[FR Doc. 97–17476 Filed 7–2–97; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5851–8]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Southside Sanitary Landfill Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Southside Sanitary Landfill Site in Indiana from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action is being taken by EPA and the State of Indiana, because it has been determined that Responsible Parties have implemented all appropriate response actions required. Moreover, EPA and the State of Indiana have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: July 3, 1997.

FOR FURTHER INFORMATION CONTACT: Dion Novak at (312) 886–4737 (SR–6J), Remedial Project Manager or Gladys Beard at (312) 886–7253, Associate Remedial Project Manager, Superfund Division, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at the local information repository located at: The Indianapolis Public Library, 40 East St. Clair Street, Indianapolis, IN 46204 and the Indiana Department of Environmental Management (IDEM), Office of Environmental Response, 2525 North Shadeland Avenue, (2nd Floor), Indianapolis, IN 46219. Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. The contact for the Regional Docket Office is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Southside Sanitary Landfill Site located in Indianapolis, Indiana. A Notice of Intent to Delete for this site was published May 14, 1997 (62 FR 26463). The closing date for comments on the Notice of Intent to Delete was June 12, 1997. EPA received no comments and therefore no Responsiveness Summary was prepared.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 20, 1997.

David Ullrich,

Acting Regional Administrator, U.S. EPA, Region V.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the Site ''Southside Sanitary Landfill, Indianapolis, Indiana''.

[FR Doc. 97–17186 Filed 7–2–97; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–149; FCC 97–142]

Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Second Report and Order in CC Docket No. 96–149 and Third Report and Order in CC Docket No. 96–61 (Order) addresses issues concerning market definition, the regulatory treatment of Bell Operating Companies' (BOCs) and independent local exchange carriers' (LECs) provision of in-region long distance and international services, and separation requirements for the BOCs' and independent LECs' provision of out-of-region long distance services. This action taken by the Commission will further the pro-competitive, deregulatory objectives of the Telecommunications Act of 1996 (1996 Act) by eliminating unnecessary regulation that is currently imposed on BOCs and, in certain circumstances, on independent LECs.

EFFECTIVE DATE: This final rule, which contains information collection requirements, shall become effective September 11, 1997, following OMB approval, unless FCC publishes a timely document in the **Federal Register** changing the effective date of the rule.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted April 17, 1997, and released April 18, 1997, as modified by Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area; Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket Nos. 96–149, 96–61, Order on Reconsideration, FCC 97–229 (released June 26, 1997) (Reconsideration Order).

In the Reconsideration Order, the Commission makes the following minor modifications to the Order to clarify language and make minor corrections: (1) The Commission makes minor modifications to paragraphs 173 and

188 of the Order to correct and clarify the meaning of these paragraphs; (2) the Commission amends 47 CFR 64.1903(c) adopted in the Order so that it is consistent with the text of the Order; (3) the Commission amends paragraph 226 of the Final Regulatory Analysis in the Order to be consistent with the changes made to paragraph 173; (4) the Commission extends the effective date of the Order in the ordering clauses to comply with the requirements of the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995); (5) in the ordering clauses and rules, the Commission redesignates subpart Q to subpart T in part 64 of title 47 of the Code of Federal Regulations; and (6) the Commission modifies the rules published in Appendix B of the Order to correct minor typographical and numbering errors.

The full text of the Order (as released on April 18, 1997) and the Reconsideration Order 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 of the Order (as released on April 18, 1997) may also be obtained through the World Wide Web at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc97–142.wp, and the complete text of the Reconsideration Order may be obtained through the World Wide Web at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc97–229.wp. The complete text of the Order (as released on April 18, 1997) and the Reconsideration Order may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., N.W., Suite 140, Washington, D.C. 20037.

This Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. The Commission inadvertently omitted specifically including the collections and their burdens in the PRA portion of the notice of proposed rulemaking in CC Docket No. 96–149 (61 FR 39397 (July 29, 1996)).

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, this Order contains a Final Regulatory Flexibility Analysis which is set forth in Section VI. The Commission performed a comprehensive analysis of the Order with regard to small entities and small incumbent LECs. This analysis includes: (1) A statement of the need for and objectives of this Order and the regulations contained within; (2) a summary and analysis of the significant issues raised in response to the initial regulatory flexibility analysis; (3) description and estimates of the number of small entities and small incumbent LECs affected by this Order; (4) summary analysis of the projected reporting, recordkeeping, and other compliance requirements; and (5) description of the steps taken by the Commission to minimize the significant economic impact of this Order on small entities and small incumbent LECs, including the significant alternatives considered and rejected.

The regulations adopted in this Order are necessary to implement the provisions of the 1996 Act.

Paperwork Reduction Act

This Order contains new 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 Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–12. Written comments by the public on the information collections are due August 4, 1997. OMB notification of action is due September 2, 1997. Comments should address: (a) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None.

Title: Separate Affiliate Requirement for Independent Local Exchange Carrier (LEC) Provision of International, Interexchange Services (47 CFR 64.1901–64.1903).

Form NO.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Public reporting burden for the collection of information is estimated as follows:

Information collection	No. of respondents (approx.)	Annual hour burden per response
Maintaining books of account of independent LEC's international, interexchange affiliate separate from LEC's local exchange and other activities	Approximately 10.	6,056

Total annual Burden: 60,560 burden hours for all respondents.

Estimated Costs Per Respondent: $100,300.

Needs and Uses: The Commission imposes the recordkeeping collection to ensure that independent LECs providing international, interexchange services through a separate affiliate are in compliance with the Communications Act, as amended, and with Commission policies and regulations.

Synopsis of Order

I. Introduction

1. In February 1996, the ''Telecommunications Act of 1996'' became law. Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996 Act), codified at 47 U.S.C. §§ 151 *et seq.* (Hereinafter, all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.) The 1996 Act amended the Communications Act of 1934 (Communications Act). The intent of this legislation is ''to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.'' In this rulemaking and related proceedings, the Commission is adopting policies necessary to achieve the pro-competitive, deregulatory goals of the 1996 Act.

2.Upon enactment, the 1996 Act permitted the Bell Operating Companies (BOCs) (for purposes of this proceeding, we adopt the definition of the term ''Bell Operating Company'' contained in 47 U.S.C. § 153(4)) to provide interLATA services that originate outside of their regions. *See* 47 U.S.C. § 271(b)(2). The Modification of Final Judgment (MFJ), which ended the government's antitrust suit against AT&T, and which resulted in the divestiture of the BOCs from AT&T,

prohibited the BOCs from providing interLATA services. *See United States* v. *Western Elec. Co.*, 552 F. Supp. 131, 214 n.316 (D.D.C. 1982); *United States* v. *Western Elec. Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983); *see also United States* v. *Western Elec. Co.*, Civil Action No. 82–0192 (D.D.C. Apr. 11, 1996) (vacating the MFJ). For purposes of this proceeding, we adopt the definition of the term ''in-region state'' that is contained in 47 U.S.C. § 271(i)(1). We note that section 271(j) provides that a BOC's in-region services include 800 service, private line service, or their equivalents that terminate in an in-region state of that BOC and that allow the called party to determine the interLATA carrier, even if such services originate out-of-region. *Id.* § 271(j). The 1996 Act defines ''interLATA services'' as ''telecommunications between a point located in a local access and transport area and a point located outside such area.'' 47 U.S.C. § 153(21). Under the 1996 Act, a ''local access and transport area'' (LATA) is ''a contiguous geographic area (A) established before the date of enactment of the (1996 Act) by a (BOC) such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or (B) established or modified by a (BOC) after such date of enactment and approved by the Commission.'' 47 U.S.C. § 153(25). LATAs were created as part of the MFJ's ''plan of reorganization.'' *United States* v. *Western Elec. Co.*, 569 F. Supp. 1057 (D.D.C. 1983), *aff'd sub nom. California* v. *United States*, 464 U.S. 1013 (1983). Pursuant to the MFJ, ''all BOC territory in the continental United States [was] divided into LATAs, generally centering upon a city or other identifiable community of interest.'' *United States* v. *Western Elec. Co.*, 569 F. Supp. 990, 993 (D.D.C. 1983). On March 25, 1996, the Commission released a Notice of Proposed Rulemaking (61 FR 14717 (April 3, 1996) initiating a review of its regulation of interstate, domestic, interexchange telecommunications services in light of the passage of the 1996 Act and the increasing competition in the interexchange market over the past decade. Among other things, the Commission asked whether it should modify or eliminate the separation requirements imposed on independent local exchange carriers (LECs) (exchange telephone companies other than the BOCs) as a condition for non-dominant treatment of their interstate, domestic, interexchange services originating outside their local exchange areas. We use the term ''independent LECs'' to refer to both the independent LECs and their affiliates. The Commission also sought comment on whether, if it modifies or eliminates these separation requirements for independent LECs, it should apply the same requirements to BOC provision of out-of-region interstate, domestic, interexchange services. In a recent order addressing BOC provision of interLATA services originating out-of-region, we considered whether, on an interim basis, BOC provision of out-of-region services should remain subject to dominant carrier regulation. *See* Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services, (61 FR 35964 (July 9, 1996)) (Interim BOC Out-of-Region Order) recon. pending. We concluded, *inter alia*, that, on an interim basis, if a BOC provides out-of-region domestic, interstate, interexchange services offered through an affiliate that satisfies the separation requirements imposed on independent LECs in the Competitive Carrier Fifth Report and Order (49 FR 34824 (September 4, 1984)), we would remove dominant carrier regulation for such services. *Id.* at ¶ 2.

Thus, we currently apply the same regulatory treatment to the BOCs' provision of out-of-region, domestic, interstate, interexchange services as we apply to the independent LECs' provision of those services. The Commission also proposed to revise the relevant product and geographic market definitions for purposes of determining whether a carrier should be regulated as dominant or non-dominant in the provision of interstate, domestic, interexchange services. Interexchange NPRM at ¶¶ 41–42. In the Interexchange NPRM, the Commission also raised issues relating to: implementation of the rate averaging and rate integration requirements in section 254(g) of the Communications Act; detariffing for domestic services of non-dominant interexchange carriers; and the current prohibition against bundling customer services equipment with the provision of interstate, interexchange services by non-dominant interexchange carriers. On August 7, 1996, we issued a Report and Order implementing the rate averaging and rate integration requirements. *See* Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended (61 FR 42558 (August 16, 1996)) (Rate Integration Order). On October 31, 1996, we issued a Second Report and Order which eliminates § 203 tariff filing requirements for interstate, domestic, interexchange services by nondominant interexchange carriers and orders all nondominant interexchange carriers to cancel their tariffs for those services within nine months from the effective date of the Order. Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934 (61 FR 59340 (November 22, 1996)) (Tariff Forbearance Order), stayed pending judicial review, *MCI Telecom. Corp.* v. *FCC*, No. 96–1459 (D.C. Cir. Feb. 13, 1997). *See also* Policy and Rules Concerning the Interstate, Interexchange Marketplace: Guidance Concerning Implementation as a Result of the Stay Order of the U.S. Court of Appeals for the D.C. Circuit, CC Docket No. 96–61, Public Notice, DA 97–493 (rel. March 6, 1997). In the Tariff Forbearance Order, we stated our intent to issue a Further Notice of Proposed Rulemaking that will address the continued applicability of the prohibitions against the bundling of both CPE and enhanced services with interstate, interexchange services by non-dominant interexchange carriers. *Id.* at ¶ 118.

3. The 1996 Act conditions the BOCs' entry into in-region, interLATA service on their compliance with certain provisions of section 271 of the Act. Under section 271, we must determine, among other things, whether the BOC has complied with the safeguards imposed by section 272 and our rules promulgated thereunder. 47 U.S.C. § 271(d)(3)(B). The Commission also must find that the interconnection agreements or statements approved by the appropriate state commission under section 252 satisfy the competitive checklist contained in section 271(c)(2)(B), and that the BOC's entry into the in-region interLATA market is ''consistent with the public interest, convenience and necessity.'' *Id.* §§ 271(d)(3)(A), (d)(3)(C). For purposes of section 271, such interconnection agreements must be made with a facilities-based competitor that meets specified criteria. *Id.* § 271(c)(1)(A). In acting on a BOC's application for authority to provide in-region interLATA services, the Commission must consult with the Attorney General and give substantial weight to the Attorney General's evaluation of the BOC's application. *Id.* § 271(d)(2)(A). In addition, the Commission must consult with the applicable state commission to verify that the BOC complies with the requirements of section 271(c). *Id.* § 271(d)(2)(B). Section 272 requires,

among other things, that a BOC provide in-region, interLATA service through a separate affiliate that meets the requirements of section 272(b).

4. On July 18, 1996, we released a Notice of Proposed Rulemaking (61 FR 39397 (July 29, 1996)) in which we sought comment on the non-accounting separate affiliate and nondiscrimination safeguards in section 272. We also sought comment on whether we should alter the dominant carrier classification that under our current rules would apply to in-region, interstate, domestic, interLATA services provided by the BOCs' section 272 interLATA affiliates (BOC interLATA affiliates). For convenience, we use the term ''BOC interLATA affiliates'' to refer to the separate affiliates established by the BOCs, in conformance with section 272(a)(1), to provide in-region, interLATA services. Although we referred to these affiliates as ''BOC affiliates'' in the NPRM, our findings in this Order apply only to affiliates established in conformance with section 272(a)(1). Further, we sought comment on whether we should modify our existing rules for regulating the provision of in-region, interstate, domestic, interexchange services by an independent LEC. For purposes of this proceeding, we have defined an independent LEC's ''in-region services'' as telecommunications services originating in the independent LEC's local exchange areas or 800 service, private line service, or their equivalents that: (1) Terminate in the independent LEC's local exchange areas, and (2) allow the called party to determine the interexchange carrier, even if the service originates outside the independent LEC's local exchange areas. *Id*. at ¶ 4 n.12 Finally, we invited comment on whether we should apply the same regulatory treatment to the BOC interLATA affiliates' and independent LECs' provision of in-region, international services that we apply to their provision of in-region, interstate, domestic, interLATA services and in-region, interstate, domestic interexchange services, respectively. We recently adopted rules to implement the section 272 non-accounting separate affiliate and nondiscrimination safeguards. On the same day, we adopted rules to implement the accounting safeguards in sections 260 and 271 through 276.

5. This Order addresses the market definition and dominant/non-dominant classification issues raised in the Interexchange NPRM and the Non-Accounting Safeguards NPRM. With respect to market definition, we adopt the approach proposed in the NPRMs. Specifically, we revise our current product and geographic market definitions in accordance with the 1992 Merger Guidelines. We conclude that we should define as a relevant product market any interstate, domestic, long distance service for which there are no close substitutes, or a group of services that are close demand substitutes (Demand substitutability identifies all of the products or services that consumers view as substitutes for each other, in response to changes in price. For example, if, in response to a price increase for orange juice, consumers instead purchase apple juice, apple juice would be considered a demand substitute for orange juice.) for each other, but for which there are no other close demand substitutes. In places where we use the term ''long distance services,'' we mean interstate, domestic or international, interLATA services provided by the BOC interLATA affiliates and interstate, domestic or international, interexchange services provided by independent LECs, respectively. We define the relevant geographic market for interstate, domestic, long distance services as all possible routes that allow for a connection from one particular location to another particular location (i.e., a point-to-point market). We conclude, however, that when a group of point-to-point markets exhibit sufficiently similar competitive characteristics (*i.e.*, market structure), we can aggregate such markets, rather than examine each individual point-to-point market separately. Therefore, if we conclude that the conditions for a particular service in any point-to-point market are sufficiently representative of the conditions for that service in all other domestic point-to-point markets, then we will examine aggregate data, rather than data particular to each domestic point-to-point market. With respect to the BOC interLATA affiliates and independent LECs, however, we conclude that we should analyze point-to-point markets that originate in-region separately from those point-to-point markets that originate out-of-region to determine whether the BOC affiliates' or independent LECs' market power in local exchange and exchange access services results in market power in the interexchange market. We note that, in some cases, it may be necessary to focus specifically on the termination point because the local exchange carrier that serves the end-user customer will necessarily have market power with regard to that customer.

6. We also conclude that a BOC interLATA affiliate should be classified as dominant only if we find that it has the ability profitably to raise and sustain prices of in-region, interstate, domestic, interLATA services significantly above competitive levels by restricting its own output. Dominant carriers are subject to more stringent regulation than non-dominant carriers, including price cap regulation, when specified by Commission order, and tariff filing notice periods of 14, 25 or 120 days. *See supra* ¶ 12 for more detail on the regulatory distinctions between dominant and non-dominant interexchange carriers. In light of the requirements established by, and pursuant to, sections 271 and 272, together with other existing Commission rules, we conclude that the BOCs will not be able to use, or leverage, their market power in the local exchange or exchange access markets to such an extent that their section 272 interLATA affiliates could profitably raise and sustain prices of in-region, interstate, domestic, interLATA services significantly above competitive levels by restricting the affiliate's own output. We also conclude that regulating BOC in-region interLATA affiliates as dominant carriers generally would not help to prevent improper allocations of costs, discrimination by the BOCs against rivals of their interLATA affiliates, or price squeezes by the BOCs or the BOC interLATA affiliates. Although certain aspects of dominant carrier regulation may address these concerns, we conclude that the burdens they would impose on competition, competitors, and the Commission outweigh any potential benefits. As a result, we classify the BOC interLATA affiliates as non-dominant in the provision of in-region, interstate, domestic, interLATA services.

7. We also classify the independent LECs as non-dominant in the provision of in-region, interstate, domestic, interexchange services, because the independent LECs do not have the ability profitably to raise and sustain prices of in-region, interstate, domestic, interexchange services above competitive levels by restricting their own output of these services. We conclude, however, that the independent LECs' control of local exchange and exchange access facilities potentially enables them to misallocate costs from their in-region, interexchange services, discriminate against rivals of their interLATA affiliates, and engage in other anticompetitive conduct. We therefore require the independent LECs to provide their in-region, interstate, domestic, interexchange services through separate affiliates that satisfy

the separation requirements adopted in the Competitive Carrier Fifth Report and Order, ¶ 9 (1984). Nevertheless, we give companies providing in-region, interexchange services on an integrated basis one year from the date of release of this order to comply with the Competitive Carrier Fifth Report and Order separation requirements. *See infra* section II.B.

8. In addition, we adopt the same regulatory treatment of the BOC interLATA affiliates' and independent LECs' provision of in-region, international services, as we adopt for their provision of in-region, interstate, domestic, interLATA and in-region, interstate, domestic, interexchange services, respectively. Accordingly, we will classify each BOC interLATA affiliate or independent LEC affiliate as non-dominant in the provision of in-region, international services, unless it (or its parent) is affiliated within the meaning of § 63.18(h)(1)(i) of the rules, with a foreign carrier that has the ability to discriminate against rivals of its U.S. affiliate through control of bottleneck services or facilities in a foreign market. In that case, we will apply section 63.10(a) of the rules to determine whether to regulate the BOC interLATA affiliate or independent LEC affiliate as a dominant carrier in its provision of service between the United States and that foreign market. In doing so, we emphasize that there is more than one basis for finding a U.S. carrier dominant in the provision of international services. The separate issue of whether a BOC interLATA affiliate, an independent LEC affiliate, or any other U.S. carrier should be regulated as dominant in the provision of international services because of the market power of an affiliated foreign carrier in a foreign destination market was addressed by the Commission last year in the Foreign Carrier Entry Order. Market Entry and Regulation of Foreign-affiliated Entities (60 FR 67332 (December 29, 1995)) (Foreign Carrier Entry Order), recon. pending. See also Regulation of International Common Carrier Services (57 FR 57964 (December 8, 1992)) ¶¶ 19–24 (1992) (International Services Order). The Foreign Carrier Entry Order maintained a separate framework adopted in the International Services Order for regulating U.S. international carriers (including BOCs or independent LECs ultimately authorized to provide in-region international services) as dominant on routes where an affiliated foreign carrier has the ability to discriminate in favor of its U.S. affiliate through control of bottleneck services or facilities in the foreign destination market. No carriers are exempt from this policy to the extent they have foreign affiliations. Section 63.10(a) of the Commission's rules provides that: (1) carriers having no affiliation with a foreign carrier in the destination market are presumptively non-dominant for that route; (2) carriers affiliated with a foreign carrier that is a monopoly in the destination market are presumptively dominant for that route; (3) carriers affiliated with a foreign carrier that is not a monopoly on that route receive closer scrutiny by the Commission; and (4) carriers that serve an affiliated destination market solely through the resale of an unaffiliated U.S. facilities-based carrier's switched services are presumptively non-dominant for that route. We will require the independent LECs to provide in-region international services through separate affiliates that satisfy the Competitive Carrier Fifth Report and Order separation requirements, consistent with the requirements we apply to their provision of in-region, interstate, domestic, interexchange services. In the Non-Accounting Safeguards Order, we concluded that the section 272 safeguards apply to the BOCs' provision of in-region, international services. Non-Accounting Safeguards Order at ¶ 58.

9. Finally, we consider whether we should modify or eliminate the separation requirements imposed on the BOCs and independent LECs as a condition for non-dominant treatment of their provision of out-of-region interstate, domestic, interexchange services. We conclude that those requirements are unnecessary, and we therefore eliminate the separation requirements as a condition for non-dominant treatment of the BOCs' and independent LECs' provision of out-of-region, interstate, domestic, interexchange services.

10. The actions we take in this proceeding will further the pro-competitive, deregulatory objectives of the 1996 Act by eliminating unnecessary regulation that is currently imposed on interexchange carriers affiliated with BOCs and independent LECs. Although we are classifying these carriers as non-dominant with respect to their provision of in-region and out-of-region long distance services, as summarized above, we recognize that, as long as these carriers retain market power in providing local exchange and exchange access services, they will have some incentive and ability to misallocate costs to local exchange and exchange access services, to discriminate against their long distance competitors, and to engage in other anticompetitive conduct. We conclude, however, that the regulatory structure we adopt today will continue the process of enhancing competition in all telecommunications markets as envisioned by the 1996 Act.

II. Background

11. Between 1979 and 1985, the Commission conducted the Competitive Carrier proceeding, in which it examined how its regulations should be adapted to reflect and promote increasing competition in telecommunications markets. In a series of orders, the Commission distinguished between two kinds of carriers—those with market power (dominant carriers) and those without market power (non-dominant carriers). In the Competitive Carrier Fourth Report and Order (48 FR 52452 (November 18, 1983)), the Commission defined market power alternatively as ''the ability to raise prices by restricting output'' and as ''the ability to raise and maintain price above the competitive level without driving away so many customers as to make the increase unprofitable.'' The 1992 Department of Justice/Federal Trade Commission Merger Guidelines similarly define market power as ''the ability profitably to maintain prices above competitive levels for a significant period of time.'' 1992 Merger Guidelines, at 20,570. The Commission recognized that, in order to assess whether a carrier possesses market power, one must first define the relevant product and geographic markets. In the Competitive Carrier proceeding, the Commission relaxed its tariff filing and facilities authorization requirements for non-dominant carriers and focused its regulatory efforts on constraining the ability of dominant carriers to exercise market power.

12. Our rules define a dominant carrier as one that possesses market power, and a non-dominant carrier as a carrier not found to be dominant (i.e., one that does not possess market power). Under our rules, non-dominant carriers are not subject to rate regulation, and currently may file tariffs that are presumed lawful on one day's notice and without cost support. Tariff Filing Requirements for Nondominant Carriers (60 FR 52865 (October 11, 1995)). As previously discussed, we adopted mandatory detariffing for nondominant interexchange carriers in the Tariff Forbearance Order, but that Order has been stayed pending judicial review. *See supra* n. 8. Non-dominant carriers are also subject to streamlined section 214 requirements. In contrast, dominant interexchange carriers are subject to price cap regulation, when

specified by Commission order, and must file tariffs on 14, 45, or 120 days' notice, with cost support data for above-cap and out-of-band tariff filings, and with additional information for new service offerings. We note that effective February 1997, a local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis. Unless the Commission takes action under 47 U.S.C. § 204(a)(1), any charge, classification, regulation, or practice shall be deemed lawful and shall be effective 7 days (in the case of a rate reduction) or 15 days (in the case of a rate increase) after the date on which it is filed with the Commission. 47 U.S.C. § 204(a)(3). See also Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996 (62 FR 5757 (February 7, 1997)). Dominant domestic carriers must also obtain specific prior Commission approval to construct a new line or to acquire, lease or operate any line, as well as to discontinue, reduce, or impair service. We note that the Commission has simplified this process to permit a carrier to file an annual ''blanket'' Section 214 application for all construction planned for the year. *See id.* § 63.06. Moreover, pursuant to section 402(b)(2)(A) of the 1996 Act, the Commission is required to ''permit any common carrier . . . to be exempt from the requirements of Section 214 of the 1934 Act for the extension of any line.'' We are addressing the implementation of section 402(b)(2)(A), including the issue of what constitutes an ''extension of any line,'' in a separate proceeding. See Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996 (62 FR 4965 (February 3, 1997)). Finally, we note that the Commission has eliminated prior approval requirements to add, modify, or delete circuits on authorized international routes as they apply to U.S. international carriers that are regulated as dominant for reasons other than having foreign carrier affiliations. In addition, such dominant carriers are required to obtain prior Commission approval to discontinue, reduce, or impair service on a particular route and notify the Commission of the conveyance of international cable capacity. See Streamlining the International Section 214 Authorization Process and Tariff Requirements (61 FR 15724 (April 9, 1996)), ¶¶ 50, 77, 80–81 (Streamlining Order).

13. In the Competitive Carrier First Report and Order (45 FR 76148 (November 18, 1980)), the Commission classified LECs and pre-divestiture AT&T as dominant, with respect to both local exchange and interstate long distance services, and therefore subject to the ''full panoply'' of then-existing Title II regulation. In light of increasing competition in the interstate, domestic, interexchange telecommunications market, and evidence that AT&T no longer possessed the ability to control price unilaterally, the Commission reclassified AT&T as a non-dominant carrier in that market. Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, Order, 11 FCC Rcd 3271 (1996) (AT&T Reclassification Order), recon. pending. In contrast, the Commission classified MCI, Sprint, and other ''specialized common carriers'' as non-dominant carriers.

14. In the Competitive Carrier Fourth Report and Order, the Commission determined that interexchange carriers affiliated with independent LECs would be regulated as non-dominant interexchange carriers. In the Competitive Carrier Fifth Report and Order, the Commission clarified that an ''affiliate'' of an independent LEC was ''a carrier that is owned (in whole or in part) or controlled by, or under common ownership (in whole or in part) or control with, an exchange telephone company.'' The Commission further clarified that, in order to qualify for non-dominant treatment, the affiliate providing interstate, interexchange services must: (1) Maintain separate books of account; (2) not jointly own transmission or switching facilities with its affiliated exchange telephone company; and (3) acquire any services from its affiliated exchange telephone company at tariffed rates, terms and conditions. Competitive Carrier Fifth Report and Order, 98 FCC 2d at 1198, ¶ 9. The Commission noted that ''[a]n affiliate qualifying for nondominant treatment is not necessarily structurally separated from an exchange telephone company in the sense ordered in the Second Computer Inquiry. . . .'' The Commission added that any interstate, interexchange services offered directly by an independent LEC (rather than through a separate affiliate) or through an affiliate that did not satisfy the specified conditions would be subject to dominant carrier regulation.

15. In the Competitive Carrier Fifth Report and Order, the Commission also addressed the possible entry of the BOCs into interstate, interLATA services in the future:

> The BOCs currently are barred by the [MFJ] from providing interLATA services. . . . If this bar is lifted in the future, we would regulate the BOCs' interstate, interLATA services as dominant until we determined what degree of separation, if any, would be necessary for the BOCs or their affiliates to qualify for nondominant regulation.

In this Order, we revisit the question of the appropriate regulatory treatment of BOCs and independent LECs in the provision of long distance services.

III. Market Definition

A. General Application

1. Background

16. In order to determine that a particular carrier or group of carriers possesses market power, (The 1992 Merger Guidelines define market power as ''the ability profitably to maintain prices above competitive levels for a significant period of time.'' 1992 Merger Guidelines at 20,570–71. ''Sellers with market power also may lessen competition on dimensions other than price, such as product quality, service, or innovation.'' *Id.* at 20,571, note 6.) it is first necessary to define the relevant product and geographic markets. In the Competitive Carrier proceeding, the Commission found, for purposes of assessing the market power of interexchange carriers, that: ''(1) Interstate, domestic, interexchange telecommunications services comprise the relevant product market, and (2) the United States (including Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, and other U.S. offshore points) comprises the relevant geographic market for this product, with no other relevant submarkets.'' In the Interexchange NPRM, the Commission proposed to reexamine and refine the market definitions adopted in the Competitive Carrier proceeding. In the Non-Accounting Safeguards NPRM, the Commission proposed to apply this new approach to market definition in assessing the market power of BOC interLATA affiliates and independent LECs in their provision of interstate, domestic, long distance services.

17. In the Interexchange NPRM, the Commission asked whether it should adopt more sharply focused market definitions than those adopted in the Competitive Carrier proceeding to provide us with a more refined analytical tool for evaluating market power. To establish a more narrowly-focused approach that more accurately reflects the realities of the marketplace and is flexible enough to accommodate unique market situations, the Commission tentatively concluded that it should follow the approach for defining relevant markets contained in the 1992 Merger Guidelines. As the Commission noted in the Interexchange NPRM, the market definition approach taken in the 1992 Merger Guidelines has been recognized increasingly by courts

and scholars as an important tool in assessing market power.

2. Comments

18. Several commenters agree with our proposal to reexamine the product and geographic market definitions adopted in the Competitive Carrier proceeding. Some emphasize that redefining the market would aid in determining whether BOC interLATA affiliates and independent LECs possess market power with respect to their provision of long distance services. Other commenters recognize the more general benefit in providing the Commission with a more refined and flexible analytical tool to evaluate whether any carrier possesses market power in the long distance marketplace.

19. Although it generally supports a reexamination of the relevant market definitions, Sprint argues that it is not readily apparent whether more particularized definitions would represent an improvement over the broader definitions adopted in the Competitive Carrier proceeding. Sprint urges the Commission to continue to use the definitions adopted in the Competitive Carrier proceeding and to examine the issue, in light of the 1992 Merger Guidelines, on a case-by-case basis only.

20. In general, the BOCs oppose the Commission's proposal to redefine the product and geographic markets adopted in the Competitive Carrier proceeding. They argue that BOC entry into interLATA services should not serve as a basis to reconsider the relevant market definitions and that it would be unreasonable to isolate portions of the national market to analyze the market power of new entrants when a single national market has been used to assess the market power of incumbent interexchange carriers. BellSouth cautions that any change in the market definitions will also require the Commission to reconsider previous decisions based on the existing definitions. SBC and U S West assert that the fast-changing telecommunications marketplace may render modifications in the market definitions quickly obsolete. SBC claims that the 1992 Merger Guidelines were never intended to serve as a basis for determining whether or how to regulate a market or to establish a rationale for disparate regulation of market participants. USTA argues that a market definition based only on demand conditions, omitting supply factors and competitive conditions, could result in an inaccurate finding of significant market power.

21. Although Ameritech does not disagree with the Commission's proposal to use the 1992 Merger Guidelines to define relevant markets, it claims that it would be impractical and unnecessary to define each and every product and geographic market. If the Commission adopts its proposed approach, however, Ameritech asks that the Commission clarify that the 1992 Merger Guidelines will be used to assess market power for other services, including interstate access services.

22. AT&T argues that the definitions adopted in the Competitive Carrier proceeding are appropriate for determining whether carriers, other than those that control the local bottleneck, possess market power in interexchange services because supply substitutability and the widespread pervasiveness of ubiquitous calling plans demonstrate that there is a single, national market for such services. AT&T emphasizes that the 1992 Merger Guidelines provide support for the existing market definitions, rather than the Commission's proposed new approach, because the 1992 Merger Guidelines recognize the importance of supply substitutability in defining relevant markets and advocate aggregate market descriptions where production substitution among a group of products is nearly universal among the firms selling one or more of those products, as is the case in the telecommunications industry.

23. The Department of Justice (DOJ) contends that it is not necessary for the Commission to adopt a precise definition of the relevant markets involved in the provision of a BOC interLATA affiliate's interLATA services and that the Commission should refrain from doing so at this time. To the extent the Commission chooses to define markets in this proceeding, however, DOJ urges the Commission to be mindful of the different objectives of defining markets for purposes of regulation and antitrust enforcement. DOJ asserts that, while the approach proposed by the Commission in the Interexchange NPRM for defining relevant markets is ''not unreasonable,'' changes in the telecommunications industry may require the Commission to define markets more precisely in the future and that it may be inappropriate to address this issue at this time. DOJ Aug. 30, 1996 Reply at 20. Although DOJ, like AT&T, believes that the market definition is irrelevant in assessing the market power of BOC interLATA affiliates, its conclusion is based on its assessment that the BOC interLATA affiliates will not be able to exercise, at least in the near term, the type of market power targeted by dominant carrier regulation. *Id.* at 16–17.

24. MFS argues that the 1992 Merger Guidelines are too generic to apply to the telecommunications industry and should not be used to redefine the appropriate product and geographic markets. MFS argues, for example, that while the 1992 Merger Guidelines contemplate industries in which goods are substitutable, the telecommunications services market is made up of services that are not substitutes, but rather essential inputs used by competitors. In addition, MFS claims that the 1992 Merger Guidelines are not well-suited to highly segmented industries, such as the telecommunications industry, which is segmented into residential, business, peak, off-peak, local, toll and access services. This market segmentation, MFS claims, makes it possible for dominant firms to engage in predatory cross-subsidization between market segments. MFS further contends that, while the 1992 Merger Guidelines focus on geographic factors and pricing issues, measuring market power in the telecommunications industry requires consideration of such non-pricing issues as physical collocation, interconnection, and the allocation of telephone numbers. Finally, MFS argues that the focus on demand substitutability in the 1992 Merger Guidelines results in an inaccurate measurement of market power in the telecommunications industry because the monopolists or near-monopolists that control the local exchange and exchange access market may foreclose competition by raising the price of an essential facility they provide to competitors without also raising the price of the service they sell to end-users.

3. Discussion

25. We conclude that the 1992 Merger Guidelines provide an appropriate analytical framework for defining relevant markets in order to assess market power in the interstate, domestic, long distance marketplace. We disagree with those commenters that claim that the 1992 Merger Guidelines are inapplicable in a regulatory setting or are based on generalized market concepts that are inapplicable to the telecommunications industry. We find that the 1992 Merger Guidelines are based on fundamental and widely-applicable economic principles, such as principles of demand and supply substitution. Supply substitutability identifies all productive capacity that can be used to produce a particular good, whether it is currently being used to produce that good or to produce some

other, even unrelated, good. For example, if a factory that is producing desks could be converted quickly and inexpensively to the production of wheelbarrows, then the owner of that factory should be considered a potential producer of wheelbarrows. That does not mean, however, that desks and wheelbarrows are in the same relevant product market. As previously noted, demand substitutability identifies all of the products or services that consumers view as substitutes for each other, in response to changes in price. For example, if, in response to a price increase for orange juice, consumers instead purchase apple juice, apple juice would be considered a demand substitute for orange juice. Accordingly, we reject MFS's contention that the telecommunications industry is so unique that the 1992 Merger Guidelines are inapplicable. MFS's concern that, by relying on the 1992 Merger Guidelines, the Commission will only consider demand-based factors in assessing market power is unfounded. As discussed *supra,* although we will rely on demand substitutability in defining relevant markets, market definition is only one component in assessing market power. The 1992 Merger Guidelines are intended to guide DOJ and the FTC in their analysis of mergers taking place in any industry, not only mergers in particular industries.'' These guidelines outline the present enforcement policy of the Department of Justice and the Federal Trade Commission (the ''Agency'') concerning horizontal acquisitions and mergers (''mergers'') subject to section 7 of the Clayton Act, to section 1 of the Sherman Act, or to section 5 of the FTC Act.'' 1992 Merger Guidelines at p. 20,569–3. The economic principles contained in the 1992 Merger Guidelines are not limited to an analysis of particular types of markets, but rather are broadly drawn to accommodate virtually all marketplace characteristics.We note that there is a recognition in the 1992 Merger Guidelines that they will be applied to ''a broad range of possible factual circumstances.'' 1992 Merger Guidelines at p. 20,569–3. In fact, DOJ agrees that ''[t]he Commission's market definition, like market definition under the antitrust laws, should be guided by the basic economic principles that inform competitive analysis and market definitions under the DOJ Merger Guidelines.'' We acknowledge that, in its comments, DOJ notes that the different objectives of regulation and antitrust enforcement may affect the application of the market definition in those contexts. We agree and realize that the markets defined in a particular antitrust suit may reach different results. DOJ does not argue, however, that the fundamental concepts and principles espoused in the 1992 Merger Guidelines apply only in the merger context.

26. We conclude that we should revise our product and geographic market definitions to follow the approach taken in the 1992 Merger Guidelines. Most commenters do not appear to articulate serious disagreements with the fundamental economic principles on which we base our revised approach to defining the relevant product and geographic markets. Rather, they appear to focus their concerns on the impact that this new approach may have on specific assessments of market power. We believe that our market power analysis, including our approach to defining the relevant product and geographic markets, should not be formulated by focusing on end-results, but instead should be focused on the application of sound economic principles and analysis. As a result, we conclude that the product and geographic market definitions defined in the Competitive Carrier proceeding should be refined to follow the approach taken in the 1992 Merger Guidelines in order to ensure that our market power assessments are based on the most accurate, up-to-date, and generally accepted economic principles relating to market analysis. As new carriers enter the long distance marketplace and as the telecommunications marketplace changes in the face of increased competition, the flexibility inherent in our new approach to defining the relevant product and geographic markets enables us to make a more accurate measurement of market power than before by accounting for unique carrier characteristics that could impact the dynamics of the marketplace. For example, potential new entrants to the long distance marketplace, such as BOCs, utility companies, and cable companies, possess different characteristics that could impact, *inter alia,* the types of services offered in the long distance marketplace and the method in which long distance services are priced. For example, many new carriers have begun entering the long distance market by targeting particular types of customers or by targeting customers in particular areas, suggesting that carriers do not view the interstate, domestic, long distance market as a single national market or as a single market of interchangeable and substitutable services.

27. In contrast to some commenters, we find that supply substitutability (As previously noted, supply substitutability identifies all productive capacity that can be used to produce a particular good, whether it is currently being used to produce that good or to produce some other, even unrelated, good.) should not be used to define relevant markets, but rather should be used to determine which providers are currently serving, or potentially could be serving, a relevant market only after that market has been identified. As the 1992 Merger Guidelines note, ''[o]nce defined, a relevant market must be measured in terms of its participants and concentration. Participants include firms currently producing or selling the market's products in the market's geographic area. In addition, participants may include other firms depending on their likely supply responses to a 'small but significant and nontransitory' price increase. A firm is viewed as a participant if, in response to a 'small but significant and nontransitory' price increase, it likely would enter rapidly into production or sale of a market product in the market's area, without incurring significant sunk costs of entry and exit. Firms likely to make any of these supply responses are considered to be 'uncommitted' entrants because their supply response would create new production or sale in the relevant market and because that production or sale could be quickly terminated without significant loss.'' 1992 Merger Guidelines at p. 20,572. We conclude that our market definitions should be based solely on demand substitutability considerations. As previously noted, demand substitutability identifies all of the products or services that consumers view as substitutes for each other, in response to changes in price. This conclusion accords with the 1992 Merger Guidelines, which state that, ''market definition focuses solely on demand substitution factors—i.e., possible consumer responses. Supply substitution factors—i.e., possible production responses—are considered elsewhere in the Guidelines in the identification of firms that participate in the relevant market and the analysis of entry.''

28. Under the 1992 Merger Guidelines, market power is determined by delineating both the product and geographic market in which power may be exercised and, then, identifying those firms that are current suppliers and those firms that are potential suppliers in that particular market. Therefore, in determining whether a carrier is able to

exercise market power in the provision of a particular service or group of services or within a particular area, we must consider two issues. First, in the case of the relevant product market, we must consider whether, if all carriers raised the price of a particular service or group of services, customers would be able to switch to a substitute service offered at a lower price. With respect to the relevant geographic market, we must consider whether, if all carriers in a specified area raised the price of a particular service or group of services, customers would be able to switch to the same service offered at a lower price in a different area. Second, with respect to supply substitutability, we must consider whether, if a carrier raised the price of a particular service or group of services, other carriers, currently not offering that service or group of services, would have the incentive and the ability to begin provisioning a substitute service quickly and easily. For example, if we were assessing the market power of a carrier providing long distance service from Miami, and determined that another carrier currently providing service in Los Angeles would also begin providing service from Miami if the price of the service in Miami were to increase, we would consider the impact of the Los Angeles carrier's potential entry into Miami in assessing the market power of the Miami carrier. This does not mean, however, that customers in Miami consider long distance service offered in Los Angeles as a substitute for service offered in Miami. Therefore, long distance service offered in Miami and long distance service offered in Los Angeles would not be considered as services in the same relevant geographic market. By following the approach taken in the 1992 Merger Guidelines, we will continue to weigh supply substitutability as an important factor in assessing market power, but we will not use it as a factor in defining the relevant product and geographic markets.

29. We acknowledge that the approach to defining relevant markets that we adopt in this proceeding departs from the approach adopted in the Competitive Carrier proceeding and applied in the AT&T Reclassification Order. For the reasons discussed herein, we believe these more refined definitions are now necessary. To the extent that various parties argue that our new approach is contrary to our decision in the AT&T Reclassification Order, it is well-established that the Commission may change approaches as long as it provides a reasoned explanation for doing so. Should any modifications be necessary to decisions reached in the AT&T Reclassification Order, they will be addressed, as necessary, in further proceedings. We emphasize, however, that, because market definition is only one step in assessing market power, changes made in the approach to defining relevant markets will not necessarily produce different assessments of market power.

30. We also reject the argument that we should not revise the product and geographic market definitions because of the dynamic changes taking place in the long distance marketplace. To the contrary, we believe that these changes in the long distance marketplace provide a compelling reason to modify our approach to defining the relevant product and geographic markets. Our new approach to defining relevant markets will be consistently applied, yet contain inherent flexibilities, so that our assessment of market power will always be based on a particular carrier's or group of carriers' unique market situation. For example, in recognition that certain carriers may control discrete facilities in specific geographic areas, target particular types of customers, or provide specialized services, our new market definitions allow us to examine the relevant product and geographic markets at the level of detail necessary to make a more accurate assessment of market power than under the Competitive Carrier definitions. We find that the definitions developed in the Competitive Carrier proceeding would not provide us with sufficient flexibility to account for the impact such unique market situations may have on assessing market power because these definitions are too broad to analyze markets at the necessary level of detail. At the time the Commission defined the relevant product and geographic markets in the Competitive Carrier proceeding, telecommunications services were provided primarily by a single national carrier. Under such a regulatory model, the use of a simplified definition of relevant markets did not significantly hinder our analysis of market power. Today, in light of the dramatic changes that have been occurring in the long distance marketplace, particularly those brought on by the passage of the Telecommunications Act of 1996, with many firms competing to provide more specialized and regionalized long distance services to different types of customers, more detailed market definitions are needed to assess market power more accurately and to pinpoint the particular markets where that power is or could be exercised.

B. Product Market Definition

1. General Approach to Product Market Definition

a. Background

31. In the Competitive Carrier proceeding, the Commission defined the relevant product market as ''all interstate, domestic, interexchange telecommunications services . . . with no relevant submarkets.'' In the Interexchange NPRM, we tentatively concluded that we should refine our analysis and define as a relevant product market any domestic, interstate, interexchange service for which there are no close demand substitutes or any group of services that are close substitutes for each other but for which there are no other close demand substitutes. Recognizing, however, that delineating all relevant product markets would be administratively burdensome and that the Commission has previously found that there is substantial competition with respect to most interstate, domestic, interexchange services, the Commission tentatively concluded that we generally should address the question of whether a specific domestic, interstate, interexchange service, or group of services, constitutes a separate product market only where there is credible evidence suggesting that there is or could be a lack of competitive performance with respect to a particular service or group of services. We asked commenters to evaluate this new approach and to suggest any other possible approaches.

b. Comments

32. Several commenters support the proposed approach to redefining the relevant product market. Many commenters agree that the Commission should rely on demand substitutability in defining relevant product markets. A number of commenters argue, however, that the Commission should continue to recognize supply substitutability in defining the relevant product market and, therefore, should not modify the relevant product market definition adopted in the Competitive Carrier proceeding.

33. GTE concedes that the definition proposed in the Interexchange NPRM would provide the Commission with the flexibility to accommodate a rapidly-evolving, technology-driven environment and would enable the Commission to assess a particular service provider's ability to exert market power over new products. GTE claims, however, that the certainty of the Commission's standard would diminish

if different market evaluations were applied to particular carriers or groups of carriers absent a relatively strong basis for distinguishing them. Although it generally supports the revised approach to defining the relevant product market, the Florida Public Service Commission warns that logical sets of substitutable services will likely intersect with one another, which could render the Commission's approach to defining relevant product markets unworkable in practice.

34. AT&T opposes the approach proposed in the Interexchange NPRM. It emphasizes that the 1992 Merger Guidelines support an aggregate product market definition where ''production substitution among a group of products is nearly universal among the firms selling one or more of the products,'' as in the telecommunications industry. AT&T claims that, due to pervasive supply substitutability, a product market defined by a single service would yield the same market share and market power results as the single product market approach adopted in the Competitive Carrier proceeding. Because there is no difference between the facilities used to provide different services, AT&T argues that there is ample capacity for carriers to attract customers from any carrier that attempts to exercise market power with respect to a particular service. AT&T further claims that the Commission's recent analysis of AT&T's 800 directory assistance and analog private line offerings provide no basis to abandon the single product market definition. AT&T contends that the Commission recognized that AT&T's pricing of 800 directory assistance is constrained by supply substitutability principles, and that the migration of analog private line customers to digital and virtual private line services demonstrates that these services are substitutable and, therefore, in the same market.

35. The BOCs generally oppose the product market definition proposed in the Interexchange NPRM. BellSouth supports retention of the current product market definition on the grounds that there is high cross-elasticity of demand among virtually all interexchange services, most of which are interchangeable services that are packaged differently, and that the distinctions between services can be easily erased by entities such as resellers. For example, BellSouth argues that, if a sole supplier of any particular interexchange service raised its prices by five percent or more, most customers would turn to a different service as an alternative. BellSouth disputes the Commission's suggestion that market power over discrete fringe services may warrant redefinition of the relevant product market. It further asserts that delineating relevant product markets would be administratively burdensome and might cause carriers without market power to be regulated as dominant carriers. BellSouth claims that the Commission's proposed approach would be inconsistent with the Commission's decision in the AT&T Reclassification Order, in which AT&T was classified as nondominant even though it was found to control two discrete services in the overall product market. BellSouth also contends that the Commission's proposed approach seems to signal a return to the ''all-services'' methodology of assessing dominance, which was expressly rejected in the AT&T Reclassification Order.

36. PacTel agrees that the product market definition turns on whether there are sufficiently close substitutes for a product or group of products. PacTel contends, however, that because services, such as MTS, discount plans, WATS, 800 service, foreign exchange service, wireless and even ''carrier'' access services, are highly substitutable options for consumers to place or receive long distance calls, the relevant product market should include all interstate, long distance services. USTA questions the Commission's use of a demand-elasticity methodology to define the relevant domestic product market, especially when the Commission proposes to continue to emphasize supply substitutability in defining the international product market. USTA asserts that the Commission has consistently and continually recognized a single relevant product market, and contends that the Commission should not abandon this long-settled definition in favor of numerous, fragmented submarkets.

37. A number of commenters support our proposal in the Interexchange NPRM to delineate separate product markets only if there is credible evidence demonstrating that there is or could be a lack of competitive performance with respect to a particular service or group of services. MCI claims that, although some interexchange services may have characteristics indicative of discrete product markets, there is no lack of competitive performance with respect to a particular service or group of services that would warrant the Commission's delineating the boundaries of specific product markets. The Pennsylvania Commission cautions that state commissions and consumer advocacy groups may not have access to the information necessary to determine whether credible evidence exists, especially if the Commission detariffs non-dominant carriers. Sprint states that the Commission should reexamine various product markets if circumstances require.

38. ACTA suggests that a separate relevant market should be established where the Commission finds that a carrier possesses market power over a particular market segment. In delineating product markets, ACTA believes that the Commission should consider many factors including such customer classifications as residential, small/medium businesses, and large businesses, but cautions that product markets based on discrete offerings may not adequately account for products offered as a package of services.

39. Two commenters identify particular services that, they contend, should be classified as separate product markets. The Pennsylvania Commission recommends that the Commission define three separate product markets: (1) MTS or residential long distance; (2) WATS/800 service; and (3) virtual network-type services (all services provided within software defined networks). SNET argues that the Commission should treat interstate toll free directory assistance as a separate product market because there are no substitutes and structural barriers make entry impossible.

c. Discussion

40. We conclude that the product market definition adopted in the Competitive Carrier proceeding should be revised to reflect the 1992 Merger Guidelines' approach to defining relevant markets. The 1992 Merger Guidelines define the relevant product market as ''a product or group of products such that a hypothetical profit maximizing firm that was the only present and future seller of those products ('monopolist') likely would impose at least a 'small but significant and nontransitory' increase in price.'' Accordingly, in defining the relevant product market, one must examine whether a ''small but significant and nontransitory'' increase in the price of the relevant product would cause enough buyers to shift their purchases to a second product, so as to make the price increase unprofitable. If so, the two products should be considered in the same product market. 1992 Merger Guidelines at p. 20,572. As explained above, we find that this new approach to defining the relevant product market will provide us with a more refined and narrowly-focused tool that more accurately reflects marketplace realities. We, therefore, adopt our tentative conclusion in the Interexchange NPRM

that we should define as a relevant product market any interstate, domestic, long distance service for which there are no close demand substitutes, or a group of services that are close substitutes for each other, but for which there are no other close demand substitutes. As previously noted, demand substitutability identifies all of the products or services that consumers view as substitutes for each other, in response to changes in price. We also adopt our tentative conclusion that we need not delineate the boundaries of specific product markets, except where there is credible evidence suggesting that there is or could be a lack of competitive performance with respect to a particular service or group of services.

41. Unlike the approach to product market definition adopted in the Competitive Carrier proceeding, our new approach will rely exclusively on demand considerations to define the relevant product market, rather than supply substitutability. As previously noted, supply substitutability identifies all productive capacity that can be used to produce a particular good, whether it is currently being used to produce that good or to produce some other, even unrelated, good. As discussed above, supply substitutability will continue to be a relevant factor in assessing market power, but will not be used as a factor in defining the relevant market. We disagree with USTA that our approach to defining the relevant market in the international services market is inconsistent with our approach in the domestic context. *See* discussion *infra* at ¶¶ 53,80. Although this distinction may be subtle, we believe that it is important in order to ensure that each step we take in assessing market power is grounded in fundamental economic principles and marketplace realities. Our new approach, however, does not reflect an ''all-services'' methodology of assessing dominance, in which a carrier must be deemed dominant with respect to all services if it is found to have market power over any single service. Rather, our new approach allows us, where warranted, to focus our analysis on particular services and limit our assessment of market power with regard to only those particular services.

42. We further adopt our tentative conclusion that we need not delineate any particular product markets to analyze the market power of a particular carrier or group of carriers unless there is credible evidence suggesting that there is or could be a lack of competitive performance with respect to a particular service or group of services. For example, if the price/cost ratio for a particular interexchange service is four times that of the price/cost ratio for all other interexchange services, that may constitute credible evidence of a lack of competitive performance. We recognize that the various services available in the interstate, domestic, long distance marketplace are changing. For example, we noted in the Interexchange NPRM that ''our finding (in the AT&T Reclassification Order) that the prices of 800 directory assistance and analog private line services could profitably be raised above competitive levels may imply these services constitute distinct relevant product markets.'' Interexchange NPRM, 11 FCC Rcd at 7166, ¶ 44. Patterns of consumer demand and the forces of competition spur continual innovation and force carriers constantly to reevaluate current services, remove outdated services, and add new services to the marketplace. In light of these marketplace dynamics, we conclude it is best to establish a consistent approach to defining the relevant product market that maintains the flexibility to recognize separate product markets only when there is credible evidence indicating that there is or could be a lack of competitive performance with respect to a particular service or group of services.

43. Despite two commenters' recommendations that we identify for all purposes, in this proceeding, particular services as separate product markets, we decline to do so at this time. We conclude that such a determination should only be made in the context of assessing the market power of a particular carrier or group of carriers. In this proceeding, we only assess the market power of BOC interLATA affiliates and independent LECs. As noted *supra* at ¶ 29, any modifications that we may make to decisions reached in the AT&T Reclassification Order will be addressed, as necessary, in further proceedings. We emphasize, however, that because market definition is only one step in assessing market power, changes made in the approach to defining relevant markets will not necessarily produce different assessments of market power. Unless there is credible evidence suggesting that there is or could be a lack of competitive performance with respect to a particular service or group of services, we will treat these services together, by analyzing aggregate data that encompasses all long distance services, rather than information particular to specific services. Such data may include, but not be limited to, price level of services, the number of competitors, the share of sales by competitors, and the ease with which potential entrants can provide these services. Recognizing that we have previously found that there is substantial competition with respect to most interstate, long distance services, such an approach allows us to avoid the burdensome task of delineating separate product markets when there is no other credible evidence suggesting that a particular carrier or group of carriers is exercising or has the ability to exercise market power, with respect to a particular service or group of services. Therefore, we will refrain from examining narrower relevant product markets except when such credible evidence has come to our attention. As we conclude *infra* at ¶ 50, for purposes of assessing the market power of BOC interLATA affiliates and independent LECs in their provision of domestic, interstate, long distance services, we need not delineate separate product markets because there is no credible evidence in the record that indicates that there is or will be a lack of competitive performance associated with any particular long distance service offered by BOC interLATA affiliates or independent LECs.

44. We conclude that the approach we adopt here will not impose an undue burden on parties seeking to have the Commission define narrower relevant product markets in order to assess the market power of a particular carrier or group of carriers. Such parties will not have to prove that there is an actual lack of competitive performance with respect to a particular service or group of services. Rather, they must only present credible evidence that there is or could be a lack of competitive performance. Credible evidence should include information sufficient to identify services that are likely substitutes and the carrier or group of carriers that allegedly possesses market power. Contrary to the concerns of the Pennsylvania Public Utilities Commission, because information suggesting a lack of competitive performance, such as availability of service from a single provider, is easily observable, we need not require data from proprietary sources for this purpose. Moreover, as we recognized in the Tariff Forbearance Order, even in the absence of tariffs for interstate, domestic, interexchange services offered by non-dominant carriers, we conclude that information concerning the rates, terms and conditions for such services will still be readily accessible to consumers and other interested parties because customers will continue to receive this information through, *inter*

alia, the billing process, notifications required by service contracts or state consumer protection laws, and marketing materials, such as advertisements.

2. Product Market Definition for BOC InterLATA Affiliates and Independent LECs

a. Background

45. In the Non-Accounting Safeguards NPRM, we tentatively concluded that if we adopt the market definition approach proposed in the Interexchange NPRM, we should treat all interstate, domestic, long distance services as the relevant product market for purposes of determining whether BOC interLATA affiliates have market power in their provision of in-region domestic, interstate, interLATA services and whether independent LECs have market power in their provision of in-region domestic, interstate, interexchange services.

b. Comments

46. Although commenters disagree over whether the Commission should adopt the approach to the product market definition proposed in the Interexchange NPRM, most commenters agree with the Commission's tentative conclusion in the Non-Accounting Safeguards NPRM that interstate, domestic, long distance services should be treated as a single product market for purposes of assessing whether BOC interLATA affiliates and independent LECs have market power.

47. AT&T argues that the interexchange product market definition is irrelevant to whether the BOCs could abuse their power in the local market to impede interexchange competition. Instead, AT&T contends that the proper markets to analyze are the local exchange and exchange access service markets, rather than the interexchange market. DOJ also argues that the product market definition is irrelevant to whether BOC interLATA affiliates could exercise market power in the interLATA marketplace because BOC interLATA affiliates clearly do not have the ability to raise prices by restricting output.

48. BellSouth contends that since the Commission did not redefine the product market in order to evaluate whether AT&T was a dominant carrier, it need not reconsider the definition in order to evaluate the competitive effects of BOC entry into the interexchange market. USTA and GTE agree with the Commission's tentative conclusion that all interstate, domestic, interexchange services should be considered the relevant product market for independent LECs.

49. The Independent Telephone Telecommunications Alliance (ITTA) contends that the Commission should adopt a product market defined as ''all telecommunications services,'' that encompasses such services as interexchange, local, access and wireless services, in recognition of the new market structure envisioned by the 1996 Act in which firms will be providing a broad range of services. The Competitive Telecommunications Association (CTA) contends that the relevant product market should include those services that rely on or utilize the BOCs' local network.

c. Discussion

50. We are aware of no evidence, nor has any commenter presented any such evidence in the record, that suggests that there is a particular interexchange service or group of services that will be provided by BOC interLATA affiliates or independent LECs with respect to which there is or could be a lack of competitive performance. Moreover, we have found previously that there is substantial competition with respect to most interstate, domestic, interexchange service offerings. As a result, we conclude that we need not conduct any particularized product market inquiry in order to evaluate the market power of BOC interLATA affiliates and independent LECs for interexchange services. We conclude that, at this time and for purposes of determining whether BOC interLATA affiliates or independent LECs have market power in the provision of domestic, interstate, long distance services, our assessment of market power will remain the same, regardless of whether we examine each individual long distance service, different groupings of long distance services, or aggregate data that encompasses all long distance services. Therefore, in assessing the market power of BOC interLATA affiliates and independent LECs in the provision of domestic, interstate, long distance services, we find it is appropriate at this time to evaluate their market power with respect to all interstate, domestic, long distance services, rather than conducting a separate analysis of each individual service.

51. We disagree with AT&T's assertion that the product market definition is irrelevant in assessing whether BOC interLATA affiliates or independent LECs possess market power in the domestic, interstate, long distance market. As discussed above, we believe that a relevant product market must be defined before we can evaluate whether a particular carrier or group of carriers possesses market power. While we agree with AT&T that other factors are important in making our overall assessment of market power, we conclude that we must define the relevant product market in order to reach an accurate assessment of whether BOC interLATA affiliates or independent LECs possess market power in the domestic, interstate, long distance marketplace.

3. International Product Market for BOC InterLATA Affiliates and Independent LECs

52. In the Non-Accounting Safeguards NPRM, we tentatively concluded that we should apply the current international product market definition, which recognizes international message telephone service (IMTS) and non-IMTS as separate product markets, for purposes of determining whether BOC interLATA affiliates and independent LECs possess market power in the provision of international long distance services.

53. MCI and NYNEX generally agree with the Commission's tentative conclusion that IMTS and non-IMTS should be treated as the relevant product markets for international services. USTA supports treating international services as a product market separate from domestic services, because international agreements and regulation create different conditions than exist for domestic interexchange services. Questioning the wisdom of dividing international services into two distinct product markets, Sprint argues that the Commission should retain flexibility to reflect the rapid changes taking place in the product market for international communications. Sprint asserts, for example, that, where providers engage in the resale of international private lines interconnected to the public switched network at both ends, the distinctions between IMTS and non-IMTS are blurred.

54. We conclude that, for purposes of determining whether BOC interLATA affiliates and independent LECs possess market power in the provision of international long distance services, we will modify our tentative conclusion and examine aggregate data that encompasses all international long distance services. Because our approach to defining relevant markets is based on fundamental economic principles, we find that it is applicable for assessing market power in both the domestic and international long distance markets. Although we recognize that international agreements and regulation

distinguish international long distance service from domestic long distance service, we conclude that, while these distinctions may affect our assessments of market power, they do not change our approach to defining relevant markets. Therefore, we find that we should define the relevant product market, in the international context, as any international long distance service for which there are no close substitutes or a group of services that are close substitutes for each other, but for which there are no other close substitutes. We need only delineate specific product markets, however, when there is credible evidence suggesting that there is or could be a lack of competitive performance with respect to a particular service or group of services.

55. Although traditionally we have recognized IMTS and non-IMTS as separate international long distance product markets, we conclude, similar to our conclusion in the domestic context, that this distinction is not necessary for purposes of assessing whether BOC interLATA affiliates and independent LECs possess market power in the international long distance marketplace in this Order because our assessment of market power will not change whether we examine IMTS and non-IMTS separately as individual product markets or analyze aggregate data that encompasses both IMTS and non-IMTS. Our decision to analyze aggregate data that encompasses IMTS and non-IMTS, in this particular context, does not modify our treatment of IMTS and non-IMTS as separate product markets under the existing framework for regulating U.S. carriers as dominant in the provision of international services because of the market power of an affiliated foreign carrier.

C. Geographic Market

1. Geographic Market in General

a. Background

56. In the Competitive Carrier proceeding, the Commission defined the relevant geographic market as ''the United States (including Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, and other U.S. offshore points) . . . with no relevant submarkets.'' In the Interexchange NPRM, the Commission tentatively concluded that we should refine this analysis and define a relevant geographic market for interstate, domestic, interexchange services as all calls, in the relevant product market, between two particular points. For purposes of market power analysis, however, the Commission tentatively concluded that, in general, we should treat domestic, interstate, interexchange calling as a single, national market because geographic rate averaging, in conjunction with the pervasiveness of ubiquitous calling plans, should reduce the likelihood that a carrier could exercise market power in a single point-to-point market, and because price regulation of access services and excess capacity in interstate transport should reduce the likelihood that an interexchange carrier could exercise market power in most point-to-point markets. If there is credible evidence suggesting that there is or could be a lack of competition in a particular point-to-point market or group of point-to-point markets and there is a showing that geographic rate averaging will not sufficiently mitigate the exercise of market power in that market or group of markets, we proposed to examine the individual market or group of markets for the presence of market power. We asked commenters to evaluate this new approach and to suggest any other possible approaches.

b. Comments

57. Many commenters oppose the Commission's proposal to define a relevant geographic market for interstate, domestic, interexchange services as all calls between two points, although some commenters concede its conceptual validity. Those parties opposing the point-to-point market definition generally advocate the retention of the single national market definition adopted in the Competitive Carrier proceeding. Several commenters claim that demand patterns based on the widespread use of ubiquitous calling plans favor a national market. Other commenters indicate that it may be too early to define relevant geographic markets with lasting precision and that point-to-point markets would not be administrably viable because of the impracticality of conducting a market power analysis in each point-to-point market. A number of parties support our proposal to treat interstate, interexchange calling as a single national market unless there is credible evidence suggesting that there is or could be a lack of competition in a particular point-to-point or group of point-to-point markets, and there is a showing that geographic rate averaging will not sufficiently mitigate the exercise of market power.

58. AT&T disagrees with the Commission's point-to-point market analysis and argues that a single national market definition reflects the way that competitors have built and conducted their business. AT&T also notes that the Commission has rejected point-to-point markets on several previous occasions. AT&T, BellSouth, USTA and NYNEX emphasize that supply substitutability demonstrates that the market is national because several carriers have national networks with capacity to provide alternate routing and the ease of constructing new facilities or to resell services allows carriers to enter the market and expand service rapidly.

59. Several commenters contend that the geographic rate averaging and rate integration requirements in the 1996 Act and the regulatory regime overseeing access rates point to the existence of a single, national market because together they ensure that the benefits of competition in one market will be passed on to customers in other markets. Bell Atlantic supports a single national market because, as long as customers select a carrier for nationwide coverage, national pricing schemes will drive the market, whether or not certain carriers offer services originating only in a particular region. PacTel claims that the trend toward uniform, distance-insensitive pricing demonstrates that the interexchange market remains a national one. USTA asserts that if point-to-point markets are appropriate, AT&T should not have been classified as a non-dominant interexchange carrier because it is the sole carrier serving a number of different cities.

60. PacTel and GTE submit that a single nationwide geographic market is supported by economic theory, Commission precedent, the AT&T Reclassification Order, and the 1996 Act. GTE acknowledges, however, that certain service providers may be able to take advantage of their market power in some point-to-point markets, despite geographic rate averaging, regulated access pricing and excess transmission capacity. In such situations, GTE recognizes that a narrower geographic market may be appropriate to measure market power if there is credible evidence of a lack of competition in a particular market. GTE adds that, if the Commission does adopt a point-to-point approach, this analysis should apply to IXCs as well as LECs.

61. Ameritech does not oppose the possibility of identifying smaller markets than the national market, but claims that it is unable to identify any such markets at this time. DOJ acknowledges that the relevant geographic market theoretically could be defined as all calls between two particular points, but argues that examining markets at such a level of detail would be impractical.

62. LDDS claims that, although, for most purposes, the appropriate relevant

geographic market for interstate, interexchange services is national, the division between local and long distance will blur as competition develops in the local market and the Commission must be able to employ an appropriate geographic market definition to reflect these changes. ACTA and GCI oppose the Commission's proposal to treat interstate, interexchange services generally as a single national market. According to ACTA, such a definition would overlook route-specific pricing schemes designed to defeat competitive entry. GCI argues that certain obvious characteristics, such as a *de facto* or *de jure* monopoly in the provision of a service or a shortage of capacity in interstate transport, should provide adequate justification for examining a particular market for the presence of market power. GCI cites AT&T/Alascom's facilities monopoly in rural Alaska and the limited fiber optic capacity linking Alaska to the continental United States as such examples.

63. A few commenters propose alternative approaches for defining relevant geographic markets, including markets based on state boundaries or local exchange boundaries and markets based on Metropolitan Statistical Areas (MSAs), Basic Trading Areas (BTAs) or Major Trading Areas (MTAs). *See, e.g.*, Frontier April 19, 1996 Comments at 1–2; PaPUC April 19, 1996 Comments at 10–11; Missouri Public Counsel May 3, 1996 Reply at 3. We note that Rand McNally & Company is the copyright owner of the Basic Trading and Major Trading Area Listings, which list the counties contained in each BTA, as embodied in Rand McNally's Trading Area System Diskette and Atlas & Marketing Guide. Rand McNally has licensed the use of its copyrighted MTA/BTA listings and maps for certain wireless telecommunications services. See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool (60 FR 21987 (May 4, 1995)). GCI asserts that, because market power does not follow any preestablished lines, the Commission should conduct a market power analysis for any area for which there is a nonfrivolous allegation of market power.

c. Discussion

64. We conclude that the geographic market definition adopted in the Competitive Carrier proceeding should be revised to reflect the approach to defining relevant markets contained in the 1992 Merger Guidelines. The 1992 Merger Guidelines define the relevant geographic market as the ''region such that a hypothetical monopolist that was the only present or future producer of the relevant product at locations in that region would profitably impose at least a 'small but significant and nontransitory' increase in price, holding constant the terms of sale for all products produced elsewhere.'' Accordingly, in defining the relevant geographic market, one must examine whether a ''small but significant and nontransitory'' increase in the price of the relevant product at a particular location would cause a buyer to shift his purchase to a second location, so as to make the price increase unprofitable. If so, the two locations should be considered to be in the same geographic market. 1992 Merger Guidelines at pp. 20,573–20,573–3. In accordance with the principles enunciated in the 1992 Merger Guidelines, we believe that long distance calling, at its most fundamental level, involves a customer making a connection from one specific location to another specific location. As we stated in the Interexchange NPRM, ''[w]e believe that most telephone customers do not view interexchange calls originating in different locations to be close substitutes for each other.'' Therefore, we further conclude that we will follow the revised approach to the geographic market definition proposed in the Interexchange NPRM and define a relevant geographic market for interstate, domestic, long distance services as all possible routes that allow for a connection from one particular location to another particular location (*i.e.*, a point-to-point market).

65. Contrary to a number of commenters, we find that defining the relevant geographic market as a point-to-point market, rather than as a single national market, more accurately reflects the fact that most customers use long distance services by purchasing ubiquitous calling plans. A point-to-point connection is a constituent element of all types of interstate, domestic, long distance services, (As we described in the Interexchange NPRM, ''residential interexchange services can be thought of as a bundle of all possible interexchange calls originating from a single point and terminating anywhere, and 800 service as a bundle of interstate, interexchange calls originating from a certain geographic region and terminating at a specific point.'' Interexchange NPRM, 11 FCC Rcd at 7168, ¶50.) including purely point-to-point services, (private line service is an example of a point-to-point service) as well as point-to-all-points services (Residential long distance service is an example of a point-to-all-points service. Point-to-all-points services can be viewed as a bundle of point-to-point connections all originating at the same point.) and all-points-to-point services. (Toll free 800 or 888 numbers that are accessible from all domestic geographic locations would be examples of an all points-to-point service. An all-points-to-point service can be viewed as a bundle of point-to-point connections that all terminate at the same point.) Ubiquitous calling plans encompass point-to-all-points services or all-points-to-point services, which are essentially a bundle of point-to-point connections serving a common point. Although ubiquitous calling allows customers to make multiple point-to-point connections from or to a common point via a single source, it does not change the nature of interstate, domestic, long distance calling. From the customer's perspective, while the calling plan itself may be ''ubiquitous'' in that it offers nationwide coverage from or to a common point, the market to purchase that plan is a localized market, not a national one. For example, customers located in Miami generally purchase calling plans that offer long distance service originating from Miami. Any calling plan that provides service originating from Los Angeles, even if it is ''ubiquitous'' service, would not be a viable substitute for customers located in Miami. Accordingly, we believe that defining the relevant geographic market as a point-to-point market is a more accurate approach to assessing market power than a single national market definition, even assuming that most long distance customers purchase ubiquitous calling plans.

66. We recognize, however, that assessing market power in each individual point-to-point market would be administratively impractical and inefficient. Therefore, we clarify our proposal in the Interexchange NPRM to treat, in general, interstate, long distance calling as a single national market unless there is credible evidence indicating that there is or could be a lack of competition in a particular point-to-point market, and there is a showing that geographic rate averaging will not sufficiently mitigate the exercise of market power. We conclude that when a group of point-to-point markets exhibit sufficiently similar competitive characteristics (*i.e.*, market structure), we will examine that group of markets using aggregate data that encompasses all point-to-point markets

in the relevant area, rather than examine each individual point-to-point market separately. Therefore, if we conclude that the competitive conditions for a particular service in any point-to-point market are sufficiently representative of the competitive conditions for that service in all other domestic point-to-point markets, then we will examine aggregate data, rather than data particular to each domestic point-to-point market. For example, we could analyze national market share data, rather than market share data for particular point-to-point markets. Such a finding would require that there be no credible evidence that there is or could be a lack of competitive performance in any point-to-point market for that service. As noted in the Interexchange NPRM, we believe that geographic rate averaging, price regulation of exchange access services, and the excess capacity in interstate transport currently cause carriers to behave similarly in each domestic point-to-point market and reduce the likelihood that carriers could exercise market power in most point-to-point markets.

67. Unless there is credible evidence suggesting that there is or could be a lack of competition in a particular point-to-point market or group of point-to-point markets, and there is a showing that geographic rate averaging will not sufficiently mitigate the exercise of market power, we will refrain from employing the more burdensome approach of analyzing separate data from each point-to-point market. We believe that, in most cases, statistics, such as market shares, are most usefully calculated based on aggregate data covering all domestic point-to-point markets. In many point-to-point markets (*e.g.*, one home to another home), one long distance carrier will have 100 percent market share. This does not imply, however, that this particular long distance carrier has market power. Therefore, in using market share as one factor in assessing market power, it is important that we examine market share in the broadest geographic group of point-to-point markets in which competitive conditions are reasonably homogeneous.

68. In the Interexchange NPRM, we also sought comment on how narrowly we should define the points of origination and termination when examining a point-to-point market. The relevant point in a point-to-point market is the location of a particular telephone or other telecommunications device. For example, with regard to residential long distance service, the relevant point is each individual customer's residence. We recognize that assessing market power at such a level of detail would be administratively impractical. We conclude, however, that there is no need to define larger points because, when assessing the market power of a particular carrier or group of carriers, we will treat together all point-to-point markets within a boundary such that all transactions carried out within that boundary are subject to the same competitive conditions. Therefore, for all practical purposes, we fully expect that the relevant geographic area for assessing market power will usually consist of multiple point-to-point connections that exhibit the same competitive conditions. Because we will invariably analyze a group of point-to-point markets, there is no practical need to also redefine the individual points.

69. Although GCI has suggested that we treat Alaska as a separate geographic market in assessing the market power of AT&T/Alascom, we do not do so in this proceeding. As noted *supra* at notes 170, 171, GCI identified the Alaska market as a separate geographic market. We also note that GCI has filed a petition seeking reconsideration of the AT&T Reclassification Order, in which it argues that the reclassification of AT&T does not apply to AT&T/Alascom, Inc. because AT&T/Alascom is still dominant in the Alaska market. *See* GCI petition for reconsideration or clarification of AT&T Reclassification Order (filed Nov. 22, 1995). As noted above, any modifications to decisions reached in the AT&T Reclassification Order that may be necessary as a result of our decision here will be addressed, as necessary, in further proceedings. We emphasize, however, that, because market definition is only one step in assessing market power, changes made in the approach to defining relevant markets will not necessarily produce different assessments of market power.

2. Geographic Market for BOC InterLATA Affiliates and Independent LECs

a. Background

70. In the Non-Accounting Safeguards NPRM, we tentatively concluded that, if we adopt the approach proposed in the Interexchange NPRM, we should evaluate a BOC's point-to-point markets in which calls originate in-region separately from its point-to-point markets in which calls originate out-of-region, for purposes of determining whether BOC interLATA affiliates have market power in the provision of interstate, domestic, interLATA services. Similarly, we tentatively concluded that we should evaluate an independent LEC's point-to-point markets in which calls originate in its local exchange areas separately from its markets in which calls originate outside those areas, for the purpose of determining whether an independent LEC possesses market power in the provision of interstate, domestic, interexchange services.

b. Comments

71. Several commenters support the Commission's tentative conclusion that it should evaluate a BOC's point-to-point markets in which calls originate in-region separately from its point-to-point markets in which calls originate out-of-region in order to determine whether a BOC interLATA affiliate possesses market power in-region. CTA and LDDS argue that this approach is supported by the fact that Congress legislated different treatment for in-region and out-of-region BOC services. Although LDDS agrees with the Commission's proposal to identify particular markets only where credible evidence of a lack of competition and a failure of geographic rate averaging to mitigate market power exists, LDDS argues that the Commission should find that, in light of BOC control over the origination and termination ends of nearly all interstate, long distance calls, the relevant geographic market for a BOC interLATA affiliate will be the entire region from which it provides long distance services, regardless of whether it is part of the region in which the BOC provides local exchange and exchange access service. MCI contends that the approach proposed in the Non-Accounting Safeguards NPRM recognizes that there are greater opportunities for cross-subsidization and anticompetitive conduct for interLATA service originating in a BOC's service region. Regardless of the market definition, DOJ states that it is ''not unreasonable'' in this proceeding for the Commission to distinguish a BOC's provision of interexchange service outside its region from provision of such service within its region. Sprint and the New York Public Service Department urge the Commission to recognize that mergers, acquisitions, and similar combinations by BOCs may require consideration of geographic markets more extensive than a BOC's own region.

72. The BOCs generally oppose the approach proposed in the Non-Accounting Safeguards NPRM and contend that the Commission should treat domestic, interstate, interexchange services as a single national market for purposes of determining whether a BOC interLATA affiliate possesses in-region market power. BellSouth and USTA

contend that all competing carriers should be subject to the same standards, including the same relevant market definitions, absent compelling reasons for disparate treatment. BellSouth and USTA argue that, given the BOCs' zero market share, the structural separation requirements and regulatory safeguards that apply to a BOC's provision of long distance services, and the comprehensive regulation of the BOCs' bottleneck facilities, the Commission's assumption that BOC interLATA affiliates may have market power over in-region interexchange services and therefore those services may need to be examined separately from out-of-region services is flawed.

73. NYNEX contends that the fact that the BOCs are not likely to begin offering interexchange services with nationwide networks does not justify redefining the geographic market because many interexchange carriers also concentrate their offerings in particular regions. NYNEX also asserts that the 1992 Merger Guidelines support a single, nationwide geographic market definition regardless of whether interexchange services provided by BOC interLATA affiliates originate in-region or out-of-region. Bell Atlantic, BellSouth, and NYNEX argue that geographic rate averaging will prevent the BOCs from being able to raise prices selectively in targeted areas. Moreover, these parties allege that even if a BOC attempted to raise rates on any given route, other carriers would respond by offering lower rates because they would have sufficient capacity available on their existing networks to be able to carry the BOC customers that they would attract through lower prices.

74. USTA argues that the Commission should not change the single, national geographic market definition in assessing the market power of independent LECs because: (1) The national scope of major telecommunications companies has increased over the years, not lessened, with the four largest IXCs controlling over 85 percent of the market; and (2) the national market is the relevant market for independent LECs, their competitors and the public, because interexchange service offerings are generally ubiquitous, not local or regional, and pricing, marketing, and networks are all national in scope. USTA adds that customers generally purchase interexchange services under ubiquitous calling plans, not on a point-to-point basis. According to USTA, although independent LECs provide local exchange services that are regional or local in scope, this does not change the national nature of the interexchange market because customers can choose from national, regional or local providers of long distance service.

75. As noted above, AT&T asserts that the geographic market definition is irrelevant in determining whether the BOCs or independent LECs could abuse their power in the local market to impede interexchange competition. AT&T contends that market definitions and market share analyses are unnecessary when the presence of market power can be proven directly, as it can here because of the BOCs' control of the local bottleneck, or where undisputed power in one market (i.e., local services) can be leveraged to impede competition in a second market (i.e., long distance). AT&T also asserts, however, that ''while interexchange services originating in a particular BOC's service area generally could not be a separate geographic market, a determination of the appropriate regulatory treatment of a BOC's (or independent LEC's) in-region interLATA services should focus on these areas.''

c. Discussion

76. In evaluating whether BOC interLATA affiliates and independent LECs possess market power in the interstate, domestic, long distance market, we conclude that we generally will follow the approach proposed in the Non-Accounting Safeguards NPRM. As discussed above, we disagree with those commenters that advocate using a single national geographic market definition. We conclude that a local exchange carrier's control of the local bottleneck constitutes credible evidence that there could be a lack of competitive performance in point-to-point markets that originate in-region. Because we expect that competitive conditions will be different for those point-to-point markets that originate in-region than for those point-to-point markets that originate out-of-region, we find that our analysis of market power should reflect this expectation. In-region, a BOC's control over the local bottleneck may give it a competitive advantage that it does not have out-of-region, causing the BOC to compete differently in-region than out-of-region. Therefore, the competitive conditions in-region are likely to be different in-region than out-of-region. Therefore, in determining whether BOC interLATA affiliates have market power in the provision of interstate, domestic, interLATA services, we conclude that calls originating from in-region point-to-point markets should be analyzed separately from calls originating from out-of-region point-to-point markets. Similarly, in determining whether independent LECs have market power in the provision of interstate, domestic, interexchange services, we conclude that calls originating in point-to-point markets within their local service areas should be analyzed separately from calls originating in point-to-point markets outside those areas.

77. We adopt this bifurcated analysis to determine whether a BOC or independent LEC, through improper cost allocation or discrimination, could use its market power in local exchange and exchange access services to disadvantage long-distance rivals of the BOC interLATA affiliate or independent LEC. Such improper cost allocation or discrimination might enable a BOC interLATA affiliate or independent LEC to obtain the ability profitably to raise and sustain its price for in-region, interstate, domestic, long distance services above competitive levels by restricting its output of long distance services. We are not persuaded, moreover, that geographic rate averaging of interstate long distance services alone will necessarily suffice to offset the potential anticompetitive effects of a BOC's or independent LEC's use of the market power resulting from its control over local access facilities because if a BOC interLATA affiliate's or independent LEC's long distance customers are concentrated in one region, it may be profitable to raise prices above competitive levels, even if geographic rate averaging might cause it to lose market share outside that region.

78. We reject AT&T's contention that the geographic market definition is irrelevant in assessing whether BOC interLATA affiliates or independent LECs possess market power. As discussed above, we conclude that a relevant geographic market must be defined in order to conduct an accurate assessment of market power. While we agree with AT&T that other factors are important in making our overall assessment of market power, we do not agree that we can avoid defining the relevant geographic market if we wish to achieve an accurate assessment of whether BOC interLATA affiliates or independent LECs possess market power in the long distance marketplace. Moreover, we further note that, in some cases, it may be necessary to focus specifically on the termination point because the local exchange carrier that serves the end-user customer will necessarily have market power with regard to that customer.

3. International Geographic Market for BOC InterLATA Affiliates and Independent LECs

79. In the Non-Accounting Safeguards NPRM, we tentatively concluded that, for purposes of assessing whether BOC interLATA affiliates or independent LECs could exercise market power in the international long distance marketplace, market power should be measured on a worldwide, rather than route-by-route, basis, except for routes on which the carriers are affiliated with foreign carriers in the destination market. MCI, NYNEX and USTA agree with the Commission's tentative conclusion.

80. In assessing whether BOC interLATA affiliates and independent LECs possess market power in the international long distance marketplace, we adopt our tentative conclusion, but clarify that we will examine aggregate data that encompasses all international point-to-point markets, unless there is credible evidence suggesting that there is or could be a lack of competition in one or more international point-to-point markets. Of course, as discussed above, we will examine international point-to-point markets that originate in-region separately from international point-to-point markets that originate out-of-region. We acknowledge that myriad factors, including whether a carrier controls 100 percent of the capacity of the U.S. half of a particular international point-to-point market, may affect our determination of whether each international point-to-point market has competitive characteristics that are sufficiently similar to other point-to-point markets in the international marketplace. In classifying AT&T as non-dominant in the provision of IMTS, we generally analyzed AT&T's market power on a worldwide basis as a surrogate for a route-by-route analysis, except a route-by-route analysis was employed to scrutinize those markets that have not supported entry by competing U.S. carriers. A route-by-route approach also was used to analyze the competitive impact of AT&T's affiliations and alliances with foreign carriers on particular U.S. international routes. In the Matter of Motion of AT&T Corp. to be Declared Non-Dominant for International Service, Order, FCC 96–209, at ¶ 32 (rel. May 14, 1996). In such cases, it may be necessary to conduct a more particularized analysis and examine certain individual international point-to-point markets or groups of point-to-point markets separately. Because no such factors currently apply or, we believe, are likely to apply to any BOC interLATA affiliate or independent LEC, however, we find that each individual international point-to-point market exhibits similar competitive characteristics to all other international point-to-point markets. Therefore, it is unnecessary for us to conduct a separate analysis for each international point-to-point market, given the administrative burdens associated with such an inquiry. Our decision here to examine aggregate data that encompasses all international point-to-point markets does not modify our existing route-by-route approach to consider whether U.S. carriers affiliated with a foreign carrier should be regulated as dominant in the provision of international services because they are affiliated with a foreign carrier that exercises market power in a foreign market.

IV. Classification of BOC Interlata Affiliates and Independent LECS as Dominant or Non-Dominant Carriers in the Provision of in-Region Long Distance Services

81. In this section, we consider whether we should continue the dominant carrier classification that under our rules would apply to the BOC interLATA affiliates in the provision of in-region, interstate, domestic, interLATA services. As previously discussed, for convenience, we use the term ''BOC interLATA affiliates'' to refer to the separate affiliates established by the BOCs, in conformance with section 272(a)(1), to provide in-region, interLATA services. *See supra* n. 12. In order to reclassify the BOC interLATA affiliates as non-dominant, our rules require us to conclude that they will not possess market power in the provision of those interLATA services in the relevant product and geographic markets. Our analysis of whether the BOC interLATA affiliates should be classified as dominant or non-dominant in the provision of in-region, interstate, domestic, interLATA services has no bearing on the determination of whether a BOC interLATA affiliate has satisfied the requirements of section 271(d)(3), and it should not to be interpreted as prejudging such determinations in any way. We also consider whether we should modify the regulatory regime adopted in the Competitive Carrier Fifth Report and Order for the regulation of in-region, interstate, domestic, interexchange services provided by independent LECs. Finally, we consider whether we should apply the same regulatory classification to the BOC interLATA affiliates' and independent LECs' provision of in-region, international services as we adopt in this proceeding for their provision of in-region, interstate, domestic, long distance services. This proceeding does not modify the Commission's separate framework, adopted in the International Services Order and Foreign Carrier Entry Order, for regulating United States international carriers (including BOC interLATA affiliates or independent LECs) as dominant on routes where an affiliated foreign carrier has the ability to discriminate in favor of its U.S. affiliate through control of bottleneck services or facilities in the foreign destination market. *See infra* ¶ 139.

A. Classification of BOC InterLATA Affiliates

82. We conclude that the requirements established by, and the rules implemented pursuant to, sections 271 and 272, together with other existing rules, sufficiently limit a BOC's ability to use its market power in the local exchange or exchange access markets to enable its interLATA affiliate profitably to raise and sustain prices of in-region, interstate, domestic, interLATA services significantly above competitive levels by restricting the affiliate's own output. We therefore classify the BOCs' section 272 interLATA affiliates as non-dominant in the provision of these services. We also conclude that we should apply the same regulatory classification to the BOC interLATA affiliates' provision of in-region, international services as we adopt for their provision of in-region, interstate, domestic, interLATA services.

1. Definition of Market Power and the Limits of Dominant Carrier Regulation

a. Background

83. In the Non-Accounting Safeguards NPRM, we noted that there are two ways in which a carrier can profitably raise and sustain prices above competitive levels and thereby exercise market power. Non-Accounting Safeguards NPRM at ¶ 131. For convenience, we refer, as we did in the Notice, to a carrier's ability to engage in such a strategy as the ability to ''raise prices.'' First, a carrier may be able to raise prices by restricting its own output (which usually requires a large market share); second, a carrier may be able to raise prices by increasing its rivals' costs or by restricting its rivals' output through the carrier's control of an essential input, such as access to bottleneck facilities, that its rivals need to offer their services. *Id.* We also noted that economists have recognized these different ways to exercise market power by distinguishing between ''Stiglerian'' market power, which is the ability of a firm profitably to raise and sustain its

price significantly above the competitive level by restricting its own output, and ''Bainian'' market power, which is the ability of a firm profitably to raise and sustain its price significantly above the competitive level by raising its rivals' costs and thereby causing the rivals to restrain their output. T.G. Krattenmaker, R.H. Lande, and S.C. Salop, Monopoly Power and Market Power in Antitrust Law, 76 Geo. L.J. 241, 249–53 (1987). We sought comment on whether the BOC interLATA affiliates should be classified as dominant carriers in the provision of in-region, interstate, domestic, interLATA services under our rules only if we find that the affiliates have the ability to raise prices of those services by restricting their own output, or whether we should also classify the affiliates as dominant if the BOCs have the ability to raise prices by raising the costs of their affiliates' interLATA rivals.

b. Comments

84. Most commenters that address this issue, including DOJ, argue that the BOC interLATA affiliates should be classified as dominant only if they have the ability to raise the prices of interLATA services by restricting their own output. MCI and AT&T contend, however, that we should also classify a BOC interLATA affiliate as dominant if it (or its BOC parent) has the ability to raise the costs or restrict the output of the affiliate's rivals through control of an essential input, such as exchange access, or the ability to raise the prices paid by the affiliate and its rivals for exchange access. MCI claims that, even if consumer prices are not raised immediately, a BOC's ability to impose excessive costs on or to restrict essential inputs to its interexchange rivals presents a long-run harm to competition because it will make the BOC's rivals weaker competitors, and thereby reduce their output and make consumer price increases inevitable. MCI asserts that raising rivals' costs is, in fact, likely to result in an increase in the BOC interLATA affiliate's rates, which could be prevented by dominant carrier regulation.

c. Discussion

85. We conclude that the BOC interLATA affiliates should be classified as dominant carriers in the provision of in-region, interstate, domestic, interLATA services only if the affiliates have the ability to raise prices of those services by restricting their own output of those services. As we stated in the NPRM, we believe that our dominant carrier regulations are generally designed to prevent a carrier from raising prices by restricting its output rather than to prevent a carrier from raising its prices by raising its rivals' costs. Non-Accounting Safeguards NPRM at ¶ 132. Accord NYNEX Aug. 15, 1996 Comments at 51; USTA Aug. 15, 1996 Comments at 47; DOJ Aug. 30, 1996 Reply at 16. As noted in the NPRM, the definitions of market power cited by the Commission in the Competitive Carrier Fourth Report and Order referred to the concept of a carrier raising price by restricting its own output. Non-Accounting Safeguards NPRM at ¶ 132 (citing Competitive Carrier Fourth Report and Order, 95 FCC 2d at 558, ¶¶ 7, 8). In fact, these regulations were adopted at a time when AT&T was essentially a monopoly provider of domestic long distance services. As discussed below, application of these regulations to a carrier that does not have the ability to raise long distance prices by restricting its own output could lead to incongruous results.

86. Even AT&T acknowledges that at least some of the dominant carrier regulations, such as price ceilings and more stringent section 214 requirements, are not designed to address the potential problems associated with BOC entry into competitive markets. For example, although we recognize, as discussed below, that there are circumstances in which price cap regulation (including price floors) of a BOC interLATA affiliate's rates might decrease a BOC's ability to engage in anticompetitive conduct, (We also conclude below that price cap regulation of the BOCs' exchange access services will reduce the BOCs' incentive to misallocate the costs of their affiliates' interLATA services. *See infra* ¶ 106.) we believe that in this situation the disadvantages of price cap regulation outweigh its benefits. Similarly, we question whether more stringent section 214 requirements would be an efficient means of addressing the concerns raised by BOC entry. Congress enacted the facilities-authorization requirements in section 214 and subsequent amendments primarily to prevent investment in unnecessary new plant by rate-base regulated common carriers and to bar service discontinuance in areas served by a single carrier. *See* Competitive Carrier First Report and Order, 85 FCC 2d at 39, ¶ 114. *See also* H. Averch and L. L. Johnson, Behavior of the Firm under Regulatory Constraint, 52 Amer. Econ. Rev. 1053 (1962) (a firm under rate of return regulation has an incentive to invest in more than the efficient amount of plant in order to increase the value of its rate base). Because we previously have found that markets for long distance services are substantially competitive in most areas, marketplace forces should effectively deter carriers that face competition from engaging in the practices that Congress sought to address through the section 214 requirements. For example, a carrier facing competition lacks the incentive to invest in unneeded facilities, because it cannot extract additional revenue from its long distance customers to recoup the cost of those facilities. If such a carrier discontinues service in an area where it faces competition, its customers could turn to the carrier's competitors for service. Because marketplace forces generally eliminate the need for regulatory requirements imposed by section 214, we have granted a blanket section 214 authorization to non-dominant carriers such that they no longer must obtain prior approval to provide domestic long distance service or add new facilities and we impose less stringent requirements on non-dominant carriers that are discontinuing service. 47 CFR §§ 63.07, 63.71. Section 63.07 requires non-dominant carriers to report the acquisition or construction of initial or additional circuits to the Commission on a semi-annual basis, while section 63.71 imposes certain notification requirements on non-dominant carriers that plan to reduce, impair, or discontinue service. We recognize that, for certain areas, such as those served by a single interexchange carrier or where equal access has not been implemented, it may still be appropriate for the Commission to review a carrier's proposal to discontinue service.

87. We recognize that certain aspects of dominant carrier regulation might constrain a BOC's ability to raise the costs of its affiliate's interLATA rivals or engage in other anticompetitive conduct. For example, requiring a BOC interLATA affiliate to file its tariffs with advance notice and cost support data might help to detect and prevent predatory pricing, particularly if coupled with a price floor on the affiliate's interLATA services. Price cap regulation of a BOC interLATA affiliate's interLATA services may deter a BOC from raising the costs of its affiliate's rivals through discrimination or other anticompetitive conduct by limiting the profit the affiliate could earn as a result of the anticompetitive conduct. As we stated in the Notice, however, price cap regulation of a BOC interLATA affiliate's interLATA services generally would not prevent a

BOC from raising its affiliate's rivals costs through discrimination or other anticompetitive conduct. Non-Accounting Safeguards NPRM at ¶ 132. It also would not prevent the affiliate from profiting from the BOC's raising rivals' costs through increased market share. *Id*. *See also* DOJ Aug. 30, 1996 Reply at 28 (impact of price cap regulation on affiliate pricing, and therefore its deterrence effect, is not so clear). Nevertheless, the fact that these measures might help to deter a BOC or its interLATA affiliate from engaging in certain types of anticompetitive conduct is not, by itself, a sufficient basis for imposing dominant carrier regulations on the BOC interLATA affiliates. We should also consider whether and to what extent these regulations would dampen competition and whether other statutory and regulatory provisions would accomplish the same objectives while imposing fewer burdens on the carriers and the Commission. Dominant carrier regulation should be imposed on the BOC interLATA affiliates only if the benefits of such regulation outweigh the burdens that would be imposed on competition, service providers, and the Commission.

88. The Commission has long recognized that the regulations associated with dominant carrier classification can dampen competition. For example, advance notice periods for tariff filings can stifle price competition and marketing innovation when applied to a competitive industry. In the Tariff Forbearance Order, we eliminated tariff filing requirements for non-dominant carriers pursuant to our forbearance authority under the Communications Act and ordered all non-dominant interexchange carriers to cancel their tariffs for interstate, domestic, interexchange services within nine months from the effective date of the Order. Tariff Forbearance Order at ¶ 3. As previously noted, the Tariff Forbearance Order is currently subject to a judicial stay. We concluded that a regime without non-dominant interexchange carrier tariffs for interstate, domestic, interexchange services will be the most pro-competitive, deregulatory system. We also found that not permitting non-dominant interexchange carriers to file tariffs with respect to interstate, domestic, interexchange services will enhance competition among providers of such services, promote competitive market conditions, and achieve other objectives that are in the public interest. We further concluded that continuing to require non-dominant interexchange carriers to file tariffs for interstate, domestic, interexchange services would reduce incentives for competitive price discounting, constrain carriers' ability to make rapid, efficient responses to changes in demand and cost, impose costs on carriers that attempt to make new offerings, and prevent customers from seeking out or obtaining service arrangements specifically tailored to their needs.

89. Requiring the BOC interLATA affiliates to file tariffs on advance notice and with cost support data would impose even more significant costs and burdens on the interLATA affiliates than the one-day notice period formerly required of non-dominant carriers and would adversely affect competition. Moreover, these requirements could undermine at least some of the benefits otherwise gained by eliminating tariff filing by non-dominant domestic interexchange carriers. In the Tariff Forbearance Order, we found that tacit coordination of prices for interstate, domestic, interexchange services, to the extent it exists, would be more difficult if we eliminate tariffs, because price and service information about such services provided by non-dominant interexchange carriers would no longer be collected and available in one central location. Upon full implementation of that Order, no interexchange carrier will be obligated (or permitted) to file tariffs for interstate, domestic, interexchange services. Upon full implementation of this Order, all domestic interexchange carriers will be regulated as non-dominant carriers. *See infra* section IV.B. If we were to require BOC interLATA affiliates to file tariffs for interstate, domestic, interexchange services, the ready availability of that information might facilitate tacit coordination of prices. We also believe that such requirements would impose significant administrative burdens on the Commission and the BOC interLATA affiliates, particularly to the extent they encourage the affiliates' interLATA competitors to challenge the affiliates' interLATA rates in order to impede the affiliates' ability to compete.

90. We find that the other regulations associated with dominant carrier classification can also have undesirable effects on competition. Although a price floor might help prevent a BOC interLATA affiliate from pricing below its cost, a price floor, if set too high, could prevent consumers from enjoying lower prices resulting from real efficiencies. The required cost support data can also discourage the introduction of innovative new service offerings, because it requires a carrier to reveal its financial information to its competitors.

91. As we discussed in the NPRM, we believe that other regulations applicable to the BOCs and their interLATA affiliates will address the anticompetitive concerns raised in the NPRM in a less burdensome manner. For example, a BOC's ability to engage in a ''price squeeze'' by raising its prices for access services (Under this scenario, a BOC would raise the price of access to all interexchange carriers, including its affiliate. This would cause competing interLATA carriers either to raise their retail interLATA rates in order to maintain the same profit margins or to attempt to preserve their market share by not raising their prices to reflect the increase in access charges, thereby reducing their profit margins. If the competing in-region interLATA service providers raised their prices to recover the increased access charges, the BOC interLATA affiliate could seek to expand its market share by not matching the price increase. *See infra* ¶ 125.) (as opposed to a BOC affiliate's lowering its long distance prices even when the BOC has not lowered its access prices) is limited by price cap regulation of those services. The nondiscrimination and structural separation requirements set forth in section 272 and our rules thereunder, price cap regulation of the BOCs' exchange access services, and the Commission's affiliate transaction rules sufficiently reduce the risk of successful anticompetitive discrimination and improper allocation of costs. We agree with DOJ that applying dominant carrier regulation to an affiliate in a downstream market would be ''at best a clumsy tool for controlling vertical leveraging of market power by the parent, if the parent can be directly regulated instead.'' In the Non-Accounting Safeguards Order (62 FR 2927 (January 21, 1997)) and Accounting Safeguards Order (62 FR 10220 (March 6, 1997)), we adopted regulations to constrain the BOCs' ability to use their market power in local exchange and exchange access services to engage in anticompetitive conduct in competitive markets. We therefore reject AT&T and MCI's contention that a BOC's ability to engage in such conduct would provide a legitimate basis for classifying its affiliate as dominant in the provision of in-region, interstate, domestic, interLATA services.

92. We find that the entry of the BOC interLATA affiliates into the provision of interLATA services has the potential to increase price competition and lead to innovative new services and marketing efficiencies. We see no reason to saddle the BOC interLATA affiliates

with regulations that are not well-suited to prevent the risks associated with BOC entry into in-region, interstate, domestic, interLATA services. We, therefore, conclude that the BOC interLATA affiliates should be classified as dominant carriers only if they have the ability to raise prices by restricting their own output.

2. Classification of BOC InterLATA Affiliates in the Provision of In-Region, Interstate, Domestic, InterLATA Services

a. Traditional Market Power Factors (other than control of bottleneck facilities)

i. Background

93. In the *Non-Accounting Safeguards NPRM*, we noted that, in determining whether a firm possesses market power, the Commission has previously focused on certain well-established market features, including market share, supply and demand substitutability, the cost structure, size or resources of the firm, and control of bottleneck facilities. We sought comment on the application of these factors in determining whether the BOC interLATA affiliates should be classified as dominant or non-dominant.

ii. Comments

94. Most commenters that address the issue agree that each of the traditional market factors weighs in favor of classifying the BOC interLATA affiliates as non-dominant. According to Ameritech, it is inconceivable that a BOC interLATA affiliate ''could bring AT&T to its knees quickly'' because the affiliates will enter the long-distance market with no customers, no traffic, no revenues, and no presubscribed lines and will be competing against some 500 incumbent carriers, including AT&T, MCI and Sprint, all of which are well-established in the market. Ameritech and U S West also claim that, in considering whether to classify the BOC interLATA affiliates as dominant, the Commission should consider only whether the BOC interLATA affiliates will have market power upon entry, not whether they will ''quickly gain'' such market power.

95. The California Cable Television Association (CCTA) contends, however, that a BOC interLATA affiliate's initial zero market share should not dissuade the Commission from retaining dominant carrier regulation because, as an entity affiliated with the dominant provider in the state, it will have enormous advantages particularly in terms of brand identification. CCTA further argues that it is likely that these affiliates will seek to capitalize on their parental lineage by using some or all of the BOCs' logos or other branding mechanisms. LDDS asserts that market share in and of itself is not a measure of market power, but rather is one of many possible indications that market power may exist in a certain market.

iii. Discussion

96. We find that each of the traditional market factors (excluding bottleneck control) supports a conclusion that the BOC interLATA affiliates will not have the ability to raise price by restricting their output upon entry or soon thereafter. As stated in the NPRM, the fact that each BOC interLATA affiliate initially will have zero market share in the provision of in-region, interstate, domestic, interLATA services suggests that the affiliate will not initially be able to raise price by restricting its output. As discussed in the NPRM, however, we find that this factor is not conclusive in determining whether a BOC interLATA affiliate should be classified as dominant, because the affiliate's zero market share results from its exclusion from the market until now, and, the affiliate potentially could gain significant market share upon entry or shortly thereafter, because of its brand identification with in-region customers, possible efficiencies of integration, and the BOC's ability potentially to raise the costs of its affiliate's interLATA rivals.

97. As to supply substitutability, we note that the Commission has previously found that the excess capacity of AT&T's competitors is sufficient to constrain AT&T's exercise of market power. In light of that finding, we conclude that AT&T and its competitors, which currently serve all interLATA customers, should be able to expand their capacity sufficiently to attract a BOC interLATA affiliate's customers if the affiliate attempts to raise its interLATA prices. As we discussed in the NPRM, the Commission also recently found that the purchasing decisions of most customers of domestic interexchange services are sensitive to changes in price, and customers would be willing to shift their traffic to an interexchange carrier's rival if the carrier raises its prices. The existence of such demand substitutability supports the conclusion that the BOC interLATA affiliates will not have the ability to raise prices by restricting their output. Finally, given the presence of existing interexchange carriers, including such large well established carriers as AT&T, MCI, Sprint, and LDDS, we find that the cost structure, size, and resources of the BOC interLATA affiliates are not likely to enable them to raise prices above the competitive level for their domestic interLATA services. Although the BOCs' brand identification and possible efficiencies of integration may give the BOC interLATA affiliates certain cost advantages in attracting customers, their lack of nationwide facilities-based networks would appear to put them at a disadvantage relative to the four largest interexchange carriers, as noted by Ameritech, particularly because the cost of resold long distances services will generally exceed the marginal cost of providing those services.

b. BOC Control of Bottleneck Access Facilities

i. Background

98. In the Non-Accounting Safeguards NPRM, we noted that, in assessing whether a BOC interLATA affiliate would possess market power in the provision of in-region, interstate, domestic, interLATA services, we must also consider the significance of the BOCs' current control of bottleneck exchange access facilities. We noted the concern that a BOC's control of bottleneck access facilities would enable it to allocate costs improperly from its affiliate's interLATA services to the BOC's regulated exchange or exchange access services, discriminate against its affiliate's interLATA competitors, and potentially engage in a price squeeze against those competitors. We therefore sought comment on whether the statutory and regulatory safeguards currently imposed on the BOCs and their affiliates are sufficient to prevent a BOC from engaging in such activities to such an extent that the BOC interLATA affiliates would quickly gain the ability to raise price by restricting output.

ii. Comments

99. Some of the BOCs dispute the Commission's assumption that the BOCs have and will maintain control of bottleneck access facilities. These commenters argue that any control the BOCs may have once had in the exchange access market has been dissipated by the Commission's expanded interconnection initiatives, the 1996 Act and the Commission's implementing regulations, and the actions of various states. In contrast, AT&T contends that the BOCs' monopoly control over local bottleneck facilities gives them market power in the interexchange market. Similarly, LDDS asserts that the BOCs will continue to possess market power in both the local exchange and exchange access markets, which translates into

market power in the in-region interLATA market. Many commenters also specifically address the three types of anticompetitive conduct listed above.

iii. Discussion

100. As noted in the Non-Accounting Safeguards NPRM, BOCs currently provide an overwhelming share of local exchange and exchange access services in areas where they provide such services—approximately 99.1 percent of the market as measured by revenues. Industry Analysis Division, Telecommunications Industry Revenue: TRS Worksheet Data, (Common Carrier Bureau December 1996). Tables 18 and 15 show that BOC local and access revenues in 1995 were $65.6 billion, while CAPs and Competitive LECs local and access revenues both in and out of BOC regions were only $595 million. Although the 1996 Act establishes a framework for eliminating entry barriers and thereby fostering local competition, the evidence to date indicates that such competition is still in its infancy. As a result, we conclude, solely for purposes of this proceeding, that the BOCs currently possess market power in the provision of local exchange and exchange access services in their respective regions, and we therefore must consider whether they can use that market power to give their interLATA affiliates the ability to raise the prices of in-region, interstate, domestic, interLATA services by restricting their own output of those services.

c. Improper Allocation of Costs

i. Comments

101. The BOCs and USTA assert that statutory and regulatory safeguards should prevent any improper cost allocations from occurring, particularly because all BOCs are subject to price-cap regulation, and a majority have adopted the no-sharing option. PacTel asserts that the concern over improper cost allocation ignores current regulation of the BOCs and presumes the incompetence of both state and federal regulators. AT&T counters that price cap regulation cannot eliminate the incentive to allocate costs improperly because both the initial caps and subsequent adjustments are generally set at least in part on the basis of the BOCs' profits during the preceding years. The Economic Strategy Institute asserts that cost accounting methodologies and models leave room for manipulation and interpretation. It also claims that improper cost allocation can lead to substantial cost advantages and facilitate a price squeeze.

102. The BOCs and USTA contend that it defies economic sense to expect any of the BOC interLATA affiliates to drive AT&T, MCI, or Sprint from the long-distance market. Even if they could, these commenters assert, the facilities of that carrier would remain intact, ready for another firm to buy at distress sale prices. AT&T, CTA, and DOJ argue, however, that the concerns expressed in the NPRM regarding improper cost allocation are too narrow. In addition to raising the possibility of predatory pricing, improper cost allocation may cause substantial harm to consumers, competition, and production efficiency. For example, improper cost allocation could lead to higher prices for local exchange and exchange access services and could shift market share and profits to a BOC interLATA affiliate, even if the affiliate is less efficient than its competitors, thereby resulting in a loss of production efficiency. AT&T asserts that such a strategy would be costless to the BOC, for it would recover its losses in the competitive market through contemporaneous higher rates in the non-competitive market. As a result, no subsequent recoupment would be necessary. According to DOJ, the Commission must consider whether applicable regulation would prevent improper cost allocation that would result in these adverse effects on consumers, competition, and production efficiency. DOJ argues that regulation alone will not prevent competitively significant improper cost allocations. The incentives to engage in such practices, according to DOJ, will be eliminated only when the local exchange market is subject to robust competition.

ii. Discussion

103. As noted in the Non-Accounting Safeguards NPRM, improper allocation of costs by a BOC is of concern because such action may allow a BOC to recover costs from subscribers to its regulated services that were incurred by its interLATA affiliate in providing competitive interLATA services. In addition to the direct harm to regulated ratepayers, this practice can distort price signals in those markets and may, under certain circumstances, give the affiliate an unfair advantage over its competitors. Recognizing this concern, Congress established safeguards in section 272, which we have implemented in the Non-Accounting Safeguards Order and Accounting Safeguards Order. For purposes of determining whether the BOC interLATA affiliates should be classified as dominant, however, we must consider only whether the BOCs could improperly allocate costs to such an extent that it would give the BOC interLATA affiliates, upon entry or soon thereafter, the ability to raise prices by restricting their own output. We conclude that, in reality, such a situation could occur only if a BOC's improper allocation enabled a BOC interLATA affiliate to set retail interLATA prices at predatory levels (i.e., below the costs incurred to provide those services), drive out its interLATA competitors, and then raise and sustain retail interLATA prices significantly above competitive levels. In so concluding, we do not dismiss cost misallocation as a potential problem. We recognize that the BOCs may have an incentive to misallocate the costs of their interLATA affiliates' interLATA services.

104. We conclude that applicable statutory and regulatory safeguards are likely to be sufficient to prevent the BOCs from improperly allocating costs between their monopoly local exchange and exchange access services and their affiliates' competitive interLATA services to such an extent that their interLATA affiliates would be able to eliminate other interLATA service providers and subsequently earn supra-competitive profits by charging monopoly prices. Section 272(b) includes a number of structural safeguards that constrain a BOC's ability to allocate costs improperly. For example, the provision requires a BOC interLATA affiliate to ''operate independently'' from the BOC, maintain separate books, records, and accounts from the BOC, and have separate officers, directors, and employees. Section 272 also requires each BOC ''to obtain and pay for a joint Federal/State audit every 2 years conducted by an independent auditor to determine whether such company has complied with [section 272] and the regulations promulgated under this section. . . .'' 47 U.S.C. § 272(d)(1). The results of such audits must be submitted to the Commission and the state commissions in each State in which the BOC provides services, which shall make such results available for public inspection. *Id.* § 272(d)(2). As noted by Ameritech and Bell Atlantic, the structural separation and audit requirements mandated in section 272 should reduce the risk of improper allocation of costs by minimizing the amount of joint costs that could be improperly allocated. In the Non-Accounting Safeguards Order, we adopted rules to implement and clarify these provisions. For example, we concluded that the requirement that

the BOC and its affiliate operate independently precludes the joint ownership of transmission and switching facilities by a BOC and its interLATA affiliate, as well as the joint ownership of the land and buildings where those facilities are located. Non-Accounting Safeguards Order at ¶158. We noted that prohibiting joint ownership of transmission and switching facilities would ensure that an affiliate must obtain any such facilities pursuant to the arm's length requirements of section 272(b)(5), thereby facilitating monitoring and enforcement of the section 272 requirements. Id. at ¶160. We also concluded that operational independence precludes a section 272 affiliate from performing operating, installation, and maintenance functions associated with the BOC's facilities. Likewise, it bars a BOC or any BOC affiliate, other than the section 272 affiliate itself, from performing operating, installation, or maintenance functions associated with the facilities that the section 272 affiliate owns or leases from a provider other than the BOC with which it is affiliated. *Id*. at ¶158. We concluded, however, consistent with these requirements and those established pursuant to sections 272(b)(5) and 272(c)(1), a section 272 affiliate may negotiate with an affiliated BOC on an arm's length and nondiscriminatory basis to obtain transmission and switching facilities, to arrange for collocation of facilities, and to provide or to obtain services such as administrative and marketing services. *Id*. We also clarified that section 272(b)(1) does not preclude a BOC or a section 272 affiliate from providing telecommunications services to one another, so long as each entity performs itself, or obtains from an unaffiliated third party, the operating, installation, and maintenance functions associated with the facilities that it owns or leases from an entity unaffiliated with the BOC. *Id*. at ¶164. As noted by BellSouth, the separate employee requirement should ensure that the cost of each employee will be attributed directly to the appropriate entity.

105. Section 272 also requires a BOC interLATA affiliate to conduct all transactions with the BOC on an arm's length basis, and all such transactions must be reduced to writing and made available for public inspection. In the Accounting Safeguards Order, we concluded that, to satisfy this requirement, a section 272 affiliate must, at a minimum, provide a detailed written description of the asset or service transferred and the terms and conditions of the transaction on the Internet within 10 days of the transaction through the company's Internet home page. Accounting Safeguards Order at ¶122. This information also must be made available for public inspection at the principal place of business of the BOC. *Id*. We conclude that these safeguards will constrain a BOC's ability to allocate costs improperly and make it easier to detect any improper allocation of costs that may occur.

106. We further find that price cap regulation of the BOCs' access services reduces the BOCs' incentive to allocate improperly the costs of their affiliates' interLATA services. As the Commission previously explained, ''[b]ecause price cap regulation severs the direct link between regulated costs and prices, a carrier is not able automatically to recoup improperly allocated nonregulated costs by raising basic service rates, thus reducing the incentive for the BOCs to shift nonregulated costs to regulated services.'' We recognize that under our current interim LEC price cap rules, a BOC can select an X-factor option that requires it to share interstate earnings with its customers that exceed specified benchmarks and permit the BOC to make a low-end adjustment if interstate earnings fall below a specified threshold. The X-factor is a component of the price cap formula that is used to adjust the price cap index for a LEC's access services each year to account for changes in telephone companies' costs per unit of output. Consequently, in certain circumstances, a BOC may have an incentive to allocate costs from interLATA services to access services in order to reduce the amount of profits the BOC is required to share with its interstate access service customers or become eligible for a low-end adjustment. Time Warner Aug. 15, 1996 Comments at 12–13. Similarly, the possibility of future re-calibration of price cap levels or out-of-band filings also implies that price cap regulation does not fully sever the link between regulated costs and prices. *See* 47 CFR § 61.49(e), (f). We note, however, that only one of the BOCs currently has adopted a sharing option. U S West is the only BOC currently subject to a sharing option. Data based on 1996 Annual Access Tariff Filings filed on April 2, 1996. *See also* USTA Aug. 15, 1996 Comments, Hausman Aff. at 8. We also note that the Commission has sought comment on whether the sharing option should be eliminated. Price Cap Performance Review for Local Exchange Carriers (60 FR 52362 (October 6, 1995)). Also, in the Access Charge Reform NPRM, we sought comment on whether we should reinitialize price cap indices and increase the X-factor. *See* Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; Usage of the Public Switched Network by Information Service and Internet Access Providers (62 FR 4657 (January 31, 1997)) at ¶¶223–35 (Access Charge Reform NPRM). Our affiliate transaction rules, which apply to transactions between the BOCs and their interLATA affiliates, should make it more difficult for a BOC to allocate improperly the costs of its affiliates' interLATA services. We also recognize that, if a state does not impose price cap regulation on a BOC's local exchange services, the BOC may have an incentive to allocate costs from interLATA services to its local exchange services. It appears, however, that many states have adopted price cap regulation or some other alternative form of regulation for the BOCs' local exchange services. Moreover, we are not persuaded that dominant carrier regulation of the BOC interLATA affiliates' interLATA services would prevent such improper cost allocation.

107. Furthermore, even if a BOC were able to allocate improperly the costs of its affiliate's interLATA services, we conclude that it is unlikely that a BOC interLATA affiliate could engage successfully in predation. At least four interexchange carriers—AT&T, MCI, Sprint, and LDDS WorldCom—have nationwide, or near-nationwide, network facilities that cover every BOC region. These are large well-established companies with millions of customers throughout the nation. It is unlikely, therefore, that a BOC interLATA affiliate, whose customers are likely to be concentrated in the BOC's local service region, (We recognize that action taken in concert by two or more BOCs could have a more significant impact on interLATA competitors, but believe that the antitrust laws and our enforcement process will sufficiently limit the risk of such concerted activity. Non-Accounting Safeguards Order at ¶70.) could drive one or more of these national companies from the market.

Even if it could do so, it is doubtful that the BOC interLATA affiliate would later be able to raise prices in order to recoup lost revenues. As Professor Spulber has observed, ''[e]ven in the unlikely event that [a BOC interLATA affiliate] could drive one of the three large interexchange carriers into bankruptcy, the fiber-optic transmission capacity of that carrier would remain intact, ready for another firm to buy the

capacity at distress sale and immediately undercut the (affiliate's) noncompetitive prices.''

108. We acknowledge that improper cost allocation may raise concerns beyond the risk of predatory pricing. As AT&T and DOJ assert, exploiting improper cost allocation to divert business to BOC interLATA affiliates from other, more efficient suppliers would be anticompetitive even if the latter suppliers remained in the market. DOJ contends that this strategy would produce inefficiencies and wasted resources and reduce future investment by competitors to improve or expand their networks and to develop innovative technologies and services. AT&T claims that such a strategy would be costless to the BOC, for it would recover its losses in the competitive market through contemporaneous higher rates in the non-competitive market, and, consequently, subsequent recoupment would be unnecessary. As previously stated, although we agree that these are serious concerns, we find that they do not establish a persuasive basis for classifying the BOC interLATA affiliates as dominant in the provision of in-region, interstate, domestic, interLATA services. Rather, such concerns are best addressed through enforcement of the section 272 requirements. We also note that DOJ contends that dominant carrier regulation will not prevent the BOCs from improperly allocating their affiliates' interLATA costs. In fact, DOJ asserts that the incentives to engage in such practices will be eliminated only when the local exchange market is subject to robust competition. As previously discussed, we conclude that dominant carrier regulation generally would not help prevent a BOC from improperly allocating costs.

d. Unlawful Discrimination

i. Comments

109. The BOCs suggest that concerns over the BOCs' incentives to discriminate are grossly exaggerated, given increasing competition in exchange and exchange access services (particularly after a BOC has satisfied the competitive checklist and other requirements in section 271) and the potential problem that customers would attribute degradation in service quality to the BOCs, rather than their interLATA affiliates' competitors. The BOCs further contend that, even if they did have the incentive to discriminate, they lack the ability to do so because of the nondiscrimination requirements in the 1996 Act and because of engineering obstacles to such selective degradation of service quality. Several BOCs also argue that discrimination is unlikely to be effective unless it is apparent to customers. According to the BOCs, if it is apparent to customers, however, it also is likely to be apparent to their long distance carrier and regulators that have the authority to enjoin any illegal practices. BellSouth and SBC contend that BOCs have a significant disincentive to provide inferior access to IXCs or otherwise jeopardize their relationship because the access charges paid by IXCs are a major source of revenue for the BOCs, and the IXCs increasingly will have the option of moving their exchange access traffic to alternative LECs and CAPs. Bell Atlantic and USTA claim that the BOCs have a long history of operating in other markets related to their local exchange and exchange access services without any adverse economic effects. They claim that, in each of the businesses that the BOCs have been allowed to enter since divestiture—cellular, voice messaging, customer premises equipment, and limited interLATA services—output has grown, prices have fallen and competitors have thrived. PacTel asserts that, if such discriminatory behavior could happen, it would already have happened.

110. A number of parties contend that, despite passage of the 1996 Act, BOCs have the incentive and ability to discriminate against their interLATA affiliates' long distance competitors. AT&T argues that the BOCs can discriminate against interexchange competitors in numerous and subtle ways that would be difficult to police. According to DOJ and Time Warner, the BOCs will retain the incentive and ability to discriminate against competitors until they are subject to actual, sustained competition in local telephone markets.

ii. Discussion

111. In the Non-Accounting Safeguards NPRM, we noted that a BOC potentially could use its market power in the provision of local exchange and exchange access services to discriminate against its interLATA affiliate's interLATA competitors to gain an advantage for its interLATA affiliate. We noted that there are various ways in which a BOC could attempt to discriminate against unaffiliated interLATA carriers, such as through poorer quality interconnection arrangements or unnecessary delays in satisfying its competitors' requests to connect to the BOC's network. Certain forms of discrimination may be difficult to police, particularly in situations where the level of the BOC's ''cooperation'' with unaffiliated interLATA carriers is difficult to quantify. To the extent customers value ''one-stop shopping,'' degrading a rival's interexchange service may also undermine the attractiveness of the rival's interexchange/local exchange package and thereby strengthen the BOC's dominant position in the provision of local exchange services. We continue to be concerned that a BOC could attempt to discriminate against unaffiliated interLATA carriers. For purposes of determining whether the BOC interLATA affiliates should be classified as dominant, however, we need to consider only whether a BOC could discriminate against its affiliate's interLATA competitors to such an extent that the affiliate would gain the ability to raise prices by restricting its own output upon entry or shortly thereafter.

112. The 1996 Act contains a number of nondiscrimination safeguards, which we have implemented in the Non-Accounting Safeguards Order and Accounting Safeguards Order. For example, section 272(c)(1) prohibits a BOC, in its dealings with its section 272 affiliate, from ''discriminat[ing] between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards.'' In the Non-Accounting Safeguards Order, we concluded that section 272(c)(1) requires a BOC to provide unaffiliated entities the same goods, services, facilities, and information that it provides to its section 272 affiliate at the same rates, terms, and conditions. We also concluded that a prima facie case of discrimination would exist under section 272(c)(1) if a BOC does not provide unaffiliated entities the same goods, services, facilities, and information that it provides to its section 272 affiliate at the same rates, terms, and conditions.Non-Accounting Safeguards Order at ¶ 212. To rebut the complainant's case, the BOC may demonstrate, among other things, that rate differentials between the section 272 affiliate and unaffiliated entity reflect differences in cost, or that the unaffiliated entity expressly requested superior or less favorable treatment in exchange for paying a higher or lower price to the BOC. *Id.* In addition, we concluded that, to the extent a BOC develops new services for or with its section 272 affiliate, it must develop new services for or with unaffiliated entities in the same manner.

113. Section 272(e) also includes a number of specific nondiscrimination requirements. For example, section

272(e)(1) requires a BOC to ''fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or its affiliates.'' In the Non-Accounting Safeguards Order, we concluded that the term ''requests'' includes, but is not limited to, initial installation requests, subsequent requests for improvement, upgrades or modifications of service, or repair and maintenance of these services. We also concluded that BOCs must disclose to unaffiliated entities information regarding service intervals in which BOCs provide service to themselves or their affiliates. Non-Accounting Safeguards Order at ¶ 241. In the Order, we sought further comment on specific information disclosure requirements that were proposed by AT&T in an ex parte letter filed after the official pleading cycle closed. *Id.* at ¶ 244. This disclosure requirement should promote compliance with section 272(e)(1) and allow competitors to resolve disputes informally rather than using the Commission's formal complaint process.

114. Section 272(e)(2) restricts the ability of a BOC to provide ''facilities, services, or information concerning its provision of exchange access to [its affiliate,] unless [it makes] such facilities, services, or information * * * available to other providers of interLATA services in that market on the same terms and conditions.'' Coupled with existing equal access and network disclosure requirements, this provision will limit the BOCs' ability to discriminate in the provision of such facilities, services, and information.

115. Section 272(e)(3) requires that a BOC charge its affiliate ''an amount for access to its telephone exchange service and exchange access that is no less than the amount [that the BOC charges] any unaffiliated interexchange carriers for such service.'' In the Non-Accounting Safeguards Order, we recognized that this provision serves to constrain a BOC's ability to engage in discriminatory pricing of its exchange and exchange access service.

116. We also find that the structural separation requirements of section 272(b) will constrain a BOC's ability to discriminate against its affiliate's interLATA competitors. As previously noted, we have interpreted the section 272(b)(1) requirement that a section 272 affiliate ''operate independently'' from the BOC to prohibit the joint ownership of transmission and switching facilities by the BOC and its affiliate. This requirement ensures that an affiliate must obtain any such facilities on an arm's length basis pursuant to section 272(b)(5), thereby increasing the transparency of transactions between a BOC and its affiliates. As we observed in the Non-Accounting Safeguards Order, ''[t]ogether, the prohibition on joint ownership of facilities and the nondiscrimination requirements should ensure that competitors can obtain access to transmission and switching facilities equivalent to that which section 272 affiliates receive.''

117. We recognize that the nondiscrimination requirements in the Communications Act are effective only to the extent that they are enforced. To this end, the 1996 Act gives the Commission specific authority to enforce the requirements of section 272 and the other conditions for in-region, interLATA entry incorporated in section 271(d)(3). Section 271(d)(6) provides that ''[i]f at any time after the approval of a [BOC application under section 271(d)(3)], the Commission determines that a [BOC] has ceased to meet any of the conditions required for such approval, the Commission may, after notice and opportunity for a hearing—(i) issue an order to such company to correct the deficiency; (ii) impose a penalty on such company pursuant to title V; or (iii) suspend or revoke such approval.'' In the Non-Accounting Safeguards Order, we concluded that this authority augments the Commission's existing enforcement authority. Section 271(d)(6) also specifies that the Commission must act within 90 days on a complaint alleging that a BOC has failed to meet a condition required for in-region, interLATA approval under section 271(d)(3).

118. In light of the 90-day deadline to act upon a 271(d)(6) complaint, we adopted certain measures in the Non-Accounting Safeguards Order to expedite the processing of these complaints. We also recently initiated a separate proceeding addressing the expedited complaint procedures mandated by this subsection as well as those mandated by other provisions of the 1996 Act. See Amendment of Rules Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers (61 FR 67978 (December 26, 1990)). For example, once a complainant has demonstrated a *prima facie* case that a defendant BOC has ceased to meet the conditions of entry, the burden of production (i.e., coming forward with evidence) will shift to the BOC defendant. By shifting this burden of production, we have placed on the BOC an affirmative obligation to produce evidence and arguments necessary to rebut the complainant's *prima facie* case or face an adverse ruling. The complainant, however, will have the ultimate burden of persuasion throughout the proceeding; that is, to show that the ''preponderance of the evidence'' produced in the proceeding weighs in its favor. Non-Accounting Safeguards Order at ¶ 345. In the Non-Accounting Safeguards Order, we also concluded that, in addressing complaints alleging that a BOC has ceased to meet the conditions required for the provision of in-region interLATA services, we will not employ a presumption of reasonableness in favor of the BOC interLATA affiliate, regardless of whether the BOC or BOC interLATA affiliate is regulated as a dominant or non-dominant carrier. *Id.* at ¶ 351. The presumption of lawfulness given to nondominant carrier rates and practices is employed in the context of complaints alleging violations of sections 201(b) and 202(b), where the complaint must demonstrate that the defendant's rates and practices are ''unjust and unreasonable.'' We found that a presumption of reasonableness is an irrelevant concept in the context of complaints alleging violations of the conditions of interLATA approval in section 271(d)(3), particularly given our interpretation of section 272(c)(1) as an unqualified prohibition on discrimination. *Id.* We believe that these enforcement mechanisms will allow us to adjudicate complaints against the BOCs and BOC interLATA affiliates in a timely manner.

119. We conclude that the statutory and regulatory safeguards discussed above will prevent a BOC from discriminating to such an extent that its interLATA affiliate would have the ability, upon entry or shortly thereafter, to raise the price of in-region, interstate, domestic, interLATA services by restricting its output. We also conclude that imposing dominant carrier regulation on the BOC interLATA affiliates would not significantly aid in the prevention of most types of discrimination. Although the advance tariff filing requirement might help detect certain types of price discrimination, the marginal benefit of such regulation would be outweighed by the burdens such regulation would impose, as discussed above. *See supra* ¶¶ 88–90. Although AT&T expresses concern about the risk of discrimination, it suggests that the Commission should impose stringent non-discrimination requirements and reporting obligations in order to combat this problem. It does not contend that

dominant carrier regulation would help to prevent discrimination. We are not persuaded by Time Warner's assertion that dominant carrier regulation is necessary to ensure that the BOCs comply with their statutory obligation to charge affiliates rates equal to those charged unaffiliated carriers for telephone exchange and exchange access services. Rather, as discussed above, we conclude that the section 272 safeguards, coupled with the expedited enforcement mechanism, should provide an adequate means of ensuring that the BOCs comply with this requirement.

e. Price Squeeze

i. Comments

120. The BOCs generally argue that they do not have the ability to engage in a price squeeze by raising prices because their access prices are regulated. They also note that section 272(e)(3) requires BOCs to charge their affiliates the same access rates they charge unaffiliated carriers. PacTel claims that a true price squeeze would occur only if the price charged by the BOC interLATA affiliate was less than the BOC's marginal cost of access, plus the foregone contribution from that access, plus the affiliate's cost of providing the long distance service. PacTel contends that it would be irrational for a BOC interLATA affiliate to price below this level unless its object was predation, which is not a plausible strategy. On the other hand, according to PacTel, a BOC interLATA affiliate's acceptance of little or no profit in order to expand its market share, by itself, would not be a price squeeze and would not be anticompetitive. NYNEX claims that significant changes to local exchange service and access markets initiated by the Local Competition First Report and Order (61 FR 45476 (August 29, 1996)) make it unreasonable to fear that BOC access pricing could result in its affiliate's attaining long distance market power, particularly in light of the Commission's commitment to undertake and complete access reform within the next year.

121. Non-BOC commenters generally contend that the BOCs will have the incentive and ability to engage in a price squeeze, despite price cap regulation of the BOCs' access services and other applicable safeguards. The Economic Strategy Institute asserts that antitrust and economic literature generally supports the need for regulatory intervention in cases of price squeezes. MCI contends that the BOCs are most likely to exercise market power by assessing excessive prices for exchange access services for all carriers (including the BOCs' interLATA affiliates), and price cap regulation will not prevent this tactic because access rates are already excessive. MFS argues that, as long as a BOC is allowed to provide both essential services and competitive services, and as long as those essential services are priced above cost, a ''vertically integrated'' BOC can drive even more efficient rivals out of the market. MFS and MCI further assert that a price squeeze would not be limited to price increases in access services, but could also arise from the contribution BOCs earn on stimulated demand for access services created by competitors' forced price reductions to match a BOC interLATA affiliate price reduction. MCI claims that such a strategy could seriously harm competition. According to MCI, even if rivals remain in the market, they will be weakened by the cost increases they are forced to absorb, thereby reducing their output and the ''vigors of competition.''

122. LDDS asserts that the structural separation, accounting, and imputation requirements in the Communications Act do not adequately address the BOCs' access cost advantage because: (1) There is no way to ensure that a BOC interLATA affiliate's costs, other than for access, are reflected in its prices; (2) to the extent customers buy bundled local exchange, long distance, and other services from a BOC interLATA affiliate, the BOC interLATA affiliate could effectively evade imputation requirements by passing on its access cost advantage in reduced prices for services not subject to the Commission's direct jurisdiction, such as local exchange and information services; (3) a BOC will have the incentive and ability to favor its interLATA affiliate over its competitors in the provision of bundled local exchange and interLATA services; and (4) a BOC has the ability to discriminate against its affiliate's interLATA competitors on terms other than price.

123. MCI and AT&T argue that requiring cost support data and advance notice periods for tariff filings is important to ensure that the BOC interLATA affiliates are pricing their services above their costs. MFS, however, questions whether regulating BOC interLATA affiliates as dominant firms would be effective in preventing price squeezes. It contends that the only effective mechanisms for preventing this behavior are pricing BOC essential services at economic cost and developing competitive alternatives to the BOCs' essential services.

124. Ameritech disputes arguments that access charges are priced above economic costs and therefore will enable BOC interLATA affiliates to set interLATA rates below cost without incurring a loss. According to Ameritech, any subsidies in access are real costs that the BOC must recover in some manner in order to remain ''whole.'' Ameritech also claims that price squeeze arguments ignore the fact that BOC interLATA affiliates will pay access charges to unaffiliated carriers when they originate or terminate long distance calls out-of-region and that facilities-based incumbent carriers actually have significant cost advantages. Finally, Ameritech disputes the relevance of the price squeeze arguments. According to Ameritech, a BOC interLATA affiliate's ability to gain market share by setting rates below the cost of access would not constitute a basis for classifying the BOC interLATA affiliate as dominant. Ameritech is aware of no legal theory under which such a practice could be considered unreasonable or otherwise unlawful, since consumers would suffer no harm unless the BOC interLATA affiliate could somehow acquire market power from its action. Bell Atlantic and NYNEX claim that advance notice periods for tariff filings and cost support requirements are unnecessary to ensure compliance with the section 272 imputation requirement because the 1996 Act already provides for a biennial audit, which is intended to serve specifically as a check on compliance with the section 272 separation requirements, including the imputation requirement.

ii. Discussion

125. In the Non-Accounting Safeguards NPRM, we noted that, absent appropriate safeguards, a BOC potentially could raise the price of access to all interexchange carriers, including its affiliate. This would cause competing interLATA carriers either to raise their retail interLATA rates in order to maintain the same profit margins or to attempt to preserve their market share by not raising their prices to reflect the increase in access charges, thereby reducing their profit margins. If the competing in-region interLATA service providers raised their prices to recover the increased access charges, the BOC interLATA affiliate could seek to expand its market share by not matching the price increase. In that event, although the BOC interLATA affiliate would achieve lower profit margins than its rivals, all other things being equal, the BOC corporate entity as a whole would receive additional access revenues from unaffiliated carriers due to the access price increase and greater

revenues from the affiliate's interLATA services caused by its increased share of interLATA traffic. If the BOC were to raise its access rates high enough, it would be impossible for interexchange competitors to compete effectively. Thus, the entry of a BOC's affiliate into the provision of in-region, interstate, domestic, interLATA services might give the BOC an incentive to raise its price for access services in order to disadvantage its affiliate's rivals, increase its affiliate's market share, and increase the profits of the BOC overall. Non-Accounting Safeguards NPRM at ¶141. In the Notice, we recognized that the same situation could occur if a BOC failed to pass through to interexchange carriers a reduction in the cost of providing access services, and that price cap regulation would not be effective in eliminating the effect of a price squeeze initiated under these circumstances. *Id.* at ¶141 n.272.

126. We conclude, as discussed in the NPRM, that price cap regulation of the BOCs' access services sufficiently constrains a BOC's ability to raise access prices to such an extent that the BOC affiliate would gain, upon entry or soon thereafter, the ability to raise prices of interLATA services above competitive levels by restricting its own output of those services. *See* NYNEX comments at 57. We also note that the emergence of competition in the provision of exchange access service may also constrain a BOC's ability to raise access prices. *See id.;* SBC Aug. 30, 1996 Reply at 27. Although a BOC may be able to raise its access rates to some extent if those rates are currently below the applicable price cap and could fail to pass along reductions in the cost of access if the productivity factor is too low, we conclude that such an increase would not give a BOC affiliate the ability to raise prices of interLATA services above competitive levels by restricting its own output of those services. We will consider the impact of such a potential increase on competition in the pending access charge reform proceeding. We also note that the ability of competing carriers to acquire access through the purchase of unbundled elements enables them to avoid originating access charges and thus partially protect themselves against a price squeeze. *See* 47 U.S.C. § 252(d)(1)(A)(i). The Commission's pricing rules interpreting section 252(d)(1)(A)(i) are currently under stay by the 8th Circuit Court of Appeals. *Iowa Utilities Board* v. *FCC,* No. 96–3321, 1996 WL 589284 (8th Cir. Oct. 15, 1996) (order granting stay pending judicial review). To the extent that access charges are reformed to more closely reflect economic cost, as is being considered in the access charge reform proceeding, the potential for a price squeeze should be further mitigated.

127. Some commenters assert, however, that a BOC could engage in a price squeeze without raising the price of its access services. These commenters suggest that, because access services are currently priced above economic cost, a BOC interLATA affiliate could set its interLATA prices at or below the BOC's access prices and still be profitable. The affiliate's interLATA competitors would then be faced with the choice of setting their prices at unprofitable levels or losing market share. Several BOCs respond that this would not be a profit-maximizing strategy because the increased revenues they would receive from the affiliate's interLATA services would be offset by a reduction in the access revenues received from unaffiliated carriers. If the affiliate's reduction in interLATA rates sufficiently increased demand, however, it is possible the BOC interLATA affiliate's higher interLATA revenues would more than offset lost access revenues, assuming the affiliate's interLATA competitors do not match the affiliate's price reduction. If, in the alternative, the competitors reduce their interLATA rates to match the BOC interLATA affiliate's reductions, the BOC would receive increased access revenues. In the extreme, such a situation could drive the affiliate's rivals from the market. MCI claims that, even if such a predatory strategy is not successful, the rivals would be weakened by the cost increases they absorb, thereby reducing their output and their ability to compete effectively.

128. We conclude that imposing advance tariffing and cost support data requirements on the BOC interLATA affiliates would not be an efficient means of preventing the BOCs from engaging in such a predatory price squeeze strategy. As previously discussed, advance notice periods for tariff filings could reduce the BOC interLATA affiliates' incentives to reduce their interLATA rates. Furthermore, requiring the BOC interLATA affiliates to file cost support data could discourage them from introducing innovative new service offerings. We also conclude that imposing advance tariff filing and cost support data requirements on the BOC interLATA affiliates would not address LDDS' concern that the BOC interLATA affiliates could effectively evade imputation requirements by passing on their access cost advantage in reduced prices for services not subject to the Commission's jurisdiction, such as local exchange and information services. In addition, we believe that, if the predatory behavior described above were to occur, it could be adequately addressed through our complaint process and enforcement of the antitrust laws, coupled with the biennial audits required by section 272(d), such that the benefits of any protections offered by advance tariffing and cost support data requirements would be outweighed by the enormous administrative burden those requirements would impose on the Commission. A BOC interLATA affiliate that charges a rate for its interLATA services below its incremental cost to provide service would be in violation of sections 201 and 202 of the Communications Act, if such a rate were sustained for an extended period.

129. We also note that other factors constrain the ability of a BOC or BOC interLATA affiliate to engage in a predatory price squeeze. For example, a BOC interLATA affiliate's apparent cost advantage resulting from its avoidance of access charges may be offset by other costs it must incur, such as the cost of interLATA transport, which, at least initially, may be greater than the true marginal cost of interLATA transport for facilities-based interLATA carriers. In addition, a BOC interLATA affiliate will have to pay terminating access charges to LECs other than its BOC parent for calls terminating outside the BOC's region and to competing LECs in the BOC's in-region states. Having to pay such access charges reduces the cost disparity between the BOC interLATA affiliate and competing interexchange carriers. Finally, we note that a price squeeze strategy would give a BOC interLATA affiliate the ability to raise price by restricting its own output only if it is able to drive competitors from the market. As discussed previously, the existence of four nationwide, or near-nationwide, network facilities makes it unlikely that a BOC interLATA affiliate could successfully engage in a predatory strategy. As a result, we conclude that the BOCs or BOC interLATA affiliates will not be able to engage in a price squeeze to such an extent that the BOC interLATA affiliates will have the ability, upon entry or soon thereafter, to raise price by restricting their own output. Thus we do not believe that classifying a BOC's interLATA affiliate as a dominant carrier is necessary or appropriate to constrain the BOC and its affiliate from attempting to execute a predatory price squeeze.

130. We agree with commenters that assert that the risk of the BOCs engaging in a price squeeze will be greatly

reduced when interLATA competitors gain the ability to purchase access to the BOCs' networks at or near cost, and as competition develops in the provision of exchange access services. As noted, we believe that the ability of competing carriers to acquire access through the purchase of unbundled elements enables them to avoid originating access charges and thus partially protect themselves against a price squeeze. Moreover, to the extent that access charges are reformed to more closely reflect economic cost, as is being considered in the access charge reform proceeding, the potential for a price squeeze should be further mitigated.

f. Mergers or Joint Ventures Between Two or More BOCs

i. Background and Comments

131. In the Non-Accounting Safeguards NPRM, we sought comment on what effect, if any, a merger of or joint venture between two or more BOCs should have on our determination whether to classify the interLATA affiliate of one of those BOCs as dominant or non-dominant. Bell Atlantic, contends that the prospect of mergers between BOCs should not have any impact on whether the BOCs are treated as dominant because both parties to such a merger would be entering the long distance market with zero market share and in competition with well established competitors and because the merged company's access business would remain subject to all the same market and regulatory constraints as nonmerged BOCs. Sprint and the New York State Department of Public Service (NYPDS) contend that mergers, acquisitions, and similar combinations by BOCs may require consideration of geographic markets more expansive than a particular BOC's region.

ii. Discussion

132.We conclude that a merger of or joint venture between two or more BOCs should have no direct effect on our determination of whether to classify the interLATA affiliates of one of those BOCs as dominant or non-dominant. Bell Atlantic notes that, even though a merged company's territory would grow, it would continue to be subject to the same regulation currently imposed on the individual companies prior to the merger or joint venture. In the Non-Accounting Safeguards Order, we concluded that, upon completion of a merger between or among BOCs, the in-region states of a merged entity shall include all of the in-region states of each of the BOCs involved in the merger. Non-Accounting Safeguards Order at ¶ 69. We declined, however, to adopt a general rule that would treat the regions of merging BOCs as combined prior to completion of the merger, for the purposes of applying the section 272 separate affiliate and nondiscrimination safeguards. We found that adequate protections against discriminatory and anticompetitive conduct already applied to mergers, acquisitions, and joint ventures among BOCs. Id. Thus, the merged entity would be required to satisfy the requirements of sections 271 and 272 in providing interLATA services originating in those in-region states. We also note that DOJ is currently considering the implications of such mergers and joint ventures from an antitrust perspective.

g. Conclusion

133. Based on the preceding analysis, we conclude that the BOCs' interLATA affiliates will not have the ability, upon entry or soon thereafter, to raise the price of in-region, interstate, domestic, interLATA services by restricting their own output, and, therefore, that the BOC interLATA affiliates should be classified as non-dominant in the provision of those services. We note, however, that we retain the ability to impose some or all of the dominant carrier regulations on one or more of the BOC interLATA affiliates if this proves necessary in the future. As discussed in the NPRM, our experience with regulating the independent LECs' provision of interstate, domestic, interexchange services and the BOCs' provision of enhanced services suggests that our existing safeguards have worked reasonably well and generally have been effective, in conjunction with our regular audits, in deterring the improper allocation of costs and unlawful discrimination. Non-Accounting Safeguards NPRM at ¶ 146; PacTel Aug. 15, 1996 Comments at 65–66 (noting that PacTel has lost significant market share in intraLATA toll services and that Bell Atlantic and NYNEX have not gained significant market share in the provision of interLATA corridor services). We acknowledge, however, that there have been instances in which individual BOCs may have not complied with our non-structural safeguards in providing non-regulated services. *See id.* n. 284. *See* also MCI Aug. 15, 1996 Comments at 67 (referring to the MemoryCall case). We are not persuaded by MCI's argument that the Ninth Circuit's decision in California III (*California* v. *FCC,* 39 F.3d 919, 923 (9th Cir. 1994) (California III). In its Computer III decisions, the Commission removed the separate affiliate requirements applicable to AT&T and the BOCs, provided that they complied with certain nonstructural safeguards intended to guarantee that they offered their regulated network services to competing enhanced service providers on an equal and nondiscriminatory basis. The U.S. Court of Appeals for the Ninth Circuit vacated portions of the Commission's Computer III decisions in three separate decisions leads to the conclusion that we should impose dominant carrier regulation on the BOC interLATA affiliates. As discussed above, section 272 requires the BOCs to provide in-region, interLATA services through structurally separate affiliates. Since section 272's structural separation requirements are akin to those in Computer II, the Ninth Circuit's discussion of whether the Commission had adequately justified its elimination of the Computer II structural separation requirements for BOC enhanced services is not relevant here.

134. We believe that the entry of the BOC interLATA affiliates into the provision of in-region, interLATA services has the potential to increase price competition and lead to innovative new services and market efficiencies. We recognize that, as long as the BOCs retain control of local bottleneck facilities, they could potentially engage in improper cost allocation, discrimination, and other anticompetitive conduct to favor their affiliates' in-region, interLATA services. We conclude, however, that, to the extent dominant carrier regulation addresses such anticompetitive conduct, the burdens imposed by such regulation outweighs its benefits. We therefore see no reason to impose dominant carrier regulation on the BOC interLATA affiliates, given that section 272 contains numerous safeguards designed to prevent the BOCs from engaging in improper cost allocation, discrimination, and other anticompetitive conduct. Section 272(f)(1) of the Communications Act provides that the BOC safeguards set out in section 272, other than those prescribed in section 272(e), shall sunset three years after the date that the BOC affiliate is authorized to provide interLATA telecommunications services unless the Commission extends such three-year period by rule or order. We cannot now predict how competition will develop in local exchange markets nor can we determine at this time what accounting and non-accounting safeguards, if any, will be needed at that time. Accordingly, we recognize that it will be necessary for the Commission to determine what accounting and non-

accounting safeguards, if any, are necessary and appropriate upon expiration of those section 272 safeguards subject to sunset, and whether BOC interLATA affiliates should be classified as dominant or non-dominant in the provision of in-region, interstate, domestic, interLATA services. We emphasize that our decision to accord non-dominant treatment to the BOCs' provision of in-region, interLATA services is predicated upon their full compliance with the structural, transactional, and nondiscrimination requirements of section 272 and our implementing rules. We believe that these safeguards, coupled with other statutory and regulatory safeguards, are sufficient to prevent the BOC interLATA affiliates from gaining the ability, upon entry or shortly thereafter, to raise prices by restricting their output.

3. Classification of BOC InterLATA Affiliates in the Provision of In-Region, International Services

a. Background

135. In the Non-Accounting Safeguards NPRM, we tentatively concluded that we should apply the same regulatory treatment to a BOC interLATA affiliate's provision of in-region, international services as we apply to its provision of in-region, interstate, domestic, interLATA services, assuming the BOC or BOC interLATA affiliate does not have an affiliation with a foreign carrier that has the ability to discriminate against the rivals of the BOC or its affiliate through control of bottleneck facilities in a foreign destination market. Under this proposal, our current framework for addressing issues raised by foreign carrier affiliations would apply to the BOCs' provision of U.S. international services.

b. Comments

136. Most commenters support the Commission's proposal to apply the same regulatory treatment to the BOC interLATA affiliates' provision of in-region, international services as it applies to in-region, interstate, domestic interLATA services. PacTel and US West agree that if the BOC interLATA affiliates should be non-dominant for in-region domestic services, they should be non-dominant for in-region international services, but they further claim that differences in the domestic and international markets suggest that BOC interLATA affiliates should be classified as nondominant for international interLATA services regardless of their classification for domestic services. PacTel agrees that the existing rules governing dominance based on foreign market affiliations should apply to BOC interLATA affiliates as they do to all other international carriers. PacTel suggests, however, that the Commission should ensure that route-by-route dominance filings, based on foreign affiliations, be concluded no later than the grant of a section 271 entry petition.

137. MCI generally agrees with the Commission that a BOC's in-region international service should be treated in a manner similar to its in-region domestic interLATA service. It contends, however, that the BOCs have unique advantages in the international services market as a result of their ''regional focus.'' MCI expresses concern that the BOCs will enter into special arrangements with foreign carriers under which return traffic would be ''groomed''—*i.e.*, the foreign carrier would give the BOC's interLATA affiliate the return traffic that terminates in the BOC's region. MCI contends that, by contrast, non-BOC interexchange carriers would be required to take return traffic to destinations all over the United States and thereby incur higher costs in terminating such traffic. MCI notes that a disproportionate amount of international traffic terminates in the NYNEX and Pacific Bell regions and argues that these BOCs would have an especially lucrative opportunity to obtain groomed traffic. MCI notes that such arrangements may result in lower costs for terminating U.S. inbound traffic, but characterizes these arrangements as ''anticompetitive.'' It urges the Commission, at a minimum, to impose on the BOC interLATA affiliates the same safeguards that it imposed on MCI in the order approving British Telecom's (BT's) initial 20 percent investment in MCI. A number of the BOCs respond that such additional requirements are unnecessary and inappropriate.

c. Discussion

138. We adopt our tentative conclusion that we should apply the same regulatory treatment to a BOC interLATA affiliate's provision of in-region, international services as we apply to its provision of in-region, interstate, domestic, interLATA services. As discussed in the NPRM, the relevant issue in both contexts is whether the BOC interLATA affiliate can exploit its market power in local exchange and exchange access services to raise prices by restricting its own output in another market (the domestic interLATA or international market). We also note that the section 272 safeguards apply equally to the BOCs' in-region, domestic, interLATA and in-region, international services. We find no practical distinctions between a BOC's ability and incentive to use its market power in the provision of local exchange and access services to improperly allocate costs, discriminate against, or otherwise disadvantage unaffiliated domestic interexchange competitors as opposed to international service competitors.

139. In light of our classification of the BOC interLATA affiliates as non-dominant in the provision of in-region, interstate, domestic, interLATA services, we accordingly will classify each BOC interLATA affiliate as non-dominant in the provision of in-region, international services, unless it is affiliated, within the meaning of section 63.18(h)(1)(i) of our rules, with a foreign carrier that has the ability to discriminate against the rivals of the BOC or its affiliate through control of bottleneck services or facilities in a foreign destination market. We will apply section 63.10(a) of our rules to determine whether to regulate a BOC interLATA affiliate as dominant on those U.S. international routes where an affiliated foreign carrier has the ability to discriminate against unaffiliated U.S. international carriers through control of bottleneck services or facilities in the foreign destination market. The safeguards that we apply to carriers that we classify as dominant based on a foreign carrier affiliation are contained in Section 63.10(c) of our rules and are designed to address the incentive and ability of the foreign carrier to discriminate against the rivals of its U.S. affiliate in the provision of services or facilities necessary to terminate U.S. international traffic. Section 63.10(a) of the Commission's rules provides that: (1) Carriers having no affiliation with a foreign carrier in the destination market are presumptively non-dominant for that route; (2) carriers affiliated with a foreign carrier that is a monopoly in the destination market are presumptively dominant for that route; (3) carriers affiliated with a foreign carrier that is not a monopoly on that route receive closer scrutiny by the Commission; and (4) carriers that serve an affiliated destination market solely through the resale of an unaffiliated U.S. facilities-based carrier's switched services are presumptively nondominant for that route. See also Regulation of International Common Carrier Services, ¶¶ 19–24. This framework for addressing issues raised by foreign carrier affiliations will apply to the BOCs' provision of U.S. international

services as an additional component of our regulation of the U.S. international services market.

140. We reject MCI's suggestion that we should impose additional safeguards on the BOC's in-region, international services. We observe, as an initial matter, that all U.S. international carriers are subject to the same prohibition against accepting ''special concessions'' from foreign carriers that we imposed on MCI in the order approving BT's initial 20 percent investment in MCI. The grooming described by MCI would constitute a special concession prohibited by the terms of Section 63.14 of the Commission's rules to the extent the U.S. carrier entered into a grooming arrangement that the foreign carrier did not offer to similarly situated U.S. carriers. *See* 47 CFR Section 63.14 (''[a]ny carrier authorized to provide international communications service * * * shall be prohibited from agreeing to accept special concessions directly or indirectly from any foreign carrier or administration with respect to traffic or revenue flows between the United States and any foreign country served * * * and from agreeing to enter into such agreements in the future * * *.''). A U.S. carrier that negotiates a grooming arrangement with a foreign carrier on a particular route would be required to submit the arrangement to the Commission for public comment and review in circumstances where the arrangement deviates from existing arrangements with other U.S. carriers for the routing and/or settlement of traffic on that route.

141. We are not prepared to rule on this record, however, that the grooming of return traffic (i.e., giving a U.S. carrier the return traffic that terminates in a particular region) in a manner that may ultimately reduce U.S. carrier costs and rates is anticompetitive *per se*. We recently adopted guidelines for permitting in certain circumstances flexible settlement arrangements between U.S. and foreign carriers that do not comply with the International Settlements Policy (ISP). *Regulation of International Accounting Rates* (62 FR 5535 (February 6, 1997)) (*Accounting Rate Flexibility Order*). The ISP requires: (1) The equal division of accounting rates; (2) non-discriminatory treatment of U.S. carriers; and (3) proportionate return of U.S.-bound traffic. The ISP is designed to prevent foreign carriers with market power from obtaining discriminatory accounting rate concessions from competing U.S. carriers. *See generally* Policy Statement on International Accounting Rate Reform (61 FR 11163 (March 19, 1996)). MCI will have ample opportunity to make its arguments, with proper economic support, in the event a BOC interLATA affiliate or any other U.S. international carrier seeks to establish an arrangement for grooming return traffic.

142. We are also unpersuaded that the other conditions imposed in the 20 percent BT investment in MCI are useful or necessary in this case. MCI has not explained how those conditions are relevant to the BOC interLATA affiliates' provision of in-region international service on routes where they have no investment interest in or by a foreign carrier. The conditions imposed on MCI apply to its operations only on the U.S.-U.K. route, where we found that BT controlled bottleneck local exchange and exchange access facilities on the U.K. end, and they were targeted to limiting the potential risks of undue discrimination between a U.S. carrier (MCI) and a foreign carrier with which the U.S. carrier has an equity relationship (BT). We note that MCI and BT have requested Commission approval of the transfer of control to BT of licenses and authorization held by MCI subsidiaries, which would occur as a result of the proposed merger of MCI and BT. *See* MCI Communications Corporation and British Telecommunications PLC Seek FCC Consent for Proposed Transfer of Control, GN Docket No. 96–245, Public Notice, DA 96–2079 (rel. Dec. 10, 1996). To the extent a BOC has an equity interest in a foreign carrier or the foreign carrier has such an interest in a BOC on a particular U.S. international route, it is of course subject to Section 63.10 of our rules. This rule sets forth the framework for imposing certain safeguards on U.S. carriers that are affiliated with foreign carriers that have the ability to discriminate in the favor of their U.S. affiliate through the control of bottleneck services or facilities.

B. Classification of Independent LECs

143. For the reasons discussed below, we conclude that the requirements established in the Fifth Report and Order, together with other existing rules, sufficiently limit an independent LEC's ability to exercise its market power in the local exchange and exchange access markets so that the LEC cannot profitably raise and sustain the price of in-region, interstate, domestic, interexchange services by restricting its own output. We, therefore, classify independent LECs as non-dominant in the provision of these services. We recognize, however, that an independent LEC conceivably could use its control over local bottleneck facilities to allocate costs improperly, engage in unlawful discrimination, or attempt to price squeeze. We, therefore, impose the Fifth Report and Order separation requirements on all incumbent independent LECs that provide in-region, interstate, domestic, interexchange services. We further conclude that we should apply the same regulatory classification to the independent LECs' provision of in-region, international services that we adopt for their provision of in-region, interstate, domestic, interexchange services.

1. Classification of Independent LECs in the Provision of In-Region, Interstate, Domestic, Interexchange Services

a. Background

144. In the Competitive Carrier Fourth Report and Order, the Commission determined that interexchange carriers affiliated with independent LECs would be regulated as non-dominant carriers. In the Competitive Carrier Fifth Report and Order, the Commission clarified the definition of ''affiliate'' (The Commission defined a carrier affiliated with an independent LEC as ''a carrier that is owned (in whole or in part) or controlled by, or under common ownership (in whole or in part) or control with, an exchange telephone company.'' Fifth Report and Order, 98 FCC 2d at 1198, ¶ 9.) and identified three separation requirements that the affiliate must meet in order to qualify for non-dominant treatment. These requirements are that the affiliate: (1) Maintain separate books of account; (2) not jointly own transmission or switching facilities with the LEC; and (3) acquire any services from its affiliated exchange company at tariffed rates, terms, and conditions. The Commission further concluded that, if the LEC provides interstate, interexchange service directly, rather than through an affiliate, or if the affiliate fails to satisfy the three requirements, those services would be subject to dominant carrier regulation. The Commission observed that these separation requirements would provide some ''protection against cost-shifting and anticompetitive conduct'' by an independent LEC that could result from its control of local bottleneck facilities.

145. In the Non-Accounting Safeguards NPRM, we sought comment on how we should classify independent LECs' provision of in-region, interstate, interexchange services. We also sought comment on whether, absent the Fifth Report and Order separation requirements, an independent LEC would be able to use its market power

in local exchange and exchange access services to disadvantage its interexchange competitors to such an extent that it would quickly gain the ability profitably to raise and sustain the price of in-region, interstate, domestic interexchange service significantly above competitive levels by restricting its output. We suggested that, regardless of our determination of whether independent LECs should be classified as dominant or non-dominant, some level of separation may be necessary between an independent LEC's interstate, domestic, interexchange operations and its local exchange operations to guard against cost misallocation, unlawful discrimination, or a price squeeze. In addition, we sought comment on whether the existing Fifth Report and Order requirements are sufficient safeguards to apply to independent LECs to address these concerns.

b. Comments

146. Commenters generally suggest two different schemes for regulating independent LECs' provision of in-region, interstate, interexchange services. First, independent LECs and others argue that the Commission should find that independent LECS are non-dominant in their provision of in-region, interstate, interexchange services, and that the Fifth Report and Order requirements are no longer necessary. According to these commenters, the Commission should eliminate the existing Fifth Report and Order separate affiliate requirement as a precondition for non-dominant classification. In support of their contention that independent LECs should be regulated as non-dominant in their provision of in-region, interstate, interexchange services, these commenters argue that: (1) independent LECs do not have market power in the in-region, interstate, interexchange market based on the market power factors that the Commission applied in reclassifying AT&T as a non-dominant interexchange carrier; (2) dominant carrier regulation would reduce competition in the long distance market; (3) imposition of the Fifth Report and Order separations requirements on independent LECs' provision of in-region, interstate, interexchange service is inconsistent with the 1996 Act; and (4) the real costs of requiring any level of separation for independent LECs far outweighs the speculative benefits of separation.

147. In addition, these commenters assert that independent LECs have neither the ability nor the incentive to leverage the market power resulting from their control over local facilities to impede competition in the interexchange market. These commenters argue that their inability to leverage control over local facilities is attributable to several factors, including provisions of the 1996 Act that are designed to open the local market to competition; the geographic dispersion and largely rural nature of independent LEC service territories; cost accounting safeguards, price caps on access services, and regulations to prevent non-price discrimination in the quality of access services provided; and the interexchange carriers' increasing emphasis on constructing their own facilities.

148. GTE contends that the Commission is legally prohibited from imposing separation requirements on independent LECs in general, and specifically on GTE. GTE argues that section 601(a)(2) of the 1996 Act, which removes the restrictions and obligations imposed by the GTE Consent Decree, prohibits the Commission from imposing any separate affiliate requirements on GTE. In addition, GTE asserts that section 271 and 272 added by the 1996 Act, apply only to BOCs, therefore, these sections reflect Congress' determination that there is no need to extend the separation requirements of section 272 to independent LECs or GTE. Moreover, GTE maintains that, if the Commission continues to require separate affiliates, it should modify the Fifth Report and Order requirements to allow the affiliate to take exchange access services not only by tariff, but also on the same basis as other carriers that have negotiated interconnection agreements pursuant to section 251.

149. Sprint argues that the Fifth Report and Order separation requirements are no longer necessary because those requirements have been incorporated into the Commission's cost allocation rules.

150. In contrast, interexchange carriers, except Sprint, and competing access providers generally argue that the Commission not only should retain the Fifth Report and Order separation requirements as a condition for non-dominant treatment of independent LEC provision of in-region, interstate, interexchange services, but also should impose additional safeguards to prevent independent LECs from engaging in anticompetitive behavior by virtue of their control over bottleneck facilities.

151. Teleport argues that the Commission should impose quarterly reporting requirements that will enable competitors and the Commission to analyze objectively the independent LEC's service record and to compare service to competitors with service to itself or its affiliates. Teleport also recommends that the Commission implement an expedited complaint process to address service quality complaints by competing carriers.

152. AT&T argues that the Fifth Report and Order and our dominant carrier requirements are inadequate to address independent LECs' potential abuse of market power. AT&T contends that the Commission should, therefore, impose the same structural separation and non-discrimination requirements on independent LECs that we impose on BOCs, as well as a modified form of dominant carrier regulation. AT&T also asks the Commission to make clear that equal access requirements apply to independent LECs, including the requirement that a customer seeking local service from such carriers be offered the options for interexchange service in a neutral fashion. AT&T asserts that the Fifth Report and Order allows joint and integrated design, planning, and provisioning of exchange and interexchange services, which inherently discriminates against other carriers and permits the costs of long distance operations to be misallocated to monopoly ratepayers. In addition, AT&T, challenging SNET's claim that geographic rate averaging would mitigate the effects of any unilateral increase in access charges, asserts that access charges are far above cost, and that this enables LECs to impose a price squeeze in the interexchange market.

153. MCI asserts that, given the types of abuses that control over bottleneck facilities allows, it is necessary to review independent LECs' in-region, interexchange rates to ensure that they fully cover independent LEC tariffed access and other costs. MCI further contends that enforcement of the imputation requirement is necessary to protect against an independent LEC's adopting a price squeeze strategy, and maintains that the Commission's cost accounting rules and after-the-fact audits are insufficient to ensure that LEC interLATA rates cover imputed access costs. Like AT&T, MCI claims that, because an independent LEC's actual access costs are much lower than the tariffed rates, an independent LEC could adopt a successful price-squeeze strategy against its interexchange rivals. MCI adds that an independent LEC may be able to increase its total profits by reducing the price of its interLATA service, thereby increasing the demand for its switched access service.

154. The Commonwealth of the Northern Mariana Islands (CNMI) asserts that GTE-owned Micronesian

Telecommunications Corporation (MTC), which is the sole provider of both local exchange and exchange access services and a major provider of domestic and international off-island services in the Commonwealth, currently provides domestic, interexchange services on a nondominant basis, even though it lacks a separate subsidiary. CNMI asks the Commission to recognize explicitly that MTC must comply with the Fifth Report and Order separation requirements or comply with the Commission's dominant carrier requirements. CNMI also asks the Commission to devise specific safeguards applicable to MTC's monopoly operations in the Commonwealth, such as a strengthened form of the Fifth Report and Order separation requirements. GTE disputes CNMI's claims that MTC is providing domestic interexchange services directly as a non-dominant carrier contrary to the requirements of the Commission's Fifth Report and Order and 1985 International Competitive Carrier Order (50 FR 48191 (November 22, 1985)). GTE asserts that, although MTC provides domestic exchange, exchange access and interexchange services on an integrated basis, its domestic interexchange services are provided on a dominant basis. GTE emphasizes that neither the Commission nor any court has found that MTC has engaged in any misconduct of the nature alleged by CNMI. GTE also asserts that imposing additional regulatory requirements on MTC, which serves 16,000 access lines in a rural location, is clearly contrary to the deregulatory spirit and intent of the 1996 Act.

155. CNMI also asks the Commission to clarify that MTC's service between the Commonwealth and the U.S. mainland and other U.S. points is a domestic service, and thus requires domestic tariffing and compliance with the strengthened form of the Fifth Report and Order separation requirements. GTE responds that, because the Northern Mariana Islands have long been considered an international point for service to and from the United States, MTC currently tariffs its service to the U.S. mainland and other U.S. points in its international tariff. GTE contends that, pursuant to the Commission's Rate Integration Order, the integration of the Islands into domestic rate schedules is not required to occur until August 1, 1997. GTE states that these offshore locations will continue to be tariffed as international points for rate purposes until that time.

c. Discussion

i. Traditional Market Power Factors (Other Than Control of Bottleneck Facilities)

156. As we noted above, dominant carrier regulation is generally designed to prevent a carrier from raising prices by restricting its own output of interexchange services. An independent LEC, therefore, should be classified as dominant in the provision of in-region, interstate, interexchange services only if it has the ability to raise prices by restricting its output of these services.

157. We find that the traditional market power factors (excluding bottleneck control) suggest that independent LECs do not have the ability profitably to raise and sustain prices above competitive levels by restricting their output. Based on an analysis of these traditional market power factors—market share, supply and demand substitutability, cost structure, size, and resources—we conclude that independent LECs do not have the ability to raise prices by restricting their own output. First, independent LECs generally have minimal market share, compared with the major interexchange carriers, which suggests they could not profitably raise and sustain interexchange prices above competitive levels. Second, the same high supply and demand elasticities that the Commission found constrained AT&T's pricing behavior also apply to independent LECs. Finally, we find that low entry barriers in the interexchange market and widespread resale of interexchange services constrain independent LECs from exercising market power. We conclude, therefore, that in light of the Fifth Report and Order requirements independent LECs do not have the ability to raise prices above competitive levels by restricting their output of interexchange services.

ii. Control of Bottleneck Access Facilities

158. As we previously found with regard to the BOCs, traditional market power factors are not conclusive in determining whether independent LECs should be classified as dominant in the provision of in-region, interstate, interexchange services. We noted in the Non-Accounting Safeguards NPRM that an independent LEC may be able to use its control over local exchange and exchange access services to disadvantage its interexchange competitors to such an extent that it will quickly gain the ability profitably to raise the price of in-region, interstate, interexchange services above competitive levels. We therefore must examine whether an independent LEC could improperly allocate costs, discriminate against its in-region competitors, or engage in a price squeeze to such an extent that the independent LEC would have the ability to raise prices for interstate, interexchange services by restricting its output. We find, as we did with regard to BOCs, that independent LECs providing in-region, interstate, interexchange services do not have the ability to engage in these actions to such an extent that they would have the ability to raise prices by restricting output. For the reasons discussed with regard to the BOCs, we thus conclude that dominant carrier regulation of independent LEC provision of in-region, interstate, interexchange services is inappropriate.

159. We disagree, however, with those commenters that assert that independent LECs have no ability to use their bottleneck facilities to harm interexchange competition. We believe that, absent appropriate and effective regulation, independent LECs have the ability and incentive to misallocate costs from their in-region, interstate, interexchange services to their monopoly local exchange and exchange access services within their local service region. Improper allocation of costs by an independent LEC is a concern because such action may allow the independent LEC to recover costs incurred by its affiliate in providing in-region, interexchange services from subscribers to the independent LEC's local exchange and exchange access services. As we stated previously, this can distort price signals in those markets and, under certain circumstances, may give the affiliate an unfair advantage over its competitors. We believe that the improper allocation of costs may cause substantial harm to consumers, competition, and production efficiency. Such cost misallocations may be difficult to detect and are not necessarily deterred by price cap regulation.

160. Furthermore, an independent LEC, like a BOC, potentially could use its market power in the provision of exchange access service to advantage its interexchange affiliate by discriminating against the affiliate's interexchange competitors with respect to the provision of exchange and exchange access services. This discrimination could take the form of poorer quality interconnection or unnecessary delays in satisfying a competitors' request to connect to the independent LEC's network.

161. We are also concerned that an independent LEC could potentially

initiate a price squeeze to gain additional market share. Absent appropriate regulation, an independent LEC could potentially raise the price of access to all interexchange carriers which would cause competing in-region carriers to either raise their retail rates to maintain the same profit margins or attempt to maintain their market share by not raising their prices to reflect the increase in access charges, thereby reducing their profit margins. If the competing in-region, interexchange providers raised their prices to recover the increased access charges, the independent LEC could seek to expand its market share by not matching the price increase. The independent LEC could also set its in-region, interexchange prices at or below its access prices. The independent LEC's in-region competitors would then be faced with the choice of lowering their retail rates, thereby reducing their profit margins, or maintaining their retail rates at the higher price and risk losing market share.

162. As we explained earlier, the Fifth Report and Order identified three separation requirements with which an independent LEC must comply in order to qualify for non-dominant treatment. These requirements are that the affiliate providing in-region, interstate, interexchange services must: (1) maintain separate books of account; (2) not jointly own transmission or switching facilities with the LEC; and (3) acquire any services from its affiliated exchange companies at tariffed rates, terms, and conditions.

163. We conclude that, although an independent LEC's control of exchange and exchange access facilities may give it the incentive and ability to engage in cost misallocation, unlawful discrimination, or a price squeeze, the Fifth Report and Order requirements aid in the prevention and detection of such anticompetitive conduct. We, therefore, conclude that we should retain the Fifth Report and Order separation requirements. More specifically, separate books of account are necessary to trace and document improper allocations of costs or assets between a LEC and its long-distance affiliate as well as discriminatory conduct. In addition, the prohibition on jointly-owned facilities will reduce the risk of improper cost allocations of common facilities between the independent LEC and its interexchange affiliate. The prohibition on jointly owned facilities also helps to deter any discrimination in access to the LEC's transmission and switching facilities by requiring the affiliates to follow the same procedures as competing interexchange carriers to obtain access to those facilities. Finally, we conclude that requiring services to be taken at tariffed rates, or as discussed below, on the same basis as requesting carriers that have negotiated interconnection agreements pursuant to section 251, aids in preventing a LEC from discriminating in favor of its long distance affiliate, and reduces somewhat the risk of a price squeeze to the extent that an affiliate's long distance prices are required to exceed their costs for tariffed services.

164. We agree that we should modify the third Fifth Report and Order requirement to allow independent LECs to take exchange services not only by tariff, but also on the same basis as requesting carriers that have negotiated interconnection agreements pursuant to section 251. GTE contends that, because under the Commission's current rules, LECs must make interconnection agreements available to other carriers, affiliated carriers should be able to obtain services under such terms as well. 47 CFR 51.809. Section 252(i) states as follows:

> (i) Availability to Other Telecommunications Carriers.—A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement. 47 U.S.C 252(i).

The Commission's pricing rules and interpretation of section 252(i) are currently under stay by the 8th Circuit Court of Appeals. *Iowa Utilities Board* v. *FCC,* No. 96–3321 (8th Cir. October 15, 1996) (Order granting stay pending judicial review). In the Non-Accounting Safeguards Order, we concluded that section 272 does not prohibit a BOC interLATA affiliate from providing local exchange services in addition to interLATA services. We also found in that Order that section 251 does not place any restrictions on which telecommunications carriers may qualify as requesting carriers. We concluded in the Non-Accounting Safeguards Order, therefore, that BOC section 272 affiliates should be permitted to purchase unbundled elements under section 251(c)(3) of the Communications Act and telecommunications services at wholesale rates under section 251(c)(4) from the BOC on the same terms and conditions as other competing local exchange carriers. We find no basis for concluding that Congress intended to treat an incumbent LEC differently from any other requesting telecommunications carrier. Accordingly, in addition to taking exchange services by tariff, the LEC may alternatively take unbundled network elements or exchange services for the provision of a telecommunications service, subject to the same terms and conditions as provided in an agreement approved under section 252 to which the independent LEC is a party.

165. As argued by many commenters, independent LECs have been providing in-region, interstate, interexchange services on a separated basis with no substantiated complaints of denial of access or discrimination. The Fifth Report and Order separation requirements have been in place for over ten years. During that time, we have received few complaints from independent LECs about the requirements themselves. Moreover, we previously determined that the Fifth Report and Order requirements are not overly burdensome. As we stated in the Interim BOC Out-of-Region Order, the separation requirements of the Fifth Report and Order require that the LEC interexchange affiliate be a separate legal entity. We do not, however, require actual ''structural separation.'' Thus, as we stated in the Interim BOC Out-of-Region Order, ''except for the ban on joint ownership of transmission and switching facilities,'' the LEC and the interexchange affiliate ''will be able to share personnel and other resources or assets.''

166. We are not persuaded by the arguments made by Citizens and USTA that the separate affiliate requirement prevents independent LECs from realizing efficiency gains though the use of joint resources. While joint ownership of transmission and switching facilities by a LEC and its affiliate is not permitted by our rules, the use of transmission and switching facilities by the other is permitted. The affiliate can contract for use of the LEC's transmission and switching facilities at tariffed rates or on the same basis as requesting carriers that have negotiated interconnection agreements pursuant to section 251, and thereby continue to benefit from economies of scope. Furthermore, we conclude that the separate books of account requirement and the requirement that the affiliate obtain LEC services at tariffed rates are not overly burdensome. As we explained in the Interim BOC Out-of-Region Order, ''the separate books of account requirement refers to the fact that, as a separate legal entity, the affiliate must maintain its own books of account as a matter of course.'' Moreover, as we stated previously, in addition to taking exchange services by tariff, to the extent that the independent

LEC affiliate meets the requirements of 251, the LEC affiliate may alternatively take unbundled network elements or exchange services subject to the same terms and conditions as provided in an agreement approved under section 252 to which the independent LEC is a party.

167. While we recognize that the Fifth Report and Order requirements impose some regulatory burdens, we find that these burdens are not unreasonable in light of the benefits these requirements yield in terms of protection against improper cost allocation, unlawful discrimination, and price squeezes. We conclude that continued imposition of the Fifth Report and Order separation requirements is necessary to prevent and detect any anticompetitive conduct that may arise as a result of an independent LEC's control of bottleneck facilities.

168. We reject GTE's contention that the 1996 Act prohibits the Commission from imposing structural safeguards on GTE, or on any other independent LEC. We find no reasonable basis for inferring from section 601, or any other provision in the 1996 Act, that Congress intended to eliminate the Fifth Report and Order requirements or to repeal by implication our authority to impose on independent LECs separation requirements that we deem necessary to protect the public interest consistent with our statutory mandates. To the contrary, section 601(c)(1) of the 1996 Act provides that we are not to presume that Congress intended to supersede our existing regulations unless expressly so provided. Section 601(c) provides as follows:

> (c) Federal, State and Local Law.—
> (1) No Implied Effect.—This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments. Telecommunications Act of 1996, Public Law 104–104, sec. 601(c), 110 Stat. 56, 143 (to be codified as a note following 47 U.S.C. § 152).

Furthermore, section 601(a)(2) of the 1996 Act deals solely with a judicial decree, not the Commission's regulations; therefore, GTE's argument is frivolous.

169. We are also not persuaded by Sprint's arguments that the Fifth Report and Order requirements are no longer necessary because other Commission requirements, such as the Commission's access charge rules, imputation requirements, and cost allocation and affiliate transaction rules, prevent anticompetitive conduct by an independent LEC in providing in-region, interstate, interexchange services. While these other requirements have significant beneficial effects, we find that these regulations alone are not an adequate substitute for the Fifth Report and Order separation requirements. As previously discussed, the prohibition against jointly owned transmission and switching facilities ensures that the affiliate obtains such facilities on an arm's length basis. This requirement also helps to ensure that all competing in-region providers have the same access to provisioning of transmission and switching as that provided to the independent LEC's affiliate. There is nothing in the Commission's rules that otherwise prohibits joint ownership of switching and transmission facilities. Although Sprint contends that we should impose this prohibition by modifying the cost allocation rules, such a prohibition is possible only if a LEC provides interexchange service through a separate affiliate, as required by the Fifth Report and Order requirements. In addition, as stated previously, the Fifth Report and Order requirement that the affiliate maintain separate books of account is necessary to trace and document improper allocations of costs or assets between a LEC and its long distance affiliate and to detect unlawful discrimination in favor of the affiliate. The historical purpose for the requirement that the affiliate acquire any services from its affiliated exchange companies at tariffed rates, terms, and conditions was to prevent the LEC from discriminating in favor of its long distance affiliate. The Commission recently reconfirmed the need for such a requirement when it applied the affiliate transaction rules to all transactions between incumbent LECs and their affiliates. We believe that the Commission's access charge rules, imputation requirements, and cost allocation and affiliate transaction rules continue to serve important purposes. We conclude, however, that the Fifth Report and Order requirements are also necessary under these circumstances to safeguard further ratepayers against cost-shifting, discrimination, and price squeezes.

170. We reject the arguments that we should impose additional requirements on independent LECs, including section 272 requirements, certain aspects of dominant carrier regulation, or any other requirements. Independent LECs tend to be more geographically dispersed and their service territories are largely rural in nature, therefore, they generally serve areas that are less densely populated than BOC services areas. In addition, because the service areas of independent LECs tend to be smaller than the service areas of the BOCs, on average, independent LECs have fewer access lines per switch than BOCs and provide relatively little interexchange traffic that both originates and terminates in their region. We conclude, therefore, that independent LECs are less likely to be able to engage in anticompetitive conduct than the BOCs and that applying the section 272 requirements to independent LECs would be overly burdensome. The Fifth Report and Order requirements appear to balance these competing concerns; they address cost shifting and discrimination, but do not appear to be overly burdensome. Although the independent LECs assert that these requirements increase their costs, none of them has provided specific evidence to support this claim, much less to demonstrate that these additional costs outweigh the benefits.

171. As previously stated, we conclude that we should not apply dominant carrier regulation to independent LECs. The dominant carrier regulation that AT&T and MCI recommend is not necessary to prevent, nor effective in detecting improper cost allocation, unlawful discrimination, price squeezes, or other anticompetitive conduct. The benefits of dominant carrier regulation are outweighed by the burdens imposed on independent LECs. We also reject MCI's argument that we should maintain full dominant carrier regulation in order to enforce effectively the Commission's imputation requirements and to prevent independent LECs from engaging in a price squeeze strategy. As we stated previously, we believe that such predatory behavior can be adequately addressed through our complaint process and enforcement of the antitrust laws. Moreover, we note that the potential for a price squeeze will be further mitigated as access charges are reformed to reflect cost.

172. Furthermore, we confirm that the equal access restrictions apply to independent LECs. Under the MFJ the BOCs were required to ''provide to all interexchange carriers and information service providers exchange access, information access and exchange services for such access on an unbundled, tariffed basis, that is equal in type, quality, and price to that provided to AT&T and its affiliates.'' Equal access includes the nondiscriminatory provision of exchange access services, dialing parity, and presubscription of interexchange carriers. Exchange access services included, but were not limited to, ''provision of network control signalling, answer supervision,

automatic calling number identification, carrier access codes, directory services, testing and maintenance of facilities, and the provision of information necessary to bill customers.'' GTE became subject to similar requirements in 1984, and in 1985 the Commission imposed requirements on independent LECs similar to those imposed on GTE. As we stated in the Non-Accounting Safeguards Order, section 251(g) added by the 1996 Act preserves the equal access requirements in place prior to the passage of the Act, including obligations imposed by the MFJ and any commission rules. We do not decide at this time, however, whether the allegations AT&T raises regarding SNET's alleged pre-subscribed interexchange carrier (PIC) freeze constitutes a violation of the Commission's equal access requirements. AT&T or any other carrier, if it deems appropriate, can file a complaint with the Commission raising this allegation in the proper context. We note that on July 24, 1996, MCI filed an informal complaint with the Commission against SNET regarding PIC-freeze disputes. Letter from MCI to John Muleta, Chief, Enforcement Division, Common Carrier Bureau (July 24, 1996), Informal Complaint No. IC96–09734 (requesting the Commission to conclude that SNET's solicitations authorizing SNET to protect long distance customers from being switched without express consent violate section 201(b) and 251 of the 1996 Act.) In addition, on September 27, 1996, AT&T filed a letter with the Enforcement Division requesting the Commission to establish procedures under which neutral third parties administer PIC protection. Letter from AT&T to John Muleta, Chief, Enforcement Division, Common Carrier Bureau (Sept. 27, 1996).

173. Based on the foregoing, we conclude that we should require independent LECs to provide in-region, interstate, interexchange services through a separate affiliate that satisfies the Fifth Report and Order separation requirements. We further conclude that, in light of our finding that independent LECs do not have the power to raise and sustain interexchange rates above competitive levels, it would be inconsistent with our analysis to allow independent LECs to choose whether to be regulated as a dominant carrier when providing in-region, interstate, domestic interexchange services. We are aware, however, of three independent LECs, Union Telephone Company (of Wyoming) (Union), GTE Hawaiian Tel., and MTC, that currently provide interexchange services on an integrated basis subject to dominant carrier regulation.

We recognize that the costs of complying with the Fifth Report and Order separation requirements faced by a going concern could be greater than the costs of complying with these requirements for independent LECs that are currently providing these services on a separated basis. Accordingly, Union, GTE Hawaiian Tel., MTC, and any other independent LEC that is currently providing interexchange service on an integrated basis subject to dominant carrier regulation shall have one year from the date of release of this Order to comply with the Fifth Report and Order separation requirements. This does not affect the requirement that these providers integrate rates across their affiliates. See Rate Integration Order, 11 FCC Rcd 9598 (¶ 69). Until that time, the Commission will continue to regulate these independent LECs as dominant carriers. The record in this proceeding does not reflect special circumstances necessary for a waiver of one or more of these requirements. To the extent that special circumstances exist, however, independent LECs may petition us to establish the necessity of a waiver of the Fifth Report and Order requirements.

174. Because section 3(40) of the Communications Act defines a state to include the ''Territories and possessions'' of the United States, CNMI is a state for purposes of domestic telecommunications regulation. In our Rate Integration Order, we stated that, in making the section 254(g) of the Communications Act rate integration provision applicable to interstate interexchange services provided between the ''states,'' as defined by section 153(40) of the Communications Act, Congress made rate integration applicable to interexchange services provided between the contiguous forty-eight states and U.S. possessions and territories, including CNMI. In the Rate Integration Order, we required providers of interexchange services between the Northern Mariana Islands and the contiguous forty-eight states to do so on an integrated basis with other interexchange services they provide by August 1, 1997. MTC and all other carriers providing off-island services between CNMI and other states are required to comply with these requirements. We find no basis in the record of this proceeding to amend these requirements. We further note that, although our Rate Integration Order does not require providers of interexchange service to integrate services offered to subscribers in the Commonwealth until August 1, 1997, this does not affect our finding that, if MTC continues to provide in-region, interstate, interexchange service directly, it must continue to comply with our dominant carrier requirements prior to that date.

175. We find no basis on the record in this proceeding to impose additional requirements on MTC's provision of in-region, interstate, domestic, interexchange service, beyond those applied in this Order. To the extent that CNMI or any other petitioner can demonstrate that MTC has violated our rules, we encourage parties to file a petition asking the Commission to impose additional requirements through a petition for declaratory ruling or a complaint filed pursuant to section 208 of the Communications Act.

2. Application of Fifth Report and Order Separation Requirements to Incumbent Independent LECs

a. Background

176. In the Non-Accounting Safeguards NPRM, we tentatively concluded that, because an independent LEC's control of local exchange and exchange access facilities is our primary rationale for imposing a separate affiliate requirement on independent LECs, we should limit application of any separation requirements that we adopt in this proceeding to incumbent LECs that control local exchange and exchange access facilities. For purposes of determining which independent LECs are ''incumbent,'' we proposed to use the definition of ''incumbent local exchange carrier'' contained in section 251(h) of the Communications Act. Section 251(h) provides that a LEC is an incumbent LEC, with respect to a particular area, if: (1) the LEC provided telephone exchange service in that area on the date of enactment of the 1996 Act (February 8, 1996), and (2) the LEC was deemed to be a member of NECA on the date of enactment or the LEC became a successor or assign of a NECA member after the date of enactment.

b. Comments

177. AT&T agrees with the tentative conclusion that only those independent LECs that control local exchange or exchange access facilities should be subject to the requirements adopted in this proceeding and that the Commission should rely on the definition of ''incumbent local exchange carrier'' provided in 47 U.S.C. 251(h).

178. NTCA, on the other hand, contends that the Commission should treat new entrants no differently than it treats small incumbent LECs because

new LEC entrants that provide in-region interexchange services are free to, and have in fact, built or acquired control of local exchange access facilities.

c. Discussion

179. We adopt our tentative conclusion that the Fifth Report and Order separation requirements should be imposed only on incumbent independent LECs that control local exchange and exchange access facilities. We believe this conclusion is consistent with the 1996 Act, which provides different regulatory treatment for incumbent and non-incumbent LECs. This different treatment generally imposes fewer regulatory requirements on non-incumbent LECs, which we believe indicates Congress's view that such carriers are unable, at this time, to affect competition adversely, and therefore, are unable to generally harm consumers through unreasonable rates. We also believe that it would be premature to impose such regulation on competitive LECs when they possess little, if any, market power in the local exchange at this time. By limiting application of the separation requirements to incumbent independent LECs that control local exchange and exchange access facilities, we avoid imposing unnecessary regulation on new entrants in the local exchange market, such as neighboring LECs, interexchange carriers, cable television companies, and commercial mobile radio service providers, some of which may be small entities, thus facilitating market entry and the development of competition in the in-region, interstate, domestic, interexchange market.

3. Application of Fifth Report and Order Separation Requirements to Small or Rural Incumbent Independent LECs

a. Background

180. In the Non-Accounting Safeguards NPRM, we sought comment on whether there is some minimum size of independent LECs below which the separation requirements should not apply. We noted that, in principle, the size of a LEC will not affect its incentives to improperly allocate costs between its monopoly services and its competitive services, but that for small or rural independent LECs, the benefits to ratepayers of a separate affiliate requirement may be less than the costs imposed by such a requirement.

b. Comments

181. Several commenters contend that we should exempt certain small or rural independent LECs (e.g., non-Class A LECs or LECs serving less than two percent of the nation's access lines) from any separation requirements that are retained, because the costs of imposing the separations requirements on small carriers may outweigh the likely benefits. Several commenters argue that small incumbent LECs lack the market power to engage in anticompetitive conduct that is harmful to their interexchange rivals. Sprint argues that its local operations have little ability and incentive to engage in anticompetitive conduct, since its service territories are widely dispersed and largely rural.

182. GTE and Bell Atlantic argue that there is no economic basis for exempting small or rural independent LECs from the separation requirements imposed in this Order, especially given the increasing competition in local exchange and exchange access markets throughout the country. GTE argues that all independent LECs, small and large, generally serve areas that are less densely populated than BOC service areas, have fewer access lines per switch on average, and provide relatively small volumes of interexchange traffic that originates and terminates in their region.

c. Discussion

183. We conclude that we should not exempt any independent LECs from the Fifth Report and Order requirements based on their size or rural service territory because neither a carrier's size nor the geographic characteristics of its service area will affect its incentives or ability to improperly allocate costs or discriminate against rival interexchange carriers. Commenters favoring such an exemption provide no persuasive evidence that small or rural independent LECs that are not currently providing in-region interexchange service on an integrated basis subject to dominant carrier regulation would be adversely affected by continuation of the Fifth Report and Order separation requirements or that the safeguards are unnecessary for such carriers. Although suggested by several commenters, a rule that exempted all LECs with less than 2 percent of the nation's access lines would essentially eviscerate our regulation of independent LECs because it would exempt all 1100 independent LECs except the GTE companies (approximately 12 percent) and the Sprint/United companies (approximately 4 percent). Industry Analysis Division, Statistics of Communications Common Carriers 1996/96, (Com. Car. Bur. Dec. 1996), Tables 1.1, 2.3, and 2.10. Accordingly, we will continue to apply the Fifth Report and Order separation requirements to all independent LECs, regardless of size. As previously noted, an independent LEC may seek a waiver of the Fifth Report and Order requirements on the basis of special circumstances. *See supra* ¶ 173. We note, however, that a petitioner will face a heavy burden in demonstrating the need for such a waiver. Finally, we note that, although NTCA argues that the separation requirements may cause small companies to lose benefits in the form of name recognition and good will, the Fifth Report and Order requirements do not preclude an independent LEC from taking advantage of its good will by providing interexchange services under the same or a similar name.

4. Classification of Independent LECs' Provision of In-Region, International Services

a. Background

184. In the Non-Accounting Safeguards NPRM we tentatively concluded that we should apply the same regulatory treatment to an independent LEC's provision of international services originating within its local service area as we adopt for independent LEC provision of interstate, domestic, interexchange services originating within its local service area.

b. Comments

185. Most commenters support our proposal to apply the same regulatory treatment that we adopt for an independent LEC's provision of in-region interstate, domestic, interexchange services to an independent LEC's provision of in-region international services. GTE argues that the Commission should not impose the Fifth Report and Order requirements on independent LECs providing either in-region domestic or international interexchange services because independent LECs do not have market power in the provision of domestic or international in-region interexchange services. GTE notes that it, and some other carriers, may be subject to dominant classification on particular routes pursuant to the Foreign Carrier Entry Order due to foreign carrier affiliations.

186. MCI, on the other hand, argues that the Commission should generally apply the same regulatory treatment to independent LECs' provision of in-region, international services, but impose additional requirements where the LEC has a foreign affiliation or other commercial relationship with a foreign carrier. MCI urges the Commission, at a minimum, to impose on the independent LECs in such

circumstances the same safeguards that it imposed on MCI in the Order approving British Telecom's (BT's) initial 20 percent investment in MCI.

187. In addition, CNMI asks the Commission to clarify that MTC is a dominant carrier under the terms of the International Competitive Carrier Order. CNMI states that in the International Competitive Carrier Order, the Commission ruled that MTC's parent company, GTE Hawaii, and similarly situated carriers were dominant. CNMI claims, however, that MTC was not covered by these policies when the Commission issued this Order because CNMI did not become a U.S. commonwealth until November 3, 1986. CNMI asserts that, now that MTC is a domestic carrier with significant market power and a lack of effective competition in exchange and exchange access markets, the Commission should declare MTC dominant in its provision of in-region, interstate, international, interexchange service. GTE replies that imposing dominant regulation on MTC's provision of in-region, interstate, international, interexchange service now, when MTC has operated as non-dominant for years, would be contrary to the deregulatory goals of the 1996 Act. In any case, GTE asserts that independent LEC international and domestic interexchange services should be regulated in the same manner and that independent LECs have no market power in the international service market. GTE further claims that MTC's exchange access service in the Northern Mariana Islands cannot give it market power in the international services market.

c. Discussion

188. We confirm our tentative conclusion that we should adopt the same rules in this proceeding for an independent LEC's provision of in-region, international, interexchange services as we adopt for its provision of in-region, interstate, domestic, interexchange services. As discussed above with regard to BOC provision of in-region, international services, the relevant issue, with respect to both domestic interexchange and international services, is whether an independent LEC can exercise its market power in local exchange and exchange access services to raise and sustain prices of interexchange or international services above competitive levels by restricting its own output. We find no practical distinctions between an independent LEC's ability and incentive to use its control over bottleneck facilities in the provision of local exchange and exchange access services to improperly allocate costs, unreasonably discriminate against, or otherwise engage in anticompetitive conduct against unaffiliated domestic interexchange competitors as opposed to international services competitors. Consistent with our conclusion to limit application of the Fifth Report and Order requirements to incumbent independent LECs that control local exchange and exchange access facilities, for independent LECs providing in-region, international, interexchange services, we also limit application of the Fifth Report and Order separation requirements to incumbent independent LECs that control local exchange and exchange access facilities.

189. In light of our decision to classify independent LECs as non-dominant in the provision of in-region, interstate, domestic, interexchange services and to impose the Fifth Report and Order requirements, we will classify an independent LEC as non-dominant in the provision of in-region, international services, unless it is affiliated with a foreign carrier that has the ability to discriminate in favor of the independent LEC through control of bottleneck services or facilities in a foreign destination market. We will apply section 63.10(a) of our rules to determine whether to regulate a independent LECs as dominant on those U.S. international routes where an affiliated foreign carrier has the ability to discriminate against unaffiliated U.S. international carriers through control of bottleneck services or facilities in the foreign destination market. The safeguards that we apply to carriers that we classify as dominant based on a foreign carrier affiliation are contained in Section 63.10(c) of the rules and are designed to address the incentive and ability of the foreign carrier to discriminate in favor of its U.S. affiliate in the provision of services or facilities necessary to terminate U.S. international traffic. As previously noted, section 63.10(a) of the Commission's rules provides that: (1) Carriers having no affiliation with a foreign carrier in the destination market are presumptively non-dominant for that route; (2) carriers affiliated with a foreign carrier that is a monopoly in the destination market are presumptively dominant for that route; (3) carriers affiliated with a foreign carrier that is not a monopoly on that route receive closer scrutiny by the Commission; and (4) carriers that serve an affiliated destination market solely through the resale of an unaffiliated U.S. facilities-based carrier's switched services are presumptively nondominant for that route. See also Regulation of International Common Carrier Services, 7 FCC Rcd at 7334, ¶¶ 19–24. This framework for addressing issues raised by foreign carrier affiliations will apply to independent LECs' provision of U.S. international services as an additional component of our regulation of the U.S. international services market.

190. We reject MCI's suggestion that we should impose additional safeguards on the independent LEC's in-region, international services. As we stated with regard to the BOCs, all U.S. international carriers are subject to the same prohibition against accepting ''special concessions'' from foreign carriers that we imposed on MCI in the Order approving BT's initial 20 percent investment in MCI. The grooming described by MCI would constitute a special concession prohibited by the terms of Section 63.14 of the Commission's rules to the extent the U.S. carrier entered into a grooming arrangement that the foreign carrier did not offer to similarly situated U.S. carriers. *See* 47 CFR Section 63.14 (''[a]ny carrier authorized to provide international communications service * * * shall be prohibited from agreeing to accept special concessions directly or indirectly from any foreign carrier or administration with respect to traffic or revenue flows between the United States and any foreign country served * * * and from agreeing to enter into such agreements in the future * * * .''). A U.S. carrier that negotiates a grooming arrangement with a foreign carrier on a particular route would be required to submit the arrangement to the Commission for public comment and review in circumstances where the arrangement deviates from existing arrangements with other U.S. carriers for the routing and/or settlement of traffic on that route.

191. We believe our decision will benefit small incumbent LECs and small entities, for many of the same reasons enumerated in our analysis of independent LEC provision of in-region, interstate, domestic, interexchange services. For instance, by establishing a regulatory regime for provision of international services that is less stringent for incumbent independent LECs than for BOCs, independent LECs, some of which may be small incumbent LECs, will benefit by not being subjected to regulations that may be burdensome and may hamper competition in the international market. In addition, by limiting application of the Fifth Report and Order separations requirements to incumbent independent LECs, new entrants, some of which may

be small entities, will benefit from lower market entry costs.

192. We decline to address whether MTC should be regulated as a dominant carrier for the provision of international services because of the inadequate record in this proceeding. We note that CNMI or any other petitioner may petition us to initiate a proceeding regarding MTC's regulatory status. We reiterate, however, our conclusion that all independent LECs that are providing international interexchange service through an affiliate that satisfies the Fifth Report and Order separation requirements as of the date of release of this Order must continue to do so, and all other independent LECs providing international interexchange service must comply with the Fifth Report and Order separation requirements no later than one year from the date of release of this Order. The Commission's International Bureau recently granted GTE Hawaiian Tel.'s petition for reclassification as a non-dominant carrier in the Hawaiian market for international message telephone service (IMTS), subject to implementation by GTE Hawaiian Tel. of the Fifth Report and Order separation requirements which the Bureau imposed on an interim basis pending the outcome of this proceeding. Petition of GTE Hawaiian Telephone Company, Inc. for Reclassification as a Non-dominant IMTS Carrier, Order, DA 96–1748 (Int'l Bur. released Oct. 22, 1996). Our decision here does not modify the International Bureau's determination that GTE Hawaiian Tel. will remain a dominant IMTS carrier until it certifies to the Chief, International Bureau, that it is in compliance with the conditions of that Order. GTE Hawaiian Tel., must comply with the Fifth Report and Order separation requirements, however, within one year from January 1, 1997.

5. Sunset of Separation Requirements for Independent LECs

a. Background

193. Section 272(f)(1) of the Communications Act provides that the BOC safeguards set out in section 272 shall sunset three years after the date that the BOC affiliate is authorized to provide interLATA telecommunications services, unless the Commission extends such three-year period by rule or order. In the NPRM we requested comment on whether any regulation of independent LECs should be subject to some type of sunset.

b. Comments

194. Frontier contends that we should eliminate any separation requirements applicable to independent LECs' provision of in-region, interstate, interexchange services no later than such time as section 272 requirements sunset.

195. Excel and CNMI oppose the removal of the separate affiliate requirements applicable to independent LECs. CNMI notes that the sunset provision in section 272 has no application to independent LECs. Moreover, CNMI states that in insular areas such as the Commonwealth, there is no evidence to suggest that effective local competition will develop in the near future.

c. Discussion

196. We intend to commence a proceeding three years from the date of adoption of this Order to determine whether the emergence of competition in the local exchange and exchange access marketplace justifies removal of the Fifth Report and Order requirements. We believe that three years should be a reasonable period of time in which to evaluate whether effective competition has developed sufficiently to reduce or eliminate an independent LEC's bottleneck control of exchange and exchange access facilities.

V. Classification of BOCS and Independent LECS as Dominant or Non-Dominant in the Provision of Out-of-Region Interstate, Domestic, Interexchange Services

197. In this section, we consider whether the Competitive Carrier Fifth Report and Order separation requirements that were applied to the provision of out-of-region, interstate, domestic, interexchange services by independent LECs in the Competitive Carrier proceeding and to the provision of such services by the BOCs in the Interim BOC Out-of-Region Order are necessary as a condition for non-dominant regulatory treatment. As discussed below, we conclude that BOCs and independent LECs do not have and will not gain the ability in the near term to use their market power in the provision of local exchange service in their in-region markets to such an extent that the BOCs or independent LECs could profitably raise and sustain prices for out-of-region, interstate, domestic, interexchange services significantly above competitive levels by restricting their own output. We therefore classify the BOCs and independent LECs as non-dominant in the provision of these services. We also conclude that, at this time, a BOC or an independent LEC will not be able to raise significantly its interexchange rivals' costs by improperly allocating costs from its out-of-region interexchange services to its regulated exchange and exchange access services, unlawfully discriminating against its rivals, or engaging in a price squeeze in its provision of out-of-region, interstate, domestic, interexchange services. We therefore eliminate the separation requirements imposed in the Fifth Report and Order as a condition for non-dominant regulatory treatment of the BOCs and independent LECs in the provision of these out-of-region services.

A. Background

198. As previously noted, the Commission determined in the Competitive Carrier proceeding that interexchange carriers affiliated with independent LECs would be regulated as non-dominant carriers if they satisfied the three separation requirements identified in the Competitive Carrier Fifth Report and Order. *See supra* ¶ 144. The three requirements are that an affiliate: (1) Maintain separate books of account; (2) not jointly own transmission or switching facilities with the LEC; and (3) acquire any services from its affiliated exchange company at tariffed rates, terms, and conditions. Competitive Carrier Fifth Report and Order, 98 FCC 2d at 1198, ¶ 9. The Commission further concluded that, if the LEC provided the interstate, interexchange services directly, rather than through an affiliate, those services would be subject to dominant carrier regulation. Upon enactment of the 1996 Act, the BOCs were authorized to provide interLATA telecommunications services outside of their regions. In the Interim BOC Out-of-Region Order, the Commission determined that, on an interim basis, the BOCs' out-of-region, interstate, domestic, interexchange services would be subject to the same regulatory treatment as the Commission applied to the independent LECs' interstate, domestic, interexchange services in the Fifth Report and Order. Interim BOC Out-of-Region Order at ¶¶ 15–25. In other words, a BOC would be subject to non-dominant treatment in the provision of out-of-region, interstate, domestic, interexchange services if it provided these services through a separate affiliate that satisfied the Fifth Report and Order separations requirements, but would be regulated as dominant if it provided these services directly. *Id.* at ¶¶ 19–25. In the Interexchange NPRM, the Commission sought comment on whether it should modify or eliminate the separation requirements that are currently imposed on independent LECs and BOCs, in order to qualify for non-dominant

treatment in the provision of out-of-region interstate, interexchange services.

B. Comments

199. The BOCs and independent LECs generally argue that they cannot exercise market power if they provide directly out-of-region, domestic, interstate, interexchange services. Specifically, Ameritech asserts that the Commission may impose requirements as a condition of non-dominant treatment, such as a separate affiliate requirement, only if it can show that such a requirement is necessary to prevent the exercise of market power. Ameritech further argues that the Commission cannot possibly show that a separate affiliate requirement is necessary to prevent the exercise of market power in out-of-region interexchange services, and thus cannot link this requirement to non-dominant status. SBC argues that neither independent LECs nor new-entrant BOCs have market power in the provision of out-of-region interexchange services based on the market power factors listed in AT&T Reclassification Order. Furthermore, SNET asserts that the Competitive Carrier Fifth Report and Order separation requirements are not necessary for small independent LECs. The Ohio Consumer Counsel argues, however, that rural carriers without a national presence should be subject to separation requirements if they receive suspensions or modification of section 251(b) or (c) of the 1996 Act.

200. In addition, the BOCs and independent LECs generally claim that they no longer retain bottleneck control over exchange access services and that the Fifth Report and Order separation requirements are not necessary to prevent cross-subsidization and discrimination. Ameritech notes that the Commission has found that a firm or group of firms has ''bottleneck control'' when it has sufficient command over some essential commodity or facility in its industry or trade to be able to impede new entrants. Ameritech asserts that no BOC could impede long-distance entry because any such effort would be a blatant violation of equal access obligations and the Communications Act, and such an attempt would surely be discovered and punished. Furthermore, several LECs argue that to the extent bottleneck control previously existed, the 1996 Act eliminates it by requiring interconnection and access to unbundled elements and resale, and by creating incentives for BOCs to implement these provisions in order to enter in-region long-distance. Several BOCs further respond that they have neither the incentive nor the opportunity to cross subsidize their long distance services. NYNEX, BellSouth and GTE contend that separation requirements are unnecessary because the BOCs' rates for access services are subject to price caps. NYNEX asserts that Commission's rules control the allocation of costs between interexchange and access services and require LECs to impute to their interexchange services the same access rates they charge to other carriers for in-region services. Ameritech and Bell Atlantic argue that price caps (particularly without sharing) and cost allocation rules will prevent cross subsidization. Bell Atlantic also contends that geographic separation between a BOC's local exchange operations and out-of-region long distance services eliminates the potential for cost shifting.

201. Numerous non-LEC commenters, on the other hand, contend that the Commission should treat BOCs and independent LECs as non-dominant for out-of-region, interexchange services only so long as they satisfy the separation requirements in the Fifth Report and Order. CompTel argues that the focal point of any decision to classify a BOC as dominant or non-dominant in interexchange services will not be the level of competition in the interexchange market, but the extent to which the BOC has lost its monopoly power in local exchange and exchange access services. In addition, numerous commenters argue that the separation requirements are necessary to prevent cross-subsidization, unreasonable discrimination or other anticompetitive conduct. Sprint contends that the Fifth Report and Order requirements are the most, and perhaps the only, reliable tool at hand for detecting and preventing cross-subsidization and discrimination. The Missouri Commission claims that, unless LECs are required to maintain separate records for their LEC and IXC operations, it will be difficult, if not impossible, to determine whether any improper discrimination or cross subsidization has occurred. The Alabama Commission asserts that the separation requirements ensure that carriers can compete on an equal basis in the interexchange market. MCI argues that the continuing need for separate affiliate requirements is underscored by recent federal and state audits of BOC and LEC affiliate transactions, which uncovered improper cost allocations and demonstrated the ineffectiveness of the cost allocation regulations in preventing LEC cross-subsidies between regulated and unregulated services.

202. In addition, several commenters claim that the BOCs and independent LECs have significant incentives to engage in improper cost allocation, discrimination, and other anti-competitive behavior, and are able to engage in such behavior due to their control of bottleneck facilities. For example, MCI contends that the independent LECs' and BOCs' local bottleneck power can be exploited beyond their service areas by discriminating against an IXC dependent on the BOC or independent LEC for access in its region, thereby damaging the IXC's reputation on a national basis. MCI further asserts that the similarity, and in some cases identity, of facilities used for monopoly and interexchange services would greatly aggravate the risks of cross-subsidization and discrimination on the terminating end of such calls. Vanguard claims that, as suppliers of an essential input, BOCs are in a position to affect the cost structures of their competitors. More specifically, Vanguard argues that any increase in charges for terminating traffic will raise the costs of non-affiliated interexchange providers that terminate calls over the same route. Vanguard notes that these increases must be absorbed by competitors, but will not injure the BOC because raising access charges to its affiliate will merely result in an intracompany transfer. Commenters further contend that BOCs and independent LECs can discriminate in a variety of ways, such as slow service provisioning, delayed information about or roll-out of new technologies, less responsive maintenance and customer service, and poorer connections. MCI asserts that LECs also can exploit information obtained in their capacity as local service providers to gain an advantage in out-of-region interexchange marketing, including such information as validation databases, and that they can manipulate the price or other terms and conditions of terminating traffic, including limiting access to certain signalling information.

203. Several commenters contend that the cost and asset shifting techniques available to incumbent LECs are hard to detect and are not deterred by price caps. MFS disputes BOC arguments that geographical separation between the BOCs' in-region exchange access and out-of-region interexchange facilities and price cap regulation moot concerns about cost shifting. MFS asserts that a BOC's ability to fund anticompetitive pricing schemes in the interexchange market from local exchange market profits is not impeded just because these markets are not contiguous or because the BOC performs artificial cost

allocations. MFS argues that price cap mechanisms do not perfectly reflect actual cost changes and can yield windfall unintended profits for BOCs which could be used to subsidize interexchange services. AT&T contends that the BOCs' assertions that price cap regulation removes exchange carriers' ability and incentive to allocate costs improperly ignores the fact that not all LECs have elected price caps, and those that have may periodically elect a ''sharing'' option. MCI asserts that ''pure'' price caps do not deter cross subsidization because the conferring of monopoly-derived benefits upon a BOC's or independent LEC's interexchange operations at less than their economic value unfairly subsidizes those operations whether or not the BOC or LEC can raise its monopoly rates to absorb additional costs.

204. In addition, numerous commenters contend that even if the Fifth Report and Order separation requirements for independent LECs are modified or eliminated, the Commission should maintain these requirements as a condition for non-dominant treatment of the BOCs' provision of out-of-region, interexchange services. Vanguard and GSA contend that the BOCs have greater opportunity to allocate costs improperly than the independent LECs because of their greater number of services, larger service territories, and more extensive interoffice facilities. Vanguard notes, for example, that each BOC serves about one-eighth of all U.S. telephone subscribers in largely contiguous service territories, which means that the BOCs receive more calls than other LECs and have more opportunities to manipulate the price and quality of terminating access than other companies. Vanguard argues that the proposed BOC mergers would further widen the size differentials between the BOCs and independent LECs.

205. Several non-LECs contend that the Competitive Carrier Fifth Report and Order separation requirements are insufficient to protect against abuses by BOCs and independent LECs, and, therefore, propose additional safeguards. These commenters urge the Commission to: (1) Impose full structural separation on the out-of-region affiliate; (2) prohibit joint marketing of local and out-of-region, interexchange services; (3) require that a LEC's out-of-region affiliate have no preferential access to non-Title II services offered by the LEC; (4) require that the LEC's affiliate transaction practices and cost allocation procedures be subject to annual independent audit; and (5) prohibit the affiliate from receiving proprietary information unless it is made available to competitors on the same basis.

C. Discussion

206. In Section IV, we concluded that a BOC affiliate or independent LEC should be classified as dominant in the provision of in-region, interstate, domestic, long distance services only if it has the ability to raise prices by restricting its output of those in-region services. We found that each of the traditional market factors (excluding bottleneck control) suggest that the BOC interLATA affiliates and independent LECs do not have the ability to raise the price of in-region, interstate, long distance services by restricting their output of these services. We recognized that a BOC's or independent LEC's control of local exchange and exchange access facilities potentially gives the BOC or independent LEC an incentive to disadvantage its interexchange competitor through improper allocations of costs, discrimination or other anticompetitive conduct. We concluded, however, that the statutory and regulatory safeguards currently imposed on the BOCs and independent LECs will prevent them from engaging in such anticompetitive conduct to such an extent that the BOC interLATA affiliates or independent LECs have, or will have upon entry or shortly thereafter, the ability to raise the price of in-region, interstate, domestic, long distance services by restricting their output of these services. Accordingly, we classified the BOC interLATA affiliates and independent LECs as non-dominant in the provision of these in-region services.

207. We conclude that we should apply a similar analysis in assessing whether to classify the BOCs and independent LECs as dominant in the provision of out-of-region, interstate, domestic, interexchange services. We conclude that the traditional market power factors (excluding bottleneck facilities)—market share, supply and demand substitutability, cost structure, size, and resources—support a finding that the BOCs and independent LECs do not have, and will not gain the ability in the near term, to raise prices of out-of-region interexchange services by restricting their output of these services. More specifically, we find, first, that the BOCs begin with an interexchange market share of zero while the market shares of the independent LECs are negligible when compared to the major interexchange carriers. Second, we find that the same high supply and demand elasticities that the Commission found constrained AT&T's price behavior also apply to the provision of out-of-region interexchange services by the BOCs and independent LECs. Finally, we find that the presence of existing interexchange carriers, including AT&T, MCI, Sprint, and LDDS, prevents the BOCs and independent LECs from using their cost structure, size, and resources to raise prices above the competitive level for their out-of-region interstate, domestic, interexchange services.

208. With respect to discrimination concerns related to the provision of out-of-region, interstate, interexchange services by the BOCs and independent LECs, we note that these carriers are not the dominant providers of originating exchange access services in out-of-region areas. We also note that majority of the discrimination concerns raised by commenters focus on inferior interconnection to a LEC's network for originating exchange access. We therefore find that the BOCs' and independent LECs' lack of control over originating access for its competitors' calls originating outside its region significantly limits their ability to discriminate against their interexchange competitors and to engage in other anticompetitive conduct. Although it is possible that a LEC could damage an interexchange competitor's reputation on a national basis by discriminating against an interexchange carrier dependent on it for access in its region, we believe this is unlikely because the BOCs and independent LECs are subject to our equal access requirements. In addition, as discussed in Section IV, we believe that the safeguards in place for the provision of in-region, interstate, interexchange services by BOCs and independent LECs further protect against originating exchange access discrimination. We therefore conclude that our equal access provisions and safeguards established for in-region interstate, interexchange services provide sufficient protection to interexchange carriers for the provision of originating exchange access as well as for the quality of these services. Similarly, although a BOC or an independent LEC may control the facilities used to terminate its interexchange competitors calls in its in-region service area, we believe it has less opportunity to discriminate against competitors through its control of these facilities. In order to discriminate effectively through control of terminating exchange access, the BOCs and independent LECs would have to convince consumers that an inferior termination connection was the fault of their interexchange carrier, and that the only way to obtain efficient termination arrangements to this region would be

through the BOCs' or independent LECs' interexchange services. In addition, to the extent such quality degradation is apparent to consumers, it is also likely to be apparent to regulators and interexchange competitors. We also note that the record in the Interexchange proceeding does not demonstrate that the BOCs and LECs have the technical ability to degrade selectively the quality of the interconnection for their interexchange competitors through their control of terminating exchange access. In addition, Section 222 of the Communications Act provides all telecommunications carriers with protection from the misuse of customer proprietary network information. We, therefore, conclude that discrimination by a BOC or an independent LEC is unlikely in the context of out-of-region, interstate, interexchange services.

209. In addition, we agree with Bell Atlantic that the geographic separation between a LEC's in-region local exchange and exchange access operations and out-of region long distance operations mitigates the potential for undetected improper allocation of costs. Because of this geographic separation, it is unlikely that the out-of-region operation will be able to share any transmission or switching facilities, many employees, or other common costs with the in-region operation. Consequently, improper allocation of costs is less problematic with respect to a BOC's or independent LEC's provision of out-of-region long distance services. We further conclude that statutory and regulatory safeguards, including our Part 64 rules, imposed on the BOCs and independent LECs sufficiently limit any residual ability to disadvantage their rivals by improperly allocating costs between their regulated local exchange and exchange access services and their out-of-region interexchange services. Our cost allocation rules control the allocation of cost between interexchange and local services and require a BOC or an independent LEC to impute to its interexchange services the same access rates it charges other carriers. Furthermore, in the Accounting Safeguards Order, the Commission determined, solely for federal accounting purposes, that out-of-region interLATA services provided by incumbent LECs on an integrated basis should be treated like nonregulated activities for purposes of our cost allocation rules. We find that the existing statutory and regulatory safeguards, coupled with the geographical separation between the BOCs' and LECs' in-region and out-of-region operations, are sufficient to prevent the BOCs and independent LECs from improperly allocating costs. We therefore disagree with MFS' assertion that a LEC's ability to fund anticompetitive pricing schemes in the interexchange market from local exchange market profits exists even thought these markets are not contiguous or because the BOC performs artificial cost allocations. Furthermore, we note that the exchange access services for all of the BOCs and most of the largest independent LECs are subject to our price cap regulations. As discussed in Section IV, price cap regulation further serves to reduce the potential that the BOCs and independent LECs will improperly allocate the costs of their interexchange services. Consequently, we conclude that the risk that the BOCs and independent LECs would be able to allocate improperly substantial costs from their out-of-region interLATA services to their monopoly local exchange and exchange access services is not sufficient to warrant imposing separation requirements.

210. We also conclude that the BOCs and independent LECs will not be able to engage in a price squeeze with respect to their out-of-region, interstate, domestic, interexchange services to such an extent that they will gain the ability to raise prices of long distance services by restricting their output of those services. We are not persuaded by arguments that, because BOCs and independent LECs have control over terminating exchange access, they will be able to effect a price squeeze to gain market share by raising the price of terminating access. We note that, because the BOCs and independent LECs do not have control over originating exchange access for out-of-region, interstate, interexchange services, they will incur the same cost for originating access as their interexchange competitors. In addition, to the extent that a BOC or independent LEC offers out-of-region long distance services on an integrated basis, our rules require the carrier to impute to itself its tariffed terminating exchange access rate. Under section 64.901(b)(1) of our rules, tariffed services, such as exchange access services, provided to a nonregulated activity must be charged to the nonregulated activity at the tariffed rates and credited to the regulated revenue account for that service. 47 CFR § 64.901(b)(1). *See also* 47 CFR § 32.5280 (explaining how carriers must account for the provision of tariffed services to nonregulated activities). As previously noted, out-of-region interLATA services provided by incumbent LECs on an integrated basis are treated as nonregulated activities for federal accounting purposes. Accounting Safeguards Order at ¶ 75. If a BOC or independent LEC offers out-of-region long distance services through an affiliate, the affiliate will have to pay the tariffed exchange access rate for long distance calls it terminates on the BOC's or independent LEC's in-region network. We also note that section 272(e)(3) of the Communications Act requires a BOC to ''charge [its section 272 interLATA affiliate], or impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service.'' 47 U.S.C. § 272(e)(3). *See also* Non-Accounting Safeguards Order at ¶¶ 256–58 (implementing section 272(e)(3)). Also, price cap regulation of exchange access services mitigates the ability of a BOC or independent LEC to effect a price squeeze by increasing terminating exchange access rates. All BOCs and most of the largest independent LECs are subject to price cap regulation. 1996 Annual Access Tariff Filings, DA 96–1022, ¶ 2 n.2 (rel. June 24, 1996). All but one BOC is subject to price caps without sharing. Data based on 1996 Annual Access Tariff Filings filed on April 2, 1996. Moreover, we believe an attempted price squeeze would be less likely to be effective, because it appears that typically a BOC's originating out-of-region calls that terminate in-region will account for a small percentage of the BOC's total out-of-region originating traffic. We acknowledge, however, that some BOCs and independent LECs may market their out-of-region interexchange services to customers who routinely terminate in the BOC's or independent LEC's in-region local exchange and exchange access area. *See, e.g.,* AT&T Sept. 13 Reply, Appendix B. Finally, we note that there are other adequate mechanisms to address such behavior. More specifically, a BOC or an independent LEC that charges a rate for interstate services below its incremental costs of providing service in the long term would be in violation of sections 201 and 202 of the Act. In addition, Federal antitrust law also would apply to the predatory pricing of interstate services.

211. Based on the foregoing, we conclude that the BOCs and independent LECs do not have, upon entry or soon thereafter, the ability to raise the price of out-of-region,

interstate, interexchange services by restricting their own output even if they are permitted to provide these services on an integrated basis. We therefore conclude that it is not necessary to require the BOCs or independent LECs to maintain the Competitive Carrier Fifth Report and Order separation requirements as a condition for non-dominant regulatory treatment for the provision of out-of-region, interstate, interexchange services. We note, however, that because BOCs and independent LECs are required to offer in-region, interstate, interexchange services through a separate affiliate, some may provide their out-of-region, interstate, interexchange services through the same affiliate rather than directly. We further note that, in the Accounting Safeguards Order, the Commission determined that affiliate transactions rules apply to all transactions between incumbent local exchange carriers and their affiliates providing any of the competitive services of the types permitted under sections 260 and 271 through 276. Accounting Safeguards Order at ¶ 256. Upon the effective date of this Order, the requirements established herein for the provision of out-of-region, interstate, interexchange services by BOCs will supersede any conflicting requirements established in the Interim BOC Out-Of-Region Order.

212. Contrary to the comments of GSA and Vanguard, we find that the record in this proceeding does not demonstrate that a BOC is in a better position than an independent LEC to leverage its in-region monopoly power arising from its control of the local exchange to benefit its provision of out-of-region long distance services. We therefore conclude that there is no persuasive reason to implement different regulatory schemes for the BOCs and independent LECs in the context of their provision of out-of-region long distance services.

213. We also conclude that the Fifth Report and Order separation requirements and the additional safeguards suggested in the record, are not necessary to prevent the BOCs and independent LECs from raising the costs of their interexchange rivals' services originating outside the BOC's or independent LEC's region. As discussed above, we believe that other applicable safeguards, coupled with the geographic separation between the BOCs' and independent LECs' in-region and out-of-region operations will prevent a BOC or independent LEC from favoring its out-of-region interexchange services through improper allocation of costs, discrimination, or other anticompetitive conduct. Further, we found in the Interim BOC Out-of-Region Order that the commenters presented no persuasive evidence that showed additional safeguards were warranted to prevent improper allocation of costs and discrimination. In Section IV.B., we found that no party presented persuasive evidence in this proceeding that shows that it is necessary to impose additional safeguards on the independent LECs as a condition for non-dominant regulatory treatment for the provision of in-region, interstate, interexchange service. Consequently, we conclude that the Fifth Report and Order separation requirements and the proposed additional safeguards are unnecessary in this context, and should therefore be eliminated. With respect to small independent LECs, we note that this decision may promote their expansion into new telecommunications services and information services consistent with section 257 of the Act. *See* 47 U.S.C. § 257.

VI. Final Regulatory Flexibility Analysis

214. As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in each of the two Notices of Proposed Rulemaking from which this Order issues. The Commission sought written public comment on the proposals in the NPRMs. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA).

A. Need for and Objectives of This Report and Order and the Regulations Adopted Herein

215. In the 1996 Act, Congress sought to establish ''a pro-competitive, de-regulatory national policy framework'' for the United States telecommunications industry. Three principal goals of the telephony provisions of the 1996 Act are: (1) Opening local exchange and exchange access markets to competition; (2) promoting increased competition in telecommunications markets that are already open to competition, particularly long distance services markets; and (3) reforming our system of universal service so that universal service is preserved and advanced as local exchange and exchange access markets move from monopoly to competition.

216. The regulations adopted in this Order implement the second of these goals—promoting increased competition in the interexchange market. The objective of the regulations adopted in this Order is to implement as quickly and effectively as possible the national telecommunications policies embodied in the 1996 Act and to promote the development of competitive, deregulated markets envisioned by Congress. In doing so, we are mindful of the balance that Congress struck between this goal of bringing the benefits of competition to all consumers and its concern for the impact of the 1996 Act on small incumbent local exchange carriers.

B. Analysis of Significant Issues Raised in Response to the IRFA

217. As noted above, this Order issues from two separate Notices of Proposed Rulemaking. In March 1996, the Commission released an NPRM asking, among other things, whether we should modify or eliminate the separation requirements imposed on independent LECs as a condition for non-dominant treatment of their out-of-region, interstate, domestic, interexchange services. In July 1996, we released an NPRM seeking comment on, in addition to other issues, whether to modify our existing regulations governing independent LECs' provision of in-region, interstate, domestic, interexchange services, and whether to apply the same regulatory treatment to their provision of in-region, international services.

218. Summary of the Initial Regulatory Flexibility Analyses (IRFAs). In each of the NPRMs, the Commission performed an IRFA. In the IRFA for the Interexchange NPRM, the Commission did not find that any of the issues that are addressed in this Order would have a significant economic impact on a substantial number of small businesses as defined by section 601(3) of the RFA. In the IRFA for the Non-Accounting Safeguards NPRM, the Commission certified that its proposed regulations would not, if promulgated, have a significant economic impact on a substantial number of small businesses as defined by section 601(3) of the RFA. We stated that our regulatory flexibility analysis was inapplicable to BOCs and other incumbent LECs because these entities are dominant in their field of operation.

1. Treatment of Small LECs

219. *Comments.* NTCA claims that its membership includes companies that constitute ''small business concerns'' under the RFA. NTCA argues that our IRFA in the Non-Accounting Safeguards NPRM incorrectly certifies that our proposed regulations will not have a significant economic impact on a

substantial number of small entities. NTCA states that the Small Business Administration (SBA) establishes size standards for small businesses that ''seek to ensure that a concern that meets a specific size standard is not dominant in its field of operation.'' NTCA states that the Commission cannot ignore SBA definitions and conclude that all incumbent LECs are dominant for purposes of the Regulatory Flexibility Analysis. NTCA recommends that we ''consider flexible regulatory proposals and analyze any significant alternatives that would minimize significant economic impacts'' of our regulations on its members that are small companies.

220. *Discussion.* NTCA essentially argues that we exceeded our authority under the RFA by certifying all incumbent LECs as dominant in their field of operation, and concluding on that basis that they are not small businesses under the RFA. We have found incumbent LECs to be ''dominant in their field of operation'' since the early 1980s, and we consistently have certified under the RFA that incumbent LECs are not subject to regulatory flexibility analyses because they are not small businesses. We have made similar determinations in other areas. While we recognize SBA's special role and expertise with regard to the RFA, we are not fully persuaded on the basis of this record that our prior practice has been incorrect. Nevertheless, in light of NTCA's concerns, we will conduct an analysis on the impact of our regulations in this Order on small incumbent LECs, in order to remove any possible issue of RFA compliance. We therefore need not address NTCA's argument that many of its members are ''small business concerns'' for purposes of the RFA.

C. Description and Estimates of the Number of Small Entities Affected by This Report and Order

221. In this FRFA, we consider the impact of this Order on two categories of entities, ''small incumbent LECs'' and ''small non-incumbent LECs.'' Consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of a small entity for the purpose of this FRFA. Accordingly, our use of the terms ''small entities'' and ''small businesses'' does not encompass ''small incumbent LECs.'' We use the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by SBA as ''small business concerns.'' We include ''small non-incumbent LECs'' in our analysis, even though we believe that we are not required to do so.

222. For the purposes of this Order, the RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be a small entity when it has fewer than 1,500 employees.

223. *Incumbent LECs.* SBA has not developed a definition of small incumbent LECs. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and regulations adopted in this Order.

224. *Non-Incumbent LECs.* SBA has not developed a definition of small non-incumbent LECs. For purposes of this Order, we define the category of ''small non-incumbent LECs'' to include small entities providing local exchange services which do not fall within the statutory definition in section 251(h), including potential LECs, LECs which have entered the market since the 1996 Act was passed, and LECs which were not members of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations. We believe it is impracticable to estimate the number of small entities in this category. We are unaware of any data on the number of LECs which have entered the market since the 1996 Act was passed, and we believe it is impossible to estimate the number of entities which may enter the local exchange market in the near future. Nonetheless, we will estimate the number of small entities in a subgroup of the category of ''small non-incumbent LECs.'' According to our most recent data, 57 companies identify themselves in the category ''Competitive Access Providers (CAPs) & Competitive LECs (CLECs).'' A CLEC is a provider of local exchange services which does not fall within the definition of ''incumbent LEC'' in section 251(h). Although it seems certain that some of the carriers in this category are CAPs, (While the Commission has not prescribed a definition for the term ''CAP,'' it is generally not used to refer to companies that provide local exchange services.) are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of non-incumbent LECs that would qualify as small business concerns under SBA's definition.

D. Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

225. Under our current regulations, independent LECs are classified as non-dominant interexchange carriers if they provide interstate, domestic, interexchange services through an affiliate that satisfies the separation requirements established in the Fifth Report and Order. Independent LECs offering interstate, domestic, interexchange services directly (rather than through a separate affiliate), or through an affiliate that does not satisfy the specified conditions, are subject to dominant carrier regulation. Independent LECs are permitted to provide international, interexchange services subject to non-dominant or dominant regulation, as determined on a case-by-case basis. Non-dominant interexchange carriers are not subject to rate regulation, and currently may file tariffs that are presumed lawful on one day's notice and without cost support. Tariff Filing Requirements for Non-Dominant Carriers. As discussed in note 8 *supra,* the Commission recently determined, pursuant to section 10 of the Communications Act, to forbear from requiring non-dominant interexchange carriers to file tariffs for interstate, domestic, interexchange services. The Commission therefore ordered, *inter alia,* non-dominant interexchange carriers to cancel their tariffs for interstate, domestic, interexchange services on file with the Commission within a nine-month transition period and not to file any

such tariffs thereafter. Tariff Forbearance Order at ¶¶ 89–93, stayed pending judicial review, *MCI Telecom. Corp.* v. *FCC,* No. 96–1459 (D.C. Cir. Feb. 13, 1997). See also Policy and Rules Concerning the Interstate, Interexchange Marketplace; Guidance Concerning Implementation as a Result of the Stay Order of the U.S. Court of Appeals for the D.C. Circuit, CC Docket No. 96–61, Public Notice, DA 97–493 (rel. March 6, 1997). Non-dominant carriers are also subject to streamlined section 214 requirements. Compliance with these requirements may require small incumbent LECs to use accounting, economic, technical, legal, and clerical skills.

226. In this Order, we have found that all incumbent independent LECs, including small incumbent independent LECs, must provide in-region, interstate, domestic, interexchange services through a separate affiliate that satisfies the Fifth Report and Order requirements. We are aware of three companies currently providing interexchange services directly on dominant basis, Union Telephone Company (of Wyoming), GTE Hawaiian Tel., and MTC. We direct companies that are not currently providing interexchange services through a separate affiliate that satisfies the Fifth Report and Order requirements to comply with the Fifth Report and Order separation requirements no later than one year from the date of release of this Order. We also extend this regulatory regime, which applies to domestic services, to international, interexchange services as well. Pursuant to this Order, all incumbent independent LECs, including small incumbent independent LECs, must provide in-region, interstate, domestic, interexchange services and international, interexchange services through a separate affiliate that satisfies the Fifth Report and Order separation requirements. Specifically, incumbent independent LECs must provide these services through a separate affiliate that must: (1) Maintain separate books of account; (2) not jointly own transmission or switching facilities with its affiliated exchange companies; and (3) obtain any services from its affiliated exchange companies at tariffed rates and conditions. Fifth Report and Order, 98 FCC 2d at 1198, ¶ 9. For purposes of these requirements, an ''affiliate'' of an independent LEC is ''a carrier that is owned (in whole or in part) or controlled by, or under common control with, an exchange telephone company.'' *Id.* In this Order, we have also eliminated the Fifth Report and Order separation requirements as a condition for non-dominant treatment of incumbent independent LECs' provision of out-of-region, interstate, domestic, interexchange services.

E. Steps Taken to Minimize the Significant Economic Impact of this Report and Order on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered and Rejected

227. We believe that our actions eliminating dominant carrier regulation of independent LEC provision of in-region, interstate, domestic, interexchange services, yet maintaining all of the Fifth Report and Order separation requirements to guard against anticompetitive conduct in the form of cost misallocation or unreasonable discrimination, will facilitate the provision of in-region, interstate, domestic, interexchange services by independent LECs, many of which may be small incumbent LECs. We reject proposals to remove the Fifth Report and Order requirements, for reasons set forth in Section IV.B.1.

228. Our actions seem likely to benefit all incumbent independent LECs providing in-region, interstate, domestic, interexchange services on a non-dominant basis, some of which may be small incumbent LECs, because any increase in costs of regulatory compliance can be amortized over a period of one year. As noted in Section IV.B.1, incumbent LECs that currently provide these services on an integrated basis subject to dominant carrier regulation are given one year from the date of release of this Order to comply with the Fifth Report and Order separation requirements.

229. We decline to impose section 272 requirements, aspects of dominant carrier regulation, or any additional requirements on independent LECs' provision of in-region, interstate, domestic, interexchange services. Consistent with our belief that independent LECs are less likely to be able to engage in anticompetitive conduct than the BOCs, we therefore establish a less stringent regulatory regime for the independent LECs. This seems likely to benefit independent LECs, including small incumbent LECs, by not subjecting them to burdensome regulations that may serve only to hamper competition in the interexchange market. For the reasons set forth in Section IV.B.1, we reject alternatives to impose additional requirements on independent LECs' provision of in-region, interstate, domestic, interexchange services.

230. We limit the scope of the separation requirements to incumbent independent LECs. By not imposing the Fifth Report and Order requirements on non incumbent LECs, we avoid imposing unnecessary regulation on new entrants into the local exchange market that wish to provide in-region, interstate, domestic, interexchange services, and will not have control of incumbent local exchange and exchange access facilities. This seems likely to benefit all of these new entrants, some of which may be small entities, by lowering entry costs, lowering the disparity in market power between new entrants and incumbent LECs, minimizing the risk of being subjected to legal action, and decreasing administrative costs. We reject proposals to subject non-incumbent LECs to the same requirements as incumbent LECs, for the reasons set forth in Section IV.B.2.

231. We apply our regulations equally to all incumbent independent LECs, in view of our conclusion that the size of an independent LEC will not affect its incentives to engage in cost misallocation between its monopoly services and its competitive services. Our action is intended to foster competition in the in-region, interstate, domestic, interexchange marketplace nationwide by preventing all incumbent independent LECs, regardless of size, from using their control of bottleneck local exchange and exchange access facilities to thwart new entry. This seems likely to benefit all new entrants into the local exchange market that wish to provide in-region, interstate, domestic, interexchange services, some of which may be small entities, by helping to reduce entry costs and lower the disparity in market power between new entrants and other incumbent LECs. Moreover, our action will likely help to establish these favorable entry conditions uniformly nationwide, fostering increased certainty which will benefit all new entrants, including any small entities. We reject alternatives to exempt all incumbent LECs with less than two percent of the nation's access lines from our regulations, for the reasons stated in Section IV.B.3.

232. We extend the regulatory regime described above, which governs independent LECs' provision of in-region, interstate, domestic, interexchange services, to independent LECs' provision of in-region, international services. We believe that this action will benefit incumbent LECs and non-incumbent LECs, some of which may be small incumbent LECs or small entities, for the same reasons enumerated in our analysis for in-region, interstate, domestic, interexchange services, such as helping

to reduce market entry costs, decreasing the disparity in market power between new entrants and other incumbent LECs, and lowering administrative costs. We decline to treat independent LECs' provision of in-region, interstate, domestic, interexchange services and in-region, international services differently, for the reasons stated in Section IV.B.4.

233. As stated in Section IV.B.5, we intend to commence a proceeding three years from the date of adoption of this Order to determine whether the emergence of competition in the local exchange and exchange access marketplace justifies removal of the Fifth Report and Order requirements. We believe that three years should be a reasonable period of time in which to expect effective competition to develop in local exchange and exchange access markets. We reject proposals to decide in this proceeding whether to sunset separate affiliate requirements for independent LECs, for the reasons stated in Section IV.B.5.

234. *Report to Congress:* The Commission shall send a copy of this FRFA, along with this Report and Order, in a report to Congress pursuant to the SBREFA, 5 U.S.C. § 801(a)(1)(A). A copy of this analysis will also be provided to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.

VII. Final Paperwork Reduction Analysis

235. Each of the two Notices of Proposed Rulemaking from which this Order issues proposed changes to the Commission's information collection requirements. As required by the Paperwork Reduction Act of 1995, Public Law 104–13, the Commission sought written comment from the public and from the Office of Management and Budget (OMB) on the proposed changes. The collections described therein, however, are addressed in other proceedings.

236. In this Order, we have decided to require independent LECs to comply with Fifth Report and Order separation requirements in order to provide international, interexchange services. Pursuant to the separation requirements, an independent LEC and its international, interexchange affiliate must maintain separate books of account. This requirement constitutes a new ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501–3520. Implementation of this requirement is subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

VIII. Ordering Clauses

237. Accordingly, *it is ordered* that, pursuant to sections 1, 2, 4, 201, 202, 251, 271, 272 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201, 202, 251, 271, 272, and 303(r), the *Report and Order is adopted.*

238. *It is further Ordered* that the *Report and Order,* which imposes new or modified information or collection requirements, shall become effective 70 days after publication in the **Federal Register**, following approval by the Office of Management and Budget, unless a notice is published in the **Federal Register** stating otherwise.

239. *It is further Ordered* that part 64, subpart T of the Commission's rules, 47 CFR part 64 subpart T, is *added* as set forth in rule changes attached hereto.

240. *It is further Ordered* that the Secretary shall send a copy of this *Report and Order,* including the final regulatory flexibility analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 605(b) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.*

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 64 of title 47 is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154.

2. Part 64 is amended by adding new subpart T to read as follows:

Subpart T—Separate Affiliate Requirements for Incumbent Independent Local Exchange Carriers That Provide In-Region, Interstate Domestic Interexchange Services or In-Region International Interexchange Services

Sec.

§ 64.1901 Basis and purpose.

(a) *Basis.* These rules are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose.* The purpose of these rules is to regulate the provision of in-region, interstate, domestic, interexchange services and in-region international interexchange services by incumbent independent local exchange carriers.

§ 64.1902 Terms and definitions.

Terms used in this part have the following meanings:

Books of Account. Books of account refer to the financial accounting system a company uses to record, in monetary terms the basic transactions of a company. These books of account reflect the company's assets, liabilities, and equity, and the revenues and expenses from operations. Each company has its own separate books of account.

Incumbent Independent Local Exchange Carrier (Incumbent Independent LEC). The term incumbent independent local exchange carrier means, with respect to an area, the independent local exchange carrier that:

(1) On February 8, 1996, provided telephone exchange service in such area; and

(2) (i) On February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to § 69.601(b) of this title; or

(ii) is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in paragraph (2) (i) of this definition. The Commission may also, by rule, treat an independent local exchange carrier as an incumbent independent local exchange carrier pursuant to section 251(h)(2) of the Communications Act of 1934, as amended.

Independent Local Exchange Carrier (Independent LEC). Independent local exchange carriers are local exchange carriers, including GTE, other than the BOCs.

Independent Local Exchange Carrier Affiliate (Independent LEC Affiliate). An independent local exchange carrier affiliate is a carrier that is owned (in whole or in part) or controlled by, or under common ownership (in whole or in part) or control with, an independent local exchange carrier.

In-Region Service. In-region service means telecommunications service originating in an independent local exchange carrier's local service areas or 800 service, private line service, or their equivalents that:

(1) Terminate in the independent LEC's local exchange areas; and

(2) Allow the called party to determine the interexchange carrier, even if the service originates outside the independent LEC's local exchange areas.

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

§ 64.1903 Obligations of all incumbent independent local exchange carriers.

(a) Except as provided in paragraph (c) of this section, an incumbent independent LEC providing in-region, interstate, interexchange services or in-region international interexchange services shall provide such services through an affiliate that satisfies the following requirements:

(1) The affiliate shall maintain separate books of account from its affiliated exchange companies. Nothing in this section requires the affiliate to maintain separate books of account that comply with Part 32 of this title;

(2) The affiliate shall not jointly own transmission or switching facilities with its affiliated exchange companies. Nothing in this section prohibits an affiliate from sharing personnel or other resources or assets with an affiliated exchange company; and

(3) The affiliate shall acquire any services from its affiliated exchange companies for which the affiliated exchange companies are required to file a tariff at tariffed rates, terms, and conditions. Nothing in this section shall prohibit the affiliate from acquiring any unbundled network elements or exchange services for the provision of a telecommunications service from its affiliated exchange companies, subject to the same terms and conditions as provided in an agreement approved under section 252 of the Communications Act of 1934, as amended.

(b) The affiliate required in paragraph (a) of this section shall be a separate legal entity from its affiliated exchange companies. The affiliate may be staffed by personnel of its affiliated exchange companies, housed in existing offices of its affiliated exchange companies, and use its affiliated exchange companies' marketing and other services, subject to paragraph (a)(3) of this section.

(c) An incumbent independent LEC that is providing in-region, interstate, domestic interexchange services or in-region international interexchange services prior to April 18, 1997, but is not providing such services through an affiliate that satisfies paragraph (a) of this section as of April 18, 1997, shall comply with the requirements of this section no later than April 18, 1998.

[FR Doc. 97–17407 Filed 7–2–97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961126334–7025–02; I.D. 062497B]

Fisheries of the Economic Exclusive Zone Off Alaska; ''Other Rockfish'' Species Group in the Eastern Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for the ''other rockfish'' species group in the Eastern Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully utilize the total allowable catch (TAC) of ''other rockfish'' in that area.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), July 1, 1997, until 2400 hours, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The annual TAC for the ''other rockfish'' species group in the Eastern Regulatory Area of the GOA, was established by the Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997) as 1,500 metric tons (mt) pursuant to § 679.20(c)(3)(ii). The Final 1997 Harvest Specifications of Groundfish for the GOA also closed directed fishing for ''other rockfish'' in the Eastern Regulatory Area of the GOA (see § 679.20(d)(1)(iii)) in anticipation that the TAC would be needed as incidental catch to support other anticipated groundfish fisheries during 1997. NMFS has determined that as of June 14, 1997, 1,383 mt remain in the directed fishing allowance.

The Administrator, Alaska Region, NMFS, has determined that the 1997 directed fishing allowance of the ''other rockfish'' species group in the Eastern Regulatory Area of the GOA has not been reached. Therefore, NMFS is terminating the previous closure and is opening directed fishing for the ''other rockfish'' species group in the Eastern Regulatory Area of the GOA.

All other closures remain in full force and effect.

Classification

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 27, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961126334–7025–02; I.D. 062497C]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully utilize the total allowable catch (TAC) of northern rockfish in that area.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), July 1, 1997, until 2400 hours, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council