

flexibility analyses because they are not small businesses.⁶²³ We have made similar determinations in other areas.⁶²⁴ While we recognize SBA's special role and expertise with regard to the RFA, we are not fully persuaded on the basis of this record that our prior practice has been incorrect. Nevertheless, in light of NTCA's concerns, we will conduct an analysis on the impact of our regulations in this Order on small incumbent LECs, in order to remove any possible issue of RFA compliance. We therefore need not address NTCA's argument that many of its members are "small business concerns" for purposes of the RFA.⁶²⁵

C. Description and Estimates of the Number of Small Entities Affected by this Report and Order

221. In this FRFA, we consider the impact of this Order on two categories of entities, "small incumbent LECs" and "small non-incumbent LECs." Consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of a small entity for the purpose of this FRFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass "small incumbent LECs." We use the term "small incumbent LECs" to refer to any incumbent LECs⁶²⁶ that arguably might be defined by SBA as "small business concerns."⁶²⁷ We include "small non-incumbent LECs" in our analysis, even though we believe that we are not required to do so.⁶²⁸

⁶²³ See, e.g., Implementation of the Local Competition Provisions in the 1996 Telecommunications Act of 1996, CC Docket No. 96-68, First Report and Order, 11 FCC Rcd 15499 (1996) (citing Expanded Interconnection with Local Telephone Company Facilities, Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 5809 (1991), MTS and WATS Market Structure, Report and Order, 2 FCC Rcd 2953, 2959 (1987) (citing MTS and WATS Market Structure, Third Report and Order, 93 F.C.C.2d 241, 338-39 (1983)).

⁶²⁴ See, e.g., Implementation of Sections of the Cable Television Consumer Protection Act of 1992: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7418 (1995).

⁶²⁵ NTCA Aug. 29, 1996 Comments at 5.

⁶²⁶ As discussed in ¶ 179 *supra*, for purposes of this Order we adopt the definition of "incumbent LEC" in section 251(h).

⁶²⁷ See 13 C.F.R. § 121.201 (SIC 4813).

⁶²⁸ See Mid-Tex Electric Cooperative, Inc. v. FERC, 773 F.2d 327, 340-343 (D.C.Cir. 1985) (holding that "an agency may properly certify that no regulatory flexibility analysis is necessary when it determines that the rule will not have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule," and rejecting SBA's argument that the RFA is intended to apply to all rules that affect small entities, whether the small entities are directly regulated or not).

222. For the purposes of this Order, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities.⁶²⁹ Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.⁶³⁰ SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be a small entity when it has fewer than 1,500 employees.⁶³¹

223. *Incumbent LECs.* SBA has not developed a definition of small incumbent LECs. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services.⁶³² Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and regulations adopted in this Order.

224. *Non-Incumbent LECs.* SBA has not developed a definition of small non-incumbent LECs. For purposes of this Order, we define the category of "small non-incumbent LECs" to include small entities providing local exchange services which do not fall within the statutory definition in section 251(h), including potential LECs, LECs which have entered the market since the 1996 Act was passed, and LECs which were not members of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations.⁶³³ We believe it is impracticable to estimate the number of small entities in this

⁶²⁹ See 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632).

⁶³⁰ 15 U.S.C. § 632.

⁶³¹ 13 C.F.R. § 121.201.

⁶³² Federal Communications Commission, CCB, Industry Analysis Division, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Tbl. 1 (Number of Carriers Reporting by Type of Carrier and Type of Revenue) (Dec. 1996) (TRS Worksheet).

⁶³³ 47 U.S.C. § 251(h).

category.⁶³⁴ We are unaware of any data on the number of LECs which have entered the market since the 1996 Act was passed, and we believe it is impossible to estimate the number of entities which may enter the local exchange market in the near future. Nonetheless, we will estimate the number of small entities in a subgroup of the category of "small non-incumbent LECs." According to our most recent data, 57 companies identify themselves in the category "Competitive Access Providers (CAPs) & Competitive LECs (CLECs)."⁶³⁵ A CLEC is a provider of local exchange services which does not fall within the definition of "incumbent LEC" in section 251(h). Although it seems certain that some of the carriers in this category are CAPs,⁶³⁶ are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of non-incumbent LECs that would qualify as small business concerns under SBA's definition.

D. Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

225. Under our current regulations, independent LECs are classified as non-dominant interexchange carriers if they provide interstate, domestic, interexchange services through an affiliate that satisfies the separation requirements established in the Fifth Report and Order. Independent LECs offering interstate, domestic, interexchange services directly (rather than through a separate affiliate), or through an affiliate that does not satisfy the specified conditions, are subject to dominant carrier regulation. Independent LECs are permitted to provide international, interexchange services subject to non-dominant or dominant regulation, as determined on a case-by-case basis. Non-dominant interexchange carriers are not subject to rate regulation, and currently may file tariffs that are presumed lawful on one day's notice and without cost support.⁶³⁷ Non-dominant carriers are also

⁶³⁴ See 5 U.S.C. § 607.

⁶³⁵ TRS Worksheet.

⁶³⁶ While the Commission has not prescribed a definition for the term "CAP," it is generally not used to refer to companies that provide local exchange services.

⁶³⁷ Tariff Filing Requirements for Non-Dominant Carriers, CC Docket No. 93-36, Order on Remand, 10 FCC Rcd 13,653 (1995). As discussed in note 8 *supra*, the Commission recently determined, pursuant to section 10 of the Communications Act, to forbear from requiring non-dominant interexchange carriers to file tariffs for interstate, domestic, interexchange services. The Commission therefore ordered, *inter alia*, non-dominant interexchange carriers to cancel their tariffs for interstate, domestic, interexchange services on file with the Commission within a nine-month transition period and not to file any such tariffs thereafter. Tariff Forbearance Order at ¶¶ 89-93, stayed pending judicial review, MCI Telecom. Corp. v. FCC, No. 96-1459 (D.C. Cir. Feb. 13, 1997). See also Policy and Rules Concerning the Interstate, Interexchange Marketplace: Guidance Concerning Implementation as a Result of the Stay Order of the U.S. Court of Appeals for the D.C. Circuit, CC Docket No. 96-61, Public Notice, DA 97-493 (rel. March 6, 1997).

subject to streamlined section 214 requirements.⁶³⁸ Compliance with these requirements may require small incumbent LECs to use accounting, economic, technical, legal, and clerical skills.

226. In this Order, we have found that all incumbent independent LECs, including small incumbent independent LECs, must provide in-region, interstate, domestic, interexchange services through a separate affiliate that satisfies the Fifth Report and Order requirements. We are aware of three companies currently providing interexchange services directly on dominant basis, Union Telephone Company (of Wyoming), GTE Hawaiian Tel., and MTC. We permit companies that are not currently providing interexchange services through a separate affiliate that satisfies the Fifth Report and Order requirements one year from January 1, 1997 to comply with the Fifth Report and Order separation requirements. We also extend this regulatory regime, which applies to domestic services, to international, interexchange services as well. Pursuant to this Order, all incumbent independent LECs, including small incumbent independent LECs, must provide in-region, interstate, domestic, interexchange services and international, interexchange services through a separate affiliate that satisfies the Fifth Report and Order separation requirements. Specifically, incumbent independent LECs must provide these services through a separate affiliate that must: (1) maintain separate books of account; (2) not jointly own transmission or switching facilities with its affiliated exchange companies; and (3) obtain any services from its affiliated exchange companies at tariffed rates and conditions.⁶³⁹ In this Order, we have also eliminated the Fifth Report and Order separation requirements as a condition for non-dominant treatment of incumbent independent LECs' provision of out-of-region, interstate, domestic, interexchange services.

E. Steps Taken to Minimize the Significant Economic Impact of this Report and Order on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered and Rejected

227. We believe that our actions eliminating dominant carrier regulation of independent LEC provision of in-region, interstate, domestic, interexchange services, yet maintaining all of the Fifth Report and Order separation requirements to guard against anticompetitive conduct in the form of cost misallocation or unreasonable discrimination, will facilitate the provision of in-region, interstate, domestic, interexchange services by independent LECs, many of which may be small incumbent LECs. We reject proposals to

⁶³⁸ See 47 C.F.R. §§ 63.71, 63.07(a).

⁶³⁹ Fifth Report and Order, 98 FCC 2d at 1198, ¶ 9. For purposes of these requirements, an "affiliate" of an independent LEC is "a carrier that is owned (in whole or in part) or controlled by, or under common control with, an exchange telephone company." Id.

remove the Fifth Report and Order requirements, for reasons set forth in Section IV.B.1.

228. Our actions seem likely to benefit all incumbent independent LECs providing in-region, interstate, domestic, interexchange services on a non-dominant basis, some of which may be small incumbent LECs, because any increase in costs of regulatory compliance can be amortized over a period of one year. As noted in Section IV.B.1, incumbent LECs that currently provide these services on an integrated basis subject to dominant carrier regulation are given one year from the date of release of this Order to comply with the Fifth Report and Order separation requirements.

229. We decline to impose section 272 requirements, aspects of dominant carrier regulation, or any additional requirements on independent LECs' provision of in-region, interstate, domestic, interexchange services. Consistent with our belief that independent LECs are less likely to be able to engage in anticompetitive conduct than the BOCs,⁶⁴⁰ we therefore establish a less stringent regulatory regime for the independent LECs. This seems likely to benefit independent LECs, including small incumbent LECs, by not subjecting them to burdensome regulations that may serve only to hamper competition in the interexchange market. For the reasons set forth in Section IV.B.1, we reject alternatives to impose additional requirements on independent LECs' provision of in-region, interstate, domestic, interexchange services.

230. We limit the scope of the separation requirements to incumbent independent LECs. By not imposing the Fifth Report and Order requirements on non-incumbent LECs, we avoid imposing unnecessary regulation on new entrants into the local exchange market that wish to provide in-region, interstate, domestic, interexchange services, and will not have control of incumbent local exchange and exchange access facilities. This seems likely to benefit all of these new entrants, some of which may be small entities, by lowering entry costs, lowering the disparity in market power between new entrants and incumbent LECs, minimizing the risk of being subjected to legal action, and decreasing administrative costs. We reject proposals to subject non-incumbent LECs to the same requirements as incumbent LECs, for the reasons set forth in Section IV.B.2.

231. We apply our regulations equally to all incumbent independent LECs, in view of our conclusion that the size of an independent LEC will not affect its incentives to engage in cost misallocation between its monopoly services and its competitive services. Our action is intended to foster competition in the in-region, interstate, domestic, interexchange marketplace nationwide by preventing all incumbent independent LECs, regardless of size, from using their control of bottleneck local exchange and exchange access facilities to thwart new entry. This seems likely to benefit all new entrants into the local exchange market that

⁶⁴⁰ See supra ¶ 170.

wish to provide in-region, interstate, domestic, interexchange services, some of which may be small entities, by helping to reduce entry costs and lower the disparity in market power between new entrants and other incumbent LECs. Moreover, our action will likely help to establish these favorable entry conditions uniformly nationwide, fostering increased certainty which will benefit all new entrants, including any small entities. We reject alternatives to exempt all incumbent LECs with less than two percent of the nation's access lines from our regulations, for the reasons stated in Section IV.B.3.

232. We extend the regulatory regime described above, which governs independent LECs' provision of in-region, interstate, domestic, interexchange services, to independent LECs' provision of in-region, international services. We believe that this action will benefit incumbent LECs and non-incumbent LECs, some of which may be small incumbent LECs or small entities, for the same reasons enumerated in our analysis for in-region, interstate, domestic, interexchange services, such as helping to reduce market entry costs, decreasing the disparity in market power between new entrants and other incumbent LECs, and lowering administrative costs. We decline to treat independent LECs' provision of in-region, interstate, domestic, interexchange services and in-region, international services differently, for the reasons stated in Section IV.B.4.

233. As stated in Section IV.B.5, we intend to commence a proceeding three years from the date of adoption of this Order to determine whether the emergence of competition in the local exchange and exchange access marketplace justifies removal of the Fifth Report and Order requirements. We believe that three years should be a reasonable period of time in which to expect effective competition to develop in local exchange and exchange access markets. We reject proposals to decide in this proceeding whether to sunset separate affiliate requirements for independent LECs, for the reasons stated in Section IV.B.5.

234. Report to Congress: The Commission shall send a copy of this FRFA, along with this Report and Order, in a report to Congress pursuant to the SBREFA, 5 U.S.C. § 801(a)(1)(A). A copy of this analysis will also be provided to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register.

VII. FINAL PAPERWORK REDUCTION ANALYSIS

235. Each of the two Notices of Proposed Rulemaking from which this Order issues proposed changes to the Commission's information collection requirements. As required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, the Commission sought written comment from the public and from the Office of Management and Budget (OMB) on the proposed changes. The collections described therein, however, are addressed in other

proceedings.⁶⁴¹

236. In this Order, we have decided to require independent LECs to comply with Fifth Report and Order separation requirements in order to provide international, interexchange services. Pursuant to the separation requirements, an independent LEC and its international, interexchange affiliate must maintain separate books of account. This requirement constitutes a new "collection of information" within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3520. Implementation of this requirement is subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

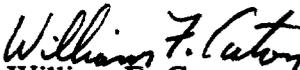
VIII. ORDERING CLAUSES

237. Accordingly, IT IS ORDERED that pursuant to sections 1, 2, 4, 201, 202, 251, 271, 272 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201, 202, 251, 271, 272, and 303(r), the REPORT AND ORDER IS ADOPTED, and the requirements contained herein will become effective 30 days after publication of a summary in the Federal Register. The collection of information contained within is contingent upon approval by the OMB.

238. IT IS FURTHER ORDERED that Part 64, Subpart Q of the Commission's rules, 47 C.F.R. § 64Q, is ADDED as set forth in Appendix B hereto.

239. IT IS FURTHER ORDERED that the Secretary shall send a copy of this REPORT AND ORDER, including the final regulatory flexibility analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 605(b) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 et seq.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

⁶⁴¹ See e.g., Tariff Forbearance Order; Non-Accounting Safeguards Order.

APPENDIX A

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
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. (GST)
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)
LCI International Telecommunications Corp. (LCI)
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
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)

List of Commenters in CC Docket No. 96-61, Phase II

Alabama Public Service Commission (Alabama PSC)
ALLTEL Corporate Services, Inc.
America's Carriers Telecommunication Association (ACTA)
American Petroleum Institute (API)
American Public Communications Council (APCC)
Ameritech
AMSC Subsidiary Corporation (AMSC)
AT&T Corp. (AT&T)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Corp. (BellSouth)
Cable & Wireless, Inc. (Cable & Wireless)
Citizens Utilities Company (Citizens Utilities)
Columbia Long Distance Service, Inc. (CLDS)
Competitive Telecommunications Association (CompTel)
Commonwealth of the Northern Mariana Islands
Florida Public Service Commission (Florida PSC)
Frank Collins
Frontier Corporation (Frontier)

General Communication, Inc. (GCI)
General Services Administration (GSA)
GTE Service Corp. (GTE)
Governor of Guam & the Guam Telephone Authority
Guam Public Utility Commission (Guam PUC)
Harvey William Ward (Ward)
Iowa Utilities Board
IT&E Overseas, Inc.
JAMA Corporation
John Stauralakis, Inc.
Kevin Loflin (Loflin)
Kristine Stark (Stark)
LDDS WorldCom (LDDS)
Louisiana Public Service Commission (Louisiana PSC)
MCI
MFS
Michael Sussman (Sussman)
Missouri Public Service Commission (Missouri PSC)
National Association of Regulatory Utilities Commissioners (NARUC)
New York State Department of Public Service
NYNEX Telephone Companies (NYNEX)
Office of the Ohio Consumers' Counsel (Ohio Consumers' Counsel)
Pacific Telesis Group (PacTel)
Paul Lee (Lee)
PCI Communications, Inc.
Peggy Orlic (Orlic)
Pennsylvania Office of Consumer Advocate
Pennsylvania Public Utility Commission (Pennsylvania PUC)
Public Utilities Commission of Ohio
Rural Telephone Coalition
Scherer Communications Group
SBC Communications, Inc. (SBC)
Southern New England Telephone Company (SNET)
Sprint Corporation (Sprint)
State of Alaska (Alaska)
State of Hawaii (Hawaii)
TCA, Inc.
TDS Telecommunications Corp.
Telecommunications Resellers Association (TRA)
United States Telephone Association (USTA)
U.S. West, Inc. (U.S. West)
Vanguard Cellular Systems, Inc.
Washington Utilities & Transportation Commission
Zankle Worldwide Telecom (ZWT)

APPENDIX B - Final Rules

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

1. Part 64 of Title 47 of the Code of Federal Regulations (C.F.R.) is amended as follows:

PART 64 -- MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Subpart Q -- Separate Affiliate Requirements For Incumbent Independent Local Exchange Carriers That Provide In-Region, Interstate Domestic Interexchange Services Or In-Region International Interexchange Services

Sec.

64.1901	Basis and purpose.
64.1902	Terms and definitions.
64.1903	Obligations of all incumbent independent local exchange carriers.

Subpart Q -- Separate Affiliate Requirements For Incumbent Independent Local Exchange Carriers That Provide In-Region, Interstate Domestic Interexchange Services Or In-Region International Interexchange Services

§ 64.1901 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 regulate the provision of in-region, interstate, domestic, interexchange services and in-region international interexchange services by incumbent independent local exchange carriers.

§ 64.1902 Terms and definitions.

Terms used in this part have the following meanings:

Books of Account. Books of account refer to the financial accounting system a company uses to record, in monetary terms the basic transactions of a company. These books of account reflect the company's assets, liabilities, and equity, and the revenues and expenses from operations. Each company has its own separate books of account.

Independent Local Exchange Carrier (Independent LEC). Independent local exchange carriers are local exchange carriers, including GTE, other than the BOCs.

Incumbent Independent Local Exchange Carrier (Incumbent Independent LEC). The term incumbent independent local exchange carrier means, with respect to an area, the independent local exchange carrier that: (1) on February 8, 1996, provided telephone

exchange service in such area; and (2) (i) on February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to § 69.601(b) of this title; or (ii) is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in clause (i) of this paragraph. The Commission may also, by rule, treat an independent local exchange carrier as an incumbent independent local exchange carrier pursuant to section 251(h)(2) of the Communications Act of 1934, as amended.

Independent Local Exchange Carrier Affiliate (Independent LEC Affiliate). An independent local exchange carrier affiliate is a carrier that is owned (in whole or in part) or controlled by, or under common ownership (in whole or in part) or control with, an independent local exchange carrier.

In-Region Service. In-region service means telecommunications service originating in an independent local exchange carrier's local service areas or 800 service, private line service, or their equivalents that: (1) terminate in the independent LEC's local exchange areas, and (2) allow the called party to determine the interexchange carrier, even if the service originates outside the independent LEC's local exchange areas.

Local Exchange Carrier. The term local exchange carrier means 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 a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of that term.

§ 64.1903 Obligations of all incumbent independent local exchange carriers.

(a) Except as provided in paragraph (c) of this section, an incumbent independent LEC providing in-region, interstate, interexchange services or in-region international interexchange services shall provide such services through an affiliate that satisfies the following requirements:

- (1) The affiliate shall maintain separate books of account from its affiliated exchange companies. Nothing in this section requires the affiliate to maintain separate books of account that comply with Part 32 of this title;
- (2) The affiliate shall not jointly own transmission or switching facilities with its affiliated exchange companies. Nothing in this section prohibits an affiliate from sharing personnel or other resources or assets with an affiliated exchange company; and
- (3) The affiliate shall acquire any services from its affiliated exchange companies for which the affiliated exchange companies are required to file a tariff at tariffed rates, terms, and conditions. Nothing in this section shall prohibit the affiliate from acquiring any unbundled network elements or exchange services for the provision of a telecommunications service from its affiliated exchange companies, subject to the same terms and conditions as

provided in an agreement approved under section 252 of the Communications Act of 1934, as amended.

(b) The affiliate required in paragraph (a) of this section shall be a separate legal entity from its affiliated exchange companies. The affiliate may be staffed by personnel of its affiliated exchange companies, housed in existing offices of its affiliated exchange companies, and use its affiliated exchange companies' marketing and other services, subject to paragraph (a)(3) of this section.

(c) An incumbent independent LEC that is providing in-region, interstate, domestic interexchange services or in-region international interexchange services prior to January 1, 1996, but is not providing such services through an affiliate that satisfies paragraph (a) of this section as of January 1, 1997 shall comply with the requirements of this section no later than January 1, 1998.

April 18, 1997

**Separate Statement
of
Commissioner Susan Ness**

Re: Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Service Area; Policy and Rules Concerning Interstate, Interexchange Marketplace

Good government requires knowing when to intervene, and when to step back. Today, we step back from a market segment where active regulation would do more harm than good.

Our order today clarifies the circumstances under which the interstate interexchange services of local exchange carriers will be treated as "nondominant." We specify the conditions under which the local telephone companies, including the Bell companies, can provide interstate, interexchange services free of requirements for cost support data, advance review of tariff changes, and other trappings of dominant carrier regulation.

In making our determination of nondominance, we are not blinking at the market power possessed by local exchange carriers. To the contrary, we will continue to focus our rules and our regulatory resources on controlling, and ultimately dissipating, that market power. That means directing our attention to the services and facilities where the LECs possess market power -- i.e., local exchange and exchange access services -- and policing the relationship between the operating companies and their interexchange affiliates. So long as these matters are properly attended to, as contemplated by our interconnection and structural separation rules, dominant carrier regulation of the interexchange services themselves would be unnecessary and possibly counterproductive.