audit program or to the scope of the audit.

(2) Notify the Federal/State joint audit team of any meetings with the Bell operating company or its separate affiliate in which audit findings are discussed.

(3) Submit to the Chief, Common Carrier Bureau, any accounting or rule interpretations necessary to complete the audit.

4. Section 53.213 is added to subpart (C) to read as follows:

§ 53.213 Audit analysis and evaluation.

(a) Within 60 dates after the end of the audit period, but prior to discussing the audit findings with the Bell operating company or the separate affiliate, the independent auditor shall submit a draft of the audit report to the Federal/State joint audit team.

(1) The Federal/State joint audit team shall have 45 days to review the audit findings and audit workpapers, and offer its recommendations concerning the conduct of the audit or the audit findings to the independent auditor. Exceptions of the Federal/State joint audit team to the finding and conclusions of the independent auditor that remain unresolved shall be included in the final audit report.

(2) Within 15 days after receiving the Federal/State joint audit team's recommendations and making appropriate revisions to the audit report, the independent auditor shall submit the audit report to the Bell operating company for its response to the audit findings and send a copy to the Federal/State joint audit team. The independent auditor may request additional time to perform additional audit work as recommended by the Federal/State joint audit team.

(b) Within 30 days after receiving the audit report, the Bell operating company will respond to the audit findings and send a copy of its response to the Federal/State joint audit team. The Bell operating company's response shall be included as part of the final audit report along with any reply that the independent auditor wishes to make to the response.

(c) Within 10 days after receiving the response of the Bell operating company, the independent auditor shall make available for public inspection the final audit report by filing it with the Commission and the state regulatory agencies participating on the joint audit team.

(d) Interested parties may file comments with the Commission within 60 days after the audit report is made available for public inspection.

[FR Doc. 97–1388 Filed 1–17–97; 8:45 am]
BILLING CODE 6712–01–P

47 CFR Part 53

[CC Docket No. 96–149; FCC 96–489]

Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The First Report and Order (Order) released December 24, 1996 clarifies certain provisions of sections 271 and 272 of the Communications Act of 1934, as amended, and promulgates regulations to implement other provisions. The intended effect of this Order is to further the Commission's goal of fostering competition in the telecommunications market.

EFFECTIVE DATE: February 20, 1997. The collections of information contained within sections 53.203(b) and (e) of these Rules are contingent upon approval by the Office of Management and Budget. The Commission will publish a document at a later date establishing the effective date.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted December 23, 1996, and released December 24, 1996. This Order contains new 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. This is a synopsis, the full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc96489.wp, or 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.

Regulatory Flexibility Analysis

We determined that section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), does not apply to the rules adopted in this Order because they do not have a significant economic impact on a substantial number of small entities, as defined by section 301(3) of the Regulatory Flexibility Act.

Paperwork Reduction Act

Some of the rules adopted in this Order impose information collection requirements that are explained in a companion order, entitled *Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96–150, FCC 96–490. The paperwork reduction estimates associated with these rules are contained in this section. 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 Order, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–12. Written comments by the public on the information collections are due 30 days after date of publication in the Federal Register. OMB notification of action is due (60 days from date of publication in the Federal Register.) Comments should address: (a) whether the new or modified 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: 3060–0734.

Title: Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996.

Form No.: N/A.

Type of review: Revision.

Respondents: Businesses or other for profit.

Section/title	No. of respondents	Est. time per response	Total annual burden
Affiliate Company, Books, Records and Accounts, Section 272	20	6,056.25 hrs.	121,125 hrs.
Arms' Length Requirement	7	72 hrs.	504 hrs.

Total Annual Burden: 121,629 total hours in this Report and Order (Total Annual Burden hours for OMB control number 3060–0734—180,536.75).

Estimated Costs Per Respondents: $0.

Needs and Uses: The attached item adopts safeguards to govern the Bell Operating Companies' (BOCs) entry into certain new markets. It promulgates rules and policies implementing and, where necessary, clarifying the non-accounting separate affiliate and nondiscrimination safeguards prescribed by Congress in sections 271 and 272 of the Communications Act of 1934, as amended. These safeguards are intended both to protect subscribers to BOC monopoly services, such as local telephony, against the potential risk of having to pay costs incurred by the BOCs to enter competitive markets, such as interLATA services and equipment manufacturing, and to protect competition in those markets from the BOCs' ability to use their existing market power in local exchange services to obtain an anticompetitive advantage in those new markets the BOCs seek to enter.

Synopsis of First Report and Order

I. Introduction

In February 1996, the Telecommunications Act of 1996 became law. Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 56 (1996 Act), *to be codified at* 47 U.S.C. §§ 151 *et seq.* The intent of the 1996 Act is ''to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.''

In this proceeding, we adopt non-accounting safeguards, pursuant to section 272 of the Communications Act, to govern entry by the Bell Operating Companies (BOCs) into certain new markets. This proceeding is one of a series of interrelated rulemakings that collectively will implement the telephony provisions of the 1996 Act. Other proceedings under the 1996 Act have focused on opening markets to entry by new competitors, establishing rules to preserve and advance universal service, establishing rules for competition in those markets that are opened to competitive entry, and on lifting legal and regulatory barriers to competition.

Upon enactment, the 1996 Act permitted the BOCs immediately to provide interLATA services that originate outside of their in-region states. The 1996 Act conditions the BOCs' entry into in-region interLATA services on their compliance with certain provisions of section 271. Under section 271, we must determine, among other things, whether the BOC has complied with the safeguards imposed by section 272 and the rules adopted herein. Section 272 addresses the BOCs' provision of interLATA telecommunications services originating in states in which they provide local exchange and exchange access services, interLATA information services, and BOC manufacturing activities.

On July 18, 1996, we initiated this proceeding by releasing a Notice of Proposed Rulemaking (NPRM) 61 FR 39397 (July 29, 1996) that sought comment on the non-accounting separate affiliate and nondiscrimination safeguards of the 1996 Act. These provisions govern the BOCs' entry into certain new markets. We initiated a separate proceeding to address the accounting safeguards required to implement sections 260 and 272 through 276 of the Communications Act. Comments on the non-accounting separate affiliate and nondiscrimination safeguards were filed on August 15, 1996, and reply comments were filed on August 30, 1996.

The NPRM also sought comment on whether we should relax the dominant carrier classification that under our current rules would apply to in-region, interstate, domestic, interLATA services provided by the BOCs' interLATA affiliates. Further, the NPRM sought comment on whether we should modify our existing rules for regulating the provision of in-region, interstate, interexchange services by independent local exchange carriers (LECs) (namely, carriers not affiliated with a BOC). Finally, the NPRM considered whether to apply the same regulatory treatment to the BOC affiliates' and independent LECs' provision of in-region, international services, as would apply to the provision of in-region, interstate, domestic, interLATA services and in-region, interstate, domestic interexchange services, respectively. This order addresses only the non-accounting separate affiliate and nondiscrimination safeguards in sections 271 and 272. The classification of BOC affiliates or independent LECs (and their affiliates) as dominant or non-dominant will be addressed in a separate Report and Order in this docket.

In this order, we promulgate rules and policies implementing, and, where necessary, clarifying the non-accounting separate affiliate and nondiscrimination safeguards prescribed by Congress in sections 271 and 272. These safeguards are intended both to protect subscribers to BOC monopoly services, such as local telephony, against the potential risk of having to pay costs incurred by the BOCs to enter competitive markets, such as interLATA services and equipment manufacturing, and to protect competition in those markets from the BOCs' ability to use their existing market power in local exchange services to obtain an anticompetitive advantage in those new markets the BOCs seek to enter. Our action today continues the process of enhancing competition in all telecommunications markets as envisioned by the 1996 Act.

A. Background

The fundamental objective of the 1996 Act is to bring to consumers of telecommunications services in all markets the full benefits of vigorous competition. As we recognized in the *First Interconnection Order*, 61 FR 45476 (August 29, 1996), ''[t]he opening of all telecommunications markets to all providers will blur traditional industry distinctions and bring new packages of services, lower prices, and increased innovation to American consumers.'' With the removal of legal, economic, and regulatory impediments to entry, providers of various telecommunications services will be able to enter each other's markets and provide various services in competition with one another. Both the BOCs and other firms, most notably existing interexchange carriers, will be able to offer a widely recognized brand name that is associated with telecommunications services. As firms expand the scope of their existing operations to new product lines, they will increasingly offer consumers the ability to purchase local, intraLATA,

and interLATA telecommunications services, as well as wireless, information, and other services, from a single provider (*i.e.*, ''one stop shopping''), and other advantages of vertical integration.

The 1996 Act opens local markets to competing providers by imposing new interconnection and unbundling obligations on existing providers of local exchange service, including the BOCs. The 1996 Act also allows the BOCs to provide interLATA services in the states where they currently provide local exchange and exchange access services once they satisfy the requirements of section 271. Moreover, by requiring compliance with the competitive checklist set out in section 271(c)(2)(B) as a prerequisite to BOC provision of in-region interLATA service, the statute links the effective opening of competition in the local market with the timing of BOC entry into the long distance market, so as to ensure that neither the BOCs nor the existing interexchange carriers could enjoy an advantage from being the first to enter the other's market.

In enacting section 272, Congress recognized that the local exchange market will not be fully competitive immediately upon its opening. Congress, therefore, imposed in section 272 a series of separate affiliate requirements applicable to the BOC's provision of certain new services and their engagement in certain new activities. These requirements are designed, in the absence of full competition in the local exchange marketplace, to prohibit anticompetitive discrimination and cost-shifting, while still giving consumers the benefit of competition.

As we observed in the NPRM, BOC entry into in-region interLATA services raises issues for competition and consumers, even after a BOC has satisfied the requirements of section 271(d)(3). BOCs currently are the dominant providers of local exchange and exchange access services in their in-region states, accounting for approximately 99.1 percent of the local service revenues in those markets. If a BOC is regulated under rate-of-return regulation, a price caps structure with sharing (either for interstate or intrastate services), a price caps scheme that adjusts the X-factor periodically based on changes in industry productivity, or if any revenues it is allowed to recover are based on costs recorded in regulated books of account, it may have an incentive to allocate improperly to its regulated core business costs that would be properly attributable to its competitive ventures.

In addition, a BOC may have an incentive to discriminate in providing exchange access services and facilities that its affiliate's rivals need to compete in the interLATA telecommunications services and information services markets. For example, a BOC may have an incentive to degrade services and facilities furnished to its affiliate's rivals, in order to deprive those rivals of efficiencies that its affiliate enjoys. Moreover, to the extent carriers offer both local and interLATA services as a bundled offering, a BOC that discriminates against the rivals of its affiliates could entrench its position in local markets by making these rivals' offerings less attractive. With respect to BOC manufacturing activities, a BOC may have an incentive to purchase only equipment manufactured by its section 272 affiliate, even if such equipment is more expensive or of lower quality than that available from other manufacturers.

Moreover, if a BOC charges other firms prices for inputs that are higher than the prices charged, or effectively charged, to the BOC's section 272 affiliate, then the BOC could create a ''price squeeze.'' In that circumstance, the BOC affiliate could lower its retail price to reflect its unfair cost advantage, and competing providers would be forced either to match the price reduction and absorb profit margin reductions or maintain their retail prices at existing levels and accept market share reductions. This artificial advantage may allow the BOC affiliate to win customers even though a competing carrier may be a more efficient provider in serving the customer. Unlawful discriminatory preferences in the quality of the service or preferential dissemination of information provided by BOCs to their section 272 affiliates, as a practical matter, can have the same effect as charging unlawfully discriminatory prices. If a BOC charged the same rate to its affiliate for a higher quality access service than the BOC charged to unaffiliated entities for a lower quality service, or disclosed information concerning future changes in network architecture to its manufacturing affiliate before disclosing it to others, the BOC could effectively create the same ''price squeeze'' discussed above.

The structural and nondiscrimination safeguards contained in section 272 ensure that competitors of the BOC's section 272 affiliate have access to essential inputs, namely, the provision of local exchange and exchange access services, on terms that do not discriminate against the competitors and in favor of the BOC's affiliate. Because the BOC has the incentive to provide its affiliate with the most efficient access, the statute requires the BOC to provide competitors the same access. Access to such inputs on nondiscriminatory terms will enable a new entrant to compete effectively, assuming it is at least as efficient as the BOC and/or its section 272 affiliate. At the same time, Congress also was sensitive to the value to the BOCs of potential efficiencies stemming from economies of scale. Our task is to implement section 272 in a manner that ensures that the fundamental goal of the 1996 Act is attained—to open all telecommunications markets to robust competition—but at the same time does not impose requirements on the BOCs that will unfairly handicap them in their ability to compete. The rules and policies adopted in this order seek to preserve the carefully crafted statutory balance to the extent possible until facilities-based alternatives to the local exchange and exchange access services of the BOCs make those safeguards no longer necessary.

B. Overview and Summary

Section 272 allows a BOC to engage in the manufacturing of telecommunications equipment and CPE, the origination of certain interLATA telecommunications services, and the provision of interLATA information services, as long as the BOC provides these activities through a separate affiliate. Unless extended by the Commission, the statutory separate affiliate requirements for manufacturing and interLATA telecommunications services expire three years after a BOC or any BOC affiliate is authorized to provide in-region interLATA services. The statutory interLATA information services separate affiliate requirement expires on February 8, 2000, four years after enactment of the 1996 Act, unless extended by the Commission.

This order implements the structural separation requirements mandated by section 272 in a manner that is designed to prevent improper cost allocation between the BOC and its section 272 affiliate and discrimination by the BOC in favor of its section 272 affiliate. In particular, we construe the section 272(b)(1) ''operate independently'' requirement to prohibit the BOC and its section 272 affiliate from jointly owning transmission and switching facilities or the land and buildings on which such facilities are located. Moreover, we prohibit a BOC and its affiliates, other than the section 272 affiliate itself, from providing operating, installation, and maintenance services associated with the facilities owned by the section 272

affiliate. Similarly, a section 272 affiliate may not provide such services associated with the BOC's facilities. These requirements should reduce the potential for the improper allocation of costs to the BOC that should be allocated to the section 272 affiliate. In addition, they should ensure that a section 272 affiliate must follow the same procedures as its competitors in order to gain access to a BOC's facilities. Consistent with these requirements and those established pursuant to sections 272(b)(5) and 272(c)(1), however, a section 272 affiliate may negotiate with an affiliated BOC on an arm's length basis to obtain transmission and switching facilities, to arrange for collocation of facilities, and to provide or obtain services other than those expressly prohibited herein.

The structural separation requirements of section 272, in conjunction with the affirmative nondiscrimination obligations imposed by that section, also are intended to address concerns that the BOCs could potentially use local exchange and exchange access facilities to discriminate against competitors in order to gain an anticompetitive advantage for their affiliates that engage in competitive activities. We interpret section 272(c)(1) as imposing a flat prohibition against discrimination more stringent than the bar on ''unjust and unreasonable'' discrimination contained in section 202 of the Act. In short, the BOCs must treat all other entities in the same manner in which they treat their section 272 affiliates. We conclude that a BOC may not discriminate in favor of its section 272 affiliate by: (1) Providing exchange access services to competing interLATA service providers at a higher rate than the rate offered to its section 272 affiliate; (2) providing a lower quality service to competing interLATA service providers than the service it provides to its section 272 affiliate at a given price; (3) giving preference to its affiliate's equipment in the procurement process; or (4) failing to provide advance information about network changes to its competitors. We seek comment in a Further Notice of Proposed Rulemaking on specific disclosure requirements to implement section 272(e)(1).

In this order, we also seek to ensure that BOC section 272 affiliates have the same opportunity to compete for customers as other long distance service providers. The joint marketing rules we have established limit the ability of the largest interexchange carriers to market jointly their interLATA service with resold BOC local exchange service, until the BOC receives in-region, interLATA authority under section 271 or until 36 months after enactment of the 1996 Act. Once the BOC receives interLATA authority, the restrictions on interexchange carrier joint marketing expire, and the interexchange carriers and the BOCs and their section 272 affiliates may engage in the same types of marketing activities.

In addition, we clarify that the Communications Act allows a section 272 affiliate to purchase unbundled elements pursuant to section 251(c)(3) and telecommunications services at wholesale rates under section 251(c)(4). Thus, the section 272 affiliate may provide integrated services in the same manner as other competitors. Such an approach is consistent with the objectives of the 1996 Act, which are to give service providers the freedom to develop a wide array of service packages and allow consumers to select what best suits their needs. We note, however, that the BOC may not transfer local exchange and exchange access facilities and capabilities to the section 272 affiliate, or another affiliate, in order to evade regulatory requirements.

We recognize that no regulatory scheme can completely prevent or deter discrimination, particularly in its more subtle forms. In this order, we shift the burden of production to the BOCs in the context of section 271(d)(6) enforcement proceedings in order to alleviate the burden on the complainant and facilitate the detection of anticompetitive behavior. Because the BOC is likely to be in sole possession of most of the relevant information necessary to establish the complainant's case, shifting the burden is the most efficient way of resolving complaints alleging violations of the conditions of in-region interLATA entry under section 271(d)(3). The goal of this proceeding and others is to establish a regulatory framework that enables service providers to enter each other's markets and compete on an equal footing by not allowing one service provider to game regulatory requirements in such a way as to hinder competition.

II. Scope of Commission Authority

A. Rulemaking Authority

1. Background

In the NPRM, we addressed the scope of the Commission's authority, pursuant to sections 271 and 272, over interLATA services, interLATA information services and manufacturing activities. Although we did not seek comment on whether the Commission has authority to adopt rules implementing section 272, several commenters addressed this issue.

2. Discussion

We reject as unfounded the assertion that the Commission lacks authority to adopt regulations implementing section 272. Sections 4(i), 201(b), and 303(r) of the Act authorize the Commission to adopt any rules it deems necessary or appropriate in order to carry out its responsibilities under the Act, so long as those rules are not otherwise inconsistent with the Act. Nothing in section 272 bars the Commission from exercising the rulemaking authority granted by these sections of the Act to clarify and implement the requirements of section 272. Moreover, courts repeatedly have held that the Commission's general rulemaking authority is ''expansive'' rather than limited. In addition, as AT&T notes, it is well-established that an agency has the authority to adopt rules to administer congressionally mandated requirements. Contrary to those parties that argue that section 272 is self-executing, we find that Congress enacted in section 272 broad principles that require interpretation and implementation in order to ensure an efficient, orderly, and uniform regime governing BOC entry into in-region interLATA telecommunications and other markets covered by section 272. In the NPRM, we identified areas of ambiguity in the requirements of section 272 with the specific goal of clarifying and implementing Congress' intent in that provision. That remains our goal in this Order. Due to the importance of the introduction of competition to the local exchange market, we believe this Order to be both important and necessary to protect BOC customers and new entrants. Further, we agree with PacTel that it serves the interests of justice for us to clarify in advance the section 272 requirements so that BOCs and other parties may be advised of what is required to meet the condition for 271 authorization that in-region interLATA services be provided in compliance with section 272.

We are not persuaded by the argument that the removal of the Senate bill's provision regarding implementing regulations from the 1996 Act indicates Congress' intent that section 272 be self-executing. Parties advancing this argument rely on a rule of statutory construction providing that, when a provision in a prior draft is altered in the final legislation, Congress intended a change from the prior version. The courts have rejected this rule of statutory construction, however, when changes from one draft to another are not explained. In this instance, the only statement from Congress regarding the

meaning of the omission of the Senate provision appears in the Joint Explanatory Statement. According to that Statement, all differences between the Senate Bill, the House Amendment, and the substitute reached in conference are noted therein ''except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.'' Because the Joint Explanatory Statement did not address the removal of the Senate bill provision, the logical inference is that Congress regarded the change as an inconsequential modification, rather than a significant alteration. Moreover, it seems implausible that, in enacting the final version of section 272, Congress intended a radical alteration of the Commission's general rulemaking authority. We therefore conclude that elimination of the proposed provision was a nonsubstantive change. Based on the foregoing, we find, pursuant to the general rulemaking authority vested in the Commission by sections 4(i), 201(b), and 303(r) of the Act, and consistent with fundamental principles of administrative law, that the Commission has the requisite authority to promulgate rules implementing section 272 of the Act.

B. Scope of Commission's Authority Regarding InterLATA Services

1. Background

In the NPRM, we tentatively concluded that the Commission's authority under sections 271 and 272 applies to intrastate and interstate interLATA services provided by BOCs or their affiliates. We based this tentative conclusion in part on our analysis that Congress intended sections 271 and 272 to replace the pre-Act restrictions on the BOCs contained in the MFJ, which barred their provision of both intrastate and interstate interLATA services. We also observed that the interLATA/intraLATA distinction appears to some extent to have supplanted the traditional interstate/intrastate distinction for purposes of sections 271 and 272. We further noted that reading sections 271 and 272 as applying to all interLATA services fits well with the structure of the statute as a whole, and that reading the sections as limited to interstate services would lead to implausible results. We also indicated that we do not believe that section 2(b) of the Act precludes the conclusion that our authority under sections 271 and 272 applies to intrastate as well as interstate interLATA services. Finally, we asked parties that disagreed with the foregoing analysis to comment on the extent to which the Commission may have authority to preempt state regulation with respect to some or all of the non-accounting matters addressed by sections 271 and 272.

2. Discussion

For the reasons set forth below, we conclude that sections 271 and 272, and the Commission's authority thereunder, apply to intrastate as well as interstate interLATA services provided by the BOCs or their affiliates. We base this conclusion on the scope of the pre-1996 Act MFJ restrictions on the BOCs' provision of interLATA services, as well as on the plain language of sections 271 and 272, and the requirements of those sections. In addition, we find that section 2(b) does not bar the Commission from establishing regulations to clarify and implement the requirements of section 272 that apply to intrastate interLATA services and other intrastate matters that are within the scope of section 272. We hold, therefore, that the rules we establish to implement section 272 are binding on the states, and the states may not impose regulations with respect to BOC provision of intrastate interLATA service that are inconsistent with section 272 and the Commission's rules under section 272. We emphasize, however, that the scope of the Commission's authority under sections 271 and 272 extends only to matters covered by those sections. Those sections do not alter the jurisdictional division of authority with respect to matters falling outside their scope. For example, rates charged to end users for intrastate interLATA service have traditionally been subject to state authority, and will continue to be.

We stated in the NPRM, and several parties agree, that section 601(a) of the 1996 Act indicates that Congress intended the provisions of the Act to supplant the MFJ. That section provides:

> Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the [MFJ] shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and shall not be subject to the restrictions and the obligations imposed by [the MFJ].

No party challenges the fact that the MFJ generally prohibited the BOCs and their affiliates from providing any interLATA services—interstate or intrastate. Moreover, no party challenges the fact that the term ''interLATA services'' as used in the MFJ referred to both intrastate and interstate services.

Similarly, with respect to the term ''interLATA services'' as used in sections 271 and 272, the DOJ, AT&T, and BellSouth maintain that, because the Act defines the term ''interLATA'' to include intrastate services, references in sections 271 and 272 to interLATA services apply to both intrastate and interstate services. We agree.

The Act defines ''interLATA service'' as ''telecommunications between a point in a local access and transport area and a point located outside such area.'' The Act further defines the term ''LATA'' as ''a contiguous geographic area * * * established before the date of enactment of the [1996 Act] by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the [MFJ]'' or subsequently modified with approval of the Commission. This definition expressly recognizes that a LATA may comprise an area, such as a metropolitan statistical area, that is smaller than a state. Indeed, the DOJ notes that most LATAs established by the MFJ consist of only parts of individual states; only nine LATAs out of a total of 158 encompass an entire state. Thus, by defining an interLATA service as telecommunications from a point inside a LATA to a point outside a LATA, the Act expressly recognizes that interLATA services may include telecommunications between two LATAs within a single state. Accordingly, we find that the term ''interLATA services,'' as used in sections 271 and 272, expressly refers to both intrastate and interstate services.

Although the term ''interLATA services'' as used in the MFJ and in sections 271 and 272 refers to both interstate and intrastate interLATA services, the New York Commission and others assert that, when Congress transferred responsibility for enforcing the prohibition on the BOCs' provision of interLATA services from the U.S. District Court to the Commission, it intended to limit our authority only to interstate interLATA services. To the contrary, we find that reading sections 271 and 272 as granting the Commission authority over intrastate as well as interstate interLATA services is consistent with, and indeed necessary to effectuate, Congress' intent that sections 271 and 272 replace the restrictions of the MFJ with respect to BOC provision of interLATA services.

The jurisdictional limitation that the New York Commission and others seek

to read into sections 271 and 272 would lead to implausible results. Specifically, under that statutory interpretation, the BOCs would have been permitted to provide in-region, intrastate, interLATA services upon enactment, without complying with the section 271 entry requirements or the section 272 safeguards, and subject only to any existing, generally applicable state rules on interexchange entry. Any such rules, presumably, would not have been specifically directed at BOC entry, because of the long-standing MFJ prohibition on entry. Because concerns about BOC control of bottleneck facilities needed for the provision of in-region interLATA services are applicable to both interstate and intrastate services, it seems clear that sections 271 and 272 apply equally to the BOCs' provision of both intrastate and interstate, in-region, interLATA services. We find no reasonable basis for concluding that Congress intended to lift the MFJ's ban on BOC provision of intrastate interLATA services, which constitute approximately 30 percent of interLATA traffic, and permit the BOCs to offer such services before satisfying the requirements of sections 271 and 272. As the DOJ notes, ''Congress could not have intended, for example, to open up the intrastate interLATA market immediately for BOC entry, without the carefully-devised entry requirements of Section 271, while at the same time establishing those requirements with respect to interstate interLATA entry. Nor could Congress have meant to defeat the safeguards carefully imposed under Section 272 by permitting the BOCs to engage in the behavior which Section 272 prohibits, as long as they do it within the individual states.'' Indeed, we find it significant that neither the states nor the BOCs have argued that such a result was intended. In light of this analysis, we find that the Commission's authority under sections 271 and 272 extends to both intrastate and interstate interLATA services.

Similarly, several parties support the conclusion that our authority to consider the applications of BOCs seeking to provide in-region interLATA service pursuant to section 271(d) applies to both interstate and intrastate services. None of the state representatives and BOCs commenting on this issue claims that the Commission's authority under section 271(d) does not apply to a BOC's provision of intrastate interLATA services. Despite the lack of controversy on this point, several commenters claim that rules adopted under section 272 apply only to interstate services. We believe that the requirements of sections 271 and 272 repudiate this argument. In granting an application under section 271(d), the Commission must determine, among other things, that the BOC meets the requirements of section 271(d)(3)(B). Under this provision, the Commission must find that the requested authorization ''will be carried out in accordance with the requirements of section 272.'' In light of the Commission's authority to approve entry into both intrastate and interstate in-region interLATA service, pursuant to section 271, it seems logical and necessary that the Commission's authority to impose safeguards established by section 272, should similarly extend to both intrastate and interstate interLATA service.

Several parties have argued that, although the MFJ restrictions on the BOCs applied to both interstate and intrastate interLATA services, the states retained authority to regulate a BOC's intrastate interLATA services when such services were authorized by the MFJ court. They assert, therefore, that, even if sections 271 and 272 apply to intrastate services, those provisions would not divest the states of authority over intrastate services. As we stated at the outset of this discussion, the scope of the Commission's authority under sections 271 and 272 extends only to matters covered by those sections, *i.e.*, authorization for BOC entry into in-region interLATA service and the safeguards imposed in section 272. We do not dispute that the states retain their authority to regulate intrastate services in other contexts.

We further find that the requirements of sections 271 and 272 buttress our conclusions regarding the scope of the Commission's jurisdiction. For example, we find it significant that section 271(h) directs the Commission to address intrastate matters relating to BOC provision of incidental interLATA services. That section states that ''[t]he Commission shall ensure that the provision of [incidental interLATA services] by a Bell operating company or its affiliate *will not adversely affect telephone exchange service ratepayers* or competition in any telecommunications market.'' Telephone exchange service is primarily an intrastate service. This reference to a plainly intrastate service indicates that the scope of section 271 encompasses intrastate matters, and thus the Commission's authority thereunder applies to both intrastate and interstate interLATA services.

State representatives and some BOCs argue that sections 2(b) and 601(c) of the Act preserve the states' authority to adopt rules regarding BOC provision of intrastate interLATA services. They argue that section 2(b) bars the Commission from exercising authority under sections 271 and 272 to establish rules applicable to intrastate interLATA services. For the reasons set forth below, we find that section 2(b) does not preclude us from finding that sections 271 and 272, and our authority to promulgate rules thereunder, apply to BOC provision of intrastate interLATA services.

In *Louisiana Public Service Commission* v. *Federal Communications Commission*, 476 U.S. 355, 377 (1986), the Supreme Court determined that, in order to overcome section 2(b)'s limits on the Commission's jurisdiction with respect to intrastate communications service, Congress must either modify section 2(b) or grant the Commission additional authority. As explained above, we find that the term ''interLATA services,'' by the Act's own definition, includes intrastate services, and that Congress, in sections 271 and 272, expressly granted the Commission authority over intrastate interLATA services for purposes of those sections. Accordingly, consistent with the Court's statement in *Louisiana*, we find that section 2(b) does not limit our authority over intrastate interLATA services under sections 271 and 272.

In addition, we find that, in enacting sections 271 and 272 after section 2(b), and squarely addressing therein the issues before us, Congress intended for sections 271 and 272 to take precedence over any contrary implications based on section 2(b). In construing these provisions, we are mindful that ''it is a commonplace of statutory construction that the specific governs the general.'' Moreover, where amended and original sections of a statute cannot be harmonized, the new provisions should be construed to prevail as the latest declaration of legislative will. We find also that, in enacting the 1996 Act, there are other instances where Congress indisputably gave the Commission intrastate jurisdiction without amending section 2(b). For instance, section 251(e)(1) provides that ''[t]he Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States.'' Section 253 directs the Commission to preempt state regulations that prohibit the ability to provide intrastate services. Section 276(b) directs the Commission to ''establish a per call compensation plan to ensure that payphone service providers are fairly compensated for each and every completed intrastate and interstate call.'' Section 276(c) provides

that, ''[t]o the extent that any State [payphone] requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements.'' None of these provisions is specifically excepted from section 2(b), yet all of them explicitly give the Commission jurisdiction over intrastate matters. Thus, we find that the lack of an explicit exception in section 2(b) does not require us to conclude that the Commission's jurisdiction under sections 271 and 272 is limited to interstate services. A contrary holding would nullify several explicit grants of authority to the Commission, noted above, and would render substantial parts of the statute meaningless. Thus, in this instance, we believe that the lack of an explicit exception in section 2(b) is not dispositive of the scope of the Commission's jurisdiction.

Moreover, as stated above, with the exception of the New York Commission, the parties challenging the Commission's authority to preempt state regulation under sections 272 do not address the issue of whether ''interLATA services'' are defined by the Act to include intrastate services. The New York Commission agrees with us that it does. These parties (including the New York Commission) also do not challenge the proposition that Congress vested in the Commission authority over BOC entry into all in-region interLATA services—intrastate and interstate. We find it difficult to reconcile these parties' silence on these issues, as well as the New York Commission's agreement that ''interLATA services'' includes intrastate services, with their position that section 2(b) limits the application of the Commission's implementing rules under section 272 to interstate interLATA services. If, as it remains undisputed in the record, the Commission would necessarily determine, in assessing whether to allow BOC entry into in-region interLATA services, whether a BOC's provision of intrastate as well as interstate interLATA services complies with section 272, we can find no basis to maintain that the Commission's authority under sections 271 and 272 does not include authority to apply its interpretation of section 272 to all of the interLATA services—intrastate and interstate—at issue in the BOC's 271 in-region interLATA services application.

NARUC and the Missouri Commission stress that earlier drafts of the legislation would have amended section 2(b) to make an exception for certain sections of Title II, including sections 271 and 272, but the enacted version did not include that exception. They argue that this change demonstrates that Congress intended that section 2(b)'s limitations remain fully in force with regard to sections 271 and 272. We find this argument unpersuasive.

As noted above, parties that attach significance to the omission of the proposed amendment of section 2(b) rely on a rule of statutory construction providing that, when a provision in a prior draft is altered in the final legislation, Congress intended a change from the prior version. This rule of statutory construction has been rejected, however, when changes from one draft to another are not explained. In this instance, the only statement from Congress regarding the meaning of the omission of the section 2(b) amendment appears in the Joint Explanatory Statement. According to the Joint Explanatory Statement, all differences between the Senate Bill, the House Amendment, and the substitute reached in conference are noted therein ''except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.'' Because the Joint Explanatory Statement did not address the removal of the section 2(b) amendment from the final bill, the logical inference is that Congress regarded the change as an inconsequential modification rather than a significant alteration. It seems implausible that, by enacting the final version, Congress intended a radical alteration of the Commission's authority under sections 271 and 272, given the total lack of legislative history to that effect. Based on the foregoing, we conclude that elimination of the proposed amendment of section 2(b) was a nonsubstantive change.

Moreover, even if it were appropriate to speculate as to the meaning of the omission of the section 2(b) exception, we disagree with the argument that the omission necessarily indicates that Congress intended *not* to provide the Commission authority over intrastate services in sections 271 and 272. We find it is equally possible that Congress omitted the exception based on an understanding that the use of the term interLATA in sections 271 and 272 established a clear grant of authority over intrastate services and therefore that such an exception was unnecessary.

We similarly are not persuaded that section 601(c) of the 1996 Act evinces an intent by Congress to preserve states' authority over intrastate matters. Section 601(c) of the 1996 Act provides that the Act and its amendments ''shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments.'' As explained above, we conclude that sections 271 and 272, which apply to interLATA services, were expressly intended to modify federal and state law and jurisdictional authority.

For all of the reasons discussed above, we conclude that sections 271 and 272, and the Commission's authority thereunder, apply to intrastate and interstate interLATA services provided by the BOCs or their affiliates. We hold, therefore, that the rules we establish to implement section 272 are binding on the states, and the states may not impose, with respect to BOC provision of intrastate interLATA service, requirements inconsistent with sections 271 and 272 and the Commission's rules under those provisions. In this regard, based on what we find is clear congressional intent that the Commission is authorized to make determinations regarding BOC entry into interLATA services, we reject the suggestion by the Wisconsin Commission that, after the Commission has granted a BOC application for authority under section 271, a state nonetheless may condition or delay BOC entry into intrastate interLATA services.

C. Scope of Commission's Authority Regarding Manufacturing Services

In the NPRM, we tentatively concluded that the Commission's authority under section 272 extends to all BOC manufacturing of telecommunications equipment and CPE. Only two parties, Sprint and TIA, commented on this issue, and both agreed with our tentative conclusion.

We adopt our tentative conclusion that our authority under section 272 extends to all BOC manufacturing of telecommunications equipment and CPE. As we stated in the NPRM, to the extent that sections 271 and 272 address BOC manufacturing activities, we believe that the same statutory analysis set forth above with respect to interLATA services would apply. We see no basis for distinguishing among the various subsections of sections 271 and 272. Even apart from that analysis, however, we believe that the provisions concerning manufacturing clearly apply to all manufacturing activities. Section 2(b) of the Communications Act limits the Commission's authority over ''charges, classifications, practices, services, facilities, or regulation for or in connection with intrastate communications service.'' Even though, for the reasons stated above, we find section 2(b) not to be relevant to

sections 271 and 272, we find that the manufacturing activities addressed by sections 271 and 272 are not, in any event, within the scope of section 2(b). Alternatively, even if section 2(b) were deemed to apply with respect to BOC manufacturing, we find that such manufacturing activities plainly cannot be segregated into interstate and intrastate portions. Thus, any state regulation inconsistent with sections 271 and 272 or our implementing regulations would necessarily thwart and impede federal policies, and should be preempted.

III. Activities Subject to Section 272 Requirements

Section 272(a) provides that a BOC (including any affiliate) that is a LEC subject to the requirements of section 251(c) may provide certain services only through a separate affiliate. Under section 272, BOCs (or BOC affiliates) may engage in the following activities only through one or more affiliates that are separate from the incumbent LEC entity: (A) Manufacturing activities; (B) interLATA telecommunications services that originate in-region; and (C) interLATA information services. We discuss below both the activities subject to the section 272 separate affiliate requirements and the activities that are exempt from these requirements.

A. General Issues

1. Definition of ''InterLATA services''

a. Background. In the NPRM, we indicated that the 1996 Act defines ''interLATA service'' as a telecommunications service. We further stated that, where the 1996 Act draws distinctions between in-region and out-of-region ''interLATA services,'' these distinctions do not apply to interLATA information services.

b. Discussion. Upon consideration of the arguments raised in the record, we modify our interpretation of the scope of the term ''interLATA service.'' Consistent with the views of the commenters that addressed this point, we conclude that the term ''interLATA services'' encompasses both interLATA information services and interLATA telecommunications services.

We are persuaded that the definition of ''interLATA service,'' which is ''telecommunications between a point located in a [LATA] and a point located outside such area,'' does not limit the scope of the term to telecommunications services because, as MFS and BellSouth point out, information services are also provided *via telecommunications.* Elsewhere in this Report and Order, we conclude that ''interLATA information services'' must include a bundled, interLATA transmission component. Thus, interLATA information services are provided via interLATA telecommunications transmissions and, accordingly, fall within the definition of ''interLATA service.'' Moreover, we believe that it is a more natural, common-sense reading of ''interLATA services'' to interpret it to include both telecommunications services and information services. In addition, as MFS argues, in section 272(a)(2), Congress uses and distinguishes between ''interLATA telecommunications services'' and ''interLATA information services,'' demonstrating that it limited the term ''interLATA services'' to transmission services when it wished to. Further, if Congress had intended the term ''interLATA services'' to include only interLATA telecommunications services, its use of the term ''interLATA telecommunications services'' in section 272(a)(2) would have been unnecessary and redundant.

As MCI points out, interpreting the term ''interLATA services'' to include both interLATA telecommunications and interLATA information services means that a BOC may not provide in-region interLATA information services until it obtains section 271 authorization. As a practical matter, we believe that interpreting ''interLATA services'' to include interLATA information services will not alter the application of section 271. As noted above, and discussed in greater detail below, we conclude that the term ''interLATA information service'' refers to an information service that incorporates as a necessary, bundled element an interLATA telecommunications transmission component provided to the customer for a single charge. Thus, regardless of whether we interpret ''interLATA service'' to include interLATA information services, a BOC would be required to obtain section 271 authorization prior to providing, in region, the interLATA telecommunications transmission component of an interLATA information service.

2. Application of Section 272 Safeguards to International InterLATA Services

In the NPRM, we tentatively concluded that Congress intended the section 272 safeguards to apply to all domestic and international interLATA services. All of the parties that commented on this point supported this tentative conclusion. As noted above, the 1996 Act defines ''interLATA services'' as ''telecommunications between a point located in a [LATA] and a point located outside such area.'' The definition does not distinguish between domestic and international interLATA services. Further, international telecommunications services, which originate in a LATA and terminate in a country other than the United States, or vice versa, fit within the statutory definition of interLATA services. Thus, we hereby adopt our tentative conclusion.

3. Provision of Services Through a Single Affiliate

a. Background. In the NPRM, we tentatively concluded that BOCs may conduct all, or some combination of, manufacturing activities, interLATA telecommunications services, and interLATA information services through a single separate affiliate, so long as the affiliate satisfies all statutory and regulatory requirements imposed on the provision of each type of service. Elsewhere in the NPRM, we sought comment on whether the 1996 Act permits us to, and if so, whether we should, interpret or apply any of the requirements of section 272(b) differently with respect to a BOC's provision of interLATA telecommunications services, which are regulated under Title II, as opposed to a BOC's engagement in manufacturing and provision of interLATA information services, which are unregulated activities. In addition, we sought comment on how we could impose different regulatory requirements if a BOC provides both regulated and unregulated services through a single affiliate.

b. Discussion. Based on the comments submitted in the record and our analysis of the 1996 Act, we adopt our tentative conclusion that BOCs may conduct all, or some combination, of manufacturing activities, interLATA telecommunications services, and interLATA information services through a single separate affiliate. Section 272(a) requires a BOC to provide these services through ''one or more affiliates'' that are ''separate from any operating company entity that is subject to the requirements of section 251(c).'' We conclude that this language is intended to allow the BOCs flexibility in structuring their provision of competitive services, so long as those services are separated from the BOCs' provision of any local exchange services that are subject to the requirements of section 251(c).

We further conclude, as a policy matter, that it is not necessary to require the BOCs to separate their manufacturing activities from their

provision of interLATA telecommunications services and interLATA information services, as suggested by VoiceTel. First, a BOC's manufacturing activities do not entail control over bottleneck local exchange facilities. Second, during the period that the MFJ prohibited the BOCs from engaging in manufacturing activities, a competitive market for these activities developed. The market for information services is fully competitive; the market for interLATA telecommunications services is also substantially competitive. Thus, while a BOC may achieve certain efficiencies and economies of scope by conducting all three categories of activity through the same section 272 affiliate, it cannot thereby increase its ability to exercise market power in either the manufacturing, interLATA telecommunications services, or interLATA information services markets. Further, we note that section 273, which is the subject of a separate proceeding, establishes additional safeguards applicable to BOC manufacturing activities, which are intended to promote competition and prevent discrimination. For these reasons, we conclude that BOCs may conduct all, or some combination of, manufacturing activities, interLATA telecommunications services, and interLATA information services through the same section 272 affiliate.

Further, we decline to adopt different requirements pursuant to section 272(b) for regulated and unregulated activities. The safeguards of section 272(b) apply to any ''separate affiliate required by'' section 272(a). Thus, the section 272(b) safeguards address the BOCs' potential to allocate costs improperly and to discriminate in favor of their section 272 affiliates, irrespective of the activities in which those affiliates engage.

4. Manufacturing Activities

In the NPRM, we stated that BOCs may only engage in manufacturing activities through a separate affiliate that meets the requirements of section 272, and noted that section 273 sets forth additional safeguards applicable to BOC entry into manufacturing activities. Subsequent to the closing of the record in this proceeding, the Commission released a Notice of Proposed Rulemaking to clarify and implement the provisions of section 273. Several parties have raised arguments relating to the section 273 provisions on the record in this proceeding. Because this proceeding implements the non-accounting safeguards provisions of sections 271 and 272, arguments relating to the specific provisions of section 273 are more appropriately addressed in the section 273 proceeding. We note that BOCs must conduct their manufacturing activities through a section 272 separate affiliate, manufacture and provide telecommunications equipment and CPE in accordance with section 273, and comply with the regulations that the Commission promulgates to implement both sections 272 and 273.

B. Mergers/Joint Ventures of Two or More BOCs

1. Background

In the NPRM, we tentatively concluded that, pursuant to sections 271(i)(1) and 153(4)(B), if two or more of the BOCs combine their operations through merger or acquisition, the in-region states of the resultant entity shall include all of the in-region states of each of the BOCs involved in the merger/acquisition. We sought comment on whether the entry into a merger agreement or a joint venture arrangement by two or more BOCs affects the application of the section 271 and 272 non-accounting separate affiliate and nondiscrimination requirements to those BOCs. We further sought comment on whether additional safeguards are required to ensure that these BOCs do not provide the affiliates of their merger partners with an unfair competitive advantage during the pendency of their merger agreement.

2. Discussion

We note the unanimous support among parties that commented on the issue, and hereby affirm our tentative conclusion that, upon completion of a merger between or among BOCs, the in-region states of the merged entity shall include all of the in-region states of each of the BOCs involved in the merger. We decline, however, to adopt a general rule that would treat the regions of merging BOCs as combined prior to completion of the merger, for the purposes of applying the section 272 separate affiliate and nondiscrimination safeguards. Section 272 requires a BOC to provide certain services (interLATA telecommunications and information services and manufacturing activities) through one or more separate affiliates, and establishes nondiscrimination requirements that apply to the BOC's conduct and its relationship with these affiliates. Section 3(1), in turn, defines an ''affiliate'' as ''a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership and control with, another person.'' Prior to completion of a merger, the merging BOCs are neither affiliates, nor successors or assigns, of one another. Thus, entry into a merger agreement does not render the section 272 safeguards applicable to a BOC's relationship with its merger partner, nor to its relationship with its merger partner's affiliates. Moreover, treating the regions of merging BOCs as combined from the inception of a merger agreement might create considerable problems in applying the section 271 and 272 safeguards. For example, if BOC A were offering out-of-region interLATA services in BOC B's region at the time the two entered a merger agreement, BOC A might be required immediately to cease the provision of such services until it had received approval under section 271 to offer in-region interLATA services. That result would be both disruptive and confusing to customers.

We further decline to adopt any additional regulations applicable to pending mergers or joint ventures between or among BOCs. We are persuaded that adequate protections against discriminatory and anticompetitive conduct already apply to mergers, acquisitions, and joint ventures among BOCs. As the DOJ and other commenters point out, these protections include the nondiscrimination obligations of sections 201 and 202 of the Communications Act, which, among other things, prevent the BOCs from unjustly or unreasonably discriminating in providing facilities or services to interexchange carriers, and would thus govern a BOC's relationship with the long-distance affiliate of its merger partner. Continuing enforcement of the MFJ equal access requirements and pre-existing Commission-prescribed interconnection requirements, pursuant to section 251(g), also safeguards against BOC discrimination in favor of the affiliates of their merger partners. Further, as USTA notes, BOCs will be subject to the pre-merger review process under the Hart-Scott-Rodino amendment to the Clayton Act. See 15 U.S.C. § 18a. Moreover, as MCI suggests, we retain our authority to impose additional safeguards in the context of particular mergers, should circumstances demonstrate the need for such safeguards, on a case-by-case basis.

C. Previously Authorized Activities

1. Background

In the NPRM, we sought comment on the meaning of and interaction between sections 271(f), 272(a)(2)(B)(iii), and 272(h). Specifically, we sought comment on whether, subject to the

exception established by section 272(a)(2)(B)(iii), section 272(h) requires the BOCs to come into compliance with the section 272 safeguards with respect to all of the activities listed in section 272(a)(2) (A)–(C) that they were providing on the date of enactment of the 1996 Act. We observed that section 272(a)(2)(B)(iii) establishes an exemption for ''previously authorized activities described in section 271(f)'' from the separate affiliate requirement for ''origination of interLATA telecommunications services.'' We sought comment on whether Congress intended, through section 272(h), to require BOCs engaged in previously authorized manufacturing activities and interLATA information services to come into compliance with the section 272 requirements.

2. Discussion

Based on the record before us and our analysis of the relevant statutory terms, we conclude that BOCs may continue to provide all previously authorized services without interruption, pursuant to the terms and conditions set forth in the MFJ court orders that authorize those services. Previously authorized interLATA information services and manufacturing activities must come into compliance with the section 272 separate affiliate requirements within one year. Previously authorized interLATA telecommunications services, which do not have to comply with the section 272 separate affiliate requirements, must continue to be provided pursuant to the terms and conditions of the MFJ court orders that authorize them.

Section 271(f). As a general matter, section 271 addresses the timing and requirements for BOC entry into the interLATA market. Section 271(f) specifies that neither section 271(a) nor section 273 ''prohibits'' a BOC or its affiliate from engaging, at any time after enactment, in any activity previously authorized by an order of the MFJ court, subject to the terms and conditions imposed by the court. We conclude that the purpose of Section 271(f) is to preserve the BOCs' ability to engage in previously authorized activities, without first having to obtain section 271 authorization from the Commission. Section 271(f) by its terms does not address, and thus does not preclude, application of the section 272 separate affiliate requirements to previously authorized services. Except for specifying that BOCs may continue to provide previously authorized services pursuant to the terms and conditions contained within the MFJ court order authorizing the service, section 271(f) does not address the manner in which BOCs must structure their provision of previously authorized services, or whether they must provide these services through a separate affiliate. These issues are addressed in section 272.

Section 272(a)(2)(B)(iii). Section 272 sets forth separate affiliate and nondiscrimination requirements with which the BOC must comply in order to provide certain services. Separate subsections of section 272(a)(2) establish separate affiliate requirements for BOC provision of manufacturing activities (section 272(a)(2)(A)), origination of interLATA telecommunications services (section 272(a)(2)(B)), and interLATA information services (section 272(a)(2)(C)). Section 272(a)(2)(B)(iii) exempts ''previously authorized activities described in section 271(f)'' from the separate affiliate requirement for ''origination of interLATA telecommunications services.'' We conclude that, because this exemption appears in section 272(a)(2)(B), it applies by its terms only to previously authorized activities that involve the origination of interLATA telecommunications services.

Previously authorized activities described in section 271(f) may include both manufacturing activities and interLATA information services. Neither of these types of previously authorized activities, however, is exempt from the section 272 separate affiliate requirements, because neither section 272(a)(2)(A) nor section 272(a)(2)(C) contains an exemption for previously authorized activities similar to the explicit exemption set forth in section 272(a)(2)(B)(iii). We reject Ameritech's argument that section 272(a)(2)(B)(iii) exempts previously authorized interLATA information services from the section 272 separate affiliate requirements, because section 272(a)(2)(B) applies only to origination of interLATA telecommunications services. Section 272(a)(2)(C) establishes the separate affiliate requirement for BOC provision of interLATA information services; there are exceptions to this requirement for electronic publishing services and alarm monitoring services, but there is no exception specified for previously authorized activities.

Section 272(h). As the majority of commenters agree, section 272(h) establishes a one-year transition period for BOCs to comply with the separate affiliate requirements of section 272 for all services they were providing on the date of enactment of the 1996 Act that are not exempt from these requirements. Because we concluded in the preceding paragraphs that previously authorized interLATA information services and manufacturing activities are not exempt from the section 272 separate affiliate requirements, BOCs providing these services must comply with those requirements within one year of enactment. We reject PacTel's argument that section 272(h) gives the BOCs one year to comply with the various requirements imposed by section 272 on their provision of exchange and exchange access services, because we find these requirements are effective immediately upon a BOC's entry into the in-region interLATA market pursuant to section 271.

Differential Treatment. We conclude that, with respect to requiring compliance with the section 272 separate affiliate requirements, Congress intended to treat previously authorized interLATA telecommunications services differently from previously authorized interLATA information services and manufacturing activities. Certain of the BOCs argue that such a distinction is justified because it would be more difficult to provide previously authorized interLATA telecommunications services on a separated basis. Ameritech, however, argues that certain previously authorized interLATA information services, such as TDDS, would be equally difficult to provide on a separated basis. Section 10 of the Communications Act requires us to forbear from applying any provision of the Act that is not necessary to ensure just and reasonable charges and practices in the telecommunications marketplace, or to protect consumers, if we find that such forbearance would promote competition and is consistent with the public interest. Thus, to the extent a BOC demonstrates, with respect to a particular previously authorized interLATA information service, that forbearance from the section 272 separate affiliate requirement fully satisfies the section 10 test, we must forbear from requiring the BOC to provide that service through a section 272 affiliate.

D. Out-of-Region InterLATA Information Services

1. Background

In the NPRM, we tentatively concluded that the BOCs must provide interLATA information services through a separate affiliate, regardless of whether these services are provided in-region or out-of-region. We observed that section 272(a)(2)(B)(ii) exempts out-of-region interLATA services from the

separate affiliate requirement for ''origination of interLATA telecommunications services,'' but there is no analogous exemption from the section 272(a)(2)(C) separate affiliate required for interLATA information services (other than electronic publishing and alarm monitoring services).

2. Discussion

Based on the record before us and our own statutory analysis, we hereby adopt our tentative conclusion that BOCs must provide out-of-region interLATA information services through a section 272 separate affiliate. Although we concluded above that ''interLATA information services'' are included within the term ''interLATA services'' as used in section 271(b), that determination does not alter the conclusion that BOCs must provide out-of-region interLATA information services through a section 272 separate affiliate. Section 271(b)(2) permits a BOC or its affiliate to provide interLATA services, including interLATA information services, that originate outside its in-region states, immediately upon enactment of the 1996 Act. Section 271, however, does not address whether such services must be provided through a separate affiliate; that issue is addressed in section 272(a).

Section 272(a)(2)(B) requires a separate affiliate for the ''origination of interLATA telecommunications services,'' but exempts from that requirement ''out-of-region services described in section 271(b)(2).'' We conclude that the exception created by section 272(a)(2)(B)(ii) extends only to out-of-region interLATA services that are telecommunications services. Section 272(a)(2)(C) requires a separate affiliate for ''interLATA information services,'' and exempts electronic publishing and alarm monitoring services from that requirement. There are no other exceptions to the requirements of section 272(a)(2)(C). As several commenters noted, section 272(a)(2)(B) explicitly excludes out-of-region services, but section 272(a)(2)(C) does not. We agree with MCI that the explicit exclusion of out-of-region interLATA telecommunications services in one subsection of the statute, and the absence of such an express exclusion of out-of-region interLATA information services in another subsection of the same provision, suggests that Congress intended not to exclude the latter from the separate affiliate requirement. Therefore, we find that out-of-region interLATA information services are not excluded from the separate affiliate requirement for interLATA information services.

BellSouth has argued that requiring BOCs to provide out-of-region interLATA information services through a section 272 separate affiliate violates the First Amendment. As noted above, we find that this result is required by the statute. Although the courts have ultimate authority to determine the constitutionality of this and other statutes, we find it appropriate to state that we find BellSouth's argument to be without merit. BellSouth bases its argument on an assertion that as ''content-related'' services, information services are commercial speech entitled to First Amendment protections. We conclude, first, that with respect to certain information services, a BOC neither provides, nor exercises editorial discretion over, the content of the information associated with those particular services, and therefore provision of those information services does not constitute speech subject to First Amendment protections. Second, to the extent that BOC provision of other interLATA information services constitutes speech for First Amendment purposes, the section 272 separate affiliate requirement neither prohibits the BOCs from providing such services, nor places any restrictions on the content of the information the BOCs may provide. Instead, the section 272 separate affiliate requirement is a content-neutral restriction on the manner in which BOCs may provide interLATA information services, intended by Congress to protect against improper cost allocation and discrimination concerns. Thus, we conclude that the separate affiliate requirement imposed by section 272 of the Communications Act on BOC provision of interLATA information services does not violate the First Amendment.

E. Incidental InterLATA Services

1. Background

In the NPRM, we sought comment on whether we should establish any non-accounting structural or nonstructural safeguards for BOC provision of the ''incidental interLATA services'' set forth in section 271(g), in light of section 271(h). Section 271(h) directs the Commission to ensure that the provision of incidental interLATA services ''will not adversely affect telephone exchange service ratepayers or competition in any telecommunications market,'' and states that the provisions of section 271(g) ''are intended to be narrowly construed.'' We also sought comment regarding the interplay between section 271(h) and section 254(k), which prohibits telecommunications carriers from ''us[ing] services that are not competitive to subsidize services that are subject to competition.''

2. Discussion

Section 271(b)(3) permits the BOCs to provide incidental interLATA services described in section 271(g) immediately after the date of enactment of the 1996 Act. Thus, unlike other in-region interLATA services, BOCs may provide incidental interLATA services originating in their own in-region states without receiving prior authorization from the Commission pursuant to section 271(d). Neither section 271(b) nor section 271(g) addresses whether BOCs must provide incidental interLATA services through a section 272 separate affiliate; this issue is addressed by section 272 itself.

Scope of the section 272(a)(2)(B)(i) exemption. Section 272(a)(2)(B)(i) sets forth an exception to the separate affiliate requirement imposed on ''origination of interLATA telecommunications services.'' Congress specifically limited this exception to the ''incidental interLATA services described in paragraphs (1), (2), (3), (5), and (6) of section 271(g).'' Consistent with the analysis set forth in the two immediately preceding sections of this Order, we conclude that the section 272(a)(2)(B)(i) exception applies, by its terms, to the origination of incidental interLATA services that are telecommunications services.

For the most part, the incidental interLATA services enumerated within the section 272(a)(2)(B)(i) exception are telecommunications services. (Congress deliberately excluded remote data storage and retrieval services that fall within section 271(g)(4) from the section 272(a)(2)(B)(i) exception.) Although the incidental interLATA services set forth in sections 271(g)(1)(A), (B), and (C) include audio, video, and other programming services that do not appear to be solely telecommunications services, section 271(h) specifies that these incidental interLATA services ''are limited to *those interLATA transmissions incidental to* the provision by a [BOC] or its affiliate of video, audio, and other programming services that the company or its affiliate is engaged in providing to the public.'' We therefore conclude that, pursuant to section 272(a)(2)(B)(i), BOCs are not required to provide the interLATA telecommunications transmission incidental to provision of the programming services listed in sections 271(g)(1)(A), (B), and (C) through a

section 272 separate affiliate. Moreover, alarm monitoring services, listed as incidental interLATA services under section 271(g)(1)(D), are explicitly excepted from the section 272 separate affiliate requirements under section 272(a)(2)(C).

In addition, section 271(g)(2), which designates as ''incidental interLATA services'' the interLATA provision of ''two-way interactive video services or Internet services over dedicated facilities to or for elementary and secondary schools as defined in section 254(h)(5),'' may encompass services that are not solely telecommunications services. The statute does not classify educational interactive interLATA services as either telecommunications services or information services. We conclude, however, that the explicit inclusion of section 271(g)(2) in the list of services subject to the section 272(a)(2)(B)(i) exception exempts educational interactive interLATA services from the section 272 separate affiliate requirements. This interpretation is consistent with Congress' clear intent, expressed in other provisions of the 1996 Act, to promote the provision of advanced telecommunications and information services, of which educational interactive interLATA services are examples, to eligible public and non-profit elementary and secondary schools. The inclusion of educational interactive interLATA services among the list of ''incidental interLATA services'' that BOCs could provide immediately upon enactment of the 1996 Act without prior Commission authorization promotes the congressional goal of rapidly deploying advanced telecommunications by permitting the BOCs to offer such services. Thus, we further find it reasonable to conclude that Congress did not wish to impose a significant regulatory barrier, in the form of a separate affiliate requirement, on BOC provision of these services.

Additional regulation of incidental interLATA services. We decline to impose the section 272 separate affiliate requirements on incidental interLATA services that, as discussed above, are exempt from those requirements under section 272(a)(2)(B)(i). Section 272 itself does not require the BOCs to provide these services through a separate affiliate. Further, we conclude as a legal matter that neither section 271(h) nor section 254(k) requires us to impose the section 272 separate affiliate requirements on exempt incidental interLATA services in order to protect telephone exchange ratepayers or competition in the telecommunications market. Moreover, we decline to do so as a matter of policy, because we see no present need to impose structural separation requirements beyond those mandated by Congress in order to protect against improper cost allocation and access discrimination. We likewise decline to impose any other structural separation requirements on BOC provision of these services, as suggested by certain commenters. This decision comports with the Commission's prior determinations not to impose structural separation requirements in contexts in which it found that nonstructural safeguards provide sufficient protection against improper cost allocation and access discrimination (*e.g.*, BOC provision of enhanced services).

Under our rules, the BOCs are subject to existing nonstructural safeguards in their provision of incidental interLATA services, and we conclude that these safeguards are sufficient to protect telephone exchange ratepayers and competition in telecommunications markets, in accordance with section 271(h). For accounting purposes, incidental interLATA services will be treated as non-regulated services under our Part 32 affiliate transaction rules and Part 64 cost allocation rules, and accordingly costs associated with provision of those services may not be allocated to regulated services accounts. Further, at the federal level and in many states, the BOCs are subject to price cap regulation, which reduces their incentive to engage in strategic cost-shifting behavior. The BOCs are also subject to the section 251 interconnection and unbundling requirements, which compel them to make available to other telecommunications carriers the local network elements and local exchange facilities that such carriers may require to provide services comparable to the incidental interLATA services listed in section 271(g). Further, the BOCs are subject to network disclosure requirements imposed by section 251(c)(5), which require them to give timely information about network changes to their affiliates' competitors.

Given the complement of nonstructural safeguards to which the BOCs are subject in their provision of incidental interLATA services, we find that the record in this proceeding does not justify the imposition of additional nonstructural safeguards on these services. We decline to extend to the integrated provision of incidental interLATA services any of the section 272(c) and 272(e) nondiscrimination requirements that depend on the existence of a section 272 affiliate, as suggested by AT&T. Further, we decline to adopt any additional unbundling requirements applicable to BOC provision of incidental interLATA services, as suggested by MCI. We agree with BellSouth that it would be inconsistent with the 1996 Act for us to require the BOCs to unbundle and make available interLATA transmission services that they are not authorized to provide except as components of an incidental interLATA service (*i.e.*, without obtaining prior authorization under section 271 or complying with the section 272 separation requirements). For the foregoing reasons, we decline to adopt any additional structural or nonstructural safeguards applicable specifically to BOC provision of incidental interLATA services.

F. InterLATA Information Services

1. Relationship Between Enhanced Services and Information Services

a. Background. In the NPRM, we sought comment on the services that are included in the statutory definition of ''information service,'' and whether that term encompasses all activities that the Commission classifies as ''enhanced services.'' We noted that the statutory definition of ''information service'' is based on the definition used in the MFJ, and that prior to passage of the 1996 Act, neither the Commission nor the MFJ court resolved the question of whether the definition of enhanced services under the Commission's rules was synonymous with the definition of information services under the MFJ.

b. Discussion. We conclude that all of the services that the Commission has previously considered to be ''enhanced services'' are ''information services.'' We are persuaded by the arguments advanced by ITAA, CIX, and others, that the differently-worded definitions of ''information services'' and ''enhanced services'' can and should be interpreted to extend to the same functions. We believe that interpreting ''information services'' to include all ''enhanced services'' provides a measure of regulatory stability for telecommunications carriers and ISPs alike, by preserving the definitional scheme under which the Commission exempted certain services from Title II regulation. We agree with ISPs that regulatory certainty and continuity benefits both large and small service providers. In sum, we find no basis to conclude that by using the MFJ term ''information services'' Congress intended a significant departure from the Commission's usage of ''enhanced services.''

We also find, however, that the term ''information services'' includes services that are not classified as ''enhanced services'' under the Commission's current rules. Stated differently, we conclude that, while all enhanced services are information services, not all information services are enhanced services. As noted by U S West, ''enhanced services'' under Commission precedent are limited to services ''offered over common carrier transmission facilities used in interstate communications,'' whereas ''information services'' may be provided, more broadly, ''via telecommunications.'' Further, we agree with BellSouth and AT&T that live operator telemessaging services that do not involve ''computer processing applications'' are information services, even though they do not fall within the definition of ''enhanced services.''

We further conclude that, subject to the exceptions discussed below, protocol processing services constitute information services under the 1996 Act. We reject Bell Atlantic's argument that ''information services'' only refers to services that transform or process the content of information transmitted by an end-user, because we agree with Sprint that the statutory definition makes no reference to the term ''content,'' but requires only that an information service transform or process ''information.'' We also agree with ITI and ITAA that an end-to-end protocol conversion service that enables an end-user to send information into a network in one protocol and have it exit the network in a different protocol clearly ''transforms'' user information. We further find that other types of protocol processing services that interpret and react to protocol information associated with the transmission of end-user content clearly ''process'' such information. Therefore, we conclude that both protocol conversion and protocol processing services are information services under the 1996 Act.

This interpretation is consistent with the Commission's existing practice of treating end-to-end protocol processing services as enhanced services. We find no reason to depart from this practice, particularly in light of Congress' deregulatory intent in enacting the 1996 Act. Treating protocol processing services as telecommunications services might make them subject to Title II regulation. Because the market for protocol processing services is highly competitive, such regulation is unnecessary to promote competition, and would likely result in a significant burden to small independent ISPs that provide protocol processing services. Thus, policy considerations support our conclusion that end-to-end protocol processing services are information services.

We note that, under *Computer II* and *Computer III,* we have treated three categories of protocol processing services as basic services, rather than enhanced services, because they result in no net protocol conversion to the end-user. These categories include protocol processing: (1) involving communications between an end-user and the network itself (*e.g.*, for initiation, routing, and termination of calls) rather than between or among users; (2) in connection with the introduction of a new basic network technology (which requires protocol conversion to maintain compatibility with existing CPE); and (3) involving internetworking (conversions taking place solely within the carrier's network to facilitate provision of a basic network service, that result in no net conversion to the end-user). We agree with PacTel that analogous treatment should be extended to these categories of ''no net'' protocol processing services under the statutory regime. Because ''no net'' protocol processing services are information service capabilities used ''for the management, control, or operation of a telecommunications system or the management of a telecommunications service,'' they are excepted from the statutory definition of information service. Thus, ''no net'' protocol conversion services constitute telecommunications services, rather than information services, under the 1996 Act.

We further find, as suggested by PacTel, that services that the Commission has classified as ''adjunct-to-basic'' should be classified as telecommunications services, rather than information services. In the *NATA Centrex* order, the Commission held that the enhanced services definition did not encompass adjunct-to-basic services. *See* 101 FCC 2d 349, 359–361, ¶¶ 24–28 (1985). Although the latter services may fall within the literal reading of the enhanced service definition, they facilitate establishment of a basic transmission path over which a telephone call may be completed, without altering the fundamental character of the telephone service. Similarly, we conclude that ''adjunct-to-basic'' services are also covered by the ''telecommunications management exception'' to the statutory definition of information services, and therefore are treated as telecommunications services under the 1996 Act.

2. Distinguishing InterLATA Information Services Subject to Section 272 From IntraLATA Information Services

a. Background. In the NPRM, we sought comment on how to distinguish between interLATA information services, which are subject to the section 272 separate affiliate requirements, and intraLATA information services, which are not. In particular, we asked whether an information service should be considered an interLATA service only when the service actually involves an interLATA telecommunications transmission component, or, alternatively, when it potentially involves interLATA telecommunications transmissions (e.g., the service can be accessed across LATA boundaries). We further sought comment regarding how the manner in which a BOC structures its provision of an information service may affect whether the service is classified as interLATA.

We also invited comment on whether a particular service for which a BOC had applied for or received an MFJ waiver should presumptively be treated as an interLATA information service subject to the separate affiliate requirements of section 272. In addition, we sought comment on whether we should presume that services provided by BOCs pursuant to CEI plans approved by the Commission prior to the enactment of the 1996 Act are intraLATA information services.

b. Discussion. InterLATA Transmission/Resale. We conclude that, as used in section 272, the term ''interLATA information service'' refers to an information service that incorporates as a necessary, bundled element an interLATA telecommunications transmission component, provided to the customer for a single charge. We find, as noted in the comments of AT&T, MCI, and the BOCs, that this definition of interLATA information service conforms to the MFJ precedent in this area. *See United States* v. *Western Electric,* 907 F.2d 160, 163 (D.C. Cir. 1990). We further conclude that a BOC provides an interLATA information service when it provides the interLATA telecommunications transmission component of the service either over its own facilities, or by reselling the interLATA telecommunications services of an interexchange provider. This conclusion also comports with MFJ precedent.

USTA contends that BOC provision of interLATA transmission through resale should be permitted because it does not

raise improper cost allocation and discrimination concerns. This argument, however, does not address the key issue of what is required by the statute. As discussed above, we find that section 601(a) of the 1996 Act indicates that Congress intended the provisions of the 1996 Act to supplant the MFJ. Therefore, we conclude that the restrictions imposed by the 1996 Act on BOC provision of interLATA services, like the interLATA restrictions imposed under the MFJ, apply to services provided through resale, as well as to services provided through the BOC's own transmission facilities. Moreover, we decline to adopt PacTel's suggestion that end-user receipt of an ''interLATA benefit'' should be the test for determining whether an information service is interLATA. PacTel's proposed test is inconsistent with MFJ precedent and would be very difficult to administer. Finally, we reject the arguments raised by Sprint and MFS that we should classify all information services as interLATA services because of the difficulties inherent in distinguishing between interLATA and intraLATA information services. We conclude that it is possible to distinguish between interLATA and intraLATA information services by applying the rule established by this Order.

InterLATA Access. We agree with AT&T and the BOCs that an information service may not be considered interLATA merely because it may be accessed on an interLATA basis by means independently chosen by the customer, such as a presubscribed interexchange carrier. In interpreting the statutory restrictions on BOC provision of interLATA information services, we are concerned not with the manner in which an information service is used, but rather with the components of the service that are provided by the BOC. When a BOC is neither providing nor reselling the interLATA transmission component of an information service that may be accessed across LATA boundaries, the statute does not require that service to be provided through a section 272 separate affiliate. We reject MFS's contention that, where an interLATA transmission service is necessary for a customer to obtain access to a particular BOC-provided information service, that information service should be considered interLATA, even if the necessary interLATA transmission component is separately provided by another carrier. In such circumstances, the BOC is not providing any interLATA services, and therefore is not required by section 272 to provide the information service in question through a separate affiliate.

Moreover, as the BOCs point out, if we were to determine that the mere possibility of interLATA access was sufficient to classify an information service as an interLATA service, that rule would render any telecommunications service that carries traffic that originates in one LATA and terminates in another, including local exchange service and exchange access service, an interLATA service. Congress clearly did not intend that result.

In addition, we agree with the BOCs that classifying information services as interLATA solely because end-users may obtain access to the service across LATA boundaries would represent a significant departure from Commission precedent, as well as from MFJ precedent. BOCs are currently providing a number of information services on an integrated basis pursuant to the Commission's *Computer III* regulations, and users may obtain access to some, if not all, of these services on an interLATA basis. If we were to determine that these services were interLATA services simply because end-users may obtain access across LATA boundaries, BOCs would have to change the manner in which they are providing many of these services, which would likely result in lost efficiency and disruption of services to customers. We see no basis in the statute to adopt such an interpretation, as sections 271 and 272 are intended to govern the BOCs' provision of services that they were previously prohibited from providing under the MFJ, not services that they were previously authorized to provide under the MFJ.

Bundling. As we concluded above, an interLATA information service incorporates a bundled interLATA telecommunications transmission component. When a customer obtains interLATA transmission service from an interexchange provider that is not affiliated with a BOC, the use of that transmission service in conjunction with an information service provided by a BOC or its affiliate does not make the information service a BOC interLATA service offering. A customer also may obtain an in-region interLATA telecommunications service from a BOC section 272 affiliate that the customer uses in conjunction with an intraLATA information service provided by that affiliate or by the BOC itself. When such telecommunications and information services are provided, purchased, and priced separately, we conclude that they do not collectively constitute an interLATA information service offering by the BOC. (We note that even when an information service and interLATA transmission service are ostensibly separately priced, if the BOC offers special discounts or incentives to customers that take both services, this would constitute sufficient evidence of bundling to render the information service an interLATA information service.) In such a situation, the BOC would, of course, be required to provide the in-region interLATA transmission service pursuant to section 271 authorization and the section 272 separate affiliate and nondiscrimination requirements. The BOC could choose to provide the separate, intraLATA information service either on an integrated basis, in compliance with the Commission's CEI and *ONA* requirements, or through a separate affiliate.

Remote Databases/Network Efficiency. BOCs may not provide interLATA services in their own regions, either over their own facilities or through resale, before receiving authorization from the Commission under section 271(d). Therefore, we conclude that BOCs may not provide interLATA information services, except for information services covered by section 271(g)(4), in any of their in-region states prior to obtaining section 271 authorization. Section 271(g)(4) designates as an incidental interLATA service the interLATA provision by a BOC or its affiliate of ''a service that permits a customer that is located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA.'' Because BOCs were able to provide incidental interLATA services immediately upon enactment of the 1996 Act, they may provide interLATA information services that fall within the scope of section 271(g)(4) without receiving section 271(d) authorization from the Commission. Since section 271(g)(4) services are not among the incidental interLATA services exempted from section 272 separate affiliate requirements, however, they must be provided in compliance with those requirements. To the extent that parties have argued in the record that centralized data storage and retrieval services that fall within section 271(g)(4) either are not interLATA information services, or are not subject to the section 272 separate affiliate requirements, we specifically reject these arguments.

We also reject the BOCs' argument that their use of interLATA transmission, outside the control of the end-user and solely to maximize network efficiencies, in connection with

the provision of an information service, does not render that information service interLATA in nature. Whenever interLATA transmission is a component of an information service, that service is an interLATA information service, unless the end-user obtains that interLATA transmission service separately, *e.g.*, from its presubscribed interexchange provider. To the extent that BOCs are allowed to perform certain interLATA call processing functions associated with their provision of telephone exchange service or exchange access service in connection with an intraLATA information service, however, they may continue to do so without transforming that information service into an interLATA information service.

We also reject PacTel's claim that a BOC's use of interLATA transmission solely for its own business convenience in providing an information service falls within the ''telecommunications management exception'' to ''information service.'' We disagree with PacTel's assertion that this practice is covered by the ''technical management exception,'' because the BOC would be providing interLATA transmission in connection with the management of an information service, not ''the management of a telecommunications service,'' as specified by section 3(20). Further, as noted above, we believe that the ''telecommunications management exception'' is analogous to the Commission's classification of certain services as ''adjunct-to-basic;'' that is, it covers services that may fit within the literal reading of the information services definition, but that are used to facilitate the provision of a basic telecommunications transmission service, without altering the character of that service. In other words, the ''technical management exception'' relates to the classification of services as either telecommunications services or information services; it has no bearing upon the classification of either of these types of services as intraLATA or interLATA. As such, the ''telecommunications management exception'' provides no safe harbor for interLATA transmission services employed by BOCs in connection with the provision of information services.

Presumptions Regarding Previously Authorized Information Services. With respect to information services that the BOCs were authorized to provide prior to passage of the 1996 Act, we conclude that as a matter of administrative convenience it is helpful to establish several rebuttable presumptions regarding intraLATA or interLATA classification. Thus, we will presume that information services that BOCs were authorized to provide pursuant to CEI plans, without MFJ waivers, are intraLATA information services. Similarly, we will presume that information services for which BOCs were required to obtain MFJ waivers are interLATA information services. We conclude that these presumptions are rebuttable, rather than conclusive, because the BOCs have noted that, for expediency purposes, they sometimes requested and obtained MFJ waivers in order to provide services that were not clearly interLATA in nature. Thus, a BOC would be able to rebut the presumption that an information service provided pursuant to an MFJ waiver is an interLATA information service by showing that it had obtained a waiver to provide the service on an intraLATA basis prior to 1991. Similarly, the presumption that an information service provided pursuant to a CEI plan is an intraLATA information service may be rebutted by a showing that the information service incorporates a bundled, interLATA telecommunications transmission component, as specified in this Order.

3. BOC-provided Internet Access Services

a. Background. On June 6, 1996, the Common Carrier Bureau (Bureau) released an order approving a CEI plan filed by Bell Atlantic for the provision of Internet Access Service. MFS had filed comments opposing Bell Atlantic's plan, arguing, *inter alia*, that Bell Atlantic's Internet access service offering is an interLATA service that Bell Atlantic may only provide through a section 272 affiliate after obtaining section 271 authorization from the Commission. Following release of the *Bell Atlantic CEI Plan Order*, MFS filed a petition for reconsideration of that Order, raising similar arguments. At about the same time, Southwestern Bell Telephone Company (SWBT) filed a CEI plan for Internet Support Services. On July 25, 1996, one week after the Commission released the NPRM in this proceeding, MFS filed with the Commission a petition seeking to consolidate proceedings related to the *Bell Atlantic CEI Plan Order* reconsideration and the SWBT Internet support CEI plan with the instant proceeding, on the grounds that the three proceedings raise similar novel, policy, factual, and legal arguments. Although the NPRM in the instant proceeding did not specifically seek comment on the proper classification or regulatory treatment of BOC-provided Internet services and Internet access services under the 1996 Act, several parties discussed these matters in their comments, in the course of addressing how we should define ''interLATA information services.''

b. Discussion. The preceding sections of this Order establish a definition of ''interLATA information service'' that should assist the BOCs and other interested parties in determining the types of information services that the BOCs are statutorily-required to provide through section 272 affiliates. If a BOC's provision of an Internet or Internet access service (or for that matter, any information service) incorporates a bundled, in-region, interLATA transmission component provided by the BOC over its own facilities or through resale, that service may only be provided through a section 272 affiliate, after the BOC has received in-region interLATA authority under section 271. We believe that this is not the appropriate forum for considering whether the various specific Internet services provided by the BOCs are ''interLATA information services'' because such determinations must be made on a case-by-case basis. We believe that the lawfulness of the specific Internet services provided by Bell Atlantic and SWBT is more appropriately analyzed in the context of the separate CEI plan proceedings regarding each service that are currently pending before the Bureau, consistent with the rules and policies enunciated in this rulemaking proceeding. Therefore, we deny MFS's request to consolidate proceedings related to the provision of Internet and Internet access services by Bell Atlantic and SWBT with the instant proceeding.

4. Impact of the 1996 Act on the Computer II, Computer III, and ONA requirements

a. Background. In the NPRM, we concluded that, because the 1996 Act does not establish regulatory requirements for BOC provision of intraLATA information services, *Computer II, Computer III,* and *ONA* requirements continue to govern BOC provision of these services, to the extent that these requirements are consistent with the 1996 Act. We sought comment on which of the Commission's existing requirements were inconsistent with, or had been rendered unnecessary by, the 1996 Act, as well as on the specific provisions of the 1996 Act that supersede the existing requirements. We also sought comment on the impact of the statute on our pending *Computer III Further Remand Proceedings.*

b. Discussion. Consistency of Commission's Computer II, Computer III, and ONA Rules with the 1996 Act.

We conclude that the *Computer II, Computer III,* and *ONA* requirements are consistent with the 1996 Act, and continue to govern BOC provision of intraLATA information services. By its terms, the 1996 Act imposes separate affiliate and nondiscrimination requirements on BOC provision of ''interLATA information services,'' but does not address BOC provision of intraLATA information services. We concluded above that, for the purposes of applying sections 271 and 272, interLATA information services must include a bundled interLATA transmission component. We further conclude, in light of our definition of interLATA information services, that BOCs are currently providing a number of information services on an intraLATA basis. We find that the BOCs may continue to provide such intraLATA information services on an integrated basis, in compliance with the nonstructural safeguards established in *Computer III* and *ONA*.

We reject Bell Atlantic's conclusory assertions that the 1996 Act's customer proprietary network information (CPNI), network disclosure, nondiscrimination, and accounting provisions supersede various of the Commission's *Computer III* nonstructural safeguards. We also reject NYNEX's claim that the section 251 interconnection and unbundling requirements render the Commission's *Computer III* and *ONA* requirements unnecessary. Based on our review of the record in this proceeding, we conclude that the pending *Computer III Further Remand Proceedings* are the appropriate forum in which to examine the necessity of retaining any or all of these individual *Computer III* and *ONA* requirements. We therefore plan to issue a Further NPRM in that proceeding to determine how to regulate BOC provision of intraLATA information services in light of the 1996 Act.

In the interim, the Commission's *Computer II, Computer III,* and *ONA* rules are the only regulatory means by which certain independent ISPs are guaranteed nondiscriminatory access to BOC local exchange services used in the provision of intraLATA information services. As noted above, the section 272 nondiscrimination requirements do not apply to BOC provision of intraLATA information services, and ISPs that are not telecommunications carriers cannot obtain interconnection or access to unbundled elements under section 251. Thus, we believe that continued enforcement of these safeguards is necessary pending the conclusion of the *Computer III Further Remand Proceedings* and establishes important protections for small ISPs that are not provided elsewhere in the Act.

Requiring section 272 affiliates for intraLATA information services. We decline to require the BOCs to provide intraLATA information services through section 272 affiliates. It is clear that section 272 does not require the BOCs to offer intraLATA information services through a separate affiliate. We further decline to exercise our general rulemaking authority to impose such a requirement. We conclude that the record in this proceeding does not justify a departure from our determination, in *Computer III,* to allow BOCs to provide intraLATA information services on an integrated basis, subject to appropriate nonstructural safeguards. Some parties in this proceeding argue that we should harmonize our regulatory treatment of intraLATA information services provided by the BOCs with the section 272 requirements imposed by Congress on interLATA information services. We invite these parties to comment on these matters in response to the Further NPRM we intend to issue in the *Computer III Further Remand Proceedings.*

Application of Computer II, Computer III, and ONA requirements to section 272 affiliate activities. We conclude that a BOC that provides interLATA telecommunications services and information services through the same section 272 affiliate may bundle such services without providing comparably efficient interconnection to the basic underlying interLATA telecommunications services. Under our definition of ''interLATA information service,'' as explained above, such service must include a bundled interLATA telecommunications element. Hence, to prohibit a BOC affiliate from bundling interLATA telecommunications and information services would effectively prevent the BOCs from offering any interLATA information services, a result clearly not contemplated by the statute. Further, we note that the market for information services is fully competitive, and the market for interLATA telecommunications services is substantially competitive. Thus, we see no basis for concern that a section 272 affiliate providing an information service bundled with an interLATA telecommunications service would be able to exercise market power. If, however, a BOC's section 272 affiliate were classified as a facilities-based telecommunications carrier (*i.e.,* it did not provide interLATA telecommunications services solely through resale), the affiliate would be subject to a *Computer II* obligation to unbundle and tariff the underlying telecommunications services used to furnish any bundled service offering.

Under our current regulatory regime, a BOC must comply fully with the *Computer II* separate subsidiary requirements in providing an information service in order to be relieved of the obligation to file a CEI plan for that service. We decline to adopt NYNEX's proposal that we find that all BOC information services provided through a section 272 separate affiliate satisfy the *Computer II* separate subsidiary requirements, because we conclude that the record in this proceeding is insufficient to support such a conclusion. Instead, we intend to examine this issue further in the context of the *Computer III Further Remand Proceedings.* Further, we reject USTA's argument that *ONA* reporting requirements do not extend to intraLATA information services provided through a section 272 separate affiliate. BOCs must comply with the *ONA* requirements regardless of whether they provide information services on a separated or integrated basis.

G. Information Services Subject to Other Statutory Requirements

1. Electronic Publishing (section 274)

a. Background. In the NPRM, we observed that, although electronic publishing is specifically identified as an information service, interLATA provision of electronic publishing is exempt from section 272, and is instead subject to section 274. Noting that we had initiated a separate proceeding to clarify and implement, *inter alia,* the requirements of section 274, we sought comment on how to distinguish information services subject to the section 272 requirements from electronic publishing services subject to the section 274 requirements. We also invited parties to comment on whether, in situations involving services that do not clearly fall within either the definition of ''electronic publishing'' (section 274(h)(1)) or the enumerated exceptions thereto (section 274(h)(2)), we should identify as ''electronic publishing'' those services for which the carrier controls, or has a financial interest in, the content of information transmitted by the service.

b. Discussion. Upon review of the record and further consideration, we conclude that it is not necessary to adopt the ''financial interest or control'' test in determining whether a particular BOC service involves the provision of electronic publishing, in addition to the definitions set forth in sections

274(h)(1) and 274(h)(2). Generally speaking, if a particular service does not appear to fit clearly within either the definition of ''electronic publishing,'' set forth in section 274(h)(1), or the exceptions thereto listed in section 274(h)(2), determining the appropriate classification of that service will involve a highly fact-specific analysis that is better performed on a case-by-case basis. In the context of such a case-by-case determination, the Commission may consider a number of factors, including whether the BOC controls, or has a financial interest in, the content of information transmitted to end-users. We also note that the definition of electronic publishing, as well as specific services encompassed by that definition, may be further refined in the *Electronic Publishing* proceeding.

We also decline to adopt ITAA's suggestion that, because of potential difficulties in distinguishing between information services and electronic publishing services, we should impose substantially the same separate affiliate requirements on both. Such an approach would be directly contrary to the statute. Congress set forth distinct separate affiliate and nondiscrimination requirements in sections 272 and 274, and specified that the former apply to interLATA information services, while the latter apply to all BOC-provided electronic publishing services. To impose the section 272 requirements on electronic publishing services, or to impose the section 274 requirements on interLATA information services, would be inconsistent with the clear statutory scheme.

Moreover, we specifically reject AT&T's contention that electronic publishing services are subject to the section 272 separate affiliate requirements, pursuant to section 272(a)(2)(B), which imposes a separate affiliate requirement on interLATA telecommunications services. Electronic publishing services, however, are specifically included within the statutory definition of information services. Accordingly, electronic publishing services would be subject to section 272(a)(2)(C), which imposes a separate affiliate requirement on interLATA information services, except that section 272(a)(2)(C) specifically exempts ''electronic publishing (as defined in section 274(h)).''

2. Telemessaging (section 260)

a. Background. In the NPRM, we tentatively concluded that ''telemessaging'' is an information service. We further tentatively concluded that BOC provision of telemessaging on an interLATA basis is subject to the section 272 separate affiliate requirements, in addition to the section 260 safeguards.

b. Discussion. Based on our review of the comments and analysis of the statute, we hereby adopt our tentative conclusion that telemessaging is an information service. We reject PacTel's contention that live operator services do not constitute information services. Under the statute, live operator services ''used to record, transcribe, or relay messages'' are telemessaging services. Because these functions plainly provide ''the capability for * * * storing * * * or making available information'' via telecommunications, we conclude that live operator telemessaging services fall within the statutory definition of information services. We also adopt our tentative conclusion that BOCs that provide telemessaging services that meet the definition of interLATA information services must do so in accordance with the section 272 requirements, in addition to the section 260 requirements.

IV. Structural Separation Requirements of Section 272

A. Application of the Section 272(b) Requirements

Section 272(b) of the Communications Act establishes five structural and transactional requirements for separate affiliate(s) established pursuant to section 272(a). We address each of the requirements below, with the exception of section 272(b)(2), which we discuss in the *Accounting Safeguards Order.*

B. The ''Operate Independently'' Requirement

1. Background

Section 272(b)(1) states that a separate affiliate ''shall operate independently from the BOC.'' The Act does not elaborate on the meaning of the phrase ''operate independently.'' We stated in the NPRM that under principles of statutory construction, a statute should be interpreted so as to give effect to each of its provisions. We therefore tentatively concluded that the section 272(b)(1) ''operate independently'' provision imposes requirements beyond those contained in subsections 272(b)(2)-(5).

As we observed in the NPRM, section 274(b) contains similar language to section 272(b)(1). It states that ''[a] separated affiliate or electronic publishing joint venture shall be operated independently from the [BOC].'' Subsections 274(b)(1)-(9) list several requirements that govern the relationship of an electronic publishing entity and the BOC with which it is affiliated. We sought comment on the relevance of the ''operated independently'' language of section 274(b) when construing the ''operate independently'' requirement of section 272(b)(1).

In addition, we sought comment on what rules, if any, we should adopt to implement the requirements of section 272(b)(1). Moreover, we asked whether we should impose one or more of the separation requirements established in the *Computer II* or *Competitive Carrier* proceedings.

In the *Computer II* proceeding, the Commission required AT&T to provide enhanced services through a separate affiliate, a requirement that the Commission extended to the BOCs following divestiture. The Commission required the enhanced services subsidiary to ''have its own operating, marketing, installation and maintenance personnel for the services and equipment it offer[ed],'' to comply with information disclosure requirements, and to maintain its own books of account. The Commission prohibited the regulated entity and its enhanced services subsidiary from using in common any leased or owned physical space or property on which transmission equipment or facilities used in basic transmission services were located, barred them from sharing computer capacity, and limited the regulated entity's ability to provide software to the affiliate. Moreover, the Commission barred the enhanced services subsidiary from constructing, owning, or operating its own transmission facilities, thereby requiring it to obtain such facilities from a local exchange carrier pursuant to tariff.

In the *Competitive Carrier* proceeding, the Commission prescribed the separation requirements to which independent LECs must conform to be regulated as nondominant in the provision of domestic, interstate, interexchange services. Specifically, an independent LEC must provide interstate interexchange services through an affiliate that:

(1) maintains separate books of account; (2) does not jointly own transmission or switching facilities with its affiliated exchange telephone company; and (3) acquires that exchange telephone company's services at tariffed rates and conditions.

2. Discussion

We adopt our tentative conclusion that the ''operate independently'' requirement of section 272(b)(1) imposes requirements beyond those listed in sections 272(b)(2)–(5). This conclusion is based on the principle of

statutory construction that a statute should be construed so as to give effect to each of its provisions.

Relationship of Section 272(b)(1) to Section 274(b). Section 274(b) mandates that a separated affiliate or electronic publishing joint venture be ''operated independently'' and then lists nine specific requirements governing the relationship between a BOC and a separated affiliate. In contrast, section 272(b) imposes five structural and transactional requirements governing the relationship between a BOC and a section 272 affiliate, one of which is that the affiliate ''shall operate independently from the [BOC].'' The structural differences in the organization of the two sections suggest that the term ''operate independently'' in section 272(b)(1) should not be interpreted to impose the same obligations on a BOC as section 274(b). In particular, while the enumerated requirements of section 274(b) may be interpreted to define the term ''operated independently'' in that context, they do not define the term ''operate independently'' as used in section 272(b). We agree with SBC that, because the requirements listed in sections 274(b)(1)–(9) of the Act overlap with the requirements of sections 272(b), (c), and (e), it would be redundant to incorporate all of the section 274(b) requirements into the ''operate independently'' requirement of section 272(b)(1).

Defining ''Operate Independently.'' The requirements that we adopt to implement section 272(b)(1) are intended to prevent a BOC from integrating its local exchange and exchange access operations with its section 272 affiliate's activities to such an extent that the affiliate could not reasonably be found to be operating independently, as required by the statute. In order to protect against the potential for a BOC to discriminate in favor of a section 272 affiliate in a manner that results in the affiliate's competitors operating less efficiently, we seek to ensure that a section 272 affiliate and its competitors enjoy the same level of access to the BOC's transmission and switching facilities. Accordingly, we conclude that operational independence precludes the joint ownership of transmission and switching facilities by a BOC and its section 272 affiliate, as well as the joint ownership of the land and buildings where those facilities are located. Furthermore, operational independence precludes a section 272 affiliate from performing operating, installation, and maintenance functions associated with the BOC's facilities. Likewise, it bars a BOC or any BOC affiliate, other than the section 272 affiliate itself, from performing operating, installation, or maintenance functions associated with the facilities that the section 272 affiliate owns or leases from a provider other than the BOC with which it is affiliated. Consistent with these requirements and those established pursuant to sections 272(b)(5) and 272(c)(1), a section 272 affiliate may negotiate with an affiliated BOC on an arm's length and nondiscriminatory basis to obtain transmission and switching facilities, to arrange for collocation of facilities, and to provide or to obtain services other than those expressly prohibited herein.

We agree with several commenters that joint ownership of transmission and switching facilities and the property on which they are located would permit such substantial integration of the BOCs' local operations with their interLATA activities as to preclude independent operation, in violation of section 272(b)(1). Imposing a prohibition on such joint ownership also avoids the need to allocate the costs of such transmission and switching facilities between BOC activities and the competitive activities in which a section 272 affiliate may be involved. We agree with the claims of some commenters that, because the costs of wired telephony networks and network premises are largely fixed and largely shared among local, access, and other services, sharing of switching and transmission facilities may provide a significant opportunity for improper allocation of costs between the BOC and its section 272 affiliate.

By prohibiting joint ownership of transmission and switching facilities, we also reduce the potential for a BOC to discriminate in favor of its section 272 affiliate. Consistent with this purpose, we define transmission and switching facilities broadly to include the facilities used to provide local exchange and exchange access service. The prohibition ensures that a section 272 affiliate must obtain any such facilities pursuant to section 272(b)(5), which requires all transactions between a BOC and its section 272 affiliate to be on an arm's length basis and reduced to writing. Requiring section 272 affiliates to obtain transmission and switching facilities from a BOC on an arm's length basis will increase the transparency of such transactions, thereby facilitating monitoring and enforcement of the section 272 requirements. Moreover, a section 272 affiliate and its interLATA competitors will have to follow the same procedures when obtaining services and facilities from a BOC. As described below, sections 272(c) (1) and (e) require a section 272 affiliate to obtain services and facilities on the same rates, terms, and conditions available to unaffiliated entities. Contrary to the suggestion of some commenters, those nondiscrimination safeguards would offer little protection if a BOC and its section 272 affiliate were permitted to own transmission and switching facilities jointly. To the extent that a section 272 affiliate jointly owned transmission and switching facilities with a BOC, the affiliate would not have to contract with the BOC to obtain such facilities, thereby precluding a comparison of the terms of transactions between a BOC and a section 272 affiliate with the terms of transactions between a BOC and a competitor of the section 272 affiliate. Together, the prohibition on joint ownership of facilities and the nondiscrimination requirements should ensure that competitors can obtain access to transmission and switching facilities equivalent to that which section 272 affiliates receive.

The requirement that a BOC and its section 272 affiliate not commonly own the land and buildings where their transmission and switching facilities are located, like the prohibition on joint ownership of facilities, should ensure that a section 272 affiliate and its competitors both receive the best available access to transmission and switching facilities. It does not, however, preclude a section 272 affiliate from collocating its equipment in end offices or on other property owned or controlled by its affiliated BOC. Rather, as IDCMA recognizes, the requirement should ensure that collocation agreements between a BOC and its section 272 affiliate are reached pursuant to arm's length negotiations and that the same collocation opportunities are available to similarly situated non-affiliated entities. Moreover, the ban on joint ownership of facilities should protect local exchange competitors that request physical collocation by ensuring that a BOC's section 272 affiliate does not obtain preferential access to the limited available space in the BOC's central office.

We decline to read the ''operate independently'' requirement to impose a blanket prohibition on joint ownership of property by a BOC and a section 272 affiliate. Rather, we limit the restriction to joint ownership of transmission and switching facilities and the land and buildings where those facilities are located. We conclude that the prohibition we have adopted should ensure that the section 272 affiliate's

competitors gain nondiscriminatory access to those transmission and switching facilities that both section 272 affiliates and their competitors may be unable to obtain from other sources. We find that joint ownership of other property, such as office space and equipment used for marketing or the provision of administrative services, may provide economies of scale and scope without creating the same potential for discrimination by the BOCs. Moreover, we believe that the Commission's accounting rules; the separate books, records, and accounts requirement of section 272(b); and the audit requirement of section 272(d) provide adequate protection against the potential for improper cost allocation.

We further conclude that allowing the same personnel to perform the operating, installation, and maintenance services associated with a BOC's network and the facilities that a section 272 affiliate owns or leases from a provider other than the BOC would create the opportunity for such substantial integration of operating functions as to preclude independent operation, in violation of section 272(b)(1). Regardless of whether the BOC or the section 272 affiliate were to provide such services, we agree with AT&T that allowing the same individuals to perform such core functions on the facilities of both entities would create substantial opportunities for improper cost allocation, in terms of both the personnel time spent in performing such functions and the equipment utilized. We conclude, as we did in the *BOC Separations Order,* 49 FR 1190 (January 10, 1984), that allowing the sharing of such services would require ''excessive, costly and burdensome regulatory involvement in the operation, plans and day-to-day activities of the carrier * * * to audit and monitor the accounting plans necessary for such sharing to take place.'' Accordingly, we read section 272(b)(1) to bar a section 272 affiliate from contracting with a BOC or another entity affiliated with the BOC to obtain operating, installation, and maintenance functions associated with the section 272 affiliate's facilities. As stated above, we believe that a prohibition on joint ownership of transmission and switching facilities is necessary to ensure that a BOC complies with the nondiscrimination requirements of section 272. Consistent with that approach, we further interpret the term ''operate independently'' to bar a BOC from contracting with a section 272 affiliate to obtain operating, installation, or maintenance functions associated with the BOC's facilities. Allowing a BOC to contract with the section 272 affiliate for operating, installation, and maintenance services would inevitably afford the affiliate access to the BOC's facilities that is superior to that granted to the affiliate's competitors.

We clarify that section 272(b)(1) does not preclude a BOC or a section 272 affiliate from providing telecommunications services to one another, so long as each entity performs itself, or obtains from an unaffiliated third party, the operating, installation, and maintenance functions associated with the facilities that it owns or leases from an entity unaffiliated with the BOC. In particular, if a section 272 affiliate obtains unbundled elements from a BOC, that BOC can perform the operating, installation, and maintenance functions associated with those facilities. Moreover, we recognize the need for an exception to the prohibition on shared operating, installation, and maintenance services to allow the BOC to obtain support services for sophisticated equipment purchased from the affiliate on a compensatory basis. For instance, the BOC could contract with the section 272 affiliate for the installation, maintenance, or repair of equipment, or the affiliate could train the BOC's personnel to perform such functions. We further note that the limited prohibition on shared services that we adopt is consistent with section 272(e)(4), which states that a BOC or BOC affiliate that is subject to section 251(c) ''may provide any interLATA or intraLATA facilities or services to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions.'' As we discuss below, section 272(e)(4) does not grant a BOC the authority to provide particular services to its affiliate, but rather prescribes the manner in which a BOC must provide those services that it is otherwise authorized to provide. Thus, section 272(e)(4) does not grant a BOC the authority to provide operating, installation, and maintenance services associated with the facilities that a section 272 affiliate owns or leases from a provider other than the BOC.

In imposing these requirements, we reject the contention of some commenters that Congress considered and rejected a prohibition on the joint ownership of telecommunications transmission or switching equipment or other property. Although the House bill contained such a prohibition, the Senate bill did not. The Joint Explanatory Statement indicates merely that the conference committee adopted the Senate version of this provision with several modifications and does not offer any specific explanation for the exclusion of the joint ownership restriction. In these circumstances, our obligation is to interpret the language of section 272(b)(1) in a manner consistent with its purpose, which is to ensure the operational independence of a section 272 affiliate from its affiliated BOC.

The limited prohibition on shared services that we impose rests on the ''operate independently'' requirement of section 272(b)(1), rather than the requirement of section 272(b)(3) that a BOC and its section 272 affiliate have ''separate officers, directors, and employees.'' Accordingly, we reject the statutory construction argument advanced by several BOCs, which is predicated on the text of the latter provision. Those BOCs argue that, if a rule against separate employees were sufficient to prevent the sharing of in-house services, Congress would not have prohibited a BOC from engaging in purchasing, installation, maintenance, hiring, training, and research and development for the separated affiliate, in addition to forbidding the BOC and its separated affiliate from having common officers, directors, and employees, in section 274(b).

We believe it is consistent with both the letter and purposes of section 272 to strike an appropriate balance between allowing the BOCs to achieve efficiencies within their corporate structures and protecting ratepayers against improper cost allocation and competitors against discrimination. We decline to impose additional structural separation requirements given the nondiscrimination safeguards, the biennial audit requirement, and other public disclosure requirements imposed by section 272. In combination with the accounting protections established in the *Accounting Safeguards Order,* we believe the requirements set forth herein will protect against potential anticompetitive behavior.

In particular, we decline to read the ''operate independently'' requirement to impose a prohibition on all shared services. We recognize the inherent tension between the ''operate independently'' requirement and allowing the integration of services. As we discuss further below, however, we believe the economic benefits to consumers from allowing a BOC and its section 272 affiliate to derive the economies of scale and scope inherent in the integration of some services outweigh any potential for competitive harm created thereby. Therefore, we permit the sharing of administrative and other services. For example, we read

section 272(b)(1) not to preclude a BOC and a section 272 affiliate from contracting with one another to provide marketing services.

In construing other provisions of section 272, we address the concerns of those commenters who urge us to interpret section 272(b)(1) to prohibit a BOC and a section 272 affiliate from engaging in various forms of joint research and development. As a preliminary matter, we note that the MFJ Court considered equipment design and development to be an integral part of ''manufacturing,'' as the term was used in the MFJ. We emphasize that to the extent that research and development is a part of manufacturing, it must be conducted through a section 272 affiliate, pursuant to section 272(a). To the extent that a BOC seeks to develop services for or with its section 272 affiliate, the BOC must develop services on a nondiscriminatory basis for or with other entities, pursuant to section 272(c)(1).

Finally, although a number of commenters support a *Computer II*-type prohibition on a section 272 affiliate's ability to construct, own, or operate its own local exchange facilities, we conclude that such a prohibition is not required by the language of section 272(b)(1). As several BOCs suggest, limiting a section 272 affiliate to resale would not necessarily increase the affiliate's operational independence, particularly if the affiliate had to acquire facilities from its affiliated BOC as a result of the requirement.

C. Section 272(b)(3) and Shared Services

1. Background

In the NPRM, we tentatively concluded that the section 272(b)(3) requirement that a BOC and its section 272 affiliate have ''separate officers, directors, and employees'' prohibits the sharing of in-house functions, including operating, installation, and maintenance, as well as administrative services. We noted that, pursuant to the *Computer II* proceeding, the Commission allowed AT&T and its enhanced services subsidiaries to share certain administrative services—accounting, auditing, legal services, personnel recruitment and management, finance, tax, insurance, and pension services—on a cost reimbursable basis, but required the subsidiary to have its own operating, marketing, installation, and maintenance personnel for the services and equipment it offered. We sought comment on whether section 272(b)(3) forbids the sharing of outside services or other types of personnel sharing.

In the context of our discussion of section 272(g), we sought comment on the related question of whether a section 272 affiliate must purchase marketing services from an affiliated BOC on an arm's length basis, pursuant to section 272(b)(5). Moreover, we sought comment on whether it is necessary to require a BOC and its section 272 affiliate to contract jointly with an outside marketing entity for joint marketing of interLATA and local exchange services in order to comply with section 272(b)(3). Finally, we invited parties to comment on the corporate and financial arrangements that are necessary to comply with sections 272(g)(2), 272(b)(3), and 272(b)(5).

2. Discussion

Sharing of Services. Based on the record before us, we decline to prohibit the sharing of services other than operating, installation, and maintenance services, as described above. We clarify that ''sharing of services'' means the provision of services by the BOC to its section 272 affiliate, or vice versa. In response to our tentative conclusion on this issue in the NPRM, the BOCs have argued persuasively that such a prohibition is neither required as a matter of law, nor desirable as a matter of policy. We note that section 272(b)(3) on its face is silent on the issue of shared services. We are persuaded by the arguments of the BOCs that the section 272(b)(3) requirement that a BOC and a section 272 affiliate have separate officers, directors, and employees simply dictates that the same person may not simultaneously serve as an officer, director, or employee of both a BOC and its section 272 affiliate. Thus, as MFS asserts, an individual may not be on the payroll of both a BOC and a section 272 affiliate. As discussed below, to the extent that a BOC provides services to its section 272 affiliate, it must provide them to other entities on the same rates, terms, and conditions, pursuant to section 272(c)(1).

We also decline to impose a prohibition on the sharing of services other than operating, installation, and maintenance services, on policy grounds. We find that, if we were to prohibit the sharing of services, other than those restricted pursuant to section 272(b)(1), a BOC and a section 272 affiliate would be unable to achieve the economies of scale and scope inherent in offering an array of services. We do not believe that the competitive benefits of allowing a BOC and a section 272 affiliate to achieve such efficiencies are outweighed by a BOC's potential to engage in discrimination or improper cost allocation. As we have noted, the Commission permitted the sharing of administrative services in the *Computer II Final Order,* 45 FR 31319 (May 13, 1980), on the grounds that ''[w]ith an appropriate accounting system, whatever administrative efficiencies may exist are preserved.'' We reject the arguments of some parties that, because of changes in the telecommunications marketplace and the language of the 1996 Act, a different outcome is warranted in this case.

We recognize that allowing the sharing of in-house services will require a BOC to allocate the costs of such services between the operating company and its section 272 affiliate and provide opportunities for improper cost allocation, exchanges of information, and discriminatory treatment that may not be revealed in a subsequent audit. Indeed, in the *Computer II* proceeding, the Commission indicated that a major reason for prohibiting the sharing of particular services, such as marketing services, was its desire to eliminate ''the inherent difficulties in allocating joint and common costs.'' For these reasons, we conclude that a BOC and a section 272 affiliate may share in-house services with each other only to the extent that such sharing is consistent with sections 272(b)(1), 272(b)(5), and 272(c)(1) of the Act.

Consistent with section 272(b)(1), a BOC and its section 272 affiliate may not share operating, installation, and maintenance services, as discussed above. In addition, as we conclude in the *Accounting Safeguards Order,* an agreement to provide in-house services by a BOC to its section 272 affiliate (or vice versa) constitutes a transaction between that BOC and its section 272 affiliate, so that the requirements of section 272(b)(5) govern. Accordingly, such transactions must be conducted on an arm's length basis, reduced to writing, and made available for public inspection. Moreover, such transactions must be consistent with the affiliate transaction rules, as modified in the *Accounting Safeguards Order.* In addition, the section 272 requirements that a BOC and its section 272 affiliate maintain separate books, records, and accounts, and be subject to an audit every two years should strengthen the ability of competitors and regulators to detect any inequities in cost allocation for shared services. We agree with commenters who contend that, in any event, federal price cap regulation reduces a BOC's incentives to allocate costs improperly. Finally, section 272(c)(1) ensures that to the extent that

a BOC provides services to its section 272 affiliate, it must make them available to the affiliate's competitors on the same rates, terms, and conditions.

We further conclude that section 272(b)(3) does not preclude the parent company of the BOC and the section 272 affiliate from performing functions for both the BOC and the section 272 affiliate, subject to the requirements of section 272(b)(1). Similarly, an affiliate of the BOC, such as a services affiliate, could provide services to both a BOC and a section 272 affiliate. We are not persuaded by claims that the sharing of services provided to a BOC and its section 272 affiliate by a parent company or another BOC affiliate would allow the BOC and the section 272 affiliate to achieve an unacceptable level of integration. Instead, we agree with the view that the section 272(b)(3) separate employees requirement extends only to the relationship between a BOC and its section 272 affiliate. To the extent that the BOC contracts with an unregulated affiliate, it is subject to the affiliate transaction rules. Moreover, a parent company or a BOC affiliate that performs services for both a BOC and its section 272 affiliate must fully document and properly apportion the costs incurred in furnishing such services.

Consistent with our conclusions, we decline to read section 272(b)(3) to preclude the sharing of marketing services. Given that section 272(g) expressly contemplates that the each entity may market or sell the services of the other, we conclude that a BOC and its section 272 affiliate may provide marketing services for each other. We agree with those commenters that assert that the entities must provide such services pursuant to arm's length transactions, consistent with the requirements of section 272(b)(5). Moreover, the parent of a BOC and its section 272 affiliate or another BOC affiliate may perform marketing functions for both entities.

Services Provided by an Outside Entity. We further conclude that section 272(b)(3) does not prohibit a BOC and its section 272 affiliate from obtaining services from the same outside supplier. Indeed, we find no statutory support for limiting permissible outsourcing, as proposed by MCI or Time Warner.

Nor do we construe section 272(b)(3), when read in light of section 272(b)(1), to require a BOC and a section 272 affiliate to contract with outside entities to perform their joint marketing services. We agree with the Citizens for a Sound Economy Foundation that such a requirement would reduce the BOCs' ability to serve consumers without providing additional protection against anticompetitive behavior. Each entity, however, must pay its full share of any outsourced services that it receives.

Other activities. We reject AT&T's request that we interpret section 272(b)(3) to prohibit compensation schemes that base the level of remuneration of BOC officers, directors, and employees on the performance of the section 272 affiliate, or vice versa. We conclude that tying the compensation of an employee of a section 272 affiliate to the performance of a Regional Holding Company and all of its enterprises as a whole, including the performance of the BOC, does not make that individual an employee of the BOC. Similarly, tying the compensation of a BOC employee to the performance of a Regional Holding Company and all of its enterprises as a whole, including the performance of the section 272 affiliate, does not make that individual an employee of the section 272 affiliate.

E. Section 272(b)(4)

1. Background

Section 272(b)(4) states that a section 272 affiliate ''may not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the [BOC].'' In the NPRM, we tentatively concluded ''that a BOC may not co-sign a contract or any other instrument with a separate affiliate that would allow the affiliate to obtain credit in a manner that violates'' this section. We sought comment on what other types of activities section 272(b)(4) prohibits, whether the Commission should establish specific requirements regarding those activities, and the relative costs and benefits of such regulation.

2. Discussion

As we stated in the NPRM, the intent of this provision is to protect ratepayers from shouldering the cost of a default by a section 272 affiliate. We adopt our tentative conclusion that section 272(b)(4) prohibits a BOC from co-signing a contract or any other instrument with a section 272 affiliate that would allow the affiliate to obtain credit in a manner that grants the creditor recourse to the BOC's assets in the event of default by the section 272 affiliate. Moreover, because the provision precludes the section 272 affiliate from obtaining credit under ''any arrangement that would permit a creditor, upon default, to have recourse to the assets of the [BOC],'' we find that section 272(b)(4) likewise prohibits the parent of a BOC or any non-272 affiliate from co-signing a contract or any other arrangement with the BOC's section 272 affiliate that would allow the creditor to obtain such recourse to the BOC's assets in the event of default by the section 272 affiliate. Indeed, we conclude that section 272(b)(4) prohibits a section 272 affiliate from entering into any arrangement to obtain credit that permits the lender recourse to the BOC in the event of default.

While preventing the affiliate from jeopardizing ratepayer assets, we conclude that section 272(b)(4) does not forbid a section 272 affiliate from using assets other than its own as collateral when seeking credit. To impose such a restriction where, as here, it is not needed to protect ratepayer assets, would force section 272 affiliates to operate inefficiently, to the detriment of consumers and competition. In particular, we agree with MCI and Sprint that a BOC's parent could secure credit, whether through the issuance of bonds or otherwise, for the benefit of the section 272 affiliate, provided that BOC assets are not at risk.

F. Section 272(b)(5)

1. Background

Section 272(b)(5) states that an affiliate ''shall conduct all transactions with the [BOC] of which it is an affiliate on an arm's length basis with any such transactions reduced to writing and available for public inspection.'' In the NPRM, we sought comment on whether this provision necessitates the adoption of any non-accounting safeguards.

2. Discussion

We conclude that we need not adopt additional non-accounting safeguards to implement section 272(b)(5). In the *Accounting Safeguards Order*, we address the definition of ''transactions'' and consider the provision's requirement that all transactions be ''reduced to writing and available for public inspection.'' Moreover, in our discussion of sections 272(b)(1) and (b)(3), we make clear that ''transactions'' include the provision of services and transmission and switching facilities by the BOC and its affiliate to one another. We reject CompTel's proposal to adopt additional requirements, which are addressed generally in other parts of this Order and the companion *Accounting Safeguards Order.*

V. Nondiscrimination Safeguards

As we observed in the NPRM, after a BOC enters a competitive market, such as long distance, it may have an incentive to use its control of local exchange facilities to discriminate against its affiliate's rivals. Section

272(c) of the Act responds to these competitive concerns by establishing nondiscrimination safeguards that apply to the BOCs' provision of manufacturing, interLATA telecommunications, and interLATA information services. We address the requirements of this section below.

A. Relationship of Section 272(c)(1) and Pre-existing Nondiscrimination Requirements

1. Background

Section 272(c)(1) states that ''[i]n its dealings with its affiliate described in subsection (a), a [BOC] (1) may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards.'' In the NPRM, we sought comment on the relationship between the nondiscrimination obligations imposed by sections 272(c)(1) and the Commission's pre-existing nondiscrimination obligations in sections 201 and 202. In particular, we sought comment on whether the flat prohibition against discrimination in section 272(c)(1) imposes a stricter standard for compliance than the ''unjust and unreasonable'' standard in section 202.

2. Discussion

We find that section 272(c)(1) establishes an unqualified prohibition against discrimination by a BOC in its dealings with its section 272 affiliate and unaffiliated entities. Section 202(a), by contrast, prohibits ''any unjust or unreasonable discrimination * * *, or * * * any undue or unreasonable preference or advantage.'' Because the text of the section 272(c)(1) nondiscrimination bar differs from the section 202(a) prohibition, we conclude that Congress did not intend section 272's prohibition against discrimination in the 1996 Act to be synonymous with the ''unjust and unreasonable'' discrimination language used in the 1934 Act, but rather, intended a more stringent standard. We therefore reject the arguments of those who argue that the section 272(c)(1) standard is not materially different from the standard in section 202.

B. Meaning of Discrimination in Section 272(c)(1)

1. Background

We tentatively concluded in the NPRM that the prohibition against discrimination in section 272(c)(1) means, at a minimum, that BOCs must treat all other entities in the same manner as they treat their section 272 affiliates, and must provide and procure goods, services, facilities, and information to and from these other entities under the same terms, conditions, and rates. We noted, however, that a requesting entity may have equipment with different technical specifications than the equipment of the BOC section 272 affiliate. We sought comment, therefore, on whether the terms of section 272(c)(1) could be construed to require a BOC to provide a requesting entity with a quality of service or ''functional outcome'' identical to that provided to its affiliate even if this would require the BOC to provide goods, facilities, services, or information to a requesting entity that are different from those provided to the affiliate.

2. Discussion

We affirm our tentative conclusion that BOCs must treat all other entities in the same manner as they treat their section 272 affiliates. We conclude therefore that, pursuant to section 272(c)(1), a BOC must provide to unaffiliated entities the same goods, services, facilities, and information that it provides to its section 272 affiliate at the same rates, terms, and conditions. We decline, as some commenters suggest, to interpret section 272(c)(1) more broadly to conclude that a BOC must provide unaffiliated entities different goods, services, facilities, and information than it provides to its section 272 affiliate in order to ensure that it is providing the same quality of service or functional outcome to both its affiliate and unaffiliated entities. To do so would, in effect, be interpreting this section the same way we interpreted section 251(c)(2) in the *First Interconnection Order,* 61 FR 45476 (August 29, 1996). We believe that to interpret the nondiscrimination requirement of section 272(c)(1) in this manner would be inappropriate as a matter of statutory construction, inconsistent with its legislative purpose, and unenforceable.

As a matter of statutory construction, we find that the nondiscrimination provision of section 272(c)(1), by its terms, is much narrower in scope than the requirement in section 251(c)(2). Section 251(c)(2) imposes on incumbent LECs ''the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network * * * that is at least equal in quality to that provided by the [LEC] to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection.'' In the *First Interconnection Order,* we interpreted the term ''equal in quality'' as requiring an incumbent LEC to provide interconnection to its network at a level of quality that is at least indistinguishable from that which the incumbent LEC provides itself. Further, we found that, to the extent a carrier requests interconnection that is of a superior or lesser quality than the incumbent LEC currently provides, the incumbent LEC is obligated to provide the requested interconnection to the extent technically feasible.

The language of section 272(c)(1), in contrast, contains no such ''equal in quality'' requirement; it simply requires that unaffiliated entities receive the same treatment as the BOC gives to its section 272 affiliate. Unlike section 251, therefore, section 272(c) is not a vehicle by which requesting entities can require a BOC to provide goods, facilities, services, or information that are different from those that the BOC provides to itself or to its affiliates. Nor is it, as some commenters suggest, designed to prevent a BOC from discriminating between unaffiliated competitors.

Our reading of the statutory language of sections 251 and 272 is consistent with the differing underlying purposes of those provisions. The section 251 requirements are designed to ensure that incumbent LECs do not discriminate in opening their bottleneck facilities to competitors. As we stated in the *First Interconnection Order,* ''[u]nder section 251, incumbent [LECs], including [BOCs], are mandated to take several steps to open their network to competition, including providing interconnection, offering access to unbundled elements to their networks, and making their retail services available at wholesale rates so that they can be resold.'' In implementing section 251, therefore, we adopted rules to open one of the last monopoly bottleneck strongholds in telecommunications—the local exchange and exchange access market.

In adopting rules in this proceeding, however, our goal is to ensure that BOCs do not use their control over local exchange bottlenecks to undermine competition in the new markets they are entering—interLATA services and manufacturing. The section 272 safeguards, among other things, are intended to protect competition in these markets from the BOCs' ability to use their existing market power in local exchange services to obtain an anticompetitive advantage. We find that when viewed in this context, the section 272(c)(1) nondiscrimination provision is designed to provide the BOC an

incentive to provide efficient service to rivals of its section 272 affiliate, by requiring that potential competitors do not receive less favorable prices or terms, or less advantageous services from the BOC than its separate affiliate receives.

We find that interpreting section 272 to require ''functional equality'' between a BOC section 272 affiliate and any unaffiliated entity would not only be impractical, but unenforceable. The ''functional equality'' standard would require a BOC to provide additional services or functions to other entities that it does not provide to its own affiliate. Because section 272, unlike section 251, contains no requirement that a BOC must provide goods, services, facilities, and information to the extent ''technically feasible,'' it would be extremely difficult, as a practical matter, to limit the types of goods, services, and facilities that a BOC would be obligated to provide to requesting entities. Further, the terms ''functional outcome'' or ''functional equality'' are likely to mean different things to different entities. Because the meaning of these terms is likely to depend on the particular characteristics of each requesting entity, the Commission would be required to apply this standard to a myriad of factual circumstances on a case-by-case basis. As one commenter observes, ensuring this type of equality would be impossible to do, as well as impossible to enforce.

We reject the argument that, because our interpretation of section 272(c)(1) effectively limits competitors to those options that the BOC affiliate finds ''useful,'' a BOC will be able to design network interfaces that work optimally only with its section 272 affiliate's specifications and not with the specifications of other entities. Section 272(c)(1) prohibits a BOC from discriminating in the establishment of standards. As we conclude below, a BOC's adoption of a network interface that favors its section 272 affiliate and disadvantages an unaffiliated entity will establish a *prima facie* case of discrimination under section 272(c)(1). Further, section 272(c)(1) prohibits a BOC from discriminating in the provision of facilities or information, and section 251(c)(5) imposes upon BOCs certain network disclosure requirements. As mentioned above, section 251(c)(5) requires incumbent LECs to provide reasonable public notice of network changes affecting competing service providers' performance or ability to provide telecommunications services, as well as changes that would affect the incumbent LEC's interoperability with other service providers. In the *Second Interconnection Order,* 61 FR 47284 (September 6, 1996), we interpreted this provision to require incumbent LECs to disclose changes subject to this requirement at the ''make/buy'' point. In light of the requirements of sections 272(c)(1) and 251(c)(5), we decline at this time to impose additional obligations on the BOCs to ensure that they structure their own networks to achieve the same level of interoperability that the section 272 affiliate receives from the BOC.

We also decline to adopt MCI's suggested presumption that the specifications requested by an unaffiliated entity are the appropriate ones for a truly separate and independent affiliate and that any different specifications needed by the BOC's section 272 affiliate reflect a lack of proper physical and operational separation from the BOC. We recognize that there may be circumstances, such as the adoption of a new and innovative technology by the BOC section 272 affiliate, where differences in technical specifications between a section 272 affiliate and an unaffiliated entity do not evidence a lack of structural separation between the BOC and its section 272 affiliate.

As discussed below, we conclude that the protection of section 272(c)(1) extends to any good, service, facility, or information that a BOC provides to its section 272 affiliate. We therefore agree with AT&T that to the extent a BOC develops new services for or with its section 272 affiliate, it must develop new services for or with unaffiliated entities in the same manner. That is, we find that the development of new services, including the development of new transmission offerings, is the provision of service under section 272(c)(1) that, once provided by the BOC to its section 272 affiliate, must be provided to unaffiliated entities in a nondiscriminatory manner. In the NPRM, we recognized the potential for competitive harm in a situation in which a BOC failed to cooperate with an interLATA carrier that is introducing an innovative new service until the BOC's section 272 affiliate is ready to initiate the same service. Similarly, AT&T asserts that the section 272(c)(1) nondiscrimination requirement should be interpreted to prevent BOCs from denying a competitor's request for a new or more cost effective access arrangement on the ground that all entities, including its section 272 affiliate, are receiving the same access service at the same price. We find that the BOC, under section 272(c)(1), is obligated to work with competitors to develop new services if it cooperates in such a manner with its section 272 affiliate.

We agree with AT&T therefore that if, as we outlined in our NPRM, a BOC purposely delayed the implementation of an innovative new service by denying a competitor's reasonable request for interstate exchange access until the BOC section 272 affiliate was ready to provide competing service, such conduct may constitute unlawful discrimination under the Act. Moreover, as we observed in the NPRM, although the 1996 Act imposes specific nondiscrimination obligations on the BOCs and their section 272 affiliates, the Communications Act imposed certain pre-existing nondiscrimination requirements on common carriers providing interstate communications service. Among them, section 201 provides that all common carriers have a duty ''to establish physical connections with other carriers,'' and to furnish telecommunications services ''upon reasonable request therefor.'' We conclude, therefore, that if a BOC were to engage in strategic behavior to benefit its section 272 affiliate, in the manner suggested by AT&T, such action may not only violate section 272(c)(1), but would also violate sections 201(a) of the Act.

Finally, we conclude that a complainant will be found to have established a *prima facie* case of unlawful discrimination under section 272(c)(1) if it can demonstrate that a BOC has not provided unaffiliated entities the same goods, services, facilities, and information that it provides to its section 272 affiliate at the same rates, terms, and conditions. To rebut the complainant's case, the BOC may demonstrate, among other things, that rate differentials between the section 272 affiliate and unaffiliated entity reflect differences in cost or that the unaffiliated entity expressly requested superior or less favorable treatment in exchange for paying a higher or lower price to the BOC. We recognize, as Sprint and Time Warner suggest, there will be some instances where the costs of providing certain goods, services, or facilities to its affiliate and to an unaffiliated entity differ. As we stated in the *First Interconnection Order,* where costs differ, rate differences that accurately reflect those differences are not unlawfully discriminatory. Strict application of the section 272(c)(1) prohibition on discrimination would itself be discriminatory if the costs of supplying customers are different. Similarly, we also conclude, as we did

in the *First Interconnection Order,* that ''price differences, such as volume and term discounts, when based upon legitimate variations in costs, are permissible under the 1996 Act when justified.''

C. Definition of ''Goods, Services, Facilities and Information'' in Section 272(c)(1)

1. Background

In the NPRM we sought comment on the interplay among the definitions of the terms ''services,'' ''facilities,'' and ''information'' in various subsections of 272, and between section 272 and section 251(c). We also sought comment on what regulations, if any, are necessary to clarify the types or categories of services, facilities, or information that must be made available under section 272(c)(1). We asked parties to comment on whether further defining the terms ''goods,'' ''services,'' ''facilities,'' and ''information'' would enable competing providers to detect violations of this section by enabling them to compare more accurately a BOC's treatment of its affiliate with a BOC's treatment of unaffiliated competing providers.

2. Discussion

We conclude that any attempt to define exhaustively the terms ''goods, services, facilities, and information'' in section 272(c)(1) may unnecessarily limit the scope of this section's otherwise unqualified nondiscrimination requirement. At the same time, however, we disagree with ITAA that the Commission should refrain from attempting to clarify the meaning of these terms. We find instead that clarifying the types of activities these terms encompass will provide useful guidance to potential competitors that seek to avail themselves of the protections of section 272(c)(1). In enforcing the nondiscrimination requirement of section 272(c)(1), we intend to construe these terms broadly to prevent BOCs from discriminating unlawfully in favor of their section 272 affiliates.

We find that neither the terms of section 272(c)(1), nor the legislative history of this provision, indicates that the terms ''goods, services, facilities, and information'' should be limited in the manner suggested by some commenters. We therefore decline to interpret the terms in section 272(c)(1) as including only telecommunications-related or, even more specifically, common carrier-related ''goods, services, facilities, and information.'' Similarly, we reject arguments set forth by NYNEX, PacTel, and U S West that the term ''services'' should exclude administrative and support services. Although NYNEX contends that, as a practical matter, unaffiliated entities are unlikely to avail themselves of such services, we find that there are certain administrative services, such as billing and collection services, that unaffiliated entities may find useful. Further, as discussed above, we construe the term ''services'' to encompass any service the BOC provides to its section 272 affiliate, including the development of new service offerings.

We conclude therefore that the protection of section 272(c)(1) extends to any good, service, facility, or information that a BOC provides to its section 272 affiliate. For example, we find that if a BOC were to decide to transfer ownership of a unique facility, such as its Official Services network, to its section 272 affiliate, it must ensure that the transfer takes place in an open and nondiscriminatory manner. That is, pursuant to the nondiscrimination requirement of section 272(c)(1), the BOC must ensure that the section 272 affiliate and unaffiliated entities have an equal opportunity to obtain ownership of this facility.

We also conclude that the terms ''services,'' ''facilities,'' and ''information'' in section 272 should be interpreted to include, among other things, the meaning of these terms under section 251(c). The term ''facilities,'' therefore, includes but is not limited to the seven unbundled network elements described in the *First Interconnection Order.* We decline to limit the scope of these terms to their meaning in section 251 because section 272 encompasses a broader range of activities than does section 251. We also emphasize that in contrast to section 251, where an incumbent LEC is prohibited from discriminating against any requesting telecommunications carrier, section 272(c)(1) prohibits BOCs from discriminating against ''any other entity.'' Because section 272 does not define the term ''entity,'' we interpret this unqualified term broadly to ensure that all competitors may benefit from the protections of section 272(c)(1). Thus, we agree with Sprint that this term should include the definition of the term ''entity'' as set forth in the electronic publishing section of the Act; however, we also find it appropriate to include within the meaning of ''entity'' the providers of the activities encompassed by section 272. We conclude, therefore, that the term ''entity'' includes telecommunications carriers, ISPs, and manufacturers.

We disagree with ATSI and CIX, however, that by interpreting ''any other entity'' to include information service providers and by concluding that the term ''facilities'' in section 272(c)(1) encompasses the meaning of that term as it is used in section 251(c), ISPs acquire the right to obtain unbundled access to the local loop and other network elements whenever BOCs provide their section 272 affiliates with such access. Pursuant to section 251(c)(3), only telecommunications carriers providing a telecommunications service are entitled to obtain access to unbundled network elements. Because ISPs may only obtain access to unbundled elements pursuant to section 251 to the extent they are providing telecommunications services, we conclude that they may not attempt to circumvent the limitations of section 251 by virtue of their rights under section 272(c)(1). This conclusion is consistent with our finding in the *Second Interconnection Order* that the inclusion of information services in the definition of ''services'' under section 251(c)(5) ''does not vest information service providers with substantive rights under other provisions of section 251, except to the extent that they are also operating as telecommunications carriers.'' To the extent, however, that a BOC chooses voluntarily to provide facilities, including network elements, to a section 272 affiliate that is solely providing information services (and thus does not qualify as a telecommunications carrier under section 251), we conclude that a BOC must, pursuant to section 272(c)(1), provide such facilities to other requesting ISPs.

We therefore agree with MFS that, if a BOC chooses to allow its information service affiliate to collocate routers, servers, or other equipment, section 272(c)(1) requires that the same accommodations be extended, on a nondiscriminatory basis, to competing ISPs. Collocation is a means of achieving interconnection and access to unbundled network elements that incumbent LECs, including BOCs, must provide to requesting carriers under section 251. Although section 251 does not require incumbent LECs to permit entities other than telecommunications carriers to collocate equipment on an incumbent LEC's premises, sections 251 and 272 do not prohibit BOCs from voluntarily allowing ISPs to collocate equipment on their premises. Thus, we find that, if a BOC permits its section 272 affiliate to collocate facilities used to provide information services, the BOC must permit collocation, under

section 272(c)(1), by similarly situated entities. If the BOC's section 272 affiliate qualifies as a ''telecommunications carrier,'' the BOC need only permit other telecommunications carriers to collocate their equipment. If, however, the BOC's section 272 affiliate only provides information services, the BOC must permit similarly situated ISPs to collocate equipment at the BOCs premises, even if such entities do not qualify as telecommunications carriers.

As Sprint points out, the term ''information'' in section 272(c)(1) is not limited as it is in section 272(e)(2) to information ''concerning [the BOC's] provision of exchange access.'' In fact, as noted above, we find no limitation in the statutory language on the type of information that is subject to the section 272(c)(1) nondiscrimination requirement. For this reason, we reject U S West's assertion that section 272(c)(1) only governs that information which may give a separate affiliate an ''unfair advantage.'' We conclude, however, that the term ''information'' includes, but is not limited to, CPNI and network disclosure information. We therefore reject arguments made by some BOCs that the nondiscrimination provision of section 272(c)(1) does not govern the BOCs use of CPNI. With respect to CPNI, we conclude that BOCs must comply with the requirements of both sections 222 and 272(c)(1). We decline to address parties' arguments raised in this proceeding regarding the interplay between section 272(c)(1) and section 222 to avoid prejudging CPNI issues that will be addressed in a separate proceeding.

D. Establishment of Standards

1. Background

Section 272(c)(1) prohibits a BOC from discriminating between its section 272 affiliate and other entities in the ''establishment of standards.'' In the NPRM we sought comment on what ''standards'' are encompassed by this provision. We observed that a BOC may act anticompetitively by creating standards that require or favor equipment designs that are proprietary to its section 272 affiliate. We sought comment on what procedures, if any, we should implement to ensure that a BOC does not discriminate between its affiliate and other entities in setting standards. We asked parties to comment, for example, on whether BOCs should be required to participate in standard-setting bodies in the development of standards covered by section 272(c)(1).

2. Discussion

We conclude that the term ''standards'' in section 272(c)(1) includes the meaning of this term as it is used in section 273. In the *Manufacturing NPRM*, we sought comment on how the term ''standards'' should be defined ''for purposes of implementation of the 1996 Act to ensure that standards processes are open and accessible to the public.'' We note, however, that unlike the use of the term ''standards'' in sections 273(d)(4) and 273(d)(5), the term ''standards'' in section 272(c)(1) is not limited by the term ''industry-wide.'' We conclude, therefore, that section 272(c)(1) prohibits discrimination in the establishment of *any* standard, not only those that are ''industry-wide.''

As we observed in the *Manufacturing NPRM*, the process by which standards are established may present opportunities for anticompetitive behavior by the BOCs. We decline, however, to implement additional procedures, beyond those outlined in section 273, to ensure that BOCs do not discriminate between their section 272 affiliates and other entities in establishing industry-wide standards. Rather, we agree with Bellcore and PacTel that the procedures for the establishment of industry-wide standards and generic requirements for telecommunications equipment and CPE appear at this time to be adequately addressed by the requirements contained in section 273(d)(4). For example, in response to MCI, we note that section 273(d)(4) already provides for an open standards-setting process whereby all interested parties have the opportunity to fund and participate in the development of industry-wide standards or generic requirements on a ''reasonable and nondiscriminatory basis.'' We find no basis in the record for concluding that the requirements established by section 273, and any regulations adopted thereunder, will not be sufficient to deter discrimination in the establishment of industry-wide standards.

Although we decline at this time to establish additional procedures beyond those required in section 273(d)(4), we recognize that there is a distinct potential competitive danger that a BOC will use standards in its own and its section 272 affiliate's network that are not ''industry-wide'' (that is, not employed by ''at least 30 percent of all access lines'') or established by an accredited standards development organization, but rather specifically tailored to meet its own needs or those of its section 272 affiliate. Because such standards may not be developed in an open and nondiscriminatory process, such as the one required for the establishment of industry-wide standards in section 273(d)(4), we find that those standards may place unaffiliated entities at a competitive disadvantage. For example, if a BOC adopts a particular non-accredited or non-industry-wide protocol or network interface, it may, by virtue of its substantial size and market share, effectively force competing entities to alter their specifications in order to maintain the same level of interoperability with the BOC or the BOC affiliate. We conclude, therefore, that the adoption of *any* standard that has the effect of favoring the BOC's section 272 affiliate and disadvantaging an unaffiliated entity will establish a *prima facie* violation of section 272(c)(1).

We also conclude, on the basis of the record before us, that it is not necessary as a matter of law, nor desirable as a matter of policy, to require BOC participation in the standards-setting process. The language of section 272(c)(1) cannot be read as requiring such participation; moreover, BOCs have an interest in participating voluntarily in standard-setting organizations because standards that are ultimately adopted may materially impact the BOCs' competitive position. Further, we decline to become involved at this time in the standard-setting process, as suggested by AT&T, in order to accomplish the purposes of section 272(c)(1). Unlike section 256, which, among other things, permits the Commission to participate in the development of public telecommunications network interconnectivity standards that promote access, section 272(c)(1) does not contemplate Commission involvement. Moreover, we reject MCI's proposal that we insert ourselves into the dispute resolution process to accomplish the purposes of section 272(c)(1). Section 273(d)(5) requires the Commission to prescribe a dispute resolution process to address the anticompetitive harms that may result from the establishment of industry-wide standards under section 273(d)(4) and expressly prohibits the Commission from becoming a party to this process. As to disputes that may arise in the context of other public standard-setting processes, we find, on the basis of the record before us, that Commission involvement beyond its existing role in the section 208 complaint process is unnecessary.

E. Procurement Procedures

1. Background

Section 272(c)(1) also prohibits the BOCs from discriminating between their section 272 affiliates and other entities in their procurement of goods, services, facilities, and information. In the NPRM, we observed that this provision prohibits a BOC from purchasing manufactured network equipment solely from its affiliate, purchasing the equipment from the affiliate at inflated prices, or giving any preference to the affiliate's equipment in the procurement process and thereby excluding rivals from the market in the BOC's service area. We sought comment on how the BOCs could establish nondiscriminatory procurement procedures designed to ensure that other entities are treated on the same terms and conditions as a BOC affiliate. We invited comment, specifically, on the nature and extent of rules necessary to ensure that such procedures are implemented.

2. Discussion

As stated above, we find that section 272(c)(1) establishes an unqualified prohibition against discrimination by a BOC in its dealings with its section 272 affiliate and unaffiliated entities. We conclude, therefore, that any discrimination with respect to a BOC's procurement of goods, services, facilities, or information between its section 272 affiliate and an unaffiliated entity establishes a *prima facie* case of discrimination under section 272(c)(1). For example, consistent with our observations in the NPRM, we find that a *prima facie* case of discrimination under section 272(c)(1) may be established if a BOC purchases manufactured network equipment solely from its section 272 affiliate, purchases such equipment from its affiliate at inflated prices, or gives any preference to the affiliate's equipment in the procurement process, thereby excluding rivals from the market in the BOC's service area.

Insofar as section 272(c)(1) governs a BOC's procurement of manufacturing services, we find that BOC procurement of telecommunications equipment should be performed in a manner consistent with the manufacturing requirements of section 273. We conclude, therefore, that section 272(c)(1) requires a BOC to adhere to the nondiscrimination and procurement standards governing the procurement of telecommunications equipment set forth in sections 273(e)(1) and 273(e)(2) of the Act. We therefore defer consideration of detailed procurement procedures with respect to telecommunications equipment to the *Manufacturing NPRM*, which specifically addresses the requirements of these sections. We conclude, however, that the BOCs must, at a minimum, comply with any and all regulations adopted to implement the standards of sections 273(e)(1) and 273(e)(2); failure to do so may be evidence of discrimination under section 272(c)(1).

We recognize, however, that the nondiscrimination requirement of section 272(c)(1) encompasses a broader range of activities than those described in sections 273(e)(1) and 273(e)(2). Nevertheless, because the record is largely silent on the nature and extent of rules necessary to ensure that BOCs do not discriminate in their procurement of goods, services, facilities, and information under section 272(c)(1), we decline, at this time, to adopt rules to implement this requirement. In response to TIA's concerns, therefore, we conclude that the record in this proceeding does not support adoption of any concrete procurement procedures beyond those already mandated by sections 273(e)(1) and 273(e)(2). Although we decline to issue rules, we caution BOCs that allegations of discrimination in their procurement of goods, services, facilities, and information under section 272(c)(1) will be evaluated in light of that section's unqualified prohibition on discrimination. Further, we note that allegations of discrimination may more easily be rebutted by demonstrated compliance with pre-existing, publicly available procedures for procurement.

F. Enforcement of Section 272(c)(1)

In the NPRM, we observed that the Commission previously adopted a regulatory scheme to ensure that the BOCs do not discriminate in the provision of basic services used to provide enhanced services or in disclosing changes in the network that are relevant for the competitive manufacture of CPE. We sought comment on whether any of the reporting and other requirements that the Commission applied to the BOCs in the *Computer III* and *ONA* proceedings, which were adopted in lieu of the structural separation requirements of *Computer II*, are sufficient to implement section 272(c)(1) and provide protection against the type of BOC behavior that section 272(c)(1) seeks to curtail. We address this issue, as well as the requirements and mechanisms necessary to facilitate the detection and adjudications of section 272 violations, below in part IX.

VI. Fulfillment of Certain Requests Pursuant to Section 272(e)

A. Section 272(e)(1)

1. Background

Section 272(e)(1) states that a BOC and a BOC affiliate subject to section 251(c) ''shall fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates.'' In the NPRM, we tentatively concluded that the term ''unaffiliated entity'' includes ''any entity, regardless of line of business, that is not affiliated with a BOC'' as defined under section 153(1) of the Act. We sought comment on the scope of the term ''requests'' and on whether it included, *inter alia*, ''initial installation requests, as well as any subsequent requests for improvement, upgrades or modifications of service, or repair and maintenance of * * * services.'' We tentatively concluded that section 272(e)(1) requires the BOCs to treat unaffiliated entities on a nondiscriminatory basis in completing orders for telephone exchange service and exchange access, but does not grant unaffiliated entities any additional rights beyond those otherwise granted by the Communications Act or Commission rules. We also sought comment regarding how to implement section 272(e)(1) and specifically inquired whether reporting requirements for service intervals analogous to those imposed by *Computer III* and *ONA* would be sufficient.

2. Discussion

Based on our analysis of the record, we adopt our tentative conclusion that the term ''unaffiliated entity'' includes ''any entity, regardless of line of business, that is not affiliated with a BOC'' as defined under section 153(1) of the Act. Also based on the record, we conclude that section 272(e)(1) requires the BOCs to treat unaffiliated entities on a nondiscriminatory basis in completing orders for telephone exchange service and exchange access, but does not grant unaffiliated entities any additional rights to make requests beyond those granted by the Communications Act or Commission rules. We conclude that the term ''requests'' should be interpreted broadly, and that it includes, but is not limited to, initial installation requests, subsequent requests for improvement, upgrades or modifications of service, or

repair and maintenance of these services.

Section 272(e)(1) unambiguously states that a BOC must fulfill requests from unaffiliated entities at least as quickly as it fulfills its own or its affiliates' requests. To implement this statutory directive, we conclude that, for equivalent requests, the response time a BOC provides to unaffiliated entities should be no greater than the response time it provides to itself or its affiliates. We are not persuaded by the BOC's argument that variations among individual requests make any comparison between requests meaningless, and thus make such a standard unachievable. The BOC must fulfill equivalent requests within equivalent intervals. Thus, for example, an unaffiliated entity's request of a certain size, level of complexity, or in a specific geographic location must be fulfilled within a period of time that is no longer than the period of time in which a BOC responds to an equivalent request from itself or its affiliates. Because we anticipate that the facts relating to each request will vary, we believe it is appropriate to determine whether requests are equivalent on a case-by-case basis.

Section 272(e)(1) requires a BOC to fulfill the requests of unaffiliated entities within a period no longer than the period in which it fulfills its own or its affiliates requests. Because the statute does not mandate that a BOC follow a particular procedure in meeting this requirement, we decline to adopt the proposals of AT&T and Teleport to require the BOCs to use electronic order processing systems or to use the identical systems that the BOCs use to process their own service requests. We emphasize, however, regardless of the procedures that a BOC employs to process service orders from unaffiliated entities, it must be able to demonstrate that those procedures meet the statutory standard. Under current industry practice, BOCs and interexchange carriers use electronic mechanisms to implement PIC changes; exchange billing information; and, in some instances, provide ordering, repair, and trouble administration information. We believe that these current mechanisms, and the requirement that incumbent LECs provide nondiscriminatory access to operation support systems functions pursuant to sections 251(c)(3) and 251(c)(4) of the Act, will promote the use of electronic interfaces between unaffiliated entities and the BOCs.

We also conclude that the BOCs must make available to unaffiliated entities information regarding the service intervals in which the BOCs provide service to themselves or their affiliates. The statute imposes a specific performance standard on the BOCs in section 272(e)(1), and we conclude that, absent Commission action, the information necessary to detect violations of this requirement will be unavailable to unaffiliated entities. Unlike the information necessary to ensure compliance with other subsections of section 272, there is no requirement that the information necessary to verify compliance with section 272(e)(1) must be disclosed under other provisions of the Act or Commission rules. Without the disclosure requirements imposed here, parties will be unable readily to ascertain how long it takes a BOC to fulfill its own or its affiliates' requests for service. Section 272(b)(5), which requires that all transactions between a BOC and its section 272 affiliate be reduced to writing and made available for public inspection, does not provide parties an adequate mechanism to obtain information necessary to evaluate compliance with section 272(e)(1) because section 272(b)(5) is necessarily prospective in nature. The information disclosed pursuant to section 272(b)(5) will allow unaffiliated entities to determine that a BOC and its section 272 affiliate have reached an agreement and the relevant terms and conditions of that agreement, but the document produced to satisfy section 272(b)(5) will not allow parties to determine the time it actually takes for a BOC to fulfill its own or its affiliates' requests. Section 272(e)(1) governs actual BOC performance, not contractual arrangements. Moreover, section 272(b)(5) by itself is insufficient to implement section 272(e)(1) because it will only make information available about transactions between a BOC and its section 272 affiliate; section 272(e)(1), in contrast, governs requests by the BOC itself and all of the BOC's affiliates. We also conclude that, in order to provide meaningful enforcement of section 272(e)(1), interval response times must be disclosed more frequently than the biennial audit required by section 272(d). Finally, a disclosure obligation will allow all entities to compare, in a timely fashion, their own service intervals with those provided to the BOC or its affiliates. Contrary to the contentions of some BOCs, vendor management programs similar to the one utilized by AT&T would not provide this information. These vendor management programs provide information to a BOC customer about the service intervals the BOC provides to that customer, but do not provide comparative data about the service intervals provided to other entities, such as BOC affiliates.

We do not agree with PacTel that the absence of discrimination found in *ONA* reports indicates that disclosure requirements are of little value in enforcing section 272(e)(1). Disclosure requirements are valuable because they promote compliance and give aggrieved competitors a basis for seeking a remedy directly from a BOC. If competitors can easily obtain data about a BOC's compliance with section 272(e)(1), this increases the likelihood that potential discrimination can be detected and penalized; this, in turn, decreases the danger that discrimination will occur in the first place. Disclosure requirements also minimize the burden on the Commission's enforcement process because entities will have the information needed to resolve disputes informally prior to submitting a complaint to the Commission. We also are not persuaded by NYNEX and Ameritech that the automation and nondiscriminatory design of their provisioning and maintenance procedures obviate the need for disclosure requirements. Although the BOCs' use of nondiscriminatory, automated order processing systems is important for meeting the requirements of section 272(e)(1), the existence of these systems does not guarantee that requests placed via these systems are actually completed within the requisite period of time. Finally, we are not persuaded by the arguments of U S West and PacTel that, because parties are able to incorporate information disclosure requirements into agreements negotiated under sections 251 and 252 of the Act, a separate information disclosure requirement is unnecessary. Section 272(e)(1) and section 251 do not govern similar activities. Section 251 provides a framework that requires incumbent LECs to provide, *inter alia*, interconnection, unbundled network elements, and wholesale services to requesting telecommunications carriers. In contrast, section 272(e)(1) requires BOCs to fulfill requests for telephone exchange service and exchange access from unaffiliated entities on a nondiscriminatory basis. To link compliance with section 272(e)(1) to the outcome of individual negotiations would not adequately implement section 272(e)(1), particularly because the class of entities entitled to nondiscriminatory treatment under section 272(e)(1) is much broader than the class of entities who may make requests under section 251.

In response to the comments raised in the record, we conclude that we should seek further comment on the specific information disclosure requirements proposed by AT&T in an *ex parte* letter filed after the official pleading cycle closed. In the NPRM, we sought comment on whether reporting requirements analogous to the *Computer III* and *ONA* reporting requirements would be sufficient to implement section 272(e)(1). The parties are divided about the usefulness of service interval reporting similar to *ONA* reporting for implementing section 272(e)(1) and on the merits of AT&T's proposal. We agree with NYNEX that we should provide an additional opportunity for parties to comment on the specific aspects of the disclosure requirements needed to implement section 272(e)(1); therefore, we are separately issuing a Further Notice of Proposed Rulemaking regarding these matters.

We reject at this time, however, AT&T's more expansive proposal to require BOCs to submit to the Commission the underlying data for the information they must make publicly available. The submission of data necessary to meet this requirement—including, for example, every trouble report submitted to a BOC for a given period—would impose a substantial administrative burden on the BOCs, and possibly on the Commission as well, and is unnecessary to enforce section 272(e)(1). We also decline to order the BOCs to publicize the response times for all entities, as suggested by AT&T and Teleport, because the standard established by section 272(e)(1) is the response time given to the BOC itself and its affiliates.

B. Section 272(e)(2)

1. Background

Section 272(e)(2) states that a BOC and a BOC affiliate that is subject to section 251(c) ''shall not provide any facilities, services, or information concerning its provision of exchange access to [a section 272(a) affiliate] unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions.'' In the NPRM, we sought comment on the scope of the term ''facilities, services, or information concerning its provision of exchange access'' and the term ''other providers of interLATA services in that market.'' We also sought comment on the relevance of the MFJ and prior Commission proceedings, including our equal access rules, in implementing this provision.

2. Discussion

Definitional issues. We conclude that section 272(e)(2) does not require a BOC to provide facilities, services, or information concerning its provision of exchange access to ISPs, as suggested by ITAA and MFS. Although ISPs are included within the term ''other providers of interLATA services,'' ISPs do not use exchange access as it is defined by the Act, and, therefore, section 272(e)(2)'s requirement that BOCs provide exchange access on a nondiscriminatory basis is not applicable to ISPs. ''Exchange access'' is defined as ''the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.'' ''Telephone toll service'' is defined, in turn, as ''telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.'' This definition makes clear that ''telephone toll service'' is a ''telecommunications service.'' Therefore, by definition, an entity that uses ''exchange access'' is a telecommunications carrier. Because ISPs do not provide telephone toll services, and therefore are not telecommunications carriers, they are not eligible to obtain exchange access pursuant to section 272(e)(2).

We are not persuaded by ITAA's argument that, because section 272(f)(2) states that the requirements of section 272 cease to apply with respect to interLATA information services at sunset, but exempts section 272(e) from the sunset requirement, section 272(e), including section 272(e)(2), must apply to ISPs. Section 272(f)(2) cannot be read to extend the application of section 272(e)(2) beyond its express terms. Similarly, we reject MFS's argument that we should use section 272(e)(2) to grant ISPs rights under section 251 because, as we articulated above, this would expand the scope of section 251 beyond its express limitations.

We agree with U S West that the term ''in that market'' is intended to ensure that, to benefit from section 272(e)(2), an interLATA provider must be operating in the same geographic area as the relevant BOC affiliate. Therefore, we conclude that the term ''providers of interLATA services in that market'' means any interLATA services provider authorized to provide interLATA service in the same state where the relevant section 272 affiliate is providing service. We have designated a state as the relevant geographic area for purposes of section 272(e)(2) because the BOCs will obtain authorization to provide interLATA services on a state-by-state basis.

Implementation of section 272(e)(2). In light of the protections imposed in other portions of the Act and our rules, we conclude that we do not need to adopt rules to implement section 272(e)(2) at this time. In our *First Interconnection Order* and *Second Interconnection Order,* we adopted rules implementing section 251 of the Act, which address, *inter alia,* the provision of exchange access and network disclosure requirements under the Act. In addition, section 251(g) of the Act preserves the equal access requirements in place prior to the passage of the 1996 Act, including obligations imposed by the MFJ and any Commission rules. If, in the future, it appears that additional rules are necessary to enforce the requirements of section 272(e)(2), we will take action at that time.

We conclude that a separate disclosure requirement under section 272(e)(2) is not warranted. Section 272(b)(5) requires that all transactions between a BOC and its section 272 affiliate be reduced to writing and made available for public inspection. Parties will be able to determine the specific services and facilities that a BOC provides to its section 272 affiliate by inspecting the documentation that must be maintained pursuant to section 272(b)(5). In addition, information about a BOC's provision of exchange access to itself or to its affiliates will be available through the information disclosure requirement we are imposing pursuant to section 272(e)(1). Accordingly, we reject AT&T's suggestion that the Commission require the BOCs to disclose publicly all exchange access services and facilities used by their interLATA affiliates and to update these disclosures whenever upgrades are made.

We conclude that our current network disclosure rules are sufficient to meet the requirement of section 272(e)(2) that BOCs disclose any ''information concerning * * * exchange access'' on a nondiscriminatory basis. Therefore, we conclude that AT&T's suggestion that the Commission mandate additional technical disclosure requirements is unnecessary. Section 251(c)(5) imposes on incumbent LECs ''[t]he duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.'' We have adopted detailed rules specifying how this requirement is to be implemented.

Further, the Commission's prior network disclosure requirements are still in place, including the *Computer II* ''all carrier rule'' and the *Computer III* network disclosure requirements. We emphasize that if a BOC preferentially disclosed information to its section 272 affiliate or withheld information from competing providers of interLATA services, that BOC would be in violation of section 272(e)(2). Our rules implementing section 251(c)(5) explicitly prohibit this behavior: they require LECs to make network disclosures according to a specific timetable, and prohibit preferential disclosures in advance of that timetable. We do not address IDCMA's concerns regarding information disclosures for manufacturers because section 273 addresses the needs of manufacturers in detail, and we are addressing the implementation of section 273 in a separate proceeding.

C. Section 272(e)(3)

1. Background

Section 272(e)(3) provides that a BOC and a BOC affiliate that is subject to the requirements of section 251(c) ''shall charge [a section 272(a) affiliate], or impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service.'' In the NPRM, we tentatively concluded that a section 272 affiliate's purchase of telephone exchange service and exchange access at tariffed rates, or imputation of tariffed rates to the BOC, would be sufficient to implement section 272(e)(3). We additionally sought comment regarding the appropriate mechanism to enforce this provision in the absence of tariffed rates.

2. Discussion

We adopt our tentative conclusion that a section 272 affiliate's purchase of telephone exchange service and exchange access at tariffed rates, or a BOC's imputation of tariffed rates, will ensure compliance with section 272(e)(3). If a section 272 affiliate purchases telephone exchange service or exchange access at the highest price that is available on a nondiscriminatory basis under tariff, section 272(e)(3)'s requirement that a BOC must charge its section 272 affiliate an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carrier will be fulfilled. In addition, we conclude that other mechanisms are available under the Act to ensure that BOCs charge nondiscriminatory prices in accordance with section 272(e)(3). If a section 272 affiliate were to acquire services or unbundled elements from a BOC at prices that are available on a nondiscriminatory basis under section 251, the terms of section 272(e)(3) would be met. To the extent that a statement of generally available terms filed pursuant to section 271(c)(1)(B) would include prices that are available on a nondiscriminatory basis in a manner similar to tariffing, and a BOC's section 272 affiliate obtains access or interconnection at a price set forth in the statement, this would also demonstrate compliance with section 272(e)(3). We address the appropriate allocation and valuation of these transactions for accounting purposes in our companion *Accounting Safeguards Order.*

We further conclude that section 272(e)(3) requires that a BOC must make volume and term discounts available on a nondiscriminatory basis to all unaffiliated interexchange carriers. We do not agree, however, with those parties that suggest that additional requirements are necessary to implement section 272(e)(3). AT&T, for example, proposes that a BOC or section 272 affiliate pay ''a price per unit of traffic that reflects the highest unit price that any interexchange carrier pays for a like exchange or exchange access service.'' We agree with the BOCs that AT&T's suggested rule would unfairly disadvantage BOC affiliates by preventing them from receiving volume discounts that other interexchange carriers with similar access traffic volumes would receive. We agree with Ameritech that, because the provision of services that fall under section 272(e)(3) must either be tariffed or made publicly available under section 252(h), unaffiliated interexchange carriers will be able to detect discriminatory arrangements. We recognize that a BOC may have an incentive to offer tariffs that, while available on a nondiscriminatory basis, are in fact tailored to its affiliate's specific size, expansion plans, or other needs. Our enforcement authority under section 271(d)(6) and section 208 are available to address this and other forms of potential discrimination by a BOC.

We reject MCI's proposal that the Commission review the BOC section 272 affiliates' prices, or profits, or both, to ensure that the section 272 affiliates' prices cover their access charges and all other costs. MCI's contention that access charges are excessive is more appropriately addressed in the Commission's forthcoming proceeding on access charge reform. We also note that the ability of competing carriers to acquire access through the purchase of unbundled elements (if those unbundled elements are properly priced) will increase pressure on the BOCs to decrease access charges, and will give competing carriers the opportunity to charge retail prices that reflect the lower cost of unbundled elements. We interpret section 272(e)(3) to require the BOCs to charge nondiscriminatory prices, as indicated above, and to allocate properly the costs of exchange access according to our affiliate transaction and joint cost rules, as modified by our companion *Accounting Safeguards Order.* We conclude that further rules addressing predatory pricing by BOC section 272 affiliates are not necessary because adequate mechanisms are available to address this potential problem. A BOC section 272 affiliate that charges a rate for interstate services below its incremental cost of providing such services would be in violation of sections 201 and 202 of the Act. Federal antitrust law also would apply to the predatory pricing of interstate and intrastate services; and the pricing of intrastate services can also be addressed at the state level. Further, as we indicated in the NPRM, the danger of successful predation by BOCs in the interexchange market is small. We also reject MCI's proposal because, as the BOCs argue and MCI concedes, Commission review of affiliates' retail prices would place an enormous administrative burden on the Commission. Such a review would also discourage BOC section 272 affiliates from competing on the basis of service prices. Because we find that adequate remedies exist to address anticompetitive pricing by BOC section 272 affiliates, we believe that regulation of these new interLATA providers' retail prices pursuant to section 272(e)(3) would not conform with the deregulatory, pro-competitive goals of the 1996 Act.

D. Section 272(e)(4)

1. Background

Section 272(e)(4) states that a BOC and a BOC affiliate that is subject to section 251(c) ''may provide any interLATA or intraLATA facilities or services to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions, and so long as the costs are appropriately allocated.'' In the NPRM, we sought comment regarding the scope of the

term ''interLATA or intraLATA facilities or services'' including, for example, whether it included ''information services and all facilities used in the delivery of such services.''

2. Discussion

We conclude that section 272(e)(4) does not alter the requirements of sections 271 and 272(a). Section 272(e)(4) is not a grant of authority for BOCs to provide ''interLATA or intraLATA facilities or services'' in contravention of the scheme governing BOC provision of in-region interLATA services in section 271 or the requirement that these services must be provided through a separate affiliate in section 272(a). Section 272(e)(4) is intended to ensure the nondiscriminatory provision of services that the BOCs are authorized to offer directly, and not through an affiliate, such as those services exempted from section 271 prior to the sunset of the separate affiliate requirement. Like the other subsections of section 272, section 272(e)(4) prescribes the manner in which a BOC must offer services and facilities it is authorized to provide.

We find no basis in the 1996 Act for the BOCs' argument that section 272(e)(4) is a grant of authority for the BOCs to provide interLATA services and facilities. By its terms, section 272(e)(4) contains no reference to the provisions of section 271 governing BOC entry into in-region interLATA services. Therefore, interpreting section 272(e)(4) as an immediate and independent grant of authority that allows BOCs to provide ''*interLATA* or intraLATA facilities or *services*,'' even where such provision is prohibited by other sections of the statute, would contravene the requirement of section 271 that BOCs receive Commission approval prior to providing these services.

We are also unpersuaded by PacTel's alternative argument that section 272(e)(4) is not a grant of authority, but that section 272 allows the BOCs to provide wholesale, ''carrier to carrier'' interLATA services directly, rather than through the section 272 affiliate. PacTel states that section 271 requires BOCs to obtain authorization from the Commission before providing ''interLATA services,'' but, in contrast, section 272(a)(2)(B) only requires BOCs to offer interLATA ''telecommunications service'' through a separate affiliate. PacTel also states that the definition of ''interLATA service'' is broad and makes no distinction between retail and wholesale offerings, but that ''telecommunications service'' is defined as ''the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.'' PacTel therefore argues that only interLATA telecommunications services offered ''directly to the public'' must be offered through a separate affiliate. PacTel contends that retail services are services offered ''directly to the public'' that must be offered through a section 272 affiliate, but that wholesale services may be offered from the BOC because they are not ''telecommunications services.'' We reject PacTel's argument because it is inconsistent with language of section 251(c)(4) and because the legislative history indicates that the definition of telecommunications services is intended to clarify that telecommunications services are common carrier services, which include wholesale services to other carriers.

A comparison between the definitions relied upon by PacTel and the language of section 251(c)(4) leads us to conclude that wholesale services are not excluded from the definition of ''telecommunications service.'' Unlike the definition of telecommunications service, section 251(c)(4) explicitly uses the terms ''retail'' and ''wholesale.'' Section 251(c)(4) states that incumbent LECs must offer, ''at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers * * *'' This language implicitly recognizes that some telecommunications services are wholesale services. If this were not the case, the qualifying phrase ''that the carrier provides at retail'' would be superfluous.

The legislative history and the definition of common carriage further support this conclusion. The Joint Explanatory Statement states that the definition of telecommunications service ''recognize[s] the distinction between common carrier offerings that are provided to the public * * * and private services.'' Therefore, the term ''telecommunications service'' was not intended to create a retail/wholesale distinction, but rather a distinction between common and private carriage. Common carrier services include services offered to other carriers. For example, exchange access service is offered on a common carrier basis, but is offered primarily to other carriers. In addition, both the Commission's rules and the common law have held that offering a service to the public is an element of common carriage. The Commission's rules define a ''communication common carrier'' as ''any person engaged in rendering communication for hire to the public,'' and the courts have held that the indiscriminate offering of a service to the public is an essential element of common carriage. Neither the Commission nor the courts, however, has construed ''the public'' as limited to end-users of a service. In *NARUC I*, the Court of Appeals for the D.C. Circuit held that an entity may qualify as a common carrier even if ''the nature of the service rendered is sufficiently specialized as to be of possible use to only a fraction of the total population.'' *See NARUC* v. *FCC*, 525 F.2d 630, 641 (D.C. Cir. 1976). In light of the statutory language of section 251(c)(4), legislative history, Commission precedent, and the common law, we decline to limit the definition of telecommunications services to retail services.

If a BOC wishes to utilize the capacity on its Official Services network to provide interLATA services to other carriers or to end-users, it must do so in accordance with the requirements of the 1996 Act and our rules. Specifically, the BOC must provide in-region, interLATA services through a section 272 affiliate as required by section 272(a). If a BOC, therefore, seeks to transfer ownership of its Official Services network to its section 272 affiliate, it must ensure that the transfer takes place in a nondiscriminatory manner, as explained *supra* in part V.C, and must comport with our affiliate transaction rules.

Finally, although the term ''interLATA services'' includes both interLATA information services and interLATA telecommunications services, we conclude that ISPs are not entitled to nondiscriminatory treatment under section 272(e)(4). The definitional sections of the Act make clear that the term ''carriers'' is synonymous with the term ''common carriers,'' which does not include ISPs. Therefore, the requirement that the BOCs provide interLATA or intraLATA facilities or services to ''all carriers'' on a nondiscriminatory basis does not extend to ISPs under section 272(e)(4).

E. Sunset of Subsections 272(e) (2) and (4)

1. Background

The NPRM sought comment regarding how to reconcile an apparent conflict between sections 272(e) and 272(f). We noted that subsections 272(e)(2) and (e)(4) establish standards that refer to BOC affiliates. On the one hand, those sections could be interpreted as subject to sunset because they depend on the existence of a separate affiliate. On the other hand, section 272(f) specifically exempts section 272(e) from the sunset requirements. We sought comment regarding whether Congress intended to eliminate the requirements of sections 272(e)(2) and (e)(4) once the BOCs were no longer required to maintain separate affiliates under section 272(a).

2. Discussion

We find that the plain language of the statute compels us to conclude that sections 272(e)(2) and 272(e)(4) can be applied to a BOC after sunset only if that BOC retains a separate affiliate. The nondiscrimination obligations imposed by subsections (e)(2) and (e)(4) are framed in reference to a BOC's treatment of its affiliates. In contrast, the nondiscrimination obligations imposed by subsections (e)(1) and (e)(3) are framed in reference to the BOC ''itself'' as well as the BOC affiliate. If a BOC does not maintain a separate affiliate, subsections (e)(2) and (e)(4) cannot be applied because there will be no frame of reference for the BOC's conduct. Section 272(f), however, exempts section 272(e) from sunset without qualification. In order to give meaning to section 272(f), we conclude that subsections (e)(2) and (e)(4) will apply to a BOC's conduct so long as that BOC maintains a separate affiliate. Subsections (e)(1) and (e)(3) will continue to apply in all events.

A number of safeguards will be available to prevent discriminatory behavior by BOCs after the separate affiliate requirements of section 272 cease to apply. As we explain in detail above, section 251(c)(5), section 251(g), and the Commission's rules imposing network disclosure and equal access requirements oblige BOCs to provide exchange access on a nondiscriminatory basis. In addition, intraLATA services and facilities must be provided on a nondiscriminatory basis under section 251(c)(3), and the provision of interLATA services and facilities will continue to be governed by the nondiscrimination provisions of sections 201 and 202 of the Act. In addition, once local competition develops, it will provide a check on the BOCs' discriminatory behavior because competitors of the BOC affiliates will be able to turn to other carriers for local exchange service and exchange access.

VII. Joint Marketing

A. Joint Marketing Under Section 271(e)

1. Background

Section 271(e)(1) limits the ability of certain interexchange carriers to market interLATA services jointly with BOC local services purchased for resale. Specifically, the statute states that:

Until a Bell operating company is authorized pursuant to [section 271(d)] to provide interLATA services in an in-region State, or until 36 months have passed since the date of enactment of the Telecommunications Act of 1996, whichever is earlier, a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines may not jointly market in such State telephone exchange service obtained from such company pursuant to section 251(c)(4) with interLATA services offered by that telecommunications carrier.

In the NPRM, we sought comment on whether we should interpret section 271(e) to prohibit, for example, promoting the availability of interLATA services and local exchange services in the same advertisement, making these services available from a single source, or providing bundling discounts for the purchase of both services. We also observed that the clear language of the statute only restricts covered interexchange carriers (*i.e.,* those carriers that fall within the scope of section 271(e) of the Act) from joint marketing interLATA services and BOC local services purchased for resale. Thus, section 271(e) does not preclude these interexchange carriers from jointly marketing local exchange services provided over their own facilities, or through the purchase of unbundled network elements pursuant to section 251(c)(3). Nor does section 271(e) prohibit those interexchange carriers from ''marketing'' BOC resold local exchange services. Rather, the prohibition is limited to ''jointly marketing'' BOC resold local services with interLATA services.

2. Discussion

Scope of section 271(e). We agree with the consensus of the commenters that the language in section 271(e) is clear—the joint marketing prohibition applies only to the marketing of interLATA services together with BOC local exchange services purchased for resale pursuant to section 251(c)(4). We refer to the latter services in the balance of this discussion as ''BOC resold local services.'' In the *First Interconnection Order,* we stated that the terms of section 271(e) do not prevent affected interexchange carriers from marketing interLATA services jointly with local exchange services provided through the use of unbundled network elements obtained pursuant to section 251(c)(3). We affirm that conclusion and, accordingly, reject USTA's suggestion that we extend the section 271(e) restriction to apply to the joint marketing of such services. We find that the express text of the statute limits the prohibition to BOC resold local services obtained pursuant to section 251(c)(4) and we decline to extend the restriction beyond the limits mandated by Congress. We further conclude, for the same reason, that the joint marketing restriction does not apply if the covered interexchange carrier provides local service over its own facilities, or by reselling local exchange services purchased from a local exchange carrier that is not a BOC.

Specific Joint Marketing Restrictions. We conclude that Congress adopted the joint marketing restriction in section 271(e) in order to limit the ability of covered interexchange carriers to provide ''one-stop-shopping'' of certain services until the BOC is authorized to provide interLATA service in the same territory. We agree with the majority of commenters that bundling BOC resold local services and interLATA services (including interLATA telecommunications and interLATA information services) into a package that can be sold in a single transaction constitutes the type of joint marketing that Congress intended to restrict by enacting section 271(e). We define ''bundling'' to mean offering BOC resold local exchange services and interLATA services as a package under an integrated pricing schedule. Thus, we find that section 271(e) restricts covered interexchange carriers from, among other things, providing a discount if a customer purchases both interLATA services and BOC resold local services, conditioning the purchase of one type of service on the purchase of the other, and offering both interLATA services and BOC resold local services as a single combined product. This restriction applies until the BOC receives authorization under section 271 to offer interLATA service in an in-region state, or February 8, 1999, whichever comes first.

We also conclude that section 271(e) bars covered interexchange carriers from marketing interLATA services and BOC resold local services to consumers through a single transaction. We define

a ''single transaction'' to include, at a minimum, the use of the same sales agent to market both products to the same customer during a single communication. Although requiring separate transactions for different types of services might preclude interexchange carriers from taking advantage of economies of scale, we agree with those commenters who argue that such a restriction is an essential element of the joint marketing prohibition in section 271(e) during the period the limitation remains in effect. We reject the suggestion of some BOCs that the section 271(e) restriction requires covered interexchange carriers to establish separate sales forces for marketing interLATA services and BOC resold local services. We agree with the commenting parties that claim neither the statute nor the legislative history indicates that Congress intended to impose such a requirement. Moreover, in our view, requiring a separate sales force is not necessary to accomplish the primary congressional objective of barring the affected interexchange carrier from offering ''one-stop shopping'' for interLATA and BOC resold local services. Thus, a single agent is permitted to market interLATA services in the context of one communication, and to market BOC resold local services to the same potential customer in the context of a separate communication.

The application of the section 271(e) joint marketing restriction to advertising implicates constitutional issues. We are aware of our obligation under Supreme Court precedent to construe the statute ''where fairly possible so as to avoid substantial constitutional questions.'' *See United States* v. *X-Citement Video,* 115 S.Ct. 464, 467, 469 (1994). In the advertising context, the Supreme Court has held that the First Amendment protects ''the dissemination of truthful and nonmisleading commercial messages about lawful products and services.'' *See 44 Liquormart, Inc. v. Rhode Island,* 116 S.Ct. 1495, 1504 (1996) (*44 Liquormart*). We must be careful, therefore, not to construe section 271(e) as imposing an advertising restriction that is overly broad. The fact that section 271(e) permits a covered interexchange carrier to *offer and market separately* both interLATA services and BOC resold services and also permits such carriers to *offer and market jointly* interLATA services and local services provided through means other than BOC resold local services (*e.g.,* through the use of unbundled network elements, over its own facilities, or by reselling local exchange services purchased from a local exchange carrier that is not a BOC) makes the task of crafting an effective advertising restriction particularly difficult. For example, we see no lawful basis for restricting a covered interexchange carrier's right to advertise a combined offering of local and long distance services, if it provides local service through means other than reselling BOC local exchange service. In addition, we cannot adopt a blanket rule that prohibits interexchange carriers from publicizing in one advertisement that they offer interLATA services and publicizing in a separate advertisement that they offer BOC resold local services. As MCI points out, the statute permits interexchange carriers to offer both types of services through the same corporate entity and under the same brand name. Thus, such advertisements would be truthful statements about lawful activities.

A closer question is whether we may ban a covered interexchange carrier from claiming in a single advertisement that it offers both interLATA services and local services in instances where the carrier intends to furnish the latter through BOC resold local services, which it is authorized to market only on a stand-alone basis. On the one hand, such an advertisement would contain truthful statements about services that the interexchange carrier is authorized to provide. On the other hand, such an advertisement may be inconsistent with the section 271(e) prohibition against jointly marketing the two types of services. As some BOCs appear to recognize, however, the principal concern with the promotion of both services in a single advertisement is that it may suggest ''to consumers that the services are available jointly as a package when in fact they are not.'' We agree with these commenters that the First Amendment does not confer the right to deceive the public. Indeed, the Supreme Court has emphasized that the First Amendment does not prevent the government from regulating commercial speech to avoid such deceptions. Further, the Court has held that the government ''may require commercial messages to appear in such a form, or include such additional information, warnings and disclaimers, as are necessary to prevent its being deceptive.'' *See 44 Liquormart,* 116 S.Ct. at 1506 (internal quotation marks omitted). Consistent with this precedent, we conclude that a covered interexchange carrier may advertise the availability of interLATA services and BOC resold local services in a single advertisement, but such carrier may not mislead the public by stating or implying that it may offer bundled packages of interLATA service and BOC resold service, or that it can provide ''one-stop shopping'' of both services through a single transaction. As discussed above, both activities are prohibited under section 271(e).

We further conclude that the joint marketing restriction in section 271(e) applies only to activities that take place prior to the customer's decision to subscribe. We agree with AT&T that, after a potential customer subscribes to both interLATA and BOC resold local services from a covered interexchange carrier, that carrier should be permitted to provide joint ''customer care'' (*i.e.,* a single bill for both BOC resold local services and interLATA services, and a single point-of-contact for maintenance and repairs). Such activities are post-marketing activities. To impose additional prohibitions on post-marketing activities would add additional burdens not required by the statute. Furthermore, a rule that would require a customer to send separate payments to the same corporate entity would be confusing and burdensome, and therefore would not serve the public interest. Customers should also be permitted to make a single phone call for complaints and repairs about both local and long distance services once they have ordered both services. Because we interpret section 271(e) to apply only to activities that take place prior to a customer's decision to subscribe, we conclude that, once a customer subscribes to both local exchange and interLATA services from a carrier that is subject to the restrictions of 271(e), that carrier may market new services to an existing subscriber.

We recognize that the principles we have adopted to implement the requirements of section 271(e) may not address all of the possible marketing strategies that a covered interexchange carrier might initiate to sell BOC resold local services and interLATA services to the public. We emphasize, however, that in enforcing this statutory section, we intend to examine the specific facts closely to ensure that covered interexchange carriers are not contravening the letter and spirit of the congressional prohibition on joint marketing by conveying the appearance of ''one-stop shopping'' BOC resold local services and interLATA services to potential customers.

B. Section 272(g)

1. Marketing Restrictions on BOC Section 272 Affiliates

a. Background. Section 272(g)(1) provides that a BOC affiliate may not market or sell telephone exchange services provided by the BOC ''unless that company permits other entities offering the same or similar service to market and sell its telephone exchange services.'' In the NPRM, we requested comment on what regulations, if any, are necessary to implement this provision.

b. Discussion. We agree with the BOCs that no regulations are necessary to implement section 272(g)(1). We do not adopt the three-month advance notice period proposed by AT&T, because it is not required by the statute. Nor do we believe that such a notice period is necessary in order for other carriers to receive nondiscriminatory treatment. As PacTel notes, any agreement between a BOC and its affiliate that enables the affiliate to market or sell BOC services must be conducted on an arm's length basis, reduced to writing, and made publicly available as required by section 272(b)(5). Thus, under section 272(g)(1), other entities offering services that are the same or similar to services offered by the BOC affiliate would have the same opportunity to market or sell the BOC's telephone exchange service under the same conditions as the BOC affiliate.

We also agree with Sprint that the term ''same or similar service'' in section 272(g)(1) encompasses information services. Thus, a section 272 affiliate may not market or sell information services and BOC telephone exchange services unless the BOC permits other information service providers to market and sell telephone exchange services. Finally, we decline to adopt MCI's requested clarification that 272(g)(1) applies to the international sphere. MCI appears to be concerned about a BOC's discriminatory provision of exchange access to foreign carriers. We conclude, however, that section 272(g)(1) applies only to the provision of ''telephone exchange'' service, not to the provision of ''exchange access.'' Section 202 bars a BOC from unreasonable discrimination in the provision of exchange access services used to originate and terminate domestic interstate and international toll traffic.

2. Marketing Restrictions on BOCs

a. Background. Section 272(g)(2) states that ''[a BOC] may not market or sell interLATA service provided by an affiliate required by this section within any of its in-region States until such company is authorized to provide interLATA services in such State under section 271(d).'' In the NPRM, we sought comment on whether section 272(g)(2) imposes the same types of restrictions on the BOCs that section 271(e) imposes on the interexchange carriers.

b. Discussion. We agree with the BOCs that no regulations are necessary to implement section 272(g)(2). The statute clearly states that BOCs are prohibited from either selling or marketing in-region interLATA services provided by a section 272 affiliate until they have received approval from the Commission under section 271. We note, however, that section 272 does not prohibit a BOC that provides out-of-region interLATA services, or intraLATA toll service, from marketing or selling those services in combination with local exchange services. If such advertisements reach in-region customers, however, the BOC must make it clear to those customers that the advertisements do not apply to in-region interLATA services. This obligation is similar to the obligation discussed above, which requires covered interexchange carriers to disclose to consumers receiving BOC resold local service that bundled packages are not available to them. After a BOC receives authorization under section 271, the restriction in section 272(g)(2) is no longer applicable, and the BOC will be permitted to engage in the same type of marketing activities as other service providers.

Inbound Marketing. We conclude that BOCs must continue to inform new local exchange customers of their right to select the interLATA carrier of their choice and take the customer's order for the interLATA carrier the customer selects. The obligation to continue to provide such nondiscriminatory treatment stems from section 251(g) of the Act, because we have not adopted any regulations to supersede these existing requirements. Specifically, the BOCs must provide any customer who orders new local exchange service with the names and, if requested, the telephone numbers of all of the carriers offering interexchange services in its service area. A customer orders ''new service'' when the customer either receives service from the BOC for the first time, or moves to another location within the BOC's in-region territory. As part of this requirement, a BOC must ensure that the names of the interexchange carriers are provided in random order. We decline to adopt NCTA's request that we extend this obligation to require that BOCs inform inbound callers of other cable operators and providers of video services in the area, however, because no such obligation currently exists, and no new requirement is imposed by the statute. We further conclude that the continuing obligation to advise new customers of other interLATA options is not incompatible with the BOCs' right to market and sell the services of their section 272 affiliates under section 272(g). Thus, a BOC may market its affiliate's interLATA services to inbound callers, provided that the BOC also informs such customers of their right to select the interLATA carrier of their choice.

Teaming. We conclude that section 272(g) is silent with respect to the question of whether a BOC may align itself with an unaffiliated entity to provide interLATA services prior to receiving section 271 approval. We agree with the BOCs that the language of section 272(g) only restricts the BOC's ability to market or sell interLATA services ''provided by an affiliate required by [section 272].'' We note, however, that any equal access requirements pertaining to ''teaming'' activities that were imposed by the MFJ remain in effect until the BOC receives section 271 authorization. Thus, to the extent that BOCs align with non-affiliates, they must continue to do so on a nondiscriminatory basis.

3. Section 272(g)(3)

a. Background. Section 272(g)(3) states that ''[t]he joint marketing and sale of services permitted under this subsection shall not be considered to violate the nondiscrimination provisions of subsection [272](c).''

b. Discussion. Some of the activities identified by the parties appear to fall clearly within the scope of section 272(g)(3) and hence would be excluded from the section 272(c) nondiscrimination requirements. For example, activities such as customer inquiries, sales functions, and ordering, appear to involve only the marketing and sale of a section 272 affiliate's services, as permitted by section 272(g). Other activities identified by the parties, however, appear to be beyond the scope of section 272(g), because they may involve BOC participation in the planning, design, and development of a section 272 affiliate's offerings. In our view, such activities are not covered by the section 272(g) exception to the BOC's nondiscrimination obligations. We see no point to attempt at this time to compile an exhaustive list of the specific BOC activities that would be covered by section 272(g). We recognize

that such determinations are fact specific and will need to be made on a case-by-case basis.

C. Interplay Between Sections 271(e), 272(g) and Other Provisions of the Statute

1. Background

In the NPRM, we sought comment on whether the affiliate may purchase marketing services from the BOC on an arm's length basis pursuant to section 272(b)(5), or whether a BOC and its affiliate should be required to contract jointly with an outside marketing entity for joint marketing of interLATA and local exchange service in order to comply with section 272(b)(3). We also sought comment on the interplay between the marketing restrictions in sections 271 and 272 and the CPNI provisions set forth in section 222 that are the subject of a separate proceeding. In addition, we requested comment on whether the joint marketing provision in section 274(c) has any bearing on how we should apply the joint marketing provisions in sections 271 and 272.

2. Discussion

As discussed above in Part IV.C, we conclude that a BOC and its affiliate are not required to contract jointly with an outside entity in order to comply with section 272(b)(3). Thus, a BOC and its affiliate may provide marketing services for each other, provided that such services are conducted pursuant to an arm's-length transaction, consistent with the requirements of section 272(b)(5). We decline to address parties' arguments raised in this proceeding regarding the interplay between section 272(g) and either section 222 or section 274(c) to avoid prejudging issues in our pending CPNI proceeding, CC Docket No. 96–115, or our electronic publishing proceeding, CC Docket No. 96–152. We emphasize that, if a BOC markets or sells the services of its section 272 affiliate pursuant to section 272(g), it must comply with the statutory requirements of section 222 and any rules promulgated thereunder.

VIII. Provision of Local Exchange and Exchange Access by BOC Affiliates

A. Background

In the NPRM, we expressed concern that a BOC might attempt to circumvent the section 272 safeguards by transferring local exchange and exchange access facilities and capabilities to one of its affiliates. We requested comment on whether we should prohibit all transfers of network capabilities from a BOC to an affiliate. Alternatively, we sought comment on whether a BOC transfer of network capabilities to an affiliate would make that affiliate a successor or assign of the BOC pursuant to section 3(4)(B) of the Act and, consequently, subject the affiliate to the nondiscrimination requirements of section 272(c)(1) and 272(e).

We also requested comment on whether, if a BOC were permitted to transfer local exchange and exchange access capabilities to an affiliate, we should exercise our general rulemaking authority to adopt regulations to prevent such an affiliate from engaging in discriminatory practices, or whether existing statutory prohibitions on discrimination are sufficient. For example, we noted that BOC affiliates that provide interstate interLATA telecommunications services already would be subject to the requirements of sections 201 and 202, which are applicable to all common carriers. Those obligations would not apply to information services affiliates and manufacturing affiliates, however, because they are not ''common carriers'' under the Act. As an additional matter, we tentatively concluded that a BOC affiliate that is classified as an incumbent LEC would also be subject to the nondiscrimination requirements of section 272(c).

B. Discussion

Transfer of local exchange and exchange access capabilities. We conclude that a BOC cannot circumvent the section 272 requirements by transferring local exchange and exchange access facilities and capabilities to an affiliate. As we discussed above, all goods, services, facilities, and information that the BOC provides to its section 272 affiliate are subject to the section 272(c)(1) nondiscrimination requirement. Application of section 272(c)(1) to the BOC's provision of such items should address to a large extent concerns about the BOC ''migrating'' or ''transferring'' key local exchange and exchange access services and facilities to the 272 affiliate. We note, however, that there are still legitimate concerns that a BOC could potentially evade the section 272 or 251 requirements by, for example, first transferring facilities to another affiliate or the BOC's parent company, which would then transfer the facilities to the section 272 affiliate. To address this problem, we conclude that, if a BOC transfers to an affiliated entity ownership of any network elements that must be provided on an unbundled basis pursuant to section 251(c)(3), we will deem such entity to be an ''assign'' of the BOC under section 3(4) of the Act with respect to those network elements. Any successor or assign of the BOC is subject to the section 272 requirements in the same manner as the BOC. Thus, the interLATA and manufacturing operations contemplated by section 272 would need to occur in an affiliate other than the one to which the local exchange and exchange access facilities have been transferred. We also note that, based on the plain language of the statute, section 272(c) only applies to the BOC or an affiliate that is a ''successor or assign'' of the BOC. We agree with Ameritech that, unlike sections 272 (a) and (e), section 272(c) does not apply to BOC affiliates merely because they qualify as incumbent LECs.

We decline to adopt an absolute prohibition on a BOC's ability to transfer local exchange and exchange access facilities and capabilities to an affiliate, because we conclude based on the record before us that such a restriction would be overly broad and exceed the requirements of the Act. We note, however, that our determination does not preclude a state from prohibiting a BOC's transfer of local exchange facilities under its regulatory framework for incumbent LECs.

In view of our decision to treat a BOC affiliate as a ''successor or assign'' of the BOC if the BOC transfers network elements to the affiliate, we find it unnecessary at this time to adopt additional nondiscrimination regulations applicable to section 272 affiliates. A section 272 affiliate that is not deemed a ''successor or assign'' of a BOC would nevertheless be subject to the obligations imposed by section 202—which prohibits common carriers from, among other things, engaging in ''unjust and unreasonable'' practices with respect to the provision of interstate services. Moreover, BOC interLATA services affiliates that offer intrastate interLATA telecommunications services would be subject to corresponding nondiscrimination obligations that state statutes and regulations typically impose on common carriers. We conclude based on the current record that these existing requirements should be adequate to protect competition and consumers against anticompetitive conduct by a BOC section 272 affiliate.

Integrated affiliates. Numerous commenters also request that we address whether the separate affiliate safeguards imposed by section 272 prohibit a section 272 affiliate from offering local exchange service through the same corporate entity. Based on our analysis of the record and the applicable statutory provisions, we conclude that

section 272 does not prohibit a section 272 affiliate from providing local exchange services in addition to interLATA services, nor can such a prohibition be read into this section. Specifically, section 272(a)(1) states that—

> A Bell operating company (including any affiliate) which is a local exchange carrier that is subject to the requirements of section 251(c) may not provide any service described in [section 272(a)(2)] unless it provides that service through one or more affiliates that * * * are separate from any operating company entity that is subject to the requirements of section 251(c) * * *

We find that the statutory language is clear on its face—a BOC section 272 affiliate is not precluded under section 272 from providing local exchange service, provided that the affiliate does not qualify as an incumbent LEC subject to the requirements of section 251(c). Because the text and the purpose of the statute are clear, there is no need, as CCTA suggests, to resort to legislative history. We also agree with Ameritech that a BOC affiliate should not be deemed an incumbent LEC subject to the requirements of section 251(c) solely because it offers local exchange services; rather, section 251(c) applies only to entities that meet the definition of an incumbent LEC under section 251(h). Section 251(h)(1) defines an incumbent LEC as, *inter alia,* a local exchange carrier that: (1) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service, and (2) was a member of the National Exchange Carrier Association (NECA) or becomes a successor or assign of such a member. Because no BOC affiliate was a member of NECA when the 1996 Act was enacted, such affiliates may be classified as incumbent LECs under this statutory provision only if they are successors or assigns of their affiliated BOCs. Alternatively, under section 251(h)(2), if the Commission determines that a carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by the incumbent LEC, and such carrier has substantially replaced an incumbent LEC, such carrier may be treated by rule as an incumbent LEC for purposes of section 251. We find no basis in the record of this proceeding to find that a BOC affiliate must be classified as an incumbent LEC under section 251(h)(2) merely because it is engaged in local exchange activities. Absent such a finding, BOC affiliates that are neither one of the Bell operating companies listed under 153(4)(A), nor a successor or assign of any such company, are not subject to the separation requirements of section 272.

Furthermore, we conclude that section 251 does not preclude section 272 affiliates from obtaining resold local exchange service pursuant to section 251(c)(4) and unbundled elements pursuant to section 251(c)(3), because the statute does not place any restrictions on the types of telecommunications carriers that may qualify as ''requesting carriers.'' We disagree with CCTA's assertion that section 272 affiliates cannot be treated as requesting carriers, because such affiliates are ''part of the standard for determining nondiscriminatory interconnection by the [incumbent LEC] for all other telecommunications carriers.'' The fact that a determination of whether an incumbent LEC provides nondiscriminatory access may be based on a comparison of the access that the incumbent LEC provides itself or its affiliate does not preclude such affiliate from being a ''requesting carrier'' under section 251. There is nothing inconsistent with both requiring nondiscriminatory access and at the same time allowing an affiliate to be a requesting carrier. Moreover, we find nothing in the statute or in the *First Interconnection Order* that limits the definition of ''requesting carrier'' to non-affiliates. Thus, section 272 affiliates cannot be precluded under section 251 from qualifying as ''requesting carriers'' that are entitled to purchase unbundled elements or retail services at wholesale rates from the BOC.

We further conclude that section 272(g)(1) cannot be read as imposing a limitation on the ability of section 272 affiliates to exercise their rights under section 251(c)(3). We are not persuaded by AT&T's argument that, because section 272(g)(1) sets forth limited conditions under which section 272 affiliates may ''market or sell'' local exchange services, allowing those affiliates to purchase unbundled elements is inconsistent with the Act. Rather, we agree with CCTA that section 272(g)(1) speaks only to marketing issues, and does not address the conditions under which a section 272 affiliate may provide local exchange services. Furthermore, we find AT&T's claim that allowing section 272 affiliates to provide local exchange service through unbundled elements will ''artificially and decisively slant [the] playing field in the BOC's favor'' unpersuasive, because other telecommunications carriers will be able to provide local exchange service through unbundled elements on the same terms and conditions. AT&T's concern that the affiliate will be able to avoid access charges by obtaining the unbundled elements appears to be premised on the view that access charges are currently too high. The issue of reforming access charges will, however, be addressed in a separate proceeding. Moreover, we conclude that MCI's argument—that opportunities for discrimination and cross-subsidy are greater when the BOC provides network elements to its affiliate than when it provides resold services—is speculative. To the extent that concerns over discrimination arise, there are safeguards in sections 251 and 252 to address such concerns. We therefore decline to distinguish between a section 272 affiliate's ability to provide local service by reselling BOC local exchange service and its ability to offer such service by purchasing unbundled elements from the BOC.

We also conclude as a matter of policy that regulations prohibiting BOC section 272 affiliates from offering local exchange service do not serve the public interest. The goal of the 1996 Act is to encourage competition and innovation in the telecommunications market. We agree with the BOCs that the increased flexibility resulting from the ability to provide both interLATA and local services from the same entity serves the public interest, because such flexibility will encourage section 272 affiliates to provide innovative new services. To the extent that there are concerns that the BOCs will unlawfully subsidize their affiliates or accord them preferential treatment, we reiterate that improper cost allocation and discrimination are prohibited by existing Commission rules and sections 251, 252, and 272 of the 1996 Act, and that predatory pricing is prohibited by the antitrust laws. Our affiliate transaction rules, as modified by our companion *Accounting Safeguards Order,* address the BOCs' ability to engage in improper cost allocation. The rules in this Order and our rules in our *First Interconnection Order* and our *Second Interconnection Order* ensure that BOCs may not favor their affiliates. In sum, we find no basis in the record for concluding that competition in the local market would be harmed if a section 272 affiliate offers local exchange service to the public that is similar to local exchange service offered by the BOC.

Although we conclude that the 1996 Act authorizes section 272 affiliates to purchase unbundled elements, we emphasize that BOC facilities and services provided to section 272 affiliates must be made available to others on the same terms, conditions, and prices provided to the BOC affiliate

pursuant to the nondiscrimination requirements of sections 272 and 251(c)(3). Thus, if a BOC affiliate is a requesting carrier under section 251, the BOC is required to treat unaffiliated requesting carriers in the same manner that the BOC treats its affiliate, unless the unaffiliated entity has requested different treatment. For example, if a BOC were to provide its section 272 affiliate with access to operational support systems (OSS) functions via a different method or system than it provides to requesting carriers under section 251, we would regard such discriminatory treatment as a violation of section 251(c)(3). We believe such nondiscrimination requirements will prevent BOCs from providing special treatment to their affiliates.

State regulation. As mentioned above, several BOCs have already submitted applications to state regulatory commissions seeking authority to provide both local exchange services and interLATA services from the same affiliate. Although we conclude that the 1996 Act permits section 272 affiliates to offer local exchange service in addition to interLATA service, we recognize that individual states may regulate such integrated affiliates differently than other carriers.

IX. Enforcement

A. Reporting Requirements under Section 272

1. Background

BOCs are required under *Computer III* to provide information to third parties regarding changes to the network and new network services and to report periodically on the quality and timeliness of installation and maintenance. We sought comment in the NPRM on what requirements or mechanisms were necessary to facilitate the detection of violations of the separate affiliate and nondiscrimination requirements of section 272. We asked parties to comment on whether we should impose reporting and other requirements on BOCs analogous to those requirements imposed in the *Computer III* and subsequent *ONA* proceedings to ensure compliance with section 272 requirements. We specifically requested comment on whether these requirements are sufficient to implement the section 272(c)(1) nondiscrimination requirement.

2. Discussion

We conclude that none of the reporting or other requirements of *Computer III/ONA* is necessary to implement the requirements of section 272(c)(1) at this time. For the same reasons, we further conclude that (with the exception of section 272(e)(1)), no reporting requirements are needed to facilitate the detection and adjudication of violations of the separate affiliate and nondiscrimination requirements of section 272. As many commenters observe, reporting requirements serve two primary purposes. First, they act to deter potential anticompetitive behavior by requiring BOCs to provide objective proof of their compliance with the separate affiliate and nondiscrimination requirements. Second, they enable competitors, as well as the Commission, to detect any potential violations of these requirements. We believe, however, that sufficient mechanisms already exist within the 1996 Act both to deter anticompetitive behavior and to facilitate the detection of potential violations of section 272 requirements. Nevertheless, we intend to monitor compliance with section 272 requirements and, of course, reserve the ability to undertake appropriate measures in the event that future developments warrant.

The requirements of section 272(b), as discussed above, discourage anticompetitive behavior by the BOC by requiring the BOC and its section 272 affiliate to adhere to certain structural and transactional requirements, including the requirement to ''operate independently.'' We therefore conclude that it is unnecessary to impose the *Computer III/ONA* reporting requirements in order to implement the separate affiliate and nondiscrimination requirements of section 272. Further, we note that even some commenters that support imposing *Computer III/ONA* reporting requirements on BOCs admit that they do not seem useful or practical.

We find, instead, that several of the disclosure requirements established in the 1996 Act will facilitate the detection of anticompetitive behavior. Section 272(d), for example, requires that a BOC obtain and pay for a biennial joint federal/state audit to determine whether it has ''complied with [section 272] and the regulations promulgated under this section * * *.'' We conclude that this broad audit requirement is intended to verify BOC compliance with the accounting and non-accounting requirements of section 272, as implemented. In addition, we note that, pursuant to section 271(d)(3)(B), a BOC may not receive authorization to provide in-region interLATA services until it shows, among other things, that the ''requested authorization will be carried out in accordance the requirements of section 272.'' In view of these requirements, we reject ITAA's suggestion that BOCs should submit to the Commission section 272 compliance plans, and periodic reports regarding their implementation of those plans, as unnecessarily burdensome.

In addition, the section 272(b)(5) requirement that all transactions between a BOC and its section 272 affiliate be reduced to writing and made publicly available should serve as a powerful mechanism both to detect violations of the section 272 requirements and to deter anticompetitive behavior. Similarly, we find that our interpretation of section 272(c)(1) as a flat prohibition against discrimination will work in conjunction with the section 272(b)(5) disclosure requirement to deter anticompetitive behavior. Under section 272(c)(1), any difference between the goods, services, and facilities given to a section 272 affiliate and those given to an unaffiliated entity may give rise to a claim of discrimination. Some commenters argue that the requirement of section 272(b)(5) should be extended to encompass not only transactions between a BOC and its section 272 affiliate, but also transactions between a BOC and unaffiliated entities. We find, however, that section 272(b)(5), by its terms, applies only to the transactions between the BOC and its section 272 affiliate. Extending such a requirement to transactions between a BOC and unaffiliated entities would expand the scope of this section beyond the statutory requirements and is not necessary to detect the type of discrimination that section 272 is intended to prevent. As discussed below, parties may make a request for such reporting requirements in the context of their interconnection negotiations with BOCs. Presented with such a request, the BOC will have the obligation to negotiate this proposal in good faith pursuant to section 251(c)(1).

In addition to the requirements of section 272, the Act also imposes other disclosure requirements on the BOCs that, in our view, largely address the concerns cited by parties arguing for additional reporting requirements. For example, section 251(c)(5) requires all incumbent LECs, including BOCs, to disclose publicly information about network changes that will affect a competing service provider's performance or ability to provide service or will affect the incumbent LEC's interoperability with other service providers. In implementing this requirement in our *Second Interconnection Order,* we found that this disclosure about network changes ''promotes open and vigorous

competition'' and provides ''sufficient disclosure to insure against anticompetitive acts.'' Similarly, section 273(c)(1) requires BOCs to maintain and file with the Commission full and complete information of the protocols and technical requirements used for network connection, and section 273(c)(4) requires BOCs to provide ''to interconnecting carriers providing telephone exchange service, timely information on the planned deployment of telecommunications equipment.''

We also find that, beyond the reporting requirements mandated under the 1996 Act, there are other avenues by which a telecommunications carrier may obtain information relevant to detecting anticompetitive BOC conduct. For example, competitive telecommunications carriers, on their own initiative, could seek to incorporate certain performance and quality standards into their negotiated or arbitrated interconnection agreements to ensure that BOCs satisfy their obligation to provide service in a nondiscriminatory manner. As noted above, BOCs, like any other incumbent LEC, are obligated to negotiate such requests in good faith pursuant to section 251(c)(1). Through this process, competitive carriers will be able to tailor the interconnection agreement to include only those reporting requirements that they deem necessary or find to be most useful. Further, pursuant to section 252(a), BOCs must file all interconnection agreements with the appropriate state commission and under section 252(h) these agreements must be made publicly available; the terms and conditions of these interconnection agreements, therefore, are on public record and available to competitors. We also note that there are several state utility commissions that, pursuant to state administrative code, require LECs to conform to certain service standards and make service quality reports publicly available. New York and Virginia, for example, require all LECs to file periodic service quality or standard of service reports.

We believe that the reporting requirements required by the 1996 Act, those required under state law, and those that may be incorporated into interconnection agreements negotiated in good faith between BOCs and competing carriers will collectively minimize the potential for anticompetitive conduct by the BOC in its interexchange operations. In addition to deterring potential anticompetitive behavior, these information disclosures will also facilitate detection of potential violations of the section 272 requirements. We, therefore, agree with those parties who argue that there is no need to impose additional reporting requirements at this time. Further, we note that even several parties who advocate the imposition of additional reporting requirements recognize the inherent difficulty of identifying and preventing every type of discrimination through regulatory measures.

Finally, we believe that the complaint process will bring violations of section 272 to the attention of the Commission. Congress has established a mechanism in section 271(d) to facilitate the enforcement of the requirements of section 272. Further, as discussed below, if the information necessary to prove a complainant's claim is not publicly available, the complainant has the opportunity to obtain the necessary documentation from the BOC in the context of an enforcement proceeding. We expect that BOC competitors will be vigilant in detecting BOC deficiencies and will avail themselves of the expedited complaint process established by section 271(d)(6).

B. Section 271(d)(6) Enforcement Provisions

As discussed in the NPRM, section 271(d)(6) of the Communications Act gives the Commission specific authority to enforce the conditions that a BOC is required to meet in order to obtain Commission authorization to provide in-region interLATA services. Specifically, section 271(d)(6) states:

(A) Commission Authority.—If at any time after the approval of an application under [section 271(d)(3)], the Commission determines that a [BOC] has ceased to meet any of the conditions required for such approval, the Commission may, after notice and opportunity for a hearing—

(i) issue an order to such company to correct the deficiency;

(ii) impose a penalty on such company pursuant to title V; or

(iii) suspend or revoke such approval.

(B) Receipt and Review of Complaints.—The Commission shall establish procedures for the review of complaints concerning failures by [BOCs] to meet conditions required for approval under [section 271(d)(3)]. Unless the parties otherwise agree, the Commission shall act on such complaint within 90 days.

1. Commission's Enforcement Authority under Section 271(d)(6)

a. Background. In the NPRM, we sought to clarify the relationship between the Commission's authority under section 271(d)(6) and the Commission's existing enforcement authority under sections 206–209 of the Communications Act. We tentatively concluded that, in the context of ''complaints concerning failures by [BOCs] to meet the conditions required for approval under [section 271(d)(3)],'' section 271(d)(6) generally augments the Commission's existing enforcement authority. We sought comment on whether, in a situation where a complaint alleges that a BOC has ceased to meet the conditions for approval to provide in-region interLATA telecommunications services and seeks damages as a result of the underlying alleged unlawful conduct, a Commission determination that the BOC has ceased to meet the conditions and the imposition of a section 271(d)(6)(A) sanction would fulfill the Commission's duty to ''act on such complaint within 90 days.''

In order to approve a BOC's application to provide in-region interLATA services pursuant to section 271(d)(3), the Commission must determine that the BOC: meets the requirements of section 271(c)(1); satisfies the competitive checklist in section 271(c)(2)(B); complies with the requirements of section 272; and demonstrates that the approval of its application is consistent with the public interest, convenience, and necessity. Section 271(d)(6)(A) sets forth various actions the Commission may take at any time after the approval of an application, and after notice and opportunity for a hearing, if it determines that a BOC has ceased to meet any of these conditions. In the NPRM, we stated that the Commission may determine that a BOC has ceased to meet the conditions of its approval under section 271(d)(3) either via the resolution of an expedited complaint proceeding pursuant to section 271(d)(6)(B) or in a proceeding commenced on its own motion.

b. Discussion. We affirm our tentative conclusion that section 271(d)(6) augments the Commission's existing enforcement authority. We reject both NYNEX's contention that the specific remedies of section 271(d)(6)(A) supersede the general sanctions contained in sections 206–209 of the Act as well as SBC's assertion that there is no statutory basis for applying the provisions of section 206–209 when a violation of section 271(d)(3) has been alleged. As AT&T observes, there is no support in the statute or its legislative history for the assertion that Congress intended to eliminate the damages remedy that applies to all other violations of Title II for violations of sections 271 and 272, especially in light of the competitive concerns that underlie the 1996 Act. We also conclude

that, where a complainant seeks damages as a result of the underlying alleged violative conduct, a Commission determination on whether the BOC has ceased to meet the conditions and the imposition of a section 271(d)(6)(A) sanction, where appropriate, would fulfill the Commission's statutory duty to ''act on such complaint within 90 days.'' Completion of this statutory obligation, however, would not preclude the complainant from filing a supplemental complaint to determine the actual amount of damages.

With respect to imposition of a Title V penalty (*e.g.*, forfeiture and fines) pursuant to section 271(d)(6)(A)(ii), we note that Title V provides for a separate process that is initiated by the issuance of a notice of apparent liability. We find, therefore, that the Commission's obligation under section 271(d)(6) is satisfied with respect to Title V penalties if, within 90 days (or longer if parties agree) of receiving a complaint, the Commission, upon finding a BOC liable for unlawful conduct, issues a notice of apparent liability pursuant to section 503. Finally, we affirm our tentative conclusion that the Commission may make a determination that a BOC has ceased to meet the conditions for entry either in a proceeding commenced on its own motion or via the resolution of a complaint proceeding. We further find, as most commenters suggest, that the Commission is not bound by the 90-day time constraint when it initiates a proceeding on its own motion.

2. Legal and Evidentiary Standards

a. Background. We sought comment in the NPRM on the legal and evidentiary standards necessary to establish that a BOC has ceased to meet the conditions required for its approval to provide in-region interLATA service. The majority of commenters assert that prescribing the elements of every claim that could conceivably be brought before the Commission would, at this point, be a fruitless exercise. USTA maintains that, in order to invoke section 271(d)(6), the complainant's allegations and supporting proof must be of such character that, had it been presented prior to entry, the Commission would not have approved the BOC's application. Similarly, MCI contends that a complainant seeking section 271(d)(6) relief should state that the defendant BOC is no longer meeting the conditions for entry, cite the specific requirements the BOC is violating, and describe how it is violating them.

b. Discussion. MCI and USTA correctly point out that section 271(d)(6) cannot be invoked unless the complainant alleges that the BOC has failed to meet the conditions of entry under section 271(d)(3). We conclude, however, that the procedural aspects of this showing are best addressed in our pending proceeding to adopt expedited complaint procedures. We agree with the majority of commenters and conclude that, beyond the duties and obligations discussed elsewhere in this Order, we need not establish at this time substantive rules that would define the specific legal elements of a claim that a BOC has failed or ceased to meet the conditions for entry under section 271(d)(3). Although we recognize that the establishment of substantive standards or ''bright line'' tests could assist in expediting the ultimate disposition of complaints invoking the 90-day statutory resolution deadline under section 271(d)(6), the conditions for entry include not only compliance with the section 272 requirements, but also satisfaction of the requirements of the competitive checklist in section 271(c)(2)(B), as well as a demonstration that the BOC application is consistent with the public interest, convenience, and necessity. Given the widely varying circumstances that may arise in the context of complaints alleging failure to meet the conditions of entry, we conclude that it is best to determine a BOC's compliance or noncompliance with these requirements on the basis of concrete facts presented in particular cases, rather than by substantive rule in this notice-and-comment proceeding.

For these same reasons, we agree with a majority of the commenters that it would be impractical to prescribe specific evidentiary standards for establishing violations of all of the substantive requirements contained in the competitive checklist. Just as the circumstances that arise in the context of 271(d)(6) complaints are likely to vary from case to case, so too will the information necessary to prove or disprove allegations that the BOC has ceased to meet the conditions of entry. We note as a general matter that, consistent with the requirements of the APA, the Commission's practice in formal complaint proceedings pursuant to section 208 has been to determine compliance or noncompliance with the Act or the Commission's rules and orders according to a ''preponderance of the evidence'' standard of proof. Neither section 271 nor its legislative history prescribe a different standard of proof for establishing a BOC's failure to meet the conditions required for entry; we conclude, therefore, that this evidentiary standard applies equally to section 271(d)(6) complaints. In the paragraphs that follow, we address related issues regarding what constitutes a *prima facie* showing that a BOC has ceased to meet one or more of the conditions for interLATA entry and whether the burden of proof should shift to the defendant BOC once the complainant makes such a showing. Notwithstanding the existence of a *prima facie* showing or any shift in the burden of production, as discussed below, to the extent that a complainant and defendant BOC differ over the material facts underlying a section 271(d)(6) complaint, the preponderance of evidence standard will guide our ultimate disposition of the complaint.

3. Prima Facie Standard

a. Background. We sought comment in the NPRM on what constitutes a *prima facie* showing that a BOC has ceased to meet one or more of the conditions for interLATA entry. We asked parties to comment on whether it is enough for complainants invoking the expedited complaint procedures under section 271(d)(6)(B) to plead, along with proper supporting evidence, ''facts which, if true, are sufficient to constitute a violation of the Act or Commission order or regulation'' in order to establish a *prima facie* showing that the BOC has ceased to meet the conditions for approval in section 271(d)(3).

b. Discussion. We conclude that complainants invoking the expedited complaint procedures of section 271(d)(6)(B) must plead, along with proper supporting evidence, facts which, if true, are sufficient to constitute a violation of the Act or Commission order or regulation in order to establish a *prima facie* showing that a BOC has ceased to meet the conditions for entry. Contrary to the suggestion of NYNEX and others, we did not propose in our NPRM that it would be sufficient for a complainant to establish a *prima facie* case without the submission of ''proper supporting evidence.'' Such a showing is not permissible under either our present pleading requirements or under the rules we propose in the *Enforcement NPRM,* 61 FR 67978 (December 26, 1996), on expedited complaint procedures. Under our present rules, a formal complaint is required to include certain categories of information, including specific facts and legal authorities upon which the complaint is based. In addition, a formal complaint must identify or describe specifically and in detail the carrier conduct that forms the basis for the complaint as well as the nature of injury sustained. Further, in our *Enforcement NPRM,* we recently proposed to

augment these requirements by requiring that a formal complaint include facts supported by relevant documentation or affidavits. Under our proposed rules, a complainant that fails to meet these pleading requirements may face either a dismissal of the complaint or a summary denial of the relief sought. Thus, in light of the pleading requirements that presently exist, as well as those proposed in the *Enforcement NPRM,* we reject allegations by some commenters that the *prima facie* standard we are adopting in this Order will violate the defendant's procedural rights, allow a complainant to file only a ''bare notice-type complaint,'' or invite a flood of frivolous suits designed to harass the BOCs.

We reject the recommendations of AT&T and MCI that we adopt specific criteria the complainant must demonstrate in order to establish a *prima facie* showing. As we stated above, beyond the legal and evidentiary standards established in this proceeding, it would be imprudent for us, at this time, to attempt to propose a comprehensive list of the showings that complainants will be required to make in order to demonstrate violations of the conditions of entry. Rather, we find it more appropriate to establish a generally applicable *prima facie* standard that is suitable for all complaints invoking section 271(d)(6), not just those alleging specific violations of the section 272 requirements.

4. Burden-Shifting and Presumption of Reasonableness

a. Background. In the NPRM, we sought comment on whether the pro-competitive goals of the Act are advanced by shifting the ultimate burden of proof from the complainant to a defendant BOC, not just in complaints alleging discrimination under section 202(a), but in all complaints alleging that a BOC has ceased to meet any of the conditions for its approval to provide interLATA services under section 271(d)(3). We sought comment specifically on whether the burden should shift to the defendant BOC once the complainant makes a *prima facie* showing that a BOC has ceased to meet the conditions of section 271(d)(3).

We also observed in the NPRM that in complaints challenging the rates, terms, and conditions of non-dominant carrier service offerings under sections 201(b) and 202(a), the Commission has effectively established a rebuttable presumption that such rates and practices are lawful. We tentatively concluded that, in the context of complaints alleging that a BOC has ceased to meet the conditions required for the provision of in-region interLATA services, we will not employ a presumption of reasonableness in favor of the BOC or BOC affiliate, regardless of whether the BOC or BOC affiliate is regulated as a dominant or non-dominant carrier.

b. Discussion. For the reasons and in the manner discussed below, we conclude that the burden of production with respect to an issue should shift to the BOC after the complainant has demonstrated a *prima facie* case that a defendant BOC has ceased to meet the conditions of entry. As an initial matter, we note that the term ''burden of proof'' has historically been used to describe two separate but related concepts. First, it has been used to describe the burden of persuasion with respect to a particular issue which, under the traditional view, never shifts from one party to the other at any stage in the proceeding. Second, it has been used to describe the burden of going forward with evidence necessary to avoid an adverse decision on that issue. This burden may shift back and forth between the parties. Under the approach we adopt today, the burden of production or coming forward with evidence will shift to the defendant BOC once the complainant has established a *prima facie* case that the conditions of interLATA entry have been violated. In other words, the defendant BOC will have an affirmative obligation to produce evidence and arguments necessary to rebut the complainant's *prima facie* case or risk an adverse ruling. The complainant, however, will have the ultimate burden of persuasion throughout the proceeding; that is, to show that the ''preponderance of the evidence'' produced in the proceeding weighs in its favor. As explained more fully below, shifting the burden of production to the defendant BOC once a *prima facie* case has been made will require the party most likely to have relevant information in its possession to produce the information at an early stage in the proceeding.

Currently, in a typical complaint proceeding, the complainant has the burden of establishing that a common carrier has violated the Communications Act or a Commission rule or order. This burden of persuasion does not shift to the defendant carrier at any time in the proceeding. As Sprint observes, however, in view of the statutory mandate to resolve section 271(d)(3) complaints in 90 days, the Commission must balance the need for expeditious resolution of the complaint against the need to develop a full record. We recognize, as do many commenters, that, even though some information may be publicly available, in many cases the BOC will be the sole possessor of certain information relevant to the disposition of the complainant's case. Our primary goal, as we expressed in the NPRM, is to give full force and effect to the pro-competitive policies underlying section 271(d)(6) by ensuring the full and fair resolution of complaints challenging a BOC's compliance with the conditions for interLATA entry within the statutory 90-day period. We find that shifting the burden of production to the defendant BOC after a *prima facie* showing has been made by the complainant will facilitate our ability to reach this goal.

Further, as we observed in the NPRM, effective enforcement of the conditions of interLATA entry, including the separate affiliate and nondiscrimination requirements of section 272, is critical to ensuring the full development of competition in the local and interexchange telecommunications markets. Many commenters argue that prompt enforcement of these conditions is essential not only to ensure the advent of true competition, but also to ensure that the BOCs take the conditions of entry seriously, particularly after they enter the in-region interLATA market. We conclude that shifting the burden of production to the BOC will facilitate the detection of anticompetitive behavior by the BOC and will enable us to adjudicate expeditiously complaints alleging violations of section 271(d)(3). Further, as mentioned above, in the context of a complaint proceeding, BOCs will have an affirmative obligation to produce all relevant evidence in their possession to rebut the complainant's claim or face an adverse ruling. Shifting the burden of production, therefore, may ultimately reduce the number of complaints filed against the BOCs by encouraging them to divulge exculpatory evidence before enforcement proceedings begin.

Many commenters that support shifting the burden of proof do not specify whether they advocate shifting the burden of persuasion or the burden of production. It is evident from the context of some comments, however, that a few commenters support a shift in the burden of persuasion, rather than a shift in the burden of production. In response to these commenters, we find that most of the competitive concerns they raise in support of shifting the burden of persuasion are more than adequately addressed by shifting the burden of production. For example, some parties that advocate shifting the burden of persuasion argue that complainants frequently will require

specific information that is within the exclusive possession of the BOC in order to substantiate their claim. These parties contend that requiring the complainant to maintain the burden of proof would result in needless, extensive discovery, and shifting the burden will give BOCs the incentive to produce information necessary to resolve the complaint. We conclude that these concerns, as well as our goal of facilitating the full and fair resolution of claims alleging violations of the conditions of entry within the statutory 90-day period, are satisfied without requiring BOCs to prove a negative in order to avoid liability, i.e., to prove, by a preponderance of the evidence, that they did not violate the conditions of entry. Further, we find it unnecessary to address most of the BOCs' arguments against burden-shifting because they are directed against shifting the ultimate burden of persuasion rather than the burden of production.

We do find it necessary, however, to respond to Ameritech's argument that informational asymmetry between the complainant and defendant is best addressed in the context of the discovery process. Ameritech maintains that, if the Commission's discovery processes are too cumbersome, they ought to be reformed rather than replaced with burden-shifting. Similarly, other commenters propose various procedural requirements that we might impose to enable us to resolve complaints within the 90-day statutory window. Moreover, a few commenters suggest that Alternative Dispute Resolution may be another mechanism by which to facilitate resolution of complaints alleging a violation of section 271(d)(3).

In response to these arguments, we note that purpose of the *Enforcement NPRM* is to streamline our current procedures and pleading requirements so that we may expedite the processing of all formal complaints and resolve complaints within the deadlines imposed by the 1996 Act. We therefore find that it would be inadvisable to attempt to establish any new procedural rules in this proceeding. Moreover, as PacTel points out, we do not have an adequate record on which to base any such rules. In response to Ameritech, we note that in the *Enforcement NPRM* we specifically proposed to reform our discovery process. Specifically, we sought comment on a range of options to eliminate or modify the discovery process, including prohibiting discovery as a matter of right, limiting the amount or scope of discovery, and allowing the state to set timetables for completion of discovery on an individual case basis. By shifting the burden of production to the BOC after a *prima facie* showing has been made by the complainant, we are ensuring that information relevant to the complainant's claim is disclosed early in the process, and thereby providing the Commission a sufficient record on which to make a decision, even in the potential absence of traditional discovery.

Finally, we affirm our tentative conclusion that, in the context of complaints alleging that a BOC has ceased to meet the conditions required for the provision of in-region interLATA services, we will not employ a presumption of reasonableness in favor of the BOC or BOC affiliate, regardless of whether the BOC or BOC affiliate is regulated as a dominant or non-dominant carrier. The presumption of lawfulness given to nondominant carrier rates and practices is employed in the context of complaints alleging violations of sections 201(b) and 202(b), where the complaint must demonstrate that the defendant's rates and practices are ''unjust and unreasonable.'' We agree with MCI that a presumption of reasonableness is an irrelevant concept in the context of complaints alleging violations of the conditions of interLATA approval in section 271(d)(3), particularly given our interpretation of section 272(c)(1) as an unqualified prohibition on discrimination.

5. Enforcement Measures under Section 271(d)(6)(A)

a. Background. Section 271(d)(6)(A) provides that if, at any time after approval of a BOC application, the Commission determines that the BOC has ceased to meet any of the conditions of its approval to provide interLATA services, the Commission may, after notice and opportunity for a hearing: (1) Issue an order to the BOC to ''correct the deficiency;'' (2) impose a penalty pursuant to Title V; or (3) suspend and revoke the BOC's approval to provide in-region interLATA services.

In the NPRM, we tentatively concluded that we will follow the procedures set forth in Title V to impose Title V penalties, including forfeitures, under section 271(d)(6)(A). As to the non-forfeiture enforcement measures, we sought comment on whether the Commission should exercise its enforcement discretion and impose these sanctions on an individual case basis, or whether we should establish specific legal and evidentiary standards for each type of sanction. Further, we sought comment on the appropriate ''notice and opportunity for a hearing'' for the imposition of these non-forfeiture sanctions, both in the context of a complaint proceeding and on the Commission's own motion. We interpreted ''opportunity for hearing'' not to require a trial-type hearing before an Administrative Law Judge (ALJ). We also tentatively concluded that Congress, by imposing a 90-day deadline for complaints, did not intend to afford the BOC trial-type hearings in enforcement proceedings pursuant to section 271(d).

b. Discussion. We affirm our tentative conclusion that we will follow the procedures set forth in Title V to impose Title V penalties in enforcement actions alleging violations of the conditions of entry under section 271(d)(3). As to non-forfeiture enforcement measures, we conclude that it is impractical, at this point in time, to prescribe the specific elements and factors that would warrant issuance of an order to ''correct the deficiency'' or an order suspending or revoking a BOC's approval to provide in-region interLATA service. We agree with AT&T that to do so would limit our remedial flexibility. Nor do we find it appropriate to establish specific evidentiary standards; rather, our determination of which non-forfeiture measure to impose will depend on the specific facts and circumstances presented in a particular case. We find, nevertheless, that a BOC will have a full and fair opportunity to submit evidence and arguments challenging the imposition of a prescribed sanction within the statutory 90-day period.

We conclude that the phrase ''opportunity for hearing'' in section 271(d)(6)(A) does not require a trial-type hearing before an ALJ prior to the imposition of non-forfeiture enforcement measures. Although we recognize, as PacTel and USTA suggest, that hearings may be necessary to resolve material questions of fact, such as when oral testimony or cross-examination is required, we do not agree that trial-type hearings before an ALJ are required before the Commission imposes any non-forfeiture sanction. We find instead that, regardless of whether the Commission is imposing a non-forfeiture sanction in a proceeding commenced on its own motion or in the context of a complaint proceeding, the Commission can satisfy the hearing requirement of section 271(d)(6)(A) through written submissions rather than oral testimony. Finally, we affirm our tentative conclusion that Congress, by imposing a 90-day deadline for complaints, did not intend to afford BOCs trial-type hearings in all enforcement proceedings pursuant to section 271(d)(6)(B).

X. Final Regulatory Flexibility Certification

The Commission certified in the NPRM that the proposed rules would not have a significant economic impact on a substantial number of small entities because the proposed rules did not pertain to small entities. Written public comment was requested on this proposed certification, and only one comment was received. For the reasons stated below, we certify that the rules adopted herein will not have a significant economic impact on a substantial number of small entities. This certification conforms to the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

The RFA incorporates the definition of small business concerns set forth in 15 U.S.C. § 632 (small business concerns are independently owned and operated, not dominant in their field of operations, and meet any additional criteria established by the Small Business Administration (SBA)). The rules we adopt in this Order implement the non-accounting separate affiliate and nondiscrimination provisions of sections 271 and 272 of the Act, and will apply to the BOCs when they enter previously restricted markets. The NPRM stated that, because BOCs are dominant in their field of operations, they are by definition not small entities and therefore no regulatory flexibility analysis is required. We now note as well that none of the BOCs is a small entity because each BOC is an affiliate of a Regional Holding Company (RHC), and all of the BOCs or their RHCs have more than 1,500 employees. The order also clarifies the joint marketing restrictions that will apply to the nation's largest interexchange carriers for an interim period pursuant to section 271. The most recent data shows that only AT&T, MCI, and Sprint meet the statutory threshold. Moreover, these carriers are not small entities under the SBA definition because each has more than 1,500 employees.

NTCA contends that small incumbent LECs should be considered small entities under the SBA's definition, and therefore, the basis of the proposed certification was incorrect. The certification contained in the NPRM applied both to our proposed rules implementing sections 271 and 272 and to our proposed rules addressing LEC interexchange services. This Order implements only sections 271 and 272, and, as we have indicated, affects only the BOCs, AT&T, MCI and Sprint. NTCA's arguments concerning small incumbent LECs are not relevant to this Order, therefore, and will be addressed in a separate Order in this docket.

We therefore certify, pursuant to section 605(b) of the RFA, that the rules adopted in this order do not have a significant economic impact on a substantial number of small entities. The Commission shall provide a copy of this certification to the Chief Counsel for Advocacy of the SBA, and include it in the report to Congress pursuant to the SBREFA. The certification will also be published in the Federal Register.

Report to Congress. The Commission shall send a copy of this FRFA, along with this Order, in a report to Congress pursuant to the SBREFA, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

XI. Ordering Clauses

Accordingly, It is Ordered that pursuant to sections 1, 2, 4, 201–205, 215, 218, 220, 271, 272, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201–205, 215, 218, 220, 271, 272, and 303(r) the REPORT AND ORDER IS ADOPTED, effective 30 days after publication of a summary in the Federal Register. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

It is further Ordered that the MFS Petition to Consolidate Proceedings in CC Docket Nos. 96–149, 85–229, 90–623, 95–20, and CCBPol 96–09 filed on July 25, 1996 is DENIED.

It is further Ordered that Part 53 of the Commission's Rules, 47 CFR § 53 is ADDED as set forth below.

List of Subjects in 47 CFR Part 53

Bell Operating Companies, Communications common carriers, InterLATA services, Separate affiliate safeguards, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 53 of Title 47 of the Code of Federal Regulations is added to read as follows:

PART 53—SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

Subpart A—General Information

Sec.

Subpart B—Bell Operating Company Entry into InterLATA Services

Subpart C—Separate Affiliate; Safeguards

Subpart D—Manufacturing by Bell Operating Companies

Subpart E—Electronic Publishing by Bell Operating Companies

Subpart F—Alarm Monitoring Services

Authority: Sections 1–5, 7, 201–05, 218, 251, 253, 271–75, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 218, 251, 253, 271–75, unless otherwise noted.

Subpart A—General Information.

§ 53.1 Basis and purpose.

(a) *Basis.* The rules in this part are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose.* The purpose of the rules in this part is to implement sections 271 and 272 of the Communications Act of 1934, as amended, 47 U.S.C. 271 and 272.

§ 53.3 Terms and definitions.

Terms used in this part have the following meanings:

Act. The Act means the Communications Act of 1934, as amended.

Affiliate. An affiliate is a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this part, the term ''own'' means to own an equity interest (or the equivalent thereof) of more than 10 percent.

AT&T Consent Decree. The AT&T Consent Decree is the order entered August 24, 1982, in the antitrust action styled *United States* v. *Western Electric*, Civil Action No. 82–0192, in the United States District Court for the District of Columbia, and any judgment or order with respect to such action entered on or after August 24, 1982.

Bell Operating Company (BOC). The term *Bell operating company*

(1) Means any of the following companies: Bell Telephone Company of Nevada, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, New England

Telephone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, U S West Communications Company, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, Southwestern Bell Telephone Company, The Bell Telephone Company of Pennsylvania, The Chesapeake and Potomac Telephone Company, The Chesapeake and Potomac Telephone Company of Maryland, The Chesapeake and Potomac Telephone Company of Virginia, The Chesapeake and Potomac Telephone Company of West Virginia, The Diamond State Telephone Company, The Ohio Bell Telephone Company, The Pacific Telephone and Telegraph Company, or Wisconsin Telephone Company; and

(2) Includes any successor or assign of any such company that provides wireline telephone exchange service; but

(3) Does not include an affiliate of any such company, other than an affiliate described in paragraphs (1) or (2) of this definition.

In-Region InterLATA service. In-region interLATA service is interLATA service that originates in any of a BOC's in-region states, which are the states in which the BOC or any of its affiliates was authorized to provide wireline telephone exchange service pursuant to the reorganization plan approved under the AT&T Consent Decree, as in effect on February 7, 1996. For the purposes of this part, 800 service, private line service, or equivalent services that terminate in a BOC's in-region state and allow the called party to determine the interLATA carrier are considered to be in-region interLATA service.

InterLATA Information Service. An *interLATA information service* is an information service that incorporates as a necessary, bundled element an interLATA telecommunications transmission component, provided to the customer for a single charge.

InterLATA Service. An *interLATA service* is a service that involves telecommunications between a point located in a LATA and a point located outside such area. The term ''interLATA service'' includes both interLATA telecommunications services and interLATA information services.

Local Access and Transport Area (LATA). A *LATA* is a contiguous geographic area:

(1) Established before February 8, 1996 by a BOC such that no exchange area includes points within more than one metropolitan statistical area, consolidated metropolitan statistical area, or state, except as expressly permitted under the AT&T Consent Decree; or

(2) Established or modified by a BOC after February 8, 1996 and approved by the Commission.

Local Exchange Carrier (LEC). A *LEC* is any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of commercial mobile service under section 332(c) of the Act, except to the extent that the Commission finds that such service should be included in the definition of such term.

Out-of-Region InterLATA service. Out-of-region interLATA service is interLATA service that originates outside a BOC's in-region states.

Section 272 affiliate. A *section 272 affiliate* is a BOC affiliate that complies with the separate affiliate requirements of section 272(b) of the Act and the regulations contained in this part.

Subpart B—Bell Operating Company Entry Into InterLATA Services

§ 53.101 Joint marketing of local and long distance services by interLATA carriers.

(a) Until a BOC is authorized pursuant to section 271(d) of the Act to provide interLATA services in an in-region State, or until February 8, 1999, whichever is earlier, a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines may not jointly market in such State telephone exchange service obtained from such company pursuant to section 251(c)(4) of the Act with interLATA services offered by that telecommunications carrier.

(b) For purposes of applying section 271(e) of the Act, telecommunications carriers described in paragraph (a) of this section may not:

(1) Market interLATA services and BOC resold local exchange services through a ''single transaction.'' For purposes of this section, we define a ''single transaction'' to include the use of the same sales agent to market both products to the same customer during a single communication;

(2) Offer interLATA services and BOC resold local exchange services as a bundled package under an integrated pricing schedule.

(c) If a telecommunications carrier described in paragraph (a) of this section advertises the availability of interLATA services and local exchange services purchased from a BOC for resale in a single advertisement, such telecommunications carrier shall not mislead the public by stating or implying that such carrier may offer bundled packages of interLATA service and BOC local exchange service purchased for resale, or that it can provide both services through a single transaction.

Subpart C—Separate Affiliate; Safeguards

§ 53.201 Services for which a section 272 affiliate is required.

For the purposes of applying section 272(a)(2) of the Act:

(a) *Previously authorized activities.* When providing previously authorized activities described in section 271(f) of the Act, a BOC shall comply with the following:

(1) A BOC shall provide previously authorized interLATA information services and manufacturing activities through a section 272 affiliate no later than February 8, 1997.

(2) A BOC shall provide previously authorized interLATA telecommunications services in accordance with the terms and conditions of the orders entered by the United States District Court for the District of Columbia pursuant to section VII or VIII(C) of the AT&T Consent Decree that authorized such services.

(b) InterLATA information services. A BOC shall provide an interLATA information service through a section 272 affiliate when it provides the interLATA telecommunications transmission component of the service either over its own facilities, or by reselling the interLATA telecommunications services of an interexchange provider.

(c) *Out-of-region interLATA information services.* A BOC shall provide out-of-region interLATA information services through a section 272 affiliate.

§ 53.203 Structural and transactional requirements.

(a) *Operational independence.*

(1) A section 272 affiliate and the BOC of which it is an affiliate shall not jointly own transmission and switching facilities or the land and buildings where those facilities are located.

(2) A section 272 affiliate shall not perform any operating, installation, or maintenance functions associated with facilities owned by the BOC of which it is an affiliate.

(3) A BOC or BOC affiliate, other than the section 272 affiliate itself, shall not perform any operating, installation, or maintenance functions associated with facilities that the BOC's section 272 affiliate owns or leases from a provider other than the BOC.

(b) *Separate books, records, and accounts.* A section 272 affiliate shall maintain books, records, and accounts, which shall be separate from the books, records, and accounts maintained by the BOC of which it is an affiliate.

(c) *Separate officers, directors, and employees.* A section 272 affiliate shall have separate officers, directors, and employees from the BOC of which it is an affiliate.

(d) *Credit arrangements.* A section 272 affiliate shall not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the BOC of which it is an affiliate.

(e) *Arm's-length transactions.* A section 272 affiliate shall conduct all transactions with the BOC of which it is an affiliate on an arm's length basis, pursuant to the accounting rules described in § 32.27 of this chapter, with any such transactions reduced to writing and available for public inspection.

§ 53.205 Fulfillment of certain requests. [Reserved]

§ 53.207 Successor or assign.

If a BOC transfers to an unaffiliated entity ownership of any network elements that must be provided on an unbundled basis pursuant to section 251(c)(3) of the Act, such entity will be deemed to be an ''assign'' of the BOC under section 3(4) of the Act with respect to such transferred network elements. A BOC affiliate shall not be deemed a ''successor or assign'' of a BOC solely because it obtains network elements from the BOC pursuant to section 251(c)(3) of the Act.

Subpart D—Manufacturing by Bell Operating Companies

§ 53.301 [Reserved]

Subpart E—Electronic Publishing by Bell Operating Companies

§ 53.401 [Reserved]

Subpart F—Alarm Monitoring Services

§ 53.501 [Reserved]

[FR Doc. 97–1390 Filed 1–17–97; 8:45 am]
BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–105; RM–8793 and RM–8852]

Radio Broadcasting Services; Ely, Hermantown & Pine City, MN and Siren, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document substitutes Channel 221C3 for Channel 221A at Hermantown, Minnesota, in response to a petition filed by Harbor Broadcasting, Inc. *See* 61 FR 24262, May 14, 1996. In accordance with Section 1.420(g) of the Commission's Rules we shall also modify the construction permit for Channel 221A to specify operation on Channel 221C3. The coordinates for Channel 221C3 are 46–49–30 and 92–17–00. To accommodate the upgrade at Hermantown, we shall substitute Channel 233A for Channel 221A, Ely, Minnesota, at coordinates 47–53–40 and 91–51–50, and modify the construction permit for Station WELY-FM accordingly. We shall also substitute Channel 265A for Channel 221A at Pine City, Minnesota, at coordinates 45–54–07 and 92–57–25, and modify the license for Station WCMP-FM accordingly. In response to a counterproposal filed by Badger Broadcasting Corporation, we shall allot Channel 289A to Siren, Wisconsin, at coordinates 45–50–56 and 92–27–13. There is a site restriction 8 kilometers (5 miles) northwest of the community. Canadian concurrence has been obtained for each of the above allotments. With this action, this proceeding is terminated.

DATES: Effective February 24, 1997. The window period for filing applications for Channel 289A at Siren, Wisconsin, will open on February 24, 1997, and close on March 27, 1997.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 96–105, adopted January 3, 1997, and released January 10, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission'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 contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202)857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 221A and adding Channel 233A at Ely, removing Channel 221A and adding Channel 221C3 at Hermantown, and removing Channel 221A and adding Channel 265A at Pine City.

3. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Siren, Channel 289A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–1095 Filed 1–17–97; 8:45 am]
BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–134; RM 8679, 8720]

Radio Broadcasting Services; Sanford, Robbins, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a counterproposal allotting Channel 276A at Robbins, North Carolina, as the community's first local aural transmission service at the request of WWGP Broadcasting Corp. See 60 FR 44003 (August 24, 1995). This document also denies a petition for rule making filed by Woolstone Corporation requesting allotment of Channel 276A at Sanford, North Carolina and an alternative proposal filed by WWGP Broadcasting requesting substitution of Channel 276A for Channel 288A at Sanford, deletion of Channel 288A from FM Table of Allotments, and modification of license of Station WFJA(FM) to specify Channel 276A. Channel 276A can be allotted at Robbins without a site restriction at coordinates 35–25–48 and 79–34–48.

DATES: Effective February 24, 1997. The window period for filing applications