

disputes that SBCS is non-dominant under existing Commission Rules--went far beyond even the dictum of the Fifth Report and Order and suggested not only that the Commission should enforce unprecedented, unnecessary, and cumbersome structural separation, but that it delay SBCS's Request and change the rules of the established process.

MCI and others have suggested that extraordinary structural and non-structural safeguards be implemented in the event that the Commission grants SBCS's Request.<sup>26</sup> However, even before the Commission had over a decade of experience with non-structural safeguards on the RBOCs, it was suggesting that, if any structural safeguards were necessary at all, it was not "in the sense ordered in the Second Computer Inquiry ("CI-II"), 47 C.F.R. § 64.702 (e.g., fully separated personnel and marketing are not necessary for nondominant regulation)." Fifth Report and Order, 98 F.C.C.2d at 1206. Particularly in light of SBCS's commitments regarding its current plans of operation, the suggestions of MCI and others regarding structural separation and non-structural safeguards would clearly result in a tilted and unfair regulatory playing field.<sup>27</sup>

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<sup>26</sup>See, e.g., MCI Comments at 16-26; TRA Comments at 10-15.

<sup>27</sup>The extraordinary and anticompetitive "safeguards" suggested by the Respondents include: (1) Imputation, which is unnecessary, even if economically sound (which it is not), in the context of the Request because the LEC in this case, SWBT, is not providing the interexchange service, and to the extent that SBCS takes services from SWBT, it will do so under tariff or the Commission's rules. Further, SBCS does not at this time propose to carry the interexchange traffic of its affiliated CMRS provider. In addition, the extraordinary procedures proposed for the approval of SBCS's tariffs are not necessary in this context and provide nothing except an advantage of delay for the

All questions of structural separation ultimately boil down to the argument that SBCS's affiliation with SWBT somehow taints its Request to be declared non-dominant. This line of argument is specious, however, because SBCS, even taken together with SWBT or its other affiliated companies, does not possess market power in the relevant market. SBCS is non-dominant, and the Commission should make that declaration.

### III. CONCLUSION

Under the test utilized by the Commission in all prior contexts, SBCS does not possess market power and should be regulated as a non-dominant carrier. No reason has been stated that would keep the Commission from applying its existing rules to SBCS. No reason has been raised for the delay of SBCS's Request pending a rulemaking that the Commission has not yet started. Even if it were pertinent to the Commission's inquiry, which it is not, no legitimate attack has been made upon the fact of SBCS's structural separation from SWBT. The Commission should not tolerate this misuse of the regulatory process and allow the four opposing Respondents to delay through this process a competitor's entry into the interexchange market. The Commission's expeditious grant of

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Respondents. (2) Separate subsidiary requirements, as set forth in the Fifth Report and Order, which SBCS has already agreed to implement, are not necessary (see above). (3) Further, SBCS has committed to meet the Commission's affiliate transaction rules. SBCS's contention that those rules need to be changed is within the scope of a different docket and is not relevant to the determination of non-dominance. (4) Adoption of extraordinary accounting rules, suggested by MCI because of the unpredictability of the future of legislation or the structure of the industry after that legislation is implemented, ask the Commission to adopt measures harmful to the entry of a new competitor.

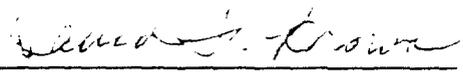
SBCS's Request will benefit competition and consumers.

SBCS requests, therefore, that the Commission act expeditiously to declare it a non-dominant provider of interstate, domestic interexchange services to customers of (1) unaffiliated Commercial Mobile Radio Service providers, and (2) landline local exchange providers other than Southwestern Bell Telephone Company.

Respectfully submitted,

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January 31, 1996

CERTIFICATE OF SERVICE

I, Cheryl C. Jones, hereby certify that copies of the foregoing SOUTHWESTERN BELL COMMUNICATIONS SERVICES, INC.'S REPLY IN SUPPORT OF ITS REQUEST TO BE CLASSIFIED AS A NON-DOMINANT CARRIER, in CCBPol 95-24, have been served by first class United States mail, postage prepaid, on the parties listed on the attached.

  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of Bell Operating Company Provision )  
of Out-of-Region Interstate, Interexchange Services )  
)

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CC Docket No. 96-21, FCC 96-59

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REPLY COMMENTS OF SBC COMMUNICATIONS INC.

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## SUMMARY

SBC files its Reply Comments in response to the incumbent interexchange industry's responsive comments to the NPRM. The Commission's proposed restrictions upon BOC out-of-region entry into the interstate, interexchange market are inappropriate and unnecessary under the Telecommunications Act of 1996 (the "Telecommunications Act"). It is apparent, however, that the incumbent IXCs would have the Commission obstruct BOC entry into this market on virtually any terms and by virtually any means. The incumbent IXC comments as a whole not only oppose BOC entry as proposed in the NPRM, but would also have the Commission ignore the strictures of the Telecommunications Act and misapply its own precedent.

SBC supports the commenters who urge that the Commission refuse to impose onerous and unsupported dominant regulation upon the BOCs, whether or not the BOCs establish separate subsidiaries for the provision of interexchange services. As the Commission has recognized, regulations that fetter competitors, such as those that accompany dominant regulation, do not protect or promote competition in the interexchange services market, but have an anticompetitive effect. The Commission must open this portion of the interexchange services market to the BOCs as Congress intended: immediately.

As BellSouth has argued, the Commission should not analyze a BOC's alleged "dominance," or market power, in the out-of-region, interstate, interexchange market based upon its presumed dominance in its in-region local exchange market. Under the Commission's existing definitions, BOCs are non-dominant in the interstate, interexchange market regardless of the scope the geographic market examined. No BOC has market power in the interstate, interexchange market as a whole, even if it could theoretically control the price of local exchange or exchange access services within its region.

SBC disagrees with the comments of MCI and TRA that existing non-structural separation rules are inadequate and that the Commission's enforcement of those rules has been ineffective. The Commission cannot lawfully require a separate subsidiary under the Telecommunications Act; even if it could, such a requirement is unnecessary. The existing nonstructural accounting safeguards protect LECs' ratepayers, especially under price cap regulation. Therefore, there is no basis to require a LEC out-of-region IXC operation to be structurally separate.

BOCs' local exchange services are subject to the Commission's well established and carefully policed equal access and non-discrimination safeguards. Any contention that BOCs could discriminate in light of these safeguards is, at most, speculative.

In addition, SBC takes issue with the suggestion of some commenters that BOC CMRS interexchange services should be subject to the dominant/non-dominant regulatory dichotomy. To impose "dominant" or "non-dominant" characterization upon BOC provision of interexchange CMRS service is directly contrary to the Commission's prior decisions. The imposition of structural separation requirements on BOC CMRS providers for the provision of interexchange service is unnecessary, inefficient, and anti-competitive.

In conclusion, SBC urges that the Commission refuse to erect artificial barriers that will shackle an important source of interexchange competition. BOCs should be allowed to enter the market with full, non-dominant carrier freedoms. Only then can consumers experience the robust competition that BOCs can bring to the interexchange market.

Before the  
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\_\_\_\_\_)

CC Docket No. 96-21, FCC 96-59

**REPLY COMMENTS OF SBC COMMUNICATIONS INC.**

SBC Communications Inc. ("SBC"), by its attorneys and in behalf of its subsidiary, Southwestern Bell Communications Services, Inc. ("SBCS"), files this reply to the comments filed in response to the Notice of Proposed Rulemaking issued by the Commission on February 14, 1996 ("NPRM").

**I. INTRODUCTION**

Predictably, the NPRM's proposals were attacked by incumbent interexchange carriers ("IXCs") and their trade associations as too lax. Conversely, the Bell Operating Companies ("BOCs") demonstrated that the proposed limitations are too stringent. The incumbent IXCs would have the Commission not only obstruct BOC entry in the market as proposed in the NPRM, but would also have the Commission ignore the strictures of the Telecommunications Act of 1996 (the "Telecommunications Act") altogether or misapply Commission precedent.<sup>1</sup>

The Commission should not impose onerous and unsupported dominant regulation upon the BOCs, whether or not the BOCs establish separate subsidiaries for the provision of interexchange services. As the Commission has recognized,<sup>2</sup> regulations that fetter competitors,

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<sup>1</sup>See, e.g., MCI Comments at ii, 2, 9; AT&T Comments at 5, 6.

<sup>2</sup>See Commission News Release relating to NPRM adopted March 21, 1996 (Docket 96-61), relating to, among other issues, the Commission's first exercise of forbearance and its tentative conclusion to eliminate most forms of tariff filings for non-dominant carriers "to promote

such as those that accompany dominant regulation, do not protect or promote competition in the interexchange services market, but have an anticompetitive effect. The Commission must open the interexchange services market to the BOCs as Congress intended: immediately.

## II. DISCUSSION

### A. DISCRIMINATION IS LEGALLY AND PRACTICALLY IMPOSSIBLE

The irrational fear of anticompetitive conduct raised by some commenters is that the BOCs might improperly use their obligation to connect calls that are terminated in their own regions as they begin to provide out-of-region long-distance service. However, BOCs' local exchange services are subject to the Commission's well established and carefully policed equal access and non-discrimination safeguards.<sup>3</sup> Any contention that BOCs could discriminate in light of these safeguards is both imaginative and highly speculative.

Bell Atlantic points out that there are at least two reasons why BOCs cannot discriminate as alleged.<sup>4</sup> First, it is far from clear that the BOCs can distinguish between calls that originate with their interexchange competitors, but from markets in which the BOC does not operate, from calls that do not. In any event, it is highly unlikely that the BOCs, facing access competition and new local competition, would have the incentive to degrade the quality of a profitable service offered to interexchange carriers or to incur the dissatisfaction of their own local exchange customers. It is inconceivable that BOCs could degrade access service without

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competition and enable non-dominant carriers to respond quickly to changes in the market." Confusingly, the News Release appears to reflect the Commission's intention to forbear from enforcing the structural separation rules it proposes in the NPRM.

<sup>3</sup>See, e.g., Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252, 98 F.C.C. 2d 1191, at text accompanying notes 11 and 12 (August 8, 1984)("Fifth Report and Order"); 47 U.S.C. §§ 201, 202.

<sup>4</sup>Bell Atlantic Comments, Crandall Affidavit at 18.

detection or would do so in the face of the penalties that are available.<sup>5</sup> Second, BOCs such as SBC have operated in-and out-of-region for years. The test of time shows that BOCs have not used and do not use their in-region local exchange position to impede competition by discriminating against their rivals in other telecommunications markets.<sup>6</sup>

B. THE FIFTH REPORT AND ORDER IS, AT MOST, LIMITED PRECEDENT FOR THE BOCS

1. THE COMMISSION HAS ABANDONED THE ALL-SERVICES APPROACH

BellSouth correctly analyzes the impact of the 1995 AT&T Order<sup>7</sup> in stating that the Commission has largely abandoned the “all-services” approach to evaluating market dominance<sup>8</sup> established in the 1984 Fifth Report and Order.<sup>9</sup> Under the Fifth Report and Order, a carrier was deemed dominant for all markets if it had dominance in any market.<sup>10</sup> The Commission stated in the AT&T Order that:

The Commission has never definitively concluded, either in its rules or the Competitive Carrier orders, that a carrier must demonstrate that it lacks the ability to control the price of every service that it provides in the relevant market before the Commission can classify that carrier as non-

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<sup>5</sup>Id. at 18-19.

<sup>6</sup>Id. at 19.

<sup>7</sup>See In the Matter of Motion of AT&T Corp. to Be Re-Classified as a Non-Dominant Carrier, Order, FCC 95-427 (October 23, 1995) at ¶¶12-13 (“AT&T Order”).

<sup>8</sup>BellSouth Comments at 5-9.

<sup>9</sup>NPRM at ¶ 13 (citing In The Matter of Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefore, CC Docket 79-252, 98 F.C.C. 2d 1191 (1984) (the “Fifth Report and Order”).

<sup>10</sup>BellSouth Comments at 7 (citing Id.; see Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252, First Report and Order, 85 FCC 2d 1 (1980) (“First Report and Order”), at 21, 22, n.55).

dominant . . . . Moreover, we do not believe that language in other proceedings that may be viewed as characterizing the Competitive Carrier standard as an all-services standard is binding as a matter of law. It is at most a policy with which, for the reasons discussed below, we do not now agree.<sup>11</sup>

The result of the Commission's rejection of the all-services approach is that an IXC (or other carrier) is non-dominant in a market if it lacks market power--"i.e., power to control prices"--in that market as a whole, even if the carrier could conceivably control the price of other services within the overall market.<sup>12</sup> The Commission should not, therefore, analyze a BOC's alleged "dominance" in the out-of-region, interstate, interexchange market based upon its presumed dominance in its in-region local exchange market.

2. REGARDLESS OF THE GEOGRAPHIC MARKET EXAMINED, BOCS DO NOT POSSESS MARKET POWER

AT&T points out that historically the Commission has treated the interstate, interexchange market as a single, nationwide, geographic market.<sup>13</sup> However, given the Commission's abandonment of the all-services approach and Congress's division of BOC-provided interLATA, interexchange services into in-region and out-of-region segments,<sup>14</sup> the Commission's analysis must shift to accommodate the new legal reality. BOCs are to be permitted to provide out-of-region landline interexchange services (as distinguished from in-region services) "immediately."<sup>15</sup> As pointed out in SBC's Comments, however, applying the Commission's

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<sup>11</sup>AT&T Order at ¶¶ 25-30.

<sup>12</sup>AT&T Order at ¶¶ 2-21, 25.

<sup>13</sup>See AT&T Comments at 4-7. See also AT&T Order at ¶ 9.

<sup>14</sup>Telecommunications Act Section 271(b).

<sup>15</sup>BOCs are permitted to provide interexchange services to CMRS customers immediately both in- and out-of-region. See Section 271(b)(3).

traditional market power analysis as set forth in the Commission's rules and orders, whether focused on the traditional nationwide market or upon the respective BOC out-of-region markets, gives the same result: BOCs cannot be found to have market power, "i.e., power to control price."<sup>16</sup>

Under the Commission's existing definitions,<sup>17</sup> BOCs are non-dominant in the interstate, interexchange market regardless of the scope the geographic market examined. No commenter has even intimated that BOCs possess the power to control prices for interstate, interexchange services. This evident lack of market power exists regardless of whether BOCs are evaluated solely with regard to their out-of-region services or on a nationwide basis. No commenter has raised a legal or regulatory basis for the Commission to determine that BOCs are dominant in the relevant market, regardless of its scope.<sup>18</sup>

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<sup>16</sup>See SBC Comments at 8-9. See also Bell Atlantic Comments at 2-3; BellSouth Comments at 9-11; US West Comments at 3-4.

<sup>17</sup>47 C.F.R. §§ 61.3(o), 61.3 (t).

<sup>18</sup>Utilizing existing Commission rules and precedent and established antitrust analysis, the test of whether any carrier possesses market power in the relevant market requires an examination of (a) the carrier's market share; (b) the supply elasticity of the market; (c) the demand elasticity of the carrier's customers (or in BOCs' cases, potential customers); and (d) the carrier's cost structure, size, and resources. The Commission can--and must--refuse to determine on the record before it that BOCs are "dominant." See AT&T Order. Furthermore, the Commission should not be persuaded by those interexchange carriers already classified as non-dominant who now seek to change the rules for determining classifications. To do so would ignore the "dominance" test recently established in the AT&T Order.

C. ALLEGATIONS THAT THE COMMISSION HAS FAILED TO ENFORCE EXISTING COST RULES AS A BASIS FOR STRUCTURAL SEPARATION ARE UNFOUNDED

1. THE AUDIT MECHANISMS ARE EFFECTIVE

Although several parties suggested that additional non-structural safeguards be implemented prior to permitting BOC out-of-region interexchange services to commence, none were so draconian as those MCI suggested. In part, MCI founded its proposed requirements upon ineffective enforcement of existing safeguards by the Commission. However, contrary to MCI's contentions that recent Commission audit activity and alleged ineffective Commission enforcement of its joint cost rules requires a separate affiliate for BOC out-of-region services, the Commission should recall that it:

1. Has a comprehensive mechanism in place to audit its joint cost rules, and the Commission's vigorous audit activity shows that it has been diligent in enforcing these rules;
2. Now has authority to hire independent auditors to assist in performing effective audits;<sup>19</sup> and
3. Has made no findings of wrongdoing by any of the carriers in any of the audits referenced by MCI; these audits, therefore, found no evidence of cross-subsidy or misallocation of costs. Even though the Commission did not conclude that any carrier violated any cost allocation rule, the audits provided guidance to the carriers and helped the Commission understand potential inconsistencies in some of its rules.

Based on the faulty premise that the Commission's existing rules and enforcement are ineffective, MCI claims that a separate subsidiary, regulated as dominant, is essential for BOCs out-of-region. Even if the Commission could lawfully require a separate subsidiary--which it cannot under the Telecommunications Act<sup>20</sup>--it is unnecessary. At the time of the Fifth Report

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<sup>19</sup>See Section 403.

<sup>20</sup>Section 272.

and Order, the Commission had not adopted its joint cost rules and did not have the experience in enforcing them that it now has. The existing nonstructural accounting safeguards are more than adequate to protect the local exchange carrier's (the "LEC's") ratepayers, especially given that there is practically no remaining incentive to misallocate costs under price cap regulation.

Therefore, with the advent of the joint cost rules, the rationale underlying the Fifth Report and Order would not constitute a legitimate basis to require a LEC out-of-region IXC operation to be structurally separate.

2. NO NEW AFFILIATE TRANSACTION RULES NEED BE ADOPTED

MCI also claims that new affiliate transaction rules should be adopted, including a system it describes as a "four-way" cost allocation and affiliate transaction monitoring regime."<sup>21</sup> Not only are these requirements unnecessary, but they would be a barrier to competition between BOCs and the incumbent IXCs who are not subject to any such requirements.

First, what MCI proposes is a completely new set of rules to allocate nonregulated costs between IXC service and all other nonregulated activities. This revamping of the Commission's joint cost rules would create another complex layer of regulation with no pro-competitive benefit. The purpose of the Commission's joint cost rules is to separate regulated telephone service costs from nonregulated activities' costs. These rules were never intended to identify the costs of individual services or subcategories of regulated or nonregulated services. The MCI proposal to impose such rules simply provides another opportunity to delay BOC entry as an effective IXC competitor in the out-of-region market. In addition, the joint cost rules are

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<sup>21</sup>See MCI Comments at 19. MCI also summarizes its position concerning the proposed changes in the affiliate transaction rules pending in CC Docket No. 93-251. MCI Comments at 20-21. SBC does not agree with MCI's position on these changes, but they should be addressed in the context of the broader proceedings(s) concerning cost allocation rules, accounting safeguards and related guidelines required by various provisions of the Telecommunications Act.

not appropriate for two competitive, nonregulated services because their purpose is to keep local exchange companies from imposing the costs of their nonregulated activities on the ratepayers of their regulated services. Since out-of-region IXC service would be considered nonregulated for purposes of the joint cost rules, then any theoretical cross-subsidy would be between two nonregulated services and could not impose any costs on the regulated service ratepayers that the joint cost rules were intended to protect.

Second, what MCI proposes is extremely complex and unjustified. If the Commission requires allocation of costs between IXC service and all other competitive, nonregulated services in order to protect MCI and other IXCs from BOC competition, then other BOC competitors may claim that their services are equally deserving of another layer of cost allocation. For example, enhanced service providers and cable operators could make the same arguments as MCI with respect to their competitive services, but their arguments would be equally invalid. Cost allocation rules should not be used to erect regulatory barriers to competition with no benefit to ratepayers.

Third, the real focus of MCI's concern appears to be that a BOC would discount one nonregulated service more than another and compete too effectively with MCI. Addressing this concern does not fit within the purpose of the Commission's joint cost rules, as explained succinctly in paragraph 40 of the Joint Cost Order:

The pricing of individual nonregulated products and services does not fall within our statutory mandate. Complaints about predatory pricing in nonregulated markets are the province of the antitrust laws. The proper purpose of our cost allocation rules is to make sure that all of the costs of nonregulated activities are removed from the rate base and allowable expenses for interstate regulated services. It is not our purpose, nor should it be our purpose, to seek to attribute costs to particular nonregulated activities for

purposes of establishing a relationship between cost and price.<sup>22</sup>

Fourth, even assuming that preventing a cross-subsidy from other competitive services to IXC service was a proper purpose, there is absolutely no justification for imposing nonstructural accounting safeguards on out-of-region operations, because they will be geographically distinguishable.<sup>23</sup>

3. NO NEED FOR THE APPLICATION OF PART 32 RULES EXISTS IN THIS CONTEXT

MCI also claims that the BOC IXC affiliate (out-of-region) should be subject to Part 32 of the Uniform System of Accounts (“USOA”). MCI’s reasons do not withstand scrutiny. MCI bases its concern on the possibility mentioned in the NPRM that the Commission might require a separate affiliate for out-of-region interexchange service on an interim basis, but then eliminate that requirement in the upcoming interexchange proceeding. Of course, what the Commission should do that would render this possibility moot is not to require a separate affiliate even on an interim basis. However, assuming the BOC’s IXC operation is in a separate subsidiary, either voluntarily or pursuant to Commission requirements, MCI’s “merging of the books” concern is irrelevant. As long as the BOC IXC affiliate is structurally separate, the books of account will be separate and will have no reason to merge with the BOC local exchange carrier. Rather, any consolidation of books will be done at the parent company level for internal and external reporting purposes. Clearly, consolidating the books at the parent company level has not

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<sup>22</sup> In the Matter of Separation of costs of regulated telephone service from costs of nonregulated activities. Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to provide for nonregulated activities and to provide for transactions between telephone companies and their affiliates, CC Docket No. 86-111, 2 FCC Rcd 1298 ¶40 (1987) (Joint Cost Order), recon., 2 FCC Rcd 6283 (1987), further recon., 3 FCC Rcd 6701 (1988).

<sup>23</sup> See Bell Atlantic Comments at 6.

posed a problem, particularly considering that other nonregulated affiliates (cellular, enhanced service, directory publishing) are not subject to Part 32, but are combined in the parent company results. Also contrary to MCI's suggestion that Part 32 should be imposed to facilitate auditing, the inapplicability of Part 32 to other nonregulated affiliates has never impaired the effectiveness of the Commission's audits of transactions between telephone companies and their nonregulated affiliates.

If at any point the BOC IXC affiliate is brought into its local exchange carrier, it could adopt the Part 32 rules at that time, if that is still the required system of accounts. The merger of books could be audited, just as the merger of any other nonregulated affiliate with the local exchange carrier can be audited. In any event, the BOC IXC operations would be brought into the local exchange carrier as a nonregulated activity and would not affect the regulated portion of the local exchange carrier's books.

MCI's other reason is also invalid: it is based on the assumption that the Commission should closely monitor the costs of a nonregulated, competitive operation based on the same standards used in the past to monitor the regulated, noncompetitive operation. The Commission has never found it necessary, much less asserted the authority, to regulate the accounting practices of structurally separate nonregulated affiliates, and there is no reason to do so in this case. The accounting standards for such competitive affiliates should not be determined by the archaic, burdensome regulatory accounting structure, but instead they should be determined by comparison to the industry in which they will compete. MCI does not follow Part 32 because to do so would serve no purpose and would cause MCI competitive harm if its competitors were not subject to the same burdensome accounting requirements. The IXCs establish their accounting system based on GAAP and other specific practices of the competitive

telecommunications industry. If the BOC IXC affiliate is subject to a different, more burdensome, accounting system than its competitors, this will impair its ability to price services competitively as well as create burdens not equally borne by its competitors. One competitor should not be constrained by unnecessary regulation, if competition is to unfold as the legislation intended. As with MCI's other suggestions, its suggestion to apply Part 32 to a competitive affiliate should be rejected.<sup>24</sup>

D. COMMENTS RELATING TO CMRS INTEREXCHANGE SERVICES MISS THE MARK

As BellSouth notes, Commercial Mobile Radio Service ("CMRS") long distance is outside the scope of this proceeding.<sup>25</sup> Despite the clear language of the Telecommunications Act and prior Commission interpretations relating to cellular long distance, some parties have requested that CMRS interexchange services be classified as "dominant" or "non-dominant."<sup>26</sup> First, the Telecommunications Act specifically states that upon enactment a BOC, or any affiliate, may provide incidental interexchange services and originating in any state,<sup>27</sup> including the provision of interLATA CMRS, in accordance with Section 332 (c). Second, the Commission, in implementing Section 332 (c), decided to forebear from requiring CMRS providers to file tariffs and in fact required any CMRS providers with tariffs on file to cancel such tariffs.<sup>28</sup> CMRS

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<sup>24</sup>It is also inappropriate to apply Part 36 jurisdictional separations procedures to a competitive operation, such as the out-of-region IXC operation, as suggested by MCI. There would be absolutely no countervailing benefit from such a regulatory burden. Certainly MCI would not agree to follow Part 36 and use the results in pricing its own interstate services.

<sup>25</sup>BellSouth Comments at 3.

<sup>26</sup>Competitive Telecommunications Association Comments at 14.

<sup>27</sup>Section 271 (b)(3).

<sup>28</sup>In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket 93-252 (March 7, 1994) at 105, ¶ 289.

providers in the past have not been, and presently are not, subject to any “dominant” or “non-dominant” requirements in their provision of interLATA services to their customers. To impose “dominant” or “non-dominant” characterization upon BOC provision of interexchange CMRS service is directly contrary to the Commission’s prior decisions.

Parties also resurrect arguments that separation requirements must be developed between BOCs and their wireless affiliates.<sup>29</sup> The Telecommunications Act outlines specific separation requirements in Section 272 and states that a separate affiliate is not required for the provision of out-of-region services, including interLATA services<sup>30</sup> The Commission should not ignore the clear language of the Telecommunications Act. As BellSouth correctly notes, there is no justification to impose separation requirements above those set by Congress.<sup>31</sup>

The call to impose the various structural separation requirements on BOC-affiliated CMRS companies wanting to provide interexchange service to their CMRS customers should be seen simply as what it is: an attempt by competitors to force additional costs on such companies to gain an artificial advantage in the market. The public interest is best served by permitting BOCs to offer service in the most cost-efficient manner. To impose structural separation requirements on BOC CMRS providers for the provision of interexchange service is unnecessary, inefficient, and anti-competitive.

Additionally, some parties comment about the potential “CMRS interLATA bottleneck” from BOC cellular provision of interLATA services.<sup>32</sup> Prior to the passage of the

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<sup>29</sup>ALTS Comments at 4-6.

<sup>30</sup>Section 272(a)(2)(B)(ii).

<sup>31</sup>See BellSouth Comments at 17-18.

<sup>32</sup>Competitive Telecommunications Association Comments at 12; Vanguard Comments at 3.

Telecommunications Act, BOC affiliated cellular companies were at a distinct competitive disadvantage in that they, unlike Vanguard or other non-BOC-affiliated CMRS providers, were subject to LATA restrictions and equal access requirements. BOC-affiliated CMRS providers could not provide interLATA interexchange service to their cellular customers. The Telecommunications Act states in Section 705, however, that CMRS providers do not need to provide equal access for interLATA services. After over ten years of having a competitive advantage over BOC-affiliated cellular companies, Vanguard now cries "the sky is falling" when forced to compete on an equal basis.<sup>33</sup> With the Telecommunications Act, Congress--recognizing such inequalities--lifted the equal access requirements from CMRS providers and lifted the prohibition upon BOC-affiliate-provided CMRS interexchange service. Rather than face competition on an equal basis, Vanguard's response is "saddle them with more bureaucracy and regulation."

Vanguard's response is directly contrary to Congressional and Commission policies for regulatory symmetry and is inconsistent with recent Commission activities undertaken in implementing the Omnibus Budget Reconciliation Act of 1993 ("OBRA"). The express intent of OBRA was regulatory symmetry. The new Telecommunications Act further advances regulatory symmetry by removing equal access requirements and allowing BOC affiliated cellular companies to provide interexchange service directly to its customers. The new legislation allows BOC-affiliated CMRS companies the same possibilities that Vanguard and other non-BOC CMRS companies have enjoyed for over ten years.

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<sup>33</sup>The Commission should recall that in the past, Vanguard has stated that mandatory equal access obligations are not in the public interest. See In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, CC Docket 95-54, Reply Comments of Vanguard Cellular Systems, Inc., October 13, 1994, at 3.

E. **THE COMMISSION SHOULD NOT DIMINISH THE BENEFIT TO CONSUMERS BY ERECTING ARTIFICIAL BARRIERS TO EFFECTIVE BOC ENTRY INTO THE INTERSTATE, INTEREXCHANGE MARKET**

The Commission should not erect artificial barriers that will shackle an important source of interexchange competition. As BellSouth states in its comments, “subjecting a BOC to dominant carrier regulation in the interexchange market will subject it to ‘burdensome and unequal’ regulation that unfairly advantages its competitors and deprives consumers of price reductions and innovative service offerings.”<sup>34</sup> Moreover, “the public interest is ill-served by a regulatory process that builds in delay for one service provider and forces it to show its hand to its competitors before it can introduce new service offerings or rate reductions in the market.”<sup>35</sup> The end result of regulating BOCS as dominant carriers would be to increase costs and undermine the very competition the Commission and the Telecommunications Act set out to encourage.<sup>36</sup>

SBC fully concurs with the statements of BellSouth and Bell Atlantic and urges the Commission to allow BOCs to enter the market with full, non-dominant carrier freedoms. Only then can consumers experience the robust competition that BOCS can bring to the interexchange market. Only then will the market, and not regulatory fiat, determine the successful participants. To do otherwise would assure that BOCs will never be as efficient providers of interexchange service as their competitors.

### **III. CONCLUSION**

The Commission’s tentative conclusions are in opposition to the Telecommunications Act’s deregulatory purpose in that the Commission has proposed to regulate

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<sup>34</sup>Bell South Comments at 15-16 (quoting AT&T Order at ¶¶16, 27).

<sup>35</sup>Id. (quoting AT&T Order, Statement of Commissioner Rachelle B. Chong at 2).

<sup>36</sup>See Bell Atlantic Comments at 2. See also Commission News Release relating to Docket 96-61.

the BOCs' out-of-region services as dominant unless provided by a separate affiliate. No commenter has described any manner in which the Commission's tentative conclusions promote any important policy objective. Further, no commenter has explained how the Commission's tentative conclusions meet the Commission's existing rules and policies. To the contrary, many commenters establish that the proposed rules would impede the introduction of competition. The Commission should follow the mandate of the Telecommunications Act and decline to regulate BOCs as dominant in the provision of out-of-region, interstate, interexchange service.

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ATTORNEYS FOR SBC  
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March 25, 1996

CERTIFICATE OF SERVICE

I, Cheryl C. Jones, hereby certify that copies of REPLY COMMENTS  
OF COMMUNICATIONS OF SBC COMMUNICATIONS INC., CC Docket 96-21, have been  
served by first class United States mail, postage prepaid, on the parties listed on the attached.

  
Cheryl C. Jones

March 25, 1996