(b) The draw of the Wellington Bridge, mile 2.5, need not be opened for vessels.

Dated: January 3, 1997.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 97–1800 Filed 1–23–97; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 96–254; FCC 96–472]

Implementation of Section 273 of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing this Notice of Proposed Rulemaking (NPRM) to initiate a proceeding concerning the Bell Operating Companies' (BOCs') manufacture of telecommunications equipment and customer premises equipment (CPE) pursuant to Section 273 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. In general, under Section 273, a BOC may provide telecommunications equipment and may manufacture both telecommunications equipment and CPE once the Commission authorizes the BOC to provide in-region, interLATA services pursuant to Section 271. The Commission seeks comment on procedures governing collaboration, research and royalty agreements, nondiscrimination standards, and the reporting and disclosure of protocols and other technical requirements for connecting to the BOC's network. Section 273 also limits the manufacturing activities of Bellcore and other entities that develop industry-wide standards or generic requirements, or conduct certification activities. The Commission seeks comment on proposed measures to implement these provisions of Section 273. In addition, the Commission seeks comment on the effects of the BOCs' proposed sale of Bellcore on its implementation of Section 273.

DATES: Comments are due on or before February 24, 1997 and Reply Comments are due on or before March 26, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before March 25, 1997.

ADDRESSES: To file formally in this proceeding, interested parties must file an original and six copies of all comments, reply comments, and supporting comments, with the reference number ''CC Docket 96–254'' on each document. Those parties wishing each Commissioner to receive a personal copy of their comments must file an original plus eleven copies. Parties must send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W. Room 222, Washington, D.C. 20554. Parties must also provide four copies to Secretary, Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Room 235, Washington, D.C. 20554. Parties must also provide one copy of any documents filed in this docket to the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Gregory Cooke, Attorney, Network Services Division, Common Carrier Bureau, (202) 418–2351. For additional information concerning the information collections contained in this NPRM contact Dorothy Conway, (202) 418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted December 10, 1996, and released December 11, 1996. (FCC 96–472). This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (''PRA''). It has been submitted to the Office of Management and Budget (''OMB'') for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. The full text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, D.C. and is also available from the FCC's World Wide Web site, http://www.fcc.gov. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington D.C. 20037.

Paperwork Reduction Act

This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due March 25, 1997. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None.

Title: Implementation of Section 273 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.

Form No.: N/A.

Type of Review: New collection.

Information collection	No. of respondents (approx.)	Estimated time per response (hours)	Frequency (per year)	Total annual burden (hours)	Total annual cost to respondents [1]	Total annual capital and startup costs and total annual operation and maintenance and purchase of services
Proposed Provision of Information on Protocols and Technical Requirements (Section 273(c)(1))	[2] 7	8	25	1,400	$140,000	$77,000
Access By:						
Competitors to Information (Section 273(c)(3))	[2] 7	2	25	350	35,000	77,000
Proposed Provision of Planning Information to Interconnecting Carriers (Section 273(c)(4))	[2] 7	2	75	1,050	105,000	77,000
Proposed Requirements for Standard-Setting Entities (Section 273(d)(4)(A))	50	5	10	2,500	250,000	0
Sunset of Manufacturing Safeguards and Procedural Requirements (Section 273(d)(6))	50	20	1	1,000	100,000	0

[1] Assuming cost of preparation to be $100/hr.
[2] Regional Holding Companies (''RHCs''). These seven RHCs control all of the Bell Operating Companies (''BOCs''). Each RHCs typically files information with the Commission on behalf of all of the BOCs under its control.

Total Annual Burden: 6300 hours.

Respondents: Businesses or others for profit, including small businesses.

Needs and Uses: The NPRM seeks comments on a number of issues, the resolution of which may lead to the imposition of information collections subject to the Paperwork Reduction Act. The information collections proposed are required under the Telecommunications Act of 1996, Public Law No. 104–104. These information collections will also be used to ensure that the BOCs, standards-setting organizations, equipment manufacturers, and certification entities fulfill their obligations under Section 273. The NPRM seeks comment on potential overlap between existing information collections and the information collections required under Section 273 and proposed in the NPRM.

Synopsis of Notice of Proposed Rulemaking

1. Introduction and Background: On February 8, 1996, the Telecommunications Act of 1996 (''1996 Act'') became law.[3] Through this legislation, Congress sought to establish a ''pro-competitive, de-regulatory national policy framework'' for the United States telecommunications industry.[4] The 1996 Act includes provisions that are intended to promote competition in markets that are already open to new competitors. Congress entrusted to this Agency the responsibility for establishing the rules that will implement most quickly and effectively the national telecommunications policy embodied in the 1996 Act.[5]

2. Section 273 seeks to facilitate BOC entry into manufacturing while preserving the competitive nature of these markets by permitting a BOC to manufacture telecommunications equipment and CPE only after the BOC: (1) has been authorized to provide interLATA service pursuant to Section 271(d) (which, *inter alia,* requires the BOC to have demonstrated that it has implemented certain network access provisions contained in Section 271(c)(2)(B) and that BOC provision of interLATA service is in the public interest);[6] (2) has established a separate subsidiary that complies with Section 272 (which contains certain structural safeguards and other provisions to facilitate detection of prohibited acts as well as to prevent discrimination and cross-subsidization);[7] and (3) has met the requirements of Section 273 (which, *inter alia,* requires BOC disclosure of certain technical information, prohibits discriminatory equipment procurement decisions, and imposes constraints on certain standards-setting, and certification, entities).[8]

3. Section 273(a): Authorization. Section 273(a) explicitly authorizes BOCs and BOC affiliates[9] to ''manufacture and provide'' telecommunications equipment,[10] and ''manufacture'' customer premises equipment[11] once they obtain authority to offer in-region, interLATA service

[3] The Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 96 (1996) (codified at 47 U.S.C. §§ 151 et seq.).

[4] *Jt. Statement of Managers,* S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 1 (1996) (''Joint Explanatory Statement'').

[5] According to Representative Fields, ''[Congress] is decompartmentalizing segments of the telecommunications industry, opening the floodgates of competition through deregulation, and most importantly, giving consumers choice * * * and from these choices, the benefits of competition flow to all of us as consumers—new and better technologies, new applications for existing technologies, and most importantly * * * lower consumer price.'' 142 Cong. Rec. H1149 (Feb. 1, 1996) (statement of Rep. Fields).

[6] 47 U.S.C. § 273(a).

[7] 47 U.S.C. § 272(a)(2)(A).

[8] 47 U.S.C. § 273(a).

[9] The term ''Bell operating company'' is defined in the 1996 Act, and includes the successors and assigns of Bell operating companies that provide ''wireline telephone exchange service,'' but does not include an ''affiliate'' of a Bell operating company, other than another Bell operating company or its successor or assigns. 47 U.S.C. § 153(4). ''Affiliate'' is defined in the 1996 Act, 47 U.S.C. § 153(1), to mean 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 the purpose of determining affiliate status under Section 153(1), ''owned'' means an equity interest of more than ten percent. 47 U.S.C. § 153(1). For Bellcore, however, the equity interest creating an affiliate relationship with a BOC is significantly less. Section 273(d)(1)(B) precludes Bellcore from becoming a BOC manufacturing affiliate, but allows for limited BOC ownership of Bellcore under Section 273(d)(8)(A). The latter paragraph states ''[t]he term 'affiliate' shall have the same meaning as in Section 3 of this Act, except that, for purposes of paragraph (1)(B)—(i) an aggregate voting equity interest in Bell Communications Research, Inc., of at least 5 percent of its total voting equity, owned directly or indirectly by more than 1 otherwise unaffiliated Bell operating company, shall constitute an affiliate relationship; and (ii) a voting equity interest in Bell Communications Research, Inc., by any otherwise unaffiliated Bell operating company of less than 1% of Bell Communications Research's total voting equity shall not be considered to be an equity interest under this paragraph.''

[10] ''Telecommunications equipment'' means ''equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).'' 47 U.S.C. § 153(45).

[11] ''Customer premises equipment'' means ''equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.'' 47 U.S.C. § 153(14).

under Section 271(d) and comply with any other rules and regulations that result from this proceeding. We tentatively conclude that Section 273(a) allows a BOC to manufacture and provide telecommunications equipment and to manufacture CPE, in compliance with the rules we adopt in this proceeding, once that BOC has obtained authority to offer interLATA service in any of its in-region states. We seek comment on this tentative conclusion.

4. Section 273(a) also states that ''neither a Bell operating company nor any of its affiliates may engage in such manufacturing in conjunction with a Bell operating company not so affiliated or any of its affiliates.'' [12] BOCs under the ownership or control of a common Regional Holding Company (''RHC'') would appear to meet the statutory definition of ''affiliates;'' therefore, we tentatively conclude that this provision prevents joint manufacturing between or among (1) unaffiliated RHCs; (2) unaffiliated BOCs that are not under the ownership or control of a common RHC; and (3) an RHC and a BOC that is not affiliated with that RHC. We seek comment on this tentative conclusion.

5. Section 273(h) defines the term ''manufacturing'' to have ''the same meaning as such term has under the AT&T Consent Decree.'' The U.S. District Court for the District of Columbia, which supervised the Decree, determined that the terms ''manufacture'' and ''manufacturing'' extend to the ''design, development and fabrication'' [13] of telecommunications equipment, CPE, and the ''software integral to [this] equipment hardware, also known as firmware.'' [14] Although Section 273 defines only the gerund ''manufacturing,'' we tentatively conclude that we should also accord the verb ''manufacture'' a meaning that extends to include the activities identified by the District Court and that is consistent with the definition of ''manufacturing'' provided in the statute. We seek comment on this interpretation.

6. Section 273(b): BOC Collaboration and Research and Royalty Agreements. Notwithstanding the restrictions on BOC entry into manufacturing imposed by Section 273(a), Section 273(b) explicitly permits BOCs to collaborate with manufacturers, engage in research activities related to manufacturing, and enter into royalty agreements with manufacturers. Specifically, Section 273(b)(1) permits a BOC to engage ''in close collaboration with any manufacturer of customer premises equipment or telecommunications equipment during the design and development of hardware, software, or combinations thereof related to such equipment.'' We seek comment on the types of activities that would constitute ''close collaboration'' permissible under this section. We tentatively conclude that the broad language of Section 273(b)(1) does not permit close collaboration in either of the following two situations: (1) between a BOC or an RHC and the manufacturing affiliate of another unaffiliated BOC or RHC; or (2) between the manufacturing affiliates of two unaffiliated BOCs or RHCs. Conversely, we tentatively conclude that Section 273(b)(1) does permit joint collaboration between a BOC-affiliated manufacturer and a non-BOC affiliated manufacturer. We request comment on these tentative conclusions.

7. Section 273(b)(2) also permits BOCs, notwithstanding the conditions imposed by Section 273(a), to ''(A) engage[] in research activities related to manufacturing; and (B) enter[] into royalty agreements with manufacturers or telecommunications equipment.'' We seek appropriate definitions for the terms ''research activities'' and ''royalty agreements'' that will preserve BOC incentives to research and develop innovative products, solutions and technologies, consistent with the language of Section 273(b)(2), while minimizing potentially anticompetitive incentives. We also seek comment on other ways to protect against potential anticompetitive abuses and seek comment on the relationship between Section 273(b)(2) and other sections of the Act which may require disclosure of information, including, but not limited to, Sections 251(c)(5), 251(e)(2), or 273(c)(1).

8. Section 273(c): BOC Information Requirements. Information with respect to the technical characteristics of a network is essential for manufacturers of telecommunications equipment and CPE. Telecommunications equipment and CPE manufacturers' products cannot be used in or with a network unless they comply with the technical specifications and protocols necessary for incorporation in or interoperation with that network.[15] Changes in technical specifications, protocols or both can foreclose competition or render potential competition less likely if an affiliated manufacturer can learn of such changes and then modify, or create new, products to be compatible with those changes in advance of the rest of the market.[16]

9. Our *Computer Inquiry III* rules recognize some of these concerns by, *inter alia*, requiring carriers offering enhanced services or providing customer premises equipment to disclose to the public ''all information relating to network design and technical standards and information affecting changes to the telecommunications network which would affect either intercarrier interconnection or the manner in which customer premises equipment is attached to the interstate network prior to implementation and with reasonable advance notification.'' [17] In addition, the Commission's ''all carrier'' rule obligates ''all carriers owning basic transmission facilities [to release] all information relating to network design * * * to all interested parties on the same terms and conditions, insofar as such information affects either intercarrier interconnection or the manner in which interconnected [customer-premises equipment]

[12] Section 273(d)(1)(B) precludes Bellcore from becoming a BOC manufacturing affiliate, but allows for limited BOC ownership of Bellcore under Section 273(d)(8)(A). The latter paragraph states ''[t]he term 'affiliate' shall have the same meaning as in Section 3 of this Act, except that, for purposes of paragraph (1)(B)—(i) an aggregate voting equity interest in Bell Communications Research, Inc., of at least 5 percent of its total voting equity, owned directly or indirectly by more than 1 otherwise unaffiliated Bell operating company, shall constitute an affiliate relationship; and (ii) a voting equity interest in Bell Communications Research, Inc., by any otherwise unaffiliated Bell operating company of less than 1% of Bell Communications Research's total voting equity shall not be considered to be an equity interest under this paragraph.''

[13] *United States* v. *Western Elec. Co.*, 675 F. Supp. at 662.

[14] *Id.* at 667 n.54.

[15] *United States* v. *AT&T*, 552 F. Supp. at 190–91; *Computer and Business Equip. Mfrs. Assoc. Petition for Declaratory Ruling Regarding Section 64.702(d)(2) of the Commission's Rules and the Policies of the Second Computer Inquiry*, Report and Order, 93 F.C.C.2d 1226, 1236–37 (1983).

[16] *See generally*, Carl Shapiro, Antitrust in Network Industries, Address before the American Bar Association (March 27, 1996). We will place a copy of this address in the docket file of this proceeding.

[17] 47 CFR § 64.702(d)(2). *See, e.g., Amendment to Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry); and Policy and Rules Concerning Rates for Competitive Common Phase II Carrier Service and Facilities Authorizations Thereof*, Report and Order, 2 FCC Rcd 3072, 3087 (1987), 52 FR 20714, June 3, 1987 (''*Phase II Order*''), *recon.*, 3 FCC Rcd 1150 (1988), 53 FR 8629, March 16, 1988 (''*Phase II Reconsideration Order*''), *further recon.*, 4 FCC Rcd 5927 (1989), 55 FR 29022, July 17, 1990 (''*Phase II Further Reconsideration Order*''); *Phase II Order vacated sub. nom. California* v. *FCC*, 905 F.2d 1217 (9th Cir. 1990) (''*California I*''); *Computer III Remand Proceeding*, 5 FCC Rcd 7719 (1990), 56 FR 964, January 10, 1991 (''*ONA Remand Order*''), *recon.*, 7 FCC Rcd 909 (1992), 57 FR 5391, February 14, 1992, *pets. for review denied sub. nom. California* v. *FCC*, 4 F.3d 1505 (9th Cir. 1993) (''*California II*''); *BOC Safeguards Order*, 6 FCC Rcd 7571 (1991), 57 FR 4373, February 5, 1992, *vacated in part and remanded sub. nom. California* v. *FCC*, 39 F.3d 919 (9th Cir. 1994) (''*California III*''), *cert. denied*, 115 S. Ct. 1427 (1995).

operates.'' [18] The Commission's rules also require carriers to disclose network changes to customers ''[i]f such changes can be reasonably expected to render any customer's terminal equipment incompatible with telephone company communications facilities, or require modification or alteration of such terminal equipment, or otherwise materially affect its use or performance'' [19] Common carriers have also filed network specifications as part of their tariffs so that customers may select from among features offered with a package of services. To the extent that the notice and filing requirements imposed on carriers by the 1996 Act (including, especially, Sections 273(c)(1) and 273(c)(4)) may duplicate these or other existing Commission notice and filing requirements related to network interconnection, we seek comment on suggestions to consolidate those requirements and the proposed text of rules that would achieve that objective.

10. The legislative safeguards of Section 273(c) reduce the potential for anticompetitive conduct that might otherwise accompany the information advantage enjoyed by a network owner that also manufactures network equipment.[20] Section 273(c) requires the BOCs to disclose certain information relating to their network standards. Disclosure of that information may promote competition by facilitating interconnectivity [21] and interoperability,[22] alerting competitors and others to changes in standards, and preventing the imposition of unreasonable licensing fees by the BOCs. [23]

11. Although the information disclosure requirements of Section 273(c) apply on their face to all BOCs, Section 273(c) is contained within a statute that otherwise addresses BOC obligations in the manufacturing context. We seek comment on whether Section 273(c) applies to all BOCs or only to BOCs that are authorized to manufacture under Section 273(a).

12. *Section 273(c)(1):* Section 273(c)(1) requires a BOC, ''in accordance with regulations prescribed by the Commission, [to] maintain and file with the Commission full and complete information with respect to the protocols and technical requirements for connection with and use of its telephone exchange service facilities.'' [24] A BOC also is required to ''report promptly to the Commission any material changes or planned changes to protocols and technical requirements for connection with and use of its telephone exchange service.'' We seek comment on how each of the terms in this subsection that are not defined by the 1996 Act (such as ''protocols'' and ''technical requirements'') should be defined. Because our current rules regarding network information, discussed above, address the needs of other carriers, information service providers (''ISPs''), enhanced service providers (''ESPs''), and other members of the public for information about network capabilities,[25] and not the specific needs of manufacturers who wish to develop new network products, we tentatively conclude that our existing rules do not satisfy the filing requirements of Section 273(c)(1). We seek comment on the need for specific disclosure rules to implement Section 273(c) in light of this tentative conclusion, as well as the specific language that commenters may conclude should appear in them.

13. Although Section 273(c)(1) mandates full disclosure of the protocols and technical requirements used for network connection, in network markets, the announcement of the impending availability of a product prior to its actual availability also may have anticompetitive effects.[26] While the potential harm associated with early disclosure in this context may not be as great as those associated with excessive secrecy, we seek comment on the potential effects of early disclosure of products, protocols or technical requirements. Specifically, we request that commenters address: (1) whether early disclosure or late disclosure of information has a greater potential to damage the operations of carriers, manufacturers, and other market participants; (2) the extent to which early disclosure of planned products, technical specifications, or protocols could stifle the development of competing products, technical specifications, or protocols; (3) whether any provision of the Communications Act fully addresses the potential problems associated with early disclosure; and (4) whether we should exempt *bona fide* equipment trials from Section 273(c)(1)'s disclosure requirements, as we did in the context of carriers' Section 251(c)(5) network disclosure obligations.[27]

14. The BOCs are required to ''maintain'' the information described in Section 273(c)(1) in addition to filing it with the Commission. We tentatively conclude that, in fulfilling their obligation to ''maintain'' this information, the BOCs must keep it ''full and complete,'' accurate, and up-to-date. In addition, because the BOCs' obligation to ''maintain'' this information is contained within a section of a statute otherwise addressing public disclosure requirements through Commission filings, we tentatively conclude that each BOC must keep the relevant information within its service area in a form that is available for inspection by the public upon reasonable request. By doing so, the BOCs would: (1) maintain the information in a form that is available at a location physically close to those parties that are most likely to need it; and (2) promote competition by making the information more widely available than it would be if the Commission were the sole source. We seek comment on this tentative conclusion. We also seek comment on how long we should

[18] *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry),* Memorandum Opinion and Order on Reconsideration, 84 F.C.C.2d 50, 82–83 (1980), 46 FR 5984, January 21, 1981, *further recon.,* 88 FCC 2d 512 (1981), 46 FR 59976, December 8, 1981, *aff'd sub nom. Computer and Communications Indus. Ass'n* v. *FCC,* 693 F.2d 198 (D.C. Cir. 1982), *cert. denied,* 461 U.S. 938 (1983).

[19] 47 CFR § 68.110(b). Certain past references to this rule also use the term ''all carrier rule.'' In this proceeding, we use that term to refer to our part 64 rule, above, and refer to 47 CFR § 68.110(b) specifically by number, if necessary.

[20] *See* Joint Explanatory Statement at 154.

[21] The 1996 Act defines ''public telecommunications network interconnectivity'' as ''the ability of two or more public telecommunications networks used to provide telecommunications service to communicate and exchange information without degeneration, and to interact in concert with one another.'' 47 U.S.C. § 256(d).

[22] In the context of Section 251(c)(5), we recently defined ''interoperability'' as ''the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged.'' *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* Second Report and Order and Memorandum Opinion and Order, FCC 96–333, 61 FR 47284, September 6, 1996, at ¶ 178 (*citing IEEE Standard Dictionary of Electrical and Electronics Terms* 461 (J. Frank ed. 1984)).

[23] *Cf.* 47 U.S.C. § 251(c), which imposes specific interconnection obligations on incumbent LECs. *Inter alia,* Section 251 obligates incumbent LECs to negotiate interconnection agreements in good faith (Section 251(c)(1)), requires that interconnection be provided ''on rates, terms, and conditions that are just, reasonable and nondiscriminatory'' (Section 251(c)(2)(D)), and requires that incumbent LECs provide reasonable public notice of changes in necessary information (Section 251(c)(5)). Accordingly, Sections 251(c) and 273(c) appear to overlap to some extent.

[24] 47 U.S.C. § 273(c)(1) (emphasis supplied). *Compare* this provision with the all carrier rule and 47 CFR § 68.110(b), above.

[25] *See, e.g.,* 47 CFR §§ 64.702(d)(2), 68.110(b).

[26] *See, e.g., id.* at 123–24; Farrell, Joseph, and Garth Saloner, *Installed Base and Compatibility: Innovation, Product Preannouncements, and Predation,* Amer. Econ. Rev., Vol. 76, No. 5 at 940–55 (Dec. 1986).

[27] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* Second Report and Order and Memorandum Opinion and Order, FCC 96–333, at ¶ 260.

require the BOCs to ''maintain'' this information.

15. All of the BOCs now have sites on the Internet that are easily accessible to millions of users around the world. We tentatively conclude that one method by which the BOCs could satisfy their obligation to ''maintain'' information in accordance with Section 273(c)(1) would be by placing the information on their publicly-accessible World Wide Web sites or by making files available through other Internet protocols, such as FTP, Gopher, or electronic mail. We seek comment on this tentative conclusion, including comment on (1) whether we should impose requirements on BOCs choosing to use such Internet postings concerning the format and location of material to ensure that competitors can access the necessary files easily; and (2) whether information that cannot be made available as plain ASCII text could be posted using cross-platform formats such as Postscript or PDF (Adobe Acrobat), allowing users to view or print materials with freely-available ''reader'' software.

16. Section 273(c)(1) also requires the BOCs to ''report promptly to the Commission any material changes or planned changes'' to the information described in that section. We seek comment both on when and how such reports must be filed. For instance, we have recently concluded that network changes in the context of Section 251(c)(5) should be disclosed at the ''make/buy'' point because, at that point, carriers' plans are sufficiently developed to provide adequate and useful guidance to competing service providers.[28] Disclosure of changes at the ''make/buy'' point, however, may not fully address the information needs of manufacturers. Information provided at the ''make/buy'' point may come too late for a rival manufacturer that might otherwise attempt to offer a competing product that can serve a similar function to the product the BOC has chosen to manufacture or purchase. In addition, unlike Section 251(c)(5), which mandates the disclosure of certain network ''changes,'' Section 273(c)(1) requires disclosure of ''planned changes.'' We seek comment, therefore, on whether a different disclosure standard would be appropriate in the context of Section 273(c)(1). We also seek comment on the potential use by the BOCs of alternative methods of reporting to the Commission changes in protocols or technical requirements, such as the use of electronic mail.

17. We request that commenters submit draft rules implementing the information filing, maintenance, and disclosure requirements contained in Section 273(c)(1) including, for those parties advocating the use of Internet capabilities in the context of Section 273(c)(1), specific language that we should adopt to implement this option. In addition, we request comment on whether the FCC should provide information on its own Internet site, in the form of actual files and/or hypertext links to BOC Internet sites, to create a central on-line point of contact for materials describing technical requirements and protocols.

18. Section 251(c)(5) requires all incumbent local exchange carriers, including all BOCs, ''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 recently adopted rules implementing this provision and describing incumbent LECs' network disclosure obligations under Section 251(c)(5).[29] In light of these obligations, we seek comment on the relationship between the filing and information disclosure requirements of Section 273(c)(1), Section 251(c)(5), and our existing disclosure requirements under the rules discussed above. Specifically, we seek comment on (1) the degree of specificity of information that we should require the BOCs to disclose and the timing of that disclosure; (2) whether compliance with the network disclosure obligations of Section 251(c)(5), as implemented by the Commission, would satisfy the information disclosure requirements of Section 273(c)(1); and (3) the text of proposed rules that would govern disclosure of this information.

19. *Section 273(c)(2):* Section 273(c)(2) bars BOCs from disclosing ''any information required to be filed under [Section 273(c)(1)] unless ''that information has been filed promptly, as required by regulation by the Commission.'' We interpret this requirement to mean that BOCs may not disclose information described in Section 273(c)(1) until the BOC has made that information publicly available by filing it with this Commission. We request comment on this interpretation.

20. We note that Section 273(b)(1) permits the BOCs to engage in ''close collaboration with any manufacturer of customer premises equipment or telecommunications equipment during the design and development of hardware, software, and combinations thereof related to such equipment.'' Under Section 273(c)(1), however, each ''Bell Operating Company shall, in accordance with regulations prescribed by the Commission, maintain and file with the Commission full and complete information with respect to the protocols and technical requirements for connection with and use of its telephone exchange facilities.'' To ensure compliance with Section 273(c)(1), we seek to prevent ''close collaboration'' from resulting in the communication of technical information and protocols in advance of the disclosure requirement that is contained in Section 273(c)(2).[30] Section 273(g) provides that this Commission ''may prescribe such additional rules and regulations as the Commission determines are necessary to carry out the provisions of this section, and otherwise prevent discrimination and cross-subsidization in a Bell operating company's dealing with its affiliate and with third parties.'' [31] We seek comment as to how sections 273(b)(1) and 273(g) may be made to work together in a manner that is both efficient and effective, and ask commenting parties to propose any rules necessary to harmonize those sections. In addition, commenters should provide data with respect to the measurement of costs and benefits that can be ascribed to specific rules that are proposed by parties to this proceeding.

21. *Section 273(c)(3):* Under Section 273(c)(3) ''[t]he Commission may prescribe such additional regulations'' as may be needed to ensure that ''manufacturers have access to the information with respect to the protocols and technical requirements for connection with and use of telephone exchange service facilities that a Bell operating company makes available to any manufacturing affiliate or any unaffiliated manufacturer.'' As noted above in the context of Section 273(c)(1), our existing network disclosure rules address the information needs of other carriers, ISPs, ESPs, and other members of the public. Our rules have not, until now, focussed specifically on the needs of manufacturers for information affecting the design of end user equipment. We request comment on whether

[28] *Id.* at ¶ 223.

[29] *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* Second Report and Order and Memorandum Opinion and Order, FCC 96–333, at ¶¶ 165–260.

[30] 47 U.S.C. § 273(c)(2).

[31] 47 U.S.C. § 273(g).

regulations in addition to those already in place, or adopted under Section 273(c)(1), are needed to assure that manufacturers have access to the necessary information and, if so, what those regulations should be.

22. *Section 273(c)(4):* Section 273(c)(4) requires the BOCs to provide ''to interconnecting carriers providing telephone exchange service, timely information on the planned deployment of telecommunications equipment.'' While the 1996 Act does not define ''interconnecting carrier,'' we interpret this subparagraph to mean that a BOC must provide adequate notice to all *telecommunications* carriers providing local exchange service with whom the BOC has an interconnection arrangement.[32] We request comment on this tentative conclusion. We also request comment on (1) the level of information this section requires BOCs to disclose; and (2) how far in advance a BOC needs to disclose this information for the disclosure to be considered ''timely.''

23. We seek comment on the relationship between the type of information required by Section 251(c)(5) and that required by Section 273(c)(4). We also seek comment as to whether a BOC's Section 273(c)(4) filing could satisfy its obligation under Section 251(c)(5). In addition, we seek specific comment on whether the disclosure timetable we recently adopted to govern network disclosure under section 251(c)(5) is either necessary or sufficient to meet the ''timely'' standard of section 273(c)(4). We seek comment as to how the Commission might minimize the administrative burden of the notice and filing requirements while still achieving Congress' objectives in establishing these reporting and notice requirements. We also seek comment on whether information filed to meet Section 64.702 or 68.110 requirements or filed as part of carrier exchange access tariffs could or should satisfy the requirements of Section 273(c)(4).

24. Section 273(d): General Manufacturing Safeguards. Section 273(d) limits the manufacturing activities of standard-setting organizations. Section 273(d) addresses three types of activities: standards development; industry-wide generic requirements development; and certification of telecommunications equipment and customer premises equipment. Section 273(d)(8) defines ''certification,'' [33] ''generic requirements'' [34] and ''industry-wide.'' [35] We tentatively conclude that these and the other definitions contained in Section 273(d)(8) are complete and self-explanatory, but seek comment as to whether any clarifications are required.

25. While Section 273(d)(8) defines ''accredited standards development organization,'' [36] neither Section 273(d)(8), nor any other section of the Act defines ''standards.'' We seek comment on how ''standards'' should be defined for purposes of implementation of the 1996 Act to ensure that standards processes are open and accessible to the public. By establishing a clear definition of the term ''standard,'' we seek (1) to clarify for manufacturers, BOCs, Bellcore and other interested parties the scope of those sections of the 1996 Act that address standards development; and (2) to facilitate compliance with standards development regulations. We also seek to understand better the possible ways that we may distinguish among different types of activities that might be characterized as standards setting activities under Section 273(d). We request comment as to the generic and conceptual distinctions among different types of standards. For example, generic distinctions might be based on the type of entity creating the standard. Thus, it might be possible to distinguish between accredited standards (*i.e.*, those standards developed by an accredited standards development organization, such as Committee T1) and ''de facto'' standards (*i.e.*, those standards not developed by an accredited standards development organization). ''De facto'' standards might further be separated into ''de facto'' standards (1) created by a group of interested parties seeking to promote interoperability; (2) imposed upon an industry by a dominant entity or dominant entities; or (3) adopted without any explicit coordination by market participants that independently select the same or similar standards. On a conceptual level, we seek to understand the role of these different types of standards within the industry and their relative impact on manufacturing competition. We seek comment as to the meaning of the term ''industry'' as used in this section. Comments that address the conceptual issues associated with ''standards'' development will assist us in developing precise rules for standards setting entities.

26. *Section 273(d)(1): Application to Bell Communications Research or Manufacturers.* Bell Communications Research, Inc., (''Bellcore'') was established on January 1, 1984, under the Plan of Reorganization as part of the divestiture of AT&T. Originally, called the Central Services Organization and consisting primarily of former Bell Laboratories employees, Bellcore was established to give support to the newly formed regional Bell Operating Companies in a manner similar to that which had been provided to AT&T by Bell Laboratories.[37] Today, Bellcore is the predominant source of industry-wide generic requirements; it conducts extensive technical certification of telecommunications equipment and it is a leading contributor and participant in standards developed by accredited standards development organizations.[38] Since its creation, Bellcore has been owned and controlled jointly by the RHCs. The RHCs, however, have recently announced their agreement to sell Bellcore to Science Applications

[32] ''Telecommunications carrier'' includes ''any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226).'' 47 U.S.C. § 153(44).

[33] ''The term 'certification' means any technical process whereby a party determines whether a product, for use by more than one Local Exchange Carrier, conforms with the specified requirements pertaining to such product.'' 47 U.S.C. § 273(d)(8)(D). Certification here pertains to the private sector process of determining that equipment is in compliance with voluntary standards.

[34] ''The term 'generic requirement' means a description of acceptable product attributes for use by local exchange carriers in establishing product specifications for the purchase of telecommunications equipment, customer premises equipment and software integral thereto.'' 47 U.S.C. § 273(d)(8)(B).

[35] ''The term 'industry-wide' means activities funded by or performed on behalf of local exchange carriers for use in providing wireline telephone exchange service whose combined total of deployed access lines in the United States constitutes at least 30 percent of all access lines deployed by telecommunications carriers in the United States as of the date of enactment of the Telecommunications Act of 1996.'' 47 U.S.C. § 273(d)(8)(C).

[36] ''The term 'accredited standards development organization' means an entity composed of industry members which has been accredited by an institution vested with the responsibility for standards accreditation by the industry.'' 47 U.S.C. § 273(d)(8)(E).

[37] *United States* v. *Western Electric Co.*, Civil Action No. 82–0192, Plan of Reorganization, filed December 16, 1982, at 336; *see United States* v. *Western Electric*, 569 F. Supp. 1057, 1113–1118 (D.D.C. 1983) (approving creation of Central Services Organization proposed in Plan of Reorganization), *aff'd sub nom. California* v. *United States*, 464 U.S. 1013 (1983).

[38] Bellcore indicates that, in 1996, its budget exceeds $1 billion and it employs nearly 6,000 people. Over 4000 of these employees were ''highly trained and experienced engineers and scientists who provide a critical mass of telecommunications expertise and resources.'' These employees make Bellcore ''unique[] in its ability to provide end-to-end solutions for its customers.'' In addition, Bellcore's patent portfolio contains more than 680 domestic and foreign patents. See Bellcore Ownership in Transition, undated briefing materials received Dec. 4, 1996. We will place a copy of these briefing materials in the docket file of this proceeding.

International Corporation (''SAIC''), a large defense contractor.[39]

27. Section 273(d) limits the circumstances under which Bellcore or any successor entity or affiliate may manufacture telecommunications equipment or CPE. Section 273(d)(1)(B) prohibits Bellcore from ''manufacturing telecommunications equipment or customer premises equipment as long as it is an affiliate of more than 1 otherwise unaffiliated Bell operating company or successor or assign of any such company.'' [40] BOCs that are commonly owned or controlled by a single RHC would appear to meet the 1996 Act's definition of affiliates. Accordingly, we tentatively conclude that Section 273(d)(1)(B) prohibits Bellcore from manufacturing telecommunications equipment or CPE only as long as it is (1) affiliated with two or more otherwise unaffiliated RHCs; (2) affiliated with two or more BOCs that are not under the ownership or control of the same RHC, and are not otherwise affiliated; or (3) affiliated with an RHC and a BOC that is not otherwise affiliated with that RHC. We seek comment on this tentative conclusion.

28. Section 273(d)(1)(A) provides that Bellcore ''shall not be considered a [BOC] or a successor or assign of a BOC at such time as it is no longer an affiliate of any [BOC].'' [41] Based on the limited information before us,[42] we tentatively conclude that, if the announced sale of Bellcore to SAIC were eventually to be consummated, under Section 273(d)(1)(A), Bellcore would no longer be considered a BOC, a BOC affiliate, or a BOC successor or assign. As such, we tentatively conclude that it would be permitted to begin manufacturing telecommunications equipment and CPE in accordance with Sections 273(d)(1)(B) and 273(d)(3). We seek comment on these tentative conclusions, including specific comment on these and other implications of Bellcore's sale.

29. *Section 273(d)(2): Proprietary Information.* Section 273(d)(2) provides that: ''[a]ny entity which establishes standards for telecommunications equipment or customer premises equipment, or generic network requirements for such equipment, or certifies telecommunications equipment or customer premises equipment shall be prohibited from releasing or otherwise using any proprietary information, designated as such by its owner, in its possession as a result of such activity, for any purpose other than purposes authorized in writing by the owner of such information, even after such entity ceases to be so engaged.'' [43]

30. We seek to clarify to which entities this section should apply, how Section 273(d)(2) should be enforced, and what impact this section may have on accredited standards development organizations and industry forums and accordingly seek comment on these issues. While Section 273(d)(4) sets procedures for use by ''any entity that is not an accredited standards development organization and that establishes industry-wide standards,'' Section 273(d)(2), on its face applies to ''any entity that establishes standards.'' A comparison of the two provisions suggests that the term ''any entity that establishes standards'' encompasses a broader range of entities than does Section 273(d)(4). Specifically, we tentatively conclude that Section 273(d)(2) applies to all entities that develop standards, and includes entities that create ''de facto'' standards. We seek comment on the extent to which Section 273(d)(2) also applies to ISO 9000 certification [44] or interoperability testing in general. We also seek comment on the extent to which this section applies to BOCs' or other carriers' development of internal interfaces and protocols that might or might not be adopted more widely. [45] We also tentatively conclude that, because Section 273(d)(2) uses the terms ''standards'' or ''generic requirements'' rather than ''industry-wide standards,'' or ''industry-wide generic requirements,'' this section applies to the establishment of any standard or requirement, not just those that are industry-wide. We seek comment on the validity of these tentative conclusions. Similarly, we seek comment on the types of certification activities that are encompassed by Sections 273(d)(2), Section 273(d)(3), and Section 273(d)(4), including comment on possible differences in the scope of certification activities encompassed by each.

31. In addition, we seek specific comment as to whether, and if so, how, Section 273(d) applies to the activities of industry forums such as the ATM Forum [46] or the National ISDN User's Forum. [47] The work of these forums can be characterized in a variety of ways. For example, the ATM Forum maintains a World Wide Web page in which it describes its work product as ''specifications.'' The Telecommunications Industry Association (TIA) characterizes the ATM Forum as a ''standards development organization,'' [48] while the Network Reliability Council states that industry forums, like the ATM Forum, ''use and influence standards to create user application profiles of standards and implementation agreements based on options approved in standards.'' [49] We seek comment on whether the work product of these types of industry forums constitutes either a ''standard'' or a ''generic requirement.'' Additionally, we seek comment as to whether these forums, if they have some relationship with ''accredited standards

[39] *Bellcore Owners Sell Business to Defense Contractor*, Communications Daily, Nov. 22, 1996, at 1.

[40] Section 273(d)(1)(B) (emphasis supplied). This subsection further states that ''[n]othing in this subsection prohibits Bell Communications Research, Inc., or any successor entity, from engaging in any activity in which it is lawfully engaged on the date of enactment of the Telecommunications Act of 1996.'' 47 U.S.C. § 273(d)(1).

[41] 47 U.S.C. § 273(d)(1)(A).

[42] *Bellcore Owners Sell Business to Defense Contractor*, Communications Daily, Nov. 22, 1996, at 1.

[43] 47 U.S.C. § 273(d)(2).

[44] The ISO 9000 Series, published by the International Standards Organization, is a set of three generic standards (ISO 9001, ISO 9002, and ISO 9003) that ''provide quality assurance requirements and quality management guidance.'' ISO 9001 is a quality assurance standard for companies involved in the design, testing, manufacture, delivery, or service of products. ISO 9002 covers manufacturing and installation. ISO 9003 addresses product testing. Newton, Harry, Newton's Telecom Dictionary 328 (11th Ed. 1996).

[45] In this case, by ''internal interfaces and protocols,'' we intend to include both (1) those standards that are used only internally by the BOCs and are otherwise transparent to network interconnectors and/or users, at least in the absence of the unbundling or sale of individual network elements; and (2) those standards that are adopted by the BOCs on an ''individual'' basis, but which may nevertheless have the effect of foreclosing other alternative standards by virtue of the BOCs' substantial size and market share.

[46] The ATM Forum is an international non-profit organization formed with the objective of accelerating the use of ATM products and services through a rapid convergence of interoperability specifications. In addition, the Forum promotes industry cooperation and awareness. The ATM Forum consists of over 700 member companies, and it remains open to any organization that is interested in accelerating the availability of ATM-based solutions.

[47] The North American ISDN Users' Forum (NIUF) objectives are to provide users the opportunity to influence developing ISDN technology to reflect their needs; to identify ISDN applications, develop implementation requirements and facilitate their timely, harmonized, and interoperable introduction; and to solicit user, product provider, and service provider participation in the process. In 1988, the National Institute of Standards and Technology (NIST) collaborated with industry to establish the NIUF. Members of NIST's Computer Systems Laboratory have served as the chair of the forum and have hosted the NIUF Secretariat. Over 300 organizations participate in the NIUF. The NIUF is open to all interested parties, product providers, and service providers.

[48] TIA Standards and Technology Annual Report 1995. We will place a copy of this document in the docket file of this proceeding.

[49] Network Reliability Council Increased Interconnection Task Group II Report (Dec. 1, 1995) at 57.

development organizations'' should themselves be considered ''accredited standards development organizations'' for the purpose of this section of the Act. We also seek comment as to what type of relationship, if any, should lead to these industry forums being classified as ''accredited'' for the purposes of Section 273(d), and how ''accredited'' should be defined for the purpose of administering Section 273. We encourage commenters to address the advantages and disadvantages of interpreting this section to include industry forums as standards setting entities within the meaning of Section 273(d) of the Act, and further encourage commenters to address the impact on members of these groups of a finding that they are covered by Section 273(d).

32. We also seek comment on the extent to which the preceding interpretations would require accredited standards organizations and industry forums to alter their existing practices and procedures for protecting proprietary information to comply with this provision of the Act, and the projected costs and benefits of such alterations. We recognize that the protection of proprietary information is vital to continued development of new technology and innovative network advances. Assuming accredited standards development organizations and industry forums must comply with Section 273(d)(2), we seek comment on and draft language for any rules that a commenting party asserts we should establish to mitigate any adverse effects of improper disclosure.

33. *Section 273(d)(3): Manufacturing Safeguards.* Section 273(d)(3) has three parts. In general, Section 273(d)(3)(A) restricts the ability of an entity to manufacture and certify any particular class of telecommunications equipment or CPE and requires that such manufacturing be performed only through an affiliate separate from the certifying entity. Sections 273(d)(3)(B) and 273(d)(3)(C) impose specific separation requirements on the manufacturing affiliate and the certifying entity, respectively. Under Section 273(d)(3)(B), the entity's manufacturing affiliate must maintain books, records and accounts separate from those of the certifying affiliate, must not engage in joint manufacturing activities with the certifying entity, and must have segregated facilities and separate employees. Under Section 273(d)(3)(C), a certifying entity must not discriminate in favor of its manufacturing affiliate, must not disclose unaffiliated manufacturers' proprietary information without authorization, and must not permit any employee engaged in certification activities to participate in joint equipment sales or marketing activities with the certifying entity's manufacturing affiliate. We tentatively conclude that, if the sale of Bellcore to SAIC were to be consummated, Bellcore would be permitted to engage in manufacturing activities, but would need to comply with the structural and accounting safeguards of Section 273(d)(3). We seek comment on this tentative conclusion.

34. Section 273(d)(3)(A) states that ''any entity which certifies telecommunications equipment and customer premises equipment manufactured by an unaffiliated entity shall only manufacture a particular class of telecommunications equipment or customer premises equipment for which it is undertaking or has undertaken, during the previous 18 months, certification activity for such class of equipment through a separate affiliate.'' [50] While the terms ''telecommunications equipment'' and ''customer premises equipment'' are defined in the Act, ''class'' is not defined by the Act. We tentatively conclude that we should define specific classes of equipment and that these classes should be based on existing industry classifications to the extent that they exist. We request comment that describes classifications currently used within the industry and proposed definitions for each class of equipment. We also seek comment on the practical effects of defining ''classes'' broadly, versus narrowly.

35. The breadth of the term ''class'' may also affect how quickly the sunset provision contained in Section 273(d)(6) becomes effective. If classes are defined more narrowly, it may be easier for the Commission to make a determination that the requirements of Section 273(d)(3) should be terminated with respect to a specific class, but it would have many such determinations to make. Conversely, if the Commission defined ''class'' broadly, it would be more difficult for the Commission to make a determination that the requirements of Section 273(d)(3) should be terminated, but there would be a much smaller number of determinations needed.

36. We also seek comment on how to interpret the phrase ''during the previous 18 months'' in Section 273(d)(3)(A). [51] One interpretation of the italicized phrase is that if, at the date on which an entity seeks to manufacture equipment, that entity is currently certifying equipment, or has within the previous 18 months certified equipment within a particular class, it may manufacture equipment within that class only through a separate affiliate. If an entity that certifies equipment seeks to manufacture equipment within a particular class of equipment and within the previous 18 months that entity has not certified equipment within that same class, it may manufacture equipment directly. A second possible interpretation of the phrase is that if the certification entity was certifying equipment and manufacturing equipment within the same class within 18 months prior to the effective date of the 1996 Act, the entity may continue to do so without creating a separate affiliate. We seek comment on the proper interpretation of this phrase.

37. Section 273(d)(3)(B) specifies particular separate affiliate requirements, such as the maintenance of separate books, records and accounts. The Commission has issued a separate NPRM addressing affiliate transactions that fall within the scope of that section. [52] In addition to these accounting safeguards, however, Section 273(d)(3)(C) states that the certification entity, *inter alia,* shall ''not discriminate in favor of its manufacturing affiliate in the establishment of standards, generic requirements, or product certification.'' We tentatively conclude that our existing nondiscrimination rules are inadequate in the context of Section 273(d)(3)(C) because these rules do not address the ability of a certification entity to discriminate in favor of its manufacturing affiliate. Unlike Section 202, which prohibits ''unjust or unreasonable discrimination,'' Section 273(d)(3)(C) uses no adjectives to modify the meaning of the verb ''discriminate.'' We seek comment, therefore, on whether Congress intended to impose a stricter standard for compliance with Section 273(d)(3)(C) by enacting a flat prohibition on all discrimination. [53] The verb, ''to discriminate'' means to ''make a clear distinction'' or to ''act on the basis of

[50] 47 U.S.C. § 273(d)(3)(A).

[51] 47 U.S.C. § 273(d)(3)(A).

[52] *Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996,* Notice of Proposed Rulemaking, 11 FCC Rcd 9054, 9099–9102 (1996), 61 FR 40161, August 1, 1996, *corrected* 61 FR 41208, August 7, 1996.

[53] We sought comment on a similar issue in *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area,* CC Docket No. 96–149, Notice of Proposed Rulemaking, FCC 96–308, ¶ 72 (released July 18, 1996), 61 FR 39397, July 29, 1996.

prejudice.'' [54] We tentatively conclude, therefore, that Section 273(d)(3)(C) requires the certification entity to provide its services to its manufacturing affiliate on terms, conditions or rates that are at least as good as those it provides to unaffiliated manufacturers. We seek comment on this tentative conclusion, including comment on (1) any specific concerns that we should address in this proceeding; (2) the language of proposed rules, if any, that a party asserts we should adopt to address these dangers; and (3) the relationship, if any, between Section 273(d)(3)(C) and Section 272(c)(1), which prohibits a BOC from discriminating between an affiliate and any other entity in, *inter alia,* the establishment of standards. We tentatively conclude that the other prohibitions that are contained in Section 273(d)(3)(C)(ii–iii) are clear and that no clarification or additional rules appear to be necessary to implement this section.

38. *Section 273(d)(4): Manufacturing Limitations for Standards-Setting Organizations.* Section 273(d)(4) prescribes procedures that are intended to be open to all interested parties in the process for setting and establishing industry-wide standards and generic requirements for telecommunications equipment and CPE. [55] These procedures apply to standards-setting activities by ''any entity that is not an accredited standards development organization and that establishes industry-wide standards for telecommunications equipment or customer premises equipment, or industry-wide generic network requirements for such equipment, or that certifies telecommunications equipment or customer premises equipment manufactured by an unaffiliated entity.'' Additionally, this section imposes requirements to assure fair, even-handed certification processes, [56] and prohibits anticompetitive behavior. [57]

39. Section 273(d)(4) potentially could encompass a wide range of entities or alliances of entities. Bellcore would appear to fall squarely within the ambit of Section 273(d)(4); we seek comment, however, on whether the sale of Bellcore to SAIC or another entity unaffiliated with the BOCs could affect the applicability of this section to Bellcore. We also seek comment on the potential additional scope of this section, including the extent to which it could apply to research, development, or adoption of standards, specifications, or generic requirements by large carriers, other entities, or alliances. In addition, we seek comment on these specific issues: (1) the ability of the RHCs, Bellcore or other carriers to circumvent the requirements of 273(d)(4) by designating standards or generic requirements as, for example, ''internal,'' ''non industry-wide,'' ''optional,'' company-specific ''specifications,'' etc.; (2) the appropriate definition, and treatment, of such *de facto* standards or requirements that may not be adopted through the 273(d)(4) processes, including the relationship between these standards and the definition of ''industry-wide'' standards contained in 273(d)(8)(C); and (3) the adequacy of 273(d)(5) and our recently-adopted default dispute resolution processes [58] to address the anti-competitive harms that may result from the establishment of such standards or requirements. Furthermore, we seek comment on the appropriate treatment of standards developed or adopted by large entities or alliances (*e.g.,* individual RHCs, GTE, or alliances) (a) in the event the entity or alliance were to control at least 30% of the deployed access lines in the United States, as defined in 273(d)(8)(C); and (b) in the event that the entity or alliance were to control fewer than 30% of such lines.

40. Section 273(d)(4)(A) specifies procedures to be followed by any entity subject to Section 273(d)(4) in establishing and publishing any industry-wide standard, industry-wide generic requirement, or ''substantial modification'' thereto for telecommunications equipment or customer premises equipment. We seek comment on what should be deemed to constitute a ''substantial modification.'' Specifically, we ask commenters to address whether the Commission should define ''substantial modification'' precisely or whether we should establish factors that should be considered in determining what constitutes a ''substantial modification.'' With regard to factors to be considered, we request comment on what factors, such as impact on network reliability, performance, security, and interoperability, might be established to assess what constitutes a ''substantial modification.'' Furthermore, we seek comment on the appropriate weight that should be given to each individual factor proposed.

41. Section 273(d)(4)(A) imposes five duties upon any entity, ''that is not an accredited standards development organization'' and that establishes an industry-wide standard or generic requirement. Section 273(d)(4)(A)(i) requires any such entity to ''issue a public notice of its consideration of a proposed industry-wide standard or industry-wide generic requirement.'' The 1996 Act does not specify what constitutes adequate ''public notice.'' We seek comment on the means of publication most likely to ensure broad knowledge of the impending activity.

42. We tentatively conclude that publications such as the Bellcore *Digest of Technical Information* [59] and publications on the World Wide Web similar to that of the ATM Forum would constitute adequate public notice because these forms of notice are available to the public at reasonable expense, provide a summary of the proposed work, provide contact information, and set tentative dates for when the requirement or specification will be available. We seek comment on this tentative conclusion and on any additional factors that should be considered in determining generally what should constitute adequate ''public notice.'' We also seek comments listing other publications or means of providing ''public notice'' that would meet the public notice requirement. To the extent that public notice can be provided by placing material on World Wide Web sites, we seek comment on whether and how the public could reasonably be informed of the location of this information. We also seek comment on whether public notice could be provided by posting information through the Internet on relevant Usenet newsgroups, or on a new newsgroup established for this purpose. In addition, we seek comment as to whether public notice should be provided by electronic mail, either by sending information directly to interested parties or by posting information on relevant Internet ''mailing lists.'' Finally, we seek comment on the role that the ATIS industry forums and TIA groups might play in ensuring interested parties have access to industry-wide generic requirement and standard development processes.

43. Section 273(d)(4)(A)(ii)–(v) states

[54] *Webster's II New Riverside University Dictionary,* Riverside Publishing Co., at 385 (1994).

[55] 47 U.S.C. § 273(d)(4)(A).

[56] 47 U.S.C. § 273(d)(4)(B).

[57] 47 U.S.C. § 273(d)(4)(C)–(D).

[58] *Implementation of Section 273(d)(5) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996—Dispute Resolution Regarding Equipment Standards,* Report and Order, 11 FCC Rcd 12955 (1996), 61 FR 24897, May 17, 1996.

[59] The annual subscription fee is $110. Bellcore, *Digest of Technical Information,* Jan. 1996. We are concerned that fees for ''publications'' that satisfy this ''public notice'' requirement remain inexpensive.

''(ii) Such entity shall issue a public invitation to interested parties to fund and participate in such efforts on a reasonable and nondiscriminatory basis, administered in such a manner as not to unreasonably exclude any interested industry party;

(iii) Such entity shall publish a text for comment by such parties as have agreed to participate in the process pursuant to clause (ii), provide such parties a full opportunity to submit comments, and respond to comments from such parties;

(iv) Such entity shall publish a final text of the industry-wide standard or industry-wide generic requirement, including the comments in their entirety, of any funding party which requests to have its comments so published; and

(v) Such entity shall attempt, prior to publishing a text for comment, to agree with the funding parties as a group on a mutually satisfactory dispute resolution process which such parties shall utilize as their sole recourse in the event of a dispute on technical issues as to which there is disagreement between any funding party and the entity conducting such activities, except that if no dispute resolution process is agreed to by all parties, a funding party may utilize the dispute resolution procedures established pursuant to paragraph (5) of this subsection.''

We have recently limited the definition of a ''funding party'' in the context of Section 273(d)(5)'s dispute resolution processes to include only parties that ''provide actual funding to support the standards-setting process,'' specifically excluding parties that merely post a ''performance bond'' or provide ''in-kind'' support.[60] We tentatively conclude that this definition should apply in the context of Section 273(d)(4)(A) as well, and that the remainder of the requirements imposed by Section 273(d)(4)(A) (ii)–(v) are self-explanatory. We request comment on these tentative conclusions.

44. Section 273(d)(4)(B) sets forth procedures that an entity must follow when it ''engages in product certification for telecommunications equipment or customer premises equipment manufactured by unaffiliated entities.'' Such activity must be performed pursuant to ''published'' and ''auditable'' criteria, and must use ''available industry-accepted testing methods and standards.'' We tentatively construe the phrase ''auditable criteria'' to mean criteria that, when applied in a certification process, are sufficiently precise that a neutral third party would be able to replicate each certification and determine whether each certification had, or had not, been performed in an unbiased manner. We request comment on the validity of this construction, and also request comment as to whether the ''Generally Accepted Auditing Standards'' that have been propounded by the American Institute of Certified Public Accountants are adequate for this purpose.[61] We seek comment on what should constitute publication and how we should determine if the criteria used to perform the product certification are auditable. In addition, we seek comment as to how the term ''industry accepted testing methods'' should be defined; whether such testing methods currently exist and, if so, what they are; and what constitutes ''industry accepted.'' We also request comment as to how we should determine whether a testing method is ''industry accepted.'' More narrowly, in this context, we seek comment on whether the term ''industry'' includes all telecommunications service providers, or those providers and all manufacturers, or subsets of these or additional categories. We request that commenters address whether any particular types of entities specifically should be included in, or excluded from, the term ''industry?''

45. Section 273(d)(4)(C) prohibits any entity that is not an accredited standards development organization and that establishes industry-wide standards from undertaking ''any actions to monopolize or attempt to monopolize the market for such services.'' We seek comment on how best to implement this provision.

46. Section 273(d)(4)(D) states that any entity that is not an accredited standard development organization shall not ''preferentially treat its own telecommunications equipment or customer premises equipment or that of its affiliate, over that of any other entity in establishing and publishing industry-wide standards or industry-wide generic requirements for, and in certification of telecommunications equipment and customer premises equipment.'' We seek comment on how best to implement this provision. We suggest that parties interested in commenting on these issues propose rules that they believe would most efficiently, and effectively, enforce these provisions of the 1996 Act. For example, one form of ''preferential treatment'' we can identify at this time would be preferential licensing of proprietary technology. We seek comment as to whether the Commission should require, as do the International Organization for Standardization (''ISO'') and the American National Standard Institute (''ANSI''), that participants agree to license proprietary technology on ''reasonable'' terms before that technology is incorporated into an official standard. We request that commenters advocating such Commission action define terms that should be considered ''reasonable,'' and that commenters opposing such Commission action discuss other possible approaches to this potential problem. In addition, we seek comment on whether we should use existing ANSI, ISO, or other rule structures as a model for developing Commission rules in this area, including specific comment on the features of existing rule structures that work well, and potential gaps that should be addressed.

47. Section 273(d)(5) requires that the Commission prescribe a dispute resolution process to be used if all parties cannot agree on a dispute resolution process when establishing and publishing any industry-wide standard or generic requirement. Because this Commission has already issued a Report and Order addressing Section 273(d)(5), that section will not be addressed further here.[62]

48. *Section 273(d)(6): Sunset.* Section 273(d)(6) defines the circumstances under which the Commission must lift the manufacturing safeguards of Section 273(d)(3) and the procedural safeguards of Section 273(d)(4), providing that:

> The requirements of paragraphs (3) and (4) shall terminate for the particular relevant activity when the Commission determines that there are alternative sources of the industry-wide standards, industry-wide generic requirements or product certification for a particular class of telecommunications equipment or [CPE] available in the United States. Alternative sources shall be deemed to exist when such sources provide commercially viable alternatives that are providing services to customers. The Commission shall act on any application for such a determination within 90 days after receipt of such application, and shall receive public comment on such application.[63]

We seek to identify those factors that the Commission should use in making the determination required by Section 273(d)(6). We tentatively conclude that factors that should be addressed include the number of entities developing standards, developing generic requirements or conducting certification work; the ability of these entities to

[60] *Implementation of Section 273(d)(5) of the Communications Act of 1934 as amended by Telecommunications Act of 1996—Dispute Resolution Regarding Equipment Standards,* Report and Order, 11 FCC Rcd at 12969.

[61] *See e.g.,* AICPA Codification of Statements on Auditing Standards, AU 320.32, 320.36, 320.37 (1996).

[62] *See Implementation of Section 273(d)(5) of the Communications Act of 1934 as amended by Telecommunications Act of 1996—Dispute Resolution Regarding Equipment Standards,* Report and Order, 11 FCC Rcd 12955.

[63] 47 U.S.C. § 273(d)(6).

compete with each other; and the length of time during which those entities have been conducting the relevant activity. We also seek comment as to what factual record the Commission should compile in making the determination required by Section 273(d)(6), including specific procurement documents or other information the Commission should require applicants to submit under this section. We ask that commenters addressing this issue provide specific comments on appropriate ways in which the Commission can balance its need to develop an adequate factual record on such applications against its statutory obligation to act within 90 days.

49. In addition, we seek comment on how we should define two phrases within Section 273(d)(6). The first, ''class of telecommunications equipment or CPE,'' was examined in our earlier discussion of Section 273(d)(3). We request comment as to whether that analysis should apply to this phrase as used in Section 273(d)(6) and whether other considerations inherent in the implementation of Section 273(d)(6) should require a different interpretation or rule. The second phrase we seek to define is ''commercially viable alternatives that are providing services to customers.'' The term ''alternatives'' in this phrase suggests that the number of entities conducting a relevant activity is a factor we should consider, and that a minimum of two entities must be conducting a relevant activity. We seek comment as to whether the existence of two entities conducting a relevant activity is both a necessary and sufficient condition for termination of the Section 273(d) (3) and (4) safeguards. In addition, it appears that, to assess the viability of entities, it is necessary to determine if the alternative entities are competitive and to examine the duration of their existences. We believe that such as analysis is necessary to ensure that we keep in place the manufacturing safeguards set by statute until they are no longer necessary. Finally, we seek comment on the relationship among (1) the phrase ''commercially viable alternatives that are providing services to customers;'' (2) the phrase ''alternative sources of industry-wide standards, industry-wide generic requirements, or product certification;'' and (3) the definition of the term ''industry-wide'' contained in Section 273(d)(8)(C).

50. While we do not want to lift statutory safeguards prematurely, we also would seek to eliminate them as promptly as possible once they are not needed. With this in mind, we tentatively conclude that the regulations developed to implement Section 273(d) (3) and (4) should not apply to certification pursuant to Part 15 (Radio Frequency Devices) or registration pursuant to Part 68 (Connection of Terminal Equipment to the Telephone Network) of the Commission's rules.[64] We seek comment on this tentative conclusion.

51. Section 273(d)(7) states that in administering Section 273(d), the Commission ''shall have the same remedial authority as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier subject to this Act.'' Finally, Section 273(d)(8) defines several terms used in Section 273(d). We tentatively conclude that the language of these paragraphs requires no further clarification at this time. We seek comment on this tentative conclusion.

52. Section 273(E): BOC Equipment Procurement and Sales. Section 273(e) governs BOC practices in procuring and selling telecommunications equipment. With the exception of Section 273(e)(4), the provisions of Section 273(e) apply on their face to all BOCs. Section 273(e), however, is contained within a statute that otherwise addresses BOC obligations in the manufacturing context. We seek comment therefore, on whether the requirements of Section 273(e) applies to all BOCs or only to BOCs that are authorized to manufacture under Section 273(a).

53. To prevent Bell Operating Companies from favoring entities with whom they have a telecommunications equipment manufacturing relationship, Section 273(e)(1) requires that ''[i]n the procurement or awarding of supply contracts for telecommunications equipment, a Bell operating company, or any entity acting on its behalf, for the duration of the requirement for a separate subsidiary including manufacturing under this Act—(A) shall consider such equipment, produced or supplied by unrelated persons; and (B) may not discriminate in favor of equipment produced or supplied by an affiliate or related person.''

54. The Act provides no definition of the word ''consider.'' As a consequence, we first look to the ordinary meaning of that word. ''Consider'' means to ''think about seriously'' or ''bear in mind.''[65] This definition suggests that Section 273(e)(1)(A) would be satisfied if a BOC merely opened its procurement and sales processes to entities other than itself or its affiliate(s). We request comment as to (1) whether this definition of ''consider'' is sufficient, or whether some other definition would be more consistent with the intent of Congress; and (2) any specific actions that a BOC must take in fulfilling this statutory obligation.

55. In contrast, Section 273(e)(1)(B) unequivocally prohibits BOCs from discriminating in favor of equipment produced or supplied by an affiliate or related person. Accordingly, the language of Section 273(e)(1)(B) seems to make it clear that the procurement decision may not rest solely on the BOC's relationship with the supplying entity and that, in addition to opening its procurement and sales processes, a BOC may need to take affirmative steps to ensure that it does not favor proposals from ''affiliates or related persons'' for reasons other than merit. Section 272(a)(2)(A) requires a BOC to engage in manufacturing only through a separate affiliate and Section 272(c)(1) provides that the BOC ''may not discriminate between that . . . affiliate and any other entity in the provision or procurement of goods, services, facilities and information, or in the establishment of standards.'' With respect to this Section 272(c)(1) prohibition, we tentatively concluded that, ''at minimum, that BOCs must treat all other entities in the same manner as they treat their affiliates, and must provide and procure goods, services, facilities and information to and from these other entities under the same terms, conditions, and rates.''[66] We seek comment on: (1) whether the word ''discriminate'' has any different import in the context of Section 273(e)(1)(B) than it does in Section 272(c)(1); (2) what specific actions or types of actions by or on behalf of a BOC would be considered discriminatory in this context; and (3) what affirmative steps, if any, a BOC would need to take to ensure that it does not discriminate, in violation of Section 273(e)(1)(B).

56. While the prohibition contained in Section 272(c)(1) applies to affiliates, the prohibition contained in Section 273(e)(1)(B) applies to ''affiliates and related persons.'' This use of the term ''related persons'' suggests that the discrimination prohibition in Section 273(e)(1)(B) may apply to a larger class of entities than that contained in

[64] 47 CFR Parts 15 and 68.

[65] *Webster's II New Riverside University Dictionary,* Riverside Publishing Co., at 301 (1994).

[66] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area,* CC Docket No. 96–149, Notice of Proposed Rulemaking, FCC 96–308, ¶ 73 (released July 18, 1996).

Section 272(c)(1) and corresponds with the use in Section 273(e)(1)(A) of the term ''unrelated persons.'' We seek comment on the meaning of the terms ''unrelated persons'' and ''related persons.'' These terms suggest that the BOCs not be permitted to discriminate in favor of parties with whom they have some type of relationship.[67] We seek comment as to specific types of relationships that would make an entity a ''related person'' for purposes of Section 273(e). We note that Section 273(d)(8)(A) defines ''affiliate'' as having the same meaning as in Section 3 except that, for purposes of Section 273(d)(1)(B) an ''aggregate voting interest in [Bellcore] of at least 5 percent of its total voting equity, owned directly or indirectly by more than 1 otherwise unaffiliated [BOC], shall constitute an affiliate relationship.'' In contrast, no such specificity is provided with regard to the meaning of ''related person.'' We request that commenters provide the language of any rules that they assert would be needed to ensure that a BOC does not discriminate in favor of either affiliates or related persons, in violation of Section 273(e)(1)(B).

57. Section 273(e)(2) requires that ''[e]ach Bell operating company or any entity acting on its behalf shall make procurement decisions and award all supply contracts for equipment, services, and software on the basis of an objective assessment of price, quality, delivery, and other commercial factors.'' We seek comment on the scope of, and request appropriate definitions for, each of the terms ''equipment,'' ''services,'' and ''software.'' For example, we seek comment on: (1) whether the scope of the term ''equipment,'' in this context, should be limited to telecommunications equipment and CPE; (2) what types of services the mandate of Section 273(e)(2) encompasses; and (3) whether the requirements of Section 273(e)(2) apply to the procurement of all software, only the software ''essential to [the] design and development of'' telecommunications equipment or CPE,[68] or some other subset. We tentatively conclude that the remainder of this provision is self-explanatory and that no further elaboration of this requirement is necessary in our rules. We seek comment on this tentative conclusion and request that parties that disagree with this tentative conclusion propose the language for rules to address their concerns.

58. We recognize that traditional, complaint-based enforcement techniques may be inadequate for the effective enforcement of Sections 273(e)(1) and 273(e)(2). Even when confronted with clear violations of the strictures of these sections, a manufacturer may be reluctant to complain publicly because, in doing so, it might risk alienating one or more customers that represent a significant source of potential future sales. Accordingly, we request comment, including the text of proposed rules, on whether we need to develop additional enforcement mechanisms, such as mandatory auditing or reporting requirements, for use in enforcing Sections 273(e)(1) and 273(e)(2).

59. Section 273(e)(3) provides that ''[a] Bell operating company shall, to the extent consistent with the antitrust laws, engage in joint network planning and design with local exchange carriers operating in the same area of interest. No participant in such planning shall be allowed to delay the introduction of new technology or the deployment of facilities to provide telecommunications services, and agreement with such other carriers shall not be required as a prerequisite for such introduction or deployment.'' [69] We seek comment on the extent to which current antitrust laws allow joint network planning and design and on appropriate definitions of the terms ''area of interest'' and ''network planning and design.'' We also request comment on the need for, and the proposed text of, any rules that the Commission should adopt (1) to facilitate permissible, or bar impermissible, joint network planning and design; and (2) otherwise to ensure that the requirements of Section 273(e)(3) are achieved.

60. The Commission recently issued a *Notice of Proposed Rulemaking* in CC Docket No. 96–237 to implement Section 259, entitled ''Infrastructure Sharing.'' [70] Section 259 requires incumbent LECs [71] to make certain ''public switched network infrastructure, technology, information, and telecommunications facilities and functions'' available to defined ''qualifying carriers'' in the service areas where such qualifying carriers have requested and obtained designation as an eligible carrier under Section 214(e). [72] Some potential definitions of a BOC's ''area of interest,'' as that phrase is used in Section 273(e)(3), might subject a BOC and a Section 259-defined qualifying carrier to obligations under both Section 259 and Section 273(e)(3). We believe, however, that the obligations imposed by Section 273(e)(3) are separate from, and consistent with, those imposed by Section 259. Because Section 273(e)(3) requires joint network planning and design among BOCs and LECs operating in the same ''area of interest,'' we believe that Section 273(e)(3) specifically contemplates joint network planning and design between a BOC and other LECs that may be the BOC's competitors, to the extent that such activities are consistent with the antitrust laws. In contrast, Section 259(b)(6) specifically provides that an incumbent LEC shall not be required to ''engage in any [Section 259-derived] infrastructure sharing agreement for any services or access which are to be provided or offered to consumers by the qualifying carrier in such [LEC's] telephone exchange area.'' [73] In other words, apparently unlike Section 273(e)(3), Section 259 appears to apply only in instances where the qualifying carrier does not seek to offer certain services within the incumbent LEC's exchange area. [74] Accordingly, we

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[67] *Webster's II New Riverside University Dictionary* at 992 (defining ''related'' as ''connected'' or ''associated'').

[68] *See United States* v. *Western Elec. Co.,* 675 F. Supp. at 667 n.54

[69] 47 U.S.C. § 273(e)(3).

[70] We will address issues relating to Section 259 in a separate proceeding. *See Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996,* CC Docket No. 96–237, Notice of Proposed Rulemaking, FCC 96–456 (released Nov. 22, 1996), 61 FR 63774, December 2, 1996 (''*Infrastructure Sharing NPRM*''). Section 259(a) requires the Commission to prescribe implementing regulations within one year of the date of enactment of the 1996 Act, *i.e.,* by February 8, 1997.

[71] The term ''incumbent LEC'' is defined, for purposes of Section 259, in Section 251(h), which states:

(1) DEFINITION—For purposes of this section, the term ''incumbent local exchange carrier'' means, with respect to an area, the local exchange carrier that—

(A) On the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area; and

(B) (i) On such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 CFR 69.601(b)); or

(ii) Is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i).

47 U.S.C. § 251(h).

[72] 47 U.S.C. § 259. Section 259(d) defines a ''qualifying carrier'' as a telecommunications carrier that:

(1) Lacks economies of scale or scope, as determined in accordance with regulations prescribed by the Commission pursuant to this section; and

(2) Offers telephone exchange service, exchange access, and any other service that is included in universal service, to all consumers without preference throughout the service area for which such carrier has been designated as an eligible telecommunications carrier under Section 214(e).

47 U.S.C. § 259(d).

[73] 47 U.S.C. § 259(b)(6).

[74] *Infrastructure Sharing NPRM,* at ¶ 11.

believe that the specific obligations imposed by Section 259 do not conflict with Section 273(e)(3)'s mandates. We seek comment on this interpretation, including comment on other possible implications for carriers that may be subject to obligations under both Section 259, as interpreted by the Commission in CC Docket No. 96–237, and Section 273(e)(3).

61. Section 256, entitled ''Coordination for Interconnectivity,'' requires, *inter alia*, that the Commission establish procedures for Commission oversight of coordinated network planning by telecommunications carriers and other providers of telecommunications services for the effective and efficient interconnection of telecommunications networks used to provide telecommunications service.[75] We seek comment on the relationship between the BOCs' obligations under Section 273(e)(3) and the obligations Section 256(b)(1) imposes on all telecommunications carriers and other providers of telecommunications service. The newly revised charter for the Commission's Federal Advisory Committee, the Network Reliability and Interoperability Council (''NRIC''), asks the NRIC to provide recommendations on the implementation of Section 256, including specifically how the Commission can most efficiently conduct effective oversight of coordinated telecommunications network planning and design.[76] We seek comment on the relationship between the NRIC's responsibility under Section 256 and the BOCs' obligations under Section 273(e)(3).

62. Section 273(e)(4) states that ''[n]either a Bell operating company engaged in manufacturing nor a manufacturing affiliate of such a company shall restrict sales to any local exchange carrier of telecommunications equipment, including software integral to the operation of such equipment and related upgrades.'' We tentatively conclude that this language is unambiguous and we seek comment on the validity of this conclusion. We also seek comment with respect to establishing criteria for determining when sales have been restricted. Commenters may address, for example, whether restriction should be measured by the volume of sales per unit of time, or by the type of equipment sold, or both, or by some other measure. We also request that commenters address: (1) Whether the Commission should require or perform periodic audits of BOC sales; (2) whether the Commission should collect information on procurement practices to enable us to detect anomalous behavior that might trigger an audit or investigation; and (3) whether the Commission should adopt other additional rules to implement this provision of the 1996 Act.

63. Section 273(e)(5) states that ''[a] Bell operating company and any entity it owns or otherwise controls shall protect the proprietary information submitted for procurement decisions from release not specifically authorized by the owner of such information.'' We tentatively conclude that this language is unambiguous and self-executing because it corresponds to the customary use of common legal instruments such as non-disclosure agreements and license agreements. We seek comment on this tentative conclusion.

64. Section 273(F): Administration and Enforcement Authority. Section 273(f) provides that for ''the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to any Bell operating company or any affiliate thereof as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier subject to this Act.'' [77] We tentatively conclude that the Commission has broad authority to regulate all matters contemplated by Section 273 under Sections 1,[78] 2(a),[79] 3,[80] and 4(i) [81] of the Communications Act and seek comment on this tentative conclusion.

65. Section 273 addresses standards development, joint network planning, research and development, and collaboration with respect to entities that are not common carriers. While Sections 206 to 209 of the Communications Act provide statutory mechanisms for addressing complaints regarding common carrier matters,[82] additional regulations may be needed to address violations of Section 273 by entities that are not common carriers. We seek comment on, and the proposed text of, any additional rules that may be necessary, or desirable, to enforce Section 273, in addition to those that presently exist to implement Sections 206 to 209, and 501 to 503 of the Communications Act, as amended.

66. Although Section 273(d)(5) requires the Commission to prescribe a default process for use in resolving standards-setting disputes,[83] it does not contain any specific directives to govern the resolution of complaints filed under other provisions of Section 273. Particularly with respect to Sections 273(d)(2) through 273(d)(4), however, we recognize that accurate, efficient, and rapid resolution of alleged violations of Section 273 will be essential to the proper operation of this statutory section. We may find it beneficial to both the Commission and industry to amend our rules in order to increase the speed and efficiency of our complaint resolution processes and to meet better the demands of this and other sections of the 1996 Act. We are addressing potential means of accomplishing this goal in a separate proceeding [84] and we encourage commenters in that proceeding to address specific enforcement concerns relating to section 273 in particular and other sections of the 1996 Act in general.

67. Section 273(G): Additional Rules and Regulations. Section 273(g) states that ''[t]he Commission may prescribe such additional rules and regulations as the Commission determines are necessary to carry out the provisions of [Section 273], and otherwise to prevent discrimination and cross-subsidization in a Bell operating company's dealings with its affiliate and with third parties.'' [85] We seek comment on what, if any, additional rules should be adopted under this provision ''to prevent discrimination and cross-subsidization in a Bell operating company's dealings with its affiliate and with third parties,'' and we request that commenters proposing such rules do so in their initial comments, so that other parties may respond to the proposals during the reply comment period. We seek additional specific comment on whether the sale of Bellcore, as announced, creates a need for additional rules under this section.

68. Conclusion. Section 273 establishes the conditions under which

[75] 47 U.S.C. § 256(b)(1).

[76] FCC Amends Charter of Network Reliability and Interoperability Council, 61 FR 26516, May 28, 1996. We will place a copy of the text of the Network Reliability and Interoperability Council Charter in the docket file of this proceeding.

[77] 47 U.S.C. § 273(f) (emphasis added).

[78] 47 U.S.C. § 151.

[79] 47 U.S.C. § 152(a), which states that the Communications Act ''applies to all interstate and foreign communications by wire or radio * * *.''

[80] 47 U.S.C. §§ 153 (51) and (33), defines communications by wire and radio in a manner that incorporates all technologies and methods of operating.

[81] 47 U.S.C. § 154(i) permits the Commission to perform ''any and all acts * * * which may be necessary in the execution of its functions.''

[82] 47 U.S.C. §§ 206–209.

[83] 47 U.S.C. § 273(d)(5).

[84] *Implementation of the Telecommunications Act of 1996, Amendment of Rules to Be Followed When Formal Complaints Are Filed Against Common Carriers,* CC Docket No. 96–238, Notice of Proposed Rulemaking, FCC 96–460, (released November 27, 1996), 61 FR 67978, December 26, 1996.

[85] 47 U.S.C. § 273(g) (emphasis supplied).

Bell Operating Companies may manufacture and provide telecommunications equipment, and manufacture customer premises equipment. It also sets forth safeguards against anticompetitive behavior in manufacturing markets by entities other than BOCs. With this NPRM, we seek to ensure that the safeguards that Congress enacted are effectively and efficiently administered. Our further objectives in this proceeding are to develop regulations that will foster technological innovation and competition in both the customer premises equipment and telecommunication equipment markets. We encourage commenters to propose innovative and administratively simple rules that will enable us to meet these objectives, and request that interested parties propose the text of any rules that they may deem appropriate to implement Section 273. We further request that, in general, those commenters proposing such rules do so in their initial comments so that other parties may reply to them in their reply comments.

Procedural Issues

A. Ex Parte Presentations

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

B. Regulatory Flexibility Act

70. We certify that the Regulatory Flexibility Act does apply to this rulemaking proceeding because there may be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act.[86] The Secretary shall send a copy of this Notice of Proposed Rulemaking including this certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act.[87]

71. Pursuant to Section 603 of the Regulatory Flexibility Act (RFA), the Commission has prepared the following Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in the Notice of Proposed Rulemaking (NPRM). Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the remainder of the NPRM, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the NPRM, including the IRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act.

72. *Reason for Action:* The Commission, in compliance with Section 273 of the Communications Act of 1934 (''Communications Act''), as amended by the Telecommunications Act of 1996 (''1996 Act''), proposes rules and procedures intended to ensure the prompt adoption of regulations to administer and enforce Section 273 provisions with minimum regulatory and administrative burden on telecommunications carriers. The rules proposed in the NPRM are necessary to implement Section 273, in which Congress imposes requirements affecting Bell Operation Companies (BOCs), Bellcore, and entities that develop standards, develop generic requirements and conduct certification activity. This NPRM proposes rules and seeks comment to implement Section 273 in a manner that is consistent with Congress's intent.

73. *Objectives and Legal Basis for Proposed Rules:* The Commission's objective in issuing the NPRM is to propose and seek comment on rules enabling the Commission to administer and enforce Section 273 effectively and efficiently, and in a manner that is consistent with the intent of Congress. The proposed action is authorized under Sections 1, 3, 4, 7, 201–209, 218, 251, 273, and 403 of the Communications Act, as amended, 47 U.S.C. Sections 151, 153, 154, 157, 201–209, 218, 251, 273, and 403.

74. *Description and Estimated Number of Small Entities Affected:* Section 273 authorizes the Commission to impose standards on the BOCs, Bellcore, and entities that develop standards, develop generic requirements and conduct certification activity. Neither BOCs nor Bellcore qualify as small business entities; for they are dominant in their field of operation. See RFA, Section 601(3). Conversely, the size of the entities that develop standards, develop generic requirements, and conduct certification activity is unknown and may include small business entities. Accordingly, we certify that the Regulatory Flexibility Act of 1980, as amended, does not apply to this rulemaking proceeding insofar as it pertains to BOCs or Bellcore since our rules are not likely to have a significant economic impact on a substantial number of small entities, as defined by section 601(3) of the Regulatory Flexibility Act.

75. Our rules, however, may have a significant economic impact on a substantial number of small businesses insofar as they apply to entities that develop standards, develop generic requirements and conduct certification activity. We request comment on the number of possible small business entities that would fall under entities that develop standards, develop generic requirements, and conduct certification activity in addition to comment as to how to develop requirements that would effectively assist and not unduly burden qualifying small business entities.

76. *Reporting, Recordkeeping and Other Compliance Requirements:* The NPRM requests comment on reasonable reporting requirements for BOCs as to network planning, design, and interconnection arrangements. Similarly, this IRFA seeks comment on measures that could be taken by the Commission to limit any burdensome requirements upon small business entities. It seeks comment on reasonable notice requirements for BOCs as to communicating planned deployment of telecommunications equipment to their interconnecting carriers.

77. The Commission's action in this proceeding is in direct response to Congress's passage of the 1996, in particular Section 273. This NPRM only sets forth tentative conclusions as to Congress's intentions within Section 273. For an exhaustive recitation of the Commission's tentative conclusions, see the NPRM at paragraphs 8–11, 18, 20–21, 26, 29, 37–38, 40, 43, 48, 50, 52–55, 59–62, 68, 71, 73–75.

78. This NPRM also seeks comment on rules proposed to administer end enforce manufacturing safeguards potentially impacting entities that develop standards, develop generic requirements and conduct certification activities. Rules adopted in this proceeding may require reporting, recordkeeping, and may impose other procedural requirements. There are no other reporting requirements contemplated by the NPRM.

79. *Federal Rules which Overlap, Duplicate or Conflict with these Rules:* The Commission seeks comment as to what overlap, if any, exists or may exist among the requirements that this Commission may adopt to implement Section 273 and the Commission's existing rules. For example, the Commission has identified two sources

[86] 5 U.S.C. § 601(3).

[87] 5 U.S.C. § 603(a) (as amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847, 866 (1996)).

of potential overlap in 47 CFR § 64.702 and 47 CFR § 68.110, and seeks comment as to how the procedures required in these existing rules may be adapted to minimize additional regulatory burdens.

80. With respect to rules that may potentially affect BOCs, Bellcore, and entities that develop standards, develop generic requirements, or conduct certification activities, the Commission tentatively concludes that no overlap, duplication, or conflict with existing rules exists. The Commission seeks comment on this conclusion.

81. *Significant Alternatives to the Proposed Rules which Accomplish the Stated Objectives of Applicable Statutes and which Minimize any Significant Economic Impact of the Proposed Rules on Small Entities:* As mentioned in paragraphs four and five of this IRFA, the Commission believes that our rules may have a significant economic impact on a substantial number of small businesses insofar as they apply to entities that develop standards, develop generic requirements and conduct certification activity. We request comment from the industry in regards to significant alternatives to the proposed rules which accomplish the stated objective of applicable statutes and which minimize any significant economic impact of the proposed rules on small entities.

82. We advance that our tentative conclusions were reached with the interests and concerns of small businesses in mind. Although tentatively there will be no differing compliance or reporting requirements or timetables that take into account the resources available to small entities, the Commission finds this to be unnecessary. The Commission seeks comment on this tentative conclusion.

83. Additionally, the Commission tentatively concludes that the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities will not be necessary. The Commission seeks comment on this tentative conclusion. Lastly, neither the use of performance rather than design standards by the Commission nor an exemption from coverage of the rule, or any part thereof, for such small entities is believed to be required as a result of actions taken by the Commission in the impending Report and Order. The Commission seeks comment on this finding.

C. Initial Paperwork Reduction Act of 1995 Analysis

84. This NPRM contains either a proposed or modified information collection. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections identified in this NPRM, as required by the Paperwork Reduction Act of 1995.[88] Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the Federal Register. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

D. Notice and Comment Provision

85. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR Sections 1.415 and 1.419, interested parties may file comments on or before February 24, 1997, and reply comments on or before March 26, 1997. To file formally in this proceeding, interested parties must file an original and six copies of all comments, reply comments, and supporting comments, with the reference number ''CC Docket 96–254'' on each document. Those parties wishing each Commissioner to receive a personal copy of their comments must file an original plus eleven copies. Parties must send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W. Room 222, Washington, D.C. 20554. Parties must also provide four copies to Secretary, Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Room 235, Washington, D.C. 20554. Parties must also provide one copy of any documents filed in this docket to the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

86. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Copies of comments and reply comments will also be available through the Commission's copy contractor: International Transcription Service, Inc. (ITS, Inc.), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (202–857–3800).

87. In order to facilitate review of comments and reply comments, both by parties and Commission staff, we require that comments not exceed sixty (60) pages, including all appendices and attachments (except the text of proposed rules), and that reply comments not exceed thirty (30) pages. We can foresee no circumstances in which these page limits would be waived. Comments and reply comments must also include a short, concise summary of each substantive argument raised in the pleading, regardless of length. The summary may be paginated separately from the rest of the pleading and will not count toward the page limitations established above.[89]

88. Written comments by the public on the proposed and/or modified information collections are due thirty days after publication of this Notice in the Federal Register and must have a separate and distinct heading designating the comments as responses to the regulatory flexibility analysis. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

E. Ordering Clauses

89. Accordingly, *it is ordered* that pursuant to Sections 1, 3, 4, 7, 201–209, 218, 251, 273 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 153, 154, 157, 201–209, 218, 251, 273, and 403 that this *notice of proposed rulemaking* is hereby *adopted.*

90. *It is further ordered* that the Secretary *shall send* a copy of this *notice of proposed rulemaking,* including the regulatory flexibility certification to the Chief Counsel for

[88] Public Law No. 104–13, *codified at* 44 U.S.C. §§ 3501–3520.

[89] *See* 47 CFR § 1.49.

Advocacy of the Small Business Administration, in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 603(a).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–1676 Filed 1–23–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–2; RM–8955]

Radio Broadcasting Services; Naches, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Sela Valley Broadcasting proposing the allotment of Channel 257A at Naches, Washington, as the community's second local FM transmission service. Channel 257A can be allotted to Naches in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.4 kilometers (7.7 miles) northwest to avoid short-spacings to the licensed sites of Station KAYO-FM, Channel 257C1, Aberdeen, Washington, and Station KHHK(FM), Channel 259C3, Yakima, Washington. The coordinates for Channel 257A at Naches are North Latitude 46–49–09 and West Longitude 120–47–55. Since Naches is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

DATES: Comments must be filed on or before March 10, 1997, and reply comments on or before March 25, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Henry E. Crawford, Esq., 1150 Connecticut Ave., NW., Suite 900, Washington, DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–2, adopted January 10, 1997, and released January 17, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–1678 Filed 1–23–97; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 97–14, RM–8916]

Radio Broadcasting Services; Idaho Falls, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of IF Broadcasting of Idaho requesting the allotment of Channel 296A to Idaho Falls, Idaho, as that community's fifth local FM service. Coordinates used for Channel 296A at Idaho Falls are 43–27–21 and 112–04–03.

DATES: Comments must be filed on or before March 10, 1997, and reply comments on or before March 25, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Henry E. Crawford, Esq., Law Offices of Henry E. Crawford, 1150 Connecticut Avenue, NW., Suite 900, Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–14, adopted January 10, 1997, and released January 17, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–1696 Filed 1–23–97; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 97–7; RM–8947]

Radio Broadcasting Services; Chehalis, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by C.C. Broadcasting Company proposing the allotment of Channel 282A at Chehalis, Washington, as the community's first local commercial FM transmission service. Channel 282A can be allotted to Chehalis in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.4 kilometers (0.9 miles) south to avoid a short-spacing to the