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SUMMARY

The NPRM requests comments on how the Commission should implement the nonaccounting safeguards established in Sections 260, 274 and 275 for the provision of telemessaging, electronic publishing and alarm monitoring services by the BOCs and other incumbent LECs. As applied to the BOCs, Sections 260, 274 and 275 supplement the provisions of Section 272, which adopts structural separation and nondiscrimination requirements for all BOC services originating in the BOC's region that have interLATA access or transmission components. The appropriate focus of this proceeding is the prevention of discrimination and other anticompetitive behavior by the BOCs and incumbent LECs that may arise from their monopoly control over the local exchange and exchange access services.

Section 260 categorically prohibits any preference or discrimination by an incumbent LEC in favor of its own telemessaging services. The nondiscrimination requirements of Section 260 apply to all telemessaging services, intrastate as well as interstate, and to all incumbent LECs, not just to the BOCs. The term "telemessaging services" has been broadly defined in Section 260 to include all telemessaging services that are, or may be in the future, offered by an incumbent LEC, regardless of the particular features of the service or the particular technology employed. The Commission should strictly regulate the provision of telemessaging services by incumbent LECs, including application of the nondiscrimination safeguards established by the Commission in its Computer III and ONA proceedings, to reduce

the potential for anticompetitive conduct by the BOCs and incumbent LECs that control substantial bottleneck facilities.

Section 274 confers authority on the Commission over all electronic publishing services provided by the BOCs, including both intrastate and interstate services. Section 274(b) requires that any electronic publishing services of a BOC must be provided through either a "separated affiliate" or an "electronic publishing joint venture" that is "operated independently" from the BOC. In addition, Section 274(b) requires compliance with nine specific structural separation requirements. With the narrow exception of one type of "inbound" telemarketing, Section 274 prohibits a BOC and its separated affiliate from engaging in joint marketing, and it establishes nondiscrimination safeguards to reduce the potential for anticompetitive behavior relating to electronic publishing by the BOCs.

Section 275 gives the Commission regulatory authority to prevent or limit discrimination and other anticompetitive conduct by incumbent LECs in the provision of alarm monitoring services. Section 275 applies to both interstate and intrastate alarm monitoring services. To reduce the potential for anticompetitive conduct, the Commission should strictly regulate the provision of alarm monitoring services by incumbent LECs that control substantial bottleneck facilities, including application of the nondiscrimination requirements established by the Commission in its Computer III and ONA proceedings.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the)	CC Docket No. 96-152
Telecommunications Act of 1996:)	
)	
Telemessaging,)	
Electronic Publishing, and)	
Alarm Monitoring Services)	

COMMENTS OF AT&T CORP.

Pursuant to Section 1.415 of the Commission's Rules and its Notice of Proposed Rulemaking in this proceeding released July 18, 1996 ("NPRM"), AT&T submits these comments on the nonaccounting safeguards applicable to the provision of telemessaging, electronic publishing and alarm monitoring services by the Bell Operating Companies ("BOCs") and other incumbent Local Exchange Carriers ("LECs") under Sections 260, 274 and 275 of the Communications Act, as amended by the Telecommunications Act of 1996 ("1996 Act").

INTRODUCTION

In this NPRM, the Commission has requested comments on three separate provisions added by the 1996 Act: Section 260 relating to the provision of telemessaging services by incumbent LECs, Section 274 relating to the provision of electronic publishing services by the BOCs, and Section 275 relating to the provision of alarm monitoring services by incumbent LECs. These provisions impose new duties on incumbent LECs that go beyond those existing under Sections 201 or 202 of the Act or the

Commission's existing regulations. For example, Sections 260 categorically prohibits any subsidy, preference or discrimination by an incumbent LEC in favor of its own telemessaging services.

Before considering the specific issues raised by the NPRM, it should be emphasized that, in the case of the BOCs, the provisions of Sections 260, 274, and 275 merely supplement the provisions of the Act that apply to interLATA information services. In particular, Section 272 of the Act adopts structural separation and other requirements that separately apply to information services that are offered by BOCs that have interLATA access or transmission services as components of the BOC service.

First, with exceptions not here relevant, Section 272(a)(2)(B) requires a BOC to use a separate affiliate that complies with the structural separation and nondiscrimination requirements of Section 272 to offer "origination of interLATA telecommunications services" in its region, and Section 272(a)(2)(B)(i) specifically provides that this duty applies to those "incidental interLATA services" authorized by Section 271(g)(4) which "permit a customer that is located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA." Because the BOCs have previously indicated that telemessaging, electronic publishing and other information services will include this "interLATA access" as a

component,¹ Section 272's requirements will apply to all telemessaging, electronic publishing and other information services that have these characteristics and that are offered to customers in a BOC's region.

Second, Section 272(a)(2)(C) also requires the BOC to satisfy Section 272's separate affiliate and other requirements for any other "interLATA information services" other than electronic publishing and alarm monitoring services. So Section 272(a) imposes structural separation and nondiscrimination requirements that apply (1) to any interLATA information service that originates in a BOC's region, including electronic publishing and alarm monitoring, and (2) to other interLATA information services (i.e., those originating outside a BOC's region) unless the service is an electronic publishing service subject to Section 274 or an alarm monitoring service subject to Section 275. The structural separation and nondiscrimination requirements of Sections 272(b)&(c) will apply to any BOC until at least four years after the effective date of the Act, and the Commission has the authority to extend the requirements after that date. See Section 272(f)(2).

The provisions of Sections 260, 274, and 275 thus supplement these provisions of Section 272 that apply to a BOC's

¹ See Motion of the Bell Operating Companies for a Waiver of the Interexchange Services Restriction to Permit Them to Provide Information Services Across LATA Boundaries, pp. 7-8 & Aff. of Jerry A. Hausman, ¶ 19 (App. A, Tab 1), United States v. Western Electric Co., No. 82-0194 (D.D.C. filed April 24, 1995) ("Regardless of the network used, major information service providers almost invariably arrange interLATA access as an essential element of the information service network").

interLATA information services, and Sections 260, 274, and 275 represent the only new restrictions that would apply to a BOC's telemessaging, electronic publishing, and alarm monitoring services to the extent the BOCs choose to configure them so that interLATA access or transmission are not components of the service. The provisions of Sections 260 and 275 are also equally applicable to independent LECs in that Congress recognized that they, too, can use local monopolies to favor their services and illicitly impede those of competitors.

AT&T's comments are divided into four parts. Part I responds to the questions raised in the NPRM concerning the scope of the Commission's authority over telemessaging services and the nondiscrimination safeguards established in Section 260. NPRM, ¶¶ 19-21, 75-77. Part II addresses the questions raised in the NPRM regarding the Commission's authority over electronic publishing services provided by the BOCs and the separated affiliate and nondiscrimination requirements of Section 274. NPRM, ¶¶ 22-25, 28-67. Part III addresses the questions raised in the NPRM concerning the Commission's authority over alarm monitoring services and the nondiscrimination safeguards of Section 275. NPRM, ¶¶ 26-27, 68-74. Finally, Part IV discusses the enforcement issues raised in the NPRM relating to Sections 260, 274 and 275. NPRM, ¶¶ 78-84.

**I. THE NONDISCRIMINATION SAFEGUARDS OF SECTION 260 APPLY TO ALL
TELEMESSAGING SERVICES PROVIDED BY INCUMBENT LOCAL EXCHANGE
CARRIERS.**

**A. Scope Of The Commission's Authority Over Telemessaging
Services.**

The NPRM (§§ 20, 21, 75) raises several questions concerning the extent of the Commission's jurisdiction under Section 260 over the intrastate and intraLATA provision of telemessaging services. However, there is no ambiguity in Section 260. By its terms, Section 260 prohibits discrimination or cross-subsidization in the provision of all telemessaging services by any incumbent LEC. Section 260 does not distinguish between interstate and intrastate telemessaging services, or between interLATA and intraLATA telemessaging services. In this respect, Section 260 is like other sections of the 1996 Act relating to the "Development of Competitive Markets" in the new Part II of Title II of the Communications Act, which clearly confer jurisdiction on the Commission over both the interstate and the intrastate aspects of particular telecommunications services.² The Commission's jurisdiction under Section 260 extends to all telemessaging services without regard to whether they are offered on an interstate or intrastate basis -- a conclusion that is reinforced by the fact that telemessaging

² See, e.g., Sections 251-253; First Report and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, §§ 83-103 (August 8, 1996).

services use the same equipment for all calls, whether the call is local, intraLATA, intrastate or interstate.³

By its terms, Section 260 also applies to all incumbent LECs that provide telemessaging services. The jurisdiction of the Commission under Section 260, therefore, plainly includes, but is not limited to, the BOCs. Section 260 is an entirely independent grant of regulatory authority to the Commission and is not in any way restricted by any of the provisions of Sections 271 or 272 of the Act. Rather, Sections 271 and 272 complement Section 260 by imposing certain additional structural separation requirements and nondiscrimination safeguards on the BOCs' provision of any telemessaging services that have interLATA transmission components. Thus, because telemessaging services are "information services,"⁴ when such services are provided by

³ In addition to the direct regulatory authority over intrastate telemessaging services conferred on the Commission by Section 260, the Commission also retains the authority to preempt any state regulation of intrastate telemessaging services that would negate or interfere with the Commission's regulation of interstate telemessaging services. See, e.g., NPRM at ¶ 21; Louisiana Public Service Comm'n v. FCC, 476 U.S. 355, 375 n.4 (1986); California v. FCC, 39 F.3d 919, 931 (9th Cir. 1994); Maryland Public Service Comm'n v. FCC, 909 F.2d 1510, 1515 (D.C. Cir. 1990); Texas Public Utility Comm'n v. FCC, 886 F.2d 1325, 1332-33 (D.C. Cir. 1989); National Ass'n of Regulatory Utility Comm'rs v. FCC, 880 F.2d 422, 429-31 (D.C. Cir. 1989).

⁴ See 47 U.S.C. § 153(20); Notice of Proposed Rulemaking, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, CC Docket No. 96-149, ¶ 54 (July 18, 1996) ("BOC In-Region NPRM"); United States v. Western Electric Co., 673 F. Supp. 525, 563-65 (D.D.C. 1987), aff'd in part, rev'd in part, 900 F.2d 283 (D.C. Cir. 1990); Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corp., 7 FCC Rcd. 1619, 1623 (¶ 20) (1992).

the BOCs on an interLATA basis, they are fully subject to the requirements of Section 272 as well as those of Section 260.⁵

The NPRM (§ 76) also asks whether rules are necessary to clarify what services are subject to Section 260. Section 260(c) broadly defines "telemessaging service" to include all "voice mail and voice storage and retrieval services, any live operator services used to record, transcribe, or relay messages (other than telecommunications relay services), and any ancillary services offered in combination with these services." 47 U.S.C. § 260(c). It is apparent that this broad definition is intended to encompass all telemessaging services that are, or may be in the future, offered by an incumbent LEC, regardless of the particular features of the service or the particular technology employed. There is no need for the Commission at this time to adopt rules to clarify the statutory definition.

B. Nondiscrimination Requirements Applicable To Telemessaging Services.

The NPRM (§ 77) asks how the nondiscrimination requirements applicable to incumbent LECs providing telemessaging services under Section 260 compare with their obligations under Sections 201 and 202 of the Act. The nondiscrimination requirements of Section 260 go well beyond the requirements of Section 202. Section 202 prohibits only "unreasonable" discriminations or preferences, while Section 260 categorically

⁵ See, e.g., Section 272(a)(2)(C) (requiring a separate affiliate for the provision of interLATA information services by a BOC); AT&T Comments in BOC In-Region NPRM at 14-15 (filed August 15, 1996).

prohibits any preference or discrimination by an incumbent LEC in favor of its own telemessaging service operations.⁶

The NPRM (§ 77) also tentatively concludes that the requirements established by the Commission in its Computer III and Open Network Architecture ("ONA") proceedings for the provision of telemessaging services by the BOCs should continue to apply to the extent that they are not inconsistent with Section 260. AT&T strongly agrees with that conclusion. The requirements established by the Commission in Computer III and ONA were designed to reduce the potential for the BOCs to abuse their bottleneck positions in local exchange markets to gain an unfair advantage over competitors in the provision of telemessaging and other enhanced services.⁷ The BOCs today possess monopoly power in their respective in-region local exchange market areas, and they have both the ability and the incentive to gain an unfair competitive advantage over competing providers of telemessaging services. The same market conditions that led the Commission to impose comparably efficient interconnection ("CEI") and open network architecture ("ONA") requirements on the BOCs in its Computer III and ONA proceedings,

⁶ It would be an obvious violation of Section 260, for example, for a group of LECs jointly to provide a voice messaging service for which those LECs have assigned the subscriber's basic telephone number to the LECs' enhanced voice messaging mailbox for their sole use to the exclusion of competing voice messaging providers, as some BOCs (Pacific Bell, Ameritech, Bell Atlantic and NYNEX) have apparently proposed to do as part of "The Messaging Alliance." See "Alliance Formed to Provide Voice Messaging Coast to Coast," PR Newswire (June 12, 1996).

⁷ See, e.g., Amendment of Section 64.702 of the Commission's Rules and Regulations, 104 F.C.C.2d 958, 1022, 1026 (1986).

therefore, remain fully applicable to the BOCs today. Moreover, there is nothing in Section 260 to suggest that Congress had any intent to displace the nondiscrimination provisions of Computer III and ONA. On the contrary, Section 260 confirms the intent of Congress to prevent discrimination by the BOCs in the provision of telemessaging services.

The NPRM (§ 77) further asks whether the nondiscrimination provisions of Computer III and ONA should be applied to the provision of telemessaging services by all incumbent LECs. The answer is that wherever an incumbent LEC possesses substantial market power as a result of its bottleneck control over local exchange facilities in a significant service area (e.g., SNET, GTE, and other Tier I LECs), it also possesses the ability to discriminate against competing providers of telemessaging services and the incentive to gain an unfair competitive advantage over its competitors. The nondiscrimination provisions of Computer III and ONA applicable to telemessaging services, therefore, should be applied to all incumbent LECs that control substantial bottleneck facilities.

II. SECTION 274 GRANTS THE COMMISSION BROAD AUTHORITY TO ENSURE THAT THE BOCs DO NOT USE THEIR LOCAL EXCHANGE MONOPOLIES TO GAIN AN UNFAIR COMPETITIVE ADVANTAGE IN ELECTRONIC PUBLISHING.

A. Scope Of The Commission's Authority Over Electronic Publishing Services.

Section 274 confers broad regulatory authority on the Commission to protect against the BOCs' use of their monopoly power over local exchange services to gain an unfair advantage over competitors in the provision of electronic publishing. As

the NPRM (§§ 23, 29) correctly notes, the requirements of Section 274 apply to both interstate and intrastate electronic publishing services. The NPRM (§ 23) also notes, however, that Section 274(b)(4) contains one reference to state commission regulations relating to the valuation of BOC assets and seeks comments on whether this reference indicates some limitation on the Commission's jurisdiction over intrastate electronic publishing.

The answer is clearly no. Section 274 neither grants any regulatory authority to the state commissions nor in any way limits the Commission's authority to regulate all aspects of electronic publishing by the BOCs, including both interstate and intrastate. This is clear from Section 274(e) which authorizes the Commission to hear complaints for damages and to issue cease and desist orders for violations of any of the provisions of Section 274. The absence of any grant of authority to the state commissions to enforce the requirements of Section 274 makes clear that the regulatory authority of the Commission over electronic publishing by the BOCs extends to both interstate and intrastate electronic publishing services.

This conclusion is also confirmed by several other provisions of Section 274. For example, Section 274(f) establishes reporting requirements for all separated BOC affiliates engaged in electronic publishing and provides that such reports shall be filed with the Commission. Similarly, Section 274(b)(3) requires that a BOC must deal with any separated affiliate or joint venture engaged in electronic publishing in an independent manner pursuant to written contracts

or tariffs filed with the Commission. And notwithstanding the very local nature of "small, local electronic publishers," Section 274(c)(2)(C) confers authority on the Commission to determine whether the BOCs may be authorized to have an interest greater than 50 percent in joint ventures with such local electronic publishers.

In sum, Section 274 confers regulatory authority on the Commission over all electronic publishing services by the BOCs, including both interstate and intrastate. The reference in Section 274(b)(4) to "such regulations as may be prescribed by the Commission or a State commission" for the valuation of BOC assets does not detract in any way from this conclusion, but merely recognizes that to the extent that the state commissions have their own accounting rules for valuing BOC assets that are transferred out of the regulated entity providing local or intrastate services,⁸ those rules -- to the extent that they complement and are consistent with the Commission's rules -- should be followed in valuing BOC assets transferred to a separated affiliate or joint venture engaged in electronic publishing. To the extent that any such state commission valuation regulations negate or interfere with the Commission's regulation of electronic publishing by the BOCs, on the other

⁸ Under the 1996 Act, the states will continue to have the authority to use their own accounting methods for intrastate services other than those that either have been preemptively deregulated by the Commission (such as information services) or for which jurisdiction has been expressly granted to the Commission by the 1996 Act (such as intrastate, interLATA telecommunications services provided by the BOCs). See AT&T Comments, CC Docket No. 96-150, p. 6 (filed August 26, 1996).

hand, the Commission retains the authority to preempt such state regulations.⁹

The NPRM (§ 31) also asks what particular BOC services are encompassed by the definition of electronic publishing in Section 274(h) and which are excluded. It is important to recognize, however, that a service excluded from the definition of electronic publishing in Section 274(h) may still be subject to the separate affiliate and other requirements of Section 272. For example, a BOC's internet access service which provides any of the features or functions of an enhanced service may be an "interLATA information service" under Section 272(a)(2)(C) even though, as an "information access" service, it would be excluded from the definition of electronic publishing under Section 274(h)(2)(A).

B. Structural Separation Required For BOC Electronic Publishing Services.

1. The Operational Independence Requirement Of Section 274(b).

Section 274(b) establishes a general requirement that any separated affiliate or electronic publishing joint venture shall be "operated independently" from the BOC. It then sets out nine more specific requirements for operational independence in subsections (1) through (9), including separate books, separate credit arrangements, and transactions pursuant to written

⁹ See Louisiana Public Service Comm'n v. FCC, 476 U.S. 355, 375 n.4 (1986); California v. FCC, 39 F.3d 919, 931 (9th Cir. 1994); Maryland Public Service Comm'n v. FCC, 909 F.2d 1510, 1515 (D.C. Cir. 1990); Texas Public Utility Comm'n v. FCC, 886 F.2d 1325, 1332-33 (D.C. Cir. 1989); National Ass'n of Regulatory Utility Comm'rs v. FCC, 880 F.2d 422, 429-31 (D.C. Cir. 1989).

contracts or tariffs filed with the Commission. In light of the fact that some of the nine specific requirements do not apply equally to separated affiliates and electronic publishing joint ventures, the NPRM (§ 35) asks whether the more general "operated independently" requirement has a different meaning for separated affiliates and for electronic publishing joint ventures and what additional regulatory requirements should be adopted to ensure compliance with the "operated independently" requirement.

The inclusion of the more general "operated independently" requirement in addition to the nine specific requirements indicates that the "operated independently" requirement imposes a more general standard of conduct on the BOCs going beyond the nine specific and more limited structural and transactional requirements set forth in the subsections of Section 274. The words of the statute clearly state that the general "operated independently" requirement of Section 274 is fully applicable to both separated affiliates and electronic publishing joint ventures, and there is no basis in the language of the statute for any claim that the "operated independently" requirement has any different meaning as applied to separated affiliates and electronic publishing joint ventures. Indeed, the fact that some of the subsections of Section 274 do not apply equally to separated affiliates and electronic publishing joint ventures demonstrates that Congress knew how to impose different requirements when it wished to do so.

The inclusion of the general "operated independently" requirement in addition to the nine specific requirements

supports two conclusions. First, a BOC cannot evade the objective of Section 274 of ensuring operational independence between the BOC and its separated affiliate or electronic publishing joint venture through hypertechnical interpretations of the nine specific requirements that violate the intent of those provisions. Second, the Commission is authorized to adopt whatever additional regulations it deems necessary beyond the nine subsections of Section 274(b) to assure that operational independence between the BOC and its separated affiliate or electronic publishing joint venture is a reality.

Standing alone, the nine specific requirements of Section 274 do not assure operational independence. For example, they do not specifically preclude joint planning and engineering that would be antithetical to the separation and operational independence required by Section 274. Accordingly, the "operated independently" requirement authorizes the Commission to adopt additional structural separation rules, such as the rules adopted by the Commission in Computer II,¹⁰ to reduce the potential for discrimination and cost misallocation that is inherent in the integration of monopoly and competitive services.

¹⁰ See Final Order, Second Computer Inquiry, 77 F.C.C.2d 384 (1980). For example, the Computer II rules required the affiliate to use separate computer facilities to provide unregulated services, prohibited the joint use of space or property on which equipment used to provide basic transmission services is located, and required the disclosure to competitors of information regarding standards and designs that the BOC possesses as a result of its control of essential facilities.

2. The Credit Requirements of Section 274(b)(2).

Section 274(b)(2) prohibits a BOC and its separated affiliate or electronic publishing joint venture from incurring "debt in a manner that would permit a creditor of the separated affiliate or joint venture upon default to have recourse to the assets of the [BOC]." The purpose of this provision is two-fold. First, as the NPRM (§ 36) recognizes, it is intended to protect subscribers to a BOC's exchange and exchange access services from bearing the cost of default by the separated affiliate or joint venture. Second, it is designed to protect and preserve fair competition in the provision of electronic publishing services by preventing the BOC's separated affiliate or joint venture from gaining an unfair competitive advantage over its rivals through lower credit costs obtained by reason of its affiliation with the BOC.

The credit requirements of Section 274(b)(2) apply to any device or "manner" that would permit a creditor of the separated affiliate or joint venture to have recourse to the assets of the BOC in the event of a default. There is no limitation with respect to the particular types of transactions or credit arrangements prohibited by this provision. Accordingly, the tentative conclusion in the NPRM (§ 37) that a BOC would violate this provision if it cosigned a contract or other instrument with its separated affiliate or joint venture is certainly correct. However, the Commission should also make clear that Section 274(b)(2) is not limited to such obvious violations, and it should retain the flexibility to deal with

other credit arrangements that may come to its attention in the future. In addition, the Commission should require that any contract or other document in which the separated affiliate or joint venture obtains credit contain a provision expressly stating that the creditor has no recourse either to the assets of the BOC or to the assets of any parent of the BOC, for any recourse to the parent's assets would produce a cross-subsidy from the BOC by reducing the economic value of recourse to the parent's assets by the BOC's creditors.

3. The Prohibitions Against Common Personnel And Common Property In Section 274(b)(5).

Section 274(b)(5) provides without qualification that a BOC and any separated affiliate engaged in electronic publishing shall "have no officers, directors, and employees in common" and shall "own no property in common." These prohibitions are unequivocal and contain no exceptions. They prohibit BOC personnel from participating in the operation, planning, marketing or other activities of the separated affiliate, and vice versa,¹¹ and they prohibit any common ownership of property. The clear intent of this section is to require the BOC and its separated affiliate to be operated in a truly independent manner.

The Commission correctly concludes that Section 274(b)(5)(B) "prohibits a BOC and its separated affiliate from jointly owning goods, facilities, and physical space." NPRM at ¶

¹¹ The only exception is the very limited provision for joint telemarketing of certain inbound telemarketing or referral services subject to the nondiscrimination requirements of Section 274(c)(2)(A).

41. The Commission is also correct that this provision "prohibits the joint ownership of telecommunications transmission and switching facilities." Id. Similarly, the Commission should make clear that this prohibition cannot be evaded by the subterfuge of having the BOC and its separated affiliate jointly lease property (NPRM at ¶ 42), for such a joint lease would obviously result in a prohibited common property interest.

To avoid further controversy, the Commission should also explicitly prohibit two types of sharing that would plainly violate the intent of Section 274(b)(5). First, the Commission should make clear that a BOC is not permitted to establish a second affiliate to perform services or own property for both the BOC and its separated electronic publishing affiliate. Such an arrangement would result in an obvious sharing of personnel or property in violation of both the letter and the intent of Section 274(b)(5), as well as a violation of the more general "operated independently" requirement of Section 274(b).

Second, the Commission should prohibit the BOCs from using any compensation system that directly or indirectly bases the compensation of BOC officers, directors, or other employees on the performance of the affiliate, or vice versa. Personnel paid under such a compensation scheme would effectively be shared employees because they would have financial incentives to promote the interests of both the BOC and the separated affiliate at the expense of competitors.

4. The Prohibitions Against BOC Performance Of Certain Functions In Section 274(b)(7).

Section 274(b)(7) prohibits a BOC from performing certain functions relating to (A) the hiring or training of personnel, (B) the purchasing, installation, or maintenance of equipment, or (C) research and development on behalf of a separated affiliate engaged in electronic publishing. There is no exception in Section 274(b)(7) for joint marketing activities. See NPRM at ¶ 45. Accordingly, Section 274(b)(7) does not permit a BOC to hire or train the marketing personnel of its separated affiliate, and no such exception can be inferred from the very limited type of joint telemarketing activities permitted under Section 274(c)(2). Similarly, the only purchase, installation or maintenance of equipment by a BOC permitted under Section 274(b)(7)(B) is the provision of basic telephone service pursuant to the requirements of Section 274(d).

5. The Relationship Between The Separate Affiliate Requirements Of Section 272(b) And The Separated Affiliate Requirements Of Section 274(b).

The NPRM (¶ 47) also asks for comment on the interrelationship between the requirements for a "separate affiliate" under Section 272(b) and the requirements established for a "separated affiliate" engaged in electronic publishing under Section 274(b). Several of the requirements in these two sections are the same or similar. Section 274(b), however,

imposes a number of additional requirements that do not have any explicit counterpart in the Section 272(b).¹²

The NPRM (§ 48) further requests comment on whether a BOC may provide electronic publishing services through the same separate affiliate through which it provides in-region interLATA telecommunications services, manufacturing activities, and/or interLATA information services, and if so, what requirements would apply. There does not appear to be anything in the 1996 Act that would prohibit a BOC from using a single separate affiliate to provide these different services. However, there is no doubt whatsoever that if a BOC does choose to provide any of its Section 272 services and its Section 274 services through the same separate affiliate, that affiliate would have to comply fully with all of the requirements of both Section 272 and Section 274.

C. Joint Marketing Under Section 274(c).

The NPRM (§ 53) correctly concludes that the term "joint marketing" used in Section 274(c) includes the "promotion, marketing, sales, or advertising" by a BOC for or with a separated affiliate or joint venture engaged in electronic

¹² See, e.g., Section 274(b)(4) (valuation of BOC assets transferred to separated affiliate), 274(b)(5)(B) (prohibition against ownership of common property), 274(b)(6) (prohibition against use of BOC name or trademarks), 274(b)(7)(A) (prohibition against BOC hiring or training of personnel), 274(b)(7)(B) (prohibition against BOC purchase, installation or maintenance of equipment of separated affiliate), 274(b)(7)(C) (prohibition against BOC research and development for separated affiliate), 274(b)(8) (annual compliance review). Some of these specific requirements of Section 274(b) may be required by the general requirement of Section 272(b)(1) that the separate affiliate must "operate independently" from the BOC.

publishing. The NPRM (§ 53) also correctly concludes that Section 274(c)(1) prohibits (1) advertising of a BOC's telecommunications services (including, but not limited to, the BOC's local exchange services) with the BOC's electronic publishing services, (2) making those services available from a single source, or (3) providing bundled discounts for the purchase of both electronic publishing and telecommunications services from the BOC.

The Commission should also adopt the position stated in the Committee Report accompanying H.R. 1555 explaining the scope of "joint telemarketing" by a BOC and its separated affiliate or electronic publishing joint venture permitted by Section 274(c)(2)(A), as proposed in the NPRM (§ 55). Thus, the Commission should adopt the position that a BOC is permitted under Section 274(c)(2)(A) only to refer a customer who initiates a request for information about electronic publishing services (i.e., "inbound" telemarketing) to its affiliate if the BOC also makes such referral service available to unaffiliated providers of electronic publishing services on the same terms, conditions and prices, and that a BOC is not permitted to engage in such referrals when a call is initiated by the BOC or someone acting on its behalf (i.e., "outbound" telemarketing). Adopting this position stated in the Committee Report accompanying H.R. 1555 is appropriate in view of the fact that the Joint Explanatory Statement specifically states that the Conference Agreement adopted the provisions of H.R. 1555 with respect to electronic