Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended	CC Docket No. 96-149

Comments on Remand of the Information Technology Association of America

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SUMMARY

The Commission should re-affirm its determination, in the *Non-Accounting Safeguards Order*, that a Bell Operating Company ("BOC") may not provide in-region, interLATA information services until the Commission has granted authorization pursuant to Section 271(d).

Section 271(a) of the Communications Act prohibits a BOC from providing in-region "interLATA services" prior to obtaining Commission authorization. On its face, the term "interLATA services" encompasses both interLATA telecommunications and information services. Moreover, the definition of "interLATA services" is taken, in all substantial respects, from the definition of "interexchange telecommunications" contained in the Modification of Final Judgment ("MFJ"). In the *Gateway Services Appeal*, the D.C. Circuit held that the MFJ's prohibition on BOC provision of "interexchange telecommunications services" precluded the BOCs from providing information services when such services are "bundled" with interLATA (interexchange) telecommunications. Congress' decision to codify the MFJ provision that provided the basis for the BOCs' exclusion from the interLATA information services market provides clear evidence that Congress intended to preserve the Decree's core prohibition on BOC provision of such services.

Construing the term "interLATA services" to include interLATA information services is fully consistent with the plain language of the Communications Act. Section 3(21) of the Communications Act defines an "interLATA service" as the provision of "telecommunications" across LATA lines. Section 3(43) of the Act, in turn, defines "telecommunications" as the provision of "transmission" capacity. When a BOC provides an interLATA information service, it satisfies the definition of an "interLATA service" because it provides transmission capacity to

its information services operation or affiliate. The BOC's information services operation, in turn, uses telecommunications to provide an information service to the public.

Further evidence that Congress intended to bar the BOCs from providing unauthorized in-region, interLATA information services is contained in three related provisions.

- Section 271(b) expressly authorizes the BOCs to provide two interLATA services that were prohibited by the MFJ: out-of-region and "incidental" interLATA services. If Congress had intended to eliminate the portion of the MFJ's interexchange restriction applicable to BOC provision of in-region, interLATA information services – which would have raised far more significant competitive concerns – it doubtless would have adopted a similar provision.

- Section 271(g) lists the categories of offerings that fall within the definition of "incidental interLATA services." This list includes information storage and retrieval services – offerings that indisputably constitute information services.

- Section 272(a) expressly distinguishes between "interLATA telecommunications services" and "interLATA information services." If, as the two BOCs insist, the term "interLATA services" must mean interLATA telecommunications, Congress presumably would not have needed to use the phrase "interLATA telecommunications."

To the extent that the Commission concludes that the language and structure of the Act do not provide clear evidence of congressional intent, the Commission should interpret Section 271(a) in a manner that promotes the goals of the Communications Act. Construing this provision to preclude a BOC from providing in-region, interLATA information services until it receives Section 271 authorization will:

- promote local exchange competition by increasing the BOCs' incentives to satisfy the market-opening requirements necessary to obtain Section 271 authorization;

- prevent anti-competitive abuse by excluding the BOCs from the in-region, interLATA information services market until they have opened their local markets to competition;

- prevent discrimination in the telecommunications services market by barring the BOCs from deploying interexchange facilities that they can only use to provide service to their information services affiliates.

The Commission's decision in the *Non-Accounting Safeguards Order* is entirely consistent the Commission's longstanding recognition, reiterated in the *Universal Service Report to Congress*, that an Information Service Provider is a *user* of telecommunications, rather than a *provider* of telecommunications services to its subscribers. As noted above, a BOC information service constitutes an "interLATA service" if the BOC provides interLATA transmission capacity to its information services operation or affiliate. Nothing in the statutory definition of "interLATA services" requires the BOCs' information service operations to provide a "telecommunications service" to their subscribers.

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COMMMENTS ON REMAND
OF THE
INFORMATION TECHNOLOGY ASSOCIATION OF AMERICA

The Information Technology Association of America ("ITAA") hereby submits the following comments. ITAA is the principal trade association of the nation's information technology industries. Together with its forty-one regional technology counsels, ITAA represents more than 26,000 companies throughout the United States. ITAA's members provide the public with a wide variety of information products, software, and services. Many of ITAA's member companies provide Internet access and other information services.

ITAA (and its predecessor, the Association of Data Processing Services Organizations ("ADAPSO")) has participated in virtually every proceeding addressing the terms and conditions on which the Bell Operating Companies ("BOCs") may participate in the information services market. This includes: proceedings related to the adoption and implementation of the Modification of Final Judgment ("MFJ"); the Commission's *Second and Third Computer Inquiries;* Congress' consideration of the legislation that culminated in the adoption of the Telecommunications Act of 1996; and earlier phases of the current docket. ITAA has

consistently urged the adoption of a regulatory regime that will foster the development of competition in the local exchange market, while limiting the ability of the BOCs to use their continuing control of bottleneck telecommunications facilities to harm competition in the vibrant information services market.

INTRODUCTION

The Commission should re-affirm its determination, in the *Non-Accounting Safeguards Order*, that the prohibition on Bell Operating Company ("BOC") provision of "interLATA services," which is contained in Section 271(a) of the Communications Act, precludes a BOC from providing in-region, interLATA information service until the Commission has granted authorization pursuant to Section 271(d).[1] As demonstrated below, the Commission's determination is consistent with: long-standing practice under the Modification of Final Judgment; the language, structure, and purpose of the Telecommunications Act; and the Commission's longstand recognition, reiterated in the *Universal Service Report to Congress*,[2] that an Information Service Provider is a *user* of telecommunications, rather than a *provider* of telecommunications services to its subscribers.

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[1] *See Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended*, First Report and Order, 11 FCC Rcd 21905, 21932-33 (1996).

[2] *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501 (1998) ("*Universal Service Report to Congress*").

I. THE COMMISSION CORRECTLY DETERMINED, IN THE *NON-ACCOUNTING SAFEGUARDS ORDER*, THAT SECTION 271(a) OF THE COMMUNICATIONS ACT BARS THE BELL OPERATING COMPANIES FROM PROVIDING UNAUTHORIZED IN-REGION, INTERLATA INFORMATION SERVICES

Verizon and Qwest contend that Section 271(a) of the Communications Act – which states that a BOC may not provide in-region "interLATA services" prior to obtaining Commission authorization – applies only to in-region, interLATA *telecommunications* services, and that the Commission erred in finding that this provision also bars a BOC from providing unauthorized in-region, interLATA information services. Their argument is deceptively simple. The Communications Act, the two BOCs observe, defines an "interLATA service" as "telecommunications between a point located in a local access and transport area and a point located outside such area."[3] The Commission, they further note, has correctly concluded that the categories of "telecommunications" and "information service" are mutually exclusive. Therefore, they conclude, the term "interLATA service" *cannot* include information services.[4] This argument is fundamentally flawed.

A. The MFJ Prohibited the BOCs from Providing InterLATA Information Services

The starting point for the Commission's analysis should be the Modification of Final Judgment. Section Two of the Decree, which governed the BOCs' participation in the

[3] 47 U.S.C. § 153(21).

[4] *See* Brief for Petitioners at 8-9, *Bell Atlantic Telephone Companies v. FCC* (D.C. Cir. No. 99-1479) ("Petitioners' Brief"). The Commission has included the two BOCs' brief in the record of this proceeding. *See Comments Requested in Connection with Court Remand of Non-Accounting Safeguards Order*, Public Notice, CC Docket No. 96-149, DA 00-2530 (Nov. 8, 2000).

information services market prior to the adoption of the Telecommunications Act, provided the basis for Section 271(a).

There can be no doubt that, under the MFJ, the BOCs were not allowed to provide interLATA (interexchange) information services. The basic premise of the MFJ was that, as long as the BOCs retained monopoly control over the local exchange, they would have the ability to harm competition in adjacent markets. For that reason, the Decree originally barred the BOCs from providing interLATA telecommunications services, providing information services, or manufacturing telecommunications and customer premises equipment.[5] These prohibitions were often referred to as the line-of-business restrictions.

In 1991, the Decree Court lifted the information services line-of-business restriction.[6] Even in the absence of the information services restriction, however, the BOCs' participation in the information services market was subject to the MFJ's prohibition on BOC provision of "interexchange telecommunications services." The MFJ defined "interexchange telecommunications" as:

> [T]elecommunications between a point or points located in one exchange telecommunications area and a point or points located in one or more other exchange areas or a point outside an exchange area.[7]

In the *Gateway Services Appeal*, the D.C. Circuit held that the MFJ's prohibition on BOC provision of "interexchange telecommunications services" precluded the BOCs from providing information services when such services are "bundled" with interLATA (interexchange)

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[5] *See United States v. American Telephone & Telegraph Co.*, 552 F. Supp. 131, 186-95 (D. D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

[6] *See United States v. Western Elec. Co.*, 767 F. Supp. 308 (D. D.C. 1991).

[7] 552 F. Supp. at 229 (*MFJ*, Section IV(K)).

telecommunications. This prohibition, the court added, applied even if the BOC obtained the interLATA service from an interexchange carrier ("IXC"), rather than providing the service over its own facilities.[8]

B. The Commission's Interpretation of the Term "InterLATA Services" to Include Information Services is Consistent With the Language, Structure, and Purpose of the Communication Act

The evidence overwhelmingly supports the conclusion that, when it adopted the Telecommunications Act, Congress intended to preserve the MFJ's prohibition on BOC provision of in-region, interLATA information services.

1. Statutory language

The most persuasive evidence of congressional intent is the words of the statute. Section 271(a) of the Communications Act prohibits a BOC from providing in-region "interLATA services" prior to obtaining Commission authorization. On its face, the term "interLATA services" encompasses both interLATA telecommunications and information services. Moreover, the definition of "interLATA services" is taken, in all substantial respects, from the MFJ's definition of "interexchange telecommunications."[9] As noted above, the D.C. Circuit held that the MFJ's prohibition on BOC provision of "interexchange telecommunications services" prevented the BOCs from offering interLATA (interexchange) information services.

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[8] *See United States v. Western Elec. Co.*, 907 F.2d 160, 162-63 (D.C. Cir. 1990) ("*Gateway Services Appeal*"). The court therefore held that the interexchange telecommunications prohibition barred a BOC from offering a "gateway" information service that used interexchange facilities leased from an IXC.

[9] *Compare* 552 F. Supp. at 229 (*MFJ*, Section IV(K)) ("'Interexchange telecommunications' means telecommunications between a point or points located in one exchange telecommunications area and a point or points located in one or more other exchange areas or a point outside an exchange area.") *with* 47 U.S.C. §153(21) ("The term 'interLATA service' means telecommunications between a point located in a local access and transport area and a point located outside such area.").

Congress' decision to codify the MFJ provision that provided the basis for the BOCs' exclusion from the interLATA information services market provides clear evidence that Congress intended to preserve the Decree's core prohibition on BOC provision of such services.

Contrary to the two BOCs' assertion, construing the term "interLATA service" to include interLATA information services is fully consistent with the plain language of the Communications Act. Section 3(21) of the Communications Act defines "interLATA service" as the provision of "telecommunications" across LATA lines.[10] Section 3(43) of the Act, in turn, defines "telecommunications" as the provision of "transmission" capacity.[11] When a BOC provides an interLATA information service, it satisfies the definition of an "interLATA service" because it provides interLATA transmission capacity to its *information service operation* or affiliate.[12] The BOC's information service operation, in turn, uses this transmission capacity to provide an information service to the public.

The two BOCs ignore the careful distinction that Congress made between "telecommunications" and "telecommunications service" – which the Act defines as the offering

[10] 47 U.S.C. § 153(21).

[11] *Id.* § 153(43).

[12] This analysis holds true regardless of whether the BOC provides the transmission capacity itself or obtains it from another carrier. As explained above, in the *Gateway Services Appeal*, the D.C. Circuit expressly held that the MFJ's "interexchange telecommunications services" prohibition applied to BOC provision of interLATA (interexchange) information services, regardless of whether the BOC provided the interLATA capacity itself or obtained it from another carrier. A contrary reading, the court explained, "would create an enormous loophole in the core restriction of the decree." *United States v. Western Elec. Co.*, 907 F.2d at 163. The most reasonable inference is that, when it adopted the definition of "interexchange telecommunications services" contained in the Decree, Congress intended to adopt the Court of Appeal's construction of the term**.** A BOC information affiliate cannot circumvent this prohibition by contracting directly with an IXC. The Section 271(a) prohibition applies to both the BOC and its affiliates. *See* 47 U.S.C. § 271(a). In effect, the actions of the affiliate are attributed to the BOC. Consequently, such a transaction should be treated as one in which the BOC itself acquired the interexchange telecommunications service and then provided it to its information services affiliate.

of telecommunications "for a fee directly to the public."[13] Had Congress chosen to define "interLATA service" as the provision of "telecommunications service" across LATA lines, then all interLATA services would have required the provision of telecommunications service *to the public*. Because an information service does not involve the provision of telecommunications service to the public, it would not have fallen within the definition of an "interLATA service." Congress, however, did not adopt this approach.

Ultimately, the Commission should reject two BOCs' contention that the term "interLATA service" must refer only to telecommunications services because it would render the statutory language meaningless. Section 272 expressly refers to "interLATA information services."[14] If an interLATA service *must* involve the provision of telecommunications services, but an information service *cannot* involve the provision of telecommunications services, then an "interLATA information service" is a meaningless contradiction in terms.

2. Structure

Further evidence of congressional intent is contained in three related provisions, Sections 271(b), Section 271(g), and 272(a).

Section 271(b). In enacting the Telecommunications Act, Congress chose to lift two components of the MFJ's interLATA restriction: the prohibition on BOC provision of out-of-region interLATA services and the prohibition on BOC provision of "incidental" interLATA services. Congress adopted two statutory provisions, Section 271(b)(2) and (b)(3), which

[13] 47 U.S.C. § 153(46).

[14] *See id.* §§ 272(a)(2)(C) & (f)(2).

expressly authorized the BOCs to provide these services.[15] If Congress had intended to eliminate the portion of the interLATA restriction applicable to BOC provision of in-region, interLATA information services – which would have raised far more significant competitive concerns – it doubtless would have adopted a similar provision. Congress chose not to do so.[16]

Section 271(g). As noted above, Section 271(b)(3) carved out an exemption to the prohibition on BOC provision of unauthorized interLATA services to allow the BOCs to provide "incidental interLATA services" upon enactment of the Telecommunications Act. Section 271(g), in turn, lists the categories of offerings that fall within the definition of "incidental interLATA services." This list includes information storage and retrieval services – offerings that indisputably constitute information services.[17] This fact, standing alone, is enough to defeat the two BOCs' claim that the term "interLATA services" cannot include information services.[18]

Section 272(a). Section 272(a), the separate affiliate provision, provides still more evidence that Congress intended for the term "interLATA services" to include both interLATA telecommunications and interLATA information services. That provision expressly distinguishes between "interLATA telecommunications services" and "interLATA information

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[15] *See id.* §§ 271(b)(2) & (b)(3).

[16] Nor does the legislative history contain even a hint that Congress intended to make so fundamental a change in the pre-existing MFJ regime.

[17] *See* 47 U.S.C. § 271(g)(4).

[18] Section 272(a)(2)(B), which requires that a BOC provide authorized in-region, interLATA telecommunications services through a separate affiliate, expressly exempts most incidental interLATA services. However, this exception does not extend to information storage and retrieval services – the one category of incidental interLATA services that indisputably constitutes information services. *See* 47 U.S.C. § 272(a)(2)(B)(i) (exempting incidental interLATA services described in paragraphs 1, 2, 3, 5, and 6 of Section 271(g)). This further demonstrates that Congress recognized that not all incidental interLATA services constitute telecommunications services.

services."[19] If, as the two BOCs insist, the term "interLATA services" must mean interLATA telecommunications, Congress would not have needed to use the phrase "interLATA telecommunications."

The two BOCs insist that Congress used the term "interLATA telecommunications services" to limit the separate affiliate provision to "telecommunications *services*" – *i.e.*, services offered on a common carrier basis – thereby excluding "private line interLATA telecommunications" offerings provided to large business customer.[20] This is nonsense. As an initial matter, the relevant distinction is not between common carrier and *private line* service. Rather, it is between telecommunications services provided on a common carrier basis and telecommunications services provided on a *private carrier* basis.[21] There is no doubt that IXCs must provide private line services (such as dedicated T-1 lines) on a common carrier basis.[22]

In any case, the two BOCs provide no possible explanation as to why Congress would require the BOCs to provide most interLATA telecommunications services through a separate affiliate, but exempt the BOCs from compliance with this requirement when they provide interLATA private line service. Certainly, private line services were not singled out for special treatment under the MFJ – and the legislative history provides no hint that Congress intended to make the distinction that the two BOCs suggest. Moreover, the statutory interpretation advanced

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[19] *Compare* 47 U.S.C. § 272(a)(2)(B) (interLATA telecommunications services) *with id.* § 272(a)(2)(C) (interLATA information services).

[20] Petitioners' Brief at 20.

[21] *See National Ass'n of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630 (D.C. Cir. 1976), *cert. denied sub nom. National Ass'n of Radio Telephone Systems v. FCC*, 425 U.S. 992 (1976).

[22] Indeed, the Commission affirmatively rejected a proposal to allow IXCs to provide private line and other services to large business customers on a private carriage basis. *See Competition in the Interstate Interexchange Marketplace*, Report & Order, 6 FCC Rcd 5880, 5897 n.150 (1991) ("*Interexchange Competition Order*").

by the two BOCs would lead to an outcome that makes no policy sense. Even after it receives Section 271 authorization, the ability of a BOC to use its continuing dominant position in the local exchange market to impede competition is no less in the market for interLATA private line service than for any other interLATA telecommunications service.

Section 272(f). The two BOCs also make much of the fact that that the sunset date for the separate affiliate requirement applicable to BOC provision of interLATA telecommunications services is tied to the date on which the BOC obtains Section 271 authorization, while the sunset date for the separate affiliate requirement applicable to BOC provision of interLATA information services was four years after the date of enactment of the Telecommunications Act. The two BOCs contend that this demonstrates that Congress intended for the Section 271 restrictions to have "no application" to interLATA information services.[23] This is plainly incorrect.

Throughout most of the legislative process, the drafters of the Telecommunications Act treated in-region, interLATA telecommunications and information services identically. Indeed, both the House and Senate bills contained a single separate affiliate provision applicable to both interLATA telecommunications and information services. The two bills differed, however, regarding the *duration* of the separate affiliate. The House bill provided that the BOC interLATA separate affiliate requirement would "sunset" eighteen months after enactment of the Act.[24] The Senate bill, by contrast, would have made the interLATA separate subsidiary requirement permanent, while giving the Commission the authority to grant exceptions.[25]

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[23] Petitioners' Brief at 15.

[24] *See* H.R. 1555, 104th Cong., 1st Sess., § 101 (1995) (adopting new Section 246(k) of the Communications Act).

[25] *See* S. 652, 104th Cong., 1st Sess., § 102 (1995) (adopting new Section 252 of the Communications Act).

The Conference Committee Report provides no explanation for the Conferees' decision to reject both the House and Senate approaches, and instead tie the sunset provision for the separate affiliate requirements applicable to BOC provision of interLATA telecommunications service to the date on which the BOC received Section 271 authorization. This may have reflected nothing more than an expedient compromise. There is, however, an obvious explanation for Congress' decision not to extend this approach to the sunset provision applicable to the interLATA information services separate affiliate.

While Section 272(a)(2)(B) requires the BOCs to use a separate affiliate for in-region, interLATA telecommunications services, Section 272(a)(2)(C) requires the BOCs to use a separate affiliate for both in-region and out-of-region information services. Congress's decision not to tie the sunset of the interLATA information services separate affiliate to the date on which a BOC receives Section 271 authorization reflects the fact Section 271 has no application to BOC provision of *out-of-region* interLATA information services –which Congress authorized the BOCs to provide upon enactment of the Telecommunications Act. Congress says nothing about the applicability of Section 271 to BOC provision of *in-region* interLATA information services.

3. Statutory purpose

To the extent that the Commission concludes that the language and structure of the Act do not provide clear evidence of congressional intent, the Commission should interpret Section 271(a) in a manner that promotes the goals of the Communications Act. Three goals are especially relevant: the promotion of local exchange competition; the prevention of BOC anti-competitive abuse in the interLATA information services market; and prevention of discrimination in the interexchange telecommunications market.

Promotion of local exchange competition. Section 271 seeks to provide the BOCs with a strong incentive to open their local markets to competition by requiring a BOC to comply with the "competitive checklist" before being allowed to provide in-region, interLATA services. The interLATA information services market offers significant growth opportunities for the BOCs. Consequently, construing the term "interLATA services" to include interLATA information services will promote the statutory goal by providing a greater incentive for BOC compliance than would limiting the term to interLATA telecommunications services.

Prevention of anti-competitive abuse in the interLATA information services market. While Congress sought to promote local competition, the drafters of Section 271 recognized that, until the BOCs have complied with the statutory "competitive checklist," there is a significant danger that the BOCs will be able to use their control over the local exchange to distort competition in adjacent markets. The BOCs' ability to engage in anti-competitive abuse is no less in the in-region, interLATA information services market then in the in-region, interLATA telecommunications and equipment markets. [26] Therefore, construing Section 271(a) to prevent a BOC from providing in-region, interLATA information services before it receives Commission authorization will promote the statutory purpose by limiting the BOCs' ability to harm competition in that market.

Prevention of discrimination in provision of telecommunications services. Construing Section 271(a) to bar a BOC from providing interLATA information services prior to

[26] The danger of BOC anti-competitive abuse is even greater in the interLATA information services market than in the interLATA telecommunications and manufacturing markets. The separate affiliate provision applicable to BOC provision of in-region, interLATA information services has already sunset. As a result, if the Commission determines that the prohibition on unauthorized BOC provision of in-region, interLATA services does not apply to interLATA information services, the BOCs will be allowed to enter the in-region, interLATA services market *before* most local markets have been opened to competition, but *without* the competitive safeguard provided by a separate affiliate.

receiving Commission authorization will also promote the statutory goal of preventing discrimination in the provision of regulated telecommunications services. The Commission, acting pursuant to Section 202 of the Communications Act, has long held that a facilities-based carrier must unbundle the telecommunications services that it provides to its information service operations and make those services available, on a non-discriminatory basis, to non-affiliated information service providers.[27] This prevents a carrier from using its control over telecommunications facilities to provide an unfair competitive advantage to its information service operations.

If the Commission were to hold that the prohibition on unauthorized BOC provision of in-region, interLATA services does not apply to information services, a BOC that has not received Section 271 authorization could provide an in-region interLATA information service using its own interLATA telecommunications facilities. However, because the BOC would not be permitted to provide in-region, interLATA telecommunications services, it could not unbundle those services and offer them to non-affiliated information service providers. This would enable – indeed, require – the BOC to engage in the very discrimination that Section 202 seeks to prevent.[28] Absent clear evidence of congressional intent, the Commission should not construe Section 271 in a manner that would erode one of the most fundamental goals of the Communications Act.

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[27] *See, e.g., Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry),* 104 F.C.C.2d 958, 1064-65 (1986) (subsequent history omitted).

[28] The drafters of the Telecommunications Act recognized the importance of preventing a BOC from discrimination in favor of its information service operations. In order to prevent such abuse, Congress imposed an absolute prohibition on BOC discrimination in favor the information service separate affiliate that the BOCs were initially required to use to provide interLATA information services. *See* 47 U.S.C. § 272(c).

C. The Commission's Determination is Consistent With Its Longstanding Recognition, Reiterated in the *Universal Service Report to Congress,* That Information Service Providers Do Not Provide Telecommunications Services to Their Subscribers

Qwest and Verizon contend that the Commission's treatment of information services in the *Non-Accounting Safeguards Order* is inconsistent with the Commission's subsequent statements regarding the regulatory status of information services providers in the *Universal Service Report to Congress.* Specifically, the two BOCs contend that the Commission's conclusion that a BOC that provides an information service is providing an "interLATA service" – which is defined as the provision of "telecommunications" across LATA lines – is inconsistent with the agency's subsequent recognition that an entity that provides an information service is not providing telecommunications.[29] ITAA strongly supports the Commission's longstanding recognition, reiterated in the *Universal Service Report to Congress,* that Information Service Providers ("ISPs") are *users* of telecommunications, rather than providers of telecommunications services to its subscribers.[30] However, ITAA believes that the Commission's decision in the *Non-Accounting Safeguards Order* is entirely consistent with this bedrock regulatory principle.

As noted above, a service constitutes an "interLATA service" if it involves the provision of "telecommunications." Therefore, a BOC provides an "interLATA service" when it provides interLATA transmission capacity to its information service operations or affiliate.[31] Nothing in the statutory definition of "interLATA services" requires the BOC to provide a

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[29] *See* Petitioners' Brief at 12-13.

[30] *See, e.g., Universal Service Report to Congress*, 13 FCC Rcd at 11516-26. For that reason, ISPs are not subject to Title II regulation, are not required to make payments directly to the Universal Service Fund ("USF"), and are entitled to purchase the same State-tariffed local business lines as other end-users.

[31] *See id.* at 11534 & n.138 (determining that ISPs that own their own transmission facilities could be viewed as providing telecommunications to themselves, but are not subject to Title II and are not required to make USF payments).

"telecommunications service" to its subscribers. Consequently, there is no contradiction between the Commission's determination that information services fall within the definition of "interLATA services" and the Commission's long-standing recognition that an entity that provides an information services is not providing telecommunications services to its subscribers.

CONCLUSION

For the foregoing reasons, the Commission should re-affirm its determination, in the *Non-Accounting Safeguards Order*, that the prohibition on Bell Operating Company provision of "interLATA services," which is contained in Section 271(a) of the Communications Act, precludes a BOC from providing in-region, interLATA information service until the Commission has granted authorization pursuant to Section 271(d).

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