required by the FCC or the State commission. The ICC notes, further, that the unbundled elements cited in section 271(c)(2)(B) may be a reasonable list of national minimum unbundled network elements.

The FCC seeks comment on whether it should establish minimum requirements to govern "terms" and "conditions" that would apply to the provision of all network elements, as well as to ensure that incumbent LECs provide "nondiscriminatory" access to unbundled network elements. NPRM at para. 89-91. While the ICC cannot comment on these issues because of pending cases,[28] the ICC believes that reasonable minimum national criteria would be helpful to ensure at least a basic standard across regions.

Beginning with paragraph 117, the FCC discusses pricing of interconnection, collocation, and unbundled elements. The ICC's comments will be limited on pricing issues, due to pending Illinois cases.[29]

The ICC agrees with the FCC's tentative conclusion in paragraph 120 that pricing principles should not recognize jurisdictional distinctions. The ICC has utilized non-jurisdictional cost studies in implementing cost-based pricing policies. For example, it generally sets intrastate local service rates so that those rates plus the interstate Subscriber Line Charge are in excess of long run service incremental costs ("LRSIC").

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[28] See ICC Dockets 95-0296, 95-0443, and 95-0458.

[29] See ICC Dockets 95-0296 and 95-0458.

The FCC questions whether Part 64 cost allocation rules should be modified, and whether the costs and revenues of services provided pursuant to sections 251 and 252 should be removed before the separations process is applied. NPRM at para. 120. The ICC is not prepared to make recommendations on this issue. However, any impacts on interstate and state price regulation procedures, e.g., price cap mechanisms, must be considered carefully before making such a determination.

In paragraph 123, the FCC addresses rates for interconnection and network elements and tentatively concludes that the 1996 Act "precludes states from setting rates by use of traditional cost-of-service regulation." It further concludes that the 1996 Act appears to contemplate the use of cost-based price regulation "such as price cap regulation" or forward-looking costing methodologies "such as long-run incremental cost (LRIC)" and is seeking comments on these conclusions.

The ICC questions the FCC's authority to adopt pricing standards, as discussed previously. However, the ICC recognizes that the FCC may establish general cost and pricing guidelines which the States can utilize in their determination of just and reasonable rates under section 252(d)(1) of the 1996 Act. For example, the FCC could determine that the rates for interconnection and unbundled network components are to be based upon forward-looking (or economic) costs rather than historical or embedded costs. Each State, then, would be left to handle the details consistent with its laws and regulations.

Any guidelines with respect to the costing and pricing of unbundled network components and interconnection should be based upon an internally consistent and comprehensive philosophy that is aimed at achieving the competitive intents of Congress. Further, consideration should be given to the effect that specific prices will have on the development of competition in the local exchange, intraLATA, and interLATA markets.

If it is determined that the FCC can and should establish general cost and pricing guidelines as described above, it should allow States that have already adopted similar principles to keep the rules and regulations in place. Illinois, for example, currently has statutory provisions, rules, regulations and policies pertaining to cost of service, pricing, price squeeze and cross subsidy issues which are founded upon the use of forward-looking cost studies.[30] Therefore, if the FCC were to state merely that rates for the purposes of Section 252(d)(1) are to be based on forward-looking costs, the ICC's policies could remain in place without being inconsistent with the FCC's policies.

Any rules that the FCC may adopt regarding the pricing standards in section 252(d) should be focused narrowly on those services addressed in section 252(d). It would be clearly contrary to the FCC's authority to apply the FCC's tentative

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[30]See, for example, Sections 13-505.1, 13-505.2, 13-505.3, and 13-505.4 of the Illinois Public Utilities Act, 83 Il. Adm. Code Parts 791 and 792, Orders in ICC Dockets 92-0210 and 92-0211 (attached) and the Customers First Order.

conclusion in paragraph 123 that "this language precludes states from setting rates by use of traditional cost-of-service regulation..." to any services other than those specifically addressed in section 252(d). See section 601(c)(1).

While the ICC cannot comment on pricing issues currently pending before it, the ICC offers, consistent with the requests in paragraph 126, the cost definitions below for the FCC's consideration.[31]

> **Long-Run Service Incremental Cost** ("LRSIC") is the forward-looking additional cost incurred by a telecommunications carrier to provide the entire output of a service, including additional resources such as labor, plant, and equipment. LRSIC excludes any costs, including common costs, that would be incurred if the service is not produced.
>
> **Long-run costs** are the economic costs over a planning horizon long enough so that there are no sunk inputs or costs.
>
> **Forward-looking costs** are the costs to be incurred by a carrier in the provision of a service. These costs shall be calculated as if the service were being provided for the first time and shall reflect planned adjustments in the firm's plant and equipment. Forward-looking costs ignore embedded or historical costs; rather, they are based on the least cost technology currently available whose cost can be reasonably estimated based on available data.
>
> **A group of services** consists of those services that share a common network technology, element, or business function that is necessary and unique to the provision of all services in the group, and where that common network technology, element, or business function cannot be attributed to any one service or subgroup of services in the group.
>
> **LRSIC of a group of services** includes the cost caused by additional resources used solely by the group of services, including the LRSICs of the individual services.

[31]These definitions are consistent with Illinois' cost of service rules. For greater detail see 83 Il. Adm. Code Part 791.

> **Common costs** are those costs that a carrier must incur in order to operate that are not directly attributable to any particular service or to any group of services smaller than the group of service consisting of all the services of the carrier.

Illinois' cost of service rules do not specifically define the terms "joint costs," "shared costs," or "residual costs." And, in fact, these terms can only be understood in the context in which they are used. For example, certain carriers will use the terms "joint" and "shared" synonymously to describe costs which are common to a group or multiple groups of services while other carriers use the terms to describe costs that are common to all of the services that the carrier provides. There are four basic types of costs that have been discussed in Illinois proceedings, regardless of what they are called. The first, or most basic, type of costs is the economic cost of providing an individual service; in Illinois this is called a LRSIC. The next type of costs is the economic cost of providing a group or family of services; this is defined as the LRSIC of a group of services in Illinois. Typically, the LRSIC of a group of services includes, in addition to the individual LRSICs, costs that are common only to that group of services. An example may be product management or sales expenses that are common only to that group of services. There are also costs that cannot be associated with any particular service or group of services; the ICC calls these common costs. Finally, those historical or embedded costs (which include returns on investments beyond the level accounted for in LRSICs) that are not accounted for in the individual LRSICs, family LRSICs or common costs but which are accounted for when developing a carrier's revenue requirement, are referred to as residual costs or residual revenue requirements.

The FCC seeks comment on whether an easily implementable transitional pricing mechanism should be adopted in order to protect the LECs' competitors from unequal positions of strength in bargaining situations. NPRM at para. 132. The ICC acknowledges that incumbent LECs have little to gain from bargaining with their competitors or from providing accurate and timely cost information, and concurs in the notion that an interim pricing approach may aid in speeding negotiations, in those States or for those companies that have not already implemented pricing mechanisms consistent with the 1996 Act. However, any interim pricing structure should, to the extent practicable, be consistent with the costing principles used in permanent pricing standards. If the FCC adopts an interim pricing mechanism, it should establish a predetermined date at which time the standards established under section 252(d) become effective.

Further, the use of transitional pricing standards would not necessarily preclude a finding that a BOC has satisfied the conditions for interLATA entry under section 271. The BOC would still retain the burden of showing that section 271 requirements have been met, including the competitive checklist, and that the requested interLATA authorization is consistent with the public interest.

The FCC requests comments on the following: a) the meaning of the term "nondiscriminatory" as used in the 1996 Act compared with the phrase "unreasonable discrimination" used in the 1934 Act; b) in choosing the word "nondiscriminatory," whether Congress intended to prohibit all price discrimination; c) whether sections 251 and 252 can be interpreted to prohibit only unjust or unreasonable discrimination; and d) whether the FCC should allow a pricing policy which allows carriers to charge different rates to parties that are not similarly situated, such as when a carrier incurs different costs to provide service to such parties, as a policy matter. NPRM at para. 156.

Initially, it should be noted that although a change of statutory language is some evidence of a change of purpose, the inference of a change of intent is only a workable rule of construction, not an infallible guide to legislative intent and cannot overcome more persuasive evidence. *McElroy v. U.S.*, 455 U.S. 642 (1982). Pursuant to the rules of statutory construction, in interpreting a statute, a reviewing court looks first and foremost to the text of the statute. *U.S. v. Alvarez*, 128 L. Ed.2d 319 (1994). If the statutory term is not defined in the statute, it must be construed in accordance with its ordinary or natural meaning. Id.

A review of the dictionary definitions of the words "nondiscriminatory" and "unreasonable discrimination" yielded the following: a) "nondiscrimination" is defined as the absence of discrimination or the practice or policy of refraining from discrimination;[32] b) "unreasonable discrimination" is defined as the acting of discriminating which is not governed by reason or the irrational perceiving, noting or making of a distinction or difference between things.[33]

Based on the ordinary or natural meaning of the words, the ICC believes, as a matter of policy, that the FCC and the States should interpret sections 251 and 252 to prohibit only unreasonable or unjust discrimination and that the FCC should permit, as a matter of policy, a carrier or carriers to charge different rates to parties that are not similarly situated. For example, if there were no flexibility for a State to allow reasonable discrimination, then the price of a service would have to be the same, regardless of cost or market characteristics. The ICC notes that price differences for a service based solely on cost differences are not considered economic price discrimination.[34] Thus, even a strict interpretation of "nondiscriminatory" should allow cost-based price differences.

The ICC recently issued an order stating that price discrimination is not unreasonable if three conditions are met. Those conditions are that:

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[32]The 1985 Second College Edition of the American Heritage Dictionary and the 1979 Compact Edition of the Oxford English Dictionary.

[33]Id.

[34]Scherer, F.M. and David Ross, Industrial Market Structure and Economic Performance," 3rd Edition, Houghton Mifflin Company, Boston, MA (1990).

> (1) prices are set no higher than the price index permits under the alternative regulation plan, i.e., a price cannot increase by more than the change in the Price Cap Index plus 2% each year;
>
> (2) Prices are set above the Long Run Service Incremental Cost, with imputation of noncompetitive tariffed inputs in each submarket; and
>
> (3) In the judgment of the [ICC], the prices are fair based on a consideration of other relevant [ICC] policies and objectives. Order in Docket 95-0201 et al., Consol. (attached) at 14.

The ICC also stated that the "application of these criteria on a consistent basis will promote economic efficiency, while assuring no unreasonable discrimination." Order in Docket 95-0201 et al., Consol. at 14 (attached). The FCC should not preempt States' ability to allow reasonable discrimination.

The FCC seeks comment on whether the terms of section 251(c) cover interconnection arrangements between incumbent LECs and certain other carriers. NPRM at paras. 158-171.

In paragraphs 159-161, the FCC discusses the duties imposed by sections 251(c)(2) and 251(c)(3) and tentatively concludes that interexchange carriers are "telecommunications carriers" and may seek interconnection and unbundled elements under subsections (c)(2) and (c)(3), respectively. The FCC also tentatively concludes that interexchange service does not appear to "constitute a 'telephone exchange service'" or "qualify as 'exchange access'." NPRM at para. 160-161. This resulted in the tentative conclusion that incumbent LECs are not obligated to provide interconnection pursuant to section 251(c)(2) if the interconnection is requested "for the purpose of originating or terminating interexchange traffic." NPRM at para. 161. The FCC suggests its analysis is consistent with other language in the 1996 Act. It argues that, historically, its statutory basis to require interconnection was section 201, and section 251(i) specifically states that the 1996 Act does not limit or otherwise affect the FCC's authority under section 201. Id.

While the ICC does not disagree with the FCC's tentative conclusions in paragraphs 159-161, the ICC would like to point out that section 251(a) imposes on all telecommunications carriers the obligation to directly or indirectly interconnect with the facilities of other telecommunications carriers. Section 252(a) states that, "Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers" without regard to the standards set forth in sections 251(b) and 251(c). Emphasis added. This raises the question of whether the 1996 Act permits interexchange carriers to request good faith negotiations and receive all the rights associated with the failure to arrive at a negotiated agreement. The opening sentence of section 252(a) does not limit the duty to negotiate upon receipt of a request to the rights afforded by sections 251(b) and (c). It appears that any telecommunications carrier could also request to negotiate interconnection arrangements under section 251(a). If negotiations failed, the telecommunications carrier could request mediation or arbitration. However, the telecommunications carrier would not get the benefits of the pricing standards in section 252(d) for interexchange traffic.

The benefit of this interpretation is that the interexchange carrier would be assured of having one interconnection arrangement for all traffic, even though the pricing may be different for interexchange and exchange traffic carried over the connection point. Other carriers would not be discriminated against because they could obtain the same method of interconnection.

The FCC tentatively concludes that interexchange carriers would not obtain the benefit of the pricing standard in section 252(d)(1) unless the interconnection was used for the purpose of offering access service in competition with the incumbent LEC. NPRM at para. 162. The FCC seeks comment on whether a carrier can request cost-based interconnection solely for offering access service or whether the interconnecting carrier must offer both "telephone exchange service" and "exchange access" to receive cost-based interconnection. It is the ICC's position that the purpose of section 251(b) and (c) was to permit local exchange competition. A number of the concerns of interexchange carriers and competitive access providers as they relate to interexchange traffic have been addressed by the Expanded Interconnection rules and Local Transport rules. The remaining market where competition had not been addressed by the FCC before the 1996 Act was the local exchange market.

It would not be inconsistent with the 1996 Act and would be entirely consistent with the FCC's prior rules to require the interconnecting carrier to provide both "telephone exchange service" and "exchange access" to receive prices based on section 252(d). This conclusion demonstrates the need to continue in effect the FCC's prior rules. Those rules, however, do not satisfactorily resolve all concerns. Interexchange carriers wishing to provide local exchange service will desire to transport all their traffic over a single interconnection arrangement. To the extent a negotiated arrangement is limited to local exchange traffic, thus necessitating a separate arrangement for interexchange traffic, inefficiencies will result. Jurisdictional issues will also return.

It is imperative that any negotiations cover all traffic, and any subsequent agreement be available to transport all traffic, even if the pricing standard is not applicable to all traffic. At least some efficiencies are gained by requiring only one interconnection arrangement. This position is consistent with the position that a carrier can request negotiation under section 252(a) for section 251(a) arrangements.

The ICC agrees with the FCC's tentative conclusion that carriers may request unbundled network elements for the purposes of originating and terminating interexchange toll traffic, in addition to whatever other services the carrier wishes to provide over the facilities. NPRM at para. 163. The ICC agrees that section 251(c)(3) is intended to permit carriers to provide telecommunications service by means of unbundled elements. Section 251(c)(3) provides no other limitation and, in this respect, is different from section 251(c)(2), which requires that the interconnection be used "for the transmission of telephone exchange service and exchange access." The incumbent LEC has no right to limit the use of the network element for any specific purpose, other than to require that the network element be used to provide a telecommunications service. Any right to limit the use of the network element would be inconsistent with the express language of section 251(c)(3) and its intended purpose--to permit a requesting carrier to pick and choose the network elements it desires to provide a telecommunications service its customers desire.

The FCC also seeks comment on whether section 251(c)(2) applies to interconnection arrangements between incumbent LECs and commercial mobile radio service ("CMRS") providers. NPRM at para. 169. Pursuant to the definition of telephone exchange service cited in the NPRM at paragraph 168, it would seem clear that some, if not all, CMRS providers offer telephone exchange service. While it is true that a CMRS call, not being fixed to a certain point, may travel between exchanges, CMRS calls may also originate and terminate within a telephone exchange or exchange area. Unlike interexchange carriers, the CMRS provider may act as both an originator and terminator of calls. As a result, the obligations imposed on incumbent LECs by section 251(c)(2) apply to at least some interconnection arrangements between incumbent LECs and CMRS providers.

47 U.S.C. 332(c) preempts States' authority to regulate the entry of or the rates charged by any commercial mobile service provider or any private mobile service provider ("PMRS"). It does not, however, prohibit a State from regulating the other terms and conditions of commercial mobile services, including interconnection terms and conditions. Further, the 1996 Act continues State authority over interconnection. CMRS providers are telecommunications carriers and, as such, interconnection agreements between incumbent LECs and CMRS providers are subject to State review and approval. The ICC strongly disagrees with any contention that a CMRS provider may simply choose between sections 251(c) and 332(c).

With regard to carriers using different technologies to provide the same or similar services, the technical rules governing those carriers as they compete against each other should be the same to the extent allowed by law and to the extent that the rules enforced on one provider can technically be applied to a competing provider using a different technology. In general, the FCC should refrain from giving a competitive advantage to any provider based solely on the technology which it employs.[35] The service provided should be the basis for the type or breadth of regulation.

The FCC also asks for comment on whether interconnection agreements between incumbent LECs and non-competing neighboring LECs are subject to section 251(c)(2). NPRM at paras. 170-171. As the FCC notes, section 251(c)(2) encompasses interconnection requested for the purposes of providing "telephone exchange service and exchange access." Resolution of this issue will hinge on the nature of the traffic passing between the adjacent LECs. If the interconnection is used to provide telephone exchange service and exchange access, section 251(c)(2) and the pricing standard in section 252(d)(1) apply. Thus, no blanket determination can be made.

At the same time, sound public policy requires that interconnection arrangements with adjacent LECs be made available to competing LECs. In the Customers First Order, the ICC stated that, ultimately, all carriers interconnecting with Illinois Bell should be offered service from the same tariff and under the same physical interconnection agreements.[36] It is in the interest of competition to ensure that all carriers are made aware of other interconnection agreements so that they may not be disadvantaged by less favorable terms.

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[35]The ICC stated a similar position in its Reply Comments in CC Docket No. 95-185, at 5. The ICC stated that the FCC should not create new policies that provide special treatment to CMRS interconnection arrangements.

[36]Customers First Order at 79.

This is true for adjacent non-competing LECs' interconnection arrangements as well as competing LECs' arrangements. There is very little physical difference between an incumbent LEC's interconnections with a LEC adjacent to its territory and one inside its territory. If an incumbent LEC were to give more favorable interconnection terms to an adjacent LEC than to a LEC inside its serving area, that would imply that the incumbent is engaging in anti-competitive behavior. All LECs should have access to all interconnection arrangements. Further, the line between adjacent and competing LECs may not be clear, and is certainly not expected to be static. Adjacent LECs can be expected to seek to enter each other's territory.[37] It is sound public policy to require interconnection arrangements with adjacent LECs to be made available to competing LECs. Thus, whether or not an interconnection arrangement between an incumbent LEC and an adjacent LEC is subject to section 251(c)(2), the physical interconnection arrangement should be made available to competing LECs.

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[37]A case in point is the recent announcement by Consolidated Communications Telecommunications Services, Inc. ("CCTS") that it is now competing with Ameritech Illinois in the Springfield area in providing local service to both business and residential customers. CCTS is an affiliate of Illinois Consolidated Telephone Company ("ICTC"), an incumbent LEC with a service territory adjacent to Ameritech Illinois' Springfield territory. Both CCTS and ICTC are subsidiaries of Consolidated Communications, Inc.

**3. Resale Obligations of Incumbent LECs**

The ICC cannot comment on many of the questions raised in this section of the NPRM, due to the pending ICC Docket 95-0458. The FCC seeks comment on "the relationship between rates for unbundled network elements and rates for wholesale or retail service offerings." NPRM at para. 184. It questions whether an imputation rule is necessary if new entrants are able to purchase network elements priced at cost and the new entrant "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." NPRM at para. 186. The State of Illinois requires that a carrier that provides both noncompetitive and competitive services must pass an imputation test for its own competitive services, switched interexchange services, and interexchange private line services. See Section 13-505.1 of the Illinois Public Utilities Act. (However, the Illinois statute only applies to carriers with 35,000 or more network access lines.) The stated purpose of the imputation statute is to determine whether the aggregate revenue for each service exceeds the costs, including the tariffed premium rates for any noncompetitive inputs, based on the carrier's own routing arrangements. Id. If the FCC precludes States from imposing imputation requirements, then competitors may be subject to a price squeeze. NPRM at para. 184. Accordingly, competitors will be required to sell such services as a "loss leader," hoping to make up the difference on other services. NPRM at para. 186. In the Customers First Order, the ICC stated the following when determining the appropriate price for mutual compensation for the termination of local traffic between Ameritech Illinois and a new LEC:

> Contrary to Illinois Bell's assertions, it is entirely appropriate to gauge the reasonableness of Illinois Bell's reciprocal compensation proposal, and to establish substitute rates, with reference to an imputation-style analysis for local traffic such as Staff used, rather than the broader test Illinois Bell advocates. The issue is not whether a new LEC ultimately can scrape together revenues from enough sources to be able to afford Illinois Bell's switched access charges. The crucial issue is the effect of a given reciprocal compensation proposal on competition. Staff's analysis identifies the essential locus of competition between the incumbent LEC and the new LEC, and it is there that competition must be viable. Illinois Bell surely could not argue that appreciable numbers of customers will switch exchange carriers because the new LEC offers the best directory assistance or custom calling in the area. Yet, adoption of Illinois Bell's proposal and rationale would force new LECs to adopt either a premium pricing strategy or use local calling as a "loss-leader." That is not just or reasonable. Customers First Order at 98.

In a recent Order regarding price discrimination, the ICC stated that imputation is necessary, otherwise a carrier could use its market power to prevent efficient entry. <u>See</u> Order in Docket 95-0201 et al., Consol, at 14. Entry could be prevented because the price of the input is greater than the retail rate of the incumbent LEC. Further, the FCC does not have the authority to prohibit the ICC from imposing imputation or other pricing requirements, as discussed previously.

The FCC states that there are at least two possible objections to an imputation rule where the rule would require that the price of inputs be less than cost. Those objections are that the inputs could be used to provide services that compete with the LEC retail services that are the source of the subsidy; and, secondly, that efficient entry of facilities-based carriers would be deterred. NPRM at para. 186. The FCC states that a possible solution would be for a State to restructure an incumbent LEC's retail rates to eliminate any non-competitively neutral, implicit subsidy flows. The FCC cites the ICC's restructuring of rates based on access areas so that the retail price is, on average, greater than TSLRIC. NPRM at para. 187. The ICC agrees that the 1996 Act requires explicit support mechanisms versus implicit support mechanisms. See section 254. In order for efficient competition to occur between incumbent LECs, resellers, and facilities-based carriers, States may have to restructure their retail rates and convert implicit subsidies to explicit subsidies. However, the ICC does not take a position, at this time, regarding whether minimum federal rules should require service-specific imputation requirements as a general standard. The federal-State Joint Board should examine this issue further.

The FCC seeks comment on whether the FCC should require that rates for local service exceed the cost of providing that service. NPRM at para. 188. However, the FCC does not have authority over retail local rates. In paragraph 40, the FCC notes that:

> sections 251 and 252 do not alter the jurisdictional division of authority with respect to matters falling outside the scope of these provisions. For example, rates charged to end users for local exchange service, which have

> traditionally been subject to state authority, continue to be subject to state authority.

The ICC concurs with the FCC's statement that State authority over intrastate retail services has not been altered by the passage of the 1996 Act.

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

Section 251(c)(5) requires incumbent LECs to provide public notice of certain technical changes to their networks. The FCC offers its tentative conclusion regarding the definitions of "transmission routing," "services," and "interoperability" for the purposes of section 251(c)(5). NPRM at para. 189. The FCC's definitions of these terms are adequate and consistent with the intent of Congress. The ICC, however, urges the FCC not to "micro-define" the changes that should trigger the public notice requirement. Such specificity could result in carriers not having to provide public notice if a particular change has not been specifically mentioned in the FCC's list. The ICC also urges the FCC to recognize that States should be given the latitude to define changes, in addition to any determined by the FCC, which would trigger the public notice requirement where the States find such notice is in the public interest.

The ICC is in complete agreement with section 251(c)(5) of the 1996 Act, which requires incumbent LECs to "provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks." NPRM at para. 189. The ICC recognizes public notice requirements as critical to the achievement and maintenance of efficient interconnection. As a result, the ICC agrees with the FCC that, at a minimum, incumbent LECs should inform interconnectors about their network design, technical standards and planned changes to the network (including date, location and type of changes to occur, as well as the potential impact these changes would have) (1) within a "reasonable" time in advance of implementing changes that will affect the information necessary for the transmission and routing of services, and (2) within a "reasonable" time after such information is requested by an individual carrier. NPRM at paras. 190 and 192. "Reasonable" time would constitute an amount of time sufficient for the interconnector to perform all necessary software and hardware reprogramming granting it the ability to continue to provide service once changes to the network have been implemented.

When deciding upon public notice requirements, the FCC may examine public notice language agreed to by Ameritech during its petition for a modification of its consent decree to provide interexchange service on a trial basis. Ameritech agreed to require its local exchange operations to:

> notify unaffiliated interexchange carriers and intraLATA toll carriers and local exchange carriers of changes to existing exchange access services and local exchange telecommunications or the addition of new such services that affect such unaffiliated carriers' interconnection with the switching, transport, and signalling facilities of, or

> ordering, provisioning, and repair systems interfaces to, the Ameritech local exchange operations in the Trial Territory at least 60 days prior to implementation, or as soon as the Ameritech local exchange operations gives any information to the Ameritech interexchange subsidiary regarding such actual or contemplated changes, whichever is sooner.[38]

A BOC should not be allowed to discriminate between unaffiliated carriers and any of its affiliates with regard to public notice about network configuration and proposed changes. The same disclosure requirements should apply to both BOCs, pursuant to sections 273(c)(1) and (c)(5), and incumbent LECs, pursuant to section 251(c)(5). This practice will allow carriers to make a more informed interconnection decision based on the complete understanding and knowledge of a LEC's network design, technology standards and anticipated network changes.

With regard to the required public notice time frame, the FCC's proposed time frames[39] appear to establish adequate thresholds for interconnectors to react to incumbent LECs' announcements regarding changes in technology and/or network configuration. A 60 day or less public notice period, such as Ameritech agreed to, may not provide interconnectors with sufficient time to adjust their networks to the change. In fact, the ICC urges the FCC to recognize that some interconnectors may need to deviate from the 12 month norm established in the

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[38]Civil Action No. 82-0192, United States of America v. Western Electric Company, Inc., et al. and American Telephone and Telegraph Company. Stipulation of Consent to Proposed Order, April 3, 1995.

[39]NPRM at para. 192, where the FCC proposes to adopt a timetable for disclosure comparable to that adopted in the Computer III proceeding.

Computer III case, and that such a deviation should be granted, on a case by case basis, if the needed extension is justified by the requesting carrier. The State commissions are the appropriate authority to make such a determination.

The ICC agrees with the FCC that industry forums and/or industry publications are appropriate media through which incumbent LECs can provide public notice. NPRM at para. 191. The ICC also agrees that a LEC should file with the FCC a reference to this technical information and where it can be located. One important issue the ICC would like to bring to the FCC's attention is the need for consistency. Once a LEC has selected a medium through which it will inform interconnectors and other industry participants of its network design, technical standards and proposed changes, the LEC should consistently use the same source for its updates. Should the LEC choose to discontinue use of that source and move on to another source, the carrier should carefully indicate the change in the original source. This will allow industry participants and interconnectors that are less actively involved in industry forums to be informed about the change.

Finally, the FCC requests comments regarding 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. The FCC also solicits comments on what those safeguards should be. NPRM at para. 194. The ICC suggests requiring carriers to sign proprietary agreements as a potential means of increasing security and restricting the dissemination of proprietary information. Agreements of this nature are commonplace and seem to be fairly successful in controlling such problems.

**C. Obligations Imposed on LECs by Section 251(b)**

The FCC seeks comment on whether, and to what extent, CMRS providers should be classified as LECs and the criteria, such as wireless local loop competition in the LEC's service area by the CMRS provider, that should be used to make such a determination. NPRM at para. 195. If CMRS providers are to be treated as LECs, the basis should be the substitutability of their services for the incumbent LEC's services or the services of other landline LECs.

A CMRS provider may erect a wireless local loop for the express purpose of competing against or bypassing the landline loop. In that situation, there is no reason to treat the CMRS provider any differently than a landline loop provider. The ICC recently granted a certificate to provide exchange services to Winstar Wireless of Illinois, Inc.,[40] which plans to provide wireless local loops.

If a CMRS provider operates as a LEC, it should be required to comply with the same guidelines as other LECs, to the extent

[40]See Order (attached) in ICC Docket 95-0616, Application for Certification of Service Authority to Provide Facilities-based and Resold Local and Interexchange Telecommunications Service in the Areas of MSA-1.

allowed by law, so as not to give the CMRS LEC an unfair competitive advantage. The CMRS LEC should be treated differently than other LECs only if required by statutory provisions or if a particular requirement is not technically viable due to the technology being used in its network. As an example, certain service and quality standards may be difficult to enforce due to different technologies used in CMRS networks.

The FCC should only classify as LECs those CMRS providers that are competing directly with the LECs for local exchange services. The determination may need to be based on how consumers are using a particular provider's services, i.e., whether they are substituting wireless for traditional wireline local exchange services. If a CMRS provider is offering a service that would not generally be considered a local exchange service, then it should not be regarded as a LEC in the offering of that particular service.

### 1. Resale

The FCC seeks comment as to what types of restrictions on resale of telecommunications services would be "unreasonable" under section 251(b)(1) and (c)(4). NPRM at para. 197. The ICC is currently examining resale in ICC Docket 95-0458 and is unable to fully address the FCC's request. However, in the Customers First proceeding, the ICC stated that "the most effective way to develop competition for residential customers is to allow the resale of residential services to residential customers."