364. AT&T proposes a reporting scheme that is based on measures it currently uses to monitor the quality of access services provided to it by LECs.[944] AT&T proposes that the BOCs report data in eleven categories, most of which are broken down into subcategories according to the type of access service provided. AT&T's proposal includes relatively specific units of measure for these categories, such as, for example, the percentage of circuits installed within each successive twenty-four hour period, until a ninety-five percent installation level is reached.[945] According to AT&T, LECs currently track information in these categories to monitor the service they provide to AT&T.[946] Teleport proposes a reporting format that includes eight service categories for both installation and service performance.[947] MCI proposes categories based on those used in Automated Reporting Management Information Systems (ARMIS), including additional categories for billing disputes and payment intervals.[948] MCI proposes quarterly reporting broken down among the BOC, its affiliate, and all other unaffiliated entities.[949]

365. The BOCs oppose AT&T's proposal. Bell Atlantic, for instance, states that some of the categories in AT&T's proposal ask for information beyond the information AT&T currently requests from the BOCs.[950] Bell Atlantic further argues that AT&T improperly proposes that the BOCs report on intermediate checkpoints that do not provide information on the ultimate timeliness of the BOCs' provision of service.[951] Several BOCs argue that the information AT&T seeks is already available in existing ARMIS reports.[952] Ameritech opposes the monthly updates proposed by AT&T, favoring quarterly updates instead.[953] Ameritech opposes reporting that would provide detail below a BOC's total service region.[954] Ameritech favors consolidating AT&T's DS0 subcategories into a single DS0 category.[955] PacTel argues that the disclosure of

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[944] AT&T Oct. 3 Ex Parte at 5.

[945] Id.

[946] Id. at 2.

[947] Teleport Oct. 24 Ex Parte, Attachments 1 and 2.

[948] MCI Nov. 1 Reporting Ex Parte at 2-3.

[949] Id.

[950] Bell Atlantic Oct. 16 Ex Parte at 2 n.1.

[951] Id. at 2.

[952] BellSouth Oct. 29 Ex Parte at 2; PacTel Oct. 18 Ex Parte at 4.

[953] Ameritech Oct. 23 Ex Parte, Attachment.

[954] Id.

[955] Id.

the absolute number of requests placed by its affiliate would reveal competitively sensitive information, and that disclosure of relative data, such as the percentage of missed appointments and average time intervals, would provide sufficient information to monitor BOC behavior.[956]

366. BOCs also oppose Teleport's proposal. PacTel disagrees with Teleport's suggestion that BOCs provide data for each exchange area in their territory.[957] PacTel also indicates that reporting on DS0 as a separate category would unfairly disadvantage the one interexchange carrier that dominates the DS0 market.[958]

367. While the BOCs generally oppose reporting requirements, they state that, if the Commission imposes a reporting requirement, the ONA format should be utilized because it is currently in place and is well-understood.[959] PacTel provides an example of a modified ONA report that reflects the services provided to interLATA telecommunications providers.[960] Ameritech indicates that it would not oppose a reporting requirement that compares data for BOC affiliates with aggregated data for all unaffiliated carriers.[961]

3. Discussion

368. In order to implement section 272(e)(1) effectively, we concluded that the BOCs must make publicly available the intervals within which they provide service to their affiliates. We concluded that, without this requirement, competitors will not have the information they require to evaluate whether the BOCs are fulfilling their requests for telephone exchange service and exchange access in compliance with section 272(e)(1).[962]

369. Method of information disclosure. In requiring the BOCs to disclose information regarding the service intervals within which they provide telephone exchange service and exchange access, we seek to avoid imposing any unnecessary administrative burdens on the BOCs, unaffiliated entities, and the Commission. Consequently, we tentatively conclude that the BOCs need not submit directly to the Commission the data that must be disclosed under section 272(e)(1). Instead, we tentatively conclude that, upon receiving permission to provide interLATA services pursuant to section 271, each BOC must submit a signed affidavit stating: 1) the BOC

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[956] PacTel Oct. 18 Ex Parte at 4.

[957] PacTel Oct. 23 Ex Parte at 4.

[958] Id. at 3.

[959] E.g., PacTel at 37; USTA at 26; Bell Atlantic Oct. 15 Ex Parte at 2; NYNEX Oct. 23 Ex Parte at 4.

[960] PacTel Oct. 18 Ex Parte at 4, Attachment 6.

[961] Ameritech Oct. 23 Ex Parte, Attachment.

[962] See supra paragraph 242.

will maintain the required information in a standardized format; 2) the information will be updated in compliance with our rules; 3) the information will be maintained accurately; and 4) how the public will be able to access the information. We tentatively conclude that, if a BOC makes any material change in the manner in which the information covered by the affidavit is made available to the public, it must submit an updated affidavit within 30 days of the change. Further, we tentatively conclude that each BOC must submit an annual affidavit each year thereafter, affirming that the BOC has complied with the four requirements set out above during the preceding year. We note that, in order to address potential complaints alleging discrimination pursuant to section 272(e)(1), the BOCs are likely to maintain information regarding the service they provide to their affiliates and to unaffiliated entities, regardless of whether they must disseminate such information publicly or file it with the Commission. Therefore, we tentatively conclude that maintaining this information for public dissemination will not impose a significant additional burden on the BOCs. We seek comment on the foregoing tentative conclusions.

370. We tentatively conclude that the BOCs must make such information available to the public in at least one of their business offices during regular business hours, and must include this information in their annual affidavits. We seek comment on this tentative conclusion. We seek comment on whether this information should also be available electronically. For example, we seek comment on whether the BOCs should make this information available on the Internet, or whether the information should be available through another electronic mechanism. We also seek comment on other methods to facilitate the access and use of this information by unaffiliated entities, including small entities.

371. Service categories and units of measure. We seek comment on whether the BOCs should maintain the information described below in a standardized format, and seek comment on whether the format in Appendix C would be appropriate. Parties favoring an alternative format should submit examples of their proposals.

372. We seek comment on whether we should require the BOCs to maintain information in the following service categories: 1) successful completion according to desired due date, measured in a percentage; 2) time from the BOC-promised due date to circuit being placed in service, measured in terms of the percentage installed within each successive twenty-four hour period until ninety-five percent complete; 3) time to firm order confirmation, measured in terms of the percentage received within each successive twenty-four hour period until ninety-five percent complete; 4) time from PIC change requests to implementation, measured in terms of percentage implemented within each successive six hour period until ninety-five percent complete; 5) time to restore and trouble duration, measured in terms of the percentage restored within each successive one hour interval until ninety-five percent of incidents are resolved; 6) time to restore PIC after trouble incident, measured by percentage restored within each successive one hour interval until ninety-five percent restored; and 7) mean time to clear network and the average

duration of trouble, measured in hours. We seek comment on whether any additional categories proposed by commenters should be included.[963]

373. We have sought comment on whether the BOCs should disclose the interval between the due date promised by the BOC and the time a circuit is actually placed in service, measured in terms of the percentage of circuits installed within each successive twenty-four hour period.[964] We have sought comment on a category that differs from AT&T's proposed category, which would measure a BOC's response time in relation to a customer's desired due date, because we recognize that the BOCs have no control over a customer's requested due date.[965] We have proposed this category because the BOCs have control over the due date they promise at the time an order is placed. Further, the amount of delay in installing a circuit, and not just whether a due date was missed, may be a significant source of difficulty to a customer.[966] Because our service category differs from the service category proposed by AT&T, we seek comment on whether any corresponding changes to the unit of measure are warranted.

374. We seek comment on whether we should require the BOCs to disclose the BOC-promised due date itself, i.e., the length of the interval promised by the BOCs to their affiliates at the time an order is placed. Parties favoring such a disclosure should provide a detailed description of the appropriate unit of measure and level of aggregation for these disclosures.

375. We seek comment on whether our proposed service categories and units of measure for these categories are more appropriate to implement section 272(e)(1) than the categories currently included in the ONA installation and maintenance reports or than PacTel's proposed modification of ONA installation and maintenance reports.[967] Our proposal addresses the provision of exchange access to interLATA service providers, unlike ONA reports, which address the provision of ONA unbundled elements to enhanced service providers.[968] The units of measure

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[963] See AT&T Oct. 3 Ex Parte at 5; Teleport Oct. 24 Ex Parte, Attachment 1; MCI Nov. 1 Reporting Ex Parte, Attachment.

[964] The date promised by a BOC is sometimes referred to as the "FOC date." See Teleport Oct. 24 Ex Parte, Attachment 2 at 1.

[965] See Bell Atlantic Oct. 16 Ex Parte at 2; NYNEX Oct. 23 Ex Parte at 6, n.10; Ameritech Oct. 23 Ex Parte, Attachment.

[966] For example, if a BOC misses a due date by several hours, this will probably cause less harm to a competitor than if the BOC misses a due date by several days. See Teleport Oct. 8 Ex Parte at 7 (indicating that reporting a BOC's total repair time provides more complete information regarding the service interval provided by the BOC than reporting only whether a due date has been met).

[967] PacTel Oct. 18 Ex Parte, Attachment 6.

[968] In the BOC ONA Reconsideration Order, the Commission determined that the ONA installation and maintenance reporting requirements should include 49 service categories presented in a standardized format. Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Memorandum Opinion and Order on

in our proposal are more precise than the ONA intervals. We therefore seek comment on whether these measures will provide a better guide for unaffiliated entities and the Commission to determine whether the BOCs are complying with section 272(e)(1).

376. We recognize that our proposal is patterned after arrangements regarding the provision of access between interexchange carriers and LECs. We seek comment on whether these categories will also provide sufficient information to ISPs, and whether our proposal is sufficient to implement the nondiscriminatory provision of telephone exchange service in accordance with section 272(e)(1).

377. We do not believe that the requirements proposed here will impose a significant additional administrative burden on the BOCs, particularly because under our existing price cap rules, the BOCs must track service intervals for end-users as part of their service quality reporting requirements.[969] Nevertheless, we seek comment on whether, and to what extent, the industry or state regulators currently collect data using the service categories and units of measure included in our proposal, and the need for the BOCs to modify their current tracking systems to comply with our proposal.[970]

378. Several BOCs argue that extensive reporting of their affiliates' requests could cause competitive harm to their affiliates.[971] Specifically, PacTel argues that relative data such as the percentage of missed appointments and average time intervals provide sufficient information to monitor BOC behavior, and that the disclosure of absolute figures for the number of orders placed by an affiliate would reveal competitively sensitive proprietary information.[972] We seek comment on whether our proposal, which uses percentages and averages and does not require disclosure of the absolute number of BOC affiliate requests, adequately protects the competitive interests of BOC affiliates. Any party favoring other levels of aggregation should provide a specific alternative proposal and explain why that alternative proposal is sufficient to implement section 272(e)(1). The party should also explain how its alternative proposal addresses commenters' concerns regarding the inadequacy of ONA installation and maintenance reporting requirements.[973]

Reconsideration, 5 FCC Rcd 3084, 3093, ¶¶ 76-79 and app. B (1990) (subsequent history omitted).

[969] See generally, Policy and Rules Concerning Rates for Dominant Carriers, AAD 92-47, Memorandum Opinion and Order, 8 FCC Rcd 7474 (1993) (modifying the service quality and other reporting requirements imposed after the imposition of price cap regulation).

[970] Compare AT&T Oct. 3 Ex Parte at 2 with Bell Atlantic Oct. 16 Ex Parte at 2 n.1.

[971] NYNEX Reply at 23 & n.72; PacTel Reply at 18-19; Bell Atlantic Sept. 27 Ex Parte at 1-2; BellSouth Oct. 29 Ex Parte at 3.

[972] PacTel Oct. 18 Ex Parte at 4.

[973] See e.g., AT&T at 36-38.

379. Frequency of Updates and Length of Retention. We seek comment on how often the BOCs should be required to update the data that they must maintain.[974] For example, we seek comment on whether the BOCs should update the data quarterly or monthly. Parties should substantiate their positions by comparing the amount of underlying data used to produce ONA reports or other reports that are prepared on a quarterly basis, with the amount of data that will be used to produce the information in our proposal. We also seek comment on how long the BOCs must retain the data that they must maintain.

380. Levels of Aggregation. Because section 272(e)(1) states that the BOCs must fulfill requests for unaffiliated entities in the period of time that the BOCs provide service to "itself or to its affiliates," we seek comment on whether the BOCs should aggregate their own requests and the requests of all of their affiliates for each service category, or whether they should maintain data for each affiliate and themselves separately.[975] We seek comment on whether the BOCs should maintain separate data for each state in their service regions. Parties favoring other levels of aggregation, such as by BOC region, or by exchange area, should provide detailed support for their proposals.[976]

381. We seek comment on whether the BOCs should provide the information required in service categories four and six, described above in paragraph 372, by carrier identification code (CIC). We seek comment on whether the BOCs should provide the information required by service category seven in two subcategories: DS1 Non-Channelized and DS0. We seek comment on whether information in all other service categories should be broken down into three subcategories: DS3, DS1, and DS0. We also seek comment on whether, in the alternative, we should further divide the DS0 subcategory into DS0 Voice Grade and DS0 Digital, as suggested by AT&T.[977]

382. Consistency with other reporting requirements. We seek comment on the extent of overlap, if any, between the disclosure requirements we propose in this Further Notice and reporting currently required by state commissions.[978] We also seek comment on whether the information provided under ARMIS form 43-05 provides sufficient information to implement section 272(e)(1), as several BOCs suggest,[979] or whether further disaggregation of the ARMIS

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[974] Ameritech Oct. 23 Ex Parte, Attachment; MCI Nov. 1 Reporting Ex Parte at 1-2.

[975] 47 U.S.C. § 272(e)(1).

[976] See e.g., Teleport Oct. 24 Ex Parte; Ameritech Oct. 23 Ex Parte at 1.

[977] AT&T Oct. 3 Ex Parte at 5. Contra Ameritech Oct. 23 Ex Parte, Attachment.

[978] See e.g., SBC Oct. 8 Ex Parte, Attachments; PacTel Oct. 18 Ex Parte, Attachments 1 and 1; SBC Nov. 6 Ex Parte at 2-3; U S West Nov. 19 Ex Parte at 2.

[979] PacTel Oct. 18 Ex Parte at 4; BellSouth Oct. 29 Ex Parte at 2-3; U S West Nov. 19 Ex Parte at 2.

service categories is necessary, as MCI suggests.[980] Parties that favor relying on ARMIS data alone, rather than imposing an information disclosure requirement under section 272(e)(1), should explain why ARMIS reports are sufficient, given that ARMIS reports must be filed on an annual basis and that they focus on services provided to the end-user, rather than services provided between carriers.[981] Any parties contending that sufficient information to enforce section 272(e)(1) is available from other sources should explain, in detail, the categories and units of measure included in these alternative sources as compared with our proposal. Finally, we note that much of Teleport's proposal appears directed toward the implementation of local competition by incumbent LECs, and therefore does not address service intervals provided by the BOCs. Teleport has raised many of these same proposals in its petition for reconsideration of the First Interconnection Order.[982] We tentatively conclude, therefore, that we should limit the scope of the proposals considered in this docket to requirements necessary to implement the service interval requirements of section 272(e)(1).[983] We seek comment on this tentative conclusion.

B. Procedural Matters

1. Ex Parte Presentations

383. This is a non-restricted notice-and-comment rulemaking proceeding. Ex parte presentations are permitted, in accordance with the Commission's rules, provided that they are disclosed as required.[984]

2. Regulatory Flexibility Analysis

384. Section 603 of the Regulatory Flexibility Act, (RFA) as amended,[985] requires an initial regulatory flexibility analysis in notice-and-comment rulemaking proceedings, unless we

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[980] MCI Nov. 1 Reporting Ex Parte.

[981] The 1996 Act requires ARMIS reports to be filed annually. 1996 Act, 110 Stat. 56, 129, sec. 402(B)(2)(b) (to be codified at a note following 47 U.S.C. § 214); see generally, Policy and Rules Concerning Rates for Dominant Carriers, AAD 92-47, Memorandum Opinion and Order, 8 FCC Rcd 7474 (1993) (modifying service quality and other reporting requirements).

[982] See Teleport Communications Group, Inc., Petition for Reconsideration of the First Interconnection Order, CC Docket No. 96-98 at 5-6 (Sept. 30, 1996); Letter from J. Manning Lee, Vice President Regulatory Affairs, Teleport Communications Group, Inc., to William F. Caton, Secretary, FCC, Oct. 14, 1996, CC Docket No. 96-98, Attachments 1 and 2.

[983] See also SBC Nov. 6 Ex Parte at 1, 3 (arguing that AT&T's proposal contains reporting requirements relating to the provision of unbundled network elements).

[984] See generally 47 C.F.R. §§ 1.1200, 1.1202, 1.1204, 1.1206.

[985] 5 U.S.C. § 603.

certify that "the rule will not, if promulgated, have a significant economic impact on a significant number of small entities."[986] A "small entity" is an entity that is "independently owned and operated, . . . not dominant in its field of operation," and meets any additional criteria established by the Small Business Administration (SBA).[987] SBA regulations define small telecommunications entities in SIC code 4813 (Telephone Companies Except Radio Telephone) as entities with fewer than 1,500 employees.[988] This proceeding pertains to the BOCs which, because they are dominant in their field of operation and have more than 1,500 employees, do not qualify as small entities under the RFA.[989] We now note as well that none of the BOCs is a small entity because each BOC is an affiliate of a Regional Holding Company (RHC), and all of the BOCs or their RHCs have more than 1,500 employees.[990] We therefore certify, pursuant to section 605(b) of the RFA, that the rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The Secretary shall send a copy of this Further Notice, including this certification and statement, to the Chief Counsel for Advocacy of the Small Business Administration.[991] A copy of this certification will also be published in the Federal Register.

3. Initial Paperwork Reduction Act of 1995 Analysis

385. This Further Notice contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Further Notice, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this Further Notice; OMB comments are due 60 days from date of publication of this Notice in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

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[986] Id. § 605(b).

[987] The RFA incorporates the definition of small business concerns set forth in 15 U.S.C. § 632. 5 U.S.C. § 601(3).

[988] 13 C.F.R. § 121.20.

[989] Federal Communications Commission, CCB, Industry Analysis Division, Preliminary Domestic Information From Statistics of Communications Common Carriers table 1.1 (July 1996).

[990] Id.

[991] 5 U.S.C. § 605(b).

4. Comment Filing Procedures

386. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before February 19, 1997, and reply comments on or before March 21, 1997. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C., 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C., 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C., 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C., 20554.

387. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with Section 1.49 and all other applicable sections of the Commission's Rules.[992] We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. Parties may not file more than a total of ten (10) pages of ex parte submissions, excluding cover letters. This 10 page limit does not include: (1) written ex parte filings made solely to disclose an oral ex parte contact; (2) written material submitted at the time of an oral presentation to Commission staff that provides a brief outline of the presentation; or (3) written materials filed in response to direct requests from Commission staff. Ex parte filings in excess of this limit will not be considered as part of the record in this proceeding.

388. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C., 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

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[992] See 47 C.F.R. § 1.49. However, we require here that a summary be included with all comments and reply comments, regardless of length. This summary may be paginated separately from the rest of the pleading (e.g., as "i, ii").

389. Written comments by the public on the proposed and/or modified information collections are due February 19, 1997, and reply comments must be submitted not later than March 21, 1997. Written comments must be submitted by the OMB on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C., 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, D.C., 20503 or via the Internet to fain_t@al.eop.gov.

XII. ORDERING CLAUSES

390. Accordingly, IT IS ORDERED that pursuant to sections 1, 2, 4, 201-205, 215, 218, 220, 271, 272, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201-205, 215, 218, 220, 271, 272, and 303(r) the REPORT AND ORDER IS ADOPTED, effective 30 days after publication of a summary in the Federal Register. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

391. IT IS FURTHER ORDERED that pursuant to sections 1, 2, 4, 201-205, 215, 218, 220, 271, 272, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201-205, 215, 218, 220, 271, 272, and 303(r) the FURTHER NOTICE OF PROPOSED RULEMAKING IS ADOPTED.

392. IT IS FURTHER ORDERED that the Secretary shall send a copy of this FURTHER NOTICE OF PROPOSED RULEMAKING, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 et seq.

393. IT IS FURTHER ORDERED that the MFS Petition to Consolidate Proceedings in CC Docket Nos. 96-149, 85-229, 90-623, 95-20, and CCBPol 96-09 filed on July 25, 1996 is DENIED.

394. IT IS FURTHER ORDERED that Part 53 of the Commission's Rules, 47 C.F.R. § 53 is ADDED as set forth in Appendix B attached hereto.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton

William F. Caton
Acting Secretary

List of Commenters in CC Docket No. 96-149

Ameritech
Association for Local Telecommunications Services (ALTS)
Association of Directory Publishers (ADP)
Association of Telemessaging International (ATSI)
AT&T Corp. (AT&T)
Bell Atlantic Telephone Companies (Bell Atlantic)
Bell Communications Research, Inc. (Bellcore)
BellSouth Corporation (BellSouth)
California Cable Television Association (CCTA)
California Public Utilities Commission (California Commission)
Centra Health
Citizens for a Sound Economy Foundation (CSEF)
Citizens Utilities Companies
Commercial Internet Exchange Association (CIX)
Commonwealth of the Northern Mariana Islands
Competitive Telecommunications Association (CompTel)
Economic Strategy Institute
Excel Telecommunications, Inc. (Excel)
Exco Noonan Inc.
Florida Public Service Commission (Florida Commission)
Frontier Corporation (Frontier)
GST Telecom, Inc.
GTE Service Corporation (GTE)
Hudson United Bank, Inc.
Independent Data Communications Manufacturers Association (IDCMA)
Independent Coalition
Independent Telephone & Telecommunications Alliance (ITTA)
Information Industry Association (IIA)
Information Technology Association of America (ITAA)
Information Technology Industry Council (ITIC)
Interactive Services Association (ISA)
LDDS WorldCom Inc. (LDDS)
MCI Telecommunications Corporation (MCI)
MFS Communications Company, Inc. (MFS)
Michigan Public Service Commission (Michigan Commission)
Missouri Public Service Commission (Missouri Commission)
Nabisco
National Association of Regulatory Utility Commissioners (NARUC)
National Cable Television Association, Inc. (NCTA)
National Telephone Cooperative Association (NTCA)
New Jersey Division of the Rate Payer Advocate (New Jersey Rate Payer Advocate)

New York State Department of Public Service (New York Commission)
NYNEX Telephone Companies (NYNEX)
Owens & Minor
Pacific Telesis Group (PacTel)
PNC Bank, N.A.
Prebon Yamane
Public Utilities Commission of Ohio (Ohio Commission)
SBC Communications, Inc. (SBC)
SmithKline Beecham
Southern New England Telephone Company (SNET)
Sprint Corporation (Sprint)
Telecommunications Industry Association (TIA)
Telecommunications Resellers Association (TRA)
Telefonica Larga Distancia de Puerto Rico, Inc. (TLD)
Teleport Communications Group, Inc. (Teleport)
Temple University
Time Warner Cable (Time Warner)
UGI Utilities, Inc.
United States Telephone Association (USTA)
U. S. Department of Justice (DOJ)
U S West
Voice-Tel
West Virginia Dept. of Administration
Wisconsin Public Service Commission (Wisconsin Commission)
Yellow Pages Publishers Association (YPPA)

Final Rules

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

1. Part 53 of Title 47 of the Code of Federal Regulations (C.F.R.) is added to read as follows:

PART 53 -- SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

Subpart A - General Information

Sec.
53.1 **Basis and purpose.**
53.3 **Terms and definitions.**

Subpart B - Bell Operating Company Entry into InterLATA Services.

53.101 **Joint marketing of local and long distance services by interLATA carriers.**

Subpart C - Separate Affiliate; Safeguards.

53.201 **Services for which a separate affiliate is required.**
53.203 **Structural and transactional requirements.**
53.205 **Fulfillment of certain requests.**
53.207 **Successor or assign.**

Subpart D - Manufacturing by Bell Operating Companies.

53.301 **[Reserved]**

Subpart E - Electronic Publishing by Bell Operating Companies.

53.401 **[Reserved]**

Subpart F - Alarm Monitoring Services.

53.501 **[Reserved]**

AUTHORITY: Sections 1-5, 7, 201-05, 218, 251, 253, 271-75, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151-55, 157, 201-05, 218, 251, 253, 271-75, unless otherwise noted.

Subpart A - General Information.

§ 53.1 Basis and purpose.

(a) *Basis.* These rules are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose.* The purpose of these rules is to implement sections 271 and 272 of the Communications Act of 1934, as amended, 47 U.S.C. 271 and 272.

§ 53.3 Terms and definitions.

Terms used in this part have the following meanings:

Act. The "Act" means the Communications Act of 1934, as amended.

Affiliate. An "affiliate" is a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this part, the term 'own' means to own an equity interest (or the equivalent thereof) of more than 10 percent.

AT&T Consent Decree. The "AT&T Consent Decree" is the order entered August 24, 1982, in the antitrust action styled United States v. Western Electric, Civil Action No. 82-0192, in the United States District Court for the District of Columbia, and any judgment or order with respect to such action entered on or after August 24, 1982.

Bell Operating Company (BOC). The term "Bell operating company" (A) means any of the following companies: Bell Telephone Company of Nevada, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, New England Telephone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, U S West Communications Company, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, Southwestern Bell Telephone Company, The Bell Telephone Company of Pennsylvania, The Chesapeake and Potomac Telephone Company, The Chesapeake and Potomac Telephone Company of Maryland, The Chesapeake and Potomac Telephone Company of Virginia, The Chesapeake and Potomac Telephone Company of West Virginia, The Diamond State Telephone Company, The Ohio Bell Telephone Company, The Pacific Telephone and Telegraph Company, or Wisconsin Telephone Company; and (B) includes any successor or assign of any such company that provides wireline telephone exchange service; but (C) does not include an affiliate of any such company, other than an affiliate described in clause (A) or (B) of this paragraph.

In-Region InterLATA service. "In-region interLATA service" is interLATA service that originates in any of a BOC's in-region states, which are the states in which the BOC or

any of its affiliates was authorized to provide wireline telephone exchange service pursuant to the reorganization plan approved under the AT&T Consent Decree, as in effect on February 7, 1996. For the purposes of this part, 800 service, private line service, or equivalent services that terminate in a BOC's in-region state and allow the called party to determine the interLATA carrier are considered to be in-region interLATA service.

InterLATA Service. An "interLATA service" is a service that involves telecommunications between a point located in a LATA and a point located outside such area. The term "interLATA service" includes both interLATA telecommunications services and interLATA information services.

InterLATA Information Service. An "interLATA information service" is an information service that incorporates as a necessary, bundled element an interLATA telecommunications transmission component, provided to the customer for a single charge.

Local Access and Transport Area (LATA). A "LATA" is a contiguous geographic area: (A) established before February 8, 1996 by a BOC such that no exchange area includes points within more than one metropolitan statistical area, consolidated metropolitan statistical area, or state, except as expressly permitted under the AT&T Consent Decree; or (B) established or modified by a BOC after February 8, 1996 and approved by the Commission.

Local Exchange Carrier (LEC). A "LEC" is any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of commercial mobile service under section 332(c) of the Act, except to the extent that the Commission finds that such service should be included in the definition of such term.

Out-of-Region InterLATA service. "Out-of-region interLATA service" is interLATA service that originates outside a BOC's in-region states.

Section 272 affiliate. A "section 272 affiliate" is a BOC affiliate that complies with the separate affiliate requirements of section 272(b) of the Act and the regulations contained in this part.

Subpart B - Bell Operating Company Entry Into InterLATA Services.

§53.100 Joint marketing of local and long distance services by interLATA carriers.

(a) Until a BOC is authorized pursuant to section 271(d) of the Act to provide interLATA services in an in-region State, or until February 8, 1999, whichever is earlier, a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines may not jointly market in such State telephone exchange service obtained from such company pursuant to section 251(c)(4) of the Act with interLATA services offered by that telecommunications carrier.

(b) For purposes of applying section 271(e) of the Act, telecommunications carriers described in paragraph (a) of this section may not:

(1) market interLATA services and BOC resold local exchange services through a "single transaction." For purposes of this section, we define a "single transaction" to include the use of the same sales agent to market both products to the same customer during a single communication;

(2) offer interLATA services and BOC resold local exchange services as a bundled package under an integrated pricing schedule.

(c) If a telecommunications carrier described in paragraph (a) of this section advertises the availability of interLATA services and local exchange services purchased from a BOC for resale in a single advertisement, such telecommunications carrier shall not mislead the public by stating or implying that such carrier may offer bundled packages of interLATA service and BOC local exchange service purchased for resale, or that it can provide both services through a single transaction.

Subpart C - Separate Affiliate; Safeguards.

§ 53.201 Services for which a section 272 affiliate is required.

For the purposes of applying section 272(a)(2) of the Act:

(a) *Previously authorized activities.* When providing previously authorized activities described in section 271(f) of the Act, a BOC shall comply with the following:

(1) A BOC shall provide previously authorized interLATA information services and manufacturing activities through a section 272 affiliate no later than February 8, 1997.

(2) A BOC shall provide previously authorized interLATA telecommunications services in accordance with the terms and conditions of the orders entered by the United States District Court for the District of Columbia pursuant to section VII or VIII(C) of the AT&T Consent Decree that authorized such services.

(b) *InterLATA information services.* A BOC shall provide an interLATA information service through a section 272 affiliate when it provides the interLATA telecommunications transmission component of the service either over its own facilities, or by reselling the interLATA telecommunications services of an interexchange provider.

(c) *Out-of-region interLATA information services.* A BOC shall provide out-of-region interLATA information services through a section 272 affiliate.

§ 53.203 Structural and transactional requirements.

(a) *Operational independence.*

(1) A section 272 affiliate and the BOC of which it is an affiliate shall not jointly own transmission and switching facilities or the land and buildings where those facilities are located.

(2) A section 272 affiliate shall not perform any operating, installation, or maintenance functions associated with facilities owned by the BOC of which it is an affiliate.

(3) A BOC or BOC affiliate, other than the section 272 affiliate itself, shall not perform any operating, installation, or maintenance functions associated with facilities that the BOC's section 272 affiliate owns or leases from a provider other than the BOC.

(b) *Separate books, records, and accounts.* A section 272 affiliate shall maintain books, records, and accounts, which shall be separate from the books, records, and accounts maintained by the BOC of which it is an affiliate.

(c) *Separate officers, directors, and employees.* A section 272 affiliate shall have separate officers, directors, and employees from the BOC of which it is an affiliate.

(d) *Credit arrangements.* A section 272 affiliate shall not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the BOC of which it is an affiliate.

(e) *Arm's-length transactions.* A section 272 affiliate shall conduct all transactions with the BOC of which it is an affiliate on an arm's length basis, pursuant to the accounting rules described in § 32.27 of this chapter, with any such transactions reduced to writing and available for public inspection.

§ 53.205 Successor or assign.

If a BOC transfers to an unaffiliated entity ownership of any network elements that must be provided on an unbundled basis pursuant to section 251(c)(3) of the Act, such entity will be deemed to be an "assign" of the BOC under section 3(4) of the Act with respect to such transferred network elements. A BOC affiliate shall not be deemed a "successor or assign" of a BOC solely because it obtains network elements from the BOC pursuant to section 251(c)(3) of the Act.

Format for Information Disclosures Pursuant to Section 272(e)(1)

Service Category	Types of Access	Outcome for BOC and BOC Affiliates
1) Successful Completion According to Desired Due Date (measured in a percentage)	DS3 and above	
	DS1	
	DS0	
2) Time from BOC Promised Due Date to Circuit being placed in service (measured in terms of percentage installed within each successive 24 hour period, until 95% installation completed)	DS3 and above	
	DS1	
	DS0	
3) Time to Firm Order Confirmation (measured in terms of percentage received within each successive 24 hour period, until 95% completed)	DS3 and above	
	DS1	
	DS0	
4) Time from PIC Change request to implementation (measured in terms of percentage implemented within each successive 6 hour period, until 95% completed)	By CIC (10XXX)	
5) Time to Restore and trouble duration (percentage restored within each successive 1 hour interval, until resolution of 95% of incidents)	DS3 and above	
	DS1	
	DS0	
6) Time to restore PIC after trouble incident (measured by percentage restored within each successive 1 hour interval, until resolution of 95% restored)	By CIC (10XXX)	
7) Mean time to clear network / average duration of trouble (measured in hours)	DS1 Non-Channelized	
	DS0	