State	City/town/county	Source of flooding	Location	#Depth in feet above ground. Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the City Building Department, City Hall, 810 E Street, Williams, California.					
Send comments to The Honorable Donald Burnett, Mayor, City of Williams, P.O. Box 310, Williams, California 95987.					
Missouri	Lawson (City) Clay and Ray Counties.	Brushy Creek	Approximately 3,950 feet downstream of the Atchison, Topeka, and Santa Fe Railroad bridge.	None	*996
			Approximately 2,600 feet downstream of the Atchison, Topeka, and Sante Fe Railroad bridge.	None	*1,000
			Approximately 1,000 feet downstream of the Atchison, Topeka, and Santa Fe Railroad bridge.	None	*1,005
			Approximately 900 feet upstream of confluence with Brushy Creek Tributary II.	None	*1,010
		Brush Creek Tributary II	At confluence with Brushy Creek	None	*1,008
			At County Highway D	None	*1,013
			Approximately 2,500 feet upstream of County Highway D.	None	*1,020
			Approximately 1,500 feet downstream of Salem Road.	None	*1,030
			Just downstream of Salem Road	None	*1,043
Maps are available for inspection at the City of Lawson, City Hall, City Administrator's Office, 3rd and Pennsylvania, Lawson, Missouri.					
Send comments to The Honorable Robert Gill, Mayor, City of Lawson, P.O. Box 185, Lawson, Missouri 64062.					
Texas	Montgomery County (Unincorporated Areas).	Sam Bell Gully	Approximately 300 feet downstream of Maplewood Drive.	*121	*121
			Approximately 1,100 feet just upstream of Maplewood Drive.	*122	*123
			Just upstream of Maplewood Drive	*124	*124
Maps are available for inspection at the County Administration Building, 301 North Thompson, Suite 208, Conroe, Texas.					
Send comments to The Honorable Alan Sadler, Montgomery County Judge, County Administration Building, 301 North Thompson, Suite 208, Conroe, Texas 77301.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 25, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–8128 Filed 4–2–96; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 96–61, FCC 96–123]

Interstate, Interexchange Marketplace; and Implementation of Section 254(g) of the Communications Act of 1934, as Amended

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In the light of the passage of the 1996 Act, changes in the interexchange market over the past decade, and the recent reclassification of AT&T as a non-dominant carrier, the Commission is issuing this Notice of Proposed Rulemaking (''Notice'' or ''NPRM'') seeking comment on possible changes in the regulatory treatment of interstate, interexchange telecommunications service providers. Specifically, the Notice tentatively concludes that, as required by the forbearance provision in Section 10 of the Communications Act, as amended, the Commission must forbear from applying Section 203 tariff filing requirements to non-dominant interexchange carriers for domestic services. The Notice tentatively concludes that the Commission's proposed detariffing policy should be implemented on a mandatory basis. The Notice seeks comment on whether the Commission should forbear, with respect to non-dominant carriers that file bundled domestic and international tariffs, from requiring such carriers to file tariffs for the international portions of their service offerings as well.

DATES: Comments on Section IV of the NPRM (related to market definition), Section V (related to separation requirements) and Section VI (related to the implementation of Section 254(g) of the Communications Act of 1934, as amended) must be submitted on or before April 19, 1996. Reply comments for these sections must be filed on or before May 3, 1996. Comments on all other sections of the NPRM must be submitted on or before April 25, 1996. Reply comments for these sections must be submitted on or before May 24, 1996. Written comments on the Initial Regulatory Flexibility Analysis must be filed in accordance with the same filing deadlines set for comments on the other issues (other than Sections IV, V, and VI) in the NPRM, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. Written comments by the public on the proposed and/or modified information collections are due on or before April 19, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before June 3, 1996.

ADDRESSES: Comments and reply comments should be sent to Office of

the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554. In order to facilitate review of comments and reply comments, both by parties and by Commission staff, we require that comments on Section IV of the NPRM (related to market definition), Section V (related to separation requirements), and Section VI (related to Implementation of Section 254(g) of the Communications Act, as amended) be no longer than forty-five (45) pages and reply comments be no longer than twenty-five (25) pages. We require that comments on the remaining sections of the NPRM be no longer than forty-five (45) pages and reply comments on the remaining sections be no longer than twenty-five (25) pages. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554 or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Melissa Waksman or Donald Stockdale at (202) 418–1580, Common Carrier Bureau, Policy and Program Planning Division. For additional information concerning the information collections contained in this NPRM, contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking (FCC 96–123) adopted on March 21, 1996 and released on March 25, 1996. The full text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., N.W., Washington, DC. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

Background

The Notice reserves for another day, in a separate proceeding, the broader question of whether the Commission should consider generally forbearing from requiring tariffs for international service provided by a non-dominant carrier, given the current market conditions in the international market. The Notice also invites parties to comment on whether, with respect to existing regulations examined in this Notice, the Commission should forbear from applying such regulations to some or all interexchange carriers or services, in particular areas or regions. The Notice also considers whether the Commission should reexamine the geographic and product market definitions that the Commission adopted in the *Competitive Carrier* proceeding. The Notice tentatively concludes that the Commission should follow the approach taken in the U.S. Department of Justice/Federal Trade Commission 1992 Merger Guidelines for defining relevant markets. The Notice interprets the Guidelines' approach as suggesting that the Commission should define as a relevant product market an interstate, interexchange service for which there are no close substitutes or group of services that are close substitutes for each other but for which there are no other close substitutes. The Notice tentatively concludes, however, that the Commission need not address the issue of delineating the boundaries of specific product markets, except where there is credible evidence suggesting that there is or could be a lack of competitive performance with respect to a particular service or group of services. The Notice also tentatively concludes that the Commission should define a relevant geographic market for interstate, interexchange services as all calls between two particular points. The Notice states, however, that geographic rate averaging and other factors imply that a carrier or group of carriers cannot change interexchange rates for calls between two particular points without changing rates nationwide for calls of that distance. The Notice, therefore, tentatively concludes that the Commission should treat interstate, interexchange calling as generally one national market. Where, however, there is credible evidence suggesting that there is or could be a lack of competition in a particular point-to-point market or group of markets, and that geographic rate averaging will not sufficiently mitigate the exercise of market power, the Notice proposes that the Commission will examine individually that market (or group of markets) for the presence of market power. In the *BOC Out-of-Region NPRM*, 60 FR 6607 (February 21, 1996) the Commission stated its intent to consider whether it may be appropriate to modify or eliminate separation requirements that are currently imposed upon independent LECs, and that we tentatively concluded in the *BOC Out-of-Region NPRM* should be imposed on BOCs, in order to qualify for non-dominant treatment in the provision of out-of-region interstate, interexchange services. The Notice thus seeks comment on whether the Commission should modify or eliminate the separation requirements independent LECs must satisfy if they are to be treated as non-dominant carriers in the provision of interstate, interexchange services outside their local exchange areas. The Notice seeks comment on whether, if the Commission modifies or eliminates these requirements for independent LECs, it should apply the same requirements to BOCs that provide out-of-region interstate, interexchange services. Section 254(g) of the Communications Act of 1934, as amended by the 1996 Act, requires the Commission to adopt rules to implement the requirements that rates for interexchange services be geographically averaged and be integrated. The Notice proposes to adopt a rule requiring that the rates charged by all providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to subscribers in

urban areas. The Notice states that Section 254(g) requires the Commission to adopt rules to require geographic averaging for intrastate and interstate telecommunications services. The Notice states the Commission believes that Section 254(g) preempts state laws or regulations requiring geographic rate averaging only to the extent such laws or regulations are inconsistent with the Commission's rules and policies. The Notice also proposes to adopt a rule to require rate integration for services between the contiguous forty-eight states and Alaska, Hawaii, U.S. territories and possessions. The Notice tentatively concludes that providers of interexchange services must file certifications stating they are in compliance with their statutory geographic rate averaging obligations and that providers of interstate, interexchange services must file certifications stating that they are in compliance with their statutory rate integration obligations. The Notice also seeks comment on: (1) the extent to which interexchange carriers do not offer discount plans throughout their service areas, and whether such carriers' failure to do so constitutes geographic deaveraging; (2) the appropriate mechanism for implementing rate integration for U.S. territories and possessions that are not currently subject to the Commission's domestic rate integration policy; and (3) whether there may be competitive conditions or other circumstances that could justify Commission forbearance from enforcing the proposed geographic rate averaging requirement with respect to particular interexchange telecommunications carries or services. Changes in the structure of the interexchange marketplace over the past decade have raised certain issues relating to the pricing of interexchange telecommunications services. The Notice seeks comment on certain of these issues. Based on the Commission's prior findings regarding competition in both the customer premises equipment (CPE) and interstate, interexchange markets, the Notice tentatively concludes that the Commission should amend Section 64.702(e) of the Commission's rules to allow non-dominant interexchange carriers to bundle CPE with interstate, interexchange services. The Notice notes that the Commission intends to initiate a comprehensive proceeding to address payphone issues, and therefore any amendment to Section 64.702(e) of the Commission's rules adopted in this proceeding will not apply to payphone bundling. Concerns about the application of the substantial cause test and other issues related to contract tariffs raised in the *AT&T Reclassification* proceeding by resellers and large business subscribers remain relevant if the Commission decides not to adopt a mandatory detariffing policy or implements permissive detariffing. Accordingly, the Notice seeks comment on such tariff-related issues. This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

Paperwork Reduction Act: This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due at the same time as comments on Section IV of the NPRM (related to market definition), Section V (related to separation requirements), and Section VI (related to Implementation of Section 254(g) of the Communications Act, as amended); OMB notification of action is due June 3, 1996. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None.

Title: Policy and Rules Concerning the Interstate, Interexchange Marketplace; and Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96–61.

Form No.: N/A.

Type of Review: New Collection.

Respondents: Businesses or other for-profit, including small businesses.

Proposed requirement	No. of respondents	Estimated time per response
Detariffing*	0	0
Recordkeeping	519	1
Certification	519	2
Advertising	519	2

*The Commission proposes to eliminate the tariffing requirement now imposed on non-dominant interexchange carriers for domestic services.

Total Annual Burden: 2595.

Estimated Costs Per Respondent: $0.

Needs and Uses: The information collected under the proposed recordkeeping and certification requirements would be used by the Common Carrier Bureau of the Commission to ensure that affected interexchange carriers fulfill their obligations under the Communications Act, as amended. The information collected under the advertising requirement, if adopted, would be used to ensure that consumers have information regarding carriers' rate plans.

Synopsis of Notice of Proposed Rulemaking

I. Introduction

1. On February 8, 1996, the Telecommunications Act of 1996 (1996 Act) became law. The 1996 Act seeks ''to provide for a pro-competitive, de-regulatory national policy framework'' designed to make available to all Americans advanced telecommunications and information technologies and services ''by opening all telecommunications markets to competition.'' Integral to achieving this goal, the 1996 Act requires the Commission to forbear from applying any provision of the Communications Act of 1934, as amended (Communications Act), or our regulations, to a telecommunications carrier or telecommunications service, or class thereof, if the Commission makes certain specified findings with respect to such provisions or regulations. In addition, the 1996 Act provides for the entry of the Bell Operating Companies (BOCs) and their affiliates into the interstate, interexchange market, after certain preconditions are satisfied. 1996 Act at § 151 (adding § 271). This entry can be expected to intensify competition in the interstate, domestic, interexchange market. For purposes of this proceeding, we generally use the term ''BOCs'' as that term is defined in Section 3(a)(35) of the Communications Act of 1934, as amended. In a few instances, however,

we use the term ''BOCs'' also to encompass BOC affiliates, such as are contemplated by Section 272 of the Communications Act of 1934, as amended. The preconditions specified in the 1996 Act apply to a BOC's provision of interLATA services originating in any of its in-region states. 1996 Act at § 151 (adding § 271).

2. Consistent with the thrust of the 1996 Act, the Commission has long pursued policies designed to facilitate the growth of competition in the domestic long-distance market. In 1979, the Commission commenced the *Competitive Carrier* proceeding in which it considered how its regulations should be modified to reflect and promote competition in this market. In succeeding years, in part as a result of reforms adopted in the *Competitive Carrier* proceeding, the interstate, domestic, interexchange market has evolved from a market of fledgling competitors overshadowed by a single, dominant service provider to a market characterized by substantial competition. The Commission explicitly acknowledged these dramatic changes when, in October 1995, we concluded that AT&T Corporation (AT&T) no longer possessed individual market power in the domestic long-distance market taken as a whole and, accordingly, reclassified AT&T as a non-dominant carrier for interstate, domestic, interexchange services.

3. The 1996 Act builds upon the progress made to date in facilitating competition in the domestic long-distance market, and provides a framework for raising competition to a higher plane. In light of the passage of the 1996 Act, changes in the interexchange market over the past decade, and our recent reclassification of AT&T as a non-dominant carrier, we believe it is timely to review our regulatory regime for interstate, domestic, interexchange telecommunications services. In this proceeding, we therefore examine whether and how our policies and rules should be changed, consistent with the intent of the 1996 Act.

4. Specifically, we propose, pursuant to the forbearance authority provided in the 1996 Act, to adopt a mandatory detariffing policy for domestic services of non-dominant, interexchange carriers. We also propose to eliminate the prohibition against bundling customer premises equipment with the provision of interstate, interexchange services by non-dominant interexchange carriers. In addition, we consider whether to reduce or eliminate the separation requirements for non-dominant treatment of local exchange carriers in their provision of certain interstate, interexchange services. By these proposals, we seek to promote competition by reducing or eliminating existing regulations that may no longer be in the public interest in the increasingly competitive interexchange marketplace.

5. We also reexamine other aspects of our oversight of the interstate, interexchange market. In this respect, we consider whether we should more narrowly focus our definitions of relevant product and geographic markets for interexchange services to reflect current and future market conditions. We also address issues related to residential services pricing, including allegations of tacit price coordination in the interexchange market, and inquire how additional facilities-based competition pursuant to the 1996 Act affects this issue. We also consider other issues, including tariff-related issues that would remain relevant if we determine not to forbear from requiring non-dominant interexchange carriers to file tariffs, or if we decide to adopt a permissive detariffing policy. Finally, as required by the 1996 Act, we propose rules to implement the 1996 Act's provisions relating to geographic rate averaging and rate integration.

II. Background

A. The Telecommunications Act of 1996

6. The 1996 Act significantly alters the legal framework governing the interstate, interexchange market. The new statutory provisions should generally promote facilities-based competition in the interexchange market and open the door for new entrants to compete with existing service providers. For example, the 1996 Act, inter alia, permits the BOCs immediately to provide interLATA telecommunications services originating outside their in-region states, as well as ''incidental'' interLATA services. More significantly, after fulfilling specified preconditions, BOCs may provide interLATA telecommunications services originating inside their in-region states. In addition, the 1996 Act provides regulatory flexibility by requiring the Commission to forbear from applying any regulation or any provision of the Communications Act to telecommunications carriers or telecommunications services, or classes thereof, if the Commission determines that certain specified conditions are satisfied. The forbearance authority applies to all provisions of the Communications Act, except the provisions added by the 1996 Act relating to interconnection and BOC entry into long-distance services.

B. The Competitive Carrier Proceeding

7. The Commission, since 1979, has pursued, in the *Competitive Carrier* proceeding, pro-competitive and deregulatory goals similar to those now underlying the 1996 Act. The Commission there examined how its regulations should be adapted to reflect and promote increasing competition in interexchange telecommunications markets, and sought to reduce or eliminate the application of economic regulation to new competitive entrants. In these efforts, the Commission pursued a forbearance policy, encompassing both permissive and mandatory detariffing. Upon judicial review, however, the Court found that the Communications Act, at that time, did not provide the Commission with the requisite authority to do so.

8. In its *Competitive Carrier* orders, the Commission distinguished two kinds of carriers—those with market power (dominant carriers) and those without market power (non-dominant carriers). In determining whether a firm possessed market power, the Commission focused on certain ''clearly identifiable market features,'' including the number and size distribution of competing firms, the nature of barriers to entry, the availability of reasonably substitutable services, and whether the firm controlled bottleneck facilities. The Commission relaxed its tariff filing and facilities authorization requirements for non-dominant carriers, and focused its regulatory efforts on constraining the ability of dominant firms to act contrary to consumer welfare.

C. The Interexchange Competition Proceeding

9. In 1990, the Commission commenced the *Interexchange Competition* proceeding to examine the state of competition in the interstate, long-distance marketplace, and to assess the efficacy of existing regulation in light of this competition. In the *First Interexchange Competition Order*, 56 FR 66602 (December 24, 1991), the Commission found that business services (except analog private line services) had become ''substantially competitive.'' The Commission accordingly streamlined its regulation of those AT&T services. For services subject to ''streamlined'' regulation, AT&T was allowed to file tariffs on 14 days' notice, without cost support, and such tariffs were presumed lawful. In addition, price cap ceilings, bands and rate floors did not apply to streamlined services. Later, the Commission, after

ordering 800 number portability, found that 800 services (except 800 directory assistance services) were also subject to substantial competition, and streamlined regulation of those AT&T services as well.

10. In the *First Interexchange Competition Order*, 56 FR 55235 (October 25, 1991) the Commission also authorized all interexchange carriers to offer services pursuant to individually negotiated, contract-based tariffs, provided they make such rates generally available to similarly situated customers. The Commission found such arrangements would allow customers to negotiate service arrangements that best addressed their particular needs and would unleash competition by allowing AT&T to offer the same type of contract arrangements its competitors were already offering.

D. The AT&T Reclassification Order

11. On October 23, 1995, we issued an order granting AT&T's motion to be reclassified as a non-dominant carrier, based upon our finding that AT&T no longer possessed individual market power in the interstate, domestic, interexchange market taken as a whole. As a result, AT&T is now generally subject to the same regulations as its long-distance competitors. Like other non-dominant carriers, AT&T is still subject to regulation under Title II of the Communications Act. Thus, it is required to do the following: offer interstate services under rates, terms and conditions that are just, reasonable and not unduly discriminatory; file tariffs; and give notice prior to any discontinuance, reduction or impairment of service. Moreover, like other non-dominant carriers, AT&T continues to be subject to the Commission's complaint process.

12. In the *AT&T Reclassification* proceeding, AT&T made certain voluntary commitments, which AT&T stated were intended to serve as transitional arrangements to address concerns expressed by parties about possible adverse effects of reclassifying AT&T. These commitments concerned: service to low-income and other customers; analog private line and 800 directory assistance services; service to and from the State of Alaska and other regions subject to our rate integration policy; geographic rate averaging; changes to contract tariffs that adversely affect existing customers; and dispute resolution procedures for reseller customers. In the *AT&T Reclassification Order*, we accepted AT&T's commitments and ordered AT&T to comply with those commitments.

13. In the *AT&T Reclassification Order*, we stated that we would consider the following issues relevant to the interstate, domestic, interexchange market as a whole in this proceeding: (1) whether there is tacit price coordination in the interexchange market; (2) how changes in the interexchange market affect our rate integration and geographic averaging policies; (3) reseller and large user concerns regarding contract tariffs; and (4) the application of the filed rate doctrine to contract tariff arrangements.

E. Need for Review of Commission Regulation of the Interexchange Market

14. The Commission's obligation to be responsive to the dynamic nature of the communications industry has long been recognized. The passage of the 1996 Act, the dramatic changes in the interstate, domestic, interexchange telecommunications services market since the *Interexchange Competition* proceeding, and our reclassification of AT&T as a non-dominant carrier in the overall interstate, domestic, interexchange market, make it timely for us to reexamine our policies and rules in light of the goals of the 1996 Act. In pursuing the pro-competitive policy established by the 1996 Act, we intend to examine existing regulations to see whether they can be reduced or eliminated consistent with our public interest responsibilities.

III. Regulatory Forbearance

A. Introduction

15. The 1996 Act amends the Communications Act to require the Commission to:

[F]orbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that—

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.

In addition, in determining whether forbearance from enforcing a particular provision or regulation is in the public interest, the Commission is specifically required to consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services. New Section 10(b) also provides that, ''[i]f the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.'' Section 401 of 1996 Act also provides that the Commission may not forbear from applying the requirements of the provisions of new Section 251 related to interconnection (except as provided in Section 251(f)) and of new Section 271 related to BOC provision of interLATA services until the Commission determines that those requirements have been fully implemented.

16. Accordingly, with respect to each of the existing regulations examined in this proceeding, we invite parties to comment on whether we should forbear from applying such regulations to some or all interexchange carriers or services, in particular geographic areas or regions. With respect to each issue, parties should specify the bases on which they believe we can make the findings required to meet the statutory criteria for forbearance.

17. We address below whether, given the current domestic, interstate, interexchange market, the 1996 Act requires the Commission to forbear from requiring non-dominant interexchange carriers to file tariffs for domestic services. Based on the Commission's analyses and findings in prior proceedings, we tentatively conclude that we are required by the 1996 Act to forbear from applying the Section 203 tariff filing requirements to non-dominant interexchange carriers for domestic interexchange services.

18. We note that we do not address here the issue of forbearance from applying Section 226 of the Act, which requires operator service providers to file informational tariffs. That issue will be addressed in a separate upcoming proceeding.

B. Forbearance From Tariff Filing Requirements for Non-Dominant Interexchange Carriers

1. Background

19. In the *Competitive Carrier* proceeding, the Commission explored the cost of imposing Title II regulation on entities lacking market power. In the *Competitive Carrier Further NPRM*, 46 FR 10924 (February 5, 1981), the

Commission suggested that tariff filing requirements for non-dominant carriers could harm consumers by slowing ''the introduction of new services, dampening competitive responses and ultimately encouraging price collusion through the forced publication of charges.'' The Commission accordingly, in a series of orders, established a permissive tariff forbearance policy for non-dominant carriers. In the *Sixth Report and Order*, 50 FR 1215 (January 10, 1985), the Commission established a mandatory detariffing policy for non-dominant carriers. The Commission concluded that tariff filings were not essential to its ability to ensure that non-dominant carriers do not unjustly discriminate in their rates, and that other means were available to ensure that the Commission fulfilled its mandate under the Communications Act.

20. The *Sixth Report and Order* subsequently was vacated and remanded by the U.S. Court of Appeals for the D.C. Circuit. The court held that the Commission lacked statutory authority to prohibit carriers from filing tariffs. The court, however, did not reach the issue of whether the Commission's earlier permissive detariffing orders were valid. The Commission, accordingly, continued to apply permissive detariffing for non-dominant carriers. The Commission's permissive detariffing regime subsequently was invalidated by the U.S. Court of Appeals for the D.C. Circuit in 1992. The court, in reviewing and disposing of a complaint filed by AT&T against MCI, vacated the Commission's *Fourth Report and Order*, 48 FR 52452 (November 18, 1983), thereby invalidating the Commission's tariff filing forbearance policy for non-dominant carriers. While stating that it had no ''quarrel with the Commission's policy objectives,'' the court found that the Communications Act did not give the Commission authority to adopt such a policy.

21. Prior to the U.S. Court of Appeals' vacation of the *Fourth Report and Order*, the Commission adopted a Report and Order in a rulemaking proceeding commenced in response to AT&T's complaint. The Commission again determined that permissive detariffing was within its authority under the Communications Act. The U.S. Court of Appeals for the D.C. Circuit granted summary reversal of the Commission's order based on the court's earlier ruling. In affirming the U.S. Court of Appeal's ruling, the Supreme Court found that Section 203(b)(2) of the Communications Act gave the Commission authority to modify the Act's tariff filing requirement, but not to eliminate it entirely. The Commission thereafter established a one-day tariff notice period for all non-dominant carriers after again concluding that traditional tariff regulation of non-dominant carriers is not necessary to ensure just and reasonable rates.

22. Against this background, Congress enacted Section 401 of the 1996 Act, adding Section 10(a) to the Communications Act, to grant the Commission authority to forbear from applying the provisions of Title II, subject to certain, limited exceptions.

2. Discussion

23. As noted above, the 1996 Act requires the Commission to forbear from applying to a telecommunications carrier or telecommunications service any regulation or any provision of the Communications Act, if the Commission makes the three specified determinations.

24. We believe, based on the Commission's prior analyses and findings, that we can make the determinations necessary in order to forbear from enforcing Section 203's tariffing requirements with respect to the domestic services offered by non-dominant, interexchange carriers. Specifically, we tentatively find that enforcement of the Section 203 tariffing requirements with respect to non-dominant interexchange carriers: (1) is not necessary to ensure that non-dominant interexchange carriers' charges, practices, or classifications are just and reasonable, and are not unjustly or unreasonably discriminatory; and (2) is not necessary for the protection of consumers. We also tentatively find that forbearing from enforcing Section 203 tariffing requirements with respect to non-dominant interexchange carriers is consistent with the public interest. Accordingly, we tentatively conclude that we must forbear from applying Section 203 tariff filing requirements to non-dominant interexchange carriers for domestic services. Each of these tentative determinations is discussed below.

25. We tentatively conclude that tariff filings for non-dominant interexchange carriers are not necessary to ensure that the charges, and practices of a telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory. As the Commission stated in the *First Report and Order*, 45 FR 76148 (November 18, 1980):

> The economic underpinning of our proposal to streamline the regulatory procedures for non-dominant carriers flows from the fact that firms lacking market power simply cannot rationally price their services in ways which, or impose terms and conditions which, contravene Sections 201(b) and 202(a) of the Act.

Two years ago, in adopting a mandatory detariffing policy for providers of domestic commercial mobile radio service (CMRS), the Commission reiterated its conclusion that ''non-dominant carriers are unlikely to behave anticompetitively, in violation of Sections 201(b) and 202(a) of the Act, because they recognize that such behavior would result in a loss of customers.'' Based on the Commission's experience under its prior tariff forbearance policy for non-dominant interexchange carriers, as well as the Commission's findings in the *Regulatory Treatment of Mobile Services* proceeding, we continue to believe that non-dominant carriers are unlikely to price their services in ways which, or to impose terms and conditions which, violate Section 201(b) and Section 202(a) of the Act. Similarly, we continue to believe that the Communications Act's objectives of just, reasonable, and not unjustly or unreasonably discriminatory rates can be achieved effectively through market forces and the administration of the complaint process.

26. We also tentatively conclude that requiring non-dominant interexchange carriers to file tariffs for domestic offerings is not necessary for the protection of consumers of interexchange services. To the contrary, we believe a tariff filing requirement harms consumers by undermining the development of vigorous competition. The Commission previously has found, in the *Second Report and Order*, 47 FR 37899 (August 27, 1982), that applying tariff requirements to competitive entities is superfluous as a consumer protection device, since competition circumscribes the prices and practices of these companies. Moreover, beginning with the *Second Report and Order*, and as recently as the 1994 *Regulatory Treatment of Mobile Services Order*, 59 FR 18493 (April 19, 1994), the Commission has consistently found that the imposition of tariff obligations in these circumstances stifles price competition and service and marketing innovations. We tentatively find that these conclusions remain valid in today's more competitive domestic, interexchange market.

27. Finally, we tentatively conclude that forbearing from imposing tariff filing requirements on non-dominant interexchange carriers is consistent with the public interest. As part of the determination of whether forbearance is

consistent with public interest, the 1996 Act requires the Commission to consider ''whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services.'' We believe that forbearance from requiring tariff filings for non-dominant carriers will promote competition and deter price coordination. In the *Sixth Report and Order*, the Commission found that requiring non-dominant carriers to file tariffs can: (1) take away carriers' ability to make rapid, efficient responses to changes in demand and cost; (2) impede and remove incentives for competitive price discounting; and (3) impose costs on carriers that attempt to make new offerings. The Commission also concluded that continuing to require non-dominant carriers to file tariffs presents an opportunity for collusive pricing by competing carriers because carriers can ascertain their competitors' existing rates and keep track of any changes by reviewing filed tariffs. The Commission indicated that this may encourage carriers to maintain rates at artificially high levels.

28. The Commission recently reiterated, in the *Regulatory Treatment of Mobile Services Order*, its findings in the *Sixth Report and Order*. We believe that forbearance from tariff filing requirements will promote competition by enabling non-dominant carriers to respond quickly to changes in the market, and reducing administrative costs on carriers making new offerings. We also believe that, without pricing and other material information available from the public tariffs of their rivals, non-dominant interexchange carriers are more likely to initiate price reductions and other competitive programs. Accordingly, we tentatively conclude that forbearing from requiring non-dominant carriers to file tariffs for interexchange services promotes competitive market conditions, and therefore is in the public interest.

29. Based on the foregoing tentative determinations, we tentatively conclude that we are required by Section 10 of the Communications Act, as amended, to forbear from requiring non-dominant interexchange carriers to file tariffs for domestic services. We invite comment on all of these tentative conclusions.

30. We note that many carriers currently file bundled tariffs that include both domestic and international services. We therefore seek comment as to whether the Commission should forbear from requiring these non-dominant firms to file tariffs for the international portions of their offerings as well. We reserve for another day, in a separate proceeding, the broader question of whether the Commission should consider generally forbearing from requiring tariffs for international service provided by a non-dominant carrier, given current market conditions in the international market. As stated in an order adopted earlier this month, we ''anticipate review of our international Section 214 authorization and tariffing procedures to identify new areas where additional streamlining may be appropriate. . . . [S]uch steps should be taken in the context of a new proceeding where we can make additional determinations about the state of competition in the international market and receive more public input.'' *Streamlining the International Section 214 Authorization Process and Tariff Requirements*, IB Docket No. 95–118, Report and Order, at ¶ 86 (rel. Mar. 13, 1996).

31. We also tentatively conclude that forbearance from tariff filing requirements for domestic services of non-dominant interexchange carriers should be implemented on a mandatory basis. Permitting non-dominant interexchange carriers to file tariffs in this context does not appear to be in the public interest. We believe that a regime without non-dominant interexchange carrier tariffs is the most pro-competitive, deregulatory regime. The risk of anticompetitive conduct inherent in, and the costs associated with, tariff filings by non-dominant interexchange carriers, discussed above, would persist if carriers were permitted to file tariffs voluntarily. In addition, the absence of tariffs would eliminate possible invocation by carriers of the filed rate doctrine, which allows carriers certain rights unilaterally to change rates, terms, and conditions of contract tariffs and other long-term service arrangements, and to limit their liability for damages. Absent filed tariffs, the legal relationship between carriers and customers will much more closely resemble the legal relationship between service providers and customers in an unregulated environment. Therefore, to establish a more market-based environment that will help prevent these possible anti-competitive practices and better protect consumers, we tentatively conclude that it would be in the public interest to prohibit non-dominant interexchange carriers from filing tariffs with respect to domestic interstate, interexchange services.

32. Our proposal to adopt a mandatory tariff forbearance policy for non-dominant interexchange carriers is supported by the Commission's adoption of a mandatory tariff forbearance policy for domestic CMRS, in response to a similar grant of forbearance authority with respect to CMRS providers and services in Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 (OBRA). In *Regulatory Treatment of Mobile Services*, the Commission concluded that, in a competitive environment, voluntary tariff filings would create a risk that competitors would use tariff filings ''merely to send price signals and thereby manipulate prices.'' It also found that forbearance would promote competition by enabling providers of CMRS to respond quickly to competitors' price packages and reducing administrative costs. To prevent collusive pricing practices, and to protect consumers and the public interest, the Commission determined that it would ''forbear from requiring or permitting tariffs for interstate service offered directly by CMRS providers to their customers.''

33. We seek comment on our tentative conclusion that we should adopt a mandatory detariffing policy for the domestic services offered by non-dominant interexchange carriers. We also seek comment on whether the Commission has the authority pursuant to the Communications Act, as amended, to prohibit carriers from filing tariffs. We tentatively conclude that, if we adopt a mandatory or a permissive detariffing policy, non-dominant carriers should be required to maintain at their premises price and service information regarding all of their interstate, interexchange offerings, that they can submit to the Commission upon request. We seek comment on this tentative conclusion.

34. We recognize that the Commission gradually relaxed its regulation of non-dominant carriers in the *Competitive Carrier* proceeding in part because it concluded that the availability of service from a nationwide dominant carrier subject to close regulation would effectively constrain the rates that could be charged by non-dominant carriers. Given the recent reclassification of AT&T, there currently are no nationwide dominant interstate, domestic, interexchange carriers. While we still believe that non-dominant carriers lacking market power cannot rationally price services anticompetitively, we seek comment on whether the absence of a nationwide dominant carrier should affect our tentative conclusion to forbear from requiring non-dominant interexchange carriers to file tariffs, and if so, how.

35. We note that market conditions or other circumstances may change in the

future. In the event of changed circumstances, such that the statutory prerequisites for forbearance are no longer present, the Commission can revisit tariff forbearance to consider whether it continues to meet the statutory criteria.

36. Finally, in the *AT&T Reclassification* proceeding, AT&T made certain voluntary commitments regarding its provision of interstate analog private line and 800 directory assistance services. Specifically, AT&T committed, for a period of three years, to limit any price increases for these services to a maximum increase in any year of no more than the increase in the consumer price index. AT&T also committed, for a period of three years, to file tariff changes increasing the prices of these services on not less than five business days' notice, and to identify clearly such tariff transmittals as affecting the provisions of this commitment. We believe that it would be consistent with AT&T's intent that its commitments act as a transitional mechanism for AT&T to continue to tariff these services in accordance with its commitments. Accordingly, we tentatively conclude that, even if we decide to forbear from requiring non-dominant interexchange carriers to file tariffs, AT&T should remain subject to its prior commitments, and our corresponding order, that AT&T file tariffs with respect to these services for the specified term of the commitments. We seek comment on these tentative conclusions.

IV. Definition of Relevant Product and Geographic Markets

37. In the *Competitive Carrier* proceeding, the Commission found, for purposes of assessing the market power of interexchange carriers covered by that proceeding, that: ''(1) interstate, domestic, interexchange telecommunications services comprise the relevant product market, and (2) the United States (including Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, and other U.S. offshore points) comprises the relevant geographic market for this product, with no relevant submarkets.'' In this section, we consider whether we should reexamine the geographic and product market definitions that the Commission adopted in the *Competitive Carrier* proceeding. We believe more sharply focused market definitions will aid us in evaluating whether the BOCs possess market power with respect to the provision of interLATA services in areas where they provide local access service. Moreover, evidence in the recent *AT&T Reclassification* proceeding suggests that the market definitions adopted in the *Competitive Carrier* proceeding might be more narrowly drawn to provide us with a more refined analytical tool for evaluating whether a carrier or group of carriers has market power. For example, there was evidence that suggested that AT&T might possess the ability to raise and sustain prices for 800 directory assistance and analog private line services above competitive levels without making the price increase unprofitable, which may imply that these services might constitute separate relevant product markets.

38. We invite comment on whether we should retain the relevant product and geographic market definitions adopted in the *Competitive Carrier* proceeding. We tentatively conclude that we should follow the approach taken in the U.S. Department of Justice/Federal Trade Commission 1992 Merger Guidelines (the ''Guidelines'') for defining relevant markets. 1992 U.S. Department of Justice/Federal Trade Commission Merger Guidelines, 4 Trade Reg. Rep. (CCH) ¶ 13,104, at p. 20,569. ''In many respects the . . . Guidelines and the scholarship on which they are based offer important insights and substantially improved formulations of relevant market issues.'' Moreover, courts have increasingly relied on the Guidelines' approach in defining relevant markets. We believe the Guidelines' approach suggests that we should define as a relevant product market an interstate, interexchange service for which there are no close substitutes or a group of services that are close substitutes for each other but for which there are no other close substitutes. We tentatively conclude, however, that we need not address the issue of delineating the boundaries of specific product markets, except where there is credible evidence suggesting that there is or could be a lack of competitive performance with respect to a particular service or group of services.

39. With respect to the relevant geographic market, we tentatively conclude that we should define a relevant geographic market for interstate, interexchange services as all calls (in the relevant product market) between two particular points. However, geographic rate averaging and other factors imply that a carrier or group of carriers cannot change interexchange rates for calls between two particular points without changing rates nationwide for calls of that distance. For purposes of market power analysis, we tentatively conclude to treat interstate, interexchange calling generally as one national market, as the Commission did in the *Competitive Carrier* proceeding. If there is credible evidence suggesting that there is or could be a lack of competition in a particular point-to-point market (or group of markets), and there is a showing that geographic rate averaging will not sufficiently mitigate the exercise of market power (if it exists); however, we propose to examine individually that market (or group of markets) for the presence of market power.

40. We note that comments and reply comments on this section are due April 19, 1996; reply comments are due May 3, 1996.

A. Relevant Product Market

41. For the reasons discussed above, we tentatively conclude that we should follow the Guidelines' approach for defining the relevant product market. In the *Competitive Carrier* proceeding, the Commission defined the relevant product market as ''all interstate, domestic, interexchange telecommunications services'' and concluded that there were no relevant submarkets. Although we recently used this product market definition to reclassify AT&T as non-dominant, we question whether a narrower product market definition might provide us with a more refined analytical tool for evaluating whether a carrier or group of carriers together are exerting market power. For example, our finding that the prices of 800 directory assistance and analog private line services could profitably be raised above competitive levels may imply these services constitute distinct relevant product markets.

42. The Guidelines define the relevant product market as ''the product or group of products such that a hypothetical profit maximizing firm that was the only present and future seller of those products ('monopolist') would impose at least a 'small but significant and nontransitory' increase in price.'' Accordingly, in defining the relevant product market, one must examine whether a ''small but significant and nontransitory'' increase in the price of the relevant product would cause enough buyers to shift their purchases to a second product, so as to make the price increase unprofitable. If so, the two products should be considered to be in the same product market.

43. Under the Guidelines, ''[m]arket definition focuses solely on demand substitution factors—i.e., possible consumer responses.'' Consideration of substitutability of demand supports the use of narrower relevant product markets than the ''all services'' product market defined in the *Competitive*

Carrier proceeding. It appears unlikely, for example, that a substantial number of residential customers would switch from residential service to 800 service in response to a small but significant nontransitory increase in the price of residential service. Thus, these two services may fall in different product markets. On the other hand, it appears that defining each interexchange service as a separate relevant product market would result in relevant markets that are too narrow. Business customers, in particular, may view certain interexchange services as sufficiently close substitutes that, if an interexchange carrier raised the price of one of the services, customers would switch to one of the substitute services. Based on this analysis, we believe that we should define as a relevant product market an interstate, interexchange service for which there are no close substitutes or a group of services that are close substitutes for each other, but for which there are no other close substitutes.

44. We believe that it would be administratively burdensome to delineate all relevant product markets for interstate, interexchange services. The fact that we have previously found that there is substantial competition with respect to most interstate, domestic, interexchange service offerings suggests that we do not need to do so at this time. Accordingly, we tentatively conclude that we should address the question whether a specific interstate, interexchange service (or group of services) constitutes a separate product market only if there is credible evidence suggesting that there is or could be a lack of competitive performance with respect to that service (or group of services). We seek comment on this approach and invite parties to suggest other approaches. Interested parties should provide support for the position they advocate. Parties recommending that services be grouped in relevant product markets should identify the services that should be grouped together, as well as providing evidence that there is or could be a lack of competitive performance with respect to those services. We also seek comment on what factors we should consider in defining relevant product markets, as well as what obstacles, problems, or administrative burdens we are likely to face in adopting narrower market definitions.

B. Relevant Geographic Market

45. The Merger Guidelines define the relevant geographic market as the ''region such that a hypothetical monopolist that was the only present or future producer of the relevant product at locations in that region would profitably impose at least a 'small but significant and nontransitory' increase in price, holding constant the terms of sale for all products produced elsewhere.'' This definition focuses on whether products in one region are good substitutes for products in other regions. Accordingly, in defining the relevant geographic market, one must examine whether a ''small but significant and nontransitory'' increase in the price of the relevant product at a particular location would cause a buyer to shift his purchase to a second location, so as to make the price increase unprofitable. If so, the two locations should be considered to be in the same geographic market.

46. In applying the principles in the Guidelines, we note that, at its most fundamental level, interexchange calling involves a customer making a connection from a specific location to another specific location. We believe that most telephone customers do not view interexchange calls originating in different locations to be close substitutes for each other. For example, it is unlikely that a person living in Chicago who wishes to make a telephone call to San Francisco will be willing to travel to another location to make the call for a lower price. Similarly, a customer will not view a call that terminates in a place other than the location of the person to whom he or she is calling to be a good substitute for a call to that person. Thus, applying the Merger Guidelines principles, we tentatively conclude that the relevant geographic market for interstate, interexchange services should be defined as all calls from one particular location to another particular location. We note that defining a relevant geographic market as transport between two specific points is well established in other contexts. For example, the Department of Justice has used city pairs as the relevant geographic market for evaluating mergers in the airline industry. Similarly, in the *International Competitive Carrier* proceeding, the Commission found that each country pair constitutes a separate geographic market. *See International Competitive Carrier Policies,* 50 FR 48191 (November 22, 1985). Thus, one geographic market consists of calls between the U.S. and France, and another consists of calls between the U.S. and Great Britain.

47. We recognize that it would be impracticable to conduct a market power analysis in each individual market implied by a point-to-point market definition for interstate, interexchange services. We believe that, in the majority of cases, economic factors and the realities of the marketplace will cause these markets to behave in a sufficiently similar manner to allow us to aggregate them into broader, more manageable groups of markets for purposes of market power analysis. For example, residential interexchange service can be thought of as a bundle of all possible interexchange calls originating from a single point and terminating anywhere, and 800 service as a bundle of interstate, interexchange calls originating from a certain geographic region and terminating at a specific point. Similarly, the ''single nationwide geographic market'' the Commission adopted in the Competitive Carrier proceeding can be viewed as an aggregate of the point-to-point markets encompassing all points in the United States.

48. We tentatively conclude for the following reasons that, in most cases, we should continue to treat interstate, interexchange services as a single national market when examining whether a carrier or group of carriers acting together has market power. First, geographic rate averaging reduces the likelihood that a carrier could exercise market power in a single point-to-point market. Because the prices a carrier can charge in a particular market are linked to the prices it charges in all other markets, it generally would not be profitable for a carrier to raise its prices throughout the nation (with a resulting loss of market share in some areas) to take advantage of market power between two particular cities. Second, customers typically purchase ubiquitous calling that enables them to make calls to all domestic locations. Thus, because of geographic rate averaging, a price change in one point-to-point market would require such price changes to be extended to all residential customers.

49. Another reason we can treat the relevant geographic market as a national market is that price regulation of access services and excess capacity in interstate transport further reduce the likelihood that an interexchange carrier could exercise market power in most point-to-point markets. In making this determination, we recognize that an interstate, interexchange call from point A to point B requires three separate inputs, each of which is sold in a separate input market: (1) originating access from point A; (2) interstate transport from point A to point B; and (3) terminating access to point B. The ability to raise the price for any of the inputs above the competitive level or to prevent competitors from assembling inputs to provide retail service would enable a firm unilaterally to raise the

retail price of and thereby exercise market power with respect to interexchange calls between points A and B. We note, however, that all originating and terminating access services are currently subject to some form of price regulation, which constrains a LEC's ability to raise access prices to monopoly levels. We also note that there are ways in which a LEC could exercise market power without raising the price of interstate, interexchange services. For example, a LEC could raise its interexchange rivals' costs by providing poorer interconnection to the LEC's network facilities than the LEC provides to itself or its affiliate, or by delaying fulfillment of its rivals' requests to connect to the LEC's network. We will be addressing these issues in upcoming proceedings that address implementation of new Sections 251 and 272 of the Communications Act, as amended. While interstate transport service is not subject to price regulation, we concluded in the *AT&T Reclassification Order* that, between most points, excess transport capacity undermines the ability of any carrier to raise and maintain the price of interstate transport above the competitive level. Thus, because the prices of access and transport services are similarly constrained in all point-to-point markets, we believe we can generally examine simply whether a carrier has market power in the group of point-to-point markets that comprise the ''nationwide geographic market.''

50. Nevertheless, we believe there may be special circumstances in which treating interexchange services as a national market will not be sufficient for purposes of market power analysis. For example, the BOCs' control of access facilities in their local service regions may require us to examine those regions individually in determining whether the BOCs have market power with respect to in-region interexchange services. If market power were found to exist in such a large region, there is no guarantee that geographic rate averaging would provide a credible check on the exercise of such power. For instance, if a BOC's interexchange customers and traffic are concentrated in one region, the BOC might find it profitable to raise prices above competitive levels, even if geographic rate averaging might cause it to lose market share outside that region. We therefore propose to examine a particular point-to-point market (or group of markets) for the presence of market power if there is credible evidence suggesting that there is or could be a lack of competition in that market (or group of markets) and there is a showing that geographic rate averaging will not sufficiently mitigate the exercise of market power (if it exists) in that market (or group of markets). We are not addressing in this proceeding the circumstances, if any, in which a BOC or independent LEC should be classified as a dominant carrier with respect to the provision of interstate, interexchange services in areas where it provides local access services. We intend to address these questions in an upcoming proceeding.

51. We seek comment on the proposed approach. We also seek comment on how narrowly we would need to define points of origination and termination if we adopt this approach. Because it would be administratively infeasible to conduct a market power analysis that defines separate geographic markets between each pair of individual locations (such as homes), we need to adopt somewhat broader definitions for this situation. One possibility is to define geographic markets between two local exchange areas. An alternative approach might be to use geographic areas currently used by the Commission, such as Major Trading Areas (MTAs), Basic Trading Areas (BTAs), or Metropolitan Statistical Areas (MSAs). Commenters should explain why the geographic market definition they recommend is appropriate and should address the administrative benefits or burdens of their proposed definition. We note that Rand McNally & Company is the copyright owner of the Basic Trading Area and Major Trading Area Listings, which list the counties contained in each BTA, as embodied in Rand McNally's Trading Area System Diskette and Atlas & Marketing Guide. Rand McNally has licensed the use of its copyrighted MTA/BTA listings and maps for certain wireless telecommunications services.

52. We also invite parties to suggest alternative approaches they believe better characterize the relevant geographic market for interstate, interexchange services, than the point-to-point market definition we have proposed. Parties should explain how the market definition they recommend reflects the market for interexchange services and should describe the likely administrative benefits or burdens of their proposal. Finally, parties should discuss the factors that we should consider in defining the relevant geographic market for interstate, domestic, interexchange services.

V. Separation Requirements for Independent Local Exchange Carrier and Bell Operating Company Provision of ''Out-of-Region'' Interstate, Interexchange Services

53. The 1996 Act authorizes the BOCs, upon enactment, to provide interLATA services originating outside their in-region states. In a recent Notice of Proposed Rulemaking, we considered what regulatory regime we should apply to BOC provision of such ''out-of-region'' interstate, interexchange services. Specifically, we considered whether such services should be subject to dominant carrier or non-dominant carrier regulation. The *BOC Out-of-Region NPRM*, 60 FR 6607 (February 21, 1996) addresses only BOC provision of out-of-region interstate, interexchange services; BOC provision of in-region interstate, interexchange services will be considered in a separate proceeding. In that Notice, we tentatively concluded that the separation requirements imposed for non-dominant treatment of independent LEC provision of interexchange services, presented a useful model upon which to base, on an interim basis, oversight of BOC provision of out-of-region interstate, interexchange services.

54. The separation requirements imposed on independent LECs were established by the Commission in the *Competitive Carrier* proceeding. The Commission there determined that interexchange carriers affiliated with independent LECs would be regulated as non-dominant carriers. In the *Fifth Report and Order*, 49 FR 34824 (September 4, 1984), the Commission specified that an ''affiliate'' of an independent LEC was ''a carrier that is owned (in whole or in part) or controlled by, or under common ownership (in whole or in part) or control with, an exchange telephone company.'' The Commission further clarified that, to qualify for non-dominant treatment, the affiliate providing interstate, interexchange services must: (1) maintain separate books of account; (2) not jointly own transmission or switching facilities with its affiliated exchange telephone company; and (3) acquire any services from its affiliated exchange telephone company at tariffed rates, terms and conditions. The Commission also stated that any interstate service offered directly by an independent LEC, rather than through a separate affiliate, would be regulated as dominant.

55. The Commission observed that the separation requirements would provide some ''protection against cost-shifting and anticompetitive conduct'' by an

independent LEC that could result from using its control of local bottleneck facilities. Noting that the requirements it had specified were less stringent than those established in the *Second Computer Inquiry,* the Commission concluded that the separation requirements would not impose excessive burdens on independent LECs.

56. The Commission stated in the *Fifth Report and Order* that the non-dominant treatment accorded to interexchange carriers affiliated with independent LECs did not apply to the BOCs, which, the Commission noted, were then prohibited from offering interLATA services. The Commission added that, ''if this bar is lifted in the future, we would regulate the BOCs' interstate, interLATA services as dominant until we determined what degree of separation, if any, would be necessary for the BOCs or their affiliates to qualify for nondominant regulation.''

57. As noted, in the *BOC Out-of-Region NPRM* we tentatively concluded that the separation requirements imposed upon independent LECs providing interexchange services, presented a useful model upon which to base, on an interim basis, oversight of BOC provision of out-of-region interstate, interexchange services. Accordingly, we tentatively concluded that, if a BOC provides out-of-region interstate, interexchange services through an affiliate that satisfies the separation requirements established in the *Competitive Carrier Fifth Report and Order,* the BOC affiliate should be regulated as a non-dominant carrier. We also tentatively concluded that, if a BOC provides out-of-region interstate, interexchange services directly, or through an affiliate that does not meet the separation requirements, those services should be regulated as dominant carrier offerings.

58. We stated in that Notice, however, our intent to consider in this proceeding whether it may be appropriate at some future date to modify or eliminate the separation requirements that are currently imposed upon independent LECs, and that we tentatively concluded should be imposed on BOCs, in order to qualify for non-dominant treatment in the provision of out-of-region interstate, interexchange services. Accordingly, we now seek comment on whether we should modify or eliminate these separation requirements as a condition for non-dominant treatment of independent LEC provision of interstate, interexchange services outside their local exchange areas. We also seek comment on whether, if we modify or eliminate these separation requirements for non-dominant treatment of independent LEC provision of interstate, interexchange services outside their local exchange areas, we should apply the same requirements to BOC provision of out-of-region interstate, interexchange services. We defer to another proceeding consideration of the appropriate regulatory treatment of BOCs that provide in-region interstate, interexchange services and independent LECs that provide interstate, interexchange services within the area in which they also provide local exchange service.

59. Parties should identify the requirement or requirements that they believe should be modified or eliminated, and offer support for their positions. Parties should comment on whether complying with the separation requirements would create an unnecessary burden for LECs subject to those requirements. Parties should also comment on whether there is a possibility of cost-shifting or other anti-competitive conduct that could result if the separation requirements are modified or eliminated, and if so, how we can or should address such conduct.

60. We note that comments and reply comments on this section are due April 19, 1996; reply comments are due May 3, 1996. *See also* Section X.D. infra regarding requirements for all pleadings.

VI. Rate Averaging and Integration Requirements of 1996 Act

61. Section 254(g) of the Communications Act, as amended by the 1996 Act, provides that the Commission, within six months after the date of enactment, must:

> [A]dopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to subscribers in any other State.

Accordingly, we propose and address here the rules necessary to implement these requirements.

62. We note that comments and reply comments on this section implementing Section 254(g) of the Communications Act, as amended, are due April 19, 1996; reply comments are due May 3, 1996. *See also* Section X.C. *infra* regarding requirements for all pleadings.

A. Geographic Rate Averaging

63. We first address the statutory requirement that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas not be higher than the rates charged to subscribers in the interexchange carrier's urban areas (*i.e.*, that rates be geographically averaged). The Commission has long supported a policy of geographic rate averaging for interstate, domestic, interexchange services. As the Commission stated in 1989:

> This Commission has repeatedly voiced our support for rate averaging. . . . Geographic rate averaging redounds to the benefit of rural ratepayers, and customers of high cost local exchange carriers. First, geographic rate averaging ensures that interexchange rates for rural areas, or areas served by high cost companies, will not reflect the disproportionate burdens that may be associated with common line cost recovery in these areas. Thus, geographic rate averaging furthers our goal of providing a universal nationwide telecommunications network. Second, geographic rate averaging ensures that ratepayers share in the benefits of nationwide interexchange competition. If prices are falling due to competition in the corridors carrying the most traffic, prices will also fall for rural Americans. An additional benefit of rate averaging has been its contribution to the simplicity of [message toll service] rates. Customers seeking to compare rates charged by various interexchange carriers have been substantially benefited by the relative simplicity of the existing rate structure.

As recently as the *AT&T Reclassification Order,* we reaffirmed our commitment to maintain our geographic rate averaging policy.

64. While the Commission has consistently endorsed a policy of geographic rate averaging, the Commission has not formally promulgated a requirement that rates be geographically averaged. As required by the 1996 Act, we propose to adopt a rule requiring that the rates charged by all providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. As established by the 1996 Act, this requirement would apply to all providers of interexchange telecommunications services. We seek comment generally on this proposed rule.

65. Section 254(g) of the Communications Act, as amended by the 1996 Act, states in part:

> the Commission shall adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas.

Thus, the statute requires the Commission to adopt rules to require geographic rate averaging for intrastate and interstate, interexchange telecommunications services. We note that the legislative history states:

> [n]ew section 254(g) is intended to incorporate the policies of geographic rate averaging . . . of interexchange services in order to ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers.

We also believe, however, that Section 254(g) preempts state laws or regulations requiring intrastate geographic rate averaging only to the extent such laws or regulations are inconsistent with the rules we adopt with respect to geographic rate averaging. Preemption may occur even when Congress has not fully foreclosed state regulation in a specific area if state law conflicts with federal law. *See Florida Lime & Avocado Growers, Inc. v. Paul,* 373 U.S. 132, 142–143 (1963) (conflict when ''compliance with both federal and state regulations is a physical impossibility''); *Hines* v. *Davidowitz,* 312 U.S. 52, 67 (1941) (conflict when state law ''stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress''). Although the statute makes clear that the Commission is to establish the rules requiring geographic averaging, it does not appear to foreclose consistent state action in this area. Indeed, the Senate Report statement included in the Joint Explanatory Statement provides:

> States shall continue to be responsible for enforcing this [geographic averaging provision] with respect to intrastate interexchange services, so long as the State rules are not inconsistent with Commission rules and policies on rate averaging.

The Joint Explanatory Statement indicates that the House receded to the Senate with modifications with respect to new Communications Act Section 254. We note that the geographic rate averaging provision of Section 254(g) contains only minor modifications from the Senate Bill geographic rate averaging provision, Section 253(h). *See* S. 652 104th Cong., 1st Sess. § 253(h) (1995). Thus, we invite comment on these views.

66. In addition to seeking comment on preemption, we seek comment on whether there may be competitive conditions or other circumstances that could justify Commission forbearance from enforcing the proposed geographic rate averaging requirement with respect to particular interexchange telecommunications carriers or services.

67. In light of our proposal in this Notice to forbear from requiring non-dominant interexchange carriers to file tariffs, we tentatively conclude that it would not be in the public interest to attempt to enforce geographic rate averaging through the tariff process. Rather, we believe that we can ensure compliance with the proposed rate averaging requirements by requiring providers of interexchange telecommunications services to file certifications stating that they are in compliance with their statutory geographic rate averaging obligations. Such a requirement would not impose a significant burden on such providers. Accordingly, we tentatively conclude that we should require providers of interexchange telecommunications services to file such certifications. We also tentatively conclude that we should rely on the complaint process under Section 208 to bring violations to our attention. We seek comment on these tentative conclusions. Parties challenging these tentative conclusions should suggest possible alternative enforcement mechanisms.

68. Enforcement issues similarly arise in the absence of tariff forbearance. Because non-dominant carriers currently are permitted to file tariffs on one day's notice, we seek comment on whether, in the absence of tariff forbearance, we should adopt any requirements in order to facilitate enforcement of the proposed rule that requires, *inter alia,* that the rates of non-dominant providers of interexchange telecommunications services be geographically averaged. Parties supporting such requirements should propose specific examples of regulatory mechanisms that could be adopted.

69. Parties in the *AT&T Reclassification* proceeding asserted that carriers often do not offer discount rate plans ubiquitously, and that, as a result, interexchange customers in some rural and high cost areas are forced to pay the carriers' higher basic rates, while customers in other geographic areas can take advantage of the carriers' discount plans. These parties further asserted that this disparity amounts to geographic rate deaveraging. We seek comment on the extent to which providers of interexchange telecommunications services do not offer optional discount plans to subscribers in rural and high cost areas and, if so, the reasons for this practice. We also seek comment on whether an interexchange carrier's failure to make a promotional plan available in the entirety of its service area constitutes geographic deaveraging, and if so, whether we should require that discount rate plans be made available and advertised in the entirety of an interexchange telecommunications service provider's service area.

70. Finally, as noted above, in the *AT&T Reclassification* proceeding, AT&T made voluntary commitments related to geographic rate averaging. Specifically, AT&T committed to file any new geographically specific tariffs that depart from its traditional approach to geographic averaging for interstate residential direct dial services on five business days' notice. AT&T committed that such tariff transmittals will be clearly identified as affecting the provisions of the commitment. AT&T committed that ''[t]his will continue for three years unless the Commission adopts rules addressing this issue for all carriers or there is a change in federal law addressing this issue.'' We tentatively conclude that, given the specific limitation of AT&T's commitment on this issue, upon adoption of the foregoing proposed rules relating to geographic rate averaging, AT&T would be subject to those adopted rules, and would not be bound to the specific commitments it made with respect to geographic rate averaging. We seek comment on this tentative conclusion.

B. Rate Integration

71. As noted above, the 1996 Act also requires that the Commission adopt rules to require that providers of interstate, interexchange telecommunications services provide such services to their subscribers in each State at rates no higher than the rates charged to their subscribers in any other State (*i.e.*, that rates be integrated). As with geographic rate averaging, the Commission has long maintained a rate integration policy for interexchange rates between the forty-eight contiguous states and various non-contiguous United States regions, including Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands.

72. As required by the 1996 Act, and guided by the Conference Committee's statement to incorporate the policies contained in our *1976 Integration of Rates and Services Order,* we propose to adopt a rule requiring that ''a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.'' The Joint Explanatory Statement provides: ''[t]he conferees intend the Commission's rules to require geographic rate averaging and rate integration, and to incorporate the policies contained in the Commission's

proceeding entitled 'Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the United States Mainland and the Offshore Points of Hawaii, Alaska and Puerto Rico/ Virgin Islands' (61 FCC 2d 380 (1976)).'' We seek comment on this proposed rule.

73. We note that the Communications Act, as amended, defines the term ''State'' as including ''the District of Columbia and the Territories and possessions.'' Accordingly, the 1996 Act extends rate integration to U.S. Territories and possessions, such as Guam and the Northern Mariana Islands, that currently are not subject to the Commission's domestic rate integration policy. The U.S. Virgin Islands and Puerto Rico are the only territories or possessions subject to the Commission's domestic rate integration policy at the present time. We seek comment on appropriate mechanisms to implement rate integration for U.S. territories and possessions that currently are not subject to the Commission's domestic rate integration policies. We note that currently pending before the Commission are three petitions to establish rulemakings to implement domestic rate integration policies for the Territory of Guam and the Commonwealth of the Northern Mariana Islands. *See* Governor's Office of the Territory of Guam Petition for Rulemaking to Integrate Rates, filed May 12, 1995, Public Notice, AAD 95–84 (rel. June 16, 1995); JAMA Corporation Petition for Rulemaking to Implement Domestic Rate Integration Policies for Guam, filed May 1, 1995, Public Notice, AAD 95–85 (rel. June 16, 1995); Commonwealth of the Northern Mariana Islands Petition for Rulemaking to Implement Domestic Rate Integration for the Commonwealth of the Northern Mariana Islands, filed June 7, 1995, Public Notice, AAD 95–86 (rel. June 16, 1995). We believe these petitions would become moot when we adopt the rules implementing new Section 254(g).

74. We tentatively conclude, in light of our proposal in this Notice to forbear from requiring non-dominant interexchange carriers to file tariffs, that it would not be in the public interest to attempt to enforce rate integration through the tariff process. Rather, we believe that we can ensure compliance with the proposed rate integration requirements by requiring providers of interstate, interexchange telecommunications services to file certifications stating that they are in compliance with their statutory rate integration obligations. Such a requirement would not impose a significant burden on such providers. Accordingly, we tentatively conclude that we should require providers of interstate, interexchange telecommunications services to file such certifications. We also tentatively conclude that we should rely on the complaint process under Section 208 to bring violations to our attention. We seek comment on these tentative conclusions. Parties challenging these tentative conclusions should suggest possible alternative enforcement mechanisms.

75. Finally, in the *AT&T Reclassification* proceeding, AT&T made voluntary commitments relating to service to and from the State of Alaska and other regions subject to our rate integration policy. Specifically, AT&T committed that it ''will continue to comply with all conditions and obligations contained in the various Commission orders regarding rate integration between the contiguous forty-eight states and the states of Alaska, Hawaii, Puerto Rico and the Virgin Islands, until or unless those orders are superseded by Congressional or Commission action.'' We tentatively conclude that, given the specific limitation of AT&T's commitment on this issue, upon adoption of the foregoing proposed rule relating to rate integration, AT&T would be subject to that rule, and would not be bound to the specific commitment it made with respect to rate integration. We seek comment on this tentative conclusion. We note that this tentative conclusion does not apply to AT&T's separate commitment to ''comply with all the conditions and obligations contained in the Commission orders associated with AT&T's purchase of Alascom, Inc.'' as that commitment is not limited in duration.

VII. Pricing Issues

76. Changes in the structure of the interexchange marketplace over the past decade have raised certain issues relating to the pricing of interexchange telecommunications services. In the *AT&T Reclassification* proceeding, a number of parties alleged that the interexchange market is characterized by oligopolistic price coordination, and that the reclassification of AT&T would lead to an increase in basic rates for domestic residential service. We address these issues in this section.

A. Allegations of Tacit Price Coordination

77. In the *AT&T Reclassification Order*, we found inconclusive and conflicting evidence in the record regarding the existence of alleged tacit price coordination among interexchange carriers for basic residential services, or residential services generally. We concluded that, if there were tacit price coordination in the interexchange market, the problem was generic to the industry and would be better addressed by removing regulatory requirements that may have facilitated such conduct. Our reclassification of AT&T as non-dominant removed one such regulatory requirement—the longer advance notice period applicable only to AT&T tariff filings. In addition, we believe that the 1996 Act provides the best solution to any problem of tacit price coordination, to the extent that it exists currently, by allowing for competitive entry in the interstate interexchange market by the facilities-based BOCs and others. Increasing the number of facilities-based carriers should make tacit price coordination more difficult. Moreover, we believe that the mandatory detariffing regime we propose in this Notice similarly will discourage price coordination by eliminating carriers' ability to ascertain their competitors' interstate rates and service offerings from publicly available tariffs filed with the Commission. We seek comment on these issues.

B. Residential Services Rate Plans

78. In order to alleviate concerns expressed in the *AT&T Reclassification* proceeding that rates for residential services would increase if AT&T were reclassified as non-dominant, AT&T voluntarily committed, for a period of three years, to offer two optional calling plans designed to mitigate the impact of future increases in basic schedule or residential rates. The first plan is targeted to low-income customers, and the second is targeted to low-volume consumers, but is generally available to all residential customers.

79. With respect to low-income customers, in our recent Notice of Proposed Rulemaking regarding implementation of the 1996 Act's universal service directives, we solicited comment ''on whether and how we should encourage domestic interstate interexchange carriers to provide optional calling plans for low-income consumers to promote the statutory [universal service] principles enumerated [in the 1996 Act].'' We anticipate resolving this issue in the Universal Service proceeding, but because the service is interstate in nature, we retain concurrent jurisdiction.

VIII. Bundling of Customer Premises Equipment

80. In 1980, the Commission adopted a rule prohibiting common carriers from bundling the provision of customer premises equipment (CPE) with the provision of common carrier telecommunications services. Carriers previously offered CPE as part of a package of services to subscribers. Changes in the industry, in particular the advent of competitive CPE vendors, led the Commission to conclude that carriers' continued bundling of telecommunications services with CPE could force customers to purchase unwanted CPE in order to obtain necessary transmission services, thus restricting customer choice and retarding the development of a competitive CPE market. It therefore required carriers to separate the provision of CPE from the provision of transmission services. Section 64.702(e) of our rules provides: ''Except as otherwise ordered by the Commission, after March 1, 1982, the carrier provision of customer-premises equipment used in conjunction with the interstate telecommunications network shall be separate and distinct from provision of common carrier communications services and not offered on a tariffed basis.''

81. The Commission recognized, however, that ''[i]f the markets for components of [a] commodity bundle are workably competitive, bundling may present no major societal problems so long as the consumer is not deceived concerning the content and quality of the bundle.'' It further acknowledged that some consumers may believe that bundled offerings can reduce transaction costs to customers. Bundling can also enable market participants to compete more effectively by offering attractive sales packages.

82. Since the adoption of the rule prohibiting CPE bundling in 1980, significant changes have occurred in the markets for CPE and interstate long-distance services. The CPE market is now widely recognized to be fully competitive. In the *AT&T Reclassification Order,* we found that AT&T no longer possesses market power in the overall interstate, domestic, interexchange market. Moreover, in the *Interexchange Competition Proceeding,* we concluded that the business services market was ''substantially competitive.''

83. The Supreme Court has stated that the essential characteristic of an illegal tying or bundling arrangement ''lies in the seller's exploitation of its control over [one] product to force the buyer into the purchase of a [second] product that the buyer either did not want at all or might have preferred to purchase elsewhere on different terms.'' Under the ''leverage theory'' of tying, ''tying provides a mechanism whereby a firm with monopoly power in one market can use the leverage provided by this power to foreclose sales in, and thereby monopolize, a second market.''

84. Based on our earlier findings regarding competition in both the CPE and interstate, interexchange services markets, we tentatively conclude that it is unlikely that non-dominant interexchange carriers can engage in the type of anticompetitive conduct that led the Commission to prohibit the bundling of CPE with the provision, *inter alia,* of interstate, interexchange services. We also tentatively conclude that allowing non-dominant interexchange carriers to bundle CPE with interstate, interexchange services would promote competition by allowing such carriers to create attractive service/equipment packages for customers. Accordingly, we tentatively conclude that we should amend Section 64.702(e) of the Commission's rules to allow non-dominant interexchange carriers to bundle CPE with interstate, interexchange services. We seek comment on these tentative conclusions.

85. Parties that believe we should amend Section 64.702(e) should also comment on whether we should require interexchange carriers offering bundled packages of CPE and interstate, interexchange services to continue to offer separately, unbundled interstate, interexchange services on a nondiscriminatory basis. We note that the U.S. Government has committed in the Uruguay Round Agreements of the General Agreement on Tariffs and Trade, to ensure, among other things, that ''service suppliers'' are permitted ''to purchase or lease and attach terminal or other equipment which interfaces with the [public telecommunications transport] network and which is necessary to supply a supplier's service. . . .'' *See* Uruguay Round Agreements Act of 1994, Pub. L. No. 103–465, Section 801, 108 Stat. 4809 (1994) (to be codified at 47 U.S.C. § 309(j)(13)). ''Service supplier'' is defined to mean a supplier of any service in any sector except services supplied in the exercise of governmental authority. We seek comment on whether this commitment implies that interexchange carriers should be required to offer separately, unbundled interstate, interexchange services on a nondiscriminatory basis if they are permitted to bundle CPE with the provision of interstate, interexchange services.

86. Parties that believe that we should not amend Section 64.702(e) as proposed should set forth specific reasons in support of their position. We also seek comment on the effect that the proposed amendment of Section 64.702(e) would have on our other policies or rules. We believe that our tentative conclusions regarding CPE bundling are consistent with our nation's foreign trade policy that seeks to promote, in trade negotiations with other countries, the unbundling of telecommunications services and CPE in certain international markets where monopoly providers may exist in either the services or CPE market. As described above, our domestic CPE and interstate, domestic, interexchange markets are both subject to competition, thus we believe that the potential for anticompetitive bundling behavior is highly unlikely in the U.S. market. Finally, we seek comment on whether and how the anticipated entry of local exchange carriers, in particular the BOCs, into the market for interstate, interexchange services should affect our analysis.

87. We note that we intend to initiate a comprehensive proceeding to address payphone issues, and to implement the sections of the 1996 Act relating to the provision of payphone service. In that proceeding, we intend to consider the issue of bundling of pay telephone equipment with underlying transmission capacity. Accordingly, any amendment to Section 64.702(e) of our rules adopted in this proceeding will not apply to payphone bundling.

IX. Other Issues

88. For reasons set forth above, we have tentatively concluded that we are required to forbear from requiring non-dominant interexchange carriers to file tariffs, and that such detariffing should be mandatory. In the *AT&T Reclassification* proceeding, commenters raised certain issues regarding contract tariffs. We deferred consideration of those issues to this proceeding because we found those issues were unrelated to the determination of whether AT&T possessed market power. We note that these issues will largely be mooted if, as proposed above, we adopt a mandatory detariffing policy. We examine those and other tariff-related issues here, however, because such issues will remain relevant if we determine not to forbear from requiring non-dominant interexchange carriers to file tariffs. In addition, if we determine to adopt a policy of permissive detariffing, it is possible that some carriers will choose

to continue to file tariffs, including contract tariffs.

89. In the *First Interexchange Competition Order,* the Commission established its contract carriage regime under which interexchange carriers are permitted to offer services pursuant to individually negotiated contracts. The Commission further found that, as long as all contracts were made generally available to similarly situated customers under substantially similar circumstances, the offering of individually-negotiated contracts for interexchange services under the contract carriage regime would comply with the nondiscrimination provisions of the Communications Act. The Commission later found that the ''contract carriage policy serves the public interest by enabling users to purchase services that match their needs in particular ways and by facilitating user and interexchange carrier planning by increasing the availability of long-term commitments and price protection.''

90. The Title II statutory scheme permits carriers to make changes to their tariffs. Moreover, it is well established that, pursuant to the ''filed rate doctrine,'' in a situation where a filed tariff rate differs from a rate set in a non-tariffed carrier-customer contract, the carrier is required to assess the tariff rate. Consequently, if a carrier unilaterally changes a rate by filing a tariff revision, the newly filed rate becomes the applicable rate unless the revised rate is found to be unjust, unreasonable, or unlawful under the Communications Act.

91. In the *RCA Americom Decisions,* the Commission recognized that a dominant carrier's proposal ''to modify extensively a long term service tariff may present significant issues of reasonableness under Section 201(b) that are not ordinarily raised in other tariff filings.'' Accordingly, the Commission held that a dominant carrier's unilateral tariff revisions that alter material terms and conditions of a long-term service tariff will be considered reasonable only if the carrier can make a showing of ''substantial cause'' for the revision. The Commission has stated that the substantial cause test would apply to unilateral changes by dominant carriers to long-term contract tariffs. In the *February 1995 Interexchange Reconsideration Order,* 60 FR 13637 (March 14, 1995), the Commission indicated that the substantial cause test would also apply to unilateral tariff modifications made by non-dominant carriers.

92. In the *February 1995 Interexchange Reconsideration Order,* we indicated that commercial contract law was highly relevant in assessing the reasonableness of a unilateral tariff revision, but we declined to declare that contract law principles constituted the sole and dispositive basis for a substantial cause showing. We seek comment on whether commercial contract law principles should be the sole criterion in applying the substantial cause test. If not, parties should suggest other factors that the Commission should consider in evaluating whether a carrier has shown substantial cause for unilaterally changing a contract tariff. We also seek comment on whether the substantial cause test should apply only to the carrier and the customer with whom it negotiated the original contract, or whether it also should apply to subsequent customers who take service under the contract tariff. We note that, in the *February 1995 Interexchange Reconsideration Order,* we stated that in applying the substantial cause test, we would consider whether the original tariff terms were the product of negotiation and mutual agreement. Commenters arguing that the substantial cause test should apply only to the initial customer, should explain how this position is consistent with the nondiscrimination requirements of Section 202 of the Communications Act. In addition, in cases in which the Commission determines that a carrier has established substantial cause for a unilateral change to a contract tariff, we seek comment on whether the modified contract tariff should be treated as a new contract tariff and should be made available to other similarly situated customers.

93. The *Mobile-Sierra* doctrine established a strict ''public interest'' standard that a carrier must meet before a regulatory agency can accept a superseding tariff that modifies the terms of a negotiated carrier-to-carrier contract. *See United Gas Pipe Line Co. v. Mobile Gas Service Corp.,* 350 U.S. 332 (1956) (*Mobile*); *FPC v. Sierra Pacific Power Co.,* 350 U.S. 348 (1956) (*Sierra*). In *Bell Telephone Company of Pennsylvania v. FCC,* 503 F.2d 1250 (3rd Cir. 1974), *cert. denied,* 422 U.S. 1026 (1975), *rehearing denied,* 423 U.S. 886 (1975), the U.S. Court of Appeals for the Third Circuit, applying the *Mobile-Sierra* doctrine, held that a common carrier could not abrogate a contract with another carrier simply by filing superseding tariffs. We seek comment on the relationship between the substantial cause test and the *Mobile-Sierra* doctrine in cases where a carrier attempts through a tariff revision to abrogate an underlying carrier-to-carrier contract.

94. In the *AT&T Reclassification* proceeding, resellers raised various issues concerning contract tariffs. Several commenters argued that resellers and other large customers need protection from the ability of carriers to revise unilaterally contract-based service arrangements. AT&T made certain transitional voluntary commitments, for a period of twelve months, in order to alleviate those concerns on an interim basis. Commenters proposed, among other things, that the Commission require carriers to: give customers advance notice of any tariff filing that materially alters negotiated agreements; obtain the consent of all affected customers before making such a filing; treat the lack of consent to a proposed tariff change as *prima facie* evidence of its unlawfulness; allow any non-consenting customer either to terminate its service arrangement without liability or to enforce the unchanged term; and provide a reasonable period of rate stability to permit service migration if the customer chooses to terminate its service agreement. We seek comment on the above proposals. In addition, we tentatively conclude that AT&T should remain subject to its voluntary commitments concerning unilateral changes to contract tariffs, regardless of what action we take in this proceeding with respect to the foregoing proposals. We seek comment on this tentative conclusion.

95. Parties in the *AT&T Reclassification* proceeding also argued that the ability of non-dominant carriers to file unilateral tariff modifications on one day's notice effectively precludes customers from challenging such revisions before they become effective. We seek comment on whether we should require a longer notice period for tariff filings that materially revise long-term service or contract tariffs, and if so, what notice period should be established. We also seek comment on whether a carrier should be required to identify clearly tariff filings that unilaterally alter existing long-term service or contract tariffs.

96. Resellers have also complained that ordering procedures are used to prevent them from subscribing to contract tariffs. Accordingly, we seek comment on whether specific ordering procedures should be allowed to be incorporated in contract tariffs (*i.e.,* when is an order placed, what documents must a customer file, when must a customer identify locations that

it will include in the plan). Resellers also complain that carriers use narrowly circumscribed customer descriptions in order to prevent resellers from taking service under contract-based tariffs. We seek comment on what is an appropriate level of specificity for customer descriptions that are used by carriers to determine eligibility under a contract tariff. We also seek comment on whether there are certain terms that should be prohibited as unreasonable (*e.g.*, extremely large upfront deposits from the customer).

97. Finally, in the *AT&T Reclassification* proceeding, we indicated that we would in the future ''initiate a new proceeding to identify specific areas of the interstate, domestic, interexchange market that may raise policy concerns, and if there are any, to seek comment on possible remedies.'' Further, we noted that we would monitor closely the areas in which AT&T had made voluntary commitments in order to protect consumers. Should parties wish to raise issues in this proceeding with regard to these issues, we encourage parties to comment.

X. Procedural Issues

A. Ex Parte Presentations

98. This is a non-restricted notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 CFR §§ 1.1202, 1.1203, 1.1206.

B. Initial Regulatory Flexibility Analysis

99. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. §§ 601–612, the Commission's Initial Regulatory Flexibility Analysis with respect to the Notice of Proposed Rulemaking is as follows:

100. *Reason for Action:* The Commission is issuing this Notice of Proposed Rulemaking to review our regulatory regime for interstate, domestic, interexchange telecommunications services, and to implement certain provisions of the 1996 Act.

101. *Objectives:* The objective of the Notice of Proposed Rulemaking is to provide an opportunity for public comment and to provide a record for a Commission decision on the issues stated above.

102. *Legal basis:* The Notice of Proposed Rulemaking is adopted pursuant to Sections 1, 2, 4, 201–205, 215, 218 and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201–205, 215, 218 and 220.

103. *Description, potential impact, and number of small entities affected:* Any rule changes that might occur as a result of this proceeding could impact entities which are small business entities, as defined in Section 601(3) of the Regulatory Flexibility Act. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth findings in the Final Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rulemaking to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. § 601, *et seq.* (1981).

014. *Reporting, recordkeeping and other compliance requirement:* The proposed rules would require non-dominant interexchange carriers to retain business records containing price and service information regarding their interstate, domestic, interexchange offerings. The proposed rules also would require providers of interexchange services to certify their compliance with their statutory geographic rate averaging obligations, and providers of interstate, interexchange services to certify their compliance with their statutory rate integration obligations.

105. *Federal rules which overlap, duplicate or conflict with the Commission's proposal:* None.

106. *Any significant alternatives minimizing impact on small entities and consistent with stated objectives:* The Notice of Proposed Rulemaking solicits comments on alternatives.

107. *Comments are solicited:* Written comments are requested on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues (other than those in Sections IV, V, and VI) in this Notice of Proposed Rulemaking but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of the Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 601, *et seq.*

C. Initial Paperwork Reduction Act of 1995 Analysis

108. This Notice contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Notice, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due April 19, 1996; OMB comments are due June 3, 1996. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

D. Comment Filing Procedures

109. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on Sections IV, V, and VI, on or before April 19, 1996, and reply comments on Sections IV, V, and VI on or before May 3, 1996. Interested parties may file comments on all other sections of this Notice on or before April 25, 1996, and reply comments on or before May 24, 1996.

110. To file formally in this proceeding, parties must file an original and six copies of all comments, reply comments, and supporting comments. Parties wanting each Commissioner to receive a personal copy of their comments, must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

111. In order to facilitate review of comments and reply comments, both by parties and by Commission staff, we require that comments submitted on Sections IV, V, and VI, be no longer than

45 pages and reply comments on those sections be no longer than 25 pages. We require that comments on the remaining sections of this Notice be no longer than 45 pages and reply comments on the remaining sections be no longer than 25 pages.

112. Comments and reply comments on *all* sections of this Notice must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with Section 1.49 and all other applicable sections of the Commissions Rules. *See* 47 CFR § 1.49. However, we require here that a summary be included with all comments and reply comments, regardless of length. The summary may be paginated separately from the rest of the pleading (*e.g.*, as ''i, ii''). *See* 47 CFR § 1.49.

113. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

114. Written comments by the public on the proposed and/or modified information collections are due April 19, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain—t@al.eop.gov.

E. Ordering Clauses

115. Accordingly, it is ordered that pursuant to Sections 1, 4, 10, 201–205, 214(e), 215, 218, 220 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201–205, 214(e), 215, 218 and 220 a notice of proposed rulemaking is hereby adopted.

116. It is further ordered that, the Secretary shall send a copy of this notice of proposed rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.* (1981).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–8116 Filed 4–2–96; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 96–65; RM–8773]

Radio Broadcasting Services; Kiowa, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Kiowa Broadcasters requesting the allotment of Channel 252C1 to Kiowa, Kansas. Channel 252C1 can be allotted to Kiowa in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 252C1 at Kiowa are 37–01–00 and 98–29–12.

DATES: Comments must be filed on or before May 21, 1996, and reply comments on or before June 5, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Leonard Johnson, III, Kiowa Broadcasters, 218 Carriage Place Court, Decatur, Georgia 30033 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–65, adopted March 14, 1996, and released March 29, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR PART 393

[FHWA Docket No. MC–96–5]

RIN 2125–AD76

Parts and Accessories Necessary for Safe Operation: Television Receivers and Data Display Units

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA is proposing to rescind restrictions on the locations at which television viewers or screens may be positioned within commercial motor vehicles (CMVs). Under the President's Regulatory Reinvention Initiative, the FHWA has reviewed the Federal Motor Carrier Safety Regulations (FMCSRs) and believes the restrictions to be obsolete and redundant. The unsafe behavior that the regulation is intended to discourage is more effectively deterred through State traffic laws concerning driver inattentiveness. Further, the current regulation may have the unintended effect of discouraging the use of certain Intelligent Transportation Systems (ITS)-related