

providing service, setting the price of discrete services and elements equal to the forward-looking LRIC of each service or element is not likely to recover the historical costs of incumbent LECs' networks. We seek comment on the empirical magnitude of the differences between the historical costs incurred by incumbent LECs (or historical revenue streams) and the forward-looking LRIC of the services and facilities they will be providing pursuant to section 251. How much of this differential can be attributed to universal service support flows? To what extent can incumbent LECs reasonably claim an entitlement to recover a portion of such cost differences? According to the Local Competition Work Group of the NARUC Staff Subcommittee on Communications, a competitive local market would make the issue of recovery of "stranded" embedded costs moot, at least from a purely economic perspective. It notes that, in limited circumstances, other considerations could result in a regulatory decision that some recovery of past investment decisions by incumbents is appropriate.<sup>201</sup> Should we establish LRIC as a long-run standard, but permit some interim recognition of embedded costs in the short run? We seek specific comment on mechanisms for any such transition, including how to determine what costs should be recovered during the transition and, most importantly, how and when any such transition would end.

145. We also solicit comment on whether it would be consistent with sections 251(d)(1) and 254 for states to include any universal service costs or subsidies in the rates they set for interconnection, collocation, and unbundled network elements. For instance, New York has adopted a "play or pay" model in which interconnectors who agree to serve all customers in their self-defined service areas ("players") potentially pay a substantially lower interconnection rate than those who serve only selected customers ("payers"), who are liable to pay additional contribution charges.<sup>202</sup> In the long term, section 254 requires the Commission and the Joint Board established under section 254 to take actions to implement the following statutory principles: "All providers of telecommunications service should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service. . . . There should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service."<sup>203</sup> Arguably, these principles can be interpreted as requiring competitively-neutral mechanisms for recovering universal service support, rather than recovering such support through rates for interconnection or unbundled network elements.<sup>204</sup> On the other hand, the statutory schedule for completion of the universal service reform proceeding (15 months from enactment of the 1996 Act) is different from that for this proceeding (6 months from the date of enactment of the 1996 Act). Also, intrastate universal service mechanisms will not be affected directly by the section 254 Joint Board proceeding. We also seek comment on whether the ability of states to take universal service support into account differs pending completion of the section 254 Joint Board proceeding or state universal service proceedings pursuant to section 254(f),<sup>205</sup> during any transition period that may be established in the Joint Board proceeding, or thereafter.

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<sup>201</sup> NARUC Subcommittee Report at 52-53.

<sup>202</sup> NARUC Handbook at 80.

<sup>203</sup> 1996 Act, sec. 101, §§ 254(b)(4), (b)(5).

<sup>204</sup> Any such universal service support payment should be, to the extent possible, "explicit, rather than implicit as many support mechanisms are today." Joint Explanatory Statement at 130-31. "In keeping with the conferees' intent that universal service support should be clearly identified, [section 254(e)] states that such support should be made explicit." *Id.* at 131.

<sup>205</sup> 1996 Act, sec. 101, § 254(f).

146. We recognize that even though, as noted below,<sup>206</sup> the provision of interconnection and unbundled elements pursuant to sections 251 and 252 may not legally displace our interstate access charge regime, the two types of services have clear similarities. Radically different pricing rules for interconnection and unbundled elements, on the one hand, and levels of interstate access charges, on the other, may create economic inefficiencies and other anomalies. Indeed, under a long-term competitive paradigm, it is not clear that there can be a sustainable distinction between access for the provision of local service and access for the provision of long distance service. Thus, we are cognizant of the need to consider these issues in a coordinated manner, and believe it is critically important to reform our interstate access charge rules in the near future.

147. Finally, we note that certain incumbent LECs have advocated that interconnection rates be set based on the "efficient component pricing rule" (ECPR) proposed by economist William Baumol and others.<sup>207</sup> Under this approach, an incumbent carrier that sells an essential input service, such as interconnection, to a competing network would set the price of that input service equal to "the input's direct per-unit incremental costs plus the opportunity cost to the input supplier of the sale of a unit of input."<sup>208</sup> Under the ECPR, competitive entry will not place at greater risk the incumbent's recovery of its overhead costs or any profits that it otherwise would forego due to the entry of the competitor. In other words, the incumbent's profitability would not be diminished by providing interconnection or unbundled elements or both. Proponents of ECPR argue that the ECPR creates an incentive for services to be provided by the lowest-cost provider and that it makes the incumbent indifferent to whether it sells an input service to a competitor or a final service to an end user. Critics, however, have argued that these properties only hold in special circumstances.<sup>209</sup> The ECPR presupposes that the incumbent is the sole provider of a bottleneck service, and seeks to define efficient incentives for incremental entry based on that assumption. Under the ECPR, competitive entry does not drive prices toward competitive levels, because it permits the incumbent carrier to recover its full opportunity costs, including any monopoly profits. In general, the ECPR framework precludes the opportunity to obtain the advantages of a dynamically competitive marketplace. These arguments cast significant doubts on the claims that the rule will yield efficient outcomes over time. Finally, as an administrative matter, it would be difficult for a regulatory agency to determine a carrier's actual opportunity cost.

148. We tentatively conclude that use of the ECPR or equivalent methodologies to set prices for interconnection and unbundled network elements would be inconsistent with the section 252(d)(1) requirement that be based on "cost." We propose that states be precluded from using this methodology to set prices for interconnection and access to unbundled elements. Moreover, we seek comment on whether such a pricing methodology, if used by a state, would constitute a barrier to entry as under section 253 of the 1996 Act.<sup>210</sup>

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<sup>206</sup> See para. 164.

<sup>207</sup> See William J. Baumol, *Some Subtle Issues in Railroad Deregulation*, 10 Int'l J. Trans. Econ. 341 (1983); William J. Baumol & Gregory Sidak, *Toward Competition in Local Telephony* (1994); William Baumol & Gregory Sidak, *The Pricing of Inputs Sold to Competitors*, 11 Yale J. on Reg. at 171 (1994).

<sup>208</sup> William Baumol & Gregory Sidak, *The Pricing of Inputs Sold to Competitors*, 11 Yale J. on Reg. at 178.

<sup>209</sup> See, e.g., Jean-Jacques Laffont & Jean Tirole, *Access Pricing and Competition*, 38 Eur. Econ. Rev. 1673 (1994).

<sup>210</sup> 1996 Act, sec. 101, § 253.

#### (4) Rate Structure

149. The structure of incumbent LEC rates for interconnection and unbundled network elements will influence the incentives for interconnectors to purchase and use these services, independent of the level at which rates are set.<sup>211</sup> For example, a usage-sensitive rate will create incentives for the purchaser to minimize usage, or to seek out end users with low usage, while a flat rate for an element will create incentives to utilize the maximum capacity available. Some possible rate structures for interconnection and access to unbundled network elements under the 1996 Act might produce rates that are not just, reasonable, and nondiscriminatory (as required under section 251), might conflict with the pricing standard in section 252(d)(1), or might be at odds with the pro-competitive goals of the 1996 Act. Establishing clear federal rules and principles concerning rate structures may assist states and the parties in arbitrating rates for interconnection and unbundled network elements. We therefore seek comment on some possible principles for analyzing rate structure questions, and some possible principles to guide state (and ultimately judicial) decisions in structuring rates for interconnection and unbundled network elements.

150. In general, we believe that costs should be recovered in a manner that reflects the way they are incurred. This approach is consistent with the 1996 Act's pricing standard for interconnection and unbundled network elements, which indicates that prices should be based on cost. Network providers incur costs in providing two broad categories of facilities, dedicated and shared. Dedicated facilities are those that are used by a single party -- either an end user or an interconnecting network. Shared facilities are those that are used by multiple parties. The cost of a dedicated facility can be attributed directly to the party ordering the service that uses that facility, and it is therefore efficient for that party to pay charges that recover the full cost of the facility. A non-traffic sensitive (NTS) or "flat-rated" charge is most efficient for dedicated facilities, because it ensures that a customer will pay the full cost of the facility, and no more.<sup>212</sup> It ensures that the customer will, for example, add additional lines only if the customer believes that the benefits of the additional lines will exceed their cost. It also ensures that the customer will not face an additional (and non-cost-based) usage charge.

151. We believe the costs of shared facilities should be recovered in a manner that efficiently apportions costs among users that share the facility. We seek comment on whether a capacity-based NTS rate or a traffic-sensitive (TS) rate may be efficient for recovering the cost of shared facilities in any given circumstance. For shared facilities whose cost varies with capacity, such as network switching, it may be efficient to set prices using any of the following: a usage-sensitive charge; a usage-sensitive charge for peak-time usage and a lower charge for off-peak usage; or a flat charge for the peak capacity that an interconnector wishes to pay for and use as though that portion of the facility were dedicated to the interconnector.

152. We seek comment on whether, pursuant to section 251(c)(2), (c)(3), (c)(6), and 251(d)(1), we should adopt rate structure principles for states to apply in meeting the pricing responsibilities under section 252(d)(1). We also seek comment on how such requirements might further our goal of having clear and administratively simple rules.<sup>213</sup> More specifically, we seek comment on whether we should require states to adopt rate structures that are cost-causative and,

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<sup>211</sup> See AT&T submission at 52.

<sup>212</sup> See *CMRS Notice* at paras. 42-44.

<sup>213</sup> See AT&T submission at 52 (advocating a principle of cost causation as an element of defining "just and reasonable" rates).

in particular, whether we should require states to provide for recovery of dedicated facility costs on a flat-rated basis or, at a minimum, make LECs offer a flat-rate option. In the absence of such a standard, could usage sensitive rates for dedicated facilities cause serious inefficiencies, harm competition, or be contrary to the requirements of the 1996 Act? For example, a usage-based charge could cause parties with high traffic volumes to overpay (*i.e.*, pay more than the fixed cost of the facility), and parties with low traffic volumes to underpay (*i.e.*, pay less than the fixed cost of the facility). In addition, a usage-based charge could give all parties an uneconomic incentive to reduce their traffic volumes or to avoid connecting with networks that impose such charges. It also could give parties with low volumes of traffic, who face below-cost prices, an incentive to add lines that they valued less than their cost. The Washington Utilities Commission, for example, has concluded that measured use interconnection rates are not cost-based and could harm local consumers, and therefore rejected a measured use compensation structure as an exclusive compensation mechanism.<sup>214</sup>

153. We also seek comment on whether we should adopt any rules for pricing of shared facilities. Parties should address the circumstances under which TS rates or flat capacity-based rates would produce efficient results for shared facilities. Several parties have argued that, in the context of interconnection and access to unbundled incumbent LEC networks, interconnectors should have the option of paying for and using a portion of the capacity of incumbent LEC switches.<sup>215</sup> As proposed by some, interconnectors would pay a flat rate for the use of a certain amount of incumbent LEC's switching capacity, and this rate would be discounted based on volume and term commitments. The interconnector would be able to use this platform to provide both basic local switching service as well as vertical switching features -- such as caller ID and call forwarding -- to its end users without paying the incumbent LEC a separate charge for these services. The interconnector would assume the risk of generating sufficient traffic to justify the capacity it purchased from the incumbent LEC. We seek comment on the "switch platform" concept, on whether the 1996 Act requires that switching capacity be made available to new entrants on this basis, and on the competitive implications of such a rate structure. We also seek comment on whether, in the context of these bottleneck facilities offered by incumbent LECs to their competitors, any measures are necessary to prevent incumbent LECs from recovering more than the total cost of a shared facility from users of that facility. Finally, we seek comment on whether concerns about pricing of shared facilities could be alleviated if, as discussed below, sellers of facilities are not allowed to preclude purchasers from further reselling such facilities on a shared basis, which would create alternative sources of shared capacity.<sup>216</sup>

154. Additionally, we seek comment on whether under the 1996 Act we should require or permit volume and term discounts for unbundled elements or services. Commenters are also invited to suggest alternative rate structure principles. Parties should explain how their proposals are consistent with economic cost-causation principles, and with the language and intent of the 1996 Act.

## (5) Discrimination

155. Sections 251 and 252 require that interconnection and unbundled element rates be

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<sup>214</sup> See *Washington Utilities and Transportation Commission*, Fourth Supplemental Order, Docket No. UT-941464, et al. (Oct. 1995).

<sup>215</sup> The concept is often referred to as the "switch platform." See, e.g., AT&T submission at 53 (arguing that "the vast majority of unbundled network elements costs are not usage sensitive").

<sup>216</sup> See *infra* Section II.B.3.b.

"nondiscriminatory."<sup>217</sup> In addition, section 251(c)(4) requires that, in making resale available, carriers not impose "discriminatory conditions or limitations on resale".<sup>218</sup> Finally, section 252(e) provides that states may reject a negotiated agreement or a portion of the agreement if it "discriminates" against a carrier not a party to the agreement and section 252(i) requires incumbent LECs to "make available any interconnection, service, or network element provided under an agreement . . . to which it is a party to any requesting telecommunications carrier upon the same terms and conditions."<sup>219</sup> By comparison, section 202(a) of the 1934 Act provides that "(i)t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges . . . for . . . like communication service."

156. We seek comment on the meaning of the term "nondiscriminatory" in the 1996 Act compared with the phrase "unreasonable discrimination" in the 1934 Act. More specifically, in choosing the word "nondiscriminatory," did Congress intend to prohibit all price discrimination, including measures (such as density zone pricing or volume and term discounts) that are considered lawful under section 202(a)? We note that the legislative history of the new provisions prohibiting discrimination offers no explicit guidance on this question.<sup>220</sup> We seek comment on whether sections 251 and 252 can be interpreted to prohibit only unjust or unreasonable discrimination. For example, may carriers charge different rates to parties that are not similarly situated, such as when a carrier incurs different costs to provide service to such parties? We also seek comment as to whether we should allow such pricing as a policy matter.

#### (6) Relationship to Existing State Regulation and Agreements

157. Section 251(d)(3) of the 1996 Act expressly bars the Commission, when prescribing and enforcing regulations to implement section 251, from precluding enforcement of certain existing state regulations. Specifically, section 251(d)(3) prohibits us from

"[precluding] the enforcement of any regulation, order, or policy of a State commission that--

- (A) establishes access and interconnection obligations of local exchange carriers;
- (B) is consistent with the requirements of this section; and
- (C) does not substantially prevent implementation of the requirements of this section and the purposes of [the portion of the 1996 Act dealing with development of competitive markets] ."<sup>221</sup>

We ask parties to address the meaning of the specific terms of section 251(d)(3). What types of state policies would, or would not, be consistent with the requirements of section 251 and the purposes of Part II or Title II of the Act? We also seek comment on how the particular principles discussed above would affect existing state rules and policies, as well as existing negotiated agreements between carriers.

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<sup>217</sup> 1996 Act, sec. 101, §§ 251(c)(2), (3), (6), and 252(d)(1).

<sup>218</sup> 1996 Act, sec. 101, § 251(c)(4)(B). *See infra* Section II.B.3.b. for a discussion of this issue.

<sup>219</sup> 1996 Act, sec. 101, §§ 252(e), (i).

<sup>220</sup> *See, e.g.*, Joint Explanatory Statement at 121-22, 125-26.

<sup>221</sup> 1996 Act, sec. 101, § 251(d)(3).

e. **Interexchange Services, Commercial Mobile Radio Services, and Non-Competing Neighboring LECs**

158. In this section, we address whether the terms of section 251(c) cover interconnection arrangements between incumbent LECs and providers of interexchange services, CMRS providers, and non-competing neighboring LECs.

(1) **Interexchange Services**

159. Sections 251(c)(2) and 251(c)(3) impose duties upon incumbent LECs to provide interconnection and nondiscriminatory access to unbundled network elements, respectively, to "any requesting telecommunications carrier." In relevant part, "telecommunications carrier" is defined in section 3(44) of the 1934 Act, as amended, as "any provider of telecommunications services." Because interexchange services are a type of "telecommunications services," which are defined in section 3(46) as "the offering of telecommunications for a fee directly to the public . . . regardless of the facilities used," we conclude that carriers providing interexchange services are "telecommunications carriers." Thus, we believe that interexchange carriers may seek interconnection and unbundled elements under subsections (c)(2) and (c)(3), respectively.

160. With respect to section 251(c)(2), however, we believe the statute imposes limits on the purposes for which any telecommunications carrier, including interexchange carriers, may request interconnection pursuant to that section. Section 251(c)(2) imposes an obligation upon incumbent LECs to provide requesting carriers with interconnection where the request is for the "transmission and routing of telephone exchange service and exchange access." "Telephone exchange service" is defined in section 3(47) of the 1934 Act, as amended, as "service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange," or "comparable service[s]."<sup>222</sup> According to this definition, interexchange service does not appear to constitute a "telephone exchange service." We seek comment on this interpretation.

161. Interexchange service would not appear to qualify as "exchange access" either. "Exchange access" is defined in section 3(16) of the 1934 Act, as amended, as "the *offering* of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services."<sup>223</sup> This definition would appear to require a telecommunications carrier to request interconnection for purposes of "offering" access to exchange services. An interexchange carrier that requests interconnection to originate or terminate an interexchange toll call would not appear to be "offering" access services, but rather to be "receiving" access services. Thus, it would appear that the obligation to provide interconnection pursuant to section 251(c)(2) does not apply to telecommunications carriers requesting such interconnection for the purpose of originating or terminating interexchange traffic. This tentative conclusion seems consistent with section 251(i), which provides that "[n]othing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201." Section 201 is the statutory basis on which interexchange carriers have long been entitled to interconnect for the purposes of originating and terminating interexchange traffic. Some have argued that our interpretation is also consistent with other provisions of section 251, such as section 251(g), and with Congress's focus on the local

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<sup>222</sup> 1996 Act, sec. 3(a)(1), § 3(47).

<sup>223</sup> 1996 Act, sec. 3(a), § 3(16) (emphasis added).

exchange market.<sup>224</sup> We seek comment on our tentative conclusion.

162. It follows from the above definition of "exchange access" that a telecommunications carrier may request cost-based interconnection under section 251(c)(2) for the purpose of *offering* access services in competition with the incumbent LEC. We seek comment, however, on whether a carrier may request cost-based interconnection under section 251(c)(2) *solely* for this purpose. The language in section 251(c)(2) indicating that interconnecting carriers must offer "telephone exchange service and exchange access" may mean that carriers must offer *both* "telephone exchange service and exchange access," or it may mean that telecommunications carriers may obtain interconnection from an incumbent LEC to provide one or the other service, or both. We believe that if we were to interpret this section to require requesting parties to offer both telephone exchange and exchange access services, such a requirement would exclude competitive access providers that currently interconnect with incumbent LECs in order to offer competing exchange access transport services, not telephone exchange service. On the other hand, if we interpret section 251(c)(2) to permit cost-based interconnection for the purpose of offering either telephone exchange or exchange access, that interpretation might permit an interexchange carrier to form an affiliate to obtain interconnection from an incumbent LEC for the purpose of offering a competing exchange access service. The affiliate then might offer its competing service exclusively to its interexchange affiliate, thereby enabling the latter to accomplish indirectly -- obtaining interconnection for the purpose of receiving exchange access service -- what the statute appears to prohibit it from doing directly under section 251(c)(2). This concern is real, of course, only if an exclusive relationship of this sort is otherwise lawful under the 1934 Act, as amended, which it may not be. We seek comment on this analysis. We also seek comment on the impact that any conclusion here would have on the Commission's *Expanded Interconnection* rules, which address the competitive provision of interstate access.

163. Section 251(c)(3) appears to limit the purposes for which telecommunications carriers may request access to unbundled network elements only in the sense that such carriers must seek to provide a "telecommunications service" by means of such elements. As discussed above, interexchange service is a "telecommunications service." Thus, we tentatively conclude that carriers may request unbundled elements for purposes of originating and terminating interexchange toll traffic, in addition to whatever other services the carrier wishes to provide over those facilities.

164. Some interested persons have suggested that this interpretation of section 251(c)(3) would allow interexchange carriers, in effect, to obtain network elements in order to avoid the Commission's Part 69 access charges, but would not require such carriers to use such elements to compete with the incumbent LEC to provide telephone exchange service to subscribers.<sup>225</sup> In opposition, others may argue that incumbent LECs are not obliged under section 251(c)(3) to provide access to unbundled elements, such as a local loop, *solely* for the purpose of originating and terminating interexchange toll traffic. Rather, the argument might go, the incumbent LEC's statutory obligation to provide network elements extends only to providing exclusive access to an entire loop, in which case an interexchange carrier could not, as a practical matter, purchase such access without having won over the local customer associated with the loop and providing that telephone exchange service to that customer (or arranging for others to provide it). This latter reading of the statute is consistent with our earlier discussion concerning the meaning of the term

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<sup>224</sup> See, e.g., Letter from Bell Atlantic to William Kennard, General Counsel, FCC 6 (April 15, 1996); Southwestern Bell's February 29, 1996 Submission at 3-4. Ameritech's February 28, 1996 Submission at 3.

<sup>225</sup> See, e.g., Letter on Behalf of AT&T, MCI, LDDS WorldCom, and CompTel to William Kennard, General Counsel, FCC 4 (March 20, 1996).

"network element."<sup>226</sup> There we noted that a network element appears to refer to a facility or function, rather than a jurisdictionally distinct service, such as switching for intrastate exchange access. We also note that viewing a network element as a jurisdictionally distinct service might be inconsistent with the pricing standards set forth in section 252(d)(1), which suggest that prices for these elements should be set on the basis of some measure of economic costs, not jurisdictionally separated costs. Moreover, as with section 251(c)(2), allowing interexchange carriers to circumvent Part 69 access charges by subscribing under section 251(c)(3) to network elements solely for the purpose of obtaining exchange access may be viewed as inconsistent with other provisions in section 251, such as sections 251(i) and 251(g), and contrary to Congress' focus in these sections on promoting local competition. Lastly, such a reading of the statute may effect a fundamental jurisdictional shift by placing interstate access charges under the administration of state commissions. We seek comment on these issues.

165. If a carrier that provides interexchange toll services purchases access to unbundled network elements in order to provide such toll services -- either alone if the statute permits it, or in conjunction with local exchange services -- we tentatively conclude that the incumbent LEC may not assess Part 69 access charges in addition to the charges assessed for the network elements determined under sections 251 and 252. Section 252, we note, requires that charges for elements shall be based on cost.<sup>227</sup> Thus, the additional imposition of Part 69 access charges would result in total charges not based on cost and thus would seem inconsistent with the statutory scheme. We seek comment on this conclusion. In commenting, parties may want to discuss the relevance of section 272(e)(3). That section requires BOCs, after entering the in-region interexchange business, to impose on their affiliates -- or impute to themselves -- access charges no lower than what they charge to unaffiliated interexchange carriers. In light of the above discussion and its possible implications for our Part 69 access charge regime, we repeat here our intention of taking up access charge reform in the very near future.

## (2) Commercial Mobile Radio Services

166. We next seek comment on whether interconnection arrangements between incumbent LECs and commercial mobile radio service (CMRS) providers fall within the scope of section 251(c)(2). As indicated below in the discussion of section 251(b)(5), we also seek comment on the separate but related question of whether LEC-CMRS transport and termination arrangements fall within the scope of section 251(b)(5).

167. With respect to section 251(c)(2), because the obligations of that section, and of section 251(c) generally, apply only to incumbent LECs, we tentatively conclude that CMRS providers are not obliged to provide interconnection to requesting telecommunications carriers under the provision of section 251(c)(2). CMRS providers are not encompassed by the 1996 Act's definition of "incumbent local exchange carrier" discussed above.

168. LEC-CMRS interconnection arrangements may nonetheless fall within the scope of section 251(c)(2) if CMRS providers are "requesting telecommunications carrier[s]" that seek interconnection for the purpose of providing "telephone exchange service and exchange access." CMRS are within the definition of "telecommunications services" in section 3(46) of the 1934 Act, as amended, because they are offered "for a fee directly to the public." Similarly, CMRS providers are within the definition of "telecommunications carrier[s]" in section 3(44) because they are "provider[s] of telecommunications services." The phrase "telephone exchange service"

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<sup>226</sup> See discussion, *supra*, II.B.2.c regarding the definition of "network element."

<sup>227</sup> 1996 Act, sec. 101, § 252(d)(1).

is arguably broad enough to encompass at least some CMRS. "[T]elephone exchange service" is defined as either "(A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service[s]." <sup>228</sup> We seek comment on which if any CMRS, including voice-grade services, such as cellular, PCS, and SMR, and non-voice-grade services, such as paging, fit this definition. In commenting, parties should address any past Commission statements that bear on the matter. <sup>229</sup>

169. If CMRS providers seeking interconnection from incumbent LECs fall within the purview of section 251(c)(2), or of section 251(b)(5), there arises the question of the relationship between section 251 and another recent addition to the 1934 Act that also addresses interconnection between CMRS providers and other common carriers, section 332(c). Although we seek comment on the relationship of the two provisions in this proceeding, we note that LEC-CMRS interconnection pursuant to section 332(c) is the subject of its own ongoing proceeding in CC Docket No. 95-185, which the Commission initiated prior to the enactment of the 1996 Act. We also note that we sought comment in that proceeding generally on the issue of the interplay of section 251 and section 332(c) and have received extensive comments. We intend that CC Docket No. 95-185 remain open and we do not want to ask interested parties to repeat their arguments on issues they have already addressed in that docket. Therefore, in this proceeding, we ask parties to address any specific issues presented in this *Notice* that are not already addressed in CC Docket No. 95-185. In submitting additional comments, parties may want to address the possibility that, if both sections 251 and 332(c) apply, the requesting carrier would have to choose the provision under which to proceed. Parties may also want to address whether it would be sound policy for the Commission to distinguish between telecommunications carriers on the basis of the technology they use. The Commission retains the prerogative of incorporating by reference comments filed in the section 332(c) proceeding into the record of this proceeding, and of acting on these pending rulemakings in a manner that best serves the interests of reasoned decisionmaking.

### (3) Non-Competing Neighboring LECs

170. We turn next to whether interconnection agreements between incumbent LECs and non-competing neighboring LECs are subject to section 251(c)(2). <sup>230</sup> If they are, section 252 would appear to require that such arrangements be made public and the terms and conditions of the agreements made available to other carriers. Whether this is true of *existing* arrangements between incumbent LECs and non-competing neighboring LECs depends on the resolution of the issue, discussed above, of existing agreements generally.

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<sup>228</sup> 47 U.S.C. § 3(47). Section 3(a)(1) of the 1996 Act amended the definition in the 1934 Act by adding part (B) above.

<sup>229</sup> See, e.g., *In re Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services*, 9 FCC Rcd 5408, 5453 (1994) (quoting *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, Policy Statement on Interconnection of Cellular Systems, 59 Rad. Reg. 2d 1275, Appendix B at 1283-85 (1986)); *Amendment of the Commission's Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Service*, Notice of Proposed Rulemaking, WT Docket No. 96-6, FCC 96-17, 11 FCC Rcd 2445 (Jan. 25, 1996) at para. 20

<sup>230</sup> As in the LEC-CMRS context, the separate but related question of whether neighboring LEC transport and termination arrangements fall within the scope of section 251(b)(5) is noted below, in the section dealing with that provision.

171. The language of section 251(c)(2), which encompasses interconnection requested for the purposes of providing "telephone exchange service and exchange access," appears to encompass the services provided by non-competing neighboring LECs. By definition, such LECs provide "telephone exchange service and exchange access." Nevertheless, a reading of section 251(c)(2) in context shows that it is part of a provision designed to promote competition against the incumbent LEC, and on this basis, the requirements set forth therein could arguably be understood to apply only to arrangements between *competing* carriers. We note, however, that in deciding this issue, we do not seek to create any disincentives that might hamper competition between neighboring carriers. We seek comment on which of the above interpretations is correct. To the extent a party advocates the latter interpretation, we also seek comment on the implications, if any, for the CMRS discussion.

### **3. Resale Obligations of Incumbent LECs**

#### **a. Statutory Language**

172. Section 251(c)(4) imposes a duty upon incumbent LECs to offer certain services for resale at wholesale rates.<sup>231</sup> Specifically, section 251(c)(4) requires incumbent LECs:

(A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

173. We seek comment generally on the application of this section, as set forth in some detail below. We will first discuss the services subject to resale and conditions on such resale and then turn to the pricing issues concerning resale. We also seek comment generally on the relationship of this section to section 251(b)(1), which imposes certain resale duties on all LECs.

#### **b. Resale Services and Conditions**

174. Section 251(c)(4)(A) provides that incumbent LECs must offer for resale at wholesale rates "any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." Section 251(b)(1) imposes on all LECs "the duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services."<sup>232</sup> One view of the relationship between section 251(b)(1) and section 251(c)(4) is that all LECs are prohibited from imposing unreasonable restrictions on resale, but that only incumbent LECs that provide retail services to subscribers that are not telecommunications carriers are required to make such services available at wholesale rates to requesting telecommunications carriers. We seek comment on this view

175. We also seek comment on what limitations, if any, incumbent LECs should be allowed to impose with respect to services offered for resale under section 251(c)(4). Should the incumbent LEC have the burden of proving that a restriction it imposes is reasonable and

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<sup>231</sup> 1996 Act, sec. 101, § 251(c)(4).

<sup>232</sup> 1996 Act, sec. 101, § 251(b)(1).

nondiscriminatory? Given the pro-competitive thrust of the 1996 Act and the belief that restrictions and conditions are likely to be evidence of an exercise of market power, we believe that the range of permissible restrictions should be quite narrow.<sup>233</sup> We seek comment on this view. We also seek comment on whether, and if so how, the resale obligation under section 251(c)(4) extends to an incumbent LEC's discounted and promotional offerings. Did Congress intend for such offerings to be provided at wholesale rates, based on the promotional rate minus avoided costs, or does the obligation to provide for resale at wholesale rates only apply to the incumbent LEC's standard retail offerings? If the obligation extends only to the standard offering, what effect would that have on the use of resale as a means of entering the local market? If the obligation applies to promotional and discounted offerings, must the entrant's customer take service pursuant to the same restrictions that apply to the incumbent LEC's retail customers? Moreover, how would such restrictions be enforced without impeding competition (e.g., through disclosure of competitively sensitive information)? We also seek comment on whether a LEC can avoid making a service available at wholesale rates by withdrawing the service from its retail offerings, or whether it should be required to make a showing that withdrawing the offering is in the public interest or that competitors will continue to have an alternative way of providing service. We also seek comment on whether access to unbundled elements addresses this concern.

176. We seek comment on the meaning of the language that "a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers."<sup>234</sup> The provision suggests that Congress did not intend to allow competing telecommunications carriers to purchase a service that, pursuant to state or federal policy, is offered at subsidized prices to a specified category of subscribers (e.g., residential subscribers), and then resell such service to customers that are not eligible for such subsidized service (e.g., business subscribers). For example, it might be reasonable for a state to restrict the resale of a residential exchange service that is limited to low-income consumers, such as the existing Lifeline program. At the same time, we have generally not allowed carriers to prevent other carriers from purchasing high volume, low price offerings to resell to a broad pool of lower volume customers.<sup>235</sup> We seek comment on this analysis.

177. We note that states have adopted various policies regarding resale of telecommunications services. For example, some states prohibit the resale of flat-rated services and residential service.<sup>236</sup> Other states require or permit the resale of residential services, but place restrictions, or permit the LECs to place restrictions, on the resale of such service. For example, Illinois prohibits the resale of residential services to customers other than residential users, while Washington and Ohio permit carriers to prohibit or to place reasonable restrictions

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<sup>233</sup> ALTS asserts that there should be no prohibitions or restrictions on the resale of the services of dominant carriers, such as the incumbent LECs. ALTS Handbook at 17.

<sup>234</sup> 1996 Act, sec. 101, § 251(c)(4)(B).

<sup>235</sup> See *Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, Docket No. 20097, Report and Order, 60 FCC 2d 261, 308-316 (1976) (divisions of full time private line circuits will enable smaller users to make efficient, discrete use of private line offerings, and such advantages will be in terms of cost savings and selectivity rather than technical advantages).

<sup>236</sup> Massachusetts prohibits the resale of flat-rate and residential services. NARUC Handbook at 72. Oregon prohibits the resale of residential service. NARUC Handbook at 107.

on the resale of residential services to business customers.<sup>237</sup> Finally, some states have imposed nondiscrimination requirements similar to those contained in section 251(c)(4). Colorado has enacted rules governing the authorization of local exchange service providers, and has prohibited facilities-based telecommunications providers from imposing unreasonable or discriminatory limitations on the resale of the regulated telecommunications service.<sup>238</sup> Pennsylvania also prohibits a LEC from maintaining or imposing resale or sharing restrictions on any service that the state commission finds to be competitive.<sup>239</sup> We seek comment on whether it would be consistent with the 1996 Act to use any state policies concerning restrictions on resale in our federal policies. We also seek comment on state policies that are inconsistent with the goals of the 1996 Act or that are inadvisable from a policy perspective. Parties are also invited to comment on whether requiring new entrants to cope with resale policies that are inconsistent from one state to another would disadvantage them competitively in a manner inconsistent with the 1996 Act.

### **c. Pricing of Wholesale Services**

#### **(1) Statutory Language**

178. The requirement in section 251(c)(4) that incumbent LECs offer services at "wholesale rates" is elaborated in section 252(d)(3), which sets forth the standards that states must use in arbitrating agreements and reviewing rates under BOC statements of generally available terms and conditions. Section 252(d)(3) provides that wholesale rates shall be set "on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." As previously discussed in Section II.B.2.d.(1), we believe that the Commission is authorized to promulgate rules for the states in applying section 252(d).

#### **(2) Discussion**

179. We seek comment generally about the meaning of the term "wholesale rates" in section 251(c)(4). To ensure that incumbent LECs fulfill their duty under section 251(c)(4) regarding resale services, can and should we establish principles for the states to apply in order to determine wholesale prices in an expeditious and consistent manner?

180. We also seek comment on whether we should issue rules for states to apply in determining avoided costs. We could, for example, determine that states are permitted, under the Act, to direct incumbent LECs to quantify their costs for any marketing, billing, collection, and similar activities that are associated with offering retail, but not wholesale services. We seek comment on whether avoided costs should also include a share of general overhead or "mark-up" assigned to such costs.<sup>240</sup> LECs would then reduce retail rates by this amount, offset by any portion of those expenses that they incur in the provision of wholesale services. This approach appears to be consistent with the statute, but would create certain administrative difficulties

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<sup>237</sup> NARUC Handbook at 65-66, 139.

<sup>238</sup> *Id.* at 27.

<sup>239</sup> *Id.* at 113.

<sup>240</sup> See Rebuttal Testimony of Jake Jennings before Telecommunications Program Office of Policy and Planning Illinois Commerce Commission, Docket No. 95-0458 (December 21, 1995) at 16-17.

because all of the information regarding such costs is under the control of the incumbent LECs. We seek comment on how this approach could be adopted without creating unnecessary burdens on the LECs.

181. Alternatively, we could establish a uniform set of presumptions that states could adopt and that would apply in the absence of quantifications of such costs by incumbent LECs. For example, the Commission could identify a significant number of expenses that the states would presume to be retail expenses, absent a contrary showing by the incumbent LEC. Such presumptions recognize that it may be difficult to obtain cost data from incumbent LECs. They also appear to be consistent with section 252(b)(4)(B), which provides that, "[i]f any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the state commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived."<sup>241</sup> In addition, we could identify specific accounts or portions of accounts in the Commission's Uniform System of Accounts (USOA)<sup>242</sup> that the states should include as "avoided costs." Another issue on which we seek comment is whether states should be permitted or required to allocate some common costs to "avoided cost" activities. We seek comment on these options, and invite parties to propose other options. We also seek comment on how any approach would further our goals of clarity and administrative simplicity.

182. We also seek comment on whether we should establish rules that allocate avoided costs across services. Should incumbent LECs be allowed, or required, to vary the percentage wholesale discounts across different services based on the degree the avoided costs relate to those services?<sup>243</sup> The benefit of any such approach is that it is likely to result in wholesale rates which are more cost-based than a uniform allocation across services, and that should facilitate efficient entry. However, the administrative complexity of this approach may outweigh the benefits. We seek comment on this approach and on other options, such as requiring that avoided costs be allocated proportionately across all services so that there would be a uniform discount percentage off of the retail rate of each service.

183. While most states have taken no action in this area, a few states have considered these issues. California recently established interim wholesale rates based on identified costs attributable to retailing functions. Based on the costs, California required Pacific Bell to offer a 17 percent discount below retail business rates and a 10 percent discount below its retail residential rates. It also required GTE to set wholesale rates 12 percent below its retail business rates and 7 percent below its residential rates.<sup>244</sup> In Illinois, Ameritech has filed wholesale tariffs with rates that are approximately 6 percent below undiscounted residential retail rates and 10 percent below undiscounted business retail rates. These tariffs are in effect, but are subject to revision in a tariff proceeding pending before the Illinois Commerce Commission. Illinois commission staff have recommended that wholesale prices be set on the basis of retail rates less a measure of net avoided costs. The measure of avoided costs would include the net total

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<sup>241</sup> 1996 Act, sec. 101, § 252(b)(4)(B).

<sup>242</sup> 47 C.F.R. Part 32.

<sup>243</sup> For example, if incumbent LECs spend more money marketing vertical features than they spend marketing basic local exchange service, the wholesale rate for vertical features could be reduced by a proportionally greater amount from the retail rate than would be the case for basic local exchange service.

<sup>244</sup> *Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service*, R.95-040043, *Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service*, I.95-04-044, Decision (Cal. Pub. Util. Comm'n. Mar. 13, 1996).

assigned costs (TSLRIC plus an allocation of joint costs) of the avoided functions and a pro rata share of the contribution in existing retail rates.<sup>245</sup> We seek comment on whether any of these approaches by the states are consistent with the fundamental objectives of the 1996 Act, and which, if any, might be useful in setting a national policy. We also invite comments discussing the effect of any regulations we adopt on agreements that have already been negotiated or decisions that have already been made by the states.

### (3) Relationship to Other Pricing Standards

184. We seek comment on the relationship between rates for unbundled network elements and rates for wholesale or retail service offerings. Some states have adopted rules requiring that the sum of the rates for unbundled network elements be no greater than the retail service rate. The Illinois Commerce Commission calls this the "imputation rule."<sup>246</sup> Proponents of an imputation rule argue that it prevents anticompetitive price squeezes by incumbent LECs,<sup>247</sup> which may set unbundled element prices too high in order to discourage new entrants from purchasing unbundled elements instead of purchasing and reselling the bundled service.

185. It may be difficult to comply with an imputation rule, however, if rates for retail services are below cost, due to implicit, non-competitively neutral, intrastate subsidy flows.<sup>248</sup> For example, assume the cost of basic residential local exchange service is \$25, including a \$20 cost for the loop element and a \$5 cost for the "port" element, and the retail rate for such service (including the federal SLC) is \$10. In such a case, application of the imputation rule would require either that the incumbent LEC offer unbundled network elements to its competitors at prices less than cost, or that the retail rate be increased to at least \$25.

186. Certain states, including the New York Public Service Commission, have not found it necessary to adopt an imputation rule. When the incumbent LEC sells retail services at prices that are less than cost, it may be that it recovers the difference in other state retail service rates and in interexchange access charges. For example, in the example cited above, the customer may pay 12 cents per minute for intrastate toll traffic that costs only 2 cents per minute to provide, and may generate long-distance traffic for which the incumbent LEC receives access charges of 3 cents per minute even though it costs only 1 cent per minute to provide such access. Under these circumstances, it could be argued that no imputation rule is needed to protect new entrants because, as a matter of market economics or legal obligations, new entrants purchasing unbundled elements priced at cost would be providing all of these services, and thus could collect the same relatively overpriced revenues for toll service, interstate access, vertical features, and other offerings to make up for the underpricing of basic residential local exchange service.<sup>249</sup>

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<sup>245</sup> NARUC Handbook at 65-66.

<sup>246</sup> *Illinois Bell Telephone Company Proposed Introduction of a Trial of Ameritech's Customer First Plan in Illinois*, nos. 94-0096, 94-0117, 94-0146, 94-0301 consolidated, Illinois Commerce Commission (Apr. 7, 1995).

<sup>247</sup> A price squeeze occurs when a vertically-integrated service provider increases the price of the inputs it sells to its non-integrated competitors and/or decreases the price of the products in which it competes with the non-integrated competitors. See, e.g., Jean Tirole, *The Theory of Industrial Reorganization* 193-94 (1988); Janusz A. Ordover & Garth Saloner, *Predation, Monopolization, and Antitrust*, in Richard Schmalensee & Robert Willig (eds.), *I Handbook of Industrial Organization* 565-66 (1989).

<sup>248</sup> Interstate subsidy flows are to be addressed by the Joint Board pursuant to section 254(a)-(e).

<sup>249</sup> See discussion *supra* in sections II.B.2.c.(1) and II.B.2.e

By contrast, an entrant that merely resells a bundled retail service purchased at wholesale rates, would not receive the access revenues. There are at least two possible additional objections to an imputation rule when it requires that unbundled elements be priced below cost. First, the unbundled elements could be used to provide services that compete with LEC retail services that are the source of the subsidy. Second, if unbundled elements were priced at less than cost, then efficient facility-based entry would be deterred, as new entrants purchase unbundled network elements at below cost rather than constructing their own facilities. We seek comment on whether it would advance the pro-competitive goals of the 1996 Act for all states to follow an imputation rule, and on the potential pitfalls of such a rule.

187. One action a state could take to address any problems created by adopting an imputation rule when retail rates are below cost would be to restructure its retail rates to eliminate non-competitively neutral, implicit subsidy flows. This restructure could involve either making subsidy flows explicit and competitively neutral, reducing the level of such flows, or a combination. For example, the Illinois Commerce Commission, before enacting an imputation rule, divided the state into three access areas with separate rates in each area. It then restructured rates, so that retail rates in each access area are, on average, above TSLRIC. Are such changes required pursuant to section 254(f)?<sup>250</sup> We seek comment on the relative advantages and detriments of this and other alternatives as either federal policies or policies that individual states could adopt.

188. We note that, to the extent federal implicit universal service subsidies contribute to any problems created by adopting an imputation rule when retail rates are below cost, they will be addressed in the federal-state joint board review of universal service requirements being conducted pursuant to section 254. We further note that at least one incumbent LEC has suggested in another proceeding that the Commission consider commencing a proceeding to determine whether it would be appropriate to enter a preemption order requiring that rates for local service exceed the cost of providing that service.<sup>251</sup> We seek comment on these issues. We also invite comment on whether some interim rules might be appropriate to address this problem before the federal-state joint board established pursuant to section 254 acts, which could be up to nine months after we issue an order in this proceeding.<sup>252</sup> We also solicit comment on any other rules that should be adopted concerning the relationship between services or elements that are necessary to promote the goals of the Act.

#### **4. Duty to Provide Public Notice of Technical Changes**

189. Section 251(c)(5) of the 1996 Act requires incumbent LECs to "provide reasonable public notice of changes in the information necessary for the transmission and routing of services

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<sup>250</sup> Section 254(f) provides that a state "may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service" and "may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms."

<sup>251</sup> Reply Comments of US West, Inc., *In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, March 25, 1996, p.5. *But cf.* Washington Utilities and Transportation Commission, Fifteenth Supplemental Order, Docket UT-950200 pp. 96-97 (April 1996) (average residential rate of \$10.50 per month covers incremental cost of service and provides a reasonable contribution to US West's overhead).

<sup>252</sup> See 1996 Act, sec. 101, §§ 251(d)(1) and 254(a)(2).

using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks."<sup>253</sup> We tentatively conclude that (1) "information necessary for transmission and routing" should be defined as any information in the LEC's possession that affects interconnectors' performance or ability to provide services; (2) "services" should include both telecommunications services and information services as defined in sections 3(46) and 3(20), respectively, of the 1934 Act, as amended; and (3) "interoperability" should be defined as the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged.<sup>254</sup> We request comment on what changes should trigger the public notice requirement and on the above tentative conclusions.

190. We note that public notice is critical to the uniform implementation of network disclosure, particularly for entities operating networks in numerous locations across a variety of states. We tentatively conclude that incumbent LECs should be required to disclose all information relating to network design and technical standards, and information concerning changes to the network that affect interconnection.<sup>255</sup> We further tentatively conclude that the incumbent LEC, at a minimum, must provide the following specific information: (1) date changes are to occur; (2) location at which changes are to occur; (3) type of changes; and (4) potential impact of changes. We believe that these proposed categories represent the minimum information that a potential competitor would need in order to achieve and maintain efficient interconnection.

191. In addition, we request comment on how public notice should be provided. We tentatively conclude that full disclosure of the required technical information should be provided through industry forums (*e.g.*, the Network Operations Forum (NOF) or Interconnection Carrier Compatibility Forum (ICCF)) or in industry publications. This approach would build on a voluntary practice that now exists in the industry and would result in broad availability of the information. We seek comment on this tentative conclusion. We further seek comment as to whether incumbent LECs should be required to file with the Commission a reference to this technical information and where it can be located (*e.g.*, an Internet address).

192. We also tentatively conclude that incumbent LECs should be required to: (1) publicly disclose the information within a "reasonable" time in advance of implementation; and (2) make the information available within a "reasonable" time if responding to an individual request. We seek comment on what constitutes a reasonable time in each of these situations, and on whether the Commission should adopt a timetable for disclosing technical information comparable to the disclosure timetable that we adopted in the *Computer III* proceeding.<sup>256</sup> In

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<sup>253</sup> 1996 Act, sec. 101, § 251(c)(5).

<sup>254</sup> See *IEEE Standard Dictionary of Electrical and Electronics Terms* 461 (J. Frank ed. 1984).

<sup>255</sup> 1996 Act, sec. 101, § 251(c)(5); see, *e.g.*, 47 C.F.R. § 64.702.

<sup>256</sup> *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III), Phase I*, 104 FCC 2d 958 (1986) (*Phase I Order*), recon., 2 FCC Rcd 3035 (1987) (*Phase I Recon. Order*), further recon., 3 FCC Rcd 1135 (1988) (*Phase I Further Recon. Order*), second further recon., 4 FCC Rcd 5927 (1989) (*Phase I Second Further Recon.*), *Phase I Order and Phase I Recon. Order vacated*, *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*); *Phase II*, 2 FCC Rcd 3072 (1987) (*Phase II Order*), recon., 3 FCC Rcd 1150 (1988) (*Phase II Recon. Order*), further recon., 4 FCC Rcd 5927 (1989) (*Phase II Further Recon. Order*), *Phase II Order, vacated*, *California I*, 905 F.2d 1217 (9th Cir. 1990); *Computer III Remand Proceedings*, 5 FCC Rcd 7719 (1990) (*ONA Remand Order*), recon., 7 FCC Rcd 909 (1992), *pets. for review denied*.

Phase II of that proceeding, the Commission required AT&T and the BOCs to disclose information about network changes or new network services that affect the interconnection of enhanced services with the network at two points in time.<sup>257</sup> First, carriers were required to disclose such information at the "make/buy" point -- that is, when the carrier decides to make itself, or to procure from an unaffiliated entity, any product the design of which affects or relies on the network interface.<sup>258</sup> Second, carriers were required to release publicly all technical information at least twelve months prior to the introduction of a new service or network change that would affect enhanced service interconnection with the network.<sup>259</sup> If a carrier is able to introduce a new service between six and twelve months of the make/buy point, public disclosure was permitted at the make/buy point, but in no event could the carrier introduce the service earlier than six months after the public disclosure.<sup>260</sup> We seek comment as to whether the Commission should adopt a comparable timetable for the section 251(c)(5) network disclosure requirements and how the timetable should be implemented in this context.

193. We seek comment on the relationship between sections 273(c)(1) and (c)(4), which detail BOCs' disclosure requirements "to interconnecting carriers . . . on the planned deployment of telecommunications equipment," and section 251(c)(5), which addresses disclosure requirements for all incumbent LECs. In addition, we seek comment on what enforcement mechanism, if any, should be employed to ensure compliance with the section 251(c)(5) public notice requirement and how we might reconcile the related obligations under sections 251(a), 251(c)(5) and 256 to make them simple to administer.

194. We seek comment on the extent to which safeguards may be necessary to ensure that information regarding network security, national security and proprietary interests of LECs, manufacturers and others are not compromised, and what those safeguards should be.

### **C. Obligations Imposed on "Local Exchange Carriers" by Section 251(b)**

195. Section 251(b) imposes certain specified obligations on all "local exchange carriers." "Local exchange carrier" is defined in section 3(26) as "any person that is engaged in the provision of telephone exchange service or exchange access."<sup>261</sup> Section 3(26) excludes from the definition persons "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 such term."<sup>262</sup> We seek comment on whether, and to what extent, CMRS providers should be classified as LECs and the criteria, such as wireless local loop competition

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*California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (*California II*); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order*); *BOC Safeguards Order, vacated in part and remanded, California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*), *cert. denied*, 115 S.Ct. 1427 (1995).

<sup>257</sup> *Phase II Recon. Order*, 3 FCC Rcd 1150, 1164, ¶ 116.

<sup>258</sup> *Id.*

<sup>259</sup> *Id.*

<sup>260</sup> *Id.*

<sup>261</sup> 1996 Act, sec. 3, § 153(a)(44).

<sup>262</sup> 1996 Act, sec. 3, § 153(26).

in the LEC's service area by the CMRS provider, that we should use to make such a determination.<sup>263</sup> We seek comment on whether and how a Commission determination that CMRS providers be granted flexibility to provide fixed wireless local loop service should affect the determination of whether CMRS providers should be included in the definition of local exchange carrier. We also seek comment on whether we may classify a CMRS provider as a LEC for certain purposes but not for others. For example, could we treat a CMRS provider as a LEC for purposes of providing resale but not for providing number portability? We also request that commenters discuss whether we may classify some classes of CMRS providers as LECs, but not others, such as those that are not competing with LECs. For example, in considering whether to classify certain CMRS providers as LECs, should we distinguish between CMRS providers that offer cellular service from those that offer only paging services?

## **1. Resale**

196. Section 251(b)(1) imposes a duty on all LECs "not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services."<sup>264</sup> New carriers can use resale of other LECs' services to provide service in a geographic area and such resale opportunities facilitate beneficial forms of competition.

197. We seek comment on what types of restrictions on resale of telecommunications services would be "unreasonable" under this provision. We believe that few, if any, conditions or limitations should be permitted because such restrictions generally are inconsistent with the pro-competitive thrust of the Act and would likely be evidence of the exercise of market power. We seek comment on this position. We also seek comment on what standards we should adopt, if any, to determine whether a resale restriction should be permitted. Further, we seek comment on whether any restriction on resale should be presumed to be unreasonable absent an affirmative showing that the restriction is reasonable, and if so, how could such a showing be made. Finally, commenters should address whether any of the issues discussed above with respect to resale by incumbent LECs as required under section 251(c)(4) should be applied to other LECs pursuant to section 251(b)(1).

## **2. Number Portability**

198. Section 251(b)(2) imposes a duty on all LECs "to provide, to the extent technically feasible, number portability in accordance with the requirements prescribed by the Commission."<sup>265</sup> This provision reflects Congress's recognition that pro-competitive policies must necessarily address the consumer's preferences and circumstances in the new competitive environment. By requiring that customers be able to switch local service providers without changing their telephone number, Congress seeks to lower barriers to entry and promote competition in the local exchange market.<sup>266</sup> Section 3(30) of the 1996 Act defines number portability as "the ability of users of telecommunications services to retain, at the same location,

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<sup>263</sup> We note that we might have authority under section 332 or other provisions of the Act to impose on CMRS providers obligations comparable to the ones set forth in section 251(b).

<sup>264</sup> 1996 Act, sec. 101, § 252(b)(1).

<sup>265</sup> 1996 Act, sec. 101, § 251(b)(2).

<sup>266</sup> *See, e.g.*, statement of Sen. Robert Kerrey ("Quite simply, telephone customers -- both business and residential -- are not as willing to switch phone companies if they also have to switch phone numbers.") 141 Cong. Rec. S8313 (June 14, 1995).

existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.<sup>267</sup> Section 251(e)(2) of the 1996 Act mandates that the cost of number portability "be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."<sup>268</sup> This requirement helps to ensure that no single category of telecommunications carriers will be disadvantaged competitively by bearing all or substantially all of the costs of number portability, and will help enhance fair and efficient local exchange competition.

199. On July 13, 1995, the Commission adopted a Notice of Proposed Rulemaking in CC Docket No. 95-116 seeking comment on a wide variety of technical and policy issues concerning number portability.<sup>269</sup> On March 14, 1996, the Common Carrier Bureau issued a Public Notice in that docket seeking comment on how passage of the 1996 Act may affect the issues raised in the *Number Portability NPRM*.<sup>270</sup> Accordingly, in an effort to adopt number portability rules expeditiously, we will address number portability issues raised by the 1996 Act in our ongoing proceeding on number portability. That proceeding will specifically address, *inter alia*, the deployment schedule that incumbent LECs must follow for providing number portability, the manner in which it can be provided, and the recovery of number portability costs.

200. Since our July NPRM, a number of states have taken significant steps to implement service provider number portability. Washington state completed a number portability trial using the Local Area Number Portability (LANP) method in December, 1995,<sup>271</sup> and New York is currently conducting a number portability trial in Manhattan using the Carrier Portability Code (CPC) method.<sup>272</sup> Several states have established task forces with industry participants to investigate the development and implementation of long-term number portability methods.<sup>273</sup> In addition, the State commissions of Illinois, Colorado, New York, and Georgia have adopted the recommendations of their staffs and task forces to implement AT&T's Location Routing Number (LRN).<sup>274</sup> Other states, such as Indiana, Michigan, Ohio, and Wisconsin, have selected, or are about to select, LRN without first establishing task forces. Switch vendors have indicated that the software required to support LRN generally will be available in the second quarter of 1997. Consequently, Illinois plans to deploy LRN in the Chicago LATA in the third quarter of 1997,

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<sup>267</sup> 1996 Act, sec. 3, § 153(30).

<sup>268</sup> 1996 Act, sec. 101, § 251(e)(2).

<sup>269</sup> *Telephone Number Portability*, CC Docket No. 95-116, 10 FCC Rcd 12350 (1995)(*Number Portability NPRM*).

<sup>270</sup> *Further Comments, Telephone Number Portability*, Public Notice, DA 96-358 (Mar. 14, 1996).

<sup>271</sup> LANP is a database solution whereby each customer is assigned a unique ten-digit customer number address (the dialed number) and a unique ten-digit network node address (the number that identifies the location of the switch to which the customer has forwarded his or her number).

<sup>272</sup> CPC is a database solution in which a three-digit code is assigned to each carrier in a given area.

<sup>273</sup> Those states include Alabama, Arizona, California, Connecticut, Florida, Georgia, Illinois, Kansas, Maryland, New York, Oregon, Texas, and Washington.

<sup>274</sup> LRN is a database solution in which a ten-digit location routing number is used to identify the switch that serves a particular customer or customers.

and Georgia has ordered implementation of LRN as soon as it becomes fully available. Ohio plans to have implemented a database number portability method by October, 1997.

201. We note that while several states have taken action toward implementation of service provider portability, no long-term number portability solutions are in use today, and approximately 27 states have yet to address issues related to long-term number portability. By enacting section 251(b)(2) of the 1996 Act, Congress has stated that consumers should be able to change local telephone companies without changing their phone numbers, and that this capability is critical to the development of local exchange competition. Although there are methods of providing number portability today, these mechanisms generally are considered less efficient and less pro-competitive than the long-term solutions now being developed. For example, existing methods rely on the incumbent LEC network, generally do not support all current vertical services, and are wasteful of numbering resources. Accordingly, we intend to take expeditious action on number portability issues.

### 3. Dialing Parity

202. Section 251(b)(3) of the 1996 Act requires LECs "to provide dialing parity to competing providers of telephone exchange service and telephone toll service." Under section 3(15) of the 1934 Act, as amended, "dialing parity" means:

that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier).<sup>275</sup>

This dialing parity requirement will foster local exchange, long distance, and international competition by ensuring that each customer has the freedom to choose among different carriers for different services without the burden of dialing additional access codes or personal identification numbers.

203. It is our understanding that some form of intraLATA toll dialing parity is available or has been ordered in eighteen states.<sup>276</sup> In the thirty-two states where dialing parity has not been required, competition in the intraLATA toll market generally has been permitted only with the use of access codes, which require customers to dial a five- or seven-digit prefix before dialing the called party's telephone number.<sup>277</sup> Under the 1996 Act, LECs are precluded from relying upon access codes as a means of providing dialing parity to competitive telecommunications providers. Thus, when the 1996 Act became law, "dialing parity" did not exist in most states and, where some form of dialing parity had been required, implementation requirements and methodologies varied across the states.

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<sup>275</sup> 1996 Act, sec. 3, § 3(15).

<sup>276</sup> Those states are Alaska, Arizona, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia, and Wyoming.

<sup>277</sup> Sometimes referred to as "10XXX" or "101XXXX" dialing, callers may reach a long distance carrier in states where such dialing arrangements are authorized, by dialing a five-digit carrier access code ("10XXX," with "XXX" representing a three-digit carrier identification code) or a seven-digit carrier access code ("101XXXX," with "XXXX" representing a carrier identification code)

204. On April 4, 1994, the Commission adopted a Notice of Proposed Rulemaking that sought comment on a variety of issues related to the administration of the North American Numbering Plan (NANP),<sup>278</sup> including whether to impose dialing parity requirements on LECs for interstate, intraLATA toll traffic.<sup>279</sup> In a subsequent Order, adopted July 13, 1995, the Commission deferred consideration of the dialing parity issue.<sup>280</sup>

205. Comments in response to the *NANP NPRM* as to *whether* LECs should be required to implement dialing parity have become moot in light of the mandatory dialing parity provisions in section 251(b)(3) of the 1996 Act. In addition, because the *NANP NPRM* proposed requiring dialing parity solely for interstate, intraLATA toll traffic,<sup>281</sup> comments received in response to that notice do not address all of the section 251(b)(3) dialing parity requirements that apply to all interstate and intrastate telephone exchange local calling, and telephone toll services. We address the dialing parity issue anew in this Notice in light of the broader dialing parity directives contained in the 1996 Act. We ask parties to file in this docket those portions of any comments filed in response to the *NANP NPRM* that address particular methodologies for implementing intraLATA toll dialing parity and that are relevant to our consideration of the dialing parity requirements in the 1996 Act.

206. Section 251(b)(3) makes no distinction among international, interstate and intrastate traffic for purposes of the dialing parity provisions. Based on the absence of any such distinctions in defining the scope of the dialing parity requirements, we tentatively conclude that section 251(b)(3) creates a duty to provide dialing parity with respect to all telecommunications services that require dialing to route a call, and encompasses international as well as interstate and intrastate, local and toll services. We believe that this interpretation is consistent with the statutory definition of dialing parity and would open the local and long distance markets to the greatest number of competitive telecommunications services providers. We seek comment on this tentative conclusion.

207. The statutory definition of dialing parity provides that the customer must have the ability to choose "from among 2 or more telecommunications services providers (including such local exchange carrier)."<sup>282</sup> LECs are precluded from relying on access codes as a means of

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<sup>278</sup> Administration of the North American Numbering Plan, *Notice of Proposed Rulemaking*, CC Docket No. 92-237, 9 FCC Rcd 2068 (1994) (*NANP NPRM*). The NANP is the basic numbering scheme that permits calls to be placed within the United States, Canada, Bermuda and most of the Caribbean with, at most, 11-digit dialing.

<sup>279</sup> Specifically, that Notice asked whether the Commission should "require local exchange carriers to . . . deliver those [interstate, intraLATA toll] calls to the carrier preselected by the end user unless the preliminary routing numbers indicate otherwise." *NANP NPRM*, para. 58.

<sup>280</sup> Administration of the North American Numbering Plan, *Report and Order*, CC Docket No. 92-237, FCC 95-283 (1995), para. 7 (*recon. pending*) (*NANP Order*).

<sup>281</sup> An "interstate, intraLATA toll call" is a call that (1) crosses a state boundary but does not cross a LATA boundary and (2) is subject to a charge. For this purpose, the term "state" includes the District of Columbia and the territories of the United States. 47 U.S.C. § 153(v). A call from Silver Spring, Maryland to Manassas, Virginia (currently handled by Bell Atlantic) is an example of such a call.

<sup>282</sup> 1996 Act, sec. 3, § 3(15).

providing dialing parity to competitive service providers.<sup>283</sup> The Act, however, does not specify what methods should be used to implement dialing parity. We believe that presubscription represents the most feasible method of achieving dialing parity in long distance markets consistent with the definition of dialing parity in section 3(15) of the 1996 Act.<sup>284</sup> In this context, "presubscription" refers to the process by which a customer preselects a carrier, to which all of a particular category or categories of calls on the customer's line will be routed automatically.

208. Presubscription to a carrier other than the customer's local exchange carrier has not been available for *interstate*, intraLATA toll calls nor has it been available in most states for *intrastate*, intraLATA toll calls. Instead, BOCs automatically carry these calls rather than routing them to a presubscribed carrier of the customer's choice. If the state from which the customer is calling has authorized competition, but has not ordered presubscription in the intraLATA toll market, a customer wishing to route an intraLATA call to an alternative carrier typically must dial the carrier access code of the alternative carrier.

209. We seek comment on specific alternative methods for implementing local and toll dialing parity, including various forms of presubscription, in the interstate and intrastate long distance and international markets, that are consistent with the statutory requirements set forth in the 1996 Act. Specifically, we seek information and comment on the standards, if any, that have been developed to address or define local or toll dialing parity, the consistency of those standards with the statutory definition of dialing parity set forth in the 1996 Act, and the extent to which there is a need for the development of further standards.

210. We note that there is substantial variation in the intraLATA toll dialing parity requirements and implementation methodologies that individual states have adopted. For example, some states have adopted a presubscription methodology that allows a customer to choose between the incumbent LEC and any interexchange carrier that is authorized in that state to carry the customer's intrastate, intraLATA toll calls.<sup>285</sup> Other states have adopted a presubscription methodology that allows the customer a choice only between the incumbent LEC and the same interexchange carrier that the customer is currently presubscribed to for interLATA long-distance calling.<sup>286</sup> A "multi-PIC" or "smart-PIC" presubscription methodology, which

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<sup>283</sup> 1996 Act, sec. 3, § 3(15).

<sup>284</sup> Although we anticipate that presubscription represents the most feasible method for achieving long distance dialing parity (*see*, discussion of PIC presubscription methodology below), we note that presubscription does not represent the method by which carriers would accomplish local dialing parity. Rather, the customer's ability to select a telephone exchange service provider and make local telephone calls without dialing extra digits will be accomplished through the unbundling, number portability and interconnection requirements of Section 251.

<sup>285</sup> *See, e.g., Intra-Market Service Area Presubscription and Changes in Dialing Arrangements Related to the Implementation of Such Presubscription*, Interim Order (Ill. Comm. Comm'n Apr. 7, 1995) (adopting "2-PIC" presubscription method based on belief that "2-PIC" method affords customers additional choice and opens market to more participants); *Opinion and Order Concerning Intra-LATA Presubscription, Case 28425*, Opinion No. 94-11 (N.Y. Pub. Serv. Comm'n April 4, 1994) (adopting intraLATA toll presubscription using "2-PIC" method).

<sup>286</sup> *See, e.g., In re Cincinnati Bell Telephone Company*, Case No. 93-432-TP-ALT Office of Consumers' Counsel v. Cincinnati Bell Telephone Company Case No. 93-551-TP-CSS, 151 P.U.R.4th 487 (Ohio Pub. Util. Comm'n May 5, 1994) (adopting "modified 2-PIC" presubscription methodology).

would enable customers to presubscribe to multiple carriers for various categories of long-distance calling, also is being considered in some states.<sup>287</sup> We seek comment on whether any of the presubscription methods adopted by the states could be implemented in national dialing parity standards consistent with the requirements of the 1996 Act. We also seek comment as to the categories of long distance traffic (*e.g.*, intrastate, interstate, and international traffic) for which a customer should be entitled to choose presubscribed carriers, and whether a uniform, nationwide methodology is necessary. In the absence of uniform, federal rules, we ask commenters, and state commissions in particular, to address the difficulties state commissions might experience in implementing the dialing parity requirements of the 1996 Act. Finally, we seek comment on what Commission action, if any, is necessary to implement dialing parity for international calls.

211. We tentatively conclude that, pursuant to section 251(b)(3), a LEC is required to permit telephone exchange service customers within a defined local calling area to dial the same number of digits to make a local telephone call, notwithstanding the identity of a customer's or the called party's local telephone service provider. We believe that this interpretation of the dialing parity requirement as applied to the provision of telephone exchange service would best facilitate the introduction of competition in local markets by ensuring that customers of competitive service providers are not required to dial additional access codes or personal identification numbers in order to make local telephone calls. We seek comment on this tentative conclusion and seek information as to how this local dialing parity requirement should be implemented.

212. For most LECs, the 1996 Act provides no timetable for implementing dialing parity. Section 271(e)(2)(A) requires BOCs, however, to provide intraLATA toll dialing parity in a state "coincident with" its exercise of authority to provide interLATA services in that state, or three years from the date of enactment of the 1996 Act, whichever is earlier.<sup>288</sup> Section 271(e)(2)(B) limits the ability of states to impose dialing parity requirements on a BOC prior to the earlier of those two dates.<sup>289</sup> We seek comment on what implementation schedule should be adopted for dialing parity obligations for all LECs.

213. The 1996 Act does not require that procedures be established to permit consumers to choose among competitive telecommunications providers (*e.g.*, through balloting). We seek comment as to whether the Commission should require LECs to notify consumers about carrier selection procedures or impose any additional consumer education requirements. Finally, we seek comment on an alternative proposal that would make competitive telecommunications providers responsible for notifying customers about carrier choices and selection procedures through their own marketing efforts.

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<sup>287</sup> See, *e.g.*, In re Local Exchange Competition and Other Competitive Issues Case No. 95-845-TP-COI, 164 P.U.R.4th 214 (Ohio Pub. Util. Comm'n Sept. 27, 1995) (staff recommendation to require Smart- or Multi-PIC methodology if it is determined that technology is available, or "Full 2-PIC" methodology if it is determined that Smart-PIC technology is not available).

<sup>288</sup> 1996 Act, sec. 151, § 271(e)(2)(A), § 271(e)(2)(B). Exceptions from this requirement are made for single-LATA states and states that issued an order by December 19, 1995 requiring intraLATA toll dialing parity. The 1996 Act also requires a BOC seeking to provide in-region interLATA services to demonstrate, *inter alia*, that it has implemented intraLATA toll dialing parity. Section 271(c)(2)(B)(xii) states that: "[a]ccess or interconnection provided or generally offered to other telecommunications carriers . . . [must include] . . . [n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)."

<sup>289</sup> 1996 Act, sec. 151, § 271(e)(2)(B).

214. In addition to the duty to provide dialing parity, Section 251(b)(3) also imposes the duty on all LECs to provide competing telecommunications services providers with "nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays."<sup>290</sup> As a general matter, we tentatively conclude that "nondiscriminatory access" means the same access that the LEC receives with respect to such services. We seek comment on this tentative conclusion. We also seek comment as to how the Commission should implement the nondiscriminatory access provisions that are contained in section 251(b)(3) as is discussed in more detail below.

215. More specifically, we interpret "nondiscriminatory access to telephone numbers" to mean that competing telecommunications providers must be provided access to telephone numbers in the same manner that such numbers are provided to incumbent LECs. Currently, the largest local exchange carrier in each area code serves as the central office (CO) code administrator, the entity that is responsible for the assignment and administration of telephone numbers.<sup>291</sup> In 1995, the Commission ordered that the functions associated with the assignment and administration of local telephone numbers be centralized and transferred from the largest LECs to a newly created NANP Administrator.<sup>292</sup> New section 251(e)(1) directs the Commission to create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis.<sup>293</sup> In light of the directives contained in the *NANP Order* and section 251(e)(1), we seek comment as to what, if any, additional Commission action is necessary or desirable to ensure nondiscriminatory access to telephone numbers consistent with the requirements of section 251(b)(3).

216. We interpret "nondiscriminatory access to . . . operator services" by LECs to mean, at least in part, that a telephone service customer, regardless of the identity of his local telephone service provider, must be able to connect to a local operator by dialing "0" or "0" plus the desired telephone number. For purposes of this provision, we tentatively define "operator services" as any automatic or live assistance to a consumer to arrange for billing or completion or both of a telephone call through a method other than: (1) automatic completion with billing to the telephone from which the call originated, or (2) completion through an access code by the consumer, with billing of an account previously established with the telecommunications service provider by the consumer.<sup>294</sup> We seek comment on this proposed definition and on what, if any, Commission action is necessary to implement the nondiscriminatory access requirements for operator services under section 251(b)(3). We ask commenters to address whether the duty imposed on LECs to provide nondiscriminatory access to operator services includes the duty to resell operator services to non-facilities-based competing providers or facilities-based competing providers.

217. We further interpret "nondiscriminatory access to . . . directory assistance and

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<sup>290</sup> 1996 Act, sec. 101, § 251(b)(3).

<sup>291</sup> In the United States, current CO code administrators include Alascom, Ameritech, Bell Atlantic, BellSouth, Cincinnati Bell, GTE, NYNEX, Pacific Bell, Southern New England Telephone, SBC Communications, and US West.

<sup>292</sup> See *NANP Order* at para. 73.

<sup>293</sup> See discussion of "Number Administration" below.

<sup>294</sup> This proposed definition is based on the definition of "operator services" that is set forth at 47 U.S.C. § 226(a)(7) and, for purposes of this proceeding, has been modified to address the 1996 Act.

directory listing" by LECs to mean that all telecommunications services providers' customers must be able to access each LEC's directory assistance service and obtain a directory listing in the same manner, notwithstanding (1) the identity of a requesting customer's local telephone service provider, or (2) the identity of the telephone service provider for a customer whose directory listing is requested through directory assistance. We seek comment on this interpretation and on what, if any, Commission action is necessary or desirable to implement nondiscriminatory access to directory assistance and directory listing as required by section 251(b)(3). We also seek comment on whether customers of competing telecommunications providers can access directory assistance by dialing 411 or 555-1212,<sup>295</sup> or whether an alternative dialing arrangement is needed in order to make directory assistance databases accessible to all providers. We ask commenters to address whether the duty imposed on LECs to provide nondiscriminatory access to directory assistance includes the duty to resell 411 or local 555-1212 directory assistance services to non-facilities-based competing providers or to facilities-based competing providers.

218. Section 251(b)(3) prohibits "unreasonable dialing delays." We seek comment on the appropriate definition of the term "dialing delay" and on appropriate methods for measuring and recording that delay. For example, the term "dialing delay" might refer to the period that begins when the caller completes dialing a call and ends when a ringing tone or busy signal is heard on the line. Alternatively, "dialing delay" might refer to the period beginning when the caller completes dialing a call and ending when the call is delivered by the incumbent LEC to a competing service provider. Another relevant measure might include the period beginning when a customer goes off hook and ending when a dialtone is heard on the line. We recognize the confusion that has centered around the context-specific use of the terms post-dial delay, access time, call set-up time, and dialtone delay.<sup>296</sup> Accordingly, we ask interested parties to define clearly the time being measured rather than rely upon a definition of a term that may have been used in particular proceedings. Finally, we ask commenters to identify a specific period that would constitute an "unreasonable" dialing delay.

219. The 1996 Act does not specify how LECs would recover costs associated with providing dialing parity to competing providers. We seek comment on what, if any, standard should be used for arbitration to determine the dialing parity implementation costs that LECs should be permitted to recover, and how those costs should be recovered.

#### **4. Access to Rights-of-Way**

220. Section 251(b)(4) imposes upon LECs the "duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224."<sup>297</sup> Section 224, which predates the enactment of the 1996 Act, states that the Commission "shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve

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<sup>295</sup> As used here, 555-1212 refers only to the local directory assistance listing.

<sup>296</sup> See, e.g., *Southwestern Bell Telephone Company Revisions to Tariff* F.C.C. No. 6, Memorandum Opinion and Order, FCC 91-173, 6 FCC Rcd 3760, n.5 (1991); *Policy and Rules Concerning Rates for Dominant Carriers*, Memorandum Opinion and Order, CC Docket No. 87-313, 6 FCC Rcd 2974 (Com. Car. Bur. 1991).

<sup>297</sup> 1996 Act, sec. 101, § 251(b)(4).