

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

In the Matter of

NYNEX
Telephone Companies

Offer of
Comparably Efficient
Interconnection to
Providers of
Enhanced Services

ORDER

Adopted: January 23, 1996; Released: January 23, 1996

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On July 28, 1995, pursuant to the requirements of the *Computer III* proceeding,¹ NYNEX Telephone Companies (NYNEX) filed three comparably efficient interconnection (CEI) plans for three enhanced services it plans to offer -- Remote Data Processing Service (RDP); Customized Announcement Service (CAS); and Audiotext Information Service (AIS).² Under *Computer III*, a carrier is permitted to provide unregulated, enhanced services if it files a CEI plan demonstrating that the underlying regulated, basic services are available on an equivalent basis to unaffiliated enhanced service providers (ESPs).³ Prior to offering the enhanced service, the carrier must obtain Commission approval of the CEI plan. No opposition was filed in response to NYNEX's CEI plans.⁴ NYNEX subsequently filed

additional information with the Commission.⁵ As discussed below, we approve NYNEX's CEI plans for providing RDP, CAS, and AIS.

II. BACKGROUND

2. NYNEX has filed three CEI plans outlining its proposed terms for offering three enhanced services -- RDP, CAS, and AIS. The requirement to file a CEI plan was first established in the *Computer III* proceeding, in which the Commission adopted a regulatory framework to govern the provision of integrated enhanced and basic services by the Bell Operating Companies (BOCs). Requiring BOCs to file CEI plans was one of the nonstructural safeguards adopted by the Commission, in lieu of structural separation, to prevent cross-subsidization and discrimination.⁶ As a first step in implementing the *Computer III* framework, the Commission permitted the BOCs, which remained subject to various structural separation requirements, to offer individual enhanced services on an integrated basis following approval of service-specific CEI plans.⁷ BOCs were required to describe in their CEI plans: 1) the enhanced service or services to be offered; 2) how the underlying basic services would be made available for use by competing ESPs; and 3) how the BOCs would comply with the other nonstructural safeguards imposed by *Computer III*.

3. The *Computer III* decision 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.⁸ In a series of orders between 1988 and the end of 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 (Bureau) approved lifting structural separation requirements for individual BOCs that showed they had implemented all of the ONA services set forth in their ONA plans.

4. In *California III*, the Court of Appeals for the Ninth Circuit determined that, although the Commission had adequately explained its decision to strengthen the protec-

¹ 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 Recon. Order*), further recon., 3 FCC Rcd 1135 (1988) (*Phase I Further Recon. Order*), second further recon., 4 FCC Rcd 5927 (1989) (*Phase I Second Further Recon.*), *Phase I Order* and *Phase I Recon. Order vacated*, *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*); Phase II, 2 FCC Rcd 3072 (1987) (*Phase II Order*), recon., 3 FCC Rcd 1150 (1988) (*Phase II Recon. Order*), further recon., 4 FCC Rcd 5927 (1989) (*Phase II Further Recon. Order*), *Phase II Order*, vacated, *California I*, 905 F.2d 1217 (9th Cir. 1990); *Computer III Remand Proceedings*, 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 1 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).

² See NYNEX Telephone Companies' Comparably Efficient Interconnection Plan for Remote Data Processing Services (filed July 28, 1995) (NYNEX CEI Plan for RDP); NYNEX Telephone

Companies' Comparably Efficient Interconnection Plan for Customized Announcement Services (filed July 28, 1995) (NYNEX CEI Plan for CAS); and NYNEX Telephone Companies' Comparably Efficient Interconnection Plan for Audiotext Information Services (filed July 28, 1995) (NYNEX CEI Plan for AIS).

³ *Phase I Order*, 104 FCC 2d at 964-965, ¶¶ 4-5.

⁴ Public Notice for Comments on NYNEX's Comparably Efficient Interconnection Plans, DA 95-1731 (rel. Aug. 8, 1995).

⁵ See Letter and Attachment from Susanne Guyer, Executive Director Federal Regulatory Policy Issues, NYNEX, to William F. Caton, FCC, dated October 26, 1995 (NYNEX Oct. 26 *Ex Parte* Filing); Letter from Susanne Guyer, Executive Director Federal Regulatory Policy Issues, NYNEX, to William F. Caton, FCC, dated December 6, 1995 (NYNEX Dec. 6 *Ex Parte* Filing); and Letter from Susanne Guyer, Executive Director Federal Regulatory Policy Issues, NYNEX, to William Caton, FCC, dated December 13, 1995 (NYNEX Dec. 13 *Ex Parte* Filing).

⁶ *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, ¶ 9 (1990).

⁷ *Phase I Order*, 104 FCC 2d at 1034-1059, ¶¶ 142-200.

⁸ *Id.* at 1019-1021, ¶¶ 113-115, and 1059-1068, ¶¶ 201-222.

tions against cross-subsidization at issue in *California I*, it had not justified its retreat from its initial position regarding the level of unbundling necessary for eliminating structural separation.⁹ The court concluded that the cost-benefit analysis associated with the Commission's decision to lift structural separation was flawed and must be set aside as arbitrary and capricious under the Administrative Procedure Act.¹⁰ In response to the *California III* decision, the Commission has initiated a rulemaking proceeding to review the current nonstructural safeguards against BOC access discrimination.¹¹

5. Following the *California III* decision, the Bureau issued an order allowing the BOCs to continue providing enhanced services and conducting market trials pursuant to CEI plans approved prior to the lifting of structural separation.¹² The Bureau also granted waivers necessary to enable BOCs to continue providing other enhanced services and market trials, conditioned upon the BOCs filing CEI plans or market trial notifications, respectively, within 60 days of the *Bureau Interim Waiver Order*.¹³ The Bureau required the BOCs to file CEI plans or market trial notifications prior to providing any new services or market trials. In addition, the *Bureau Interim Waiver Order* required the BOCs to continue to comply with the procedures established in approved ONA plans.¹⁴ For example, BOCs still must provide new ONA services that ESPs need to provide enhanced services¹⁵ and file federal and state tariffs for ONA services.¹⁶ NYNEX's CEI plans for RDP, CAS, and AIS were filed pursuant to the CEI requirement established by the *Bureau Interim Waiver Order*.

III. SERVICE DESCRIPTION

6. *Remote Data Processing Service*. RDP will be provided on an integrated basis.¹⁷ RDP will enable customers, or NYNEX on behalf of customers, to store, retrieve and/or manipulate data stored in computers provided by NYNEX

or others.¹⁸ The first RDP application that NYNEX intends to introduce is Point-of-Sale Data Processing (POS).¹⁹ Through the use of point-of-sale customer premises equipment (CPE)²⁰ and the public switched network, a merchant will be able to obtain access remotely to a NYNEX POS database, which tracks the merchant's retail sales. The POS database will provide the merchant with individual customer sales information to provide discounts to specific customers. To utilize the POS database, a merchant's point-of-sale CPE will be programmed to call the telephone number associated with NYNEX's POS database and to transmit the appropriate customer sales information to the POS database. The POS database will in turn transmit to the merchant's CPE appropriate customer-specific or general sales information. According to NYNEX, a standard telephone number (*i.e.*, NPA NXX-XXXX) will be used for the call between the merchant's point-of-sale CPE and NYNEX's POS database.²¹ NYNEX states that for high volume applications, such as a large department store, tariffed private lines, or other high speed tariffed services may be used to interconnect a merchant's CPE to NYNEX's POS database.²²

7. *Customized Announcement Service*. CAS will be provided on an integrated basis.²³ CAS is similar to a voice messaging service. CAS is a computer-based audiotext service that enables subscribers to create, store, access, and retrieve customized announcements.²⁴ Subscribers and end users will obtain access to and interact with CAS via a touch-tone telephone. CAS subscribers will use NYNEX's CAS equipment and services to develop and store customized messages in conjunction with NYNEX network services. For example, subscribers of NYNEX's Automatic Call Distribution (ACD) service²⁵ could use NYNEX's CAS equipment to leave promotional and/or informational messages for calls that are held in queue by the ACD or made to the ACD at night when the ACD subscriber has no one available to answer the call.²⁶ When encountering a no-

⁹ *California III*, 39 F.3d at 927, 929.

¹⁰ *Id.* at 929.

¹¹ See *Computer III* Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, Notice of Proposed Rulemaking, 10 FCC Rcd 8360 (1995) (*Computer III Remand Notice of Proposed Rulemaking*). For a more detailed history of rules governing the BOCs' participation in the enhanced services market, see *Computer III Remand Notice of Proposed Rulemaking*, 10 FCC Rcd at 8362-8369, ¶¶ 3-10.

¹² See Bell Operating Companies' Joint Petition for Waiver of *Computer II* Rules, 10 FCC Rcd 1724, ¶¶ 2-3 (Com. Car. Bur., 1995) (*Bureau Interim Waiver Order*).

¹³ The Bureau subsequently approved the BOCs' CEI plans for these other existing enhanced services. See Bell Operating Companies' Joint Petition for Waiver of *Computer II* Rules, DA 95-2264 (Com. Car. Bur., rel. Oct. 31, 1995) (*Joint Petition Order*).

¹⁴ See *Bureau Interim Waiver Order*, 10 FCC Rcd at 1728-29, ¶ 22; see also Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 1 (1988) (*BOC ONA Order*), recon. 5 FCC Rcd 3084 (1990) (*BOC ONA Reconsideration Order*), 5 FCC Rcd 3103 (1990) (*BOC ONA Amendment Order*), Erratum, 5 FCC Rcd 4045, *pets. for review denied*, *California II*, 4 F.3d 1505 (9th Cir. 1993), recon., 8 FCC Rcd 97 (1993) (*BOC ONA Amendment Reconsideration Order*), 6 FCC Rcd 7646 (1991) (*BOC ONA Further Amendment Order*), 8 FCC Rcd 2602 (1993) (*BOC ONA Second Further Amendment Order*), *pet. for review denied*, *California II*, 4 F.3d 1505 (9th Cir. 1993). In April 1994, the Commission decided to apply the *Computer III* and ONA requirements to GTE Corporation. Application of Open Net-

work Architecture and Nondiscrimination Safeguards to GTE Corporation, 9 FCC Rcd 4922 (1994) (*GTE ONA Application Order*).

¹⁵ *Bureau Interim Waiver Order*, 10 FCC Rcd at 1728-29, ¶ 22.

¹⁶ *BOC ONA Order*, 4 FCC Rcd at 116, ¶ 226.

¹⁷ NYNEX Dec. 6 *Ex Parte* Filing at 1.

¹⁸ NYNEX CEI Plan for RDP at 2.

¹⁹ NYNEX must inform the Commission prior to the introduction of any new applications. NYNEX has been conducting a market trial of its point-of-sale service in Maine. See Notification of NYNEX's Market Trial of NYNEX PowerPass, CC Docket No. 88-616 (filed June 30, 1995).

²⁰ According to NYNEX, a merchant would use a CPE device, such as a cash register or charge card reader, which is capable of reading the magnetic strip of a charge card or specialty shoppers card. NYNEX CEI Plan for RDP at 3 n.9. This CPE will be available from NYNEX Information Resources Company and other vendors. NYNEX Dec. 6 *Ex Parte* Filing at 1 n.4.

²¹ NYNEX CEI Plan for RDP at 3 n.10.

²² NYNEX CEI Plan for RDP at 3 n.11.

²³ NYNEX Dec. 6 *Ex Parte* Filing at 1.

²⁴ NYNEX CEI Plan for CAS at 2.

²⁵ ACD is a basic service feature associated with NYNEX's Centrex service offering that allocates incoming calls equally among a group of associated Centrex lines. The tariffed ACD includes a Basic Service Element, known as Access to Customer Premises Announcement, that gives customers or ESPs on behalf of customers the option to interconnect audiotext equipment. NYNEX Dec. 6 *Ex Parte* Filing at 2.

²⁶ NYNEX CEI Plan for CAS at 2.

answer signal, night calls could be forwarded to NYNEX's CAS equipment to advise the customer to call back at a different time, or the ACD subscriber (*i.e.*, the called party) could leave a promotional message as well. To enter or update a customized announcement, a CAS subscriber would first dial the number associated with NYNEX's CAS equipment.²⁷ After connecting to CAS, a subscriber, through interaction with voice prompts, could create and leave a voice message, which would be heard by incoming callers.²⁸

8. *Audiotext Information Service.* AIS will be provided on an integrated basis.²⁹ AIS is a computer-based audiotext information service that may be provided as a stand-alone audiotext database or audiotext services gateway.³⁰ AIS will enable consumers and AIS subscribers to use their telephone and the public switched network to access and/or place audiotext information on the NYNEX AIS provider's equipment. NYNEX describes three options for how AIS service might be provided: 1) NYNEX may directly provide the AIS content, in partnership with a nonaffiliated content provider; 2) NYNEX may permit nonaffiliated audiotext providers to provide content on NYNEX equipment, such as through an audiotext gateway; or 3) nonaffiliated audiotext providers may utilize NYNEX AIS equipment to provide their own audiotext service.³¹ Depending on the specific application, consumers would be able to access and interact with a variety of audiotext information, including informational messages (*e.g.*, news, weather, sports, horoscope, etc.) and topical information placed by AIS advertisers (*e.g.*, description of merchant services or discount programs).³² To access AIS, consumers will dial a standard seven or ten digit number (*i.e.*, NPA NXX-XXXX). Once connected to AIS, a customer, through use of a standard touch-tone telephone and interaction with audiotext prompts, will be able to navigate through AIS and place or access audiotext messages.³³ Depending on the arrangements with the individual advertiser, an end-user may leave a message for an advertiser (*e.g.*, request that the advertiser contact the customer) or have the call redirected to the sponsor to speak directly with the advertiser.³⁴

IV. COMPLIANCE ISSUES

A. CEI Parameters

9. The Commission's CEI requirements are designed to give ESPs equal and efficient access to those basic services that the BOCs use to provide their own enhanced services.³⁵ The Commission has established nine CEI parameters,³⁶ which are discussed below.

10. NYNEX has described in its submissions how its proposed enhanced services will satisfy each of the Commission's nine CEI parameters. No parties objected to NYNEX's CEI plans. We review below NYNEX's three CEI plans with respect to each of the parameters delineated by the Commission.

1. Unbundling of Basic Services

11. The unbundling parameter requires the carrier to unbundle, and associate with a specific rate element in the tariff, the basic services and basic service functions that underlie the carrier's enhanced service offering.³⁷ Nonproprietary information used by the carrier in providing the unbundled basic services must be made available as part of CEI.³⁸ In addition, any options available to a carrier in the provision of such basic services or functions must be included in the unbundled offerings.³⁹

12. According to NYNEX, the following underlying basic services will be used in providing all three of its proposed enhanced services: residence and business lines, foreign exchange lines, private lines, CENTREX, DID, ISDN, and Digital PBX Flexpath.⁴⁰ In addition, for RDP NYNEX will also use INFOPATH service, while CAS will also use ACD and Access to Customer Premises Announcement service (ACPA).⁴¹ NYNEX states that all the underlying basic services used to provide its three proposed enhanced services are available under tariff and it does not use any network functions for its enhanced services that are not available to all ESPs under the same rates, terms, and conditions.⁴² NYNEX states that if it uses any new basic services, it will include such services in an amendment to the specific CEI plan and that these services will be offered in state and/or federal tariffs as appropriate, and will be available to all users on a nondiscriminatory basis.⁴³ We find that NYNEX's plan comports with the unbundling requirement established by the Commission.

²⁷ NYNEX CEI Plan for CAS at 3. NYNEX states that CAS would utilize a standard seven or ten digit number of the form NPA NXX-XXXX. *Id.* at n.6.

²⁸ NYNEX CEI Plan for CAS at 3.

²⁹ NYNEX Dec. 6 *Ex Parte* Filing at 1.

³⁰ NYNEX CEI Plan for AIS at 2. NYNEX has been conducting a market trial of an AIS application in Dutchess and Erie Counties in New York. See Notification of NYNEX's Market Trial of NYNEX Consumer Tips, CC Docket No. 88-616 (filed May 15, 1995). NYNEX plans for Consumer Tips to be the first AIS application to be offered commercially pursuant to its AIS CEI plan. NYNEX Dec. 6 *Ex Parte* Filing at 2. NYNEX must inform the Commission prior to the introduction of any new applications.

³¹ NYNEX CEI Plan for AIS at 2-3.

³² NYNEX CEI Plan for AIS at 3.

³³ NYNEX CEI Plan for AIS at 3.

³⁴ NYNEX CEI Plan for AIS at 3 n.9.

³⁵ *Phase I Recon Order*, 2 FCC Rcd at 3048, § 91.

³⁶ *Phase I Order*, 104 FCC 2d at 1039-1043, ¶¶ 154-166.

³⁷ *Id.* at 1040, ¶ 158.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ NYNEX CEI Plan for RDP at 4 and Appendices A and B; NYNEX CEI Plan for CAS at 3-4 and Appendix A; and NYNEX CEI Plan for AIS at 4 and Appendix A.

⁴¹ NYNEX CEI Plan for RDP at 4 and Appendices A and B; NYNEX CEI Plan for CAS at 2 and Appendices A and B; and NYNEX Dec. 13 *Ex Parte* Filing.

⁴² NYNEX CEI Plan for RDP at 5; NYNEX CEI Plan for AIS at 4; and NYNEX CEI Plan for CAS at 4.n

⁴³ NYNEX CEI Plan for RDP at 4; NYNEX CEI Plan for AIS at 3-4; and NYNEX CEI Plan for CAS at 3-4.

2. Interface Functionality

13. The interface functionality parameter requires the carrier to "make available standardized hardware and software interfaces that are able to support transmission, switching, and signalling functions identical to those utilized in the enhanced service provided by the carrier."⁴⁴

14. NYNEX states that the equipment associated with each of the three proposed enhanced services uses the same existing standard interfaces and tariffed transmission offerings that are available on the same terms and conditions to all ESPs.⁴⁵ We find that NYNEX's CEI plans comport with the interface functionality requirement established by the Commission.

3. Resale

15. The resale parameter requires a "carrier's enhanced service operations to take the basic services used in its enhanced service offerings at their unbundled tariffed rates as a means of preventing improper cost-shifting to regulated operations and anticompetitive pricing in unregulated markets."⁴⁶

16. NYNEX states that it complies with this CEI parameter because it obtains the underlying basic services for its enhanced services at the same tariffed rates, terms, and conditions that are available to other ESPs.⁴⁷ We find that NYNEX's CEI plans comport with the resale requirement established by the Commission.

4. Technical Characteristics

17. This parameter requires a carrier to provide basic services with technical characteristics that are equal to the technical characteristics the carrier uses for its own enhanced services.⁴⁸

18. NYNEX states that it provides interconnection to its proposed enhanced service offerings and to offerings of unaffiliated ESPs through the same standard network interfaces. According to NYNEX, these interconnections are provided under existing tariffs and support all the transmission, switching, and signaling functions used in NYNEX's proposed enhanced services.⁴⁹ We find that NYNEX's CEI plans comport with the technical characteristics requirement established by the Commission.

5. Installation, Maintenance, and Repair

19. This parameter requires that the time periods for installation, maintenance, and repair of the basic services and facilities included in a CEI offering must be the same

as those the carrier provides to its own enhanced service operations.⁵⁰ Carriers also must satisfy reporting and other requirements showing that they have met this requirement.⁵¹

20. NYNEX states that the procedures for ordering, installing, maintaining, and repairing underlying basic services are identical for affiliated and unaffiliated ESPs.⁵² NYNEX notes that the Commission has previously approved these procedures.⁵³ We find that NYNEX's CEI plans comport with the installation, maintenance, and repair requirement established by the Commission.

6. End-User Access

21. This parameter requires the carrier to provide to all end users the same abbreviated dialing and signalling capabilities that are needed to activate or obtain access to enhanced services that use the carrier's facilities. This parameter also requires the carrier to provide end users equal opportunities to obtain access to basic facilities through derived channels, whether they use the enhanced service offerings of the carrier or of a competing provider.⁵⁴

22. According to NYNEX, its enhanced service end users will use the same tariffed services that will be used by any other user.⁵⁵ We find that NYNEX's CEI plans comport with the end-user access requirement established by the Commission.

7. CEI Availability

23. This parameter requires a carrier's CEI offering to be available and fully operational on the date that it offers its corresponding enhanced service to the public. The parameter also requires the carrier to provide a reasonable period of time prior to that date when prospective users of the CEI offering can use the CEI facilities and services for purposes of testing their enhanced service offerings.⁵⁶ The testing period is necessary "to balance the conflicting interests of the carrier, which should have a reasonable period to develop, test, and 'de-bug' its CEI offerings before making them publicly available, and other CEI users, such as competitors, that might suffer an unfair competitive disadvantage if carriers were able to test and perfect their enhanced services -- particularly, their interconnection with the basic underlying facilities -- while withholding those same basic facilities from others."⁵⁷ Consequently, the Commission has required the BOCs to notify unaffiliated ESPs in advance about the impending deployment of new basic services.⁵⁸

⁴⁴ *Phase I Order*, 104 FCC 2d at 1039, ¶ 157.

⁴⁵ NYNEX CEI Plan for RDP at 4; NYNEX CEI Plan for AIS at 3-4; and NYNEX CEI Plan for CAS at 3-4.

⁴⁶ *Phase I Order*, 104 FCC 2d at 1040, ¶ 159.

⁴⁷ NYNEX CEI Plan for RDP at 5; NYNEX CEI Plan for AIS at 5; and NYNEX CEI Plan for CAS at 5.

⁴⁸ *Phase I Order*, 104 FCC 2d at 1041, ¶ 160.

⁴⁹ NYNEX CEI Plan for RDP at 5; NYNEX CEI Plan for AIS at 5; and NYNEX CEI Plan for CAS at 5.

⁵⁰ *Phase I Order*, 104 FCC 2d at 1041, ¶ 161.

⁵¹ *Id.* NYNEX must provide quarterly reports on installation and maintenance of its basic services. *Id.* at 1055-1056, ¶¶ 192-193.

⁵² NYNEX CEI Plan for RDP at 6; NYNEX CEI Plan for AIS at 5; and NYNEX CEI Plan for CAS at 5.

⁵³ See NYNEX CEI Plan for RDP at 6 n.13; NYNEX CEI plan

for AIS at 5 n.11; and NYNEX CEI Plan for CAS at 5 n.8 (citing *BOC ONA Order*, 4 FCC Rcd at 242-44, ¶¶ 467-73); see also *infra* note 80 and *Joint Petition Order*.

⁵⁴ *Phase I Order*, 104 FCC 2d at 1041, ¶ 162.

⁵⁵ NYNEX CEI Plan for RDP at 6; NYNEX CEI Plan for AIS at 5; and NYNEX CEI Plan for CAS at 5.

⁵⁶ *Phase I Order*, 104 FCC 2d at 1041, ¶ 163.

⁵⁷ *Id.*

⁵⁸ See *Phase I Order*, 104 FCC 2d at 1068, ¶¶ 221-222 (under an ONA regime, a BOC wishing to offer an enhanced service that uses a new Basic Service Element or otherwise uses different arrangements for underlying basic services than those set forth in its ONA Plan must file an amendment to its Plan with the Bureau at least 90 days prior to offering that enhanced service).

24. In addition, the Commission has separately stated that a carrier's CEI Plan should contain a description of the geographic areas in which it will offer the enhanced service, as well as the network locations within those areas through which it will provide such service.⁵⁹

25. According to NYNEX, it only uses tariffed network services to provide its proposed enhanced services.⁶⁰ If in the future, NYNEX chooses to offer any of its three proposed enhanced services in areas where the basic underlying services were not previously available, NYNEX must make these basic services available in these other jurisdictions for 90 days for testing by affiliates and nonaffiliates before using these services in its own offerings. Moreover, if NYNEX uses any additional basic services to provide any of the proposed enhanced services, it must file an amendment to the relevant CEI plan. We find that NYNEX's CEI plans, subject to the 90 day and future amendment requirements outlined above, comport with the CEI availability requirement established by the Commission.⁶¹

8. Minimization of Transport Costs

26. This parameter requires carriers to provide competitors with interconnection facilities that minimize transport costs.⁶²

27. According to NYNEX, affiliated and unaffiliated enhanced service providers are charged the same rates for underlying basic services.⁶³ NYNEX states that it may physically collocate the equipment associated with its three proposed enhanced services.⁶⁴ NYNEX states that it will comply with the Commission's pricing parity rules when such equipment is collocated.⁶⁵ We find that NYNEX's plans comport with the minimization of transport costs requirement established by the Commission.

9. Recipients of CEI

28. This parameter prohibits carriers from restricting the availability of the CEI offering to any particular class of customer or enhanced service competitor.⁶⁶

29. NYNEX states that the basic services it will use to provide the proposed three enhanced services are offered under existing tariff to all ESPs and end users, and, therefore, are not restricted to any particular class of customer or enhanced service competitor.⁶⁷ We find that NYNEX has proposed to provide service to CEI recipients in compliance with the Commission's requirements.

B. Other Nonstructural Safeguards

30. In addition to the CEI requirements established in *Computer III*, a BOC proposing to provide enhanced services on a structurally integrated basis must comply with requirements regarding the use of customer proprietary network information (CPNI), disclosure of network information, and nondiscrimination reporting.⁶⁸

1. Customer Proprietary Network Information

31. NYNEX is required to describe the procedures it intends to establish to comply with the CPNI safeguards.⁶⁹ The *Phase II Order* established CPNI requirements for BOCs' enhanced service operations, requiring them in part to 1) make CPNI available, upon customer request, to unaffiliated enhanced service vendors, on the same terms and conditions under which the information is provided to the BOCs' enhanced services personnel; 2) limit the BOCs' enhanced services personnel from gaining access to a customer's CPNI if the customer so requests; and 3) notify annually multiline business customers of their CPNI rights.⁷⁰ The Commission also requires BOCs to provide to unaffiliated enhanced service vendors any nonproprietary, aggregate CPNI that the BOCs provide to their own enhanced services personnel.⁷¹

32. NYNEX has stated that in providing its three proposed enhanced services it will comply with all the Commission's rules and requirements regarding the use of CPNI.⁷² We find that NYNEX's CEI plans comport with the Commission's CPNI requirements.⁷³

⁵⁹ See Southwestern Bell Telephone Company, Comparably Efficient Interconnection Plan for the Provision of Voice Messaging Services, 3 FCC Rcd 6912, at 6914, ¶ 19 (1988); see also Ameritech's Offer of Comparably Efficient Interconnection to Providers of Message Delivery Service, DA 96-9, at 8-10, ¶ ¶ 22-24 (Com. Car. Bur., rel. Jan. 16, 1995).

⁶⁰ NYNEX CEI Plan for RDP at 6; NYNEX CEI Plan for AIS at 6; and NYNEX CEI Plan for CAS at 6.

⁶¹ GTE and the BOCs must file state and federal tariffs for their ONA services. *BOC ONA Order*, 4 FCC Rcd at 116, ¶ 226. According to NYNEX, the federal tariffing requirement does not apply to ACD, because it is a complementary network service. NYNEX Dec. 13 *Ex Parte* Filing. Traditionally, CNSs are "locally tariffed, basic services that . . . give end users access to the network for a variety of applications, not merely enhanced services." CNSs' must be tariffed in the state jurisdiction. *BOC ONA Order*, 4 FCC Rcd at 47, ¶ 83. NYNEX, however, considers ACPA to be a BSE. NYNEX Dec. 6 *Ex Parte* Filing at 2. According to NYNEX, "the existing interstate access arrangements do not provide a logical or technically appropriate service platform to provide ACPA [] on an interstate basis." *Id.* At present, we waive the federal tariffing requirement for ACPA. If in the future, a customer requests ACPA on an interstate basis, NYNEX must federally tariff this BSE.

⁶² *Phase I Order*, 104 FCC 2d at 1042, ¶ 164.

⁶³ NYNEX CEI Plan for RDP at 6; NYNEX CEI Plan for CAS at 6; and NYNEX CEI Plan for AIS at 6.

⁶⁴ NYNEX Dec. 6 *Ex Parte* Filing at 1.

⁶⁵ *Id.*

⁶⁶ *Phase I Order*, 104 FCC 2d at 1042, ¶ 165.

⁶⁷ NYNEX CEI Plan for RDP at 6; NYNEX CEI Plan for CAS at 6; and NYNEX CEI Plan for AIS at 6.

⁶⁸ *Phase II Order*, 2 FCC Rcd at 3082, ¶ ¶ 73-75.

⁶⁹ *Phase II Order*, 2 FCC Rcd at 3095, ¶ 156.

⁷⁰ *Id.* at 3093-3097, ¶ ¶ 141-174. The Commission subsequently amended its CPNI requirements to prohibit BOC personnel engaged in the marketing of enhanced services from accessing the CPNI of customers with more than 20 lines, unless they first obtain permission from the customer. *BOC Safeguards Order*, 6 FCC Rcd at 7613, ¶ 89.

⁷¹ *Phase II Order*, 2 FCC Rcd at 3097, ¶ ¶ 172-174.

⁷² NYNEX CEI Plan for RDP at 7; NYNEX CEI Plan for CAS at 6; and NYNEX CEI Plan for AIS at 6.

⁷³ The Commission previously reviewed and approved NYNEX's procedures for compliance with the nonstructural safeguards requirements. See *infra* note 80 and *Joint Petition Order*.

2. Network Information Disclosure

33. NYNEX is also required to disclose to the enhanced services industry information about network changes and new network services that affect the interconnection of enhanced services with the network. NYNEX must make that disclosure at the "make/buy" point, that is, when NYNEX decides whether to make or to procure from an unaffiliated entity any product whose design affects or relies on the network interface.⁷⁴ NYNEX must provide that information to members of the enhanced services industry that sign a nondisclosure agreement, within 30 days after the execution of such nondisclosure agreement.⁷⁵ NYNEX also must publicly disclose technical information about a new or modified network service twelve months before that service is introduced.⁷⁶ BOCs need not describe network disclosure procedures in their CEI plans, because they are obligated to obey those rules.⁷⁷ NYNEX states that it has complied and will continue to comply with the Commission's network disclosure requirements.⁷⁸ NYNEX notes that all of the basic services that are to be used to provide CAS, AIS, and RDP are existing tariffed services for which network interfaces exist and no further network disclosures are required.⁷⁹ We find that NYNEX's CEI plans comport with the Commission's network information disclosure requirements.

3. Nondiscrimination Reporting

34. BOCs are required to file quarterly nondiscrimination reports with respect to their basic services, thereby ensuring that they provide the access promised in their CEI plans.⁸⁰ NYNEX states that it has complied and will continue to comply with the Commission's nondiscrimination reporting requirements.⁸¹ We find that NYNEX's CEI plans comport with the Commission's nondiscrimination reporting requirements.

C. Accounting Safeguards

35. In addition, the BOCs must adhere to certain accounting procedures to protect ratepayers from cross-subsidization. This system consists of five principal parts: 1) the establishment of effective accounting rules, in accordance with the Commission's Part 32 Uniform System of Accounts requirements, and cost allocation standards; 2) the requirement that telecommunications carriers file cost allocation manuals reflecting the established rules and standards; 3) mandatory audits of carrier cost allocations by independent auditors, who must state affirmatively whether the audited carriers' allocations comply with their cost allocation manuals; 4) the establishment of detailed reporting requirements and the development of an automated

system to store and analyze the data; and 5) the performance of on-site audits by Commission staff.⁸² NYNEX must comply with these accounting safeguards.

V. CONCLUSION

36. We conclude that NYNEX's three CEI plans comply with the *Computer III* requirements. If NYNEX provides new enhanced services not described in these CEI plans, or if NYNEX uses additional basic underlying services, it must file a CEI plan amendment. Accordingly, in this Order, we approve NYNEX's CEI plans to offer RDP, CAS, and AIS.

VI. ORDERING CLAUSES

37. IT IS HEREBY ORDERED that, pursuant to Sections 1, 4(i) and (j), 201, 202, 203, 205, and 218 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 201, 202, 203, 205, and 218, and authority delegated thereunder pursuant to Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, NYNEX's Comparably Efficient Interconnection Plans for Remote Data Processing Service, Customized Announcement Service, and Audiotext Information Service ARE APPROVED, subject to the conditions discussed herein.

FEDERAL COMMUNICATIONS COMMISSION

Regina M. Keeney
Chief, Common Carrier Bureau

⁷⁴ *Phase II Order*, 2 FCC Rcd at 3086, ¶ 102.

⁷⁵ *Id.* at 3091-3093, ¶¶ 134-140.

⁷⁶ *Id.* at 3092, ¶ 136. If a BOC is able to introduce the service within twelve months of the make/buy point, however, it may make public disclosure at the make/buy point. It may not, however, introduce the service less than six months after the public disclosure.

⁷⁷ *BOC ONA Order*, 4 FCC Rcd at 252, ¶ 490.

⁷⁸ NYNEX CEI Plan for RDP at 7; NYNEX CEI Plan for CAS at 6; NYNEX CEI Plan for AIS at 6.

⁷⁹ NYNEX Dec. 6 *Ex Parte* Filing at 1.

⁸⁰ See *BOC ONA Reconsideration Order*, 5 FCC Rcd 3084,

3096, Appendix B (1990), *BOC ONA Amendment Order*, 5 FCC Rcd 3103 (1990), *Erratum*, 5 FCC Rcd 4045, *pets. for review denied, California II*, 4 F.3d 1505 (9th Cir. 1993), *recon.*, 8 FCC Rcd 7646 (1991), *BOC ONA Second Further Amendment Order*, 8 FCC Rcd 2606 (1993), *pet. for review denied, California II*, 4 F.3d 1505 (1993); and *Phase II Order*, 2 FCC Rcd at 3082, ¶ 73.

⁸¹ NYNEX CEI Plan for RDP at 7; NYNEX CEI Plan for CAS at 6; and NYNEX CEI Plan for AIS at 6.

⁸² *BOC Safeguards Order*, 6 FCC Rcd at 7591, ¶ 46.