the Inmarsat System, FCC 96–161, 61 FR 30579 (June 17, 1996). Based on the publication date, comments are due July 17, 1996 and replies are due August 16, 1996.

BT North America, Inc. (BTNA) has filed a Motion for an Extension of Time to extend the comment date an additional 45 days, or 75 days from publication in the Federal Register. BTNA states that more time is needed for parties to provide in-depth comments based on changes in the industry over the past seven years and to conduct the complex technical analysis required to address the Commission's tentative conclusions.

Accordingly, pursuant to section 0.261 of the Commission's rules on delegations of authority, 47 CFR 0.261, and for good cause shown, BTNA's motion is granted.

Comments may be filed on or before September 3, 1996. Replies may be filed on or before October 4, 1996.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96–22198 Filed 8–30–96; 8:45 am]

BILLING CODE 6712–01–U

47 CFR Parts 1 and 25

[IB Docket No. 95–59]

Preemption of Local Zoning Regulation of Satellite Earth Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; request for comments.

SUMMARY: The Commission issued a *Report and Order and Further Notice of Proposed Rulemaking* adopting rules implementing Section 207 of the Telecommunications Act of 1996 relating to nonfederal restrictions on installation of satellite and certain other antennas. The Public Notice seeks to refresh the record and requests comments on any remaining issues pertaining to satellite earth station antennas and local restrictions.

DATES: Comments are due on or before September 27, 1996. Replies are due on or before October 28, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rosalee Chiara at (202) 418–0749.

SUPPLEMENTARY INFORMATION: The following is a summary of Public Notice, Report No. SPB–55 (released August 7, 1996):

On August 6, 1996, the Commission released a Report and Order and Further Notice of Proposed Rulemaking adopting rules implementing Section 207 of the Telecommunications Act with respect to nonfederal restrictions on installation of satellite and certain other antennas used to receive video programming. (*See* FCC 96–328 (released August 6, 1996)) In this order, the Commission stated that the International Bureau would issue this public notice soliciting comment to update and refresh the record with respect to issues that are not addressed in the August 6 order but which remain pending in IB Docket 95–59. Accordingly, we seek comment on any issues pertaining to satellite earth station antennas and local restrictions that remain in light of the Commission's August 6 action.

Comments filed in response to this public notice should be filed on or before September 27, 1996 and replies should be filed on or before October 28, 1996. Copies of relevant documents can be obtained in the FCC Reference Center, 1919 M Street, NW., Room 239, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037. For further information contact Rosalee Chiara, 202–418–0749.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–22199 Filed 8–30–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 22

[WT Docket No. 96–162; GEN Docket No. 90–314; FCC 96–319]

Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this *Notice of Proposed Rulemaking* (*NPRM*), in WT Docket No. 96–162 and GEN Docket No. 90–314, the Commission initiates a comprehensive review of the existing regulatory framework of structural and nonstructural safeguards for local exchange carrier (LEC) provision of commercial mobile radio services (CMRS). The Commission proposes to eliminate the current requirement that Bell Operating Companies (BOCs) must provide cellular service through a structurally separate corporation. The Commission also proposes rule changes necessary to implement those provisions of the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996) (''the 1996 Act'') that govern the joint marketing of CMRS and landline services, protections for customer proprietary network information (CPNI) and network information disclosure. The Commission's objective is to implement further the mandate of the Omnibus Budget Reconciliation Act of 1993, Title VI, Sections 6002(b)(2)(A), 6002(b)(2)(B), Public Law No. 103–66, 107 Stat. 312, 392 (1993) to treat similar commercial mobile radio services similarly by placing all CMRS licensees under a uniform set of nonstructural safeguards.

DATES: Comments must be filed on or before October 3, 1996. Reply comments are to be filed on or before October 24, 1996. Comment of the Office of Management and Budget on the information collections contained herein are due November 4, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jane Halprin or Mika Savir, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This *Notice of Proposed Rulemaking* in WT Docket No. 96–162 and GEN Docket No. 90–314, adopted on July 25, 1996 and released on August 13, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 575, 2000 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. Synopsis of the *Notice of Proposed Rulemaking*:

I. Background

1. Currently, there are distinct rules for BOC provision of cellular service versus non-BOC provision of personal communications service (PCS) and other commercial mobile radio services. BOCs are required to provide cellular service through structurally separate subsidiary corporations, whereas all other LECs may provide cellular service on an unseparated basis. Moreover, the Commission has declined to impose these restrictions on LEC, including BOC, provision of other CMRS, such as PCS and specialized mobile radio (SMR)

service. The BOCs have sought relief from the Commission's cellular structural separation rule on the grounds of changed circumstances and competitive necessity. The BOCs' challenges to the continued viability of the restrictions contained in Section 22.903 are premised on two points: (1) the Commission's existing interconnection rules and accounting safeguards are sufficient to protect against anti-competitive behavior by the BOCs; and (2) LECs that are not BOCs are treated differently with respect to the provision of cellular service and other commercial mobile radio services. In response, parties opposing grant of such waivers have cited the broader competitive implications of the individual waiver requests, and have generally disputed the BOC claims.

2. A central purpose of the 1996 Act is to provide open access to local and other telecommunications markets in order to encourage entry by new competitors. Structural separation was originally imposed over a decade ago on certain LECs to prevent them from leveraging their market power in the local exchange market into other competitive markets, such as cellular service. The Commission notes that CMRS providers will, in the very near term, need to enter into a series of agreements with local exchange incumbents for such things as the mutual exchange of traffic, the location of equipment, and the sharing of network functionalities. Effective competitive safeguards, where a demonstrated need exists, should permit competitors to construct their networks, implement their business plans, and begin offering service to customers with the reasonable assurance that the incumbent LEC will not be able to extend its market power into the critical new PCS market.

3. The original version of Section 22.903 was adopted as Section 22.901 in 1981 when the Commission amended Part 22 of the rules to provide for the authorization of two cellular licensees in each market—one wireline carrier and one non-wireline carrier. To preserve the competitive potential of the non-wireline cellular provider, the Commission required the wireline carrier to provide its cellular service through a structurally separate subsidiary, *i.e.*, an independent corporation with separate officers, separate books of account, and separate operating, marketing, installation and maintenance personnel, and also prohibited cellular licensees affiliated with landline LECs from owning facilities for the provision of landline telephone service. The structural separation requirement was intended to protect against improper cross-subsidization, to assure equitable interconnection arrangements, and to make the detection of anti-competitive conduct somewhat easier for regulatory authorities.

4. In 1982, the Commission revised Section 22.901 to apply only to AT&T and its affiliates. In 1983, the Commission further amended Section 22.901 in response to the breakup of AT&T under the divestiture agreement entered into by AT&T and the Department of Justice. A final revision of the cellular structural separation requirement occurred in the *Part 22 Rewrite Order,* Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, CC Docket No. 92–115, *Report and Order,* 59 FR 59502 (November 17, 1994) (*Part 22 Rewrite Order*), *reconsideration pending,* as part of the Commission's comprehensive reorganization of Part 22 of the rules. In the *Part 22 Rewrite Order,* Section 22.903 was amended to incorporate the provisions of former Section 22.901. Section 22.903 essentially consists of two parts: (1) the requirement that BOCs provide cellular service through a separate corporation; and (2) a series of restrictions on the operation of that separate affiliate, including restrictions on use and ownership of landline transmission facilities and requirements for the independent operation of the separate cellular affiliate through separate books of account, officers, operating, marketing, installation and maintenance personnel and utilization of separate computer and transmission facilities in the provision of cellular service. In addition, Section 22.903(d) requires that all transactions between the BOC and the cellular subsidiary or its affiliates be reduced to writing and that a copy of all agreements (other than interconnection agreements) between such entities be kept available for inspection upon reasonable request by the Commission. It also requires that all affiliate contracts with respect to cellular/landline interconnection be filed with the Commission; however, this requirement does not apply to any transaction governed by an effective state or federal tariff. Section 22.903(e) prohibits BOCs from engaging in the sale or promotion of cellular service on behalf of the separate corporation. This prohibition does not extend to joint advertising or promotions by the landline carrier and its cellular affiliate. Finally, the rule prohibits the provision of BOC customer proprietary network information (CPNI) to the cellular affiliate, unless such CPNI is made publicly available on the same terms and conditions.

5. *The Broadband PCS Order,* Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90–314, *Second Report and Order,* 58 FR 59174 (November 8, 1993), *reconsideration,* 59 FR 32830 (June 24, 1994) (*Broadband PCS Order*), found that allowing LECs to participate in PCS may produce significant economies of scope between wireline and PCS networks, and that these economies will promote more rapid development of PCS, yield a broader range of PCS services at lower costs to consumers, and should encourage LECs to develop their wireline architectures to better accommodate all PCS. Thus, the Commission declined to impose structural separation for PCS providers affiliated with LECs, including the BOCs, reasoning that such limitations on the ability of LECs to take advantage of their potential economies of scope would jeopardize, if not eliminate, the public interest benefits sought through LEC participation in PCS. The Commission further concluded that the cellular-PCS cross-ownership policies are adequate to ensure that LECs do not behave in an anti-competitive manner. The Commission also found that existing accounting safeguards were sufficient to protect against cross-subsidization by the LECs, and therefore declined to impose additional cost-accounting rules on LECs that provide PCS service. The *Broadband PCS Order* also reiterated that commencement of PCS operations by LECs would be contingent on the LEC implementing an acceptable non-structural safeguards plan.

6. In the *CMRS Second Report and Order,* Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GEN Docket No. 93–252, *Second Report and Order,* 59 FR 18493 (April 19, 1994) *CMRS Second Report and Order*), *reconsideration pending,* the Commission concluded that all LECs with CMRS affiliates must follow the same accounting safeguards that were adopted in the PCS proceeding. The Commission observed that these safeguards were necessary to prevent cost-shifting from the non-regulated affiliates to the regulated ratebase of the LEC. The Commission also noted that the commenters had raised important issues with respect to the potential role of accounting, structural separation, and other safeguards in promoting a competitive CMRS environment. At that time, due to inadequate notice and an insufficient record, the Commission

again declined to address the issue of removing the cellular structural separations requirements for the BOCs.

7. In *Cincinnati Bell, Cincinnati Bell Telephone* v. *FCC*, 69 F.3d 752 (6th Cir. 1995) (*Cincinnati Bell*), the Sixth Circuit Court of Appeals found that the Commission had failed to adequately justify its retention of Section 22.903, in light of the Commission's decision permitting LECs (including BOCs) to provide PCS under nonstructural safeguards. The court stated that the Commission was required to give a reasoned explanation of its disparate treatment of the Bell companies. Accordingly, the court remanded the matter to the Commission with instructions to promptly conduct an inquiry into whether the structural separation requirement continues to serve as a necessary regulatory restriction on BellSouth and other Bell Operating Companies. Both before and after *Cincinnati Bell*, a number of BOCs filed waiver petitions seeking varying forms of relief from the requirements of Section 22.903. The Commission has granted one such waiver (Southwestern), another has been withdrawn (BellSouth), and the remainder (US West, Bell Atlantic) are pending.

8. The 1996 Act contains specific requirements that BOCs be permitted to enter into previously prohibited or constrained lines of business, including, *inter alia*, in-region interLATA telecommunications services, interLATA manufacturing, information, and electronic publishing services through a separate affiliate. In certain cases, this separate subsidiary requirement ''sunsets'' after a number of years. With respect to in-region interLATA service, these separate affiliates are under additional structural and transactional constraints including the requirement that the BOC deal with the separate affiliate on an arm's length basis. Section 272(c), 47 U.S.C. § 272(c), imposes additional nondiscrimination safeguards on a BOC's dealings with its separate affiliate. With the addition of Section 601(d), Public Law 104–104, 110 Stat. 56 (1996), the 1996 Act expressly permits BOCs to market jointly and sell CMRS together with a variety of landline services. Section 222, 47 U.S.C. § 222, contains new requirements for maintaining the confidentiality of proprietary information.

II. Notice of Proposed Rulemaking

A. BOC Cellular Safeguards

In this *NPRM*, the Commission addresses one of the issues remanded by the Sixth Circuit in *Cincinnati Bell:* whether the structural separation requirement continues to serve as a necessary regulatory restriction on the BOCs. The Commission proposes a series of amendments to the rule intended to provide BOCs sufficient flexibility in serving the public, while preserving the ability to detect and correct any potential anti-competitive behavior, whether that be cost shifting, interconnection discrimination, or some other form of leveraging the BOCs' dominant position in the local exchange market. The Commission also seeks comment on whether the public interest would be better served by (1) a transitional arrangement whereby some aspects of the current structural separation requirements would be retained during an interim period; or (2) immediate replacement of Section 22.903 with the uniform streamlined safeguards proposed for in-region LEC PCS and other commercial mobile radio services.

10. One of the primary objectives underlying the Commission's adoption of structural separations was to prevent interconnection discrimination by BOCs in their relationship with affiliated and unaffiliated cellular carriers. In considering whether to retain structural separation for BOC cellular service, the Commission is taking into account whether proposed changes to the existing LEC CMRS interconnection policies either support retention of Section 22.903, or demonstrate its obsolescence. In addition, the 1996 Act contains significant new provisions with respect to interconnection. The Commission has examined LEC CMRS interconnection issues in recent dockets. In the *Interconnection Compensation NPRM*, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95–185, *Notice of Proposed Rulemaking*, 61 FR 03644 (February 1, 1996) (*Interconnection Compensation NPRM*), the Commission found that if the commercial mobile radio services are to compete directly against LEC landline services, it is important that the prices, terms and conditions of interconnection arrangements not serve to buttress LEC market power against erosion by competition. Section 251, 47 U.S.C. § 251, imposes extensive interconnection obligations on all telecommunications carriers, and particularly on LECs and incumbent LECs. Section 251(a) imposes a general duty on all telecommunications carriers (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and (2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to Section 255 or 256. The new interconnection obligations in Section 251(b) for LECs govern LEC provision of resale, number portability, dialing parity, access to rights-of-way, and reciprocal compensation for the transport and termination of traffic originating on another carrier's facilities. Section 251(c) contains additional obligations for incumbent LECs, which include, *inter alia*: (1) good faith negotiation of terms and conditions of agreements to fulfill Section 251 (b) and (c) interconnection obligations; (2) provision of interconnection with the LEC's network for transmission and routing of telephone exchange and exchange access service, at any technically feasible point, that is at least equal in quality to that provided by the LEC to itself or any affiliate or other party, on rates, terms and conditions that are just, reasonable and nondiscriminatory; (3) provision of unbundled, nondiscriminatory access to network elements to any requesting telecommunications carrier, at any technically feasible point on rates, terms and conditions that are just, reasonable and nondiscriminatory; (4) provision of public notice of changes in the information necessary for transmission and routing of services using the LEC's network or of changes that would affect interoperabililty; and (5) the duty to provide physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the LEC, on reasonable and nondiscriminatory rates, terms and conditions, unless the LEC demonstrates to the State commission that physical collocation is not practical due to technical reasons or space limitations, in which case the LEC may provide virtual collocation. Section 252 contains procedures for negotiation, arbitration, and approval of agreements, and gives the States authority to resolve interconnection disputes arising under Sections 251 and 252. In addition, a LEC must make available to any requesting carrier, on the same terms and conditions, any interconnection, service, or network element provided under an approved agreement to which it is a party.

11. The question remanded by the Sixth Circuit is whether the structural separation requirements of Section 22.903 continue to serve as a necessary

regulatory restriction on the BOCs, or whether changed circumstances have either obviated the need for such restrictions, or rendered them contrary to the public interest. The Section 22.903 restrictions on the BOCs were imposed, as a general matter, to prevent them from leveraging their dominance into the newly created cellular service markets. The structural separation requirements were specifically intended to protect BOC local exchange ratepayers by preventing cross-subsidization of the more competitive cellular service, and to prevent discriminatory interconnection practices with respect to the non-wireline cellular provider, by requiring that the wireline and non-wireline entities exist independently from one another with respect to facilities, operations, management and other personnel. With respect to both cross-subsidization and interconnection, structural separation was believed to permit easier detection and disclosure of improper activities and to reduce unnecessary regulatory intrusion into competitive or unregulated operations.

12. The Commission has also recognized that structural separation entails costs to the carriers, in the form of lost efficiencies of scope and added costs of establishing separate facilities, operations, and personnel, as well as lost opportunities for customers to obtain integrated and innovative service packages. In the case of CPE and enhanced services, the Commission recognized costs to small business and residential customers because the BOCs, which already had existing marketing contacts with households in their service regions, could not inform them of new and desirable enhanced service offerings, such as voice messaging, through existing marketing contacts. The result, in many cases, was that such customers would never learn of the availability of such desired offerings at all. Thus, the public benefit of dissemination of advanced telephone offerings that has been the product of joint marketing of basic and enhanced services and CPE was found to outweigh the costs to competition of integrated BOC offerings, if such integrated services were provided pursuant to appropriate nonstructural safeguards.

13. The Commission referred to the economies of scope arising from the use of wireless loops and wireless tails in the broadband PCS orders, but there were no specific findings about the public benefits of integrated operations or joint marketing of BOC cellular and landline services. The only nonstructural safeguards specifically addressed in the broadband PCS proceeding were the cost accounting and allocation rules contained in Parts 32 and 64 of the Commission's rules. Thus, the nature of the nonstructural safeguards, other than the accounting rules, that might be applied in lieu of structural separations to LEC-provided CMRS has never been squarely addressed by this Commission until this *NPRM*.

14. The Commission observes that Congress has concluded as a general matter that such requirements, together with associated nondiscrimination safeguards, constitute an appropriate initial safeguard for BOC entry into the provision of certain competitive services, which can be phased out as markets become more competitive. At the same time, the Commission notes that the BOCs have been subject to structural separation requirements for their cellular operations since their inception, and that the BOCs are generally incumbents in CMRS markets, facing market entry by PCS competitors. In this *NPRM*, the Commission explores varying approaches to separate affiliate and nondiscrimination safeguards for BOC cellular operations, while proposing to give full expression to Congressional intent regarding joint marketing, customer proprietary information and network information disclosure requirements.

15. The Commission finds that although there have been vast changes in the nature of the wireless market since the 1981 imposition of the BOC cellular structural separation requirement, the market power of the BOCs in the landline local exchange and exchange access markets has remained relatively stable, and is likely to remain so until the market entry and interconnection changes authorized by the 1996 Act occur. The BOCs thus currently retain market power in the local exchange market, and therefore control over public switched network interconnection within their in-region states. The Commission seeks comment as to whether in-region application of separate affiliate and nondiscrimination requirements would continue to serve as an important regulatory check on the BOCs' market power in local exchange.

16. *Interconnection.* Prevention of interconnection discrimination was one of the central justifications for imposing structural separation. A separate cellular affiliate provides a template by which to measure the rates, terms, and conditions of these entities' interconnection agreements with their affiliated LECs. The effective enforcement of nondiscrimination rules depends on the visibility of the transactions under scrutiny. Such visibility does not depend on structural separation *per se*, but could be achieved through a more limited separate affiliate requirement, including one that permitted integrated management with affiliates providing landline services. The Commission believes that it will be particularly crucial to retain some form of separate affiliate requirement, either structural or non-structural, as the new CMRS entrants begin to negotiate their interconnection arrangements with the incumbent BOCs. The Commission seeks comment on this analysis.

17. *Price Discrimination.* The Commission is concerned that the possibility of discrimination by a BOC or incumbent LEC in favor of its own cellular operations and against other CMRS providers could be increased absent some form of separate subsidiary requirement, either structural or non-structural, and that the Commission's tasks of detecting such discrimination and determining whether it is reasonable or unreasonable would be greatly complicated. The Commission seeks comment on the value of separate affiliates in detecting and deterring pricing discrimination, and whether the degree of separation (*i.e.*, structural versus non-structural) has any effect on the value of this safeguard.

18. *Cross-subsidization.* The Commission observes that some commenters continue to argue that cross-subsidization is possible even under a price cap regime, for those services that are either not subject to a pure price cap option, or continue to be regulated under a rate-of-return system at the intrastate level. Presumably, the cost-shifting these parties are concerned with would occur between the as-yet primarily intrastate competitive cellular service and the intrastate as-yet primarily monopoly local exchange service. The Commission seeks further comment on these issues, and urges the parties alleging continued cross-subsidy problems under price caps to provide specific data in support of their claims and to address the relative value of structural and non-structural separate affiliate requirements in this regard.

19. *Leveraging of Market Power.* The Commission notes that one concern with respect to integrated landline and cellular operations has been the incentives and opportunities such a corporate structure provides for leveraging of the LEC's local exchange market power into the more competitive cellular market. The Commission is concerned about the potential for abuses in provisioning, installation, maintenance and customer network design that might not be addressed adequately by the uniform nonstructural

safeguards proposed for LEC provision of CMRS, at least during the transitional period before implementation of the 1996 Act's interconnection and network unbundling provisions. Structural separation, if continued on an interim basis, could prevent, for example, the BOC from tasking a single set of officers and personnel with the interconnection arrangements for its cellular unit's PCS competitor as well as dealings with that competitor's major customers to provide local exchange service, or cellular service, or both. The Commission notes that nonstructural safeguards would not prevent such sharing of personnel and integrated management decisionmaking. The Commission seeks comment on whether such integrated operations would present realistic opportunities for anti-competitive conduct and, if so, whether safeguards less restrictive than our current structural separation rules would sufficiently constrain such conduct.

20. *Costs and Benefits of Integrated Versus Structurally Separated Operations.* The Commission notes that the BOCs have sought relief from Section 22.903 primarily so that they could benefit from the cost efficiencies of integrated operations, and so that their customers could benefit from ''one-stop-shopping,'' *i.e.*, a single point of contact for all service, repair and billing needs. The Commission observes Section 601(d) increases the flexibility afforded the BOCs to meet customer demands without necessarily eliminating the remainder of the structural separation requirement. The Commission seeks comment on this analysis. Additionally, the Commission seeks data on the relative benefit of integrated operations other than those relating to joint marketing. The Commission seeks comment on specific public benefits from integrated cellular/landline operations that structural separation precludes. Parties submitting comments should provide specific instances of savings, economies of scale and/or scope, or other consumer benefits that they contend would be impossible without integrated operations. The Commission is particularly interested in receiving information and comment on the effect on the cost-benefit analysis of recent initiatives seeking to introduce greater flexibility for CMRS licensees' use of their spectrum.

21. *Proposed revisions to Section 22.903—limitation to in-region BOC cellular services.* The Commission tentatively concludes that, at a minimum, certain aspects of Section 22.903 may be safely relaxed to permit the BOCs increased flexibility in meeting customer needs, while at the same time protecting BOC ratepayers and wireless competitors. The Commission believes that for out-of-region combined service offerings, the costs to the carrier of establishing a subsidiary in addition to their structurally separate cellular subsidiary to provide integrated competitive landline local exchange (CLLE) and cellular services outweigh any possible benefits to the public of such fragmented operations. The Commission also believes that additional relief is warranted for BOC provision of out-of-region cellular service. The Commission tentatively concludes that Section 22.903 should be limited in scope to in-region services of the BOC and its cellular operations, or, in the case of a joint venture between two or more BOCs, the in-region services of all of the joint venture participants together. The Commission tentatively concludes that such relief would promote local exchange competition in those areas in which the affiliated LEC is not the incumbent local exchange provider. The Commission seeks comment on these tentative conclusions.

22. *Proposed revisions to Section 22.903—interim relief for out-of-region operations.* The Commission eliminates any out-of-region effect of Section 22.903, as part of the effort to narrowly tailor restrictions to reach only the relationship between the incumbent BOC and its cellular subsidiary in the incumbent's in-region service area. The Commission concludes that the public interest would be served by granting the BOCs interim relief from the out-of-region reach of our existing Section 22.903 requirements. The Commission also concludes that immediate out-of-region relief from Section 22.903 will benefit consumers by promoting competition in those areas in which the BOC cellular operation is not affiliated with the incumbent LEC by permitting the BOCs to structure their out-of-region offerings to suit their business judgment. The Commission further concludes that the BOCs may exercise this degree of flexibility in provisioning their out-of-region cellular services without undermining the core protections of the rule for either the BOCs' in-region local exchange ratepayers, or their cellular competitors. The Commission is granting to all BOCs a waiver of the requirements of Section 22.903 with respect to the provision of cellular service outside of their in-region service areas.

23. *Ownership of Landline Facilities.* Section 22.903(a) prohibits, *inter alia*, BOC separate cellular affiliates from owning any facilities for the provision of landline service. The Commission proposes to amend the portion of Section 22.903(a) prohibiting the cellular affiliate from owning any facilities for the provision of landline service to permit a BOC cellular affiliate to own landline facilities for the provision of landline services, including competitive landline local exchange (CLLE) and interexchange service, in the same market with the affiliated incumbent LEC. Thus, the rule would be modified only to prohibit the cellular affiliate from owning, including jointly owning with the incumbent affiliated LEC, landline facilities that the latter uses in the provision of landline local exchange services. The Commission believes that retention of this prohibition is appropriate for the same reasons that the Commission proposes to include a limited separate affiliate requirement in the proposed uniform LEC/CMRS safeguards, *i.e.*, to distinguish clearly between charges applied to all interconnectors and joint cost allocations resulting from integrated operations. The Commission believes that such relief would benefit the public by enabling a new entrant to the local exchange market to provide a package of services without the risk of LEC monopoly cross-subsidization or interconnection discrimination. The Commission seeks comment on this proposal.

24. *BOC CMRS Joint Marketing and Resale; Section 222 CPNI Requirements; and Section 251(c)(5) Network Information Disclosure Obligations.* The 1996 Act expressly permits a BOC to market jointly and sell CMRS in conjunction with several types of landline service in Section 601(d). The Commission tentatively concludes that Section 601(d) does not necessarily require the elimination of the remainder of our current structural separation requirements. As support for this conclusion, the Commission notes that the authority to engage in joint marketing and sale of landline and CMRS services is expressly made subject to the provisions of Section 272, which include separate affiliate requirements. The Commission believes that it retains authority and responsibility to determine the scope of Section 601(d), the definition of joint marketing intended, and the rules to define the relationship between the affiliated entities engaged in such joint marketing. The Commission seeks comment on this interpretation of the effect of Section 601(d).

25. The Commission proposes to define ''joint marketing'' as referenced in that provision as the advertising, promotion, and sale, at a single point of

contact, of the CMRS, telephone exchange service, exchange access, intraLATA and interLATA telecommunications, and information services provided by the BOC. Such joint marketing also includes, but is not limited to, activities such as promotion, advertising and in-bound service marketing. The Commission further tentatively concludes that Section 601(d) restores the ability of the BOCs to engage in the joint sale or promotion of cellular and landline service. The Commission tentatively concludes that the public interest in preventing, and permitting easy detection of, cross-subsidization requires that such joint marketing be done on behalf of the separate affiliate, subject to affiliate transaction rules and classified as a non-regulated activity, on a compensatory, arms-length basis. The Commission seeks comment on these tentative conclusions, and whether it should impose a requirement similar to that of Section 272(b)(5) requiring that all transactions be reduced to writing and made available for public inspection.

26. Integrated sales and marketing of resold cellular and incumbent LEC landline local exchange service are clearly permitted under Section 601(d). The Commission seeks comment on whether it should impose conditions implementing the resale authority under Section 601(d) of the 1996 Act, and if so, what these conditions should be. In addition, the Commission seeks comment on whether it should mandate public disclosure of rates, terms, and conditions of service in cases where the LEC is reselling its cellular affiliate's service. In the alternative, the Commission seeks comment on whether the general proscription against unjust or unreasonable discrimination in Section 202(a) and the formal complaint process are sufficient deterrents to discriminatory resale practices. In addition, the Commission seeks comment as to how implementation of Section 601(d) should affect potentially related joint marketing and sale activities that are currently prohibited under Section 22.903, such as joint installation, maintenance, and repair of BOC cellular and landline local exchange services. The Commission also seeks comment on the effect of the joint marketing authorization on activities such as billing and collection.

27. Section 22.903(f) currently prohibits BOCs from providing any customer proprietary information to a cellular affiliate unless such information is publicly available on the same terms and conditions. The Commission seeks comment whether the current CPNI rule in Part 22 is inconsistent with Section 222. The Commission notes that continued application of the existing rule would limit a customer's options in granting approval for use or disclosure of, or access to, individually identifiable CPNI under Section 222(c)(1) and (2). In addition, the Commission seeks comment whether it should eliminate Section 22.903(f) even if it were to determine that continued application of this rule is not inconsistent with Section 222, on the grounds that the current rule would be superfluous in light of the comprehensive statutory scheme put in place by Section 222. In addition, the Commission seeks comment on whether, in considering the joint marketing authorization in Section 601(d) of the 1996 Act together with the CPNI requirements contained in the new Section 222, the Commission should require any particular BOC organizational structure or procedures to guard against the unauthorized disclosure of CPNI in the context of joint marketing of CMRS and other BOC-provided services. The Commission asks for comment on the need for, and formulation of, appropriate organizational and procedural guidelines specific to the BOC/CMRS joint marketing situation that would be in accord with both Section 601(d) and Section 222.

28. The Commission tentatively concludes that no specific Part 22 rule pertaining to network information disclosure by the BOCs is necessary or appropriate. The Commission seeks comment on this tentative conclusion. Commenters supporting a specific Part 22 rule should provide information about particular technical or regulatory issues to be addressed by such a rule.

29. *Sunset/Elimination of Section 22.903.* Section 22.903 and its predecessor, Section 22.901, were established without sunset provisions, or the requirement that the Commission periodically review the continued need for the restrictions contained therein. In contrast, the general approach of the 1996 Act to BOC-provided competitive services is initial entry pursuant to establishment of separate subsidiary corporations, through which the competitive service must be provided for a period of years. In the case of BOC entry into interLATA services, a competitive checklist must be met prior to BOC entry into that competitive market, and such entry must be through a structurally separate corporation. This structural separation continues for three years after the BOC receives in-region interLATA authorization, unless extended by order of this Commission. With respect to other competitive services, the Act imposes sunset provisions of varying lengths.

30. The Commission seeks ultimately to eliminate any regulatory asymmetry between BOC provision of cellular services, on the one hand, and BOC provision of other CMRS as well as LEC provision of any CMRS, on the other. Yet, the competitive safeguards contained in Section 22.903, as modified through the proposals above, may continue to serve the public interest during the present crucial phase of entry of new wireless competitors into the CMRS markets. Further, the realization of the fundamental regulatory reforms contained in the 1996 Act, including the opening of the LEC network for purposes of local exchange competition pursuant to Section 251, would reduce the need for these safeguards in the not too distant future, and would provide a convenient milepost to mark a transition period. The Commission therefore seeks comment on the addition of a sunset provision to Section 22.903, similar to those contained in the 1996 Act for BOC provision of other competitive services. Upon the sunset of the Section 22.903 requirements for each BOC's cellular operations, the Commission proposes that such service would be governed by the uniform set of competitive safeguards proposed below for all in-region LEC CMRS.

31. The Commission proposes to sunset the effectiveness of the Section 22.903 requirements for a particular BOC in tandem with that BOC's receipt of authorization pursuant to Section 271(d) to provide interLATA service originating in any in-region State. In addition to the interconnection requirements, the competitive checklist requires BOCs to provide, *inter alia,* further unbundling of local loops, switching and transport; nondiscriminatory access to 911 and E911 services; directory assistance, and operator call completion services; and nondiscriminatory access to databases and associated signaling necessary for call routing and completing. The effective implementation of these requirements should provide potential CMRS competitors with sufficient protection from interconnection discrimination and monopoly leveraging such that the Commission may safely relax the degree of separation required for BOC cellular operations. The Commission believes that effectively conditioning relief from Section 22.903 upon each BOC's meeting a ''competitive checklist'' may be a viable approach to assure that, from the regulator's and the competitor's standpoint, a sufficiently level playing

field is in place such that structural safeguards may safely be eliminated. Moreover, this approach to sunsetting Section 22.903 would provide the BOCs with an added incentive to meet the requirements of the competitive checklist. The Commission seeks comment on this formulation of an approach to sunsetting Section 22.903.

32. The Commission also seeks comment on alternative sunset dates. Parties advocating a different sunset should provide information supporting their recommendations. Parties proposing a sunset date and/or competitive checklist different than that contained in Section 271 (c)(2)(B) and (d) should detail why their proposed factors are relevant to the question of BOC cellular safeguards. Parties may also suggest alterations to the list for purposes of setting a sunset date for our Section 22.903 requirements. The Commission also notes that BOC entry in some areas could potentially occur without a single facilities-based competitor actually obtaining interconnection arrangements consistent with Sections 251 and 252 as long as the BOC is generally offering access and interconnection in a manner that meets the requirements of the competitive checklist. The Commission seeks comment on the effect of this aspect of Section 271 on the proposal to tie sunset of Section 22.903 to BOC entry into in-region interLATA markets.

33. The Commission seeks comment on whether it should forgo the transition period described above, where a streamlined Section 22.903 would be in effect for BOC cellular operations until a designated sunset, in favor of immediate elimination of Section 22.903 and its replacement by the uniform set of safeguards proposed below. The Commission is concerned about whether transitional structural separation for BOC provision of cellular service, which is more restrictive than any rules applying to other cellular providers or any provision of PCS, will promote or inhibit the development of competition. The Commission seeks comment on this aspect of our two alternative safeguards proposals, and whether immediate elimination of Section 22.903 in favor of uniform LEC CMRS safeguards will promote competition and the public interest more effectively than the sunset approach outlined above.

34. The Commission seeks comment on the relative costs and benefits for the public and the BOCs if the independent operation and joint research requirements were eliminated before the BOCs meet the requirements of the competitive checklist in Section 271. Parties should focus specifically on how the relative costs and benefits of independent versus integrated management and personnel bear upon the competitive equity issues discussed above.

35. *BOC Provision of Incidental InterLATA CMRS.* The Commission does not believe that the authorization contained in Sections 271(g)(3) and 272(a)(2)(B)(i) for immediate BOC provision of in-region, incidental interLATA service, defined as commercial mobile radio service, limits the Commission's authority to retain the current BOC cellular separate affiliate rules, or to prescribe alternative rules, should the Commission determine that such rules constitute an appropriate competitive safeguard. The Commission notes that Section 271(f)(3) preserves the Commission's authority to prescribe safeguards consistent with the public interest, convenience, and necessity. The Commission seeks comment on this analysis.

B. Symmetry of Cellular Safeguards

36. The Commission notes that one of the principal criticisms of the cellular structural separation requirement is that it applies only to the BOCs, but not to other large LECs with similar characteristics, particularly GTE. The lack of regulatory symmetry between BOC-provided cellular service and LEC-provided cellular service under Section 22.903 presents a difficult problem in this period of transition to more competitive landline and wireless markets. Rather than distinguish between BOCs and other LECs, it would arguably be more consistent to apply Section 22.903 to GTE, which is similar in size to the BOCs, or to all LECs above a particular size, *e.g.*, all Tier 1 LECs. The rationale for imposing structural separation on the BOCs' cellular service would appear to apply to all Tier 1 LECs. The Commission does not propose to apply Section 22.903 to any additional LECs at this time. The Commission seeks comment on this approach.

37. The Commission also proposes to require all the Tier 1 LECs to implement the same service safeguards for their in-region cellular service that is proposed for in-region PCS and other CMRS below. The Commission seeks comment on the costs to the Tier 1 LECs of establishing nonstructurally separate affiliates. The Commission does not believe it appropriate to impose either a streamlined Section 22.903 or the proposed nonstructural competitive safeguards on any non-Tier 1 independent and rural LECs because, on balance, the cost and potential disruption of requiring non-Tier 1 LECs to establish new separate affiliates for the provision of cellular service would likely be significant, both in terms of the direct costs of incorporation and lost efficiencies of joint operations, facilities, and staff. These costs are obviously different than the going-forward costs of retaining a structurally separate corporate entity, discussed above. The Commission seeks comment on the nature and extent of such costs, and asks that commenters be specific in their quantification of both direct costs of separate incorporation, and of lost economies of scope. The Commission seeks comment on the tentative conclusion that such costs likely outweigh the benefits of imposing a limited separate affiliate requirement.

C. Safeguards for Provision of CMRS by LECS

38. *Cellular/PCS Regulatory Parity.* The Commission seeks comment on whether there are differences between cellular and PCS that justify different regulatory treatment, at least in the short term. The Commission notes that PCS was intended to be competitive with both incumbent cellular systems and landline networks, and its identity as a new entrant places PCS providers in a different competitive situation from incumbent cellular carriers. The Commission intended that PCS would compete with cellular service at the outset, and eventually compete with, complement, or, where appropriate, replace landline local exchange service. In addition, PCS providers face competitive hurdles unlike those existing when the cellular service was established, such as auction payments, competition with incumbent cellular providers themselves, and the need, in some cases, to relocate incumbent microwave users before PCS can become fully operational. Permitting LECs greater flexibility in the provision of PCS than the BOCs enjoy with respect to cellular was part of the Commission's plan to get PCS into the market quickly, and to encourage the LECs to engineer their network architectures in a ''PCS-friendly'' manner. This added degree of flexibility may act as a counterbalance to the competitive hurdles unique to PCS. The Commission seeks comment on whether this analysis pertains today in the same way as when PCS was established as a new service.

39. *Need for Uniform Safeguards.* The Commission believes that the imposition of competitive safeguards in addition to accounting safeguards for LEC provision of in-region broadband PCS will serve the public interest. The Commission believes it is time to

replace the initial case-by-case approach with a uniform set of requirements. This should be more efficient for both the carriers and the Commission, as it will streamline the review process and provide a consistent regulatory framework for future competition. The Commission seeks comment on this analysis. The potential costs of imposing additional nonstructural safeguards on LEC provision of PCS at this time are different from the costs for either retaining structural separation for BOC cellular service, or for extending such structural separation requirements for the first time to other LECs, such as GTE. In the case of BOC cellular service, the costs of establishing the subsidiary have already been incurred, whereas in the case of the independent LECs, the re-arrangement of existing corporate structures would entail additional costs of a particular scope and nature. The Commission also recognizes that, in the case of an entirely new service such as in-region LEC broadband PCS, the start-up costs of structural separation would likely be of a different nature and scope altogether. Few LECs currently have in-region PCS licenses as a result of the cellular-PCS cross-ownership and spectrum cap requirements. It is also not clear how far along those other LECs are in building-out their PCS networks and in structuring their PCS operations from an organizational perspective. The Commission seeks comment on this analysis and on the relative costs of imposing the requirements proposed herein.

40. *In-Region/Spectrum Allocation Limitations.* With respect to the imposition of nonstructural safeguards, the *Broadband PCS Order* did not distinguish between in-region versus out-of-region PCS, nor did it distinguish among LEC PCS providers on the basis of the amount of PCS spectrum they would be utilizing to provide service. The Commission does not believe that the competitive dangers of integrated LEC provision of landline and PCS outside of the local exchange service areas in which they are the incumbent LEC raises the same concerns as in-region integrated services. In fact, the Commission has found that out-of-region competition from LECs offering integrated service packages will promote local exchange competition. The Commission therefore proposes to limit LEC PCS nonstructural safeguards to in-region broadband PCS service. The Commission seeks comment on this tentative conclusion. In addition, the Commission seeks comment on the relevance of the distinction raised in the record between LEC holders of 30 MHz versus 10 MHz in-region PCS licenses for the proposed uniform nonstructural safeguards. Specifically, the Commission seeks comment on whether it should exempt LEC licensees with no more than 10 MHz of PCS spectrum from some or all of the competitive safeguards discussed herein, with the exception of those safeguards which arise from the provisions of the 1996 Act.

41. *Applicability to Tier 1 LECs.* The Commission believes that the goal of regulatory symmetry should be tempered by a realistic assessment of the costs and benefits of applying the proposed competitive safeguards to small telephone companies. The Commission notes that small telephone companies, particularly those operating in rural areas, are uniquely positioned to provide wireless services to populations which might otherwise not receive them. The Commission does not want to unduly burden or discourage small telephone company entry into cellular and PCS markets. The Commission does not believe that these companies pose a significant threat of anti-competitive conduct toward potential wireless competitors, as their ability to leverage their bottleneck local exchange facilities is limited as compared to that of the BOCs and the larger independents. The Commission also seeks to ensure that the local exchange and exchange access customers of the small telephone companies are not unduly burdened with the costs of these companies' ventures in competitive wireless markets. The Commission therefore would apply the uniform set of competitive safeguards proposed here only to the Tier 1 LECs. The Commission seeks comment on this proposal and on what changes, if any, to our accounting rules are necessary or appropriate to ensure that LECs not subject to the proposed competitive safeguards will not cross-subsidize PCS activities from the regulated telephone ratebase.

42. The Commission proposes that all Tier 1 LECs providing broadband PCS within their in-region states implement a nonstructural safeguard plan, and file the plan for approval with the Commission. The plan would include the following elements: (1) a description of a separate affiliate, as defined herein, for the provision of PCS; (2) a description of compliance with Part 64 and Part 32 accounting rules, with copies of the relevant CAM changes attached; (3) a description of planned compliance with all outstanding interconnection obligations; (4) a description of compliance with all outstanding network disclosure rules; and (5) a description of planned compliance with the CPNI requirements in new Section 222. Additionally, the Commission proposes to require that LEC in-region broadband PCS services should be provided through a corporate affiliate that is separate from the LEC.

43. The Commission proposes to require the affiliate to meet the following separation conditions: the affiliate must (1) maintain separate books of account; (2) not jointly own transmission or switching facilities with the exchange telephone company; and (3) obtain any exchange telephone company-provided communications services at tariffed rates and conditions. The Commission proposes to modify the second requirement to conform with the proposed modification of the facilities-sharing prohibition of Section 22.903(a). That is, the separate PCS affiliate would not be permitted to have joint ownership with the incumbent LEC of transmission and switching facilities that the latter uses in the provision of landline services in the same in-region market. The Commission seeks comment on these proposals.

44. The Commission tentatively concludes that these requirements will not impose excessive burdens on LECs, while providing some protection against cost-shifting and anti-competitive conduct, in the case of Tier 1 LEC in-region PCS. The Commission tentatively concludes that the separate affiliate requirement permits greater flexibility for the LEC than the Section 22.903 structural separation requirement, while preserving the competitive safeguards of separate books of account, facilities, and tariffed services between the PCS affiliate and its affiliated LEC. The Commission seeks comment on the effect that changes in interconnection tariffing requirements under Sections 251 and 252 have on the requirement that the separate affiliate obtain any exchange telephone company service at tariffed rates and conditions. In addition, the Commission tentatively concludes that joint marketing of PCS and LEC landline services should be permitted on a compensatory, arm's length basis. Any such joint marketing must be subject to the Part 64 cost allocation and affiliate transaction rule and the CPNI requirements. The Commission seeks comment on these tentative conclusions.

45. The Commission believes that the nonstructural safeguards plan should address the separation of costs engendered by joint marketing operations. The Commission believes that even with these filing requirements only an annual audit will help

determine compliance with the accounting, affiliate transaction and cost allocation rules. The Commission notes that all CAM changes are also subject to comment and review by the Commission and interested parties. The Commission believes that a description of the carrier's procedures to ensure compliance with the Part 32 and 64 rules, together with copies of the relevant CAM changes, is sufficient for purposes of initial review of the carriers' nonstructural safeguards plans. This initial review will determine whether adequate accounting procedures are in place. The company's compliance with these procedures, however, can only be determined through the existing annual audit process. The Commission seeks comment on this analysis.

46. The Commission seeks comment on whether the same type of organizational and procedural guidelines for the protection and dissemination of CPNI for which the Commission is seeking comment relating to BOC cellular operations, should apply to the PCS operations of any LEC (including non-Tier 1 LECs) or interexchange carrier possessing CPNI gathered in the provision of landline services. The Commission also seeks comment as to whether there are any circumstances under which the Commission should forbear from requiring a description of such organizational structures and procedures, and rely instead on enforcement procedures for any violations of the CPNI statutory mandates. Such circumstances could include a weighing of relative costs and benefits, as well as the significance of the CPNI at issue. The Commission tentatively concludes that the filing of such descriptions by non-Tier 1 LECs and non-dominant interexchange carriers holding PCS licenses is not needed. The Commission seeks comment on this tentative conclusion and this issue generally. In addition, the Commission seeks comment on whether, for purposes of applying Section 222, cellular service and PCS should be considered the same service (*i.e.*, CMRS) such that CPNI gained in the provision of one could be utilized without restriction in the marketing of the other. The Commission also seeks comment whether other CMRS, such as paging and Specialized Mobile Radio, should be considered the same service as cellular service and PCS for purposes of implementing Section 222 and what distinctions, if any, should be made among these different types of CMRS. Finally, the Commission seeks comment whether a toll service provided by means of CMRS (*e.g.*, cellular long distance) should be treated as a distinct telecommunications service for purposes of implementing the new Section 222.

47. The Commission believes that in the case of LEC PCS two factors render a lesser degree of separation appropriate. First, and most importantly, the public interest benefits the Commission anticipates from permitting LECs somewhat more flexibility in establishing their PCS operations counterbalance the loss of the added level of protection that complete structural separation under Section 22.903 provides. The Commission's proposal that LECs establish nonstructurally separate affiliates for the provision of in-region PCS is intended as an interconnection safeguard that will render visible the LEC's interconnection arrangements with its affiliate. The second factor is one of timing. The Commission believes that the possible retention of structural separation for the in-region BOC cellular service may act as additional protection against anti-competitive actions with respect to PCS competitors of the BOC cellular providers who are seeking interconnection arrangements. The Commission seeks comment on this, and asks that parties disagreeing with this analysis provide specific examples and argument in support of their position.

48. In light of the statutory provision regarding public notice by incumbent LECs of network technical changes and the implementation of that provision, the Commission seeks comment on the need for specific PCS rules pertaining to network information disclosure. Commenters supporting a specific Part 24 rule should provide information about particular technical or regulatory issues to be addressed by such a rule.

49. With respect to LEC in-region broadband PCS, the Commission has proposed a set of flexible service safeguards that strike an appropriate balance between the Commission's pro-competitive goals and the goal of expediting in-region LEC-provided broadband PCS service. Nonetheless, assuming that competition in the local exchange market increases to the point where LECs do not have market power in the provision of local exchange service, those safeguards that are not mandated by statute could be relaxed or eliminated. The Commission seeks comment on whether the rules proposed here should be subject to a sunset provision. The Commission also seeks comment on the appropriate term of such a provision, or the conditions that would justify relaxing or eliminating these restrictions in the future.

50. The Commission notes that Congress created the CMRS regulatory classification and mandated that similar commercial mobile radio services be accorded similar regulatory treatment under the rules. Therefore, the Commission tentatively concludes that the nonstructural safeguards discussed above for LEC provision of PCS should apply to Tier 1 LEC provision of other in-region CMRS. The Commission seeks comment on this proposal.

III. Conclusion

51. The Commission believes that the proposals in this *NPRM* are consistent with the legislative mandate in the 1996 Act and will promote competition in wireless communications markets by applying the least intrusive means to curb the residual market power of the LECs. The Commission intends to move rapidly to complete the comprehensive review of the CMRS safeguards initiated by this *NPRM*, and to put into place new, streamlined rules which accomplish the goals of promoting wireless competition, limiting the exercise of market power, and establishing regulatory symmetry.

IV. Procedural Matters and Ordering Clauses

A. Regulatory Flexibility Act

Summary: As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in this *NPRM*. Written public comments are requested on the IRFA.

Reason for Action: The Commission is issuing this *NPRM* to review the regulatory regime for the provision of commercial mobile services, and to implement certain provisions of the Telecommunications Act of 1996. The proposals advanced in the *NPRM* are designed to explore whether the BOC separate subsidiary requirement of Section 22.903 continues to be relevant in today's marketplace. The *NPRM* also proposes streamlined safeguards for Tier 1 LECs seeking to provide PCS and other commercial mobile services.

Objectives: The objective of the *NPRM* is to provide an opportunity for public comment and to provide a record for a Commission decision regarding appropriate competitive safeguards for landline telephone companies seeking to provide wireless services. The *NPRM* proposes two alternatives for modification of Section 22.903, the BOC/cellular separate subsidiary

requirement. The first alternative is to retain the rule for in-region provision of cellular service, subject to a sunset period. The second alternative is to eliminate the rule immediately for in-region cellular services. (The Commission waives the requirement for out-of-region cellular service.) Further, the *NPRM* proposes a uniform set of safeguards for Tier 1 LECs seeking to provide PCS and other CMRS services.

Reporting, Recordkeeping and Other Compliance Requirements: The LEC/PCS safeguards proposed in the *NPRM* would require that Tier 1 LECs submit to the Commission a nonstructural safeguards plan. Smaller LECs would not be subject to this requirement.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules: None.

Description and Number of Small Entities Involved: Because Section 22.903 only applies to the BOCs and because the proposed LEC/PCS safeguards would apply only to the 23 Tier 1 LECs (including the BOCs), no small entities would be affected by the proposals included in the *NPRM*.

Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives: The *NPRM* proposes to adopt LEC/PCS safeguards only for Tier 1 LECs and not for smaller LECs. A Tier 1 LEC is a local exchange carrier with over $100 million in revenues from regulated telecommunications operations that are subject to the CAM filing requirements of Section 64.903 of the Commission's Rules. The Commission notes that small telephone companies are uniquely positioned to provide wireless services to populations that might otherwise receive them. The *NPRM* points out that the Commission wishes to take no action that would unduly burden or discourage small telephone company entry into cellular and PCS markets, nor do we believe that these companies pose a significant threat of anti-competitive conduct toward potential wireless competitors.

Legal Basis. The *NPRM* is adopted pursuant to Sections 1, 2, 4, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, and 332.

IRFA Comments. The Commission requests written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses of the IRFA and must be filed by the deadline for comments in response to the *NPRM*.

B. Paperwork Reduction Act

This *NPRM* contains a proposed information collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *NPRM* as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due October 3, 1996; OMB notification of action is due November 4, 1996. Comments should address (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Dates: Written comments by the public on the proposed information collections are due October 3, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before November 4, 1996.

Address: In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain__t@al.eop.gov.

Further Information: For additional information concerning the information collections contained in this *NPRM* contact Dorothy Conway at (202) 418–0217, or via the Internet at dconway@fcc.gov.

Supplementary Information:

Title: Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services.

Type of Review: New Collection.

Respondents: Business or other for profit.

Number of Respondents: We estimate that approximately 25 Tier 1 LECs may submit a nonstructural safeguard plan.

Estimated Time Per Response: The average burden on the LEC is 30 hours to do the research and development and 30 hours to write and review the plan. 25 plans×60 hours=1,500 hours.

Estimated Cost to the Respondent: We presume that the LECs would use attorneys and engineers (average $200 per hour) to prepare the information. 25 plans×$200 per hour×60 hours=$300,000.

Needs and Uses: This proceeding initiates a comprehensive review of the existing regulatory framework of structural and nonstructural safeguards for local exchange carrier (LEC) provision of commercial mobile radio services (CMRS). All Tier 1 LECs providing broadband Personal Communications Service (PCS) within their in-region states will be required to implement a nonstructural safeguard plan and file the plan for approval with the Commission. The plan should include the following elements: (1) a description of a separate affiliate for the provision of PCS; (2) a description of compliance with Part 64 and Part 32 accounting rules, with copies of the relevant Cost Allocation Manual (CAM) changes attached; (3) a description of planned compliance with all outstanding interconnection obligations; (4) a description of compliance with all outstanding network disclosure rules; and (5) a description of planned compliance with the Customer Propriety Network Information (CPNI) requirements in Section 702 of the Telecommunications Act of 1996 (which creates a new Section 222 of the Communications Act). The Commission will use the information to determine if the Tier 1 LECs are in compliance with our rules.

C. Ex Parte Presentations—Non-Restricted Proceeding

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

D. Comment Period

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 October 3, 1996. Reply comments are to be filed on or before October 24, 1996. To file formally in this proceeding, you must file an original and four 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 nine 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. Parties should also submit two copies of comments and reply comments to Bobby Brown, Commercial Wireless Division, Wireless Telecommunications Bureau, 2025 M Street, N.W., Room 7130, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

E. Authority

The above action is authorized under the Communications Act of 1934, §§ 1, 4, 222, 252(c)(5), 301, and 303, 47 U.S.C. §§ 151, 154, 222, 252(c)(5), 301, and 303, as amended, and Section 601(d) of the Telecommunications Act of 1996, Section 601(d), Public Law 104–104, 110 Stat. 56 (1996).

F. Ordering Clauses

It is ordered that pursuant to Sections 1, 4, 222, 252(c)(5), 301, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 222, 252(c)(5), 301, and 303, and Section 601(d) of the Telecommunications Act of 1996, Section 601(d), Public Law 104–104, 110 Stat. 56 (1996), a *notice of proposed rulemaking* is hereby *adopted*.

It is further ordered that comments in WT Docket No. 96–162 will be due October 3, 1996 and reply comments will be due October 24, 1996.

It is further ordered that, pursuant to Sections 1.3 and 22.19 of the Commission's Rules, 47 CFR 1.3, 22.19, all Bell Operating Companies are hereby granted a WAIVER of the provisions of Section 22.903 of the Commission's Rules, 47 CFR 22.903 with respect to the provision of cellular service outside of their in-region service areas as defined herein.

It is further ordered that, pursuant to Sections 1.3 and 22.19 of the Commission's Rules, 47 CFR §§ 1.3, 22.19, a waiver of Section 22.903 with respect to the provision of cellular service outside of their in-region service areas as defined herein, is GRANTED to Bell Atlantic NYNEX Mobile, Inc. and US West, Inc.

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

List of Subjects in 47 CFR Part 22

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–22348 Filed 8–30–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–153; RM–8804]

Radio Broadcasting Services; Batesville, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Arkansas Radio Broadcasters, seeking the allotment of Channel 258A to Batesville, Arkansas, as that community's second local FM service. Coordinates used for this proposal are 35–50–28 and 91–34–45.

DATES: Comments must be filed on or before September 16, 1996, and reply comments on or before October 1, 1996.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Arkansas Radio Broadcasters, Attn: Carol B. Ingram, President, P.O. Box 73, Batesville, MS 38606.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–153, adopted May 24, 1996, and released July 26, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–22347 Filed 8–30–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Reopening of Comment Period on Proposed Threatened and Endangered Status for Seven Desert Milk-Vetch Taxa From California and Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; Notice of reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of reopening of the comment period for five plants that have been proposed as endangered: Lane Mountain milk-vetch (*Astragalus jaegerianus*), Coachella Valley milk-vetch (*Astragalus lentiginosus* var. *coachellae*), Fish Slough milk-vetch (*Astragalus lentiginosus* var. *piscinensis*), Peirson's milk-vetch (*Astragalus magdalenae* var. *peirsonii*), and triple-ribbed milk-vetch (*Astragalus lentiginosus* var. *micans*); and two plants that have been proposed as threatened: shining milk-vetch (*Astragalus tricarinatus*) and Sodaville milk-vetch (*Astragalus lentiginosus* var. *sesquimetralis*). The comment period has been reopened to acquire additional information from interested parties, and to reconsider the proposed listing actions.

DATES: The public comment period closes October 18, 1996. Any comments received by the closing date will be considered in the final decision on this proposal.