affiliated with the BOC. In effect, section 22.903(f) functions analogously to section 272 of the Act, which precludes a BOC from providing CPNI to its interLATA services affiliate or using the CPNI in marketing jointly with that affiliate unless it makes the same information generally available on a nondiscriminatory basis.[58] This is appropriate because the CPNI a BOC possesses by virtue of its local exchange monopoly is some of the most competitively valuable information. To prevent a BOC from leveraging its monopoly information in favor of its CMRS affiliate, the Commission should specifically mandate that a BOC cannot either provide the CPNI to its affiliate or use the CPNI in its joint marketing unless it makes the same CPNI available on the same terms to all competing CMRS providers.

Further, as noted above, because there is no reason to distinguish between BOCs and other large incumbent LECs, the same type of CPNI protection guidelines that are applied to BOCs should apply to all Tier 1 LECs.[59]

### C. The Commission Should Specifically Mandate Application of the Nondiscriminatory Network Information Disclosure Obligations of the 1996 Act to CMRS

In the Notice, the Commission tentatively concludes that network information disclosure obligations are adequately addressed by the 1996 Act and therefore states that no specific part 22 rule addressing this issue is needed.[60] AT&T agrees that the network information disclosure obligations of the 1996 Act,[61] as implemented by the Local

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[58] See AT&T Non-Accounting Safeguards Comments, supra note 17, at 34, 59-60.

[59] Notice at ¶ 121.

[60] Id. at ¶ 76.

[61] 47 U.S.C. § 251(c)(5).

Competition Second Report and Order,[62] adequately address concerns that incumbent LECs will design new network services or change network technical specifications in a manner that inhibits competition.

Pursuant to these rules, when an incumbent LEC decides to implement network changes, including but not limited to changes that affect transmission, signalling standards, call routing, network configuration, logical elements, electronic interfaces, data elements, and transactions that support ordering, provisioning, maintenance and billing, it must provide the public with notice.[63] The public notice must include, at a minimum, (1) the date changes are to occur; (2) the location at which changes are to occur; (3) types of changes; (4) the reasonably foreseeable impact of changes to be implemented; and (5) a contact person who may supply additional information regarding the changes.[64] Further, so as to deter anticompetitive practices and ensure that the required public notice is reasonably given, the Commission has dictated specific mechanisms for giving such notice, including the location and timetables for the notice.[65]

Although AT&T agrees that no specific Part 22 rule regarding network information disclosure by BOCs is needed,[66] the Commission should explicitly extend these obligations

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[62] In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, FCC 96-333 at ¶¶ 165-236 (rel. Aug. 8, 1996) ("Local Competition Second Report and Order").

[63] Id. at ¶ 182.

[64] Id. at ¶ 188.

[65] Id. at ¶¶ 198, 214-224.

[66] Notice at ¶ 76.

for the benefit of CMRS providers. Only through such specific and detailed safeguards will the Commission be able to ensure that the BOCs cannot use more subtle, as well as blatant, forms of discriminatory conduct to impede competition.

### D. The Commission Must Vigorously Enforce its Accounting Safeguards to Detect Abuses

In addition to the above safeguards, the Commission should commit to vigorous enforcement of the accounting safeguards that are embodied in Parts 64 and 32 of its rules. Although accounting safeguards alone can never truly guard against the LECs' incentive to misallocate costs and thereby cross-subsidize their operations in competitive markets, combined with structural and nondiscrimination safeguards, they can help detect and deter some of the more egregious and blatant forms of cross-subsidization.

While the Commission suggests that a description of a carrier's compliance with the Part 32 and Part 64 cost allocation rules and copies of relevant Cost Allocation Manual changes reflecting CMRS expenditures and transactions would suffice initially to determine whether adequate accounting procedures are in place,[67] the fact is that even assuming the current rules are sufficient to identify the true nature and scope of relevant costs, a carrier's compliance with these rules could only be determined through careful audits.[68] Consequently, AT&T agrees that comprehensive audits, on at least an annual basis, are necessary because of the inherent difficulties of bringing accounting irregularities to light and correcting them in a timely manner. Indeed, even with such audits, as the Commission has

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[67] Id. at ¶ 120.

[68] See, e.g., id.

recognized, there can be delays of several years between the period covered by an audit and an order to show cause resulting from that audit.[69] Less frequent audits would eviscerate the rules by making timely enforcement impossible. In addition, to facilitate the critical auditing function, all incumbent LEC affiliates should be required to issue a separate set of financial reports, including an income statement, a balance sheet, and a statement of cash flows for public review on a quarterly basis.

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[69] See, e.g., Southwestern Bell Telephone Company, Order to Show Cause, AAD 95-32 (rel. March 3, 1995) (order to show cause in 1995 concerning period 1989-92); Ameritech Telephone Operating Companies, AAD 93-146, Order to Show Cause (rel. March 3, 1995) (order to show cause in 1995 concerning period 1988-89).

## CONCLUSION

For the foregoing reasons, the Commission should adopt structural separation for the provision of all CMRS by all incumbent Tier 1 LECs, as well as the additional safeguards set forth herein.

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## CERTIFICATE OF SERVICE

I, Tanya Butler, hereby certify that on this 3rd day of October, 1996, a copy of the foregoing "Comments of AT&T Wireless Services, Inc.", was served by first-class mail, postage prepaid or by messenger (*).

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