

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

In the Matter of	)	
	)	
Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services	)	CC Docket No. 95-20
	)	
1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements	)	CC Docket No. 98-10
	)	
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**REPLY COMMENTS OF  
THE NEW JERSEY DIVISION OF RATE COUNSEL  
AND  
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

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## **I. INTRODUCTION**

The New Jersey Division of Rate Counsel (“Rate Counsel”), an agency representing New Jersey consumers,<sup>1</sup> and the National Association of State Utility Consumer Advocates (“NASUCA”)<sup>2</sup> (collectively, “Consumer Advocates”) hereby submit reply comments<sup>3</sup> regarding the Further Notice of Proposed Rulemaking issued by the Federal Communications Commission (“FCC” or “Commission”) on May 17, 2013, on the issue of streamlining or eliminating residual regulations that the FCC established in its Computer Inquiry proceedings.<sup>4</sup> Initial comments were filed by a regional reseller, Full Service Network LP (“FSN”); the Alarm Industry Communications Committee (“AICC”) (representing diverse providers from the alarm services industry); and two large incumbent local exchange carriers (“ILECs”) – Verizon and CenturyLink –two of the three remaining Regional Bell Operating Companies.

## **II. DISCUSSION**

### **A. Overview and Summary**

Consumer Advocates appreciate the Commission’s objective of streamlining or eliminating regulatory requirements that have outlived their usefulness. However, having

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<sup>1</sup> Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities.

<sup>2</sup> NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

<sup>3</sup> Neither Rate Counsel nor NASUCA submitted initial comments.

<sup>4</sup> *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*, Further Notice of Proposed Rulemaking, CC Docket Nos. 95-20, 98-10, FCC 13-69 (rel. May 17, 2013) (“FNPRM”); Public Notice, Wireline Competition Bureau Announces Comment Cycle for Further Notice of Proposed Rulemaking on Computer III Requirements, DA 13-1516, CC Docket Nos. 95-20, 98-10, DA 13-1516, rel. July 3, 2013.

reviewed the initial comments, Consumer Advocates are not convinced that the Computer Inquiry III (“CI3”) non-structural safeguards – in particular, the open network architecture (“ONA”) requirements – are obsolete or are unduly burdensome to ILECs, in light of their continuing benefit to consumers. Vast consumer benefit has come from creating a pro-competitive environment for enhanced and information services – much of that environment attributable to the Commission’s Computer Inquiry framework. It has not been established that changes in technology have disrupted the ILECs’ market power to the extent that these pro-competitive frameworks are no longer necessary. Consumer Advocates urge the Commission not to jettison the remaining ONA requirements simply because the ILECs deem all legacy regulation to be inconvenient.

**B. Competition alone cannot be relied upon to provide enhanced service providers with the necessary inputs for their services.**

Consumer Advocates urge the Commission to disregard the opening arguments by CenturyLink that the rationale for the CI3 frameworks is obsolete because “competition is thriving”<sup>5</sup> and because it is “undeniably clear that ILECs do not have a dominant market position today in the voice and broadband markets.”<sup>6</sup> Verizon makes similar claims.<sup>7</sup> In fact, when the ILECs have been challenged to produce hard evidence of effective competition in their series of MSA forbearance petitions,<sup>8</sup> they have almost universally failed to come up with a compelling case.

More relevant here, nothing in the ILECs’ comments establishes that enhanced service providers (“ESPs”) in particular have competitive alternatives for the telecommunications inputs

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<sup>5</sup> CenturyLink, at 3.

<sup>6</sup> Id., at 3.

<sup>7</sup> Verizon, at 5-6.

<sup>8</sup> Cite

traditionally obtained, via Open Network Architecture (“ONA”), from the ILECs. End-user options for voice services do not automatically translate into useful narrowband inputs for ESPs. CenturyLink makes no effort to demonstrate that ESPs can obtain true functional substitutes for ILEC narrowband services from cable companies or wireless providers (neither of which is obligated to provide ONA alternative services).

**C. Consumers continue to reap the benefits of the pro-competitive structures that remain in place under Computer Inquiry III.**

CenturyLink goes to great lengths to make the point that the Computer Inquiry framework is, to paraphrase, really, really old.<sup>9</sup> But sound regulatory and economic principles do not have an expiration date. With periodic tune-ups by the Commission, the CI3 policies have been one of the most successful policy frameworks of the competitive era in telecommunications. They permitted independent providers to create innovative, competitive information services without fear of competitive interference from the companies that supplied them with basic services.

Comments from the AICC and FSN attest to the fact that ONA services are still being used to provide consumers with valuable services. According to AICC,

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. 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. As such, the unbundled features and functions and “level playing field” objectives of ONA are still relevant today.<sup>10</sup>

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<sup>9</sup> CenturyLink, at 5-6.

<sup>10</sup> AICC, at 3. AICC goes on to describe the many narrowband services that alarm companies rely on to provide their diverse offerings. *Id.*, at 4.

Although broadband services continue to expand, these and other narrowband applications will likely could continue to be provided to consumers, on a cost-effective basis, for many years to come. This will occur only if appropriately protected from discrimination or forced migration to the broadband platform (where the non-discrimination protections are either not applied or exist under tenuous conditions created by the constant barrage of deregulatory pressure from ILECs).

CenturyLink's concern is that the ONA rules "fundamentally impede the ability of carriers to develop and deploy innovative products that respond to market demands in a timely fashion..."<sup>11</sup> Yet ILECs ILECs vehemently insist that such narrowband offerings are essentially becoming obsolete.

According to both Verizon and CenturyLink, full justification for dismantling the remaining Computer III protections can be found in the Commission's 2005 Order on Broadband Wireline Internet Access.<sup>12</sup> Both companies quote liberally from that Order, to support their argument that the burdens on ILECs from the CI3 rules "impede the development and deployment of innovative wireline broadband Internet access technologies and services."<sup>13</sup> Verizon and CenturyLink are wrong. The policies adopted in the BWIA Order may have created some additional incentive for broadband deployment by the ILECs, but have cost consumers greatly in lost opportunity for competitive growth and innovation with respect to information services provided over a neutral broadband transmission platform. Rather than end the CI3 frameworks for narrowband services, the Commission should restore broadband transmission for

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<sup>11</sup> CenturyLink, at 11.

<sup>12</sup> Verizon at 3-4, CenturyLink at 11-12, citing *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005) ("BWIA Order").

<sup>13</sup> Verizon, at 3; CenturyLink, at 11, quoting BWIA, at para. 65.

Internet access to its appropriate classification, as a **telecommunications** service and require that it be offered as a neutral pathway for the offering of information services.

**D. The Commission should not shift the burden of proof for retaining ONA services from the ILECs to their ESP customers.**

CenturyLink supports the Commission’s proposed procedure for discontinuation of existing ONA services, while (Verizon would simply flash-cut away from all remaining ONA requirements.,<sup>14</sup> But ESPs object – in Consumer Advocates’ view, with justification – to the fact that the proposed procedure would shift the burden of proof with respect to showing the existence of alternatives, from the carriers to which ONA service obligations apply and onto the ESPs that rely on those services.<sup>15</sup> As AIA points out, there is (appropriately) no presumption in the existing rules or in practice that an ILEC request to withdraw an ONA service is justified; that needs to be demonstrated through affirmative evidence by the requesting party. Certainly, it is reasonable to expect ESP customers to provide any relevant information about their continuing need for the service, but any restructuring of the ONA process that would require the customer to affirmatively show a lack of alternative services in order to preserve existing ONA options goes too far.

**III. CONCLUSION**

Consumer Advocates urge the Commission to heed the recommendations set forth in these reply comments, and to retain its CI3 safeguards.

Respectfully submitted,

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<sup>14</sup> CenturyLink, at 14; see generally, Verizon, at 1, 7.

<sup>15</sup> AICC, at 7-9; see also, FSN, at 4-5.

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