publishing with only minor modifications unrelated to the joint marketing provisions of Section 274(c).[13]

D. Nondiscrimination Requirements For Electronic Publishing.

The NPRM (¶¶ 65-66) concludes that the requirements for nondiscriminatory access to unbundled network elements, network information disclosure, and nondiscrimination in the quality of service, installation and maintenance established by the Commission in its Computer III and ONA proceedings continue to apply to the BOCs' provision of electronic publishing services to the extent that they are not inconsistent with Section 274(d). AT&T agrees with that conclusion. As discussed above, the nondiscrimination 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 the local exchange markets to gain an unfair advantage over competitors in the provision of electronic publishing and other enhanced services.[14] There is no question but that the BOCs still possess substantial market power in their respective in-region local exchange market areas, and that they have both the ability and the incentive to gain an unfair competitive advantage over competing providers of electronic publishing services. The same market conditions that led the Commission to impose nondiscrimination requirements on the BOCs in its Computer III

---

[13] See Joint Explanatory Statement at 156.

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

and ONA proceedings, therefore, remain fully applicable to the BOCs today. Further, there is nothing in Section 274(d) to suggest that Congress intended to displace the nondiscrimination provisions of Computer III and ONA.

III. THE NONDISCRIMINATION SAFEGUARDS OF SECTION 275 APPLY TO ALL ALARM MONITORING SERVICES PROVIDED BY INCUMBENT LOCAL EXCHANGE CARRIERS.

A. Scope Of The Commission's Authority Over Alarm Monitoring Services.

Section 275 confers broad authority on the Commission to ensure that incumbent LECs do not use their local exchange monopolies to discriminate against their competitors in providing alarm monitoring services. The nondiscrimination safeguards established in Section 275(b) apply to all incumbent LECs and to all alarm monitoring services, intrastate as well as interstate.

B. Nondiscrimination Requirements For Alarm Monitoring Services.

The NPRM (¶ 74) points out that alarm monitoring has been considered an enhanced service under the Commission's Computer III and ONA regime and tentatively concludes that the Computer III nondiscrimination requirements continue to apply to the BOCs to the extent that they are not inconsistent with the nondiscrimination provisions of Section 275(b). For the reasons stated above with regard to the nondiscrimination safeguards applicable to telemessaging and electronic publishing services, that conclusion is appropriate in light of the BOC's continuing monopoly power in their respective in-region local exchange market areas and their continued ability and incentive to gain unfair competitive advantages over competitors.

By its terms, the nondiscrimination safeguards in Section 275(b) are not limited to the BOCs, but apply equally to all incumbent LECs. The NPRM (¶ 74) asks whether the existing nondiscrimination and network unbundling rules established in Computer III for the BOCs should now be applied to 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 possesses both the ability to discriminate against competing providers of alarm monitoring services and the incentive to gain an unfair competitive advantage over its competitors. The nondiscrimination provisions of Computer III and ONA applicable to alarm monitoring services, therefore, should be applied to all incumbent LECs that control substantial bottleneck facilities.

IV. THE COMMISSION SHOULD ESTABLISH SPECIFIC PROCEDURES FOR ENFORCING THE REQUIREMENTS OF SECTIONS 260, 274 AND 275.

Sections 260(b), 274(e) and 275(c) each require the Commission to establish procedures for the expedited consideration and determination of complaints alleging violations by the BOCs or other incumbent LECs of the requirements of Sections 260, 274 and 275. Each of those sections also establishes specific time limits for Commission action on requests for damages and the issuance of cease and desist orders that are substantially shorter than the periods of time permitted for other complaints under Section 208(b)(1) of the Act. These expedited time limits reflect Congress' recognition that any

violation of Sections 260, 274 or 275 must be remedied quickly in order to minimize injury to competition and that this prompt resolution of complaints under these sections requires the development of special expedited procedures.

One such expedited procedure proposed in the NPRM (¶¶ 79, 82) is to shift the burden of proof to the respondent LEC or BOC once the complainant has made out a *prima facie* case -- that is, once the complainant has alleged specific facts which, if true, would constitute a violation of Sections 260, 274 or 275. Such a shifting of the burden of proof is appropriate in light of both the short periods of time for Commission action established in these sections and the fact that the relevant information will almost certainly be in the possession of the respondent LEC or BOC rather than the complainant.

In order to enable the Commission to meet the expedited schedules set in the 1996 Act, the Commission should also establish specific procedural schedules for complaints filed under Sections 260(b), 274(e) and 275(c) that would apply in the absence of a Commission scheduling order entered in a particular proceeding. Moreover, in light of Congress' intent that final decisions on these complaints should be expedited, the Commission should adopt a rule that it will act on petitions for

reconsideration within three months of the filing of such petitions.

Respectfully submitted,

Ava B. Kleinman

Mark C. Rosenblum
Ava B. Kleinman
AT&T CORP.
295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-3539

Attorneys for AT&T Corp.

September 4, 1996