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

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In the Matter of	)	
	)	
Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services	)	WT Docket No. 96-162
	)	
Implementation of Section 601(d) of the Telecommunications Act of 1996, and Sections 222 and 251(c)(5) of the Communications Act of 1934	)	
	)	
Amendment of the Commission's Rules to Establish New Personal Communications Services	)	GEN Docket No. 90-314
	)	
Requests of Bell Atlantic-NYNEX Mobile, Inc., and U S West, Inc. for Waiver of Section 22.903 of the Commission's Rules	)	

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COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI TELECOMMUNICATIONS CORPORATION

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SUMMARY

The Commission should retain its policy of requiring that the Bell Operating Companies (BOCs) may only provide cellular services through structurally separate corporations. It should decline to adopt its proposals to eliminate that requirement and to employ instead nonstructural safeguards to be implemented through transitional mechanisms. The Commission's structural separation requirement was established to protect against improper subsidization of BOC wireless services by their monopoly wireline services, to ensure equitable interconnection arrangements for competing wireless carriers, and to facilitate the detection and deterrence of anticompetitive conduct. These fundamental public interest concerns will continue to apply to the BOCs' provision of cellular services for the foreseeable future, given the BOCs' continuing monopoly control over local exchange services and the slow pace at which personal communications service competition will evolve. Because the factual predicate for the structural separation requirement has not changed since the Commission originally adopted it, there is no public interest basis for the Commission to reverse course and now repudiate that policy.

Moreover, the Commission should not "sunset" its structural separation requirement -- under either its "Option 1" or "Option 2" transition plan -- before there is shown to be significant competition in the local exchange and CMRS markets. The

Commission should, instead, wait and see whether the Section 271 requirements are accomplishing their goal of establishing conditions conducive to the development of local competition. Withdrawing the structural separation safeguard before such meaningful competition exists would thwart the very competition in local exchange and CMRS services that the Commission is seeking to encourage.

Irrespective of whether it eliminates the structural separation requirement, in considering amending Section 22.903(a) of its Rules, the Commission should not permit BOC cellular affiliates to own or use landline facilities for the provision of in-region interLATA service if those affiliates are also going to provide any type of landline local exchange services. BOC provision of in-region landline interLATA service is governed by Sections 271 and 272 of the Communications Act, and the Commission should not allow the BOCs to circumvent those requirements, through their cellular subsidiaries, "competitive landline local exchange" affiliates, or any other vehicle.

Moreover, the Commission should prohibit BOC cellular affiliates from providing one-of-a-kind volume discounts to their affiliated BOC telcos. This practice would give the BOCs free license to engage in discriminatory and anticompetitive conduct that would undercut the Commission's efforts to promote competition in the provision of CMRS services.

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To: The Commission

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation (MCI), pursuant to Section 1.415 of the Commission's Rules, submits these Comments in response to the Commission's Notice of Proposed Rulemaking (NPRM), FCC 96-319 (rel. Aug. 13, 1996), in the above-captioned proceeding.

I. INTRODUCTION

The Commission proposes to eliminate, under two alternative timetables,[1] the requirement in Part 22 of its Rules that the Bell Operating Companies (BOCs) may only provide cellular services through structurally separate corporations, and it suggests possible transition mechanisms and nonstructural safeguards to replace its current requirement. MCI submits that there is no public interest justification for the Commission to reverse course as to that requirement, as the factual predicate for the structural separation requirement has not changed since the Commission originally adopted it. The Commission's structural separation requirement was established to protect against improper subsidization of BOC cellular services by their monopoly wireline services, to ensure equitable interconnection arrangements for competing wireless carriers, and to facilitate the detection of anticompetitive conduct by the BOCs.[2] These same essential public interest concerns continue to apply to the BOC provision of cellular service.

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[1] The Commission proposes two options in eliminating the structural separation requirement. The first option "would generally retain streamlined separate affiliate and nondiscrimination requirements of Section 22.903 for BOC provision of cellular service within the BOC's area of operation (i.e., `in-region'), but would sunset the restrictions for a particular BOC when that BOC receives authorization to provide interLATA service originating in any in-region state." NPRM at ¶ 4. The second option would "eliminate Section 22.903 immediately in favor of the uniform safeguards for LEC provision of PCS, and potentially other CMRS, proposed in Section VI of this Notice." NPRM at ¶ 5.

[2] Cellular Communications Systems, 86 FCC 2d 469, 494-95 (1981) ("Cellular Order").

The BOCs retain their monopoly control over local exchange services and will continue to do so for at least several years until the real local exchange competition contemplated by the Telecommunications Act of 1996 ("1996 Act") can materialize. Similarly, the construction, deployment and implementation of personal communications services (PCS) that provide genuine competition for the BOCs' cellular services may evolve over several years, but such competition does not exist at the present time. As a practical matter, although there is technically at least one cellular competitor in every market, the BOCs retain significant market power in the provision of cellular services. The Commission recently described the cellular market as a "duopoly" that is "highly profitable ... in large cities" and "not fully competitive,"[3] and cited approvingly the conclusions of the Department of Justice that "'cellular duopolists have substantial market power'" and that the BOCs' statements reflect a "consciousness of their own power in the marketplace.'"[4]

The absence of meaningful competition to the BOCs' cellular affiliates is illustrated by the experience of MCI Wireless, MCI's cellular resale service entity, in attempting to secure interconnection arrangements with the BOCs' and other local exchange carriers' (LECs') cellular affiliates. MCI Wireless has

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[3] Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, 10 FCC Rcd. 8844, 8846, 8853, 8872 (1995).

[4] Id. at 8866-67.

found it virtually impossible to obtain such arrangements, thus precluding it from market entry on any basis other than as a "rebiller." All of the BOCs' cellular affiliates have refused interconnection for in-region resale service, some of them stating that they did so because MCI would use such interconnections to bypass their local exchange services. Such boycotting behavior would be irrational and impossible if the BOCs' cellular affiliates faced meaningful competition.

Until local exchange competition is fully developed, the BOCs will retain the ability to engage in the anticompetitive conduct that prompted the promulgation of the Commission's structural separation safeguard in the first place. Moreover, as this emerging competition is developing, the BOCs will have the incentive to engage in a variety of anticompetitive actions designed to thwart and inhibit the development of that competition, and thus the need for the Commission to retain the structural separation requirement is as compelling now as it was when originally adopted. In this light, there is no justification for the Commission to change its policy at this time.

II. THE COMMISSION SHOULD RETAIN ITS STRUCTURAL SEPARATION REQUIREMENT

The Commission decided to apply the structural separation requirement to the BOCs' provision of cellular service because of "the potential for anticompetitive abuse [by the BOCs] against cellular carriers . . . due to the BOCs' control over local

exchange facilities and, hence, control of access to the network . . . ."[5] The Commission acknowledges that this essential factual predicate for the structural separation requirement remains valid:

> although there have been vast changes in the nature of the wireless market since the 1981 imposition of our BOC cellular structural separation requirement, the market power of the BOCs in the landline local exchange and exchange access markets has remained relatively stable, and is likely to remain so until the sweeping market entry and interconnection changes authorized by the 1996 Act have taken hold.[6]

Moreover, the Commission further concludes that the BOCs "retain market power in the local exchange market, and therefore control over public switched network interconnection, within their in-region states."[7] Thus, the "wireless bottleneck"[8] remains unbroken.

Although the Commission's structural separation requirement serves in the first instance to deter BOC anticompetitive activities in the existing cellular market, it will be crucial to ensuring the development of competition in PCS services as well. As consumers are introduced to broadband PCS systems in competition with cellular operations, a truly competitive

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[5] Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies, 95 FCC 2d 1117, 1133, 1136 (1983) ("BOC Separation Order").

[6] NPRM at ¶ 42.

[7] Id.

[8] See United States v. Western Electric Co., 890 F. Supp. 1, 3 (D.D.C. 1995).

wireless market cannot evolve unless the Commission has the tools to detect and prevent the BOCs from leveraging their monopoly power to disadvantage their new competitors, which are several years from providing a realistic alternative to the BOCs' cellular services.

The Commission's auctions of broadband PCS licenses in the D, E, and F spectrum blocks is still underway.[9] Winners in the broadband PCS C block auction are expected to receive their licenses shortly, joining winners in the A and B block auction, who were licensed in June, 1995. Although broadband PCS A and B block licensees have held their licenses for more than one year, these entities are presently offering service in very few markets across the country and, even then, only in discrete areas without providing consumers the ability to roam. Furthermore, the costs of building microcellular systems, relocating existing microwave users in the 2 GHz band, and attracting customers to as yet geographically-limited operations means that broadband PCS systems will not be meaningful competitors to existing cellular licensees for some time.

Thus, the BOCs retain the very same ability to engage in anticompetitive conduct that the Commission has historically concluded they possess and which provides the rationale for the structural separation requirement. Moreover, each of the public interest concerns that led the Commission to adopt the requirement remain valid.

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[9] The auction began on August 26, 1996.

A. Interconnection

By virtue of their control over the local exchange bottleneck, the BOCs clearly have the ability to discriminate against their commercial mobile radio service (CMRS) competitors in providing them essential interconnection arrangements. Preventing such actions requires that the BOCs' interconnection dealings with their cellular operations be as transparent as are the BOCs' dealings with their CMRS competitors, for as the Commission notes, "[t]he effective enforcement of nondiscrimination rules depends on the visibility of the transactions under scrutiny."[10] Moreover, as the Commission admits, the existing interconnection rules are insufficient to protect against CMRS interconnection pricing discrimination.[11]

Although the Commission suggests that structural separation is not critical to such visibility,[12] it is noteworthy that the Commission for many years has believed that such visibility is possible only if structural separation exists, given the BOCs' control over the local exchange bottleneck and their capacity to discriminate against CMRS competitors. The Commission identifies no material changed circumstances that would justify a change in course now, in light of the continued inadequacy of the

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[10] NPRM at ¶ 43.

[11] Id.

[12] Id.

interconnection "safeguards," and particularly as new unaffiliated wireless entrants begin to interconnect and compete with entrenched BOCs with monopoly power in local exchange services, and face the risk that the BOCs can thwart their progress by discriminatory actions in providing them crucial interconnection arrangements.[13]

B. **Price Discrimination**

In the NPRM, the Commission indicates it is "concerned that the possibility of discrimination by a BOC . . . in favor of its own cellular operations and against other CMRS providers could be increased absent some form of separate subsidiary requirement . . . ."[14] MCI agrees. As the Commission correctly observes,

> integrated operations present opportunities for pricing discrimination. . . . [A]bsent separation of these activities into two corporate structures, any "charge" that a local exchange carrier places on services or facilities provided to wireless operations would be merely a bookkeeping entry, subject to the cost allocation requirements of Section 64.901 of our rules. In order to determine whether such carriers were pursuing a nondiscriminatory pricing policy, competitors and this Commission would be required to compare these cost allocations with actual charges levied on non-affiliated competitors, . . . which would be a problematic comparison, especially where allocations of joint or common costs are concerned.[15]

Since the BOCs "retain market power in the local exchange market, and therefore control over public switched network

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[13] As discussed above, MCI Wireless faces a related discrimination problem in attempting to secure interconnection agreements with the BOCs' cellular affiliates.

[14] Id. at ¶ 44.

[15] Id. at ¶ 44 (footnotes omitted).

interconnection, within their in-region states,"[16] they continue to have the ability to engage in price discrimination in favor of their own cellular operations and against their CMRS competitors. Moreover, inasmuch as the BOCs would have substantial common costs if they were to provide wireline and wireless services on an unseparated basis, the potential for improper cost shifting is especially strong. Detecting that type of discrimination in favor of BOC cellular operations would be greatly complicated without the Commission's structural separation requirement. Bookkeeping entries are difficult to police, and the greater visibility resulting from structural separation provides some deterrence to price discrimination.

C. Cross-Subsidization

Although BOCs will argue that the Commission's price cap regime leaves them little room to subsidize competitive cellular operations with monopoly wireline revenues, improper cost shifting and subsidization obviously is possible in the current system. BOCs may still elect "sharing" under the price cap regime, and unduly generous revenue cushions resulting from a lax price cap formula in given price cap service baskets present a clear opportunity to underprice more competitive offerings.[17] The BOCs' continued high earnings and their choice of the highest

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[16] Id. at ¶ 42.

[17] See Statement of Commissioner Ervin S. Duggan, Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd. 6786, 6861 (1990), recon., 6 FCC Rcd. 2637 (1991), aff'd sub nom. National Rural Telecom Ass'n v. FCC, 988 F.2d 174 (D.C. Cir. 1993).

productivity factor under price cap regulation demonstrate that price cap regulation is still too lax.[18] Moreover, as joint federal/state audits have confirmed, improper cost shifting can and does occur.[19] Price cap regulation also will have no impact on the typical subsidization situation, in which the BOC simply confers a monopoly-based benefit, such as_access to customer information, on the cellular operations. There, the subsidization occurs when the benefit is conferred, irrespective of whether the BOC raises its monopoly access rates.

It should be noted that most cross-subsidization between BOC wireline and cellular services will occur on the intrastate side of the ledger, and the Commission's cost allocation and affiliate transaction rules, ARMIS reporting, and other accounting regulations therefore cannot deter the bulk of cross-subsidization that will affect cellular competition. Thus, true structural separation — as the Commission has required for years — remains a crucial tool that is available to the Commission and should continue to be used in detecting and helping to prevent improper BOC wireless cost shifting.

D. Leveraging of Market Power

The Commission acknowledges that "[o]ne concern with respect to integrated landline and cellular operations has been the

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[18] See Ex Parte letter from Bradley Stillman, CARE Coalition, to William F. Caton, Acting Secretary, FCC, CC Docket No. 94-1 (April 16, 1996).

[19] See, e.g., Ameritech, Consent Decree Order, 10 FCC Rcd 13846, 13866-68 (1995).

incentives and opportunities such a corporate culture provides for leveraging of the LECs' local exchange market power into the more competitive cellular and, more generally, CMRS market."[20] Crucially, the Commission acknowledges that

> a BOC which integrated a well-established incumbent wireless provider into its landline management and operations could possess incentives and opportunities to favor its own wireless operations while at the same time providing essential services and facilities to its cellular system's potential competitors. We are concerned about the potential for abuses in provisioning, installation, maintenance and customer network design that might not be addressed adequately by the uniform nonstructural safeguards that we propose . . . .[21]

The Commission also concedes that "because PCS is likely to be competitive with both landline local exchange and incumbent cellular service, an integrated double incumbency (BOC cellular and local exchange operations) would appear to increase the incentives and the opportunities for the BOC to act in an anticompetitive manner."[22] Accordingly, the Commission reasons that

> [s]tructural separation, if continued on an interim basis, could prevent, for example, the BOC from tasking a single set of officers and personnel with the interconnection arrangements for its cellular unit's PCS competitor as well as dealings with that competitor's major customers to provide local exchange service, or cellular service, or both. The nonstructural safeguards we propose below in Section VI would not prevent such

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[20] NPRM at ¶ 47.

[21] Id. at ¶ 48.

[22] Id. at ¶ 49.

sharing of personnel and integrated management decision making.[23]

MCI believes that such administrative and operational separation is crucial. The Commission's separate subsidiary requirement is indeed increasingly important as PCS services that will compete with existing cellular operations are gradually introduced into the marketplace. Given their control of the local exchange bottleneck and their market share in existing cellular services, BOCs with combined local exchange and cellular operations thus have the clear-cut capacity to leverage their "double incumbency" market power in an anticompetitive manner to undercut the efforts of their nascent PCS competitors. The structural separation requirement — which provides visibility and transparency to the BOCs' operations — at least can assist the Commission's efforts in preventing such monopoly leveraging.

Thus, each of the four considerations that led to the imposition of the cellular separation rules still obtains and requires continuation of such requirements.

E. There is No Rational Basis for the Elimination of the Structural Separation Requirements

In considering whether to eliminate the structural separation requirement as it proposes, the Commission must satisfy the admonition of the courts that "an agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when an

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[23] Id.

agency does not act in the first instance."[24] The Commission must also recognize that:

> Revocation [of a rule] constitutes a reversal of the agency's former views as to the proper course. A settled course of behavior embodies the agency's informed judgment that, by pursuing that course, it will carry out the policies committed to it by Congress. There is, then, at least a presumption that those policies will be carried out best if the settled rule is adhered to.[25]

The Commission adopted and consistently adhered to its structural separation policy because it has understood that the BOCs' control of bottleneck local exchange and exchange access facilities gives them the ability to engage in a variety of anticompetitive practices relative to their CMRS rivals. That control has not changed in any material respect, as the Commission acknowledges in the NPRM, noting that "the market power of the BOCs in the landline local exchange and exchange access markets has remained relatively stable and is likely to remain so until the sweeping market entry and interconnection changes authorized by the 1996 Act have taken hold."[26] Accordingly, since the predicate for the structural separation requirement has not changed, there is no rational basis for the Commission to now reverse course and rescind that requirement.

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[24] Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 42 (1983) (emphasis added).

[25] Id. at 41-42 (quoting Atchison, Topeka & Santa Fe Ry. Co. v. Wichita Bd. of Trade, 412 U.S. 800, 807-08 (1973)) (quotations omitted).

[26] NPRM at ¶ 42.

The BOCs have argued that removal of the structural separation policy is necessary to yield the operational efficiencies of integrated wireline and wireless businesses. Under Section 601(d) of the 1996 Act, however, BOCs are permitted jointly to market and sell CMRS and landline services, removing one of the main alleged costs of separate operations.[27] Beyond that, the Commission notes, the BOCs have not specifically quantified the magnitude of the alleged benefits of consolidation or the costs of continuing under the Commission's standing policy.[28] Indeed, the speculative costs of the structural separation requirement are clearly insubstantial, for the BOCs' cellular operations have thrived, and enjoy a "firmly established brand name, vibrantly growing customer base," and "are financially solid."[29] Balanced against any hypothesized costs of the structural separation requirement is the real benefit of that requirement in assisting the Commission in deterring the BOCs from engaging in anticompetitive conduct and in detecting and curing such conduct when it occurs.

Once the interconnection agreements contemplated by the 1996 Act are implemented and genuine competition in local exchange and exchange access services begins to develop, the BOCs may well lose their capacity to engage in anticompetitive activities in providing cellular services, relative to their CMRS competitors.

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[27] Id. at ¶ 51.

[28] Id. at ¶ 52.

[29] Id. at ¶ 30.

That day, however, has not arrived, and therefore there is no rational basis for the Commission to eliminate the structural separation requirement at this time.

III. THE PROPOSED REVISIONS TO SECTION 22.903

A. BOCs' Cellular Affiliates Should Not Be Permitted to Own Landline Facilities for the Provision of Interexchange Services

Irrespective of whether it eliminates the structural separation requirement, immediately or after a transition period, the Commission proposes to amend Section 22.903(a) of its Rules "to permit a BOC cellular affiliate to own landline facilities for the provision of landline services, including competitive landline local exchange (CLLE) and interexchange service, in the same market with the affiliated incumbent LEC."[30] The provision of interexchange service by a BOC — including "any affiliate" — is specifically governed by Sections 271 and 272 of the Communications Act, which set forth a detailed series of requirements that must be satisfied before the BOC may provide in-region landline interLATA and other services as well as the conditions governing the provision of such services once the BOC secures authorization to provide them. The Commission should not allow the BOCs to circumvent Section 271 and provide in-region landline interexchange service, whether through their cellular

[30] Id. at ¶ 59.

subsidiaries or any other vehicle, before they obtain in-region authority.

In recently granting Ameritech Communications, Inc. ("ACI") a waiver of Section 22.903 to provide CLLE service, the Commission recognized the limitations of Section 271 and the continuing importance of the structural separation requirement.[31] The Commission noted that "ACI's separation both from incumbent cellular operations and from incumbent local exchange operations lessens considerably our concerns about the potential for improper cross-subsidization or discriminatory interconnection practices."[32] Nonetheless, the Commission pointedly noted that "any provision by ACI of interLATA interexchange service would be subject to the statutory provisions of the 1996 Act governing BOC entry into and provision of interLATA services . . . ."[33]

In addition, the Commission should recognize that the safeguards established in Sections 271 and 272 of the Communications Act -- especially the separation requirements of Section 272(b) -- to prevent the BOCs from improperly using their local exchange market power to gain an advantage over competitors in the in-region, interLATA service market will be worthless if BOCs are permitted to circumvent those safeguards by providing

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[31] Petition of Ameritech Communications, Inc. for Partial Waiver of Section 22.903 of the Commission's Rules, Memorandum Opinion and Order, CWD 95-14, FCC 96-339 (rel. Aug. 22, 1996) ("ACI Waiver Order").

[32] Id. at ¶ 19.

[33] Id. at ¶ 19 n.62.

in-region landline interLATA and local exchange service through the same affiliate, whether that affiliate is called a "competitive" LEC (CLEC) or otherwise.[34] A BOC should not be permitted to end-run the obligations and restrictions imposed on BOC local exchange operations by Sections 251, 252, 271 and 272 of the Act by establishing a "CLEC" free of those obligations and restrictions. Accordingly, if the Commission decides to amend Section 22.903(a) to permit BOC cellular services to be provided on an unseparated basis with their CLLE services, the affiliate providing such services should continue to be prohibited from owning any landline facilities for the provision of interLATA services or engaging in the provision of landline interLATA services in any way in the BOC's local service region.

B. BOC One-of-a-Kind Volume Discounts for Cellular Service Sold to the Affiliated BOC Telco Should be Prohibited, and All Rates, Terms and Conditions of Such Services Should be Publicly Disclosed

The Commission also seeks comments on whether it should impose conditions on the resale authority granted the BOCs' cellular affiliates pursuant to Section 601(d) of the Act. The Commission inquires whether "to prevent discriminatory resale practices, should we prohibit `one-of-a-kind' volume discounts for cellular service sold by the cellular affiliate to the

[34] Thus, assuming that the BOC cellular structural separation rules are maintained in their current form, a BOC's interLATA affiliate could also provide cellular services, but a BOC's CLLE affiliate should not be allowed to provide either in-region landline interLATA or cellular service.

affiliated telephone company for resale to the end user . . . ."[35] The answer is clearly yes.

Even though the Commission detariffed cellular rates in 1994,[36] it did not give the BOCs free license to engage in discriminatory and anticompetitive practices in pricing their cellular services. If the Commission allowed the BOCs' cellular operations to sell services to their affiliated telcos on unique, one-of-a-kind terms, however, it would be sanctioning precisely that result. Indeed, given the BOCs' continuing market power in the provision of in-region cellular services, as discussed above, and their landline monopoly power, it would be particularly outrageous for the Commission to endorse this practice. Allowing the BOCs' cellular affiliates to offer unique volume discounts to their telco affiliates would enable the BOCs to further leverage their existing market power and to thwart the emerging CMRS competition. Thus, the Commission would be undercutting its own pro-competitive CMRS policies if it allowed the BOCs' cellular affiliates to engage in such practices.

Similarly, in cases where the LEC is reselling its cellular affiliate's service, the Commission should mandate public disclosure of the rates, terms and conditions of the service provided by the cellular affiliate to the LEC, in order to help prevent discriminatory resale practices. If the rates, terms and

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[35] NPRM at ¶ 67.

[36] Implementation of Section 3(n) and 332 of the Communications Act - Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411, 1479 (1994).

conditions of the sale of cellular service to the LEC are not disclosed, other competitive cellular resellers, such as MCI, will not know whether the LEC is exploiting its bottleneck power by receiving preferential rates or terms from its cellular affiliate.[37]

C. Sunset of Section 22.903

Given the rationale for the cellular structural separation requirements, MCI strongly objects to any sunset of such requirements, at least for in-region BOC cellular services, before the BOCs have lost all market power in the local exchange and CMRS markets. It would make no sense to eliminate those requirements as soon as the Section 271 requirements are satisfied for BOC in-region interLATA services, as the Commission proposes as "Option 1."[38] BOC cellular affiliates are supposedly subject to equal interconnection requirements now, but, as the Commission admits, those requirements are inadequate.[39] Rather than a flash-cut elimination of the cellular separation rules as soon as the conditions conducive to the development of local

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[37] MCI also concurs with the Commission's tentative conclusion that any joint marketing of local and LEC cellular service be carried out on behalf of the separate affiliate, subject to the affiliate transaction rules, on a compensatory, arm's-length basis, and subject to a written contract available for public inspection. See NPRM at ¶ 64. These requirements should help to minimize the discrimination and cross-subsidization that would ordinarily accompany the joint marketing of a monopoly service with one in which the LEC has little competition.

[38] NPRM at ¶¶ 79-80.

[39] Id. at ¶ 43.

competition are established, it would be far more prudent to wait until that goal has been accomplished and significant CMRS competition becomes a reality. Otherwise, local exchange and CMRS competition will be stillborn, as safeguards are withdrawn before competition has a chance to thrive on its own.

IV. OTHER CMRS SAFEGUARDS

MCI concurs with the Commission's tentative conclusion that, on balance, the benefits of applying structural separation to non-BOC LECs would not justify the costs.[40] Moreover, MCI also agrees that if the Commission decides not to impose structural separation on other LEC cellular services or other CMRS, the nonstructural safeguards proposed in paragraphs 116-24 of the NPRM should be imposed at least on all in-region Tier 1 LEC cellular, PCS and other CMRS. As the Commission notes, these nonstructural safeguards are more likely to be at least somewhat effective in facilitating competition in the PCS market if the BOC cellular structural separation requirements are maintained, since such separation may make it easier for all CMRS providers to secure nondiscriminatory interconnection with the BOCs' local exchange networks.[41] The nonstructural safeguards proposed in the NPRM are the bare minimum that should be imposed on non-BOC cellular services and other LEC CMRS.

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[40] See id. at ¶¶ 54-57.

[41] See id. at ¶ 123.

V. CONCLUSION

For the reasons stated above, the Commission should retain its structural separation requirement for the BOCs' provision of cellular services and otherwise adopt the recommendations presented herein.

Respectfully submitted,

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