c. Effect of the 1996 Act

(1) Section 251 Unbundling

92. Section 251 of the Act requires incumbent LECs, including the BOCs and GTE, to provide to requesting telecommunications carriers interconnection and access to unbundled network elements at rates, terms, and conditions that are just, reasonable, and nondiscriminatory, and to offer telecommunications services for resale.[221] The Act defines "telecommunications carrier" as "any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226)."[222] As we concluded in the *Local Competition Order*, the term "telecommunications carrier" does not include ISPs that do not also provide domestic or international telecommunications.[223] Thus, as discussed above, companies that provide both information and telecommunications services are able to request interconnection, access to unbundled network elements, and resale under section 251, but companies that only provide information services ("pure ISPs") are not accorded such rights under section 251.[224]

93. Despite this limitation, there are several ways that pure ISPs may be able to obtain benefits from section 251, as discussed in Part III.B above.[225] We recognize, however, that section 251 provides a level of unbundling that pure ISPs do not receive under the Commission's current ONA framework.[226] Unbundling under section 251 includes the physical facilities of the network, together with the features, functions, and capabilities associated with those facilities.[227] Section 251 also requires incumbent LECs to provide for the collocation at the LEC's premises of equipment necessary for interconnection or access to unbundled network elements, under certain conditions. Unbundling under ONA, in contrast, emphasizes the unbundling of basic services, not the substitution of underlying facilities in a

---

[221] *See* 47 U.S.C. § 251(c).

[222] 47 U.S.C. § 153(44); *see also id.* § 153(46) for the definition of "telecommunications service."

[223] *Local Competition Order*, 11 FCC Rcd at 15990, ¶ 995. Conversely, a company that provides both telecommunications and information services must be classified as a telecommunications carrier to the extent that it is acting as a telecommunications carrier (*i.e.*, to the extent that it is providing telecommunications services). *Id.* at 15888, 15990, ¶¶ 992, 995. *See also* 47 U.S.C. § 153(44).

[224] *Local Competition Order*, 11 FCC Rcd at 15988-15990, ¶¶ 992-95; *see supra* ¶ 32.

[225] *See* discussion *supra* ¶ 33 .

[226] *See supra* ¶¶ 29-32.

[227] *Local Competition Order*, 11 FCC Rcd at 15631, ¶ 258.

carrier's network.[228] ONA unbundling also does not mandate interconnection on carriers' premises of facilities owned by others.[229] These differences may be due to the different policy goals that the two regimes were designed to serve.[230]

94. As seen above, section 251 unbundling raises a number of issues relating to the Commission's ONA framework. In the *Non-Accounting Safeguards Order*, for example, some parties stated that section 251's interconnection and unbundling requirements render the Commission's *Computer III* and ONA requirements unnecessary.[231] A related issue is whether the Commission, pursuant to our general rulemaking authority, should extend section 251-type unbundling to "pure ISPs."

95. In this Further Notice, we seek comment on whether section 251, as currently applied, obviates the need for ONA. We ask commenters to analyze this issue with respect to both pure ISPs as well as ISPs that are also telecommunications carriers. For example, is ONA unbundling still necessary for ISPs that are also telecommunications carriers for whom section 251 unbundling is available? As for pure ISPs, does the fact that they can obtain the benefits of section 251 by becoming telecommunications carriers, or by partnering with or obtaining basic services from competitive telecommunications providers, render ONA unnecessary? Commenters should address whether ONA should still be available for pure ISPs or other ISPs in areas where there may not be sufficient competition in the local exchange market.

96. We also seek comment on whether it is in the public interest for the Commission to extend section 251-type unbundling to pure ISPs.[232] Put differently, we seek comment regarding whether, pursuant to our general rulemaking authority contained in section 201-205 of the Act, and as exercised in the *Computer III*, *ONA*, and *Expanded Interconnection* proceedings, we can and should extend some or all rights accorded by section 251 to requesting telecommunications carriers to pure ISPs. Commenters who contend that it is in the public interest to extend section 251-type unbundling should address why it is necessary to do so, given the alternative options pure ISPs have to obtain the benefits of section 251 unbundling, as well as the unbundling rights ISPs currently enjoy under the

---

[228] *BOC ONA Order*, 4 FCC Rcd at 41, ¶ 69.

[229] *Id.*

[230] *See supra* ¶ 31.

[231] *See, e.g., Non-Accounting Safeguards Order*, 11 FCC Rcd at 21968, 21970, ¶¶ 129, 133 (noting NYNEX and Bell Atlantic comments).

[232] We note that related issues have been raised in the *Information Services and Internet Access NOI*, 11 FCC Rcd at 21490-93, ¶¶ 311-18, and may be addressed in that proceeding as well. *See also* ¶ 8 for a discussion of the Universal Service Report.

Commission's existing ONA regime. Commenters should also address whether the extension of section 251-type unbundling to pure ISPs would be inconsistent with section 251, which by its terms applies only to telecommunications carriers. Similarly, commenters should address whether section 251-type unbundling is appropriate for pure ISPs, given the different purposes section 251 and ONA serve, and the different approaches to unbundling they encompass. Furthermore, commenters that argue that we should extend the section 251 unbundling framework to pure ISPs should explain what such a framework would include. For example, commenters should address, among other things, whether extending section 251-type unbundling rights to pure ISPs necessarily requires the extension to pure ISPs of any obligations under section 251 or other Title II provisions. Commenters should also address whether extending section 251-type unbundling to pure ISPs obviates the need for ONA.[233]

(2) InterLATA Information Services

97. As discussed above, we tentatively conclude in this Further Notice that the Commission's nonstructural safeguard regime should continue to apply to BOC provision of intraLATA information services.[234] Prior to the enactment of the 1996 Act, however, we did not distinguish between intraLATA and interLATA information services, and we did not explicitly apply our *Computer III* and ONA rules to BOC provision of interLATA information services since the BOCs were prevented under the MFJ from providing interLATA services.[235] Section 272 of the 1996 Act, however, does distinguish between intraLATA and interLATA information services by imposing separation and nondiscrimination requirements on BOC provision of interLATA information services.[236] We seek comment, therefore, on whether the Commission's ONA requirements, as modified or amended by this proceeding, should be interpreted as encompassing BOC provision of interLATA information services. We also seek comment on whether it would be inconsistent with section 272 for the Commission to apply ONA requirements to BOC provision of interLATA information services.

98. In addressing this issue, we ask that commenters take note of the following policy considerations. As noted above, the Commission required the BOCs to implement

---

[233] We do not address the issue of pricing of elements or services in this Further Notice. Those issues may be addressed in the proceeding on information services and Internet usage. *See Information Service and Internet Access NOI*, 11 FCC Rcd 21354. In addition, in the *Access Reform Report and Order*, we concluded that "ISPs should not be subject to interstate access charges." *Access Reform Report and Order*, *supra* note 148. We are not reexamining that decision here.

[234] *See supra* ¶¶ 48, 59; *see also Non-Accounting Safeguards Order* 11 FCC Rcd at 21969-70, ¶ 132; *Telemessaging and Electronic Publishing Order*, 12 FCC Rcd at 5446, 5455, ¶¶ 200, 221.

[235] *See supra* note 147.

[236] *See* 47 U.S.C. § 272.

ONA regardless of whether ONA provided the basis for elimination of structural separation.[237] We stated that ONA serves the public interest, not only by serving as a critical nonstructural safeguard against anticompetitive behavior by the BOCs, but also by promoting the efficient use of the network by ISPs, to the benefit of consumers.[238] On the other hand, section 272 already sets forth the statutory requirements for BOC provision of interLATA information services and, therefore, including such services within the Commission's ONA framework may be unnecessary to protect the public interest. Moreover, as discussed above, section 251 unbundling may obviate ONA in some or all respects, including its application to BOC provision of interLATA information services. We also seek comment, to the extent commenters believe that ONA should encompass BOC provision of interLATA information services, on how the Commission's current ONA requirements, including ONA reporting requirements,[239] may need to be changed or supplemented, if at all, to take account of such services.

2. ONA and Nondiscrimination Reporting Requirements

a. Introduction

99. In this section of the Notice, we examine the various reporting requirements imposed on the BOCs and GTE by the *Computer III* and *ONA* regimes. These reporting requirements were originally intended as a safeguard, in that the BOCs and GTE must disclose information that would allow detection of patterns of access discrimination. In addition, certain reporting requirements were intended to promote competition, by providing interested parties (including ISPs and equipment manufacturers) with information about service introduction and deployment by the subject carriers, which may assist such parties in structuring their own operations.

100. We recognize, however, that a number of years have passed since certain of these reporting requirements were imposed, and that some of the information we require to be disclosed may no longer be useful, relevant, or related to either the safeguard or competition promotion functions identified above. Thus, as part of the Commission's 1998 biennial review of regulations, we intend in this proceeding to reexamine each of the reporting obligations imposed on the BOCs and GTE by the *Computer III* and *ONA* regimes, to determine whether any of these requirements should be eliminated or modified, consistent

[237] *See ONA Remand Order*, 5 FCC Rcd at 7720, ¶¶ 7, 11.

[238] *Id.* It is for this reason that we applied the ONA requirements to GTE as well. *See GTE ONA Order*, 9 FCC Rcd at 4924, 4932-33, ¶¶ 3, 16-18.

[239] *See* discussion *infra* ¶¶ 99-116.

with the 1996 Act.[240] We also seek comment on what, if any, different or additional reporting requirements should be imposed to safeguard against anticompetitive behavior by the BOCs and GTE and to promote competition in the provision of information services. In particular, we also seek comment on methods to facilitate access to and use of this information by unaffiliated entities, including small entities.

101. We set forth below the ONA reporting reporting requirements and make specific inquiries regarding each requirement. The following are general inquiries that apply to all ONA reporting requirements. We ask parties to respond to both the specific and general inquiries in their comments on each ONA reporting requirement.

a. Is the information reported necessary to or helpful in monitoring the compliance of the subject carriers with their unbundling and nondiscrimination obligations? If not, why not? Would other types of information be more useful for compliance monitoring or enforcement purposes?

b. Is this requirement duplicative? In other words, does the Commission currently require other reports that disclose the same or substantially similar information, or serve the same purposes? If so, how should the Commission streamline these requirements?

c. Do industry groups, such as ATIS and/or NIIF, collect and compile information that is duplicative of that required by the Commission? If so, is that information readily available to interested parties?

d. Should we continue to require the subject carriers to file this report with the Commission both on paper and on disk, or should we adopt streamlined filing proposals similar to those set forth in the Further Notice of Proposed Rulemaking in the *Non-Accounting Safeguards* proceeding?[241] Specifically, should we require either:

i) a certification process whereby the subject carrier must maintain the required information in a standardized format, and file with the Commission an annual affidavit stating: (1) the information is so maintained; (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; or

[240] *See supra* ¶ 6; 47 U.S.C. § 161.

[241] *See, e.g., Non-Accounting Safeguards Order*, 11 FCC Rcd at 22079-86, ¶¶ 362-382.

ii) electronic posting whereby the subject carriers must make the required information available on the Internet (for example, by posting it on their website) or through another similar electronic mechanism?

e. If we continue to maintain a paper filing requirement, is the information presented in a clear, comprehensible format? If not, what modifications to the format would improve clarity and accessibility?

f. If we continue to maintain a paper filing requirement, should we alter the frequency with which we require this report to be filed? If so, what alteration should be made, and what is the basis for that alteration? In the alternative, if we impose a certification process or electronic posting requirement, how often should subject carriers be required to update the information they must maintain? How must the subject carriers maintain historical data, and for what length of time?

102. In conjunction with our inquiries elsewhere in this item, we seek to examine, and, if possible, clarify the relationship between the ONA reporting requirements and the other obligations imposed on the subject carriers by ONA. For example we seek comment above on whether we should modify or eliminate the ONA unbundling requirements.[242] To the extent that parties argue that we should do so, we request that they comment upon the effect that such action would have on the reporting obligations of the subject carriers. It seems that if the subject carriers were no longer required to unbundle and tariff ONA services, much of the information we currently require to be disclosed in the annual and semi-annual ONA reports would cease to exist. Does this mean that all such reporting requirements should be eliminated? Are there other meaningful reporting requirements that should be imposed instead?

b. Annual ONA Reports

103. The BOCs and GTE are required to file annual ONA reports that include information on: 1) annual projected deployment schedules for ONA service, by type of service (BSA, BSE, CNS), in terms of percentage of access lines served system-wide and by market area;[243] 2) disposition of new ONA service requests from ISPs; 3) disposition of ONA service requests that have previously been designated for further evaluation; 4) disposition of ONA service requests that were previously deemed technically infeasible; 5) information on Signaling System 7 (SS7), Integrated Services Digital Network (ISDN), and Intelligent Network (IN) projected development in terms of percentage of access lines served system-

[242] *See supra* Part IV.D.1.

[243] This information must cover the upcoming three years, and must refer to generic *ONA Services User Guide* names for the services covered, as well as the carrier's own trade name for the service. *BOC ONA Further Amendment Order*, 6 FCC Rcd at 7653, ¶ 9, n.22.

wide and on a market area basis;[244] 6) new ONA services available through SS7, ISDN, and IN; 7) progress in the IILC (now NIIF) on continuing activities implementing service-specific and long-term uniformity issues; 8) progress in providing billing information including Billing Name and Address (BNA), line-side Calling Number Identification (CNI), or possible CNI alternatives, and call detail services to ISPs;[245] 9) progress in developing and implementing Operation Support Systems (OSS) services and ESP access to those services; 10) progress on the uniform provision of OSS services; and 11) a list of BSEs used in the provision of BOC/GTE's own enhanced services.[246] In addition, the BOCs are required to report annually on the unbundling of new technologies arising from their own initiative, in response to requests by ISPs, or resulting from requirements imposed by the Commission.[247]

104. We believe that certain aspects of the annual reporting requirements may be outdated and should be streamlined. We seek comment, for example, on whether we should continue to require the subject carriers to continue to report on projected deployment of ONA services (item 1 above), particularly as this information does not appear to change appreciably from year to year. Should we instead require the subject carriers to make a one-time filing of a 5-year deployment schedule at the time a new ONA service is introduced? In addition, should we require the subject carriers to continue to report on the disposition of ONA service requests from ISPs (items 2,3, and 4 above), despite evidence that the frequency of such requests has declined appreciably since the initial implementation of ONA?

105. We seek comment on whether we should continue to require the subject carriers to report on deployment of SS7 (items 5 and 6), which has become available in most service areas. We further seek comment on whether we should continue to require the subject carriers to report on the availability and deployment of ISDN, IN, and AIN services (items 5 and 6). In addition, we seek comment regarding whether the requirement that the BOCs report on "new ONA services available through SS7, ISDN, and IN, and plans to provide

[244] SS7 data must be reported by TR 317 and TR 394; ISDN data by Basic Rate Interface (BRI) and Primary Rate Interface (PRI); and IN data by release number or other designation type. *BOC ONA Further Amendment Order*, 6 FCC Rcd at 7660, ¶ 29, n.44.

[245] Call detail services allow a telephone system to collect, record, and organize information about telephone calls so the system can be used for a variety of business purposes.

[246] *BOC ONA Further Amendment Order*, 6 FCC Rcd at 7677-78 App. B; *GTE ONA Order*, 9 FCC Rcd at 4940-41, ¶¶ 33-35.

[247] *BOC ONA Second Further Amendment Order*, 8 FCC Rcd at 2608, ¶ 10.

these services" (item 6)[248] overlaps so significantly with the requirement that they report on the unbundling of new technologies[249] that one of these requirements should be eliminated.

106. In addition, we seek comment on whether, and to what extent, we should alter the requirement that carriers report on progress in industry forums regarding uniformity issues. Currently, subject carriers are required to report on progress in the IILC on continuing activities implementing service-specific and long-term uniformity issues (item 7). As a preliminary matter, we note that the functions that used to be performed by the IILC were transferred, as of January 1, 1997, to the NIIF.[250] We tentatively conclude that, at a minimum, the ONA reporting requirement should be updated to reflect this change. We believe that the BOCs have agreed to provide to the NIIF periodic updates regarding issues that have been resolved. We seek comment on the nature of such updates to the NIIF, including specifically what information the BOCs provide. We further seek comment regarding whether the information from such updates is comprehensive enough, and sufficiently accessible to interested parties, to allow us to eliminate the ONA reporting requirement covering progress of matters in the NIIF. In the alternative, we seek comment regarding whether there are other sources of information produced by or for ATIS or the NIIF that may reasonably substitute for this ONA reporting requirement.

107. We seek comment on whether we should continue to require the subject carriers to report on progress in providing billing information and call detail services to ISPs (item 8). We seek comment on whether we should continue to require the subject carriers to report on progress in developing, implementing, and providing access to Operation Support Systems (OSS) services (items 9 and 10). We believe it is important for such information to continue to be publicly available. We recognize, however, that such information may be more appropriately provided pursuant to other statutory provisions. For example, we issued a Public Notice on June 10, 1997, asking for comment on LCI's petition for expedited rulemaking to establish reporting requirements, performance, and technical standards for OSS in the context of section 251 of the Act.[251] We seek comment on the appropriate forum for collecting information about OSS and whether continued reporting under *Computer III* is necessary in light of other pending Commission proceedings. We further seek comment on

---

[248] *BOC ONA Further Amendment Order*, 6 FCC Rcd at 7677-78, App. B.

[249] *BOC ONA Second Further Amendment Order*, 8 FCC Rcd at 2608, ¶ 10.

[250] *See supra* note 87.

[251] *Comments Requested on Petition for Expedited Rulemaking to Establish Reporting Requirements and Performance and Technical Standards for Operation Support Systems*, Public Notice, RM 9101, DA 97-1211 (rel. June 10, 1997) (*LCI OSS Petition*).

what, if any, changes we should make to the ONA OSS reporting requirements, to better reflect the obligations with respect to OSS imposed on carriers in the *Local Competition Order*.[252]

c. Semi-Annual ONA Reports

108. In addition to the annual ONA reports discussed above, the BOCs and GTE are required to file semi-annual ONA reports.[253] These semi-annual reports include: (1) a consolidated nationwide matrix of ONA services and state and federal ONA tariffs;[254] (2) computer disks and printouts of data regarding state and federal tariffs; (3) a printed copy and a diskette copy of the *ONA Services User Guide*;[255] (4) updated information on 118 categories of network capabilities requested by ISPs and how such requests were addressed, with details and matrices;[256] and 5) updated information on BOC responses to the requests and matrices.

109. Considerable portions of the semi-annual reports filed by the BOCs appear to be redundant, as each of the BOCs files identical information. This generic information includes the ONA service matrix and the Services Description section of the *ONA Services User Guide*, as well as information on the 118 network capabilities originally requested by ISPs, and how the BOCs collectively have responded to these requests. Bell Communications Research, Inc. (Bellcore) originated and, until its spin-off earlier this year, prepared these portions of the BOCs' semi-annual reports; currently, an organization called the National Telecommunications Alliance (NTA) has assumed this responsibility. We see no benefit to continuing to require each of the BOCs separately to file the generic portions of the semi-annual report, particularly as there appear to be few changes in this information from year to

---

[252] *See Local Competition Order*, 11 FCC Rcd at 15763-15768, ¶¶ 516-528.

[253] *BOC ONA Further Amendment Order*, 6 FCC Rcd at 7678, App. B; *GTE ONA Order*, 9 FCC Rcd at 4940-41, ¶¶ 33-35.

[254] Currently, the BOCs prepare a consolidated, nationwide matrix of their ONA services and the federal and state tariffing status of each. GTE prepares and files a matrix, following the format established by Bellcore, showing its own ONA services and their federal and state tariffing status.

[255] The *ONA Services User Guides* filed by the BOCs contain three parts: 1) a generic Services Description section (this information is identical for all the BOCs; it is supplied both on paper and on diskette); 2) a BOC-specific Tariff Reference section listing the BOC's ONA tariffs on a state-by-state basis (supplied on paper and on diskette); and 3) Wire Center Deployment information (supplied on diskette only). GTE also files all three types of information, including: 1) a Services Description section that follows the format established by the BOCs (on paper and on diskette); 2) GTE's own Tariff Reference section (on paper and on diskette); and 3) Wire Center Deployment information (supplied on diskette only).

[256] *See BOC ONA Order*, 4 FCC Rcd at 25-27, ¶¶ 31-36.

year. Thus, we tentatively conclude that the BOCs should be permitted to make one consolidated filing (or posting) for all generic information they currently submit in their semi-annual reports. We seek comment on this tentative conclusion. We further seek comment on whether we should allow GTE to join in this consolidated filing or posting (to the extent that this arrangement would be mutually agreeable to the parties) with respect to the information it files that overlaps with that filed by the BOCs.

110. In addition, we seek comment on the frequency with which we require the subject carriers to file the information contained in the semi-annual ONA reports. In particular, we inquire as to whether we should reduce the filing frequency, and restructure the semi-annual reports to become part of the annual ONA reports filed by the subject carriers. A reduction in filing frequency would decrease the burden imposed on the subject carriers, without, we believe, significantly affecting the quality or utility of the information supplied, much of which is either generic or rather static in nature, or is available through other means (for example, in the state and federal tariffs filed by the subject carriers).

111. We also seek comment regarding whether certain information required in the semi-annual reports overlaps with the information required in the annual reports. For example, in the annual ONA reports, the Commission requires the BOCs and GTE to supply information on the disposition of several categories of ONA requests,[257] whereas in the semi-annual reports, the Commission requires the BOCs and GTE to supply information regarding how they have responded to ISP requests for the existing 118 categories of network capabilities.[258] These separate requirements seem to elicit similar, if not identical, information. To the extent there is overlap, we seek comment regarding whether these requirements may be simplified and consolidated, or, in the alternative, whether either or both sets should be eliminated entirely. We also seek comment on other, similar, overlaps among the ONA reporting requirements, and what we should do to eliminate the burdens or inefficiencies associated with them.

d. Nondiscrimination Reports

112. The BOCs and GTE are also required to establish procedures to ensure that they do not discriminate in their provision of ONA services, including the installation, maintenance, and quality of such services, to unaffiliated ISPs and their customers.[259] For

---

[257] *BOC ONA Further Amendment Order*, 6 FCC Rcd at 7677-78, App. B.

[258] *BOC ONA Further Amendment Order*, 6 FCC Rcd at 7678, App. B; *GTE ONA Order*, 9 FCC Rcd at 4940-41, ¶¶ 33-35. The semiannual reports include a filing of a matrix of BOC and GTE ONA services and state and federal tariffs; data regarding state and federal tariffs; the *ONA Services Users Guide*; and other updated information in the areas of ISP requests, BOC and GTE responses, and services offered. *Id.*

[259] *Computer III Phase II Order*, 2 FCC Rcd at 3084, ¶¶ 88-89.

example, they must establish and publish standard intervals for routine installation orders based on type and quantity of services ordered, and follow these intervals in assigning due dates for installation, which are applicable to orders placed by competing service providers as well as orders placed by their own information services operations.[260] In addition, they must standardize their maintenance procedures where possible, by assigning repair dates based on nondiscriminatory criteria (e.g., available work force and severity of problem), and handling trouble reports on a first-come, first-served basis.[261]

113. In order to demonstrate compliance with the nondiscrimination requirements outlined above, the BOCs and GTE must file quarterly nondiscrimination reports comparing the timeliness of their installation and maintenance of ONA services for their own information services operations versus the information services operations of their competitors.[262] If a BOC or GTE demonstrates in its ONA plan that it lacks the ability to discriminate with respect to installation and maintenance services, and files an annual affidavit to that effect, it may modify its quarterly report to compare installation and maintenance services provided to its own information services operations with services provided to a sampling of all customers.[263] In their quarterly reports, the BOCs and GTE must include information on total orders, due dates missed, and average intervals for a set of service categories specified by the Commission,[264] following a format specified by the Commission.[265]

---

[260] *BOC ONA Order*, 4 FCC Rcd at 242, ¶ 467. The installation process is tracked by mechanized systems, which must assign available facilities and equipment in a nondiscriminatory manner, without regard to the identity of the customer ordering the service. *Id.* at 243, 244, ¶¶ 468, 472.

[261] *BOC ONA Order*, 4 FCC Rcd at 243, ¶ 470.

[262] *Computer III Phase II Order*, 2 FCC Rcd at 3086, ¶ 98. BOCs were also required to file other, similar quarterly installation and maintenance reports regarding their provision of services to affiliated and unaffiliated CPE vendors. *See Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies*, CC Docket No. 86-79, Report and Order, 2 FCC Rcd 143, 155, ¶ 84 (1987) (*BOC CPE Relief Order*), *modified on recon.* 3 FCC Rcd 22 (1987) (*BOC CPE Relief Reconsideration Order*). These filing requirements were recently eliminated by the Bureau. *See Revision of Filing Requirements*, CC Docket No. 96-23, 11 FCC Rcd 16326 (Com. Car. Bur. 1996) (*Revision of Filing Requirements Order*).

[263] *Computer III Phase II Reconsideration Order*, 3 FCC Rcd at 1161, ¶ 84. In addition, the *Computer III Phase II Order* originally imposed a requirement to report on the quality and reliability of ONA services BOCs provided to their own enhanced services operations versus their enhanced services competitors. *Computer III Phase II Order*, 2 FCC Rcd at 3086, ¶ 98. This requirement was replaced with an annual affidavit, signed by the officer principally responsible for installation procedures, attesting that the BOC had followed installation procedures described in the BOC's ONA plan, and that the BOC had not, in fact, discriminated in the quality of services it had provided. *Computer III Phase II Reconsideration*, 3 FCC Rcd at 1160, ¶ 76.

[264] *BOC ONA Reconsideration Order*, 5 FCC Rcd at 3093-94, ¶¶ 77-80, and App. B. The specified service categories include: (1) Circuit Switched Line: Business Line, PBX, Centrex, WATS, Mobile, Feature Group A, Foreign Exchange; (2) Circuit Switched Trunk: Feature Group B, Feature Group D, DID (Line and Trunk);

114. We tentatively conclude that the nondiscrimination obligations for provisioning and performing maintenance activities established by *Computer III* continue to apply to the BOCs and GTE. We seek comment, however, on whether the current quarterly installation and maintenance reports are an appropriate and effective mechanism for monitoring the BOCs' and GTE's compliance with these nondiscrimination obligations. Are there ways in which the quarterly reports, and the accompanying annual affidavits, may be simplified, clarified, or otherwise made more useful to the Commission and the interested public? Along these lines, we note that the Commission issued a Further Notice of Proposed Rulemaking in conjunction with its *Non-Accounting Safeguards Order*, seeking comment on what types of reporting requirements are necessary to implement the specific nondiscrimination requirement set forth in section 272(e)(1) of the Communications Act.[266] While we acknowledge that the nondiscrimination obligations imposed on the BOCs by section 272(e)(1) differ from those imposed by *Computer III*, we seek comment regarding whether the information required to demonstrate compliance with both sets of nondiscrimination requirements is sufficiently similar that we should harmonize the ONA nondiscrimination reporting requirements with the reporting requirements adopted in response to the Further Notice of Proposed Rulemaking in the *Non-Accounting Safeguards* proceeding. We also seek comment on whether we should

---

(3) Packet Switched Services (X.25 and X.75): Packet DDD Access Line, Packet Synchronous Access Line, Packet Asynchronous Access Line; (4) Dedicated Metallic: Protection Alarm, Protection Relaying, Control Circuit; (5) Dedicated Telegraph Grade: Telegraph Grade 75 Baud, Telegraph 150 Baud; (6) Dedicated Voice Grade: Voice Non-Switched Line, Voice Switched Line, Voice Switched Trunk, Voice and Tone-Radio Land Line, Data Low Speed, Basic Data and Voice, Voice and Data-PSN Access Tie Trunk, Voice and Data-SSN Access, Voice and Data-SSN-Intermachine Trunk, Data Extension-Voice Grade Data, Protection Relay Voice Grade, Telephoto and Facsimile; (7) Dedicated Program Audio: Program Audio 200-3500 HZ, Program Audio 100-5000 HZ, Program Audio 50-8000 HZ, Program Audio 50-15000 HZ; (8) Dedicated Video: TV Channel-One Way 15kHz Audio, TV Channel-One Way 5 kHz Audio; (9) Dedicated Digital: Digital Voice Circuit, Digital Data-2.4kb/s, Digital Data-4.8kb/s, Digital Data-9.6kb/s, Digital Data-56kb/s; (10) Dedicated High Capacity Digital: 1.544 MBPS BSA; (11) Dedicated High Capacity Digital (Greater than 1.544 MBPS): Dedicated Digital-3.152 MBPS, Dedicated Digital-6.312 MBPS, Dedicated Digital-44.736 MBPS, Dedicated Digital-45 MBPS or Higher; (12) Dedicated Alert Transport; (13) Dedicated Derived Channel; (14) Dedicated Network Access Link (DNAL).

[265] *Id.* at 3093-94, ¶¶ 77-80, and App. B. For installation reports, the Commission requires the BOCs and GTE to report separately for their own affiliated enhanced services operations and for all other customers, whether ISPs or other carriers, and to include information, for each specified service category, on: (1) total orders; (2) due dates missed; (3) percentage of due dates missed; and (4) average interval. The BOCs and GTE are also required to report maintenance activities separately for their own affiliated enhanced services operations and for all other customers. For maintenance activities with due dates, carriers are required to report: (1) total orders; (2) due dates missed; (3) percentage of due dates missed; and (4) average interval. For maintenance activities without due dates, carriers are required to report only total orders and average interval.

[266] *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22079-86, ¶¶ 362-382. Section 272(e)(1) states that BOCs "shall fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates." 47 U.S.C. § 272(e)(1).

harmonize the ONA nondiscrimination reporting requirements with reporting requirements being considered in other proceedings, such as in the *LCI OSS Petition*.[267]

115. We note that, like the BOCs, AT&T was originally required to file quarterly nondiscrimination reports on the provision of installation and maintenance services to unaffiliated providers of enhanced services.[268] The Commission modified and reduced these reporting requirements in 1991 and in 1993.[269] In 1996, the Bureau eliminated the requirement that AT&T file quarterly installation and maintenance nondiscrimination reports, as well as the requirement that AT&T file an annual affidavit[270] that its quarterly reports are true and that it has not discriminated in providing installation and maintenance services.[271]

116. The Bureau declined to eliminate the requirement that AT&T file a second affidavit,[272] which affirms that AT&T has followed the installation procedures in its ONA plan[273] and has not discriminated in the quality of network services provided to competing enhanced service providers, deferring that determination to the instant proceeding.[274] We tentatively conclude that we should no longer require AT&T to file this second affidavit because the level of competition in the interexchange services market is an effective check on

---

[267] *See supra* ¶ 107 and note 251.

[268] *See Computer III Phase I Order*, 104 FCC 2d at 1055-56, ¶ 192; *Computer III Phase II Order*, 2 FCC Rcd at 3086, ¶¶ 98-101; *Computer III Phase II Reconsideration Order*, 3 FCC Rcd at 1159, ¶¶ 66. Like the BOCs, AT&T was also required to file similar quarterly installation and maintenance reports regarding provision of services to affiliated and unaffiliated CPE vendors. *See Furnishing of Customer Premises Equipment and Enhanced Services by American Telephone and Telegraph Co.*, 102 FCC 2d 655, 690-91, ¶¶ 59-60 (1985) (*AT&T Structural Relief Order*), *modified in part on reconsideration*, 104 FCC 2d 739 (1986) (*AT&T Structural Relief Reconsideration Order*).

[269] *See Competition in the Interstate Interexchange Marketplace*, CC Docket No. 90-132, Report and Order, 6 FCC Rcd 5880, 5909 (1991) (*First Interexchange Competition Order*) (eliminating nondiscrimination reporting for AT&T network services subject to maximum streamlined regulation, including Basket 3 services and services not subject to price cap regulation); *Competition in the Interstate Interexchange Marketplace*, CC Docket No. 90-132, Second Report and Order, 8 FCC Rcd 3668 (1993) (*800 Streamlining Order*) (designating AT&T's 800 services as subject to streamlined treatment). Following these modifications, only AT&T's analog private line services remained subject to nondiscrimination reporting requirements.

[270] *See Computer III Phase II Reconsideration Order*, 3 FCC Rcd at 1161, ¶ 80, n.148.

[271] *See Revision of Filing Requirements Order*, 11 FCC Rcd at 16332, ¶ 12.

[272] *See Computer III Phase II Reconsideration Order*, 3 FCC Rcd at 1159, ¶ 66.

[273] As noted above, AT&T was required to file a modified ONA plan that the Commission approved in 1988, but has not been subject to other ONA reporting requirements. *See supra* note 5.

[274] *See Revision of Filing Requirements Order*, 11 FCC Rcd at 16332, ¶ 12.

AT&T's ability to discriminate in the quality of network services provided to competing ISPs.[275] This tentative conclusion is consistent with our previous finding that the competitive nature of the interexchange market provides an important assurance that access to those services will be open to ISPs, and that much of the information of greatest use to ISPs is controlled by LECs such as the BOCs, and not by interexchange carriers.[276] We also find that this tentative conclusion comports with our statutory obligation to eliminate regulations that are no longer necessary due to "meaningful economic competition" between providers of such service.[277] We seek comment on this tentative conclusion.

3. Other Nonstructural Safeguards

a. Network Information Disclosure Rules

117. The Commission's network information disclosure rules seek to prevent anticompetitive behavior by ensuring that ISPs and other interested parties can obtain timely access to information affecting the interconnection of information services to the BOCs', AT&T's, and other carriers' networks. Prior to the 1996 Act, the rules set forth in the Commission's *Computer II* and *Computer III* proceedings governed the disclosure of network information.[278] Section 251(c)(5) of the Act requires incumbent LECs to "provide reasonable

---

[275] The Commission has determined that the interexchange telecommunications market is substantially competitive. *See, e.g., Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Second Report & Order, 11 FCC Rcd 20730, 20741-43, ¶¶ 21-22 (1996) (*Tariff Forbearance Order*), *stay granted, MCI Telecommunications Corp. v. FCC*, No. 96-1459 (D.C. Cir. filed Feb. 13, 1997); *Motion of AT&T to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271, 3278-3279, 3288, ¶¶ 9, 26 (1995) (*AT&T Nondominance Order*), *recon. pending*; *Competition in the Interstate Interexchange Marketplace*, CC Docket No. 90-132, Report & Order, 6 FCC Rcd 5880, 5887, ¶ 36 (1991) (*First Interexchange Competition Order*). We also note, from a regulatory parity perspective, that no other interexchange carriers are required to file service quality affidavits similar to that required of AT&T.

[276] *AT&T ONA Order*, 4 FCC Rcd at 2450, ¶ 4.

[277] 47 U.S.C. § 161(a)(2).

[278] The *Computer II* network information disclosure rules are set forth in section 64.702(d)(2) of the Commission's rules and in the *Computer II* proceeding. *See* 47 C.F.R. § 64.702(d)(2); *see, e.g., Computer II Final Decision*, 77 FCC 2d 384 at 480, ¶ 246; *Computer II Reconsideration Order*, 84 FCC 2d 50 at 82-83, ¶ 95; and *Computer and Business Equipment Manufacturers Association Petition for Declaratory Ruling Regarding Section 64.702(d)(2) of the Commission's Rules and the Policies of the Second Computer Inquiry*, ENF-82-5, Report and Order, FCC 83-182, 93 FCC 2d 1226 (1983) (*Computer II Disclosure Order*). The *Computer III* network information disclosure rules are set forth in the *Computer III Phase I Order* and *Computer III Phase II Order* and other *Computer III* orders. *See, e.g., Computer III Phase I Order*, 104 FCC 2d 958 at 1080-1086, ¶¶ 246-255; *Computer III Phase II Order*, 2 FCC Rcd 3072 at 3086-3093, ¶¶ 102-140. GTE was made subject to the *Computer III* network information disclosure rules in the ONA proceeding. *See Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation*, CC Docket No. 92-256,

public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities or networks."[279] The Commission recently adopted network information disclosure requirements to implement section 251(c)(5) in the *Local Competition Second Report and Order*.[280] Although we discussed our preexisting network information disclosure requirements in conjunction with the requirements of section 251(c)(5) in the *Local Competition Second Report and Order*, we did not address in that proceeding whether our *Computer II* and *Computer III* network information disclosure requirements should continue to apply independently of our section 251(c)(5) network information disclosure requirements.[281] We address that issue in this proceeding as part of our 1998 biennial review of regulations, in an effort to eliminate unnecessary and possibly conflicting requirements.

118. The rules established pursuant to section 251(c)(5) in some respects appear to duplicate and even exceed the rules established under *Computer II* and *Computer III*, while in other respects they do not. For example, section 251(c)(5) of the Act, and the Commission's rules implementing that section, only apply to incumbent LECs,[282] while some of the *Computer II* network information disclosure requirements apply more broadly to "all carriers owning basic transmission facilities."[283] We seek comment, therefore, on the extent to which the Commission should retain its network information disclosure rules established in the Commission's *Computer II* and *Computer III* proceedings in light of the disclosure requirements stemming from section 251(c)(5) of the 1996 Act. As a starting point, we set forth in the following paragraphs a general description of the current network disclosure requirements under *Computer II*, *Computer III*, and section 251(c)(5), and then we ask parties to comment on whether, and why, specific requirements should be retained or eliminated.

Report and Order, FCC 94-58, 9 FCC Rcd 4922, 4947-4948, ¶¶ 50-53 (1994) (*GTE ONA Order*).

[279] 47 U.S.C. § 251(c)(5). An incumbent LEC is defined in section 251(h).

[280] *See* 47 C.F.R. §§ 51.325-51.335; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, *Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas*, NSD File No. 96-8, *Administration of the North American Numbering Plan*, CC Docket No. 92-237, *Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois*, IAD File No. 94-102, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996) (*Local Competition Second Report and Order*), *recon. pending*.

[281] *See, e.g.*, *Local Competition Second Report and Order*, 11 FCC Rcd at 19472, 19476, 19486, 19490, 19491, ¶¶ 173 n.383, 183 n.403, 205, 214, 216 n.486.

[282] *See* 47 U.S.C. § 251(h) for a definition of "incumbent LEC."

[283] *Computer II Reconsideration Order*, 84 FCC 2d at 82, ¶ 95.

The following descriptions are not intended to be an exhaustive list of every feature of the Commission's current network disclosure requirements. These descriptions are intended, rather, to serve as a basis for comparison by parties commenting in this proceeding.

119. *Computer II* Network Disclosure Obligations.

a. *Application of the Network Disclosure Obligations.* The *Computer II* network information disclosure rules consist of two requirements: (1) a disclosure obligation which depends on the existence of a *Computer II* separate subsidiary;[284] and (2) a disclosure obligation that applies independent of whether the carrier has a *Computer II* separate subsidiary. The Commission initially imposed both requirements on AT&T in the *Computer II Final Decision.*[285] The Commission extended disclosure requirement (2) in the *Computer II Reconsideration Order* to "all carriers owning basic transmission facilities" (hereinafter the "all-carrier" rule).[286] After divestiture, the Commission extended disclosure requirement (1) to the BOCs insofar as they are providing information services in accordance with the structural separation requirements of *Computer II*.[287]

b. *Events Triggering the Public Notice Requirement.* The *Computer II* "all-carrier" rule is triggered by implementation of "change[s] . . . to the telecommunications network that would affect either intercarrier interconnection or the manner in which interconnected CPE must operate . . . ."[288] The *Computer II* separate affiliate disclosure obligation is triggered by any of three events: (1) the BOC communicates the relevant network information directly to its *Computer II* separate affiliate; (2) such information is used by the BOC or a third party to develop services or products which reasonably can be expected to be marketed by the *Computer II*

[284] *See* 47 C.F.R. § 64.702(d)(2).

[285] We initially imposed the *Computer II* structural separation and other requirements, including the network information disclosure rules, on AT&T and GTE in the *Computer II Final Decision.* We later lifted those requirements from GTE in the *Computer II Reconsideration Order. Computer II Reconsideration Order*, 84 FCC 2d at 72-73, ¶ 66.

[286] *Computer II Reconsideration Order*, 84 FCC 2d at 82-83, ¶ 95.

[287] *See Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Equipment by the Bell Operating Companies*, CC Docket 83-115, Report and Order, 95 FCC 2d 1117 (1984) (*BOC Separation Order*), *aff'd sub nom. Illinois Bell Telephone Co. v. FCC*, 740 F.2d 465 (7th Cir. 1984), *aff'd on reconsideration*, FCC 84-252, 49 Fed. Reg. 26056 (1984) (*BOC Separation Reconsideration*), *aff'd sub nom. North American Telecommunications Association v. FCC*, 772 F.2d 1282 (7th Cir. 1985).

[288] *Computer II Reconsideration Order*, 84 FCC 2d at 81-822, ¶ 92.

separate affiliate; or (3) the BOC engages in joint research and development with its *Computer II* separate affiliate, leading to the design or manufacture of any product that either affects the network interface or relies on a not-yet implemented interface.[289]

c. *Timing of Public Notice.* Under *Computer II*, the disclosure obligation of the "all-carrier" rule must be met "in a timely manner and on a reasonable basis."[290] The *Computer II* separate affiliate network disclosure obligation requires that disclosure be made to information service competitors of the *Computer II* affiliate "at the same time" disclosure is made directly to the *Computer II* separate affiliate as described in item (1) above.[291] If the disclosure requirement is triggered by the events described in items (2) and (3) above, then disclosure must be made at the "make/buy" point, i.e., when the BOC or an affiliated company decides, in reliance on previously undisclosed information, to produce itself or to procure from a non-affiliated company any product, whether it be hardware or software, the design of which either affects the network interface or relies on the network interface.[292]

d. *Types of Information To Be Disclosed.* The *Computer II* "all-carrier" rule encompasses "all information relating to network design . . . , insofar as such information affects . . . intercarrier interconnection . . . ."[293] For the separate affiliate network disclosure requirement, the information required to be disclosed consists of, "at a minimum, . . . any network information which is necessary to enable all [information] service . . . vendors to gain access to and utilize and to interact effectively with [the BOCs'] network services or capabilities, to the same extent that [the BOCs' *Computer II* separate affiliate] is able to use and interact with those network services or capabilities."[294] This requirement includes information concerning "network design, technical standards, interfaces, or generally, the manner in which interconnected . . . enhanced services will interoperate with [any of the BOCs']

---

[289] *See Computer II Disclosure Order*, 93 FCC 2d at 1245, ¶ 60; *see also Computer III Phase I Order*, 104 FCC 2d at 971, ¶ 15.

[290] *Computer II Disclosure Order*, 93 FCC 2d at 1228, ¶ 6; *see also Computer II Reconsideration Order*, 84 FCC 2d at 82-83, ¶¶ 93, 95.

[291] *Computer II Final Decision*, 77 FCC 2d at 480, ¶ 246; *Computer II Disclosure Order*, 93 FCC 2d at 1245, ¶ 60.

[292] *See Computer II Disclosure Order*, 93 FCC 2d at 1245, ¶ 60.

[293] *Computer II Reconsideration Order*, 84 FCC 2d at 82-83, ¶ 95; *see Computer II Disclosure Order*, 93 FCC 2d at 1228, 1238, ¶¶ 6, 38.

[294] *Computer II Disclosure Order*, 93 FCC 2d at 1237, ¶ 34.

network."[295] In addition to technical information, the information required includes marketing information, such as "commitments of the carrier with respect to the timing of introduction, pricing, and geographic availability of new network services or capabilities."[296]

e. *How Public Notice Should Be Provided.* Under *Computer II*, carriers subject to the "all-carrier" rule must disclose in their tariffs or tariff support material either the relevant network information or a statement indicating where such information can be obtained, that will allow competitors to use network facilities in the same manner as the subject carrier.[297] The separate affiliate network disclosure obligation requires that the BOCs "file with the Commission, within seven calendar days of the date the disclosure obligation arises, a notice apprising the public that the disclosure has taken place and indicating in summary form the nature of the information which has been disclosed [to its *Computer II* separate affiliate], the identity of any source documents and where interested parties can obtain additional details."[298] Moreover, when a BOC "files a tariff for a new or changed network service where there has been a prior disclosure to or for the benefit of [the *Computer II* separate affiliate], the tariff support materials must list any disclosure notices previously filed with the Commission that are relevant to the tariffed offering."[299]

120. *Computer III* Network Disclosure Obligations.

a. *Application of the Network Disclosure Obligations.* The *Computer III* network information disclosure rules initially were imposed on AT&T and the BOCs in the *Phase I Order* and *Phase II Order*.[300] The Commission later extended the *Computer*

---

[295] *Id.* at 1238, ¶ 36. The information required includes, but is not limited to, "(a) circuit quality (transmission speeds, error rates, bandwidths, equalization characteristics, attenuation, transmission delays, quantization effects, non-linearities etc.); (b) performance specifications for switched systems (connection times, queuing delays, blocking probabilities, etc.); and (c) network protocols (message formats, requirements for synchronizing bits, error detection and correction procedures, signalling procedures, etc.)." *Id.*

[296] *Id.* at 1238, ¶ 37.

[297] *See Computer II Disclosure Order*, 93 FCC 2d at 1246, ¶ 63.

[298] *Id.* at ¶ 64.

[299] *Id.*

[300] *See Computer III Phase I Order*, 104 FCC 2d 958 (1986); *Computer III Phase II Order*, 2 FCC Rcd 3072 (1987).

III network information disclosure rules and other nondiscrimination safeguards to GTE in the *GTE ONA Order*.[301]

b. *Events Triggering the Public Notice Requirement.* The *Computer III* public notice requirement is triggered at the "make/buy" point; that is, when AT&T, any of the BOCs, or GTE "makes a decision to manufacture itself or to procure from an unaffiliated entity, any product the design of which affects or relies on the network interface."[302]

c. *Timing of Public Notice.* AT&T, the BOCs, and GTE must disclose the relevant information concerning planned network changes at two points in time. First, they must disclose the relevant technical information at the "make/buy" point. They are permitted, however, to condition this "make/buy" disclosure on the recipient's signing of a nondisclosure agreement, upon which the relevant technical information must be disclosed within 30 days. Second, they must make public disclosure of the relevant technical information a minimum of twelve months before implementation of the change; however, if the planned change can be implemented between six and twelve months following the "make/buy" point, then public notice is permitted at the "make/buy" point, but at a minimum of six months before implementation.[303]

d. *Types of Information To Be Disclosed.* Under *Computer III*, the range of information encompassed by the network information disclosure requirements is adopted from, and identical to, the *Computer II* requirements.[304] Specifically, at the "make/buy" point, AT&T, the BOCs, and GTE must disclose that a network change or network service is under development.[305] The notice itself need not contain the full range of relevant network information, but it must describe the proposed network service with sufficient detail to convey what the new service is and what its capabilities are.[306] The notice must also indicate that technical information required for the development of compatible information services will be provided to any entity involved in the provision of information services and may indicate that such

---

[301] *See GTE ONA Order*, 9 FCC Rcd 4922 (1994).

[302] *Computer III Phase I Order*, 104 FCC 2d at 1084, ¶ 252; *see Computer III Phase II Order*, 2 FCC Rcd at 3087, ¶¶ 108, 109.

[303] *See Computer III Phase II Order*, 2 FCC Rcd at 3091-3093, ¶¶ 134-140; *Computer III Phase II Reconsideration Order*, 3 FCC Rcd at 1164-1165, ¶ 116.

[304] *See Computer III Phase I Order*, 104 FCC 2d at 1085, ¶ 253 n.298.

[305] *See Computer III Phase I Order*, 104 FCC 2d at 1084, ¶ 253.

[306] *Id.*

information will be made available only to such entities willing to enter into a nondisclosure agreement.[307] Once an entity has entered into a nondisclosure agreement, AT&T, the BOCs, or GTE must provide the full range of relevant information.[308]

e. *How Public Notice Should Be Provided.* Under the *Computer III* rules, public notice is made through direct mailings, trade associations, or other reasonable means.[309]

121. Section 251(c)(5) Network Disclosure Obligations.

a. *Application of the Network Disclosure Obligations.* These rules apply to all incumbent LECs, as the term is defined in section 251(h) of the Act.[310]

b. *Events Triggering the Public Notice Requirement.* The incumbent LEC makes a decision to implement a network change that either: (1) affects "competing service providers' performance or ability to provide service; or (2) otherwise affects the ability of the incumbent LEC's and a competing service provider's facilities or network to connect, to exchange information, or to use the information exchanged."[311] Examples of network changes that would trigger the section 251(c)(5) public disclosure obligations include, but are not limited to, changes that affect (1) transmission, (2) signalling standards, (3) call routing, (4) network configuration, (5) logical elements, (6) electronic interfaces, (7) data elements, and (8) transactions that support ordering, provisioning, maintenance, and billing.[312]

c. *Timing of Public Notice.* Incumbent LECs must disclose planned network changes at the "make/buy" point,[313] but at least twelve months before implementation

---

[307] *Id.*

[308] *See supra* note 304. The full range of network information that must be disclosed is defined in the *Computer II Disclosure Order*, 93 FCC 2d at 1236-1238, ¶¶ 31-38, and is summarized in ¶ 119 *supra*.

[309] *Computer III Phase I Order*, 104 FCC Rcd at 1084, 1086, ¶¶ 253, 255.

[310] *See* 47 U.S.C. § 251(h).

[311] *Local Competition Second Report and Order*, 11 FCC Rcd at 19476, ¶ 182; *see also* 47 C.F.R. § 51.325.

[312] *Local Competition Second Report and Order*, 11 FCC Rcd at 19476, ¶ 182.

[313] 47 C.F.R. § 51.331; *Local Competition Second Report and Order*, 11 FCC Rcd at 19491, ¶ 216. The meaning of the "make/buy" point relevant to section 251(c)(5) is adopted from the *Computer II* and *Computer III* proceedings. *See Local Competition Second Report and Order*, 11 FCC Rcd at 19491, ¶ 216 n.486.

of the change.[314] If the planned change can be implemented within twelve months of the "make/buy" point, then public notice must be given at the "make/buy" point, but at least six months before implementation.[315] If the planned changes can be implemented within six months of the make/buy point, then the public notice may be provided less than six months before implementation, if additional requirements set forth in section 51.333 of the Commission's rules are met.[316]

d. *Types of Information To Be Disclosed.* Under the Commission's regulations, incumbent LECs are required to disclose, at a minimum, "complete information about network design, technical standards and planned changes to the network."[317] Public notice of planned network changes, at a minimum, shall consist of: (1) the carrier's name and address; (2) the name and telephone number of a contact person who can supply additional information regarding the planned changes; (3) the implementation date of the planned changes; (4) the location(s) at which the changes will occur; (5) a description of the type of changes planned (including, but not limited to, references to technical specifications, protocols, and standards regarding transmission, signalling, routing, and facility assignment as well as references to technical standards that would be applicable to any new technologies or equipment, or that may otherwise affect interconnection); and (6) a description of the reasonably foreseeable impact of the planned changes.[318]

e. *How Public Notice Should Be Provided.* Network disclosure may be made either: (1) by filing public notice with the Commission in accordance with section 51.329 of the Commission's rules; or (2) providing public notice through industry fora, industry publications, or on the incumbent LEC's own publicly accessible Internet sites, as well as a certification filed with the Commission in accordance with section 51.329 of the Commission's rules.[319]

---

[314] 47 C.F.R. § 51.331(a); *Local Competition Second Report and Order*, 11 FCC Rcd at 19490, ¶ 214. The timing requirements for public notice under section 251(c)(5) are adopted, with modifications, from the timing requirements for public notice under *Computer III*. *Local Competition Second Report and Order*, 11 FCC Rcd at 19490, ¶ 214.

[315] 47 C.F.R. § 51.331(a)(1); *Local Competition Second Report and Order*, 11 FCC Rcd at 19490, ¶ 214.

[316] 47 C.F.R. § 51.331(a)(2); *Local Competition Second Report and Order*, 11 FCC Rcd at 19490-91, ¶ 215.

[317] *Local Competition Second Report and Order*, 11 FCC Rcd at 19479, ¶ 188.

[318] 47 C.F.R. § 51.327; *Local Competition Second Report and Order*, 11 FCC Rcd at 19479, ¶ 188.

[319] 47 C.F.R. § 51.329; *Local Competition Second Report and Order*, 11 FCC Rcd at 19483, ¶ 198.

122. We tentatively conclude that the Commission's rules established pursuant to section 251(c)(5) for incumbent LECs should supersede the Commission's previous network information disclosure rules established in *Computer III*. We also tentatively conclude that the Commission's network disclosure rules established in *Computer II* should continue to apply -- specifically, the *Computer II* separate affiliate disclosure rule should continue to apply to any BOC that operates a *Computer II* subsidiary, and the all-carrier rule should continue to apply to all carriers owning basic transmission facilities. We reach our tentative conclusion regarding the *Computer III* network disclosure rules since, in our view, the 1996 Act disclosure rules for incumbent LECs are as comprehensive, if not more so, than the Commission's *Computer III* disclosure rules. Parties who disagree with this view should explain why all or some aspects of the Commission's *Computer III* disclosure rules are still needed for incumbent LECs in light of the rules established pursuant to section 251(c)(5) of the Act.

123. We recognize, however, that some BOCs may still be providing certain intraLATA information services through a *Computer II* subsidiary, rather than on an integrated basis under the Commission's *Computer III* rules. We tentatively conclude, therefore, that the *Computer II* separate subsidiary disclosure rule should continue to apply in such cases because, for instance, it encompasses marketing information which is not included within the scope of information to be disclosed under section 251(c)(5) and it requires disclosure under a more stringent timetable than that required under section 251(c)(5).[320] We also tentatively conclude that the all-carrier rule should continue to apply to all carriers owning basic transmission facilities, since it is broader in certain respects than section 251(c)(5). First, it applies to all carriers, whereas section 251(c)(5) just applies to incumbent LECs. In addition, the all-carrier rule requires, among other things, the disclosure of network changes that affect end users' CPE, whereas our rules interpreting section 251(c)(5) only require the disclosure of information that affects "competing service providers." We seek comment on these tentative conclusions and analyses.

b. Customer Proprietary Network Information (CPNI)

124. The Commission first established its CPNI rules in the *Computer II Final Decision* in 1980 to encourage AT&T, the BOCs, and GTE to develop and market efficient,

---

[320] This marketing information includes, for instance, "information which relates to commitments of the [BOC] with respect to the timing of introduction, pricing, and geographic availability of new network services or capabilities." *See supra* ¶ 119; *Computer II Disclosure Order*, 93 FCC 2d at 1238, ¶ 37. Disclosure under the *Computer II* separate affiliate network disclosure requirement must be made to information service competitors at the same time such information is directly disclosed to the BOC's separate affiliate or, in the case of BOC disclosures to third parties for the benefit of the BOC's separate affiliate, disclosure must take place at a "make/buy point" that is more strict than the "make/buy" point which governs disclosure under section 251(c)(5). *See supra* ¶¶ 119, 121; *Computer II Final Decision*, 77 FCC 2d at 480, ¶ 246; *Computer II Disclosure Order*, 93 FCC 2d at 1245, ¶ 60.

integrated combinations of information and basic services without the marketing restrictions imposed by structural separation, while protecting the competitive interests of information service competitors.[321] While the CPNI rules are an integral part of the Commission's current nonstructural regulatory framework for the provision of information services by AT&T, the BOCs, and GTE, we defer consideration of all CPNI issues relating to our *Computer II* and *Computer III* rules to our *CPNI* rulemaking proceeding.

125. Section 702 of the 1996 Act, which added a new section 222 to the Communications Act of 1934, as amended, sets forth requirements for use of CPNI by telecommunications carriers, including the BOCs. Although the requirements of section 222 were effective upon enactment of the 1996 Act, we issued a *CPNI Notice* on May 17, 1996, which sought comment on, among other things, what regulations we should adopt to implement section 222.[322] We stated in the *CPNI Notice* that the CPNI requirements the Commission previously established in the *Computer II* and *Computer III* proceedings remain in effect pending the outcome of the rulemaking, to the extent they do not conflict with section 222. The *CPNI* proceeding will address whether these pre-existing requirements should be retained, eliminated, extended, or modified in light of the Act.

126. Under the *Computer II* structural separation requirements, AT&T, the BOCs, and GTE were prohibited from jointly marketing their basic services with the enhanced services provided through their separate affiliate. Under the *Computer III* nonstructural safeguards regime, AT&T, the BOCs, and GTE were permitted to engage in joint marketing of basic and enhanced services subject to restrictions on their use of CPNI.[323] In the *BOC Safeguards Order*, the Commission strengthened the CPNI rules by requiring that, for customers with more than twenty lines, BOC personnel involved in marketing enhanced services obtain written authorization from the customer before gaining access to its CPNI.[324]

---

[321] *See Computer II Final Decision*, 77 FCC 2d at 481, ¶ 249.

[322] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Notice of Proposed Rulemaking, 11 FCC Rcd 12513 at 12515, ¶ 3 (1996) (*CPNI Notice*).

[323] Specifically, in the *Computer III Phase I Order* we applied to the BOCs on an interim basis, pending adoption of final CPNI rules for the BOCs, the same CPNI restrictions that we imposed on AT&T in the *Computer II AT&T Structural Relief Order*. *Computer III Phase I Order*, 104 FCC 2d at 1089-91, ¶ 261-265. We adopted final CPNI rules for BOC provision of information services in the *Computer III Phase II Order*, and reaffirmed these rules in the *Computer III Phase II Reconsideration Order*. *Computer III Phase II Order*, 2 FCC Rcd at 3093-98, ¶¶ 141-76; *Computer III Phase II Reconsideration Order*, 3 FCC Rcd at 1161-64, ¶¶ 85-114.

[324] *Computer III BOC Safeguards Order*, 6 FCC Rcd at 7609, ¶ 84.

127. On March 6, 1992, the Association of Telemessaging Services International, Inc. (ATSI) filed a petition for reconsideration[325] of the *BOC Safeguards Order* in CC Docket No. 90-623, the *Computer III Remand* proceeding. ATSI asked the Commission to modify the *BOC Safeguards Order* by: (1) prohibiting joint marketing of basic and information services; (2) extending the prior authorization requirement for CPNI to all users, regardless of size; and (3) ensuring that users who restrict access to their CPNI continue to receive nondiscriminatory treatment and an adequate level of service.[326] On May 17, 1996, the Commission issued an order dismissing issues (2) and (3) as moot because of the passage of the Telecommunications Act of 1996 and our commencement of a new proceeding to address the obligations of telecommunications carriers with respect to CPNI in light of the new statute.[327] The order also noted that issue (1) remained to be addressed by the Commission.[328] ATSI filed a motion to withdraw its petition for reconsideration in CC Docket No. 90-623[329] and to incorporate its petition into the Commission's *Computer III Further Remand* proceeding in CC Docket No. 95-20, as well as other proceedings, on December 10, 1996.[330] On May 14, 1997, the Common Carrier Bureau partially granted the *ATSI Motion* by agreeing to address in this proceeding whether joint marketing of basic services and information services by the BOCs should be prohibited.[331]

---

[325] Petition for Reconsideration of the Association of Telemessaging Services International, Inc., CC Docket No. 90-623, filed Mar. 6, 1992 (*ATSI Petition*).

[326] *ATSI Petition* at 1.

[327] *See Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, CC Docket No. 90-623, *and Rules Governing Telephone Companies' Use of Customer Proprietary Network Information*, CC Docket Nos. 90-623, 92-256; Order, 11 FCC Rcd 16617 (1996).

[328] *Id.* at 16619-20, ¶ 7.

[329] Motion to Withdraw Petition for Reconsideration in *Computer III Remand* Proceedings and To Incorporate the Same in *Computer III Further Remand* Proceedings and Other Proceedings, CC Docket Nos. 90-623, 95-20, 96-149, and 96-152, filed Dec. 10, 1996 (*ATSI Motion*).

[330] ATSI also requested that its petition be incorporated into CC Docket Nos. 96-149 and 96-152, the *Non-Accounting Safeguards* proceeding and the *Telemessaging, Electronic Publishing, and Alarm Monitoring* proceeding, respectively. We denied ATSI's motion to the extent it requested the Commission to incorporate the joint marketing question into the *Non-Accounting Safeguards* proceeding and the *Telemessaging, Electronic Publishing, and Alarm Monitoring Services* proceeding. *See Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, CC Docket No. 90-623, and *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, CC Docket No. 95-20, Order, 12 FCC Rcd 5899 (1997) (*ATSI Order*).

[331] *See ATSI Order*, 12 FCC Rcd at 5902.

128. We therefore seek comment on the issue raised in the *ATSI Petition*: whether, to the extent the Commission continues to allow the BOCs to provide information services subject to a nonstructural safeguards regime, the BOCs should be prohibited from jointly marketing basic services and information services when these services are provided on an intraLATA basis. To the extent parties support the view that the term "telecommunications service" in the Act encompasses the same set of services as the term "basic service" did under the Commission's previous rules,[332] parties should discuss the issue raised in the ATSI petition in terms of whether joint marketing should be allowed between telecommunications services and information services. As noted in the *ATSI Order*, we do not address this question with respect to interLATA information services, since under section 272 of the Act BOCs must provide interLATA information services pursuant to a section 272 affiliate and subject to the joint marketing provisions in that section. Also, under section 274, BOCs providing electronic publishing, whether on an interLATA or intraLATA basis, must do so pursuant to a section 274 affiliate and subject to the joint marketing rules in that section.

129. In its petition, ATSI argues that joint marketing of basic services and information services harms consumers and diminishes overall competition in the information services market. ATSI alleges that the BOCs have abused the Commission's joint marketing rules by: (1) routing calls to subscribers of competing voice messaging providers to the BOC's own voice messaging service instead; (2) soliciting customers of competing voice messaging providers who contact the BOCs to request other BOC services; (3) providing customers with misleading and disparaging information about the voice messaging services offered by competing providers; and (4) engaging in other unfair practices.[333] ATSI therefore requests that the Commission prohibit the BOCs from using the same personnel and facilities to market basic services and information services. We seek comment on these issues. We also seek comment on the costs and operational efficiencies or inefficiencies of allowing the BOCs to provide intraLATA information services on an integrated basis, but requiring different personnel and facilities to market basic services and information services.

V. JURISDICTIONAL ISSUES

130. Our authority, pursuant to section 2(a) of the Communications Act, to establish, enforce, modify, or eliminate a regime of safeguards for the provision of information services by the BOCs and GTE is well settled.[334] In addition, the scope of our authority to preempt

---

[332] *See* discussion *supra* at ¶ 41.

[333] *ATSI Petition* at 3-6.

[334] *See Computer III Phase I Order*, 104 FCC 2d at 1124, ¶ 342 (citing *Computer II Final Decision*, 77 FCC 2d at 432, 486-487, ¶¶ 124, 261-264). *See also California II*, 4 F.3d at 1514-1516 (holding that it is within the FCC's jurisdictional authority to require the federal tariffing of ONA services that are technically compatible with interstate service).