

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

CC Docket No. 90-623

In the Matter of

US West Communications, Inc.
Petition for *Computer III* Waiver

ORDER

Adopted: November 6, 1995; Released: November 6, 1995

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On April 4, 1994, US West Communications, Inc. (US West) filed a petition for a waiver of the Commission's *Computer III* Comparably Efficient Interconnection (CEI) requirements¹ in order to offer a reverse-search capability in conjunction with its Electronic White Pages (EWP) offering.² In this Order, we grant US West a limited waiver of the *Computer III* CEI Plan and CEI equal access parameter requirements for the reverse-search capability provided in conjunction with US West's EWP. We condition this

¹ *Computer III Phase I Order*, 104 FCC 2d 958, 964-965 (1986); see *infra* note 10.

² Public Notice, 9 FCC Rcd 1876 (1994). Comments on the petition were filed May 9, 1994, and reply comments were filed on May 24, 1994.

³ See *infra* note 34. See also *Computer III Phase II Order*, 2 FCC Rcd at 3097, paras. 172-174; see *infra* note 10.

⁴ *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II)*, Final Decision, 77 FCC 2d 384 (1980) (*Computer II Final Decision*), *recon.*, 84 FCC 2d 50 (1980) (*Reconsideration Order*), *further recon.*, 88 FCC 2d 512 (1981) (*Further Reconsideration Order*), *aff'd sub nom.*, *Computer and Communications Indus. Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

⁵ *Computer II Final Decision*, 77 FCC 2d at 420. "Basic services," such as "plain old telephone service" (POTS), are regulated transmission services that are offered under tariff pursuant to Title II of the Communications Act of 1934, as amended (the Act). In the *NATA Centrex Order* the Commission discussed characteristics of "adjunct to basic services" that facilitate the use of traditional telephone service but do not alter the fundamental character of telephone service. See *North American Telecommunications Association, Petition for Declaratory Ruling Under Section 64.702 of the Commission's Rules Regarding the Integration of Centrex, Enhanced Services, and Customer Premises Equipment*, 101 FCC 2d 349, 359-361, paras. 23-28 (1985) (*NATA Centrex Order*).

⁶ Enhanced services employ computer processing applications that act on the format, content, code, protocol or similar aspects of a subscriber's transmitted information, provide the subscriber additional, different, or restructured information, or involve subscriber interaction with stored information. See 47 C.F.R. § 64.702(a).

⁷ *Computer II Final Decision*, 77 FCC 2d at 475-86, paras. 233-60; *Reconsideration Order*, 84 FCC 2d at 75-86, paras. 72-105; 47 C.F.R. § 64.702.

grant on US West's compliance with the Commission's Joint Cost Rules and Cost Allocation Manual (CAM) requirements, and the *Computer III* customer proprietary network information (CPNI) requirements.³

II. BACKGROUND

2. The regulatory treatment of data communications services is governed by the basic-enhanced service dichotomy created in the *Computer II* proceeding.⁴ In that proceeding, the Commission described "basic" services as those that provide a "pure transmission capability over a communications path that is virtually transparent in terms of its interaction with customer-supplied information."⁵ "Enhanced services," on the other hand, are not regulated under Title II of the Act, and provide more than a basic voice transmission offering.⁶ In *Computer II*, the Commission also established rules to govern the provision of enhanced services, including a requirement that the then integrated Bell System establish separate subsidiaries for the provision of enhanced services.⁷ Following the divestiture of AT&T in 1984,⁸ the Commission extended the structural separation requirements of *Computer II* to the Bell Operating Companies (BOCs).⁹

3. The requirement to file a CEI plan was first established in the *Computer III* proceeding, where the Commission adopted a regulatory framework through which BOCs could offer integrated enhanced and basic services.¹⁰ As a first step in implementing *Computer III*, a BOC was permitted to provide unregulated, "enhanced" services if it filed a CEI plan demonstrating that the regu-

⁸ *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982), *affirmed sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

⁹ *Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Equipment by the Bell Operating Companies*, CC Docket No 83-115, Report and Order, 95 FCC 2d 1117, 1120, para. 3 (1984) (*BOC Separation Order*), *affirmed sub nom. Illinois Bell Telephone Co. v. FCC*, 740 F.2d 465 (1984), *affirmed on recon.*, FCC 84-252, 49 Fed. Reg. 26056 (1984) (*BOC Separation Reconsideration Order*), *affirmed sub nom. North American Telecommunications Ass'n v. FCC*, 772 F.2d 1282 (7th Cir. 1985).

¹⁰ *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III)*, CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (*Phase I Order*), *recon.*, 2 FCC Rcd 3035 (1987) (*Phase I Reconsideration Order*), *further recon.*, 3 FCC Rcd 1135 (1988) (*Phase I Further Reconsideration Order*), *second further recon.*, 4 FCC Rcd 5927 (1989) (*Phase I Second Further Reconsideration Order*); *Phase I Order and Phase I Reconsideration Order vacated California v. FCC*, 905 F.2d 1217 (9th Cir. 1990); *Phase II*, 2 FCC Rcd 3072 (1987) (*Phase II Order*), *recon.*, 3 FCC Rcd 1150 (1988) (*Phase II Reconsideration Order*), *further recon.*, 4 FCC Rcd 5927 (1988) (*Phase II Further Reconsideration Order*); *Phase II Order vacated, California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*); *Computer III Remand Proceeding*, 5 FCC Rcd 7719 (1990) (*ONA Remand Order*), *recon.*, 7 FCC Rcd 909 (1992), *pets. for review denied, California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (*California II*); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order*), *BOC Safeguards Order vacated in part and remanded, California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*), *cert. denied*, 115 S. Ct. 1427 (1995).

lated, basic services it used to provide the enhanced services were available to unaffiliated enhanced service providers (ESPs) on an unbundled basis with technical specifications, functional capabilities, and other quality and operational characteristics equal to those provided to the BOC's enhanced services.¹¹ Requiring BOCs to file CEI plans was one of the nonstructural safeguards imposed by the Commission, in lieu of structural separation, to prevent cross-subsidization and access discrimination.¹²

4. In *Computer III*, the Commission concluded that, in the longer term, with the implementation of Open Network Architecture (ONA), the BOCs should be allowed to provide integrated enhanced services without prior Commission approval of service-specific CEI plans.¹³ In a series of orders between 1988 and 1992, the Commission approved the BOC ONA plans that described the unbundled basic services each BOC proposed to provide as ONA services and the terms under which they would be offered. During 1992-1993, the Common Carrier Bureau approved lifting structural separation requirements for individual BOCs that showed they offered under tariff all of the ONA services set forth in their initial ONA plans. Thus, BOCs have not been required to file CEI plans for several years.

5. The *Computer III* regime was vacated in 1990 by the Ninth Circuit in the *California I* decision.¹⁴ The court concluded that the Commission had not explained why accounting safeguards would be effective in preventing the BOCs from cross-subsidizing their enhanced service offerings with their regulated services, but approved the Commission's safeguards against access discrimination, including CEI and ONA requirements. Subsequently, the Commission adopted the *BOC Safeguards Order*, which strengthened the accounting standards criticized in *California I* and again concluded that structural separation requirements should be fully eliminated once BOC ONA plans were approved and implemented.¹⁵

6. In *California II*,¹⁶ the Ninth Circuit reviewed a series of Commission orders approving ONA plans.¹⁷ The court concluded that the orders under consideration constituted a retreat from the policy announced in *Computer III* because they advanced the view that structural separation could be lifted before implementation of a fully realized ONA.¹⁸ Because the orders under review did not themselves eliminate structural separation, however, the court upheld the Commission orders approving the BOC ONA plans and did not reach the question of whether the noted change in policy had been adequately explained.¹⁹

7. In the *California III* decision, the U.S. Court of Appeals for the Ninth Circuit remanded the portion of the *BOC Safeguards Order* that established the conditions for lifting all structural separation requirements imposed on BOCs seeking to provide integrated enhanced services.²⁰ In *California III*, the court determined that although the Commission had adequately explained its decision to strengthen the protections against cross-subsidization at issue in *California I*, it had not justified its retreat from its position that "fundamental unbundling" was a prerequisite for eliminating structural separation.²¹ The court concluded that because the Commission had failed to explain its decision to lift structural separation without fundamental unbundling as a safeguard against access discrimination, the cost-benefit analysis adopted by the *BOC Safeguards Order* was flawed and must be set aside as arbitrary and capricious under the Administrative Procedures Act (APA).²²

8. Following the *California III* decision, the Common Carrier Bureau issued an order that concluded that the *California III* decision effectively reimposed the requirement that BOCs file CEI plans for each new enhanced service, pending further Commission action.²³ In that order, the Bureau allowed the BOCs to continue to provide enhanced services and conduct market trials pursuant to CEI plans approved prior to the lifting of structural separation.²⁴ The Bureau concluded that the BOCs could continue to provide other existing enhanced services and market trials implemented pursuant to ONA plans, conditioned upon the BOCs filing CEI plans or market trial notifications, respectively, within 60 days of the *Bureau Interim Waiver Order*. The Bureau required the BOCs to file CEI plans or market trial notifications prior to providing any new services or market trials.

9. In response to the *California III* decision, the Commission also has initiated a rulemaking proceeding to review the current nonstructural safeguards for BOC provision of integrated enhanced services.²⁵

10. Under the requirements of *Computer III* and the *Bureau Interim Waiver Order*, US West must file a CEI plan for a proposed enhanced service offering or receive a waiver of the Commission's CEI requirements, if it wishes to offer an enhanced service on an integrated basis that is not the subject of a previously approved CEI plan. A CEI plan would require US West to demonstrate that it will provide interconnection opportunities to other enhanced service providers (ESPs) on an "equal access" basis, making basic facilities available on an unbundled and functionally equiv-

¹¹ *Phase I Order*, 104 FCC 2d at 964-65, paras. 4-5, 147, & n. 210.

¹² *Computer III Remand Proceedings: Bell Operating Company Safeguards; and Tier 1 Local Exchange Company Safeguards*, Notice of Proposed Rulemaking and Order, 6 FCC Rcd 174, 175 (1990) at para. 9.

¹³ *Phase I Order* at 1019-1021, paras. 113-115, and 1059-1068, paras. 201-222.

¹⁴ *California I*, *supra*.

¹⁵ *BOC Safeguards Order*, 6 FCC Rcd 7571.

¹⁶ *California II*, *supra*.

¹⁷ The orders reviewed were: *Filing and Review of Open Network Architecture Plans, Phase I*, 4 FCC Rcd 1 (1988) (*BOC ONA Order*); 5 FCC Rcd 3084 (1990) (*ONA Reconsideration Order*); 5 FCC Rcd 3103 (1990) (*BOC ONA Amendments Order*); 5 FCC Rcd 7719 (1990) (*ONA Remand Order*).

¹⁸ *California II*, 4 F.3d at 1512-13.

¹⁹ *Id.*

²⁰ According to the *BOC Safeguards Order*, lifting all structural separation requirements, or "full structural relief," meant removing requirements that BOCs receive approval of service-specific CEI plans prior to offering any enhanced service.

²¹ *California III*, 39 F.3d at 927, 929.

²² *Id.* at 929.

²³ See *Bell Operating Companies' Joint Petition for Waiver of Computer II Rules*, 10 FCC Rcd 1724 (1995) (*Bureau Interim Waiver Order*).

²⁴ *Bureau Interim Waiver Order*, 10 FCC Rcd at 1724, 1730, paras. 2-3, 30.

²⁵ *Notice of Proposed Rulemaking, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, 10 FCC Rcd 8360 (1995) (*Computer III Remand Notice of Proposed Rulemaking*). See also *id.* at 8362-8369, paras. 3-10.

alent basis.²⁶ In this order, we grant US West a limited waiver of the *Computer III* CEI plan and equal access parameter requirements for the enhanced reverse-search capability provided in conjunction with EWP. US West must, however, comply with the Commission's accounting and CPNI requirements in the provision of this enhanced service.

III. POSITIONS OF THE PARTIES

A. Petition

11. US West currently offers EWP as a tariffed basic service.²⁷ It now wishes to add a reverse-search capability to its EWP service offering.²⁸ Noting that it faces opposition from other reverse-search providers if it adds this capability to EWP as a basic service, US West proposes that it provide this service as an enhanced service.²⁹ US West seeks a waiver of the Commission's CEI requirements with regard to its EWP reverse-search offering, arguing that technological constraints will not permit it economically to offer this service on an equal access basis by making basic facilities available on an unbundled and functionally equivalent basis.³⁰

12. US West notes that its current EWP offering supports customers in either an Electronic Directory Assistance (EDA) or Direct Customer Access (DCA) environment. It states that its current system: (1) provides access to a database of telephone subscribers consisting of name, address, zip code, and telephone number information; (2) includes no other data in the database; (3) enables searches by name only; (4) enables searches of only one name at a time; and (5) enables customers to request the data via a personal computer and modem and to receive the requested data on their computer screens. US West represents that its service is capable of screening non-published and non-listed information and identifying customers desiring a "no solicitation" indicator.³¹

13. US West states that its proposed EWP reverse-search service would allow customers to search the same database of telephone subscribers by telephone number, rather than only by name. Customers would input one telephone number at a time and the system would provide the name and

address associated with the requested telephone number. US West states that customers would not be able to search the data base by address.³² US West represents that there are three ways in which reverse-search capability could be provided:

1. Duplicate the existing database and establish a stand-alone offering that allows searches by fields other than name (stand-alone model).
2. Create an "interface" between the existing EWP data base and the reverse-search capability of third parties.
3. Change existing functionalities in the EWP offering to allow the reverse-search capability in a manner similar to that currently allowed for name searches.³³

14. US West asks the Commission to waive the CEI requirements so that it can offer the reverse-search capability by changing functionalities in the existing data base as set out in Scenario No. 3. Under its proposed approach, US West would remove all of the costs associated with providing the service from its regulated accounts in accordance with the Commission's Joint Cost Rules³⁴ and US West's approved Cost Allocation Manual (CAM). US West intends to offer the EWP reverse-search capability on an integrated basis with its basic EWP service offering throughout its operating territory.³⁵

15. US West states that it is not asking for authority to use unique telephone company facilities which others require in order to provide competing reverse-search capabilities. It contends that no interconnection with US West's existing EWP offering is necessary, pointing out that a number of competing directory service providers already offer search requests using various fields of inquiry, including reverse-searches.³⁶ Noting that the Commission has already found EWP service to be a data base offering that is adjunct to basic service,³⁷ US West states that this kind of data base offering does not lend itself to unbundling of

²⁶ *Phase I Order*, 104 FCC Rcd at 1036. See *supra* para. 3.

²⁷ The Common Carrier Bureau granted US West a waiver of the Part 69 rules in order to provide electronic white pages as an adjunct to basic service. *US West Communications, Inc. Petition for Waiver of Part 69 of the Commission's Rules to Provide Electronic White Pages Service*, Memorandum Opinion and Order, 5 FCC 5526 (1990). See *supra* note 5.

²⁸ US West Petition at 1 (citing US West Tariff FCC No. 1 Section 9).

²⁹ US West states that when US West proposed to provide reverse-search capability with EWP, petitions to reject were filed Dec. 1, 1992, by CompuServe Incorporated, Information Technology Association of America, and Prodigy Services Company. See *In the Matter of US West Communications Tariff FCC No. 1, Electronic White Pages Reverse-Search Capability, Transmittal No. 297*, filed Nov. 16, 1992. US West states that it is not now conceding that an EWP reverse-search capability is *per se* an enhanced service. Rather, it points out that the Commission could find it to be an adjunct to basic service for the same reasons the Commission determined that EWP without a reverse-search capability was adjunct to basic. US West Petition at 7 and n.13.

³⁰ US West Petition for Waiver at 1-3.

³¹ US West Petition for Waiver at 1-3; *Ex Parte* letter from Elridge A. Stafford, Executive Director - Federal Regulatory US West, to William F. Caton, Acting Secretary, FCC, filed September 15, 1995.

³² *Id.*

³³ US West Petition at 4.

³⁴ *In the Matter of Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities. Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to Provide for Nonregulated Activities and to Provide for Transactions Between Telephone Companies and Their Affiliates*, Report and Order, 2 FCC Rcd 1298 (1987) ("*Joint Cost Order*"), *Order on Reconsideration*, 2 FCC Rcd. 6283 (1987), *Order on Further Reconsideration*, 3 FCC Rcd 6701 (1988), *aff'd sub nom. Southwestern Bell Corp. v. FCC*, 896 F.2d 1378 (D.C. Cir. 1990). See also 47 C.F.R. Parts 32, 64.

³⁵ US West Petition at 4-5.

³⁶ US West lists as examples such companies as Metro One Direct, Inc., Metromail Corporation (an R.J. Donnelly & Sons Corporation), MCI FastData, Equifax, and Telenetx. See US West Petition at 6-8 and n.15.

³⁷ US West Petition at 6-7. See *NATA Centrex Order*, 101 FCC 2d at 359-361, paras. 23-28.

elements and that the only basic service which might be associated with its proposed reverse-search offering would be the basic electronic directory service itself.³⁸

16. US West estimates that it would cost \$2,677,577 to duplicate and create a stand-alone search capability. If it were only permitted to offer the reverse-search feature on that basis, US West asserts that it would not offer this capability.³⁹ US West claims, moreover, that no vendor offers a directory reverse-search capability on a stand-alone basis. Rather, its competitors provide such a service as one of several different search options available to subscribers of their competing electronic directory services. US West also contends that requiring it to install an interface between the EWP data base and the reverse-search capability would be prohibitively expensive. It asserts that there is no policy or market reason to create such an interface because the reverse-search functionality is an inherent feature of the existing hardware and similar offerings are widely available from competing providers of electronic directory services.⁴⁰

17. US West argues that the costs of complying with *Computer III* CEI requirements in this case would outweigh any asserted benefits of increased competition that the requirements are intended to produce. To the contrary, US West contends that application of the rules would, in fact, serve to decrease competition. It asserts that the current market is "robust" and that grant of the waiver is unlikely to have an adverse effect on competition. US West states that it has shown good cause for the grant of a CEI waiver, and that its grant would maintain the basic/enhanced dichotomy of the Commission's *Computer III* rules, while permitting competition to grow.⁴¹

B. Comments

18. Bell Atlantic, DirectoryNet, Inc., Southwestern Bell Telephone Company (SWBT), and CompuServe Inc. (CompuServe) filed comments on the waiver petition. Reply comments were filed by Ameritech, AT&T Corp. (AT&T), BellSouth Telecommunications, Inc. (BellSouth), CompuServe, and US West. None of the commenting parties objects to granting a CEI waiver to US West to provide reverse-search capability as it proposed in Scenario No. 3.

19. SWBT, Bell Atlantic, Ameritech, and BellSouth (the BOCs) support granting the waiver if the Commission concludes that the reverse-search service is an enhanced service. Bell Atlantic and BellSouth, moreover, request that the Commission extend that waiver to similar services offered by other local exchange carriers that are subject to *Computer III*.⁴² The BOCs contend, however, that the Commission should conclude that the requested waiver is unnecessary because the reverse-search capability proposed by US West should be considered as adjunct to basic service pursuant to the *NATA Centrex Order*.⁴³

20. In support of their claim that the reverse-search capability is an adjunct to basic service, the BOCs argue generally that customers frequently need to use the service in order to place an ordinary telephone call. For example, they argue that customers frequently have a telephone number, but no name or other identifying information that would enable communication with the party the subscriber wishes to call. Thus, they argue that reverse-search functionality facilitates the placement of an ordinary, basic phone call. SWBT asserts that while it is true that some parties may utilize this capability for purposes other than placing a basic telephone call, the one dominant use would be to complete telephone calls. Therefore, it argues that the Commission should use a primary purpose test, and apply common sense to find the service to be an adjunct to basic service.⁴⁴ BellSouth notes that the utility of reverse-search capability in placing a telephone call increased substantially as a result of the Commission's Caller ID decision because customers will receive the telephone number from Caller ID service, but will not have other information to decide whether to return or place the call.⁴⁵

21. In contrast, CompuServe and AT&T support the requested waiver on the grounds that the proposed service is an enhanced, competitive service that will be offered on a non-regulated basis. DirectoryNet, Inc. similarly notes that it supports US West's decision not to tariff reverse-search capability.⁴⁶

22. CompuServe notes that it previously filed a petition to reject a tariff transmittal filed by US West in 1992 in which it proposed to revise its tariff to include reverse-search capability.⁴⁷ CompuServe states that it does not ob-

³⁸ US West Petition at 7.

³⁹ US West Petition at 4 n.8.

⁴⁰ US West Petition at 7-10 and nn.14-15; Bobka Affidavit at 4, 9-13. US West estimates that it would require approximately two to three years to develop a stand-alone reverse-search capability (Scenario No. 2), with total developmental costs estimated at between \$500,000 and \$550,000. US West asserts that there would be no demand for this service if and when it were deployed.

⁴¹ US West Petition at 9-12 and n.19. US West states that while in theory its enhanced stand-alone-reverse-search offering would interface with its basic directory offering, no one else would, and there would be no third-party demand for the interface.

⁴² Bell Atlantic Comments at 1; BellSouth Comments at 5-6.

⁴³ Bell Atlantic Comments at 4 (citing 47 C.F.R. § 64.702(a) and *NATA Centrex Order*, 101 FCC 2d 359-361, paras. 23-28); Ameritech Reply Comments at 1-2.

⁴⁴ SWBT Comments at 2-4; Ameritech Reply Comments at 2-3; BellSouth Comments at 1-3; Bell Atlantic Comments at 1.

⁴⁵ BellSouth Reply Comments at 1-3 and n.7 (citing *Rules and Policies Regarding Calling Number Identification Service -- Caller*

ID, Memorandum Opinion and Order on Reconsideration, Second Report and Order and Third Notice of Proposed Rulemaking, (*Caller ID Order*) 9 FCC Rcd 1764 (1994)).

⁴⁶ DirectoryNet, Inc. Comments at 1-2. DirectoryNet, Inc. describes itself as a competitive electronic directory assistance provider and a current customer of US West's existing electronic directory assistance services. It notes that it intends to use US West's proposed reverse-search capability when it becomes available.

⁴⁷ In its petition to reject, CompuServe argued that the reverse-search function in US West's EWP service is an enhanced service because it meets all three independent prongs of the definition of enhanced service set out in the Commission's rules. CompuServe further argued that under the terms of *Southwestern Bell Telephone Company Petition for Waiver of Section 69.4(b) of the Commission's Rules, Revisions to Tariff F.C.C. No. 68, Memorandum Opinion and Order*, 5 FCC Rcd 3792 (1990) (*SWBT Waiver Order*), the reverse-search function is enhanced because its primary purpose is not to facilitate the completion of a telephone call, but rather toll message investigation by Bell companies, local exchange, and interexchange carriers, and other applications such as skip tracing and name

ject to the grant of the requested waiver of Section 64.702(a), since it agrees with US West's proposal to treat reverse-search capability as an enhanced service.⁴⁸

23. CompuServe objects to the requests by Bell Atlantic and SWBT that they, and other similarly situated LECs, be granted similar CEI waivers. CompuServe asserts that the issue of whether reverse-search capability should be classified as an adjunct to basic service is outside the scope of this proceeding because US West only requests a waiver of Section 64.702(a).⁴⁹ CompuServe urges the Commission to deny Bell Atlantic's request for a waiver, regardless of whether it grants one to US West. It urges the Commission to limit its decision to the specific issue presented by US West.⁵⁰

24. AT&T also challenges the BOCs' arguments that reverse-search capability should be deemed to be adjunct to basic service. AT&T argues that name and address information has intrinsic value apart from facilitating call completion and that many subscribers to this service will not place a telephone call after receiving the information. For example, AT&T notes that many companies seek such information to initiate mailings, not telephone calls, and that credit card companies use the capability to verify names and/or addresses. AT&T further asserts that the Commission made clear in the *NATA Centrex Order* that services that are adjunct to basic are limited to those services that are basic in purpose and use.⁵¹ AT&T argues that because US West did not design the capability to facilitate call completion, reverse-search capability cannot be characterized as basic in purpose and use, and is, therefore, enhanced.⁵²

25. US West asserts that while one might argue as to whether an EWP reverse-search service offering is basic or enhanced, it does not seek such a determination in the instant case. Rather, it suggests that if another company wishes to provide the EWP reverse-search capability as adjunct to basic, it is free file a petition. In addition, it notes that the Commission could raise the matter on its own initiative if it so desired.⁵³

IV. DISCUSSION

26. We conclude that the reverse-search capability offered in conjunction with US West's EWP offering constitutes an enhanced service. We grant US West a limited waiver of the *Computer III* CEI requirements to enable US West to offer a reverse-search capability in conjunction with its EWP offering.

and/or address verification. See CompuServe Reply Comments, Appendix A at 5-6 (referencing Comments of CompuServe Regarding Southwestern Bell Petition, Transmittal No. 1741, filed March 29, 1990, at 3-6). US West subsequently withdrew the reverse-search portion of Transmittal No. 297 via Application No. 105, filed December 10, 1992.

⁴⁸ CompuServe Comments at 1-3.

⁴⁹ CompuServe Reply Comments at 3 and n.8. (incorporating by reference its Petition to Reject or In the Alternative Investigate filed on December 1, 1992 to protest US West's Tariff Transmittal No. 297 set out in Appendix A).

⁵⁰ 47 C.F.R. § 1.44. CompuServe urges the Commission to deny Bell Atlantic's request for a waiver and to require each entity to file separate petitions for waiver in accordance with 47 C.F.R. § 1.3.

A. US West's Reverse-Search

27. The Commission defines an enhanced service as an unregulated service that employs computer processing applications that: (1) act on the format, content, code, protocol or similar aspects of a subscriber's transmitted information; or (2) provide the subscriber additional, different, or restructured information; or (3) involve subscriber interaction with stored information.⁵⁴ Notwithstanding this three-pronged test, the Commission held in the *NATA Centrex Order* that carriers may use some of the processing and storage capabilities within their networks to offer optional tariffed features as "adjunct to basic" services, if the services: (1) are intended to facilitate the use of traditional telephone service; and (2) do not alter the fundamental character of telephone service.⁵⁵

28. Access to a data base through directory assistance that searches for a listing by name may be offered as an adjunct to basic telephone service, even though a subscriber can access additional, different, or restructured information. The Commission found such access to be adjunct to basic, rather than enhanced, because directory assistance provides only that information necessary for a subscriber to place a call.⁵⁶ The *NATA Centrex Order* concluded that the provision of access to a data base for purposes other than to obtain the information necessary to place a call will generally be found to be an enhanced service. The presumption regarding such services, therefore, is that they are enhanced unless they are shown to be otherwise.⁵⁷

29. In the instant case, US West has not made such a showing, nor does it seek to argue that its reverse-search capability constitutes a basic service. US West's EWP reverse-search capability on its face meets two of the three characteristics that define an enhanced service because it provides additional information (name and address associated with a telephone number) and involves subscriber interaction with stored information. Satisfying any one of the characteristics would suffice to classify the service as enhanced.

30. We are not persuaded by the arguments of Bell Atlantic and SWBT that the primary purpose of the reverse-search capability is to facilitate the placement of a telephone call, making the service adjunct to basic pursuant to the *NATA Centrex Order*. While this service enables customers to avoid calling a number without knowledge of the name and address of the called party, the additional information gained through the service -- name and address -- is not actually necessary to make the call.⁵⁸ Although customers may place a call to a telephone number after

⁵¹ AT&T Comments at 3 (citing *NATA Centrex Order*, 101 FCC 2d 349, para. 26).

⁵² AT&T Comments at 3-4.

⁵³ US West Reply Comments at 2-3.

⁵⁴ 47 C.F.R. § 64.702(a).

⁵⁵ *NATA Centrex Order*, 101 FCC 2d 359-361, paras. 23-28.

⁵⁶ *Id.* at para. 25. The Commission also concluded in the *SWBT Waiver Order* that electronic directory assistance is an adjunct to basic service because the purpose of the service is an electronic form of directory assistance that does not change the nature of the basic telephone service. *Id.* 5 FCC Rcd 3792.

⁵⁷ *NATA Centrex Order*, 101 FCC 2d at 360-361, paras. 26, 28.

⁵⁸ In the *Caller ID Order*, the Commission concluded, based on a limited record and for the purposes of that proceeding, that delivery of a name in the context of a caller ID service is adjunct to basic. *Id.* 9 FCC Rcd 1764.

obtaining the associated name and address through a reverse-search, commenters have not demonstrated that placement of a telephone call would typically be the immediate next step.⁵⁹ Thus, we find that the primary purpose for this service is not to facilitate call completion. We conclude that unlike directory assistance, which the Commission has found adjunct to basic because it provides information necessary to make a call, the reverse-search capability provides additional information that is not necessary to make a call (because the subscriber has the telephone number) and which could be used for a number of other purposes.

31. Because US West's reverse-search capability meets two of the *Computer III* tests for an enhanced service and does not meet the *NATA Centrex Order* test for an adjunct to basic service, we therefore conclude that the reverse-search capability offered in conjunction with US West's EWP offering constitutes an enhanced service pursuant to Section 64.702 of our rules.

B. CEI Waiver

32. The Commission may waive any provision of its rules or orders if good cause is shown.⁶⁰ A showing of good cause requires the petitioner to demonstrate special circumstances that warrant deviation from the rules or orders, and to show how such deviation would serve the public interest.⁶¹ The applicant must clearly demonstrate that the general rule is not in the public interest when applied to its particular case, and that the grant of the waiver will not undermine the public policy served by the rule. In the instant case, US West must carry the burden of showing that a CEI waiver is in the public interest by demonstrating that grant of the waiver is unlikely to permit US West to engage in unlawful discrimination and is likely to produce benefits for consumers.⁶²

33. Significantly, no party opposes granting US West a CEI waiver in this proceeding. Moreover, the record indicates that competition already exists in the directory services market and that competing providers of these services currently offer reverse-searches as part of their offerings.⁶³ Thus, the record shows that access to US West's facilities is not necessary to allow other companies to provide competing reverse-search capabilities. In addition, US West has shown that no party has challenged its assertion that compliance with the Commission's CEI requirements would force it to delay introduction of its proposed service for several years and to incur costs that would make its offering non-competitive.⁶⁴ We are persuaded that the costs of complying with CEI in this case outweigh the benefits, and that application of the general rule to US West's provision of EWP reverse-search capability is not in the public interest.

34. We conclude that US West has established good cause for granting a limited waiver of the *Computer III* CEI Plan and CEI equal access parameter requirements for the re-

verse-search capability offered in conjunction with US West's EWP offering. We limit this waiver to the reverse-search capability as described in US West's Petition and pleadings in this proceeding. We condition our grant of this waiver on US West's compliance with the Commission's Joint Cost Rules⁶⁵ and CAM requirements, and the *Computer III* CPNI requirements. Finally, we decline to grant CEI waivers to Bell Atlantic and BellSouth as part of this proceeding.

V. ORDERING CLAUSES

35. IT IS HEREBY ORDERED that US West's Petition for a waiver of the *Computer III* CEI Plan and CEI equal access parameter requirements for the EWP reverse-search capability IS GRANTED subject to the conditions and requirements established herein.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen M.H. Wallman
Chief, Common Carrier Bureau

⁵⁹ CompuServe Reply Comments, attachment at 7; DirectoryNet Comments at 1-2.

⁶⁰ 47 C.F.R. § 1.3.

⁶¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁶² See *In the Matter of American Telephone and Telegraph Company Petition for Waiver of Section 64.702 of the Commis-*

sion's Rules and Regulations, 88 FCC 2d 1, 5 (1981).

⁶³ See *supra* note 36.

⁶⁴ US West Petition at 4 n.8.

⁶⁵ *Joint Cost Order, Report and Order*, 2 FCC Rcd 1298 (1987), *Order on Reconsideration*, 2 FCC Rcd 6283 (1987), *Order on Further Reconsideration*, 3 FCC Rcd 6701 (1988), *aff'd sub nom. Southwestern Bell Corp. v. FCC*, 896 F.2d 1378 (D.C. Cir. 1990). See also 47 C.F.R. Parts 32, 64.