrative law that an abrupt departure from agency precedent requires adequate explanation and support in the record under administrative law.¹⁷ As mentioned earlier, the current Commission policy is that it is presumptively unreasonable for BOCs to withdraw any services listed in their approved ONA plans, and that the Commission does not look favorably on requests for withdrawal.¹⁸ In its proposed language, the Commission takes the opposite stance; namely, that applications for withdrawal should be routinely granted unless the ESP demonstrates

¹⁷ See *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983); *Atchison, Topeka & Santa Fe Ry. Co. v. Wichita Bd. of Trade*, 412 U.S. 800, 808 (1973)

¹⁸ See, *supra*, note 11.

otherwise. AICC respectfully submits that, as discussed above, the record does not support this abrupt departure from existing procedure.

At a minimum, the Commission should not allow for automatic grant of ONA withdrawal applications. This aspect of the proposal improperly reinforces the incorrect assumption that such requests for withdrawal should be “routinely granted.” As the Commission itself recognized in denying USTelecom’s Petition for Forbearance, there is insufficient evidence in the record to show that such an assumption is true.¹⁹ Moreover, it introduces uncertainty into the process because ESPs that oppose withdrawal of an ONA service may not be afforded the benefit of the Commission’s analysis in the event the Commission allows the 60 day period to pass. In a time where increased government transparency is demanded by the American people,²⁰ a system that does not require an agency to explain its reasoning is wholly inappropriate.

Instead, the Commission should require a BOC to provide an initial demonstration of why the withdrawal of the ONA service is appropriate based on the factors discussed above as part of its application to withdraw the service. In cases where the Commission receives no comment or opposition during the public comment period, automatic grant of the application may be appropriate. However, if the Commission receives any comments opposing the withdrawal of the service, the Commission should then provide an Order or other memorandum providing the rationale for its ultimate decision.

¹⁹ *In the Matter of Petition of the United States Telecom Association for Forbearance from Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, et al., Report and Order, *supra* note 1 at ¶22.

²⁰ *See, e.g.*, The FCC Process Reform Act, a U.S. House of Representatives Energy and Commerce subcommittee draft bill aimed at improving FCC transparency, draft available at <http://docs.house.gov/meetings/IF/IF16/20130724/101215/BILLS-113pih-FCCProcessReform.pdf> (last accessed July 31, 2013).

V. Conclusion

As demonstrated above, the alarm industry still makes use of ONA service inputs, in the face of a growing initiative by the BOCs to offer alarm services in a largely de-regulated environment. Accordingly, the Commission should not implement the proposed “streamlined” ONA service withdrawal mechanism. Instead, the Commission should continue to review the reasonableness of requests to withdraw ONA service, while providing the public the opportunity to comment and oppose any such request. It should be the BOC’s burden to prove that withdrawing the ONA service is reasonable, rather than the ESP’s burden to prove that withdrawing the ONA service is not.

Respectfully submitted,

**THE ALARM INDUSTRY
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