be held within 60 days from the date the conference request is received.

16. Section 845.19, Request for Adjudicatory Public Hearing

At paragraph (a), Arkansas proposes to revise the amount of time in which a person charged with a violation may contest the proposed penalty or the fact of the violation from the date of service of the conference officer's action. Currently the person charged with a violation has 15 days, from the date of service of the conference officer's action, to contest the proposed penalty or the fact of the violation. Arkansas proposes to increase the time to 30 days.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Arkansas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on March 13, 1998. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsection (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1291(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(3)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 19, 1998.

Russell W. Frum,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 98–4862 Filed 2–25–98; 8:45 am]

BILLING CODE 4310–05–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51, 53, and 64

[CC Docket No. 95–20, FCC 98–8]

Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review—Review of Computer III and ONA Safeguards and Requirements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing this Notice of Proposed Rulemaking seeking comment on the remand from the United States Court of Appeals for the Ninth Circuit relating to the replacement of structural separation requirements for Bell Operating (BOC) provision of enhanced services with nonstructural safeguards, as well as the effectiveness of the Commission's *Computer III* and ONA nonstructural rules in general. The Commission believes it is necessary not only to respond to the issues remanded by the Ninth Circuit, but also to reexamine the Commission's nonstructural safeguards regime governing the provision of information services by the BOCs in light of the Telecommunications Act of 1996 and ensuing changes in telecommunications technologies and markets.

DATES: Comments are due on or before March 27, 1998 and Reply Comments are due on or before April 23, 1998. Written comments by the public on the proposed information collections are due March 27, 1998. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before April 27, 1998.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th St., N.W., Washington, D.C. 20036. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@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: Lisa Sockett, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. For additional information concerning the information collections contained in this NPRM contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted January 29, 1998 and released January 30, 1998 (FCC 98–8). This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the OMB for review under the PRA. The 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, 1919 M St., N.W., Room 239, Washington, D.C. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc988.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

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 OMB to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due April 27, 1998. 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: Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review—Review of *Computer III* and ONA Safeguards and Requirements.

Form No.: N/A.

Type of Review: New collection.

Information collection	No. of respondents (approx.)	Estimated time per response	Total annual burden
Consolidation of generic information in semi-annual reports	5	4 hours (2 hours twice a year)	20 hours.

Respondents: Bell Operating Companies.

Estimated costs per respondent: $0.

Needs and Uses: The NPRM seeks comment on a number of issues, the result of which could lead to the imposition of information collections.

Synopsis of Notice of Proposed Rulemaking

I. Introduction

1. In the Commission's *Computer III* and *Open Network Architecture* (ONA) proceedings, the Commission sought to establish appropriate safeguards for the provision by the Bell Operating Companies (BOCs) of ''enhanced'' services.[1] Examples of enhanced services include, among other things, voice mail, electronic mail, electronic store-and-forward, fax store-and-forward, data processing, and gateways to online databases. Underlying this effort, as well as our reexamination of the *Computer III* and ONA rules in this Further Notice of Proposed Rulemaking (Further Notice), are three complementary goals. First, we seek to enable consumers and communities across the country to take advantage of innovative ''enhanced'' or ''information'' services[2] offered by both

[1] Basic services, such as ''plain old telephone service'' (POTS), are regulated as tariffed services under Title II of the Communications Act. Enhanced services use the existing telephone network to deliver services that provide more than a basic transmission offering. *Bell Operating Companies' Joint Petition for Waiver of Computer II Rules*, Memorandum Opinion & Order, 10 FCC Rcd 1724 n.3 (1995) (*Interim Waiver Order*); 47 CFR 64.702(a). The terms ''enhanced service'' and ''basic service'' are defined and discussed more fully *infra* at ¶ 38.

[2] The terms ''enhanced services'' and ''information services'' are used interchangeably in this Further Notice.

the BOCs and other information service providers (ISPs). Second, we seek to ensure the continued competitiveness of the already robust information services market. Finally, we seek to establish safeguards for BOC provision of enhanced or information services that make common sense in light of current technological, market, and legal conditions.

2. Under *Computer III* and ONA, the BOCs are permitted to provide enhanced services on an ''integrated'' basis (*i.e.*, through the regulated telephone company), subject to certain ''nonstructural safeguards,'' as described more fully below. These rules replaced those previously established in *Computer II*, which required AT&T (and subsequently the BOCs) to offer enhanced services through structurally separate subsidiaries. On February 21, 1995, the Commission released a Notice of Proposed Rulemaking (*Computer III Further Remand Notice*) following a remand from the United States Court of Appeals for the Ninth Circuit (*California III*). The *Computer III Further Remand Notice* sought comment on both the remand issue in *California III* relating to the replacement of structural separation requirements for BOC provision of enhanced services with nonstructural safeguards, as well as the effectiveness of the Commission's *Computer III* and ONA nonstructural rules in general.

3. Since the adoption of the *Computer III Further Remand Notice*, significant changes have occurred in the telecommunications industry that affect our analysis of the issues raised in this proceeding. Most importantly, on February 8, 1996, Congress passed the Telecommunications Act of 1996 (1996 Act) to establish ''a pro-competitive, de-regulatory national policy framework'' in order to make available to all Americans ''advanced telecommunications and information technologies and services by opening all telecommunications markets to competition.'' As the Supreme Court recently noted, the 1996 Act ''was an unusually important legislative enactment'' that changed the landscape of telecommunications regulation.

4. The 1996 Act significantly alters the legal and regulatory framework governing the local exchange marketplace. Among other things, the 1996 Act opens local exchange markets to competition by imposing new interconnection, unbundling, and resale obligations on all incumbent local exchange carriers (LECs), including the BOCs. In addition, the 1996 Act allows the BOCs, under certain conditions, to enter markets from which they previously were restricted, including the interLATA telecommunications and interLATA information services markets. In some cases, the 1996 Act requires a BOC to offer services in these markets through a separate affiliate.[3] In addition, the 1996 Act incorporates new terminology and definitions that differ from those the Commission had been using.

5. In light of the 1996 Act and ensuing changes in telecommunications technologies and markets, we believe it is necessary not only to respond to the issues remanded by the Ninth Circuit, but also to reexamine the Commission's nonstructural safeguards regime governing the provision of information services by the BOCs. Congress recognized, in passing the 1996 Act, that competition will not immediately supplant monopolies and therefore imposed a series of safeguards to prevent the BOCs from using their existing market power to engage in improper cost allocation and discrimination in their provision of interLATA information services, among other things. These statutory safeguards seek to address many of the same anticompetitive concerns as, but do not explicitly displace, the safeguards established by the Commission in the *Computer II*, , and ONA proceedings. We therefore issue this Further Notice to address issues raised by the interplay between the safeguards and terminology established in the 1996 Act and the regime. These 1996 Act-related issues were not raised in the *Computer III Further Remand Notice*. We therefore ask interested parties to respond to the issues raised in this Further Notice and, to the extent that parties want any arguments made in response to the *Computer III Further Remand Notice* to be made a part of the record for this Further Notice, we ask them to restate those arguments in their comments.

6. We note, in addition, that Congress required the Commission to conduct a biennial review of regulations that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be ''no longer necessary in the public interest.'' Accordingly, the Commission has begun a comprehensive 1998 biennial review of telecommunications and other regulations to promote ''meaningful deregulation and streamlining where competition or other considerations warrant such action.'' In this Further Notice, therefore, we seek comment on whether certain of the Commission's current and ONA rules are ''no longer necessary in the public interest.'' To the extent parties identify additional *Computer III* and ONA rules they believe warrant review under the Act, we invite those comments as well.

7. Consistent with the 1996 Act, in this Further Notice we seek to strike a reasonable balance between our goal of reducing and eliminating regulatory requirements when appropriate as competition supplants the need for such requirements to protect consumers and competition, and our recognition that, until full competition is realized, certain safeguards may still be necessary. We want to encourage the BOCs to provide new technologies and innovative information services that will benefit the public, as well as ensure that the BOCs will make their networks available for the use of competitive providers of such services. We therefore seek comment in this Further Notice on, among other things, the following tentative conclusions:

—Notwithstanding the 1996 Act's adoption of separate affiliate requirements for BOC provision of certain information services (most notably, interLATA information services), the Act's overall pro-competitive, de-regulatory framework, as well as our public interest analysis, support the continued application of the Commission's nonstructural safeguards regime to BOC provision of intraLATA information services [paragraphs 43–59];

—Given the protections established by the 1996 Act and our ONA rules, we should eliminate the requirement that BOCs file Comparably Efficient Interconnection (CEI) plans and obtain Common Carrier Bureau (Bureau) approval for those plans prior to providing new intraLATA information services [paragraphs 60–65];

—At a minimum, we should eliminate the CEI-plan requirement for BOC intraLATA information services provided through an Act-mandated affiliate under section 272 or 274 [paragraphs 66–72]; and

—The Commission's network information disclosure rules established pursuant to section 251(c)(5) should supersede certain,

[3] We note that on December 31, 1997, the United States District Court for the Northern District of Texas held that sections 271–275 of the Act are a bill of attainder and thus are unconstitutional as to SBC Corporation and U S WEST. *SBC Communications, Inc.* v. *Federal Communications Comm'n*, No. 7:97–CV–163–X, 1997 WL 800662 (N.D. Tex. Dec. 31, 1997) (*SBC* v. *FCC*) (ruling subsequently extended to Bell Atlantic), *request for stay pending*. In general, the analysis in this Further Notice assumes the continued applicability of these provisions to the Bell companies. At appropriate places in this Further Notice, however, we ask commenters to assess the impact of *SBC* v. *FCC* on our analysis.

but not all, of the Commission's previous network information disclosure rules established in *Computer II* and *Computer III* [paragraph 122].

We also generally seek comment on, among other things, the following issues:

—Whether enactment and implementation of the 1996 Act, as well as other developments, should alleviate the Ninth Circuit's concern about the level of unbundling mandated by ONA [paragraphs 29–36];

—Whether the Commission's definition of the term ''basic service'' and the 1996 Act's definition of ''telecommunications service'' should be interpreted to extend to the same functions [paragraphs 38–42];

—Whether the Commission's current ONA requirements have been effective in providing ISPs with access to the basic services that ISPs need to provide their own information service offerings [paragraphs 85–90];

—Whether the Commission, under its general rulemaking authority, should extend to ISPs some or all section 251-type unbundling rights, which the Commission previously concluded was not required by section 251 of the Act [paragraphs 94–96]; and

—How the Commission's current ONA reporting requirements should be streamlined and modified [paragraphs 99–116].

8. As set forth in the 1998 appropriations legislation for the Departments of Commerce, Justice, and State, the Commission is required to undertake a review of its implementation of the provisions of the 1996 Act relating to universal service, and to submit its review to Congress no later than April 10, 1998. The Commission must review, among other things, the Commission's interpretations of the definitions of ''information service'' and ''telecommunications service'' in the 1996 Act, and the impact of those interpretations on the current and future provision of universal service to consumers, including consumers in high cost and rural areas. We recognize that there is a some overlap between the inquiry in this Further Notice about the relationship between the Commission's definition of the term ''basic service'' and the 1996 Act's definition of ''telecommunications service,'' and the issues to be addressed in the Commission's report to Congress. Furthermore, we recognize that other aspects of this Further Notice also may be affected by the analysis in the Universal Service Report. We note that the inquiry in this Further Notice is primarily focused on the rules and terminology the Commission should be using in the context of its *Computer II* and *Computer III* requirements. We also note that the order in this proceeding will be issued after the Universal Service Report is submitted to Congress, and will thus take into account any conclusions made in that report.

II. Background

A. Overview of Computer III/ONA and Related Court Decisions

9. We discussed in detail the factual history of *Computer III*/ONA in the *Computer III Further Remand Notice.* One of the Commission's main objectives in the *Computer III* and ONA proceedings has been to permit the BOCs to compete in unregulated enhanced services markets while preventing the BOCs from using their local exchange market power to engage in improper cost allocation and unlawful discrimination against ESPs. The concern has been that BOCs may have an incentive to use their existing market power in local exchange services to obtain an anticompetitive advantage in these other markets by improperly allocating to their regulated core businesses costs that would be properly attributable to their competitive ventures, and by discriminating against rival, unaffiliated ESPs in the provision of basic network services in favor of their own enhanced services operations. In *Computer II,* the Commission addressed these concerns by requiring the then-integrated Bell System to establish fully structurally separate affiliates in order to provide enhanced services. Following the divestiture of AT&T in 1984, the Commission extended the structural separation requirements of *Computer II* to the BOCs.

10. In *Computer III,* after reexamining the telecommunications marketplace and the effects of structural separation during the six years since *Computer II,* the Commission determined that the benefits of structural separation were outweighed by the costs, and that nonstructural safeguards could protect competing ESPs from improper cost allocation and discrimination by the BOCs while avoiding the inefficiencies associated with structural separation. The Commission concluded that the advent of more flexible, competition-oriented regulation would permit the BOCs to provide enhanced services integrated with their basic network facilities. Towards this end, the Commission adopted a two-phase system of nonstructural safeguards that permitted the BOCs to provide enhanced services on an integrated basis. The first phase required the BOCs to obtain Commission approval of a service-specific CEI plan in order to offer a new enhanced service. In these plans, the BOCs were required to explain how they would offer to ESPs all the underlying basic services the BOCs used to provide their own enhanced service offerings, subject to a series of ''equal access'' parameters. Thus, the CEI phase of nonstructural safeguards imposed obligations on the BOCs only to the extent they offered specific enhanced services. The Commission indicated that such a CEI requirement could promote the efficiencies of competition in enhanced services markets by permitting the BOCs to participate in such markets provided they open their networks to competitors.

11. During the second phase of implementing *Computer III,* the Commission required the BOCs to develop and implement ONA plans. The ONA phase was intended to broaden a BOC's unbundling obligations beyond those required in the first phase. ONA plans explain how a BOC will unbundle and make available to unaffiliated ESPs network services in addition to those the BOC uses to provide its own enhanced services offerings. These ONA plans were required to comply with a defined set of criteria in order for the BOC to obtain structural relief on a going-forward basis. This means that a BOC would not need to obtain approval of CEI plans prior to offering specific enhanced services on an integrated basis. The Commission also required the BOCs to comply with various other nonstructural safeguards in the form of rules related to network disclosure, customer proprietary network information (CPNI), and quality, installation, and maintenance reporting. All of these nonstructural safeguards were designed to promote the efficiency of the telecommunications network, in part by permitting the technical integration of basic and enhanced services and in part by preserving competition in the enhanced services market through the control of potential anticompetitive behavior by the BOCs.

12. In 1990, the Court of Appeals for the Ninth Circuit vacated three orders in the *Computer III* proceeding, finding that the Commission had not adequately justified the decision to rely on (nonstructural) cost accounting safeguards as protection against cross-subsidization of enhanced services by the BOCs. In response to this remand, the Commission adopted the *BOC Safeguards Order,* which strengthened

the cost accounting safeguards, and reaffirmed the Commission's conclusion that nonstructural safeguards should govern BOC participation in the enhanced services industry, rather than structural separation requirements.

13. During the period from 1988 to 1992, the Commission approved the BOCs' ONA plans, which described the basic services that the BOCs would provide to unaffiliated and affiliated ESPs and the terms on which these services would be provided. During the two-year period from 1992 to 1993, the Bureau approved the lifting of structural separation for individual BOCs upon their showing that their initial ONA plans complied with the requirements of the *BOC Safeguards Order,* and these decisions were later affirmed by the Commission.

14. After *California I* and the Commission's response in the *BOC Safeguards Order,* the Ninth Circuit in *California II* upheld the Commission's orders approving BOC ONA plans. In *California II,* the court concluded that the Commission had scaled back its vision of ONA since *Computer III* by approving BOC ONA plans before ''fundamental unbundling'' had been achieved. The court also concluded that the issue of whether implementation of ONA plans justified the lifting of structural separation, as the Commission had determined, was not properly before it.

15. In *California III,* the Court of Appeals for the Ninth Circuit partially vacated the Commission's *BOC Safeguards Order.* The *California III* court found that, in granting full structural relief based on the BOC ONA plans, the Commission had not adequately explained its apparent ''retreat'' from requiring ''fundamental unbundling'' of BOC networks as a component of ONA and a condition for lifting structural separation. The court was therefore concerned that ONA unbundling, as implemented, failed to prevent the BOCs from engaging in discrimination against competing ESPs in providing access to basic services. The court did find, however, that the Commission had adequately responded to its concerns regarding cost-misallocation by strengthening its cost accounting rules and introducing a system of ''price cap'' regulation; the court indicated its belief that these strengthened safeguards would significantly reduce the BOCs' incentive and ability to misallocate costs. The court also upheld the scope of federal preemption adopted in the *BOC Safeguards Order.*

16. In response to *California III,* the Bureau issued the *Interim Waiver Order,* which reinstated the requirement that BOCs must file CEI plans, and obtain Commission approval of those plans, to continue to provide specific enhanced services on an integrated basis. Also in response, the Commission issued the *Computer III Further Remand Notice,* 60 FR 12529, March 7, 1995, which sought comment on the *California III* court's remand question regarding the sufficiency of ONA unbundling as a condition of lifting structural separation, and on the general issue of whether relying on nonstructural safeguards serves the public interest.

B. Overview of the 1996 Act

17. Since the *California III* remand and the Commission's release of the *Computer III Further Remand Notice,* the 1996 Act became law and the Commission has conducted a number of proceedings to implement its provisions. These developments give us a fresh perspective from which to evaluate the Commission's current regulatory framework for the provision of information services. In this section, we describe some of the major provisions of the 1996 Act, and in later sections we examine how those provisions may affect our current rules.

1. Opening the Local Exchange Market

18. Various provisions of the 1996 Act are intended to open local exchange markets to competition. Section 251(c) of the Act requires, among other things, incumbent LECs, including the BOCs and GTE, to provide to requesting telecommunications carriers interconnection and access to unbundled network elements at rates, terms, and conditions that are just, reasonable, and nondiscriminatory, and to offer telecommunications services for resale. Section 253(a) bars state and local governments from imposing certain legal requirements that prohibit or have the effect of prohibiting the ability of any entity to provide any telecommunications service, and section 253(d) authorizes the Commission to preempt such legal requirements to the extent necessary to correct inconsistency with the Act. As a result, telecommunications carriers may now enter the local exchange market, and compete with the incumbent LEC, through access to unbundled network elements, resale, or through construction of network facilities.

19. In implementing section 251 of the Act, the Commission prescribed certain minimum points of interconnection necessary to permit competing carriers to choose the most efficient points at which to interconnect with the incumbent LEC's network. The Commission also adopted a minimum list of unbundled network elements (UNEs) that incumbent LECs must make available to new entrants, upon request. In Parts III and IV below, we discuss and seek comment on the potential impact of these unbundling requirements in more detail, both with respect to the issue in *California III* regarding the Commission's justification of ONA unbundling as a condition of lifting structural separation, as well as our overall reexamination of the Commission's current nonstructural safeguards framework.

2. BOC Provision of Information Services

20. The 1996 Act conditions the BOCs' entry into the market for many in-region interLATA services, among other things, on their compliance with the separate affiliate, accounting, and nondiscrimination requirements set forth in section 272. In the *Non-Accounting Safeguards Order,* 62 FR 2927, January 21, 1997, we noted that these safeguards are designed to prohibit anticompetitive discrimination and improper cost allocation while still permitting the BOCs to enter markets for certain interLATA telecommunications and information services, in the absence of full competition in the local exchange marketplace. We also concluded in the *Non-Accounting Safeguards Order* that the Commission's *Computer II, Computer III,* and ONA requirements are consistent with section 272 of the Act, and continue to govern the BOCs' provision of intraLATA information services, since section 272 only addresses BOC provision of interLATA services.

21. Sections 260, 274, and 275 of the Act set forth specific requirements governing the provision of telemessaging, electronic publishing, and alarm monitoring services, respectively, by the BOCs and, in certain cases, by incumbent LECs. Section 260 delineates the conditions under which incumbent LECs, including the BOCs, may offer telemessaging services. We affirmed our conclusion in the *Non-Accounting Safeguards Order* that, since telemessaging service is an ''information service,'' BOCs that offer interLATA telemessaging services are subject to the separation requirements of section 272. We further concluded that the *Computer III*/ONA requirements are consistent with the requirements of section 260(a)(2), and, therefore, BOCs may offer intraLATA telemessaging services on an integrated basis subject to both *Computer III*/ONA and the requirements in section 260.

22. Section 274 permits the BOCs to provide electronic publishing services, whether interLATA or intraLATA, only through a ''separated affiliate'' or an ''electronic publishing joint venture'' that meets certain separation, nondiscrimination, and joint marketing requirements in that section. The Commission found that there was no inconsistency between the nondiscrimination requirements of *Computer III*/ONA and section 274(d). We therefore found that the *Computer III*/ONA requirements continue to govern the BOCs' provision of intraLATA electronic publishing. We also noted that the nondiscrimination requirements of section 274(d) apply to the BOCs' provision of both intraLATA and interLATA electronic publishing.

23. Section 275 of the Act prohibits the BOCs from providing alarm monitoring services until February 8, 2001, although BOCs that were providing alarm monitoring services as of November 30, 1995 are grandfathered. Section 275 of the Act does not impose any separation requirements on the provision of alarm monitoring services. We concluded in the *Alarm Monitoring Order,* 62 FR 16093, April 4, 1997 that the *Computer III*/ONA requirements are consistent with the requirements of section 275(b)(1), and therefore continue to govern the BOCs' provision of alarm monitoring service. We discuss the potential impact of the Act's new requirements for BOC provision of certain information services on our cost-benefit analysis of structural versus nonstructural safeguards in more detail in Part IV.B.

III. California III Remand

A. Background

24. In *California III,* the Ninth Circuit reviewed the *BOC Safeguards Order,* in which the Commission reaffirmed its earlier determination to remove structural separation requirements imposed on a BOC's provision of enhanced services, based on a BOC's compliance with ONA requirements and other nonstructural safeguards. The court found that, in the *BOC Safeguards Order,* and in the orders implementing ONA, the Commission had ''changed its requirements for, or definition of, ONA so that ONA no longer contemplates fundamental unbundling.'' Because, in the Ninth Circuit's view, the Commission had not adequately explained why this perceived shift did not undermine its decision to rely on the ONA safeguards to grant full structural relief, the court remanded the proceeding to the Commission.

25. In the *Computer III Phase I Order,* (51 FR 24350 (July 3, 1986)) the Commission declined to adopt any specific network architecture proposals or specific unbundling requirements, but instead set forth general standards for ONA. BOCs were required to file initial ONA plans presenting a set of ''unbundled basic service functions that could be commonly used in the provision of enhanced services to the extent technologically feasible.'' The Commission stated that, by adopting general requirements rather than mandating a particular architecture for implementing ONA, it wished to encourage development of efficient interconnection arrangements. The Commission also noted that inefficiencies might result from ''unnecessarily unbundled or splintered services.''

26. The *Computer III Phase I Order* required the BOCs to meet a defined set of unbundling criteria in order for structural separation to be lifted. In the *BOC ONA Order,* (54 FR 3435 (January 24, 1989)) the Commission generally approved the ''common ONA model'' proposed by the BOCs. The common ONA model was based on the existing architecture of the BOC local exchange networks, and consisted of unbundled services categorized as basic service arrangements (BSAs), basic service elements (BSEs), complementary network services (CNSs), and ancillary network services (ANSs).

27. In the *BOC ONA* proceeding, certain commenters criticized the common ONA model. The commenters argued that the BOCs had avoided the *Computer III Phase I Order* unbundling requirements by failing to ''disaggregate communications facilities and services on an element-by-element basis.'' They urged the Commission to adopt a more ''fundamental'' concept of unbundling in the ONA context, by requiring the BOCs to unbundle facilities such as loops, as well as switching functions, inter-office transmission, and signalling. Specifically, they claimed that BSAs could be further unbundled; *e.g.,* trunks could be unbundled from the circuit-switched, trunk-side BSA, so that ESPs could connect their own trunks to BOC switches.

28. In the *BOC ONA Order,* the Commission rejected arguments that ONA, as set forth in the *Computer III Phase I Order,* required unbundling more ''fundamental'' than that set forth in the ''common ONA model'' proposed by the BOCs. The Commission indicated that the *Computer III Phase I Order* anticipated that the BOCs would unbundle network services, not facilities, and determined that the ONA services developed by the BOCs under the common ONA model were consistent with the examples of service unbundling set forth in the *Computer III Phase I Order.* The Ninth Circuit, however, agreed with the view that the Commission's approval of the BOC ONA plans, and subsequent lifting of structural separation, was a retreat from a ''requirement'' of ''fundamental unbundling.''

B. Subsequent Events May Have Alleviated the Ninth Circuit's California III Concerns

29. In this section, we seek comment on whether the enactment and implementation of the 1996 Act, as well as other developments, should alleviate the Ninth Circuit's underlying concern about the level of unbundling mandated by ONA. Section 251 of the Act requires incumbent LECs, including the BOCs and GTE, to provide to requesting telecommunications carriers interconnection and access to unbundled network elements at rates, terms, and conditions that are just, reasonable, and nondiscriminatory, and to offer telecommunications services for resale. Section 251 also requires incumbent LECs to provide for physical collocation at the LEC's premises of equipment necessary for interconnection or access to unbundled network elements, under certain conditions.

30. In its regulations implementing these statutory provisions, the Commission identified a minimum list of network elements that incumbent LECs are required to unbundle, including local loops, network interface devices (NIDs), local and tandem switching capabilities, interoffice transmission facilities (often referred to as trunks), signalling networks and call-related databases, operations support systems (OSS) facilities, and operator services and directory assistance. Additional unbundling requirements may be specified during voluntary negotiations between carriers, by state commissions during arbitration proceedings, or by the Commission as long as such requirements are consistent with the 1996 Act and the Commission's regulations. We note that the 1996 Act creates particular incentives for the BOCs to unbundle and make available the elements of their local exchange networks. For example, section 271 provides that a BOC may gain entry into the interLATA market in a particular state by demonstrating, *inter alia,* that it has entered into access and interconnection agreements with competing telephone exchange service providers that satisfy the ''competitive

checklist'' set forth in section 271(c)(2)(B).

31. In our view, the unbundling requirements imposed by section 251 and our implementing regulations (hereinafter referred to as ''section 251 unbundling'') are essentially equivalent to the ''fundamental unbundling'' requirements proposed by certain commenters, and rejected by the Commission as premature, in the *BOC ONA Order.* These commenters asked the Commission to require the BOCs to unbundle network elements such as loops, switching functions, inter-office transmission, and signalling. Section 251(c)(3) and the Commission's implementing regulations require those elements, and others, to be unbundled by the BOCs, and by other incumbent LECs that are subject to the requirements of section 251(c). In addition, the type and level of unbundling under section 251 is different and more extensive than that required under ONA. This may be because one of Congress's primary goals in enacting section 251—to bring competition to the largely monopolistic local exchange market—is more far-reaching than the Commission's goal for ONA, which has been to preserve competition and promote network efficiency in the developing, but highly competitive, information services market.

32. We recognize that, according to the terms of section 251, only ''requesting telecommunications carriers'' are directly accorded rights to interconnect and to obtain access to unbundled network elements.[4] In that regard, the section 251 unbundling requirements do not provide access and interconnection rights to the identical class of entities as does the ONA regime, since these rights do not extend to entities that provide solely information services (''pure ISPs''). We also recognize that the development of competition in the local exchange market has not occurred as rapidly as some expected since the enactment of the 1996 Act.

33. We believe, however, that section 251 is intended to bring about competition in the local exchange market that, ultimately, will result in increased variety in service offerings and lower service prices, to the benefit of all end-users, including ISPs. Moreover, because local telecommunications services are important inputs to the information services ISPs provide, ISPs are uniquely positioned to benefit from an increasingly competitive local exchange market. There is evidence, for example, that carriers that have direct rights under section 251 will compete with the incumbent LECs to provide pure ISPs with the basic network services that ISPs need to create their own information service offerings, either by obtaining unbundled network elements for the provision of telecommunications services or through the resale of such services. As a result, incumbent LECs have an incentive to provide an increased variety of telecommunications services to pure ISPs at lower prices in response to the market presence of such competitors. Pure ISPs also could enter into partnering or teaming arrangements with carriers that have direct rights under section 251. In addition, ISPs can obtain certification as telecommunications service providers in order to receive direct benefits under section 251. We also note that many ISPs that currently provide both telecommunications services and information services will have the benefit of both section 251 unbundling as well as ONA.

34. For all these reasons, the fact that section 251's access and interconnection rights apply by their terms only to a ''requesting telecommunications carrier'' does not, in our view, change our conviction that the 1996 Act, as well as other factors, should alleviate the court's underlying concern in *California III* that the level of unbundling required under ONA does not provide sufficient protection against access discrimination. We seek comment on this analysis. In light of several recent court decisions bearing on these issues, we also ask commenters to address how the opinions of the Eighth Circuit Court of Appeals, including the decision regarding the recombination of unbundled network elements, as well as the decision of the United States District Court for the Northern District of Texas concerning the constitutionality of sections 271 through 275 of the Act, affect our analysis.

35. In addition to the changes engendered by the 1996 Act, there have been other regulatory and market-based developments that, we believe, also should alleviate the court's underlying concern about whether the level of unbundling mandated by ONA provides sufficient protection against access discrimination. For example, the Commission's *Expanded Interconnection* proceeding requires Class A LECs, including the BOCs and GTE, to allow all interested parties to provide competitive interstate special access, transport, and tandem switched transport by interconnecting their transmission facilities with the LECs' networks. Competing ISPs that utilize transmission facilities thus may provide certain transport functions as part of their enhanced services independent of the *Computer III* framework. These additional interconnection requirements, together with section 251 unbundling and the Commission's current ONA requirements, further help to protect ISPs against access discrimination by the BOCs. We seek comment on this analysis.

36. In addition, the level of competition within the information services market, which the Commission termed ''truly competitive'' as early as 1980, has continued to increase markedly as new competitive ISPs have entered the market. The phenomenal growth of the Internet over the past several years illustrates how robustly competitive one sector of the information services market has become. Recent surveys suggest that there are some 3,000 Internet access providers in the United States; these providers range from small start-up operations, to large providers such as IBM and AT&T, to consumer online services such as America Online. We believe that other sectors of the information services market have also continued to grow, as we observed in the *Computer III Further Remand Notice.* The presence of well-established participants in the information services market, such as EDS, MCI, AT&T, Viacom, Times-Mirror, General Electric, and IBM, may make it more difficult for BOCs to engage in access discrimination. For example, the *California I* court indicated that ''the emergence of powerful competitors such as IBM, which have the resources and expertise to monitor the quality of access to the network, reduces the BOCs' ability to discriminate in providing access to their competitors.'' We seek comment on whether the sustained growth of competition within the information services market,

[4] *See* 47 U.S.C. 251(c)(2), (c)(3). The Commission determined that entities that provide both telecommunications services and information services are classified as telecommunications carriers for the purposes of section 251, and are subject to the general interconnection obligations of section 251(a), to the extent that they are acting as telecommunications carriers. *Local Competition Order,* 61 FR 45476, August 29, 1996. The Commission further concluded that telecommunications carriers that have obtained interconnection or access to unbundled network elements under section 251 in order to provide telecommunications services, may offer information services through the same arrangement, so long as they are offering telecommunications services through the same arrangement as well. *Id. See infra* paragraphs 92–96 for a more complete discussion of section 251 unbundling vis-a-vis ONA. *See also* paragraph 8 for a discussion of the Universal Service Report.

including the continued participation of large information service competitors, serves to diminish further the threat of access discrimination and, consequently, the court's concern about whether the level of unbundling mandated by ONA is sufficient.

IV. Effect of the 1996 Act

37. As detailed in the background section, the Commission issued the *Computer III Phase I Order* more than ten years ago, shortly after divestiture, and before the BOCs had obtained authorization from the MFJ court to begin to provide information services. Similarly, the implementation of ONA primarily took place between 1988 and 1992. Our objective is now, as it was then, to promote efficiency and increased service offerings while controlling anticompetitive behavior by the BOCs. We therefore reevaluate below the continuing need for these safeguards, in light of the 1996 Act and the significant technological and market changes that have taken place since the *Computer III* nonstructural safeguards were first proposed. This reevaluation is also part of the Commission's 1998 biennial review of regulations as required by the 1996 Act.

A. Basic/Enhanced Distinction

38. In the *Computer II* proceeding, the Commission adopted a regulatory scheme that distinguished between the common carrier offering of basic transmission services and the offering of enhanced services. The Commission defined a ''basic transmission service'' as the common carrier offering of ''pure transmission capability'' for the movement of information ''over a communications path that is virtually transparent in terms of its interaction with customer-supplied information.'' The Commission further stated that a basic transmission service should be limited to the offering of transmission capacity between two or more points suitable for a user's transmission needs. The common carrier offering of basic services is regulated under Title II of the Communications Act. In contrast, the Commission defined enhanced services as:

> services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information.

Enhanced services are not regulated under Title II of the Communications Act.

39. The 1996 Act does not utilize the Commission's basic/enhanced terminology, but instead refers to ''telecommunications services'' and ''information services.'' The 1996 Act defines *telecommunications* as:

> the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications service is defined as:

> the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of facilities used.

The 1996 Act defines *information service* as:

> the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

40. We concluded in the *Non-Accounting Safeguards Order* that, although the text of the Commission's definition of ''enhanced services'' differs from the 1996 Act's definition of ''information services,'' the two terms should be interpreted to extend to the same functions. We found no basis to conclude that, by using the term ''information services,'' Congress intended a significant departure from the Commission's usage of ''enhanced services.'' We further explained that interpreting ''information services'' to include all ''enhanced services'' provides a measure of regulatory stability for telecommunications carriers and ISPs by preserving the definitional scheme under which the Commission exempted certain services from traditional common carriage regulation.

41. Consistent with our conclusion in the *Non-Accounting Safeguards Order* that ''enhanced services'' fall within the statutory definition of ''information services,'' we seek comment in this Further Notice on whether the Commission's definition of ''basic service'' and the 1996 Act's definition of ''telecommunications service'' should be interpreted to extend to the same functions, even though the two definitions differ. We ask parties to address whether there is any basis to conclude that, by using the term ''telecommunications services,'' Congress intended a significant departure from the Commission's usage of ''basic services.'' As noted in the *Non-Accounting Safeguards Order,* we believe the public interest is served by maintaining the regulatory stability of the definitional scheme under which the Commission exempted certain services from traditional common carriage regulation. To the extent parties believe that ''telecommunications services'' differ from ''basic services'' in any regard, they should identify the distinctions that should be drawn between the two categories, describe any overlap between the two categories, and delineate the particular services that would come within one category and not the other.

42. In light of our conclusion in the *Non-Accounting Safeguards Order* that the statutory term ''information services'' includes all services the Commission has previously considered to be ''enhanced,'' and our decision in this proceeding to seek comment on whether the statutory term ''telecommunications services'' includes all services the Commission has previously considered to be ''basic services,'' we seek comment on whether the Commission hereafter should conform its terminology to that used in the 1996 Act. We ask commenters to discuss whether the Commission's rules, which previously distinguished between basic and enhanced services, should now distinguish between telecommunications and information services. For example, we ask whether the Commission's *Computer II* decision should now be interpreted to require facilities-based common carriers that provide information services to unbundle their telecommunications services and offer such services to other ISPs under the same tariffed terms and conditions under which they provide such services to their own information services operations.

B. Cost-Benefit Analysis of Structural Safeguards

1. Background

43. The Commission's goals in addressing BOC provision of information services have been both to promote innovation in the provision of information services and to prevent access discrimination and improper cost allocation. Because the BOCs control the local exchange network and the provision of basic services, in the absence of regulatory safeguards they may have the incentive and ability to engage in anticompetitive behavior against ISPs that must obtain basic network services from the BOCs in order

to provide their information service offerings. For example, BOCs may discriminate against competing ISPs by denying them access to services and facilities or by providing ISPs with access to services and facilities that is inferior to that provided to the BOCs' own information services operations. BOCs also may allocate costs improperly by shifting costs they incur in providing information services, which are not regulated under Title II of the Act, to their basic services.

44. Under rate-of-return regulation, which allows carriers to set rates based on the cost of providing a service, the BOCs may have had an incentive to shift costs incurred in providing information services to their basic service customers. In 1990, the Commission replaced rate-of-return regulation with price cap regulation of the BOCs and certain other LECs to discourage improper cost allocation, among other things. Recently, the Commission revised its price caps regime to eliminate the sharing mechanism, which required price cap carriers to ''share'' with their access customers half or all their earnings above certain levels in the form of lower rates. This revision substantially reduces the BOCs' incentive to misallocate costs.

45. Since the adoption of *Computer I* in 1971, the Commission has employed various regulatory tools, including structural separation, to prevent access discrimination and cost misallocation, first by AT&T and then, after divestiture, by the BOCs, in providing information services. In *Computer I,* we imposed a ''maximum separation policy'' on the provision of ''data processing'' services by common carriers other than AT&T and its Bell System subsidiaries. We continued to impose structural separation on the provision of enhanced services by AT&T and its Bell System subsidiaries in *Computer II,* until we replaced structural separation with a system of nonstructural safeguards in 1986, in *Computer III.*

46. The Commission has long recognized both the benefits as well as the costs of structural separation as a regulatory tool. The Commission noted in *Computer II* that a structural separation requirement reduces firms' ability to engage in anticompetitive activity without detection because the extent of joint and common costs between affiliated firms is reduced, transactions must take place across corporate boundaries, and the rates, terms, and conditions on which services will be available to all potential purchasers must be made publicly available. Structural separation thus is useful as an enforcement tool and as a deterrent, because firms are less likely to engage in anticompetitive activity the more easily it can be detected. As for costs, the Commission recognized that structural separation increases firms' transaction and production costs, but did not agree with arguments presented at the time that structural separation reduces innovation.

47. The Commission similarly weighed the benefits and costs of structural separation in *Computer III* when, with the passage of time and the accumulation of experience, it replaced the *Computer II* structural separation requirements with a system of nonstructural safeguards. The Commission concluded in Computer III that the benefits of structural separation are not significantly greater than the benefits of nonstructural safeguards in preventing anticompetitive practices by the BOCs, and that structural separation imposes greater costs on the public and the BOCs than nonstructural safeguards. The Commission also found that the benefits of structural separation had decreased since the adoption of the *BOC Separation Order,* 49 FR 1190, January 10, 1984 due to technological and market developments that diminished the BOCs' ability to misallocate costs and engage in access discrimination. Further, the Commission found, based on its experience, that the introduction of new information services by the BOCs was slowed or prevented altogether by structural separation, thus denying the public the benefits of innovation. The Commission also found that structural separation imposed direct costs on the BOCs resulting from duplication of facilities and personnel, limitations on joint marketing, and deprivation of economies of scope. The Ninth Circuit upheld the Commission's analysis of the costs of structural separation in *California I* and *California III.*

2. Effect of the 1996 Act and Other Factors

48. In the *Computer III Further Remand Notice,* the Commission sought comment on how various factors, including reports of anticompetitive behavior by the BOCs and the increase in the number of BOC information service offerings since the elimination of structural separation, affected the Commission's cost-benefit analysis of structural separation in *Computer III.* The 1996 Act was enacted after the Commission issued the *Computer III Further Remand Notice,* and raises additional issues that may affect this cost-benefit analysis. As discussed in more detail below, we tentatively conclude that the Act's overall pro-competitive, de-regulatory framework, as well as our public interest analysis, support the continued application of the Commission's nonstructural safeguards regime to the provision by the BOCs of intraLATA information services. We also tentatively conclude that allowing the BOCs to offer intraLATA information services subject to nonstructural safeguards serves as an appropriate balance of the need to provide incentives to the BOCs for the continued development of innovative new technologies and information services that will benefit the public with the need to protect competing ISPs against the potential for anticompetitive behavior by the BOCs. We thus propose to allow the BOCs to continue to provide intraLATA information services on an integrated basis, subject to the Commission's *Computer III* and ONA requirements as modified or amended by this proceeding, or on a structurally separate basis. If a BOC chooses to provide intraLATA information services on a structurally separate basis, we seek comment on whether we should permit the BOC to choose between a *Computer II* and an Act-mandated affiliate under section 272 or section 274, or whether we should mandate one of these types of affiliates.

a. Section 251 and Local Competition

49. Competition in the local exchange and exchange access markets is the best safeguard against anticompetitive behavior. BOCs are unable to engage successfully in discrimination and cost misallocation to the extent that competing ISPs have alternate sources of access to basic services. Stated differently, when other telecommunications carriers, such as interexchange carriers (IXCs) or cable service providers, compete with the BOCs in providing basic services to ISPs, the BOCs are less able to engage successfully in discrimination and cost misallocation because they risk losing business from their ISP customers for basic services to these competing telecommunications carriers.

50. As discussed above, the 1996 Act affirmatively promotes local competition. Sections 251 and 253, among other sections, are intended to eliminate entry barriers and foster competition in the local exchange and exchange access markets. Indeed, the market for local exchange and exchange access services has begun to respond to some degree to the pro-competitive mandates of the 1996 Act. Some ISPs, for example, currently are obtaining basic services that underlie their information services from competing

providers of telecommunications services that have entered into interconnection agreements with the BOCs pursuant to section 251.

51. We recognize that the BOCs remain the dominant providers of local exchange and exchange access services in their in-region states, and thus continue to have the ability and incentive to engage in anticompetitive behavior against competing ISPs. On the other hand, the movement toward local exchange and exchange access competition should, over time, decrease and eventually eliminate the need for regulation of the BOCs to ensure that they do not engage in access discrimination or cost misallocation of their basic service offerings. The Commission has previously concluded that the nonstructural safeguards established in *Computer III* could combat such anticompetitive behavior as effectively as structural separation requirements, but in a less costly way. We thus tentatively conclude that the de-regulatory, pro-competitive provisions of the 1996 Act, and the framework the 1996 Act set up for promoting local competition, are consistent with, and provide additional support for, the continued application of the Commission's current nonstructural safeguards regime for BOC provision of intraLATA information services. We seek comment on this tentative conclusion.

b. Structural Separation and the 1996 Act

52. In the *Computer III Further Remand Notice,* we sought comment on the issue of whether some form of structural separation should be reimposed for the provision of information services by the BOCs, and we discussed briefly the costs and benefits that the Commission previously identified in granting structural relief to the BOCs. In this section, we seek comment on the extent to which the Act-mandated separation requirements may affect this cost-benefit analysis.

53. The 1996 Act permits the BOCs to enter markets from which they were previously restricted, allowing the BOCs to develop and market innovative new technologies and information services. In doing so, Congress in certain cases imposed structural separation requirements on the BOCs. Section 272, for example, allows the BOCs to provide certain interLATA information services as well as in-region, interLATA telecommunications services, and to engage in manufacturing activities, only through a structurally separate affiliate. Section 274 imposes structural separation requirements on BOC provision of intraLATA and interLATA electronic publishing services. Congress did not, however, mandate separation requirements for BOC provision of other information services.

54. In the *Non-Accounting Safeguards Order* we recognized that section 272 on its face does not require the BOCs to offer intraLATA information services through a separate affiliate, and deferred to this proceeding the question of whether the Commission should exercise its general rulemaking authority to do so. We find it significant that Congress limited the separate affiliate requirement in section 272 to BOC provision of most interLATA information services, interLATA telecommunications services, and manufacturing, and in section 274 to BOC provision of electronic publishing services. We therefore tentatively conclude that Congress' decision to impose structural separation requirements in sections 272 and 274, while relevant to our cost-benefit analysis, does not in itself warrant a return to structural separation for BOC provision of intraLATA information services not subject to those sections. We seek comment on this tentative conclusion.

55. Congress's decision to mandate structural separation only for certain information services does not necessarily foreclose the Commission from mandating or allowing structural separation for other information services. We recognize that, for example, the statutory separate affiliate requirements may reduce the cost of returning to a structural separation regime for BOC provision of intraLATA information services, given that the BOCs already are required to establish at least one structurally separate affiliate in order to provide the services covered by sections 272 and 274. Some BOCs may find it more efficient to provide all of their information services through a statutorily-mandated affiliate. In addition, it may be in the public interest for the Commission to prescribe a uniform set of regulations for BOC provision of both intraLATA and interLATA information services, by requiring, for example, that BOCs provide all information services through an affiliate that complies with the statute. This approach would eliminate the need to distinguish between intraLATA and interLATA information services for purposes of regulation and, consequently, lower compliance and enforcement costs.

56. On the other hand, mandatory structural separation would entail increased transaction and production costs for the BOCs, as discussed above. In addition, in the *Computer III Further Remand Notice* we noted that all of the BOCs currently are offering some information services on an integrated basis pursuant to CEI plans approved by the Commission. Thus, our cost-benefit analysis should take into account the costs today of returning to structural separation. These would include the personnel, operational, and other changes the BOCs would have to undergo in order to reinstate a regime of structural separation, and the service disruptions, lower service quality, reduced innovation, and higher user rates that may result. We must also consider the effect on the public of the potential delay in the development of new technologies and information services by the BOCs that may result. In addition, once the separation requirements under sections 272 and 274 sunset, structural separation for intraLATA information services based on the existence of the statutorily-mandated affiliates would have to be reexamined.

57. We also recognize the benefits of a flexible, regulatory framework that would allow the BOCs, consistent with the public interest, to structure their operations as they see fit in order to maximize efficiencies and thus provide greater benefits to consumers. We note that, under our current rules, a BOC may provide an intraLATA information service either on an integrated basis pursuant to an approved CEI plan or on a structurally separated basis pursuant to the Commission's *Computer II* rules. SBC has argued that the BOCs continue to need this type of flexibility to provide intraLATA information services either on an integrated basis, subject to appropriate safeguards, or through a separate affiliate, because the most appropriate form of regulation varies service-by-service, depending on the relative significance of cost considerations and other factors. Although the Commission may need to devote more resources to administer and enforce multiple regulatory regimes, this approach would allow the BOCs to structure their intraLATA information service offerings more in accordance with their business needs. In addition, such an approach may minimize the risk of service disruptions, since the BOCs would not have to change the manner in which they are providing their current intraLATA information service offerings.

58. In addition to the factors cited by the Commission in the *Computer III Phase I Order,* more recent events may affect the analysis of the relative costs and benefits of structural and nonstructural safeguards. In particular,

we earlier discussed how our *Price Caps Fourth Report and Order*, 62 FR 31939, June 11, 1997 eliminates the sharing mechanism from the price caps regime, thereby reducing the BOCs' incentive to misallocate costs. We also described previously how the local competition provisions of the 1996 Act provide for alternate sources of access to basic services, thereby diminishing the BOCs' ability to engage in anticompetitive behavior against competing ISPs.

59. In light of this analysis, we continue to believe it is preferable, as a matter of public interest, to continue with the Commission's nonstructural safeguards regime rather than to reimpose structural separation, notwithstanding the affiliate requirements of sections 272 and 274 of the Act. We thus tentatively conclude that the BOCs should continue to be able to choose whether to provide intraLATA information services either on an integrated basis, subject to the Commission's *Computer III* and ONA requirements as modified or amended by this proceeding, or pursuant to a separate affiliate. We seek comment on this tentative conclusion. In addition, if a BOC chooses to provide intraLATA information services through a separate affiliate, we seek comment on whether we should permit the BOC to choose between a *Computer II* and an Act-mandated affiliate, or whether we should mandate one of these types of affiliates. Finally, we seek comment on how the recent *SBC* v. *FCC* decision in the United States District Court for the Northern District of Texas affects this analysis.

C. Comparably Efficient Interconnection (CEI) Plans

1. Proposed Elimination of Current Requirements

60. In the *Interim Waiver Order* adopted in response to the *California III* decision, the Bureau allowed the BOCs to continue to provide existing enhanced services on an integrated basis, provided that they filed CEI plans for those services. In addition, the Bureau required the BOCs to file CEI plans for new enhanced services they propose to offer, and to obtain the Bureau's approval for these plans before beginning to provide service. We concluded that the partial vacation of the *BOC Safeguards Order* in *California III* reinstated the service-specific CEI plan regime, augmented by implementation of ONA, until the Commission concluded its remand proceedings. BOCs were also required to comply with the requirements established in their approved ONA plans, because we had previously determined that ONA requirements are independent of the removal of structural separation requirements.

61. In this Further Notice, we tentatively conclude that we should eliminate the requirement that BOCs file CEI plans and obtain Bureau approval for those plans prior to providing new information services. We note that CEI plans were always intended to be an interim measure, designed to bridge the gap between the Commission's decision to lift structural separation in the *Computer III Phase I Order* and the implementation of ONA. While CEI plans have been effective as interim safeguards, we tentatively conclude that they are not necessary to protect against access discrimination once the BOCs are providing information services pursuant to approved ONA plans, which they have been for several years. ONA provides ISPs an even greater level of protection against access discrimination than CEI. Under ONA, not only must the BOCs offer network services to competing ISPs in compliance with the nine CEI ''equal access'' parameters, but the BOCs must also unbundle and tariff key network service elements beyond those they use to provide their own enhanced services offerings. BOCs are also subject to ONA amendment requirements that constitute an additional safeguard against access discrimination following the lifting of structural separation.

62. Further, under the 1996 Act, the BOCs are now subject to additional statutory requirements that will help prevent access discrimination, including the section 251 unbundling requirements and the network information disclosure requirements of section 251(c)(5). These statutory requirements all serve as further protections against access discrimination, both by requiring the BOCs to open the local exchange market to competition, and by ensuring that the BOCs publicly disclose on a timely basis information about changes in their basic network services.

63. Given the protections afforded by ONA and the 1996 Act, we believe that the substantial administrative costs associated with BOC preparation, and agency review, of CEI plans outweigh their utility as an additional safeguard against access discrimination. Moreover, the time and effort involved in the preparation and review of the CEI plans may delay the introduction of new information services by the BOCs, without commensurate regulatory benefits. Such a result is contrary to one of the Commission's original purposes in adopting a nonstructural safeguards regime, which was to promote and speed introduction of new information services, benefiting the public by giving them access to innovative new technologies.

64. For the reasons outlined above, we tentatively conclude that we should eliminate the requirement that BOCs file CEI plans and obtain Bureau approval for those plans prior to providing new information services. We believe the significant burden imposed by these requirements on the BOCs and the Commission outweighs their possible incremental benefit as additional safeguards against access discrimination. In this light, we tentatively conclude that lifting the CEI plan requirement will further our statutory obligation to review and eliminate regulations that are ''no longer necessary in the public interest.'' We seek comment on this tentative conclusion and our supporting analysis.

Parties who disagree with this tentative conclusion should address whether there are more streamlined procedures that could be adopted as an alternative to the current CEI filing requirements.

65. We recognize that, as part of our effort to reexamine our nonstructural safeguards regime, we seek comment in this Further Notice on whether we should modify or amend certain ONA requirements. Because we base our tentative conclusion that we should eliminate the CEI-plan filing requirement in part on the adequacy of ONA, we ask that parties comment on how any of the modifications the Commission proposes in Part IV.D., or proposed by commenters in response to our questions, may affect this tentative conclusion. We also seek comment on whether the requirements that the 1996 Act imposes on the BOCs, such as those relating to section 251 unbundling and network information disclosure, are sufficient in themselves to provide a basis for eliminating CEI plans.

2. Treatment of Services Provided Through 272/274 Affiliates

a. Section 272

66. In the *Non-Accounting Safeguards Order*, we noted that section 272 of the Act imposes specific separate affiliate and nondiscrimination requirements on BOC provision of ''interLATA information services,'' but does not address BOC provision of intraLATA information services. We concluded that, pending the conclusion of the *Computer III Further Remand* proceeding, BOCs may continue to provide intraLATA information services on an integrated basis, in compliance

with the Commission's nonstructural safeguards established in *Computer III* and ONA.

67. *The Non-Accounting Safeguards Order* also raised the related issue of whether a BOC that provides all information services (both intraLATA and interLATA) through a section 272 separate affiliate satisfies the Commission's *Computer II* separate subsidiary requirements, and therefore does not have to file a CEI plan for those services. We noted that the record in the *Non-Accounting Safeguards Order* was insufficient to make this determination, and that we would examine this issue in the *Computer III Further Remand* proceeding.

68. If we do not adopt our tentative conclusion in this proceeding to eliminate the CEI plan filing requirement for the BOCs, we tentatively conclude that the BOCs should not have to file CEI plans for information services that are offered through section 272 separate affiliates, notwithstanding that section 272's requirements are not identical to the Commission's *Computer II* requirements (all other applicable *Computer III* and ONA safeguards, however, as amended or modified by this proceeding, would continue to apply). We note that, to the extent certain or all BOCs no longer have to provide interLATA services through a section 272 affiliate as a result of the *SBC* v. *FCC* decision by the United States District Court for the Northern District of Texas, then this tentative conclusion would not apply.

69. We reach our tentative conclusion for several reasons. First, we believe that the concerns underlying the Commission's *Computer II* requirements regarding access discrimination and cost misallocation are sufficiently addressed by the accounting and non-accounting requirements set forth in section 272 and the Commission's orders implementing this section. Second, after a BOC receives authority under section 271 to provide interLATA services through a section 272 affiliate, the BOC in many cases may want to provide a seamless information service to customers that would combine both the inter-and intraLATA components of such service. For the Commission to require that the BOC also receive approval under a CEI plan for the intraLATA component of such service is, in our view, unnecessary, and likely to delay the provision of integrated services that would be beneficial to consumers. We seek comment on this tentative conclusion and supporting analysis.

70. We also noted in the *Non-Accounting Safeguards Order* that other issues raised regarding the interplay between the 1996 Act and the Commission's *Computer III/ONA* regime would be addressed in the *Computer III Further Remand* proceeding. These included whether: (1) the Commission should harmonize its regulatory treatment of intraLATA information services provided by the BOCs with the section 272 requirements imposed by Congress on interLATA information services; (2) the 1996 Act's CPNI, network disclosure, nondiscrimination, and accounting provisions supersede various of the Commission's *Computer III* nonstructural safeguards; and (3) section 251's interconnection and unbundling requirements render the Commission's *Computer III* and *ONA* requirements unnecessary. These issues are either being addressed in this Further Notice or have been covered in other proceedings.

b. Section 274

71. In the *Telemessaging and Electronic Publishing Order,* 62 FR 7690, February 20, 1997 we concluded that the Commission's *Computer II, Computer III,* and ONA requirements continue to govern the BOCs' provision of intraLATA electronic publishing services. We found, however, that the record was insufficient to determine whether BOC provision of electronic publishing through a section 274 affiliate satisfied all the relevant requirements of *Computer II,* such that the BOC would not have to file a CEI plan for that service. We noted that we would consider that issue, as well as other issues raised regarding the revision or elimination of the *Computer III/ONA* requirements, in the *Computer III Further Remand* proceeding.

72. If we do not adopt our tentative conclusion in this proceeding to eliminate the CEI plan filing requirement for the BOCs, we tentatively conclude, as we do above for information services that are provided through a section 272 affiliate, that BOCs should not have to file CEI plans for electronic publishing services or other information services provided through their section 274 affiliate (as noted above, however, all other applicable *Computer III* and ONA safeguards, as amended or modified by this proceeding, would continue to apply). As noted above, to the extent certain or all BOCs no longer are subject to section 274 for their provision of electronic publishing as a result of the *SBC* v. *FCC* decision by the United States District Court for the Northern District of Texas, then this tentative conclusion would not apply.

73. Again, we reach our tentative conclusion for several reasons. First, we believe the section 274 separation and nondiscrimination requirements, and the Commission's rules implementing those requirements, are sufficient to address concerns regarding access discrimination and misallocation of costs in general. Second, given that Congress set forth detailed rules in section 274 for the specific provision of electronic publishing services, we do not believe the Commission should continue to require the BOCs to file, and the Commission to approve, CEI plans before the BOCs may provide such services. We seek comment on this tentative conclusion and supporting analysis.

3. Treatment of Telemessaging and Alarm Monitoring Services

74. In the *Telemessaging and Electronic Publishing Order* and the *Alarm Monitoring Order,* respectively, we concluded that the Commission's *Computer II, Computer III,* and ONA requirements continue to govern the BOCs' provision of intraLATA telemessaging services and alarm monitoring services. Because neither section 260 nor section 275 imposes separation requirements for the provision of intraLATA telemessaging services or alarm monitoring services, respectively, BOCs may provide those services, subject both to other restrictions in those sections, as applicable, as well as the Commission's current nonstructural safeguards regime, as modified by the proposals that we may adopt in this proceeding.

4. Related Issues

75. If we adopt our tentative conclusion to eliminate the CEI plan filing requirement for the BOCs, we seek comment on whether we should dismiss all CEI matters pending at that time (including pending CEI plans, pending CEI plan amendments, and requests for CEI waivers), on the condition that the BOCs must comply with any new or modified rules that may be established as a result of this Further Notice. We also seek comment on whether we should require a BOC with CEI approval to continue to offer service under the CEI requirements. To the extent that parties involved in pending CEI matters raise issues other than those directly related to the CEI requirements (*e.g.,* whether the service for which the BOC is seeking CEI-plan approval is a true information service, as opposed to a telecommunications service that should be offered under tariff), we seek comment on how and in what forum those issues should be addressed.

76. We note that section 276 directs the Commission to prescribe a set of nonstructural safeguards for BOC provision of payphone service, which must include, at a minimum, the ''nonstructural safeguards equal to those adopted in'' the *Computer III* proceeding. In implementing section 276, the Commission required the BOCs, among other things, to file CEI plans describing how they would comply with various nonstructural safeguards. The Bureau approved the BOCs' CEI plans to provide payphone service on April 15, 1997.

77. We seek comment on whether the changes that may be made to the Commission's *Computer III* and ONA rules as a result of this Further Notice should also apply to the nonstructural safeguards regime established in the *Payphone Order* proceeding for BOC provision of payphone service. For example, to the extent that we adopt our tentative conclusion to eliminate the CEI plan filing requirement, should we also relieve the BOCs from the requirement of filing amendments to their CEI plans for payphone service? How does this comport with the statutory requirement in section 276? We seek comment on these issues.

D. ONA and Other Nonstructural Safeguards

1. ONA Unbundling Requirements

a. Introduction

78. The Commission's ONA unbundling requirements serve both to safeguard against access discrimination and to promote competition and market efficiency in the information services industry. As described above, the Commission conditioned the permanent elimination of the *Computer II* structural separation requirements imposed on the BOCs upon the evolutionary implementation of ONA and other nonstructural safeguards. The ONA requirements, however, have a significance independent of whether they provide the basis for lifting structural separation. In 1990, during the course of the remand proceedings in response to *California I,* the Commission required the BOCs to implement ONA regardless of whether ONA provided the basis for elimination of structural separation. As discussed below, the Commission stated that ''[a] major goal of ONA is to increase opportunities for ESPs to use the BOCs'' regulated networks in highly efficient ways, enabling ESPs to expand their markets for their present services and develop new offerings as well, all to the benefit of consumers.'' It was for this reason that the Commission applied the ONA requirements to GTE in 1994.

79. ONA is the overall design of a carrier's basic network services to permit all users of the basic network, including the information services operations of the carrier and its competitors, to interconnect to specific basic network functions and interfaces on an unbundled and ''equal access'' basis. The BOCs and GTE through ONA must unbundle key components of their basic services and make them available under tariff, regardless of whether their information services operations utilize the unbundled components. Such unbundling ensures that competitors of the carrier's information services operations can develop information services that utilize the carrier's network on an economical and efficient basis.

b. ONA Unbundling Requirements

80. In the *Computer III Phase I Order* we declined to adopt any specific network architecture proposals for ONA and instead specified certain standards that carriers' ONA plans must meet. The unbundling standard for the BOCs required that: (1) the BOCs' enhanced services operations obtain unbundled network services pursuant to tariffed terms, conditions, and rates available to all ISPs; (2) BOCs provide an initial set of basic service functions that could be commonly used in the provision of information services to the extent technologically feasible; (3) ISPs participate in developing the initial set of network services; (4) BOCs select the set of network services based on the expected market demand for such elements, their utility as perceived by information service competitors, and the technical and costing feasibility of such unbundling; and (5) BOCs comply with CEI requirements in providing basic network services to affiliated and unaffiliated ISPs. In the *BOC ONA Order* that reviewed the initial BOC ONA plans for compliance with the Commission's requirements, the Commission generally approved the use of the ''common ONA model'' that described unbundled services BOCs would provide to competing ISPs. Under the common ONA model, ISPs obtain access to various unbundled ONA services, termed Basic Service Elements (BSEs), through access links described as Basic Service Arrangements (BSAs). BSEs are used by ISPs to configure their information services. Other ONA elements include Complementary Network Services (CNSs), which are optional unbundled basic service features (such as stutter dial tone) that an end user may obtain from carriers in order to obtain access to or receive information services, and Ancillary Network Services (ANSs), which are non-Title II services, such as billing and collection, that may be useful to ISPs.

81. The BOCs and GTE are also subject to the ONA amendment requirement. Under this requirement, if a subject carrier itself seeks to offer an information service that uses a new BSE or otherwise uses different configurations of underlying basic services than those included in its approved ONA plan, the carrier must amend its ONA plan at least ninety days before it proposes to offer that information service. The Commission must approve the amendment before the subject carrier can use the new basic service for its own information services.

82. In addition to the ONA services that BOCs and GTE currently provide, there are mechanisms to help ISPs obtain the new ONA services they require to provide information services. When an ISP identifies a new network functionality that it wants to use to provide an information service, it can request the service directly from the BOC or GTE through a 120-day process specified in our rules, or it can request that the Network Interconnection Interoperability Forum (NIIF) sponsored by the Alliance for Telecommunications Industry Solutions (ATIS) consider the technical feasibility of the service.

83. Under the Commission's 120-day request process, an ISP that requests a new ONA basic service from the BOC or GTE must receive a response within 120 days regarding whether the BOC or GTE will provide the service. The BOC or GTE must give specific reasons if it will not offer the service. The BOC or GTE's evaluation of the ISP request is to be based on the ONA selection criteria set forth in the original *Phase I Order:* (1) market area demand; (2) utility to ISPs as perceived by the ISPs themselves; (3) feasibility of offering the service based on its cost; and (4) technical feasibility of offering the service. If an ISP objects to the BOC or GTE's response, it may seek redress from the Commission by filing a petition for declaratory ruling.

84. Additionally, ISPs can ask the NIIF for technical assistance in developing and requesting new network services. Upon request, the NIIF will establish a task force composed of representatives from different industry sectors to evaluate the technical feasibility of the service, and through a consensus process, make recommendations on how the service can be implemented. ISPs can then take the information to a specific BOC or GTE and request the service under the

120-day process using the NIIF result to show that the request is technically feasible.

85. As part of the Commission's 1998 biennial review of regulations, we seek comment on whether ONA has been and continues to be an effective means of providing ISPs with access to the BOC/GTE unbundled network services they need to structure efficiently and innovatively their information service offerings. To the extent that commenters assert that ONA is effective or ineffective, we request that they cite to specific instances to support their claims.

86. In addition, we seek comment on whether the ''common ONA model'' through which ISPs gain access to BSEs, BSAs, CNSs, and ANSs is adequate to provide ISPs with the network functionalities they need. If not, what specific changes to the ONA unbundling framework should be made? Some parties have argued that the common ONA model forces ISPs to purchase unnecessary services or functionalities that are embedded within the BSEs, BSAs, CNSs, and ANSs. We seek comment on this argument. In addressing these issues, commenters should take note of our separate inquiry below regarding the impact of section 251 and its separate unbundling regime.

87. We further seek comment on whether ISPs make use of the ONA framework to acquire unbundled network services or whether they use other means to obtain such services in order to provide their information service offerings. Commenters that have used means other than ONA to acquire or provide unbundled network services should identify those means, state why ONA was not used, and discuss why the alternative approach was more effective and efficient.

88. In addition, we seek comment on whether the ONA 120-day request process established to help ISPs obtain new ONA services has been effective. We seek comment, from ISPs in particular, regarding whether they have made use of the 120-day request process, and the results from using that process. If ISPs have not used the 120-day request process, we request that they explain why they have not done so. We further request that parties comment, with specificity, on what, if anything, we should do to streamline the 120-day request process to make it more useful. In the alternative, we seek comment on whether the 120-day request process should be eliminated, in light of the fact that the issues that must be resolved between the carrier and the requesting ISP are technical and operational in nature, and may be most appropriately addressed in an industry forum, such as the NIIF. We also seek comment on whether the ONA amendment process has been effective.

89. We further seek comment regarding the role of the NIIF in helping ISPs obtain basic services from the BOCs and GTE. We seek comment, from ISPs in particular, regarding whether they have requested assistance from the NIIF in determining the technical feasibility of offering particular network functionalities as new basic services, and if so, the results obtained. If ISPs have not done so, we request that they tell us why not. We further seek comment on whether we should continue to request that the NIIF perform the function of facilitating ISP ONA requests or whether some other forum or industry group would be more appropriate.

90. Finally, we seek comment on whether and how the development of new information services, including, for example, Internet services, should affect our analysis of the effectiveness of the Commission's current ONA rules for ISPs. As we noted in the *Information Service and Internet Access NOI,* 62 FR 4657, January 31, 1997, many of the Commission's existing rules have been designed for traditional circuit-switched voice networks rather than the emerging packet-switched data networks. While the *Information Service and Internet Access NOI* sought comment, in general, on identifying ways in which the Commission could facilitate the development of high-bandwidth data networks while preserving efficient incentives for investment and innovation in the underlying voice network, we seek comment in this Further Notice specifically on whether and how the Commission should modify the *Computer III* and ONA rules in light of these technological developments.

91. Specifically, we seek comment on how the Commission's *Computer III* or ONA rules may impact the BOCs' incentive to invest in and deploy data network switching technology. For example, the Commission's existing ONA rules require the BOCs to unbundle and separately tariff all basic services. We have interpreted this rule to require a BOC to unbundle and separately tariff a basic service used in the provision of an information service provided by the BOC affiliate, even where the basic service is solely located in, and owned by, the BOC affiliate, not the BOC. This situation may arise, for example, when a frame relay switch is located in, and owned by, the BOC affiliate rather than the BOC. We seek comment on the appropriate treatment of these types of services.

c. Effect of the 1996 Act

(1) Section 251 Unbundling

92. Section 251 of the Act requires incumbent LECs, including the BOCs and GTE, to provide to requesting telecommunications carriers interconnection and access to unbundled network elements at rates, terms, and conditions that are just, reasonable, and nondiscriminatory, and to offer telecommunications services for resale. The Act defines ''telecommunications carrier'' as ''any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226).'' As we concluded in the *Local Competition Order,* the term ''telecommunications carrier'' does not include ISPs that do not also provide domestic or international telecommunications. Thus, as discussed above, companies that provide both information and telecommunications services are able to request interconnection, access to unbundled network elements, and resale under section 251, but companies that only provide information services (''pure ISPs'') are not accorded such rights under section 251.

93. Despite this limitation, there are several ways that pure ISPs may be able to obtain benefits from section 251, as discussed in Part III.B. We recognize, however, that section 251 provides a level of unbundling that pure ISPs do not receive under the Commission's current ONA framework. Unbundling under section 251 includes the physical facilities of the network, together with the features, functions, and capabilities associated with those facilities. Section 251 also requires incumbent LECs to provide for the collocation at the LEC's premises of equipment necessary for interconnection or access to unbundled network elements, under certain conditions. Unbundling under ONA, in contrast, emphasizes the unbundling of basic services, not the substitution of underlying facilities in a carrier's network. ONA unbundling also does not mandate interconnection on carriers' premises of facilities owned by others. These differences may be due to the different policy goals that the two regimes were designed to serve.

94. Section 251 unbundling raises a number of issues relating to the Commission's ONA framework. In the *Non-Accounting Safeguards Order,* for example, some parties stated that section 251's interconnection and

unbundling requirements render the Commission's *Computer III* and ONA requirements unnecessary. A related issue is whether the Commission, pursuant to our general rulemaking authority, should extend section 251-type unbundling to ''pure ISPs.''

95. In this Further Notice, we seek comment on whether section 251, as currently applied, obviates the need for ONA. We ask commenters to analyze this issue with respect to both pure ISPs as well as ISPs that are also telecommunications carriers. For example, is ONA unbundling still necessary for ISPs that are also telecommunications carriers for whom section 251 unbundling is available? As for pure ISPs, does the fact that they can obtain the benefits of section 251 by becoming telecommunications carriers, or by partnering with or obtaining basic services from competitive telecommunications providers, render ONA unnecessary? Commenters should address whether ONA should still be available for pure ISPs or other ISPs in areas where there may not be sufficient competition in the local exchange market.

96. We also seek comment on whether it is in the public interest for the Commission to extend section 251-type unbundling to pure ISPs. Put differently, we seek comment regarding whether, pursuant to our general rulemaking authority contained in section 201–205 of the Act, and as exercised in the *Computer III, ONA*, and *Expanded Interconnection* proceedings, we can and should extend some or all rights accorded by section 251 to requesting telecommunications carriers to pure ISPs. Commenters who contend that it is in the public interest to extend section 251-type unbundling should address why it is necessary to do so, given the alternative options pure ISPs have to obtain the benefits of section 251 unbundling, as well as the unbundling rights ISPs currently enjoy under the Commission's existing ONA regime. Commenters should also address whether the extension of section 251-type unbundling to pure ISPs would be inconsistent with section 251, which by its terms applies only to telecommunications carriers. Similarly, commenters should address whether section 251-type unbundling is appropriate for pure ISPs, given the different purposes section 251 and ONA serve, and the different approaches to unbundling they encompass. Furthermore, commenters that argue that we should extend the section 251 unbundling framework to pure ISPs should explain what such a framework would include. For example, commenters should address, among other things, whether extending section 251-type unbundling rights to pure ISPs necessarily requires the extension to pure ISPs of any obligations under section 251 or other Title II provisions. Commenters should also address whether extending section 251-type unbundling to pure ISPs obviates the need for ONA.

(2) InterLATA Information Services

97. As discussed, we tentatively conclude in this Further Notice that the Commission's nonstructural safeguard regime should continue to apply to BOC provision of intraLATA information services. Prior to the enactment of the 1996 Act, however, we did not distinguish between intraLATA and interLATA information services, and we did not explicitly apply our *Computer III* and ONA rules to BOC provision of interLATA information services since the BOCs were prevented under the MFJ from providing interLATA services. Section 272 of the 1996 Act, however, does distinguish between intraLATA and interLATA information services by imposing separation and nondiscrimination requirements on BOC provision of interLATA information services. We seek comment, therefore, on whether the Commission's ONA requirements, as modified or amended by this proceeding, should be interpreted as encompassing BOC provision of interLATA information services. We also seek comment on whether it would be inconsistent with section 272 for the Commission to apply ONA requirements to BOC provision of interLATA information services.

98. In addressing this issue, we ask that commenters take note of the following policy considerations. As noted above, the Commission required the BOCs to implement ONA regardless of whether ONA provided the basis for elimination of structural separation. We stated that ONA serves the public interest, not only by serving as a critical nonstructural safeguard against anticompetitive behavior by the BOCs, but also by promoting the efficient use of the network by ISPs, to the benefit of consumers. On the other hand, section 272 already sets forth the statutory requirements for BOC provision of interLATA information services and, therefore, including such services within the Commission's ONA framework may be unnecessary to protect the public interest. Moreover, as discussed above, section 251 unbundling may obviate ONA in some or all respects, including its application to BOC provision of interLATA information services. We also seek comment, to the extent commenters believe that ONA should encompass BOC provision of interLATA information services, on how the Commission's current ONA requirements, including ONA reporting requirements, may need to be changed or supplemented, if at all, to take account of such services.

2. ONA and Nondiscrimination Reporting Requirements

a. Introduction

99. In this section of the Notice, we examine the various reporting requirements imposed on the BOCs and GTE by the *Computer III* and *ONA* regimes. These reporting requirements were originally intended as a safeguard, in that the BOCs and GTE must disclose information that would allow detection of patterns of access discrimination. In addition, certain reporting requirements were intended to promote competition, by providing interested parties (including ISPs and equipment manufacturers) with information about service introduction and deployment by the subject carriers, which may assist such parties in structuring their own operations.

100. We recognize, however, that a number of years have passed since certain of these reporting requirements were imposed, and that some of the information we require to be disclosed may no longer be useful, relevant, or related to either the safeguard or competition promotion functions identified above. Thus, as part of the Commission's 1998 biennial review of regulations, we intend in this proceeding to reexamine each of the reporting obligations imposed on the BOCs and GTE by the *Computer III* and *ONA* regimes, to determine whether any of these requirements should be eliminated or modified, consistent with the 1996 Act. We also seek comment on what, if any, different or additional reporting requirements should be imposed to safeguard against anticompetitive behavior by the BOCs and GTE and to promote competition in the provision of information services. In particular, we also seek comment on methods to facilitate access to and use of this information by unaffiliated entities, including small entities.

101. We set forth the ONA reporting reporting requirements and make specific inquiries regarding each requirement. The following are general inquiries that apply to all ONA reporting requirements. We ask parties to respond to both the specific and general inquiries in their comments on each ONA reporting requirement.

a. Is the information reported necessary to or helpful in monitoring the compliance of the subject carriers with their unbundling and nondiscrimination obligations? If not, why not? Would other types of information be more useful for compliance monitoring or enforcement purposes?

b. Is this requirement duplicative? In other words, does the Commission currently require other reports that disclose the same or substantially similar information, or serve the same purposes? If so, how should the Commission streamline these requirements?

c. Do industry groups, such as ATIS and/or NIIF, collect and compile information that is duplicative of that required by the Commission? If so, is that information readily available to interested parties?

d. Should we continue to require the subject carriers to file this report with the Commission both on paper and on disk, or should we adopt streamlined filing proposals similar to those set forth in the Further Notice of Proposed Rulemaking in the *Non-Accounting Safeguards* proceeding? Specifically, should we require either:

(i) a certification process whereby the subject carrier must maintain the required information in a standardized format, and file with the Commission an annual affidavit stating: (1) the information is so maintained; (2) the information will be updated in compliance with our rules; (3) the information will be maintained accurately; and (4) how the public will be able to access the information; or

(ii) electronic posting whereby the subject carriers must make the required information available on the Internet (for example, by posting it on their website) or through another similar electronic mechanism?

e. If we continue to maintain a paper filing requirement, is the information presented in a clear, comprehensible format? If not, what modifications to the format would improve clarity and accessibility?

f. If we continue to maintain a paper filing requirement, should we alter the frequency with which we require this report to be filed? If so, what alteration should be made, and what is the basis for that alteration? In the alternative, if we impose a certification process or electronic posting requirement, how often should subject carriers be required to update the information they must maintain? How must the subject carriers maintain historical data, and for what length of time?

102. In conjunction with our inquiries elsewhere in this item, we seek to examine, and, if possible, clarify the relationship between the ONA reporting requirements and the other obligations imposed on the subject carriers by ONA. For example we seek comment above on whether we should modify or eliminate the ONA unbundling requirements. To the extent that parties argue that we should do so, we request that they comment upon the effect that such action would have on the reporting obligations of the subject carriers. It seems that if the subject carriers were no longer required to unbundle and tariff ONA services, much of the information we currently require to be disclosed in the annual and semi-annual ONA reports would cease to exist. Does this mean that all such reporting requirements should be eliminated? Are there other meaningful reporting requirements that should be imposed instead?

b. Annual ONA Reports

103. The BOCs and GTE are required to file annual ONA reports that include information on: (1) annual projected deployment schedules for ONA service, by type of service (BSA, BSE, CNS), in terms of percentage of access lines served system-wide and by market area; (2) disposition of new ONA service requests from ISPs; (3) disposition of ONA service requests that have previously been designated for further evaluation; (4) disposition of ONA service requests that were previously deemed technically infeasible; (5) information on Signaling System 7 (SS7), Integrated Services Digital Network (ISDN), and Intelligent Network (IN) projected development in terms of percentage of access lines served system-wide and on a market area basis; (6) new ONA services available through SS7, ISDN, and IN; (7) progress in the IILC (now NIIF) on continuing activities implementing service-specific and long-term uniformity issues; (8) progress in providing billing information including Billing Name and Address (BNA), line-side Calling Number Identification (CNI), or possible CNI alternatives, and call detail services to ISPs; (9) progress in developing and implementing Operation Support Systems (OSS) services and ESP access to those services; (10) progress on the uniform provision of OSS services; and (11) a list of BSEs used in the provision of BOC/GTE's own enhanced services. In addition, the BOCs are required to report annually on the unbundling of new technologies arising from their own initiative, in response to requests by ISPs, or resulting from requirements imposed by the Commission.

104. We believe that certain aspects of the annual reporting requirements may be outdated and should be streamlined. We seek comment, for example, on whether we should continue to require the subject carriers to continue to report on projected deployment of ONA services (item 1), particularly as this information does not appear to change appreciably from year to year. Should we instead require the subject carriers to make a one-time filing of a 5-year deployment schedule at the time a new ONA service is introduced? In addition, should we require the subject carriers to continue to report on the disposition of ONA service requests from ISPs (items 2, 3, and 4), despite evidence that the frequency of such requests has declined appreciably since the initial implementation of ONA?

105. We seek comment on whether we should continue to require the subject carriers to report on deployment of SS7 (items 5 and 6), which has become available in most service areas. We further seek comment on whether we should continue to require the subject carriers to report on the availability and deployment of ISDN, IN, and AIN services (items 5 and 6). In addition, we seek comment regarding whether the requirement that the BOCs report on ''new ONA services available through SS7, ISDN, and IN, and plans to provide these services'' (item 6) overlaps so significantly with the requirement that they report on the unbundling of new technologies that one of these requirements should be eliminated.

106. In addition, we seek comment on whether, and to what extent, we should alter the requirement that carriers report on progress in industry forums regarding uniformity issues. Currently, subject carriers are required to report on progress in the IILC on continuing activities implementing service-specific and long-term uniformity issues (item 7). As a preliminary matter, we note that the functions that used to be performed by the IILC were transferred, as of January 1, 1997, to the NIIF. We tentatively conclude that, at a minimum, the ONA reporting requirement should be updated to reflect this change. We believe that the BOCs have agreed to provide to the NIIF periodic updates regarding issues that have been resolved. We seek comment on the nature of such updates to the NIIF, including specifically what information the BOCs provide. We further seek comment regarding whether the information from such updates is comprehensive enough, and sufficiently accessible to interested parties, to allow

us to eliminate the ONA reporting requirement covering progress of matters in the NIIF. In the alternative, we seek comment regarding whether there are other sources of information produced by or for ATIS or the NIIF that may reasonably substitute for this ONA reporting requirement.

107. We seek comment on whether we should continue to require the subject carriers to report on progress in providing billing information and call detail services to ISPs (item 8). We seek comment on whether we should continue to require the subject carriers to report on progress in developing, implementing, and providing access to Operation Support Systems (OSS) services (items 9 and 10). We believe it is important for such information to continue to be publicly available. We recognize, however, that such information may be more appropriately provided pursuant to other statutory provisions. For example, we issued a Public Notice on June 10, 1997, asking for comment on LCI's petition for expedited rulemaking to establish reporting requirements, performance, and technical standards for OSS in the context of section 251 of the Act. We seek comment on the appropriate forum for collecting information about OSS and whether continued reporting under *Computer III* is necessary in light of other pending Commission proceedings. We further seek comment on what, if any, changes we should make to the ONA OSS reporting requirements, to better reflect the obligations with respect to OSS imposed on carriers in the *Local Competition Order.*

c. Semi-Annual ONA Reports

108. In addition to the annual ONA reports discussed above, the BOCs and GTE are required to file semi-annual ONA reports. These semi-annual reports include: (1) a consolidated nationwide matrix of ONA services and state and federal ONA tariffs; (2) computer disks and printouts of data regarding state and federal tariffs; (3) a printed copy and a diskette copy of the *ONA Services User Guide;* (4) updated information on 118 categories of network capabilities requested by ISPs and how such requests were addressed, with details and matrices; and (5) updated information on BOC responses to the requests and matrices.

109. Considerable portions of the semi-annual reports filed by the BOCs appear to be redundant, as each of the BOCs files identical information. This generic information includes the ONA service matrix and the Services Description section of the ONA Services User Guide, as well as information on the 118 network capabilities originally requested by ISPs, and how the BOCs collectively have responded to these requests. Bell Communications Research, Inc. (Bellcore) originated and, until its spin-off earlier this year, prepared these portions of the BOCs' semi-annual reports; currently, an organization called the National Telecommunications Alliance (NTA) has assumed this responsibility. We see no benefit to continuing to require each of the BOCs separately to file the generic portions of the semi-annual report, particularly as there appear to be few changes in this information from year to year. Thus, we tentatively conclude that the BOCs should be permitted to make one consolidated filing (or posting) for all generic information they currently submit in their semi-annual reports. We seek comment on this tentative conclusion. We further seek comment on whether we should allow GTE to join in this consolidated filing or posting (to the extent that this arrangement would be mutually agreeable to the parties) with respect to the information it files that overlaps with that filed by the BOCs.

110. In addition, we seek comment on the frequency with which we require the subject carriers to file the information contained in the semi-annual ONA reports. In particular, we inquire as to whether we should reduce the filing frequency, and restructure the semi-annual reports to become part of the annual ONA reports filed by the subject carriers. A reduction in filing frequency would decrease the burden imposed on the subject carriers, without, we believe, significantly affecting the quality or utility of the information supplied, much of which is either generic or rather static in nature, or is available through other means (for example, in the state and federal tariffs filed by the subject carriers).

111. We also seek comment regarding whether certain information required in the semi-annual reports overlaps with the information required in the annual reports. For example, in the annual ONA reports, the Commission requires the BOCs and GTE to supply information on the disposition of several categories of ONA requests, whereas in the semi-annual reports, the Commission requires the BOCs and GTE to supply information regarding how they have responded to ISP requests for the existing 118 categories of network capabilities. These separate requirements seem to elicit similar, if not identical, information. To the extent there is overlap, we seek comment regarding whether these requirements may be simplified and consolidated, or, in the alternative, whether either or both sets should be eliminated entirely. We also seek comment on other, similar, overlaps among the ONA reporting requirements, and what we should do to eliminate the burdens or inefficiencies associated with them.

d. Nondiscrimination Reports

112. The BOCs and GTE are also required to establish procedures to ensure that they do not discriminate in their provision of ONA services, including the installation, maintenance, and quality of such services, to unaffiliated ISPs and their customers. For example, they must establish and publish standard intervals for routine installation orders based on type and quantity of services ordered, and follow these intervals in assigning due dates for installation, which are applicable to orders placed by competing service providers as well as orders placed by their own information services operations. In addition, they must standardize their maintenance procedures where possible, by assigning repair dates based on nondiscriminatory criteria (e.g., available work force and severity of problem), and handling trouble reports on a first-come, first-served basis.

113. In order to demonstrate compliance with the nondiscrimination requirements outlined above, the BOCs and GTE must file quarterly nondiscrimination reports comparing the timeliness of their installation and maintenance of ONA services for their own information services operations versus the information services operations of their competitors. If a BOC or GTE demonstrates in its ONA plan that it lacks the ability to discriminate with respect to installation and maintenance services, and files an annual affidavit to that effect, it may modify its quarterly report to compare installation and maintenance services provided to its own information services operations with services provided to a sampling of all customers. In their quarterly reports, the BOCs and GTE must include information on total orders, due dates missed, and average intervals for a set of service categories specified by the Commission, following a format specified by the Commission.

114. We tentatively conclude that the nondiscrimination obligations for provisioning and performing maintenance activities established by *Computer III* continue to apply to the BOCs and GTE. We seek comment, however, on whether the current quarterly installation and maintenance reports are an appropriate and effective mechanism for monitoring the BOCs'

and GTE's compliance with these nondiscrimination obligations. Are there ways in which the quarterly reports, and the accompanying annual affidavits, may be simplified, clarified, or otherwise made more useful to the Commission and the interested public? Along these lines, we note that the Commission issued a Further Notice of Proposed Rulemaking in conjunction with its *Non-Accounting Safeguards Order,* seeking comment on what types of reporting requirements are necessary to implement the specific nondiscrimination requirement set forth in section 272(e)(1) of the Communications Act. While we acknowledge that the nondiscrimination obligations imposed on the BOCs by section 272(e)(1) differ from those imposed by *Computer III,* we seek comment regarding whether the information required to demonstrate compliance with both sets of nondiscrimination requirements is sufficiently similar that we should harmonize the ONA nondiscrimination reporting requirements with the reporting requirements adopted in response to the Further Notice of Proposed Rulemaking in the *Non-Accounting Safeguards* proceeding. We also seek comment on whether we should harmonize the ONA nondiscrimination reporting requirements with reporting requirements being considered in other proceedings, such as in the LCI OSS Petition.

115. We note that, like the BOCs, AT&T was originally required to file quarterly nondiscrimination reports on the provision of installation and maintenance services to unaffiliated providers of enhanced services. The Commission modified and reduced these reporting requirements in 1991 and in 1993. In 1996, the Bureau eliminated the requirement that AT&T file quarterly installation and maintenance nondiscrimination reports, as well as the requirement that AT&T file an annual affidavit that its quarterly reports are true and that it has not discriminated in providing installation and maintenance services.

116. The Bureau declined to eliminate the requirement that AT&T file a second affidavit, which affirms that AT&T has followed the installation procedures in its ONA plan and has not discriminated in the quality of network services provided to competing enhanced service providers, deferring that determination to the instant proceeding. We tentatively conclude that we should no longer require AT&T to file this second affidavit because the level of competition in the interexchange services market is an effective check on AT&T's ability to discriminate in the quality of network services provided to competing ISPs. This tentative conclusion is consistent with our previous finding that the competitive nature of the interexchange market provides an important assurance that access to those services will be open to ISPs, and that much of the information of greatest use to ISPs is controlled by LECs such as the BOCs, and not by interexchange carriers. We also find that this tentative conclusion comports with our statutory obligation to eliminate regulations that are no longer necessary due to ''meaningful economic competition'' between providers of such service. We seek comment on this tentative conclusion.

3. Other Nonstructural Safeguards

a. Network Information Disclosure Rules

117. The Commission's network information disclosure rules seek to prevent anticompetitive behavior by ensuring that ISPs and other interested parties can obtain timely access to information affecting the interconnection of information services to the BOCs', AT&T's, and other carriers' networks. Prior to the 1996 Act, the rules set forth in the Commission's *Computer II* and *Computer III* proceedings governed the disclosure of network information. Section 251(c)(5) of the Act requires incumbent LECs 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 or networks.'' The Commission recently adopted network information disclosure requirements to implement section 251(c)(5) in the *Local Competition Second Report and Order,* 61 FR 47284, September 6, 1996. Although we discussed our preexisting network information disclosure requirements in conjunction with the requirements of section 251(c)(5) in the *Local Competition Second Report and Order,* we did not address in that proceeding whether our *Computer II* and *Computer III* network information disclosure requirements should continue to apply independently of our section 251(c)(5) network information disclosure requirements. We address that issue in this proceeding as part of our 1998 biennial review of regulations, in an effort to eliminate unnecessary and possibly conflicting requirements.

118. The rules established pursuant to section 251(c)(5) in some respects appear to duplicate and even exceed the rules established under *Computer II* and *Computer III,* while in other respects they do not. For example, section 251(c)(5) of the Act, and the Commission's rules implementing that section, only apply to incumbent LECs, while some of the *Computer II* network information disclosure requirements apply more broadly to ''all carriers owning basic transmission facilities.'' We seek comment, therefore, on the extent to which the Commission should retain its network information disclosure rules established in the Commission's *Computer II* and *Computer III* proceedings in light of the disclosure requirements stemming from section 251(c)(5) of the 1996 Act. As a starting point, we set forth in the following paragraphs a general description of the current network disclosure requirements under *Computer II, Computer III,* and section 251(c)(5), and then we ask parties to comment on whether, and why, specific requirements should be retained or eliminated. The following descriptions are not intended to be an exhaustive list of every feature of the Commission's current network disclosure requirements. These descriptions are intended, rather, to serve as a basis for comparison by parties commenting in this proceeding.

119. *Computer II Network Disclosure Obligations.*

a. *Application of the Network Disclosure Obligations.* The *Computer II* network information disclosure rules consist of two requirements: (1) a disclosure obligation which depends on the existence of a *Computer II* separate subsidiary; and (2) a disclosure obligation that applies independent of whether the carrier has a *Computer II* separate subsidiary. The Commission initially imposed both requirements on AT&T in the *Computer II Final Decision.* The Commission extended disclosure requirement (2) in the *Computer II Reconsideration Order,* 46 FR 5984, January 21, 1981, to ''all carriers owning basic transmission facilities'' (hereinafter the ''all-carrier'' rule). After divestiture, the Commission extended disclosure requirement (1) to the BOCs insofar as they are providing information services in accordance with the structural separation requirements of *Computer II.*

b. *Events Triggering the Public Notice Requirement.* The *Computer II* ''all-carrier'' rule is triggered by implementation of ''change[s] * * * to the telecommunications network that would affect either intercarrier interconnection or the manner in which interconnected CPE must operate

* * *.'' The *Computer II* separate affiliate disclosure obligation is triggered by any of three events: (1) the BOC communicates the relevant network information directly to its *Computer II* separate affiliate; (2) such information is used by the BOC or a third party to develop services or products which reasonably can be expected to be marketed by the *Computer II* separate affiliate; or (3) the BOC engages in joint research and development with its *Computer II* separate affiliate, leading to the design or manufacture of any product that either affects the network interface or relies on a not-yet implemented interface.

c. *Timing of Public Notice*. Under *Computer II*, the disclosure obligation of the ''all-carrier'' rule must be met ''in a timely manner and on a reasonable basis.'' The *Computer II* separate affiliate network disclosure obligation requires that disclosure be made to information service competitors of the *Computer II* affiliate ''at the same time'' disclosure is made directly to the *Computer II* separate affiliate as described in item (1). If the disclosure requirement is triggered by the events described in items (2) and (3), then disclosure must be made at the ''make/buy'' point, i.e., when the BOC or an affiliated company decides, in reliance on previously undisclosed information, to produce itself or to procure from a non-affiliated company any product, whether it be hardware or software, the design of which either affects the network interface or relies on the network interface.

d. *Types of Information To Be Disclosed*. The *Computer II* ''all-carrier'' rule encompasses ''all information relating to network design * * *, insofar as such information affects * * * intercarrier interconnection * * *.'' For the separate affiliate network disclosure requirement, the information required to be disclosed consists of, ''at a minimum, * * * any network information which is necessary to enable all [information] service * * * vendors to gain access to and utilize and to interact effectively with [the BOCs'] network services or capabilities, to the same extent that [the BOCs' *Computer II* separate affiliate] is able to use and interact with those network services or capabilities.'' This requirement includes information concerning ''network design, technical standards, interfaces, or generally, the manner in which interconnected * * * enhanced services will interoperate with [any of the BOCs'] network.'' In addition to technical information, the information required includes marketing information, such as ''commitments of the carrier with respect to the timing of introduction, pricing, and geographic availability of new network services or capabilities.''

e. *How Public Notice Should Be Provided*. Under *Computer II*, carriers subject to the ''all-carrier'' rule must disclose in their tariffs or tariff support material either the relevant network information or a statement indicating where such information can be obtained, that will allow competitors to use network facilities in the same manner as the subject carrier. The separate affiliate network disclosure obligation requires that the BOCs ''file with the Commission, within seven calendar days of the date the disclosure obligation arises, a notice apprising the public that the disclosure has taken place and indicating in summary form the nature of the information which has been disclosed [to its *Computer II* separate affiliate], the identity of any source documents and where interested parties can obtain additional details.'' Moreover, when a BOC ''files a tariff for a new or changed network service where there has been a prior disclosure to or for the benefit of [the *Computer II* separate affiliate], the tariff support materials must list any disclosure notices previously filed with the Commission that are relevant to the tariffed offering.''

120. *Computer III Network Disclosure Obligations*.

a. *Application of the Network Disclosure Obligations*. The *Computer III* network information disclosure rules initially were imposed on AT&T and the BOCs in the *Phase I Order* and *Phase II Order*, 52 FR 20714, June 3, 1987. The Commission later extended the *Computer III* network information disclosure rules and other nondiscrimination safeguards to GTE in the *GTE ONA Order*, 59 FR 26756, May 24, 1994.

b. *Events Triggering the Public Notice Requirement*. The *Computer III* public notice requirement is triggered at the ''make/buy'' point; that is, when AT&T, any of the BOCs, or GTE ''makes a decision to manufacture itself or to procure from an unaffiliated entity, any product the design of which affects or relies on the network interface.''

c. *Timing of Public Notice*. AT&T, the BOCs, and GTE must disclose the relevant information concerning planned network changes at two points in time. First, they must disclose the relevant technical information at the ''make/buy'' point. They are permitted, however, to condition this ''make/buy'' disclosure on the recipient's signing of a nondisclosure agreement, upon which the relevant technical information must be disclosed within 30 days. Second, they must make public disclosure of the relevant technical information a minimum of twelve months before implementation of the change; however, if the planned change can be implemented between six and twelve months following the ''make/buy'' point, then public notice is permitted at the ''make/buy'' point, but at a minimum of six months before implementation.

d. *Types of Information To Be Disclosed*. Under *Computer III*, the range of information encompassed by the network information disclosure requirements is adopted from, and identical to, the *Computer II* requirements. Specifically, at the ''make/buy'' point, AT&T, the BOCs, and GTE must disclose that a network change or network service is under development. The notice itself need not contain the full range of relevant network information, but it must describe the proposed network service with sufficient detail to convey what the new service is and what its capabilities are. The notice must also indicate that technical information required for the development of compatible information services will be provided to any entity involved in the provision of information services and may indicate that such information will be made available only to such entities willing to enter into a nondisclosure agreement. Once an entity has entered into a nondisclosure agreement, AT&T, the BOCs, or GTE must provide the full range of relevant information.

e. *How Public Notice Should Be Provided*. Under the *Computer III* rules, public notice is made through direct mailings, trade associations, or other reasonable means.

121. *Section 251(c)(5) Network Disclosure Obligations*.

a. *Application of the Network Disclosure Obligations*. These rules apply to all incumbent LECs, as the term is defined in section 251(h) of the Act.

b. *Events Triggering the Public Notice Requirement*. The incumbent LEC makes a decision to implement a network change that either: (1) affects ''competing service providers' performance or ability to provide service; or (2) otherwise affects the ability of the incumbent LEC's and a competing service provider's facilities or network to connect, to exchange information, or to use the information exchanged.'' Examples of network changes that would trigger the section 251(c)(5) public disclosure obligations include, but are not limited to, changes that affect (1) transmission, (2) signalling standards, (3) call routing, (4)

network configuration, (5) logical elements, (6) electronic interfaces, (7) data elements, and (8) transactions that support ordering, provisioning, maintenance, and billing.

c. *Timing of Public Notice.* Incumbent LECs must disclose planned network changes at the ''make/buy'' point, but at least twelve months before implementation of the change. If the planned change can be implemented within twelve months of the ''make/buy'' point, then public notice must be given at the ''make/buy'' point, but at least six months before implementation. If the planned changes can be implemented within six months of the make/buy point, then the public notice may be provided less than six months before implementation, if additional requirements set forth in section 51.333 of the Commission's rules are met.

d. *Types of Information To Be Disclosed.* Under the Commission's regulations, incumbent LECs are required to disclose, at a minimum, ''complete information about network design, technical standards and planned changes to the network.'' Public notice of planned network changes, at a minimum, shall consist of: (1) the carrier's name and address; (2) the name and telephone number of a contact person who can supply additional information regarding the planned changes; (3) the implementation date of the planned changes; (4) the location(s) at which the changes will occur; (5) a description of the type of changes planned (including, but not limited to, references to technical specifications, protocols, and standards regarding transmission, signalling, routing, and facility assignment as well as references to technical standards that would be applicable to any new technologies or equipment, or that may otherwise affect interconnection); and (6) a description of the reasonably foreseeable impact of the planned changes.

e. *How Public Notice Should Be Provided.* Network disclosure may be made either: (1) by filing public notice with the Commission in accordance with section 51.329 of the Commission's rules; or (2) providing public notice through industry fora, industry publications, or on the incumbent LEC's own publicly accessible Internet sites, as well as a certification filed with the Commission in accordance with section 51.329 of the Commission's rules.

122. We tentatively conclude that the Commission's rules established pursuant to section 251(c)(5) for incumbent LECs should supersede the Commission's previous network information disclosure rules established in *Computer III.* We also tentatively conclude that the Commission's network disclosure rules established in *Computer II* should continue to apply—specifically, the *Computer II* separate affiliate disclosure rule should continue to apply to any BOC that operates a *Computer II* subsidiary, and the all-carrier rule should continue to apply to all carriers owning basic transmission facilities. We reach our tentative conclusion regarding the *Computer III* network disclosure rules since, in our view, the 1996 Act disclosure rules for incumbent LECs are as comprehensive, if not more so, than the Commission's *Computer III* disclosure rules. Parties who disagree with this view should explain why all or some aspects of the Commission's *Computer III* disclosure rules are still needed for incumbent LECs in light of the rules established pursuant to section 251(c)(5) of the Act.

123. We recognize, however, that some BOCs may still be providing certain intraLATA information services through a *Computer II* subsidiary, rather than on an integrated basis under the Commission's *Computer III* rules. We tentatively conclude, therefore, that the *Computer II* separate subsidiary disclosure rule should continue to apply in such cases because, for instance, it encompasses marketing information which is not included within the scope of information to be disclosed under section 251(c)(5) and it requires disclosure under a more stringent timetable than that required under section 251(c)(5). We also tentatively conclude that the all-carrier rule should continue to apply to all carriers owning basic transmission facilities, since it is broader in certain respects than section 251(c)(5). First, it applies to all carriers, whereas section 251(c)(5) just applies to incumbent LECs. In addition, the all-carrier rule requires, among other things, the disclosure of network changes that affect end users' CPE, whereas our rules interpreting section 251(c)(5) only require the disclosure of information that affects ''competing service providers.'' We seek comment on these tentative conclusions and analyses.

b. Customer Proprietary Network Information (CPNI)

124. The Commission first established its CPNI rules in the *Computer II Final Decision* in 1980 to encourage AT&T, the BOCs, and GTE to develop and market efficient, integrated combinations of information and basic services without the marketing restrictions imposed by structural separation, while protecting the competitive interests of information service competitors. While the CPNI rules are an integral part of the Commission's current nonstructural regulatory framework for the provision of information services by AT&T, the BOCs, and GTE, we defer consideration of all CPNI issues relating to our *Computer II* and *Computer III* rules to our *CPNI* rulemaking proceeding.

125. Section 702 of the 1996 Act, which added a new section 222 to the Communications Act of 1934, as amended, sets forth requirements for use of CPNI by telecommunications carriers, including the BOCs. Although the requirements of section 222 were effective upon enactment of the 1996 Act, we issued a *CPNI Notice* on May 17, 1996, 61 FR 26483, May 28, 1996, which sought comment on, among other things, what regulations we should adopt to implement section 222. We stated in the *CPNI Notice* that the CPNI requirements the Commission previously established in the *Computer II* and *Computer III* proceedings remain in effect pending the outcome of the rulemaking, to the extent they do not conflict with section 222. The *CPNI* proceeding will address whether these pre-existing requirements should be retained, eliminated, extended, or modified in light of the Act.

126. Under the *Computer II* structural separation requirements, AT&T, the BOCs, and GTE were prohibited from jointly marketing their basic services with the enhanced services provided through their separate affiliate. Under the *Computer III* nonstructural safeguards regime, AT&T, the BOCs, and GTE were permitted to engage in joint marketing of basic and enhanced services subject to restrictions on their use of CPNI. In the *BOC Safeguards Order,* the Commission strengthened the CPNI rules by requiring that, for customers with more than twenty lines, BOC personnel involved in marketing enhanced services obtain written authorization from the customer before gaining access to its CPNI.

127. On March 6, 1992, the Association of Telemessaging Services International, Inc. (ATSI) filed a petition for reconsideration of the *BOC Safeguards Order* in CC Docket No. 90–623, the *Computer III Remand* proceeding. ATSI asked the Commission to modify the *BOC Safeguards Order* by: (1) prohibiting joint marketing of basic and information services; (2) extending the prior authorization requirement for CPNI to all users, regardless of size; and (3) ensuring that users who restrict access to their CPNI continue to receive nondiscriminatory treatment and an adequate level of service. On May 17, 1996, the Commission issued an order dismissing issues (2) and (3) as moot

because of the passage of the Telecommunications Act of 1996 and our commencement of a new proceeding to address the obligations of telecommunications carriers with respect to CPNI in light of the new statute. The order also noted that issue (1) remained to be addressed by the Commission. ATSI filed a motion to withdraw its petition for reconsideration in CC Docket No. 90–623 and to incorporate its petition into the Commission's *Computer III Further Remand* proceeding in CC Docket No. 95–20, as well as other proceedings, on December 10, 1996. On May 14, 1997, the Common Carrier Bureau partially granted the ATSI Motion by agreeing to address in this proceeding whether joint marketing of basic services and information services by the BOCs should be prohibited.

128. We therefore seek comment on the issue raised in the ATSI Petition: whether, to the extent the Commission continues to allow the BOCs to provide information services subject to a nonstructural safeguards regime, the BOCs should be prohibited from jointly marketing basic services and information services when these services are provided on an intraLATA basis. To the extent parties support the view that the term ''telecommunications service'' in the Act encompasses the same set of services as the term ''basic service'' did under the Commission's previous rules, parties should discuss the issue raised in the ATSI petition in terms of whether joint marketing should be allowed between telecommunications services and information services. As noted in the *ATSI Order,* we do not address this question with respect to interLATA information services, since under section 272 of the Act BOCs must provide interLATA information services pursuant to a section 272 affiliate and subject to the joint marketing provisions in that section. Also, under section 274, BOCs providing electronic publishing, whether on an interLATA or intraLATA basis, must do so pursuant to a section 274 affiliate and subject to the joint marketing rules in that section.

129. In its petition, ATSI argues that joint marketing of basic services and information services harms consumers and diminishes overall competition in the information services market. ATSI alleges that the BOCs have abused the Commission's joint marketing rules by: (1) routing calls to subscribers of competing voice messaging providers to the BOC's own voice messaging service instead; (2) soliciting customers of competing voice messaging providers who contact the BOCs to request other BOC services; (3) providing customers with misleading and disparaging information about the voice messaging services offered by competing providers; and (4) engaging in other unfair practices. ATSI therefore requests that the Commission prohibit the BOCs from using the same personnel and facilities to market basic services and information services. We seek comment on these issues. We also seek comment on the costs and operational efficiencies or inefficiencies of allowing the BOCs to provide intraLATA information services on an integrated basis, but requiring different personnel and facilities to market basic services and information services.

V. Jurisdictional Issues

130. Our authority, pursuant to section 2(a) of the Communications Act, to establish, enforce, modify, or eliminate a regime of safeguards for the provision of information services by the BOCs and GTE is well settled. In addition, the scope of our authority to preempt inconsistent regulation on the part of the states has been established by the Commission in the previous *Computer III* orders and has been affirmed on appeal.

131. In the *Computer III Phase I Order,* the Commission preempted: (1) all state structural separation requirements applicable to the provision of enhanced services by AT&T and the BOCs; and (2) all state nonstructural safeguards applicable to AT&T and the BOCs that were inconsistent with federal safeguards. The *California I* court vacated these preemption actions, on the ground that the Commission had not adequately justified imposing them. In response to the *California I* remand, the Commission narrowed the scope of federal preemption to cover only: (1) state requirements for structural separation of facilities and personnel used to provide the intrastate portion of jurisdictionally mixed enhanced services; (2) state CPNI rules requiring prior authorization that is not required by federal regulation; and (3) state network disclosure rules that require initial disclosure at a time different than the federal rules. The Commission reasoned that such state requirements would thwart or impede the nonstructural safeguards pursuant to which the BOCs may provide interstate enhanced services, and the federal goals such safeguards were intended to achieve. The *California III* court upheld the Commission's narrowly tailored preemption, stating that the Commission had met its burden of demonstrating that it was preempting only state regulations that would negate valid federal regulatory goals.

132. Thus, we believe that the proposals we make in the current Further Notice, and the options upon which we seek comment, fall within the scope of our authority previously established in the context of this proceeding, as outlined above. To the extent that our proposals go beyond our recognized preemption authority, we ask that commenters identify those proposals and comment on our authority to adopt them.

VI. Procedural Matters

A. Ex Parte Presentations

133. This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's revised *ex parte* rules, which became effective June 2, 1997. *See Amendment of 47 CFR 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings,* GC Docket No. 95–21, Report and Order, 62 FR 15852, April 3, 1997, (citing 47 CFR 1.1204(b)(1)) (1997). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.

B. Initial Paperwork Reduction Act Analysis

134. This Further Notice contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Further Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this Further Notice; OMB comments are due 60 days from the date of publication of this Further Notice 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.

C. Initial Regulatory Flexibility Certification

135. The Regulatory Flexibility Act (RFA) requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

136. This Further Notice pertains to the Bell Operating Companies (BOCs), each of which is an affiliate of a Regional Holding Company (RHC), as well as to GTE and AT&T. Neither the Commission nor SBA has developed a definition of ''small entity'' specifically applicable to the BOCs, GTE, or AT&T. The closest definition under SBA rules is that for establishments providing ''Telephone Communications, Except Radiotelephone,'' which is Standard Industrial Classification (SIC) code 4813. Under this definition, a small entity is one employing no more than 1,500 persons. We note that each BOC is dominant in its field of operation and all of the BOCs as well as GTE and AT&T have more than 1,500 employees. We therefore certify that this Further Notice will not have a significant economic impact on a substantial number of small entities. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this Further Notice, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration. A copy will also be published in the **Federal Register**.

D. Comment Filing Procedures

137. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before March 27, 1998, and reply comments on or before April 23, 1998. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C., 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C., 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C., 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C., 20554.

138. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

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

140. You may also file informal comments or an exact copy of your formal comments electronically via the Internet at <http://www.fcc.gov/e-file/> or via e-mail <computer3@comments.fcc.gov>. Only one copy of electronically-filed comments must be submitted. You must put the docket number of this proceeding in the subject line if you are using e-mail (CC Docket No. 95–20), or in the body of the text if by Internet. You must note whether an electronic submission is an exact copy of formal comments on the subject line. You also must include your full name and Postal Service mailing address in your submission.

VII. Ordering Clauses

141. Accordingly, *It is ordered* that, pursuant to sections 1, 2, 4, 10, 11, 201–205, 251, 271, 272, and 274-276, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 160, 161, 201–205, 251, 271, 272, and 274–276, a *Further notice of proposed rulemaking is adopted*.

142. *It is Further Ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *shall send* a copy of this *Further notice of proposed rulemaking*, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act, *see* 5 U.S.C. 605(b).

List of Subjects

47 CFR Part 51

Communications common carriers, Interconnection.

47 CFR Part 53

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

47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

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