tariffing of payphone services, on reconsideration we modify the federally tariffing requirement as discussed below.[490] Accordingly, as required in the Report and Order, LECs must provide tariffed, nondiscriminatory basic payphone services that enable independent providers to offer payphone services using either instrument-implemented "smart payphones" or "dumb" payphones that utilize central office coin services, or some combination of the two in a manner similar to the LECS. LECs must file those tariffs with the state. In addition, as required by the Report and Order, any basic network services or unbundled features used by a LEC's operations to provide payphone services must be similarly available to independent payphone providers on a nondiscriminatory, tariffed basis. Those unbundled features or functions must be tariffed in the state and federal jurisdiction. Federal tariffing of unbundled network features is consistent with Computer III and ONA. The Commission has also required, for example, federal tariffing of originating line screening services.[491]

163. We require LECs to file tariffs for the basic payphone services and unbundled functionalities in the intrastate and interstate jurisdictions as discussed below. LECs must file intrastate tariffs for these payphone services and any unbundled features they provide to their own payphone services. The tariffs for these LEC payphone services must be: (1) cost based; (2) consistent with the requirements of Section 276 with regard, for example, to the removal of subsidies from exchange and exchange access services; and (3) nondiscriminatory. States must apply these requirements and the Computer III guidelines for tariffing such intrastate services.[492] States unable to review these tariffs may require the LECs operating in their state to file these tariffs with the Commission. In addition, LECs must file with the Commission tariffs for unbundled features consistent with the requirements established in the Report and Order.[493] LECs are not required to file tariffs for the basic payphone line for smart and dumb payphones with the Commission. We will rely on the states to ensure that the basic payphone line is tariffed by the LECs in accordance with the requirements of Section 276. As required in the Report and Order, and affirmed herein, all required tariffs, both intrastate and interstate, must be filed no later than January 15, 1997 and must be effective no later that April 15, 1997. Where LECs have already filed intrastate tariffs for these services, states may, after considering the requirements of this order, the Report and Order, and Section 276, conclude: 1) that existing tariffs are consistent with the requirements of the Report and Order as revised herein; and 2) that in such case no further filings are required. We delegate authority to the Common Carrier Bureau to determine the least burdensome method for small carriers to comply with the

[490] Section 276(c) also provides for the preemption of inconsistent state requirements.

[491] Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, Third Report and Order (rel. Apr. 5, 1996) at para. 34.

[492] The new services test required in the Report and Order is described at 47 C.F.R. Section 61.49(g)(2). See also Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-79, 6 FCC Rcd 4524, 4531(1991) at paras. 38-44.

[493] Report and Order at para. 146-148.

requirements for the filing of tariffs with the Commission, such as those suggested by NTCA.

164. In the Report and Order we provided a waiver of the notification period of Computer II and Computer III network information disclosure requirements with which BOCs may be required to comply pursuant to the requirements of the Report and Order. Consistent with our clarification above that LECs may comply with all the requirements of the Report and Order by April 15, 1997, we also clarify that the waiver of the network information disclosure requirements to allow a minimum three month period for notification of payphone service and related unbundled feature tariffs is also granted if BOCs file those tariffs earlier than the January 15, 1997 date. We clarify further that the waiver provided in the Report and Order and in this order is only effective for payphone tariffs to comply with this order and only until April 15, 1997, because network information disclosures must be made, as required by the Report and Order, no later than January 15, 1997.

165. On reconsideration, we decline to require further unbundling of payphone services beyond those established in the Report and Order. We clarify that any unbundled network features provided to a LEC payphone operation must be available on a nondiscriminatory basis to independent payphone providers and must be tariffed in the federal and state jurisdictions. Under Computer III, independent payphone providers may request unbundled features through a 120-day process and BOCs must indicate why they decline to provide the requested features.[494] We did not create a similar requirement for LECs other than BOCs to provide unbundled network functionalities requested by independent payphone providers. However, as discussed herein and provided in the Report and Order states may require all LECs to provide, pursuant to nondiscriminatory tariffs, unbundled network functionalities associated with payphone services.[495]

ii. Other Payphone Services

166. As requested by Sprint, we clarify that the requirement for LECs to provide installation and maintenance services applies only to the payphone transmission lines and unbundled basic functionalities not the payphone equipment, which pursuant to the Report and Order is unregulated equipment. We decline to require access to unregulated services, such as installation and maintenance of unregulated CPE, and billing and collection (beyond the requirement established in the Report and Order). Services the Commission has deregulated are available on a competitive basis and do not have to be provided by LECs as the only source of services. We also decline to require the LECs to joint market for independent payphone providers. We have not required joint marketing in Computer III, which also required

494 See Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, 10 FCC Rcd 8360 (1995).

495 Report and Order at para. 148.

nondiscriminatory access to BOC services.[496] Moreover, no new arguments are raised on reconsideration regarding joint marketing.

iii. Registration and Demarcation Point for Payphones

167. As requested by the RBOC Coalition, we clarify that our minimum point of entry demarcation point standards are flexible enough to allow for placement of payphones at the nearer and most cost-effective drop point in unique circumstances, such as service stations. We note that this conclusion is consistent with Section 68.3 which defines the demarcation point and allows LECs to select a location "as determined by the telephone company's reasonable and nondiscriminatory standard operating practices."[497] We require that LECs must treat independent payphone providers in a nondiscriminatory manner with regard to such flexible placement.

168. We delegate to the Chief, Common Carrier Bureau the authority to establish any specific requirements associated with the existing payphone equipment we grandfathered from registration requirements under Section 68.2, in the Report and Order.[498]

2. Reclassification or Transfer of Payphone Equipment to Nonregulated Status

a. Report and Order

169. In the Report and Order, we considered what payphone assets were to be reclassified to a nonregulated payphone account or transferred to an affiliate or operating division. We concluded that the payphone assets to be reclassified or transferred include all facilities related to payphone service, with the exception of the loops connecting the payphones to the network, the central office "coin-service," and operator service facilities supporting incumbent LEC payphones.[499] We further considered the appropriate means to value those assets when they are reclassified or transferred in light of the goals of Section 276. We concluded that our existing accounting rules provide the best means of achieving those goals, including protecting the interests of ratepayers.[500]

170. Our existing accounting rules provide for two distinct means of valuing such assets that depend upon the underlying nature of the transaction. To be more precise, the

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[496] See Computer III proceeding, above.

[497] 47 C.F.R. § 68.3.

[498] See 47 C.F.R § 68.2 (b)-(h); In the Matter of Amendment of Section 68.2 of the Commission's Rules to Extend the Grandfather Dates of the Telephone Equipment Registration Program, 67 FCC 2d 235 (1977).

[499] Report and Order at para. 159.

[500] Id. at paras. 165, 166,167, 169, 171.

method that applies depends upon whether the assets are to be reclassified as nonregulated or are to be transferred to an affiliate or operating division of the regulated carrier.[501] Under our Part 64 cost allocation rules, when assets are reclassified as nonregulated assets, those assets are reclassified at their net book value.[502] The affiliate transactions rules require that when assets are transferred to a separate affiliate or an operating division that has no joint or common use of assets or resources, the transfer shall be recorded at the higher of their fair market value or net book value.[503]

171. In reaching the conclusion that the Part 32 affiliate transactions rules are to be applied without modification, we discussed the means by which fair market value is determined.[504] We defined fair market value as "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts."[505] We further explained that, in assessing the fair market value of the payphone assets at the time of transfer, the going concern value, including intangible assets such as location contracts, should be taken into consideration.[506] That is, a willing buyer and a willing seller in an arms-length transaction would consider the existence of those intangibles that would be relevant when negotiating a fair price for the transferred equipment.[507]

b. Petitions

172. APCC and Inmate Coalition request reconsideration of the method for valuing deregulated LEC payphone assets.[508] APCC argues that the method applied to value payphone assets should take into consideration their going concern value, including locations contracts, irrespective of whether the assets are going to be reclassified to a nonregulated

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501 Id. at para. 162.

502 Id. at para. 163; "Net book value is defined as the original cost of an asset less the related depreciation reserve." Second Computer Inquiry, 95 FCC 2d 1276, 1306 n. 40 (1983).

503 47 C.F.R § 32.27; Report and Order at para. 164.

504 Report and Order at para. 164.

505 Id.

506 Id.

507 Id.

508 APCC Petition at 7; Inmate Coalition incorporated APCC's arguments in its petition for reconsideration on this issue in their entirety. Inmate Coalition Petition at 18.

payphone division or transferred to an affiliate or separate operating division.[509] APCC asserts that the going concern value of payphone assets exceeds their net book value.[510] APCC argues that the valuation methods applied to a reclassification of assets to a nonregulated payphone division should be identical to those applied to a transfer of assets to an affiliate or separate operating division.[511] APCC further argues that the Conference report indicates that Congress intended that LEC assets are to be transferred to separate unregulated books as evidenced by its use of the term "transfer".[512] APCC asserts that it will be difficult for the ratepayers to obtain the "gain" from the transfer of payphone assets until such assets are transferred to an affiliate.[513] APCC also argues that there will be adverse competitive effects if the assets are undervalued.[514]

173. BellSouth and SW Bell request that the Commission reconsider its decision to define the fair market value of payphone assets as encompassing their going concern value, including location contracts and other intangibles, when assets are sold or transferred an affiliate.[515] SW Bell argues that it is inappropriate to consider the going concern value of assets as part of their fair market value because the going concern value includes elements that are separate and distinct from the assets that are accounted for on the regulated books.[516] SW Bell asserts that the assets that are accounted for on the regulated books would not appreciate; as a consequence, any estimate of fair market value that was higher than the net book value would be the result of valuing intangibles outside the ratebase.[517] BellSouth argues that considering the going concern value as part of the fair market value is a change in the accounting rules that was not "noticed" in the NPRM.[518] BellSouth asserts that there is no basis for requiring the valuation

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[509] APCC Petition at 7, 9-10.

[510] Id. at 8-9.

[511] Id. at 18-21.

[512] Id. at 10-15.

[513] Id. at 15-21.

[514] Id. at 21-22.

[515] BellSouth Petition at 19; SW Bell Petition at 2.

[516] SW Bell Petition at 3.

[517] Id. at 2.

[518] BellSouth Petition at 20-21.

of intangibles such as location contracts.[519] SW Bell argues that the risk of loss for these intangibles has been borne by shareholders not ratepayers.[520]

174. The RBOC Coalition requests a clarification that the Commission did not change the accounting rules and did not intend to include intangible assets such as location contracts in the assets to be valued when the assets are transferred to an affiliate, unless they were on the carrier's books.[521] The RBOC Coalition argues that to include the value of intangibles such as location contracts in the fair market value of the payphone assets would be inconsistent with the Commission's existing accounting rules.[522]

c. **Comments**

175. NJPA argues that the fair market value of payphone assets should include intangibles such as their going concern value.[523] NJPA asserts that the FCC rules provide for the recording of such assets on regulated books.[524] NJPA further argues that the Commission's consideration of the inclusion of going concern value as part of the fair market value of the payphone assets was noticed in the NPRM.[525]

176. The RBOC Coalition and Ameritech argue that the Commission's application of its existing accounting rules complies with the requirements of Section 276.[526] The RBOC Coalition and Ameritech argue that APCC's assertion that Section 276 requires a "transfer" to separate books is unsubstantiated in the Section or its legislative history.[527] Ameritech argues that to require a "transfer" to a separate set of books would be to ignore the Joint Cost Rules.[528] Ameritech argues that any modification of either the Joint Cost Rules or the

[519] Id. at 19-20.

[520] SW Bell Petition at 3.

[521] RBOC Coalition Petition at 9.

[522] Id. at 9-10.

[523] NJPA Comments at 14.

[524] Id. at 14-15.

[525] Id. at 15.

[526] Ameritech Comments at 14; RBOC Coalition Comments at 18.

[527] RBOC Comments at 18-19; Ameritech Comments at 12-13 .

[528] Ameritech Comments at 12.

Affiliate Transaction Rules should have been addressed in the separate rulemaking proceeding which considered these issues.[529] Ameritech argues that the assets that the Report and Order required to be valued at the time of reclassification or transfer are limited to those assets which are on the LEC's books.[530]

177. The RBOC Coalition also argues that the ratepayers have never "invested" in intangible assets such as location contracts.[531] The RBOC Coalition asserts that those assets were created at the expense of the shareholders.[532] The RBOC Coalition argues that any change in the existing accounting methods to include "intangibles" will have no effect on rates.[533] The RBOC Coalition further argues that using net book value to value the reclassified assets will not have any anti-competitive effects.[534] The RBOC Coalition asserts that differential treatment of assets that are reclassified from those which are transferred is sufficiently justified in the Report and Order on the same grounds that justified such treatment when those rules were originally enacted.[535]

d. Discussion

178. We reaffirm our conclusions in the Report and Order regarding payphone asset valuation and accounting issues. The Report and Order addressed the issues that APCC has raised again on reconsideration and stated that, in the situation in which a BOC or a LEC chooses to maintain the nonregulated payphone assets on the carrier's regulated books of account, our Part 64 cost allocation rules contain the necessary safeguards required by Section 276 of the 1996 Act to protect regulated ratepayers from improper cross-subsidies.[536] Pursuant to these long-standing cost allocation rules, carriers are not required to "write-up" payphone assets when they are reclassified as nonregulated assets. APCC raises no new arguments in either its petition or comments that contradict our conclusions in the Report and Order.

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[529] Id. at 11.

[530] Id.

[531] RBOC Comments at 20-21.

[532] Id.

[533] Id. at 21.

[534] Id.

[535] Id. at 22.

[536] See Report and Order at para. 162.

179. We also reaffirm our conclusions with respect to asset valuation when a BOC or a LEC transfers payphone assets to an affiliate. We do believe, however, that the RBOC Coalition, BellSouth, SW Bell, and Ameritech raise an issue that we must clarify on reconsideration. Those petitioners agree with the Commission that, if payphone assets are transferred from the carrier to an affiliate, the affiliate transactions rules must apply. Those carriers also agree that under our rules, the transferred assets must be valued at the higher of fair market value or net book value. These petitioners disagree, however, with our determination that fair market value of assets transferred includes intangible assets that are not recorded on the carrier's regulated books.[537] Some of these petitioners cite the Joint Cost Reconsideration Order and a 1988 Ameritech Cost Allocation Manual Review Order as authority for their contention. We disagree with the petitioners for the reasons discussed below.

180. In the Report and Order, we stated that, if a carrier transferred its payphone assets to an affiliate, the transaction would be governed by our affiliate transactions rules.[538] Accordingly, the payphone asset transfer would be recorded on the carrier's books at the higher of fair market value or net book value. We further stated that fair market value is "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts."[539] We next concluded that the going concern value associated with the payphone business must be taken into consideration in determining fair market value and that going concern value includes the value of intangible assets such as location contracts that add value to the payphone business.[540] We must clarify this latter point.

181. We reiterate that in this order on reconsideration, we continue to apply the definition of "fair market value" as provided for in the Report and Order. The issue raised by the RBOC Coalition, BellSouth, SW Bell and Ameritech focuses on whether the definition should be applied to the tangible value of the assets, as contrasted to the value of all property rights directly associated with the payphone assets. We clarify that the answer depends on the nature of the transfer itself.

182. We envisioned in the Report and Order that if payphone assets were transferred by a carrier to an affiliate, these assets would be transferred inclusive of intangible assets such as location contracts.[541] In this instance, appraisal techniques would be applied such

[537] RBOC Petition at 9-10; BellSouth Petition at 19-20; SW Bell Petition at 2-4; Ameritech Comments at 11.

[538] Report and Order at para. 164.

[539] Id.

[540] Id.

[541] Id.

as discounting the stream of predicted cash flows over the term of the location contract, capitalizing net income from payphone operations, using comparable sales data, or any other reasonable method that would yield an estimated fair market value. This computation could be done for each payphone on an individual basis, for accumulations of payphone assets, for example by geographic area, or for all payphone assets. If appraisal techniques indicated that fair market value exceeded net book value, the transfer of the payphone assets should be recorded at the fair market value. We further stated in the Report and Order, and as discussed further below, that the value of the carrier's brand name should not be included in the fair market value computation.[542] If a carrier could reasonably estimate the value associated with the brand name, this value should be deducted from the overall fair market value computation.

183. We did not envision in the Report and Order that a carrier would transfer only the physical assets themselves but we now address that situation. On the date of transfer to affiliates, there may be circumstances in which the location contracts supporting payphone assets may have expired or otherwise been terminated. In this case, the affiliate would take those payphone assets and deploy those assets to new locations subject to new contracts. The fair market value established by reasonable appraisal techniques would not include the value of intangible assets such as location contracts; only the physical assets would be transferred. Even so, the same definition of fair market value would be applicable.

184. Our conclusions in the Report and Order and in this Order on Reconsideration are consistent with our affiliate transactions rules and do not reflect any change in those rules. Our conclusions also do not conflict with the Joint Cost Reconsideration Order or the Ameritech CAM Order. In the Joint Cost Reconsideration Order, the Commission addressed in a footnote a commenter's suggestion that a nonregulated affiliate should be charged for the value of previous training when an employee is transferred to the affiliate.[543] In that instance, the Commission stated that the value of previous employee training is an intangible benefit, the allocation of which is beyond the scope of the proceeding.[544] In the Ameritech CAM Order, the Commission addressed the employee training issue again and stated that allocation of costs of employee training would not be required unless it became apparent that the regulated entity was providing employee training as a service to its affiliate.[545] In addition, in the Ameritech CAM Order, the Commission addressed the BOC brand name issue. In that Order,

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542 Id.

543 Joint Cost Reconsideration Order, 2 FCC Rcd at 6315-6316, n. 204.

544 Id. at 6316, n. 204.

545 Ameritech CAM Order, 3 FCC Rcd at 435.

the Commission reaffirmed its position that the BOC brand name was an intangible benefit that has never appeared on Ameritech's books and is not a cost for affiliate transactions purposes.[546]

185. We agree that intangible benefits such as the carrier's brand name should not be considered in the determination of fair market value for affiliate transactions rules purposes. Such benefits accrue to all assets of the carrier and are not directly related to the asset being valued. In addition, as we stated in the Report and Order, intangible assets such as the carrier's brand name would not generally be transferred by a willing seller under the definition of fair market value. We thus conclude that such intangible assets should not be included in the determination of fair market value. This determination is consistent with existing Commission rules and the Ameritech CAM Order.

186. We disagree with those petitioners who assert that intangible assets such as the going concern value stemming from location contracts and other like assets should not be included in the determination of fair market value. Going concern value is the additional element of value that attaches to property by reason of its existence as an integral part of a going concern.[547] As such, this intangible asset is directly related to the payphone assets being transferred and enhances the value of the assets. The fact that this intangible asset is directly related to the asset distinguishes this intangible asset from the carrier brand name that is not directly related. In addition, the petitioners have asserted that the cost of this intangible asset has never been recorded on the carriers' regulated books and thus should not be considered in determining fair market value. Most, if not all, of the going concern value associated with the payphone assets is generated by the existence of the location contracts. While the cost of these location contracts are not capitalized to the payphone asset accounts, the commissions paid to location providers as required by the location contracts are recorded as period expenses on the carrier's books. This further distinguishes these intangible assets from the carrier's brand name.

187. We also see no conflict with the Joint Cost Reconsideration Order or Ameritech CAM Order as those orders addressed the intangible benefits accruing from previous employee training. Like the carrier brand name, that type of intangible benefit is not directly associated with any particular asset. In addition, it is doubtful whether such an intangible benefit is even subject to valuation under reasonable appraisal techniques. As a result, we conclude that these types of intangible benefits are distinguishable from the going concern value generated by the location contracts of the payphone assets. We thus conclude that we did nothing in the Report and Order that conflicted with existing Commission rules and that we did not deviate from either the Joint Cost Reconsideration Order or the Ameritech CAM Order.

3. Termination of Access Charge Compensation and Other Subsidies

[546] Id. at 437.

[547] VGS v. Comm. of Internal Revenue, 68 T.C. 563, 591 (1977).

a. Report and Order

188. In the Report and Order we noted that in the telephone network, payphones, as well as all other telephones, are connected to the local switch by means of a subscriber line. The costs of the subscriber line that are allocated to the interstate jurisdiction are recovered through two separate charges: a flat-rate subscriber line charge (SLC) assessed upon the end-user customer who subscribes to local service; and a per-minute CCL charge assessed upon IXCs that recovers the balance of the interstate subscriber line costs not recovered through the SLC. LEC payphone costs are also included in the CCL charge. The CCL charge, however, applies to interstate switched access service that is unrelated to payphone service costs. While independent payphone providers are required to pay the SLC for the loop used by each of their payphones, LECs have not been required to pay this charge because the subscriber lines connected to LEC payphones have been recovered entirely through the CCL charge.

189. In the Report and Order, we concluded that to implement Section 276 (b)(1)(B) of the 1996 Act, incumbent LECs must reduce their interstate CCL charges by an amount equal to the interstate allocation of payphone costs currently recovered through those charges. LECs subject to the price cap rules would treat this as an exogenous cost change to the Common Line basket pursuant to Section 61.45(d) of the Commission's rules. The incumbent LECs' residential SLC is limited to $3.50 per month and their multi-line business SLC is currently subject to a $6.00 per month cap.

190. The 1996 Act mandates that the Commission "discontinue the intrastate and interstate carrier access charge payphone service elements and payments ... and all intrastate and interstate subsidies from basic exchange and exchange access revenues[.]" Accordingly, we adopted rules that provide for the removal from regulated intrastate and interstate rate structures of all charges that recover the costs of payphones (i.e., the costs of payphone sets, not including the costs of the lines connecting those sets to the public switched network, which, like the lines connecting competitive payphones to the network, will continue to be treated as regulated). Therefore, we concluded that incumbent LECs must file revised CCL tariffs with the Common Carrier Bureau no later than January 15, 1997 to reduce their interstate CCL charges by an amount equal to the interstate allocation of payphone costs currently recovered through those charges, scheduled to take effect April 15, 1997. The Report and Order required that LECs subject to the price cap rules must treat this as an exogenous cost change to the Common Line basket pursuant to Section 61.45(d)(1)(v) of our rules.[548] Incumbent LECs must identify and report accounts that contain costs attributable to their payphone operations. Incumbent LECs must identify specific cost pools and allocators that are required to capture the nonregulated investment and expenses associated with their payphone operations. LECs must file this information with the Common Carrier Bureau by January 15, 1997.

[548] 47 C.F.R. § 61.45(d)(1)(v).

191. The Report and Order required LECs that file tariffs pursuant to Section 61.38 or Section 61.39, rate-of-return regulation, or Section 61.50, optional incentive regulation, to file tariffs to revise interstate CCL rates to remove the payphone investment and any other assets used in the provision of payphone service along with the accumulated depreciation and deferred income tax liabilities from the common line costs recovered through those rates. As stated previously, these LECs must reclassify payphone assets from regulated to nonregulated activity pursuant to Part 64 rules. Expenses incurred after payphones are deregulated should be classified as nonregulated expenses. The CCL rate reduction must account for overhead costs assigned to common line costs as a result of payphone investment and expenses. We required these LECs to recalculate their CCL rates, using the same data and methods they used to develop their current CCL rates, except those calculations should exclude payphone costs.

192. In the Report and Order we required that price cap LECs must also revise their CCL rates, using the following method to remove payphone costs from their CCL rates. First, price cap LECs should develop a common line revenue requirement using ARMIS costs for calendar year 1995. Second, price cap LECs are required to develop a payphone cost allocator equal to the payphone costs in Section 69.501(d) divided by total common line costs, based on 1995 ARMIS data. Each LEC is required to reduce its PCI in the common line basket by this payphone cost allocator minus one.

193. We required in the Report and Order that, pursuant to the mandate of Section 276(b)(1)(B), incumbent LECs must remove from their intrastate rates any charges that recover the costs of payphones. Revised intrastate rates must be effective no later than April 15, 1997. Because parties did not submit state-specific information regarding the intrastate rate elements that recover payphone costs, the Report and Order required that states must determine the intrastate rates elements that must be removed to eliminate any intrastate subsidies within this time frame.

194. Finally, we concluded that, to avoid discrimination among payphone providers, the multiline business SLC must apply to subscriber lines that terminate at both LEC and competitive payphones. We conclude that the removal of payphone costs from the CCL and the payment or imputation of a SLC to the subscriber line that terminates at a LEC nonregulated payphone will result in the recovery of LEC payphone costs on a more cost-causative basis consistent with the requirements of the 1996 Act.[549]

b. Petitions

195. Sprint requests clarification that not just the payphone equipment costs that are transferred from the regulated books are removed from the CCL costs. Sprint argues that costs for the local network used for payphone services and local business office expenses should

[549] See Ameritech/SW Bell Waiver at para. 25.

be removed. [550] USTA requests clarification of the instructions for the removal of payphone costs from the CCL charges, because the multiline SLC was applied to all payphones.[551] WPTA requests that the Commission reconsider its decision not to discontinue the application of the SLC to payphones but to instead apply them to all payphones including those provided by LECs. WPTA argues that application of the end-user common line is not consistent with the Act because it appears to require discontinuation of the carrier access charges relative to payphone service like the end user common line charge. [552] AT&T requests that the Commission clarify that LECs must reduce their CCL rates by an amount of the additional SLC that will be received from the LEC operations.[553]

c. Comments

196. AT&T opposes several suggestions for clarification presented by USTA. AT&T argues that LEC payphone line costs included in 69.501(d) should remain as part of the LECs' regulated operations.[554] AT&T argues that to avoid double counting we should clarify that the payphone allocator and PCI established in the Report and Order are the same as those that existed before the inmate payphone order.[555] With regard to the SLC, AT&T contends that the Commission should require LECs to hold the base period constant and have the change in SLC revenue as a change to the base period revenue.[556] Finally, AT&T argues that the Report and Order correctly found that Part 61.45(d)(1)(v) applies to reclassification of payphone costs.[557] Sprint contends that the CCL charge should not reflect any payphone transmission costs, and should reflect the increase in SLC revenues received by the LECs from their own payphone operations.[558] BellSouth argues that WPTA is incorrect when it says that SLC must be discontinued for payphone service because the act requires removal of regulated charges that

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550 Sprint Petition at 19.

551 USTA Petition at 1-4.

552 WTPA Petition at 14-15 .

553 AT&T Petition at 24.

554 AT&T Comments at 16.

555 Alternatively, AT&T asserts that LECs could obtain the same result by adjusting their current price cap index (PCI) and rate caps by adding a positive exogenous cost to the current PCI that is equal to the negative exogenous cost amount used in the inmate filing. Id. at 16, note 38.

556 Id. at 17.

557 Id.

558 Sprint Comments at 15.

subsidize unregulated payphone operations, not regulated charges for regulated services.[559] BellSouth opposes Sprint's claim that the costs of payphone lines connecting payphone sets to the network should be removed from the CCL charge. The RBOC Coalition agrees with USTA's methodology for removing payphone costs.[560]

d. Discussion

197. The Report and Order requires LECs to remove interstate payphone costs being recovered through CCL charges by doing the following: (1) transferring payphone set costs to nonregulated accounts; and (2) transferring the recovery of payphone line costs from CCL charges to subscriber line charges.[561] The following addresses petitions seeking clarification of the method of revising CCL charges under price cap rules.

198. As a threshold matter, the Report and Order requires price cap LECs to reflect the removal of deregulated costs by making an exogenous cost adjustment to the PCI in the Common Line Basket, pursuant to Section 61.45(d)(1)(v) of the rules.[562] USTA has petitioned the Commission to clarify that the removal of deregulated payphone cost qualifies instead as an exogenous cost adjustment under Section 61.45(d)(1)(vi).[563] According to USTA, Section 61.45(d)(1)(v) is limited to investment reallocations from regulated to nonregulated accounts caused by usage forecast revisions pursuant to Section 64.901(b)(4). AT&T contends that USTA offers no justification for treating payphone-related costs pursuant to Section 61.45(d)(1)(vi), a rule relating to tax and other extraordinary cost changes, and supports the finding in the Report and Order that the reclassification falls under Section 61.45(d)(1)(v).[564]

199. We deny USTA's request regarding Section 61.45(d)(1)(vi). We state clearly in the Report and Order that LECs are required to transfer payphone set costs from regulated to nonregulated accounts pursuant to Section 64.901 and other applicable rules.[565] Section 61.45(d)(1)(v) governs exogenous cost changes resulting from "the reallocation of investment from regulated to nonregulated activities pursuant to § 64.901." USTA has not provided any reasonable basis for construing Section 61.45(d)(1)(v) to be inapplicable here.

[559] BellSouth Comments at 3.

[560] RBOC Coalition Comments at 22.

[561] Report and Order at paras. 182-87.

[562] Id. at para. 183.

[563] USTA Comments at 3.

[564] AT&T Comments at 17.

[565] Report and Order at paras. 161-71.

200. USTA seeks clarification of the procedure for LECs to use in removing from the CCL charges the deregulated payphone costs described in Section 69.501(d) of the rules.[566] The Report and Order requires LECs to determine the percent ratio of payphone cost to all costs in the common line category in 1995, the payphone cost allocator, and to reduce the Common Line Basket PCI by that percentage.[567] USTA maintains that cost associated with payphone lines identified by Section 69.501(d) should be subtracted before developing the payphone cost allocator, because payphone lines will remain under regulation. AT&T maintains that the intent of the Report and Order clearly states that payphone line costs allocated pursuant to Section 69.501(d) should remain as part of the LEC's regulated operations, and thus supports USTA's position.[568]

201. USTA also seeks acknowledgment that the exogenous cost adjustment to the PCI should be reduced by the amount of PCI adjustment that has already occurred as a result of prior deregulation of inmate payphones.[569] According to USTA, this credit can be obtained by multiplying the PCI in effect prior to the inmate payphone filing by the payphone cost allocator. AT&T maintains that USTA's suggested approach will not achieve the correct result, which can be achieved by clarifying that the PCI and payphone cost allocator described in paragraph 185 of the Report and Order refer to the PCI and allocator that existed prior to implementation of the inmate payphone order.[570]

202. We agree that LECs should subtract the payphone costs described in Section 69.501(d) associated with payphone lines, prior to developing the payphone cost allocator. We therefore clarify and revise the exogenous cost adjustment mechanism we adopted in paragraph 185 of the Report and Order, and require LECs to subtract the costs of lines associated with payphones from the costs described in Section 69.501(d), prior to calculating their payphone cost allocator. We further agree that a credit should be applied to the PCI adjustment equal to any prior PCI adjustment associated with inmate payphone deregulation, and that AT&T has proposed a method that achieves the correct result. LECs proposing to subtract payphone line costs or inmate payphone costs from Section 69.501(d) for the purpose of their PCI adjustment should provide complete details, including references to Parts 32, 36, and 69 of the rules and associated ARMIS line items, to demonstrate that their line cost calculations are reasonable.[571]

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566 USTA Comments at 2.

567 Report and Order at para. 185.

568 AT&T Comments at 16.

569 USTA Comments at 2.

570 AT&T Comments at 16.

571 See AT&T Comments at 16.

203. Sprint seeks clarification by the Commission that CCL charges must be reduced by more than the amount of payphone equipment cost transferred from regulated to nonregulated accounts. Sprint further espouses that payphone cost includes non-equipment cost such as the cost of the local network used for payphone service and local business office expense.[572] BellSouth maintains that local network and local business associated with the payphone lines should not be reclassified as nonregulated.[573] We agree with Sprint that there are non-equipment, local and network costs attributable to payphone set cost and believe that the exogenous cost adjustment, as modified above, removes an adequate amount of such interstate overhead costs from the LEC's common line charges. We also agree with BellSouth that line cost should not be reclassified, and believe this is clearly stated in the Report and Order.[574]

204. USTA and AT&T seek clarification of the treatment of additional revenues that will accrue to LECs as a result of the rule change that results in a multiline SLC charge on payphone lines. According to USTA, the application of a SLC to payphone lines will be a price cap restructure reflecting: (1) the additional SLC revenue as a result of applying a multiline SLC to public payphone lines, and (2) the additional SLC revenue as a result of applying the multiline SLC to semi-private payphones instead of the residential and single line business SLC that currently applies.[575] The RBOC Coalition supports USTA's methodology.[576] Similarly, AT&T maintains that LECs should reduce CCL charges by an amount equal to the additional SLC revenue.[577] AT&T believes, however, that USTA's reference to restructuring the base period revenue is unclear. AT&T advocates no change to the base period revenue for the purpose of comparing revenues under the existing and modified rate structures.

205. We agree that application of multiline SLCs to payphone lines is a restructure pursuant to Section 61.46(c), requiring a comparison of existing revenue to receipts of revenue under the modified rate structure. LECs can achieve this result by recalculating and revising CCL charges pursuant to the CCL formula in Section 61.46(d), using the following steps. First, recalculate the end user common line (minutes of use) factor displayed in 1996 annual filing to include public payphone costs and lines including any necessary adjustments to forecasts to reflect: (1) the increase in SLC revenue from application of multiline SLCs to public payphone lines; and (2) the increase in SLC revenue from applying multiline SLCs to the semi-private payphone lines instead of the residential and single line business SLC. Second, use the

572 Sprint Comments at 19.

573 BellSouth Comments at 3.

574 Report and Order at para. 180.

575 USTA Comments at 3.

576 RBOC Coalition Comments at 22.

577 AT&T Comments at 24.

same carrier common line (minutes of use) factor displayed in the 1996 annual filing, but recalculate the percent change in the PCI to reflect the exogenous cost change associated with payphone cost deregulated as a result of the Report and Order. Third, recalculate the percent change in the PCI to incorporate any change in Long Term Support (LTS) paid to NECA's common line pool, if revised LTS data are available at the time of filing. Otherwise, the LTS adjustment can be shown as a true-up to prior year LTS and reported in the 1997 annual filing. Fourth, recalculate the carrier common line (minutes of use), the CCL revenue component of the formula, to reflect these changes. Finally, recalculate the maximum allowable CCL charges.

206. The procedure above will result in the removal from the CCL charge of deregulated set cost. Regulated line cost will also be removed and recovered through SLC charges except any portion that might exceed the $6.00 cap on the multiline SLC charge. Those SLC deficit costs will be recovered through the CCL charge, in the same manner as the deficit costs associated with non-payphone lines.

207. WPTA contends that the Act requires the Commission to discontinue the application of SLCs with regard to all payphone lines, to meet the Act's requirement for removal of subsidies from payphone services.[578] BellSouth disputes WPTA's interpretation of the Act by contending that regulated charges such as the SLC should not apply only if those charges subsidize nonregulated payphone operations.[579] BellSouth contends there is no subsidization, because the SLC serves the purpose of recovering regulated costs associated with payphone lines. We agree with BellSouth that the application of a SLC to payphone lines is necessary for LECs to recover regulated costs assigned to the interstate jurisdiction. In addition, SLC charges will apply equally to LEC and non-LEC payphone lines and, therefore, the incremental SLC cost is the same for LEC and non-LEC payphone providers.

208. Finally, we take this opportunity to revise the rules regarding the recovery of common line costs. We revise Part 69 of our rules to reflect what we have just described.

C. NONSTRUCTURAL SAFEGUARDS FOR BOC PROVISION OF PAYPHONE SERVICE

1. Report and Order

209. Section 276(b)(1)(C) directs the Commission to "prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a), which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry - III (CC

[578] WPTA Comments at 14-15.

[579] BellSouth Comments at 2-3.

Docket No. 90-623) proceeding[.]"[580] As referred to in Section 276(b)(1)(C), Section 276(a) provides that a BOC "(1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and (2) shall not prefer or discriminate in favor of its payphone service."[581]

a. Nonstructural Safeguards

210. In the Report and Order, we concluded that in addition to the accounting safeguards that we will adopt with respect to payphone services in the accounting safeguards proceeding,[582] Computer III and ONA nonstructural safeguards will provide an appropriate regulatory framework to ensure that BOCs do not discriminate or cross-subsidize in their provision of payphone service. To ensure that the BOCs comply with the Computer III and ONA nonstructural separation requirements for the provision of payphone services, we required that, within 90 days after publication of a summary of the Report and Order in the Federal Register. BOCs must file CEI plans describing how they will comply with the Computer III unbundling, CEI parameters, accounting requirements, customer proprietary network information (CPNI) requirements as modified by Section 222 of the 1996 Act, network disclosure requirements, and installation, maintenance, and quality nondiscrimination requirements.[583]

211. In the Report and Order we declined to require structural separation requirements. We concluded that all Computer III and ONA nonstructural safeguards must be applied to meet our obligation under Section 276 of the 1996 Act.[584] Pursuant to these requirements, we noted that any basic services provided by a BOC to its payphone affiliate must be available on a nondiscriminatory basis to other payphone providers and that payphone providers may request additional unbundled payphone services through the 120-day ONA service request process.[585] Except for the Commission's Part 64 cost allocation rules and Part 32

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[580] 47 U.S.C. § 276 (b)(1)(C).

[581] 47 U.S.C. § 276(a).

[582] We note that nonstructural accounting safeguards applicable to the BOCs' provision of payphone service are being considered in a separate proceeding. See Implementation of the Telecommunications Act of 1996: Accounting Safeguards under the Telecommunications Act of 1996, Notice of Proposed Rulemaking, 11 FCC Rcd 9054 (1996) ("Accounting Safeguards NPRM").

[583] Report and Order at para. 199.

[584] 47 U.S.C. § 276(b)(1)(C). We note that our conclusions in this order regarding structural and nonstructural safeguards for BOC provision of basic payphone services and unbundled features are distinct from requirements that may be imposed by the Commission in implementing Sections 271 and 272 of the 1996 Act.

[585] See BOC ONA Order, 4 FCC Rcd at 205-6; BOC ONA Amendment Order, 5 FCC Rcd at 3117; BOC ONA Further Amendment Order, 6 FCC Rcd at 7654-6.

affiliate transaction rules, we declined to apply the Computer III nonstructural safeguards directly to other LECs.

b. BOC CEI Plans

212. In the Report and Order, we require that each BOC file an initial CEI plan describing how it intends to comply with the CEI equal access parameters and nonstructural safeguards for the provision of payphone services. We concluded that this requirement is consistent with the requirement in Section 276 that we establish safeguards, at a minimum, "equal to those adopted in the Computer III Inquiry."[586]

213. The Report and Order requires that in a CEI plan, a BOC must describe how it intends to comply with the CEI "equal access" parameters for the specific payphone services it intends to offer.[587] In its CEI plan, a BOC must also explain how it will provide basic payphone services and unbundled functionalities. Thus, a BOC must indicate how it plans to unbundle, and associate with a specific rate element in a tariff, the basic services and basic service functions that underlie its provision of payphone service.[588] In addition, any options available to the BOC in the provision of such basic services or functions would be included in the unbundled offerings.[589]

214. We also required that a BOC must explain in its CEI plan how it will comply with the CPNI requirements. We have continued to require compliance with the Computer III and ONA CPNI requirements that are not inconsistent with Section 222 of the 1996 Act, which was immediately effective.[590] In the CPNI NPRM, we are currently examining a carrier's obligations under the CPNI provisions of the 1996 Act.[591]

[586] 47 U.S.C. § 276(b)(1)(C).

[587] Phase I Order, 104 FCC 2d at 1039-1043.

[588] Id. at 1040.

[589] Id.

[590] 47 U.S.C. § 222. See Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Notice of Proposed Rulemaking, CC Docket No. 96-115 (rel. May 17, 1996) (CPNI NPRM).

[591] CPNI NPRM at para. 37-8.

215. In addition, BOCs must comply with the Computer III and ONA network information disclosure requirements.[592] We note, however, that in the Report and Order and in this order, we have provided a partial waiver of this requirement under certain circumstances.[593] In addition, BOCs must comply with the Computer III and ONA requirements regarding nondiscrimination in the quality of service, installation, and maintenance. BOCs must indicate in their CEI plans how they will comply with these requirements. We do not impose any new continuing reporting requirement because BOCs are already subject to reporting requirements pursuant to Computer III and ONA.[594] BOCs must report on payphone services as they do for other basic services.

2. Petitions

216. The Inmate Coalition requests that the Commission clarify that the nonstructural safeguards apply also to inmate payphone services.[595] SW Bell argues that CEI plans should be reviewed expeditiously and requests a clarification to that effect.[596]

3. Comments

217. The RBOC Coalition asks that the Commission clarify that the Report and Order preempts inconsistent nonstructural requirements.[597] Peoples argues that BOC CEI plans for payphone services are important because BOCs are providing payphones services on an integrated basis. Peoples opposes any action that would eliminate the opportunity for public review of the CEI plans.[598]

4. Discussion

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[592] Amendment to Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), Report and Order, 2 FCC Rcd 3072, 3087-88 (1988); Computer III, 3 FCC Rcd 1150, 1164 (1988). The network information subject to disclosure includes only network changes or new basic services that affect the interconnection of enhanced services with the network. Id. at 3097. These network disclosure rules parallel those for CPE.

[593] Report and Order at para. 146.

[594] See BOC ONA Reconsideration Order, 5 FCC Rcd at 3093, 3096, Appendix B.

[595] Inmate Coalition Petition at 17.

[596] SW Bell Petition at 4.

[597] RBOC Coalition Comments at 23.

[598] Peoples Comments at 11-12.

218. In response to the request from the RBOC Coalition that we clarify that the Report and Order preempts inconsistent nonstructural safeguards, we note that Section 276(c) provides for such preemption. We clarify that the Report and Order does preempt nonstructural safeguards that are inconsistent with those established in the Report and Order.[599] We specifically preempted any structural separation requirements for the LEC provision of payphone service because we concluded that such requirements are inconsistent with Section 276.[600] With regard to other nonstructural safeguards, we note that we applied the Computer III and ONA safeguards to the provision of payphone service by the BOCs.[601] Although we declined to apply these same safeguards to the nonBOC LECs, we indicated that we did not preempt the states from imposing nonstructural safeguards that are no more stringent than those we impose on the BOCs.[602] In the Computer III proceeding we addressed when state nonstructural safeguards would be inconsistent with Computer III. We have addressed such preemption of state requirements with regard to jurisdictionally-mixed enhanced services in Computer III.[603] We adopt that analysis for preemption of state payphone service nonstructural safeguards that are inconsistent with the Report and Order. We conclude, however, that it is necessary to go further than the Computer III analysis to determine if a nonstructural safeguard is inconsistent with Section 276 because, for example, it is clear from Section 276 that BOCs and other LECs may provide payphone services on an integrated basis. Thus, state requirements that, for example, require the LECs or BOCs to provide payphone services only through a separate corporate entity with separate books would be inconsistent with Section 276. We have previously addressed state regulations that may conflict with our Computer III network disclosure and CPNI requirements.[604] We adopt that analysis herein for clarifying when state requirements would be inconsistent with those requirements, although we note that CPNI requirements must also be consistent with Section 222 of the Act. The provision for state requirements for further unbundling of payphone network functionalities are discussed in the Report and Order and above.[605]

[599] Report and Order at paras. 145, 199-202.

[600] Id. at para. 145.

[601] Id. at paras. 199-202.

[602] Id. at para. 145

[603] Computer III Remand Proceedings, 6 FCC Rcd 7571 at paras.122-131.

[604] Id.

[605] Report and Order at para. 148.

219. We clarify that the requirements of the Report and Order apply to all payphones, including inmate payphones. LECs must comply with the requirements of the Report and Order with regard to inmate payphones. [606]

220. With regard to CEI Plans for payphone service, we clarify that they will be placed on public notice in a similar manner to CEI plans that have been filed for enhanced services. Like CEI plans for enhanced services, we delegate the authority to review CEI plans to the Chief, Common Carrier Bureau. We anticipate that payphone service CEI plans will raise fewer issues than CEI plans for enhanced services because payphone services described in the CEI plans required by the Report and Order will address only basic payphone services and unbundled payphone features, not enhanced services. CEI plan review will evaluate the application of the nondiscrimination and cross-subsidy nonstructural safeguards to the provision of payphone services by each BOC as required by the Report and Order and this order.

D. ABILITY OF BOCs TO NEGOTIATE WITH LOCATION PROVIDERS ON THE PRESUBSCRIBED INTERLATA CARRIER

1. Report and Order

221. Section 276(b)(1)(D) of the 1996 Act directs the Commission to "provide for Bell operating company payphone service providers to have the same right that independent payphone service providers have to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry interLATA calls from their payphones, unless the Commission determines . . . that it is not in the public interest."[607] The BOCs were prohibited from engaging in these activities pursuant to an order of the MFJ court.[608] In the Report and Order, we concluded that it would not be contrary to the public interest to allow the BOCs to negotiate with location providers with respect to the selecting and contracting for the interLATA carriers presubscribed to their payphones.[609]

222. In reaching this conclusion, we found that the payphone industry is competitive and characterized by low barriers to entry, thereby preventing the BOCs from

[606] See para. 131, above.

[607] 47 U.S.C. § 276(b)(1)(D). See Report and Order at para. 208, et seq.

[608] See United States v. Western Elec. Co., 698 F.Supp. 348, 360 (D.D.C. 1988).

[609] Report and Order at para. 226.

exercising market power in the provision of payphone services.[610] Although the BOCs currently have a large share of the payphone services market, we found that there are thousands of competitors already in the market, ranging in size from very small entities with only a handful of payphones, to the major long distance companies.[611] We found that the existence of these many small competitors demonstrates that entry is relatively easy and does not require investment or scale levels that would deter many potential competitors.[612] We also noted that any ability that the BOCs might have to raise prices to end users above competitive levels is severely restricted by the ability of end users to dial around the presubscribed interLATA carrier.[613] In sum, we concluded that the payphone services market is sufficiently competitive as to prevent the BOCs from raising and sustaining prices above competitive levels, irrespective of their current market shares.[614]

223. We further determined that the nonstructural and accounting safeguards required with respect to the BOCs' payphone operations are sufficient to deter the BOCs from improperly subsidizing those operations from their local access services or discriminating in the provision of local access services to the detriment of their payphone competitors.[615] As discussed previously, we are requiring that all Computer III and ONA nonstructural and accounting safeguards be applied to the BOCs' provision of payphone services, and requiring that any basic services provided by a BOC to its own payphone operations be available on a nondiscriminatory basis to other payphone providers.[616] We found that these safeguards provide an appropriate regulatory framework to ensure that BOCs do not engage in improper subsidization or discriminate in the provision of services required by their payphone competitors.[617] For these reasons, and because we found that the statutory language reflects a Congressional determination that structural separation of the BOCs' payphone operations from their core business is neither necessary nor appropriate, we declined to impose structural separation on the BOCs' payphone businesses.[618] We determined, however, that the nonstructural and accounting safeguards

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[610] Id. at para. 232. See also our discussion of the payphone marketplace, Report and Order at paras. 11-19.

[611] Id.

[612] Id.

[613] Id. at para. 234.

[614] Id. at para. 232.

[615] Id. at para. 237.

[616] Id.

[617] Id.

[618] Id. at para. 238.

established pursuant to Section 276(b)(1)(C) of the 1996 Act must be in place before the BOCs are allowed to participate in the interLATA presubscription process for their payphones.[619] Specifically, we required each BOC to submit and receive approval of an initial CEI plan filed pursuant to Section 276(b)(1)(C) as a precondition to being authorized to engage in the conduct authorized by Section 276(b)(1)(D).[620]

224. We rejected the argument made by some commenters that the presubscription rights specified in Section 276(b)(1)(D) constitute the provision of interLATA service subject to the restrictions of Sections 271 and 272 of the 1996 Act.[621] We found that the statutory language authorizing the BOCs to "select and contract with, the carriers that carry interLATA calls from their payphones," grants the BOCs no more than the right to participate as a contractual intermediary between a location provider and a third-party interLATA carrier. Such limited conduct does not amount to the provision of interLATA telecommunications service addressed under Sections 271 and 272.[622] We did find, however, that resale and branding by a BOC of interLATA service for its in-region presubscribed payphones lies outside of the specific rights granted by Section 276(b)(1)(D) of the 1996 Act.[623]

225. Finally, we affirmed our tentative conclusion in the NPRM that the 1996 Act grandfathers all contracts in force between location providers and PSPs or interLATA or intraLATA carriers which were in force and effect as of February 8, 1996.[624]

2. Petitions

226. InterLATA Presubscription. BellSouth petitions for reconsideration of the Commission's rejection of its argument that Section 276(b)(1)(D) authorizes BOCs to engage in "reselling and/or branding" of interLATA service to its presubscribed payphones, or, at a minimum, to reconsider the use of the conjunctive/disjunctive "and/or" and clarify its remarks concerning whether branding (standing alone) is permissible.[625] BellSouth explains that under TOCSIA, where multiple OSPs are involved in setting rates for particular operator services, these parties may jointly decide which party will be named in the audible brand. BellSouth adds that

[619] Id. at para. 239.

[620] Id.

[621] Id. at para. 243.

[622] Id.

[623] Id. at para. 244.

[624] Id. at para. 250.

[625] BellSouth Petition at 22-23.

BOC PSPs are allowed to provide operator services to interexchange carriers, and asserts that to the extent BOC PSPs are involved with other OSPs in setting the rates for particular operator services, including pursuant to Section 276(b)(1)(D) the rates for interstate operator services, they should be entitled to rely on TOCSIA's multiple OSP branding rules.[626] BellSouth also notes that it is common practice for aggregators and OSPs to engage in "split branding," in which the audible brand identifies both the payphone aggregator and the OSP. BellSouth requests reconsideration or clarification that the Report and Order does not prohibit such branding arrangements.[627]

227. SW Bell urges the Commission to clarify its rules to ensure expedited approval of the CEI plans required to be filed by the BOCs, and approved by the Commission, as a prerequisite to BOC participation in interLATA presubscription for their payphones.[628] SW Bell states that such plans have not always received timely approval by the Commission, and that the BOCs will remain at a competitive disadvantage until they are allowed to negotiate with location providers for presubscribed interLATA carriers to their payphones pursuant to Section 276(b)(1)(D).[629]

228. Grandfathering of Contracts. AT&T requests that the Commission clarify that nothing in the statute or the new rules allows location providers to terminate contracts with carriers regarding the interLATA carrier presubscribed to payphones on their premises, regardless of the date such agreements were executed.[630] In particular, AT&T argues that even where a LEC or other PSP may remove its payphones from a location provider's premises, such action by the LEC or other PSP does not allow it to interfere with a pre-existing contractual relationship between the location provider and the interLATA carrier concerning the provision of presubscribed interLATA service to the location provider.[631] AT&T also urges the Commission to clarify that contracts between BOCs and location providers that reference presubscribed interLATA carrier choice, but which are executed prior to the BOC completing the requirements detailed in the Report and Order for engaging in interLATA presubscription, are void and

[626] Id. at 23-24.

[627] Id. at 24.

[628] SW Bell Petition at 4.

[629] Id. Ameritech also notes a typographical error at ¶ 240 of the Report and Order, in which "intraLATA" incorrectly appears in the section discussing "interLATA" presubscription issues. Ameritech Petition at 2, n.2.

[630] AT&T Petition at 22.

[631] Id.