



PUBLIC NOTICE

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DA 01-620
March 7, 2001

FURTHER COMMENT REQUESTED TO UPDATE AND REFRESH RECORD

ON COMPUTER III REQUIREMENTS

CC DOCKET NOS. 95-20; 98-10

COMMENTS DUE: 30 days after publication in the Federal Register

REPLY COMMENTS DUE: 45 days after publication in the Federal Register

On January 30, 1998, the Commission released a Further Notice of Proposed Rulemaking (FNPRM) in the above dockets in which it sought comment on the interplay between the safeguards and terminology established in the Telecommunications Act of 1996 (1996 Act) and the *Computer III* regime.¹ In its *Computer III* and *Open Network Architecture* (ONA) proceedings, the Commission established nonstructural safeguards for the provision of enhanced services by the Bell Operating Companies (BOCs).² The FNPRM sought information necessary to respond to a remand from the United States Court of Appeals for the Ninth Circuit regarding the effectiveness of nonstructural safeguards.³ It also asked for comment on a number of other issues, including, the continued application of the *Computer III* safeguards to BOC provision of enhanced services, whether implementation of the 1996 Act should alleviate the Ninth Circuit's concern about the level of unbundling mandated by ONA,⁴ whether ONA has been effective in providing competitive information service providers (ISPs) with access to basic telecommunications services and whether the ONA requirements should be modified, whether the Commission, under its general rulemaking authority should extend to ISPs some or all unbundling rights available under section 251 of the 1996 Act, and whether the Commission should interpret its definition of the term "basic service" and the 1996 Act's definition of "telecommunication service" to extend to the same function.⁵ This Public Notice

¹ *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, 13 FCC Rcd 6040 (1999) (FNPRM).

² *Id.* at 6042, para. 1 (citations omitted). The Commission has concluded that "enhanced services" and "information services" should be interpreted to extend to the same functions. It used both terms throughout the FNPRM.

³ *California v. FCC*, 39 F.3d 919 (9th Cir. 1994).

⁴ The Commission has required the BOCs to implement ONA regardless of whether ONA provided the basis for the elimination of structural separation. FNPRM, 13 FCC Rcd at 6085, para. 78.

invites parties to update and refresh the record on these issues.

In addition to commenting generally on the outstanding issues, parties should discuss specifically any developments in the ISP market since 1998 that the Commission should consider in re-examining the effectiveness of the *Computer III* and ONA requirements.⁶ For example, in response to the Commission's inquiry regarding how the deployment of new information services, such as Internet services, should affect our analysis of the ONA rules,⁷ we seek comment on whether ISPs can obtain, under the ONA framework, the telecommunications service inputs that they require from the BOCs, including Digital Subscriber Line (DSL) service. If ISPs use means other than ONA to acquire DSL service, commenters should identify such alternatives and discuss whether they offer a more effective and efficient approach for obtaining the required service. In addition, we ask parties to comment on whether there are adequate CEI plans in place for DSL service, and on whether they use those plans. With regard to the various annual and nondiscrimination reporting requirements mandated under *Computer III*, we also ask parties to comment on whether the requirements should be modified in any way to account for the current services that ISPs require from the BOCs.⁸ We also ask ISPs to describe the extent to which they may have used ONA to provide any information service over the course of the past three years, and correspondingly, ask the BOCs to comment generally on the numbers and types of requests for ONA services that they have received during this time.

The Commission stated in the FNPRM that it wanted to encourage the BOCs to provide new technologies and innovative information services that would benefit the public, as well as ensure that they make their networks available to competitive providers of such services.⁹ In light of the number of ISPs that have entered the marketplace, many of which are small competitors, and the Commission's goal of streamlining regulations whenever possible,¹⁰ we ask parties to comment on whether there is a way to make any safeguards that we adopt in this proceeding more self-enforcing, or otherwise structure them so that they can be implemented and used by all parties in a timely, efficient manner.

The FNPRM sought comment on the extent to which the Commission's unbundling requirements promulgated pursuant to section 251 of the 1996 Act should alleviate the Ninth Circuit's concerns about the level of unbundling required under ONA.¹¹ We note that the Commission's unbundling requirements

⁵ See *id.* at 6043-47, paras. 2-7. The FNPRM also sought comment on several issues related to Comparably Efficient Interconnection (CEI) requirements under *Computer III* that the Commission has already addressed. *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, Report and Order, 14 FCC Rcd 4289 (1999), *recon.*, 14 FCC Rcd 21,628 (1999).

⁶ The FNPRM discussed the sustained growth of competition in the information services market, particularly for access to the Internet, and noted the entrance of many ISPs into the market. 13 FCC Rcd 6063-64, para. 36.

⁷ *Id.* at 6089, para. 90.

⁸ *Id.* at 6093-6103, paras. 99-116.

⁹ *Id.* at 6046, para. 7.

¹⁰ *Id.* at 6046, para. 6.

¹¹ *Id.* at 6059-62, 6090-91, paras. 29-34, 92-96.

changed in light of the U.S. Supreme Court's 1999 ruling regarding the standard under which incumbent local exchange carriers should be required to unbundle their networks,¹² and we ask parties to comment on how the new rules and any resulting changes in the marketplace may affect our analysis in the FNPRM.

The FNPRM also sought comment on issues related to the ability of BOCs to provide both interLATA and intraLATA information services through a separate affiliate created pursuant to section 272 or 274 of the 1996 Act.¹³ It further stated that once the separation requirements under section 272 and 274 sunset, structural separation for intraLATA information services based on the existence of the statutorily-mandated affiliate would have to be reexamined.¹⁴ The relevant separation requirements in Section 272 and 274 did sunset on February 8, 2000,¹⁵ and we therefore seek comment on this development.

Parties submitting comments in response to this Public Notice must file initial comments 30 days after publication of the Notice in the Federal Register and reply comments 45 days after such publication.

Ex parte presentations in this proceeding continue to be governed by the procedures set forth in Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, covering "permit-but-disclose" proceedings.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

¹² See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (citing *AT&T v. Iowa Utils. Bd.*, 119 S.Ct. 721 (1999)), *recons. pending*.

¹³ *FNPRM*, 13 FCC Rcd at 6071, 6073-76, 6079-83, 6092-93, paras. 48, 52-59; 66-74, 97-98. In a separate proceeding, the Commission is examining, as part of a remand from the United States Court of Appeals for the D.C. Circuit, whether the term "interLATA services" as used in section 271 of the Act encompasses not only interLATA telecommunications services, but also interLATA information services. See *Comments Requested in Connection with Court Remand of Non-Accounting Safeguards Order*, CC Docket No. 96-149, Public Notice, DA 00-2530 (rel. Nov. 8, 2000).

¹⁴ *FNPRM* at 6075, para. 56.

¹⁵ 47 U.S.C. §§ 272(f)(2); 274(g)(2). See also *Request For Extension of the Sunset Date of the Structural, Nondiscrimination, and Other Behavioral Safeguards Governing Bell Operating Company Provision of In-Region, InterLATA Informational Services*, CC Docket No. 96-149, Order, 15 FCC Rcd 3267 (2000) (denying request for extension of section 272 sunset date).

Parties who choose to file by paper must file an original and four copies of each filing with the Office of the Secretary, FCC, 445 12th Street, S.W., Suite TW-A325, Washington, D.C. 20554. In addition, parties should send two copies to Janice Myles, Common Carrier Bureau Policy and Program Planning Division, 445 12th Street, S.W., 5-C327, Washington, D.C. 20554. Comments and reply comments will be available for public inspection and copying during regular business hours in the Commission's Public Reference Center, 445 12th Street, S.W., Suite CY-A257, Washington, D.C. 20554, 202-418-0270. Copies will also be available from International Transcription Service, 445 12th Street, S.W., Suite CY-B400, Washington, D.C. 20554, or by calling 202-314-3070.

For more information, please contact Jodie Donovan-May or Jessica Rosenworcel, Common Carrier Bureau Policy and Program Planning Division, 202-418-1580.