

inconsistent regulation on the part of the states has been established by the Commission in the previous *Computer III* orders and has been affirmed on appeal.

131. In the *Computer III Phase I Order*, the Commission preempted: (1) all state structural separation requirements applicable to the provision of enhanced services by AT&T and the BOCs; and (2) all state nonstructural safeguards applicable to AT&T and the BOCs that were inconsistent with federal safeguards.³³⁵ The *California I* court vacated these preemption actions, on the ground that the Commission had not adequately justified imposing them.³³⁶ In response to the *California I* remand, the Commission narrowed the scope of federal preemption to cover only: (1) state requirements for structural separation of facilities and personnel used to provide the intrastate portion of jurisdictionally mixed enhanced services;³³⁷ (2) state CPNI rules requiring prior authorization that is not required by federal regulation; and (3) state network disclosure rules that require initial disclosure at a time different than the federal rules.³³⁸ The Commission reasoned that such state requirements would thwart or impede the nonstructural safeguards pursuant to which the BOCs may provide interstate enhanced services, and the federal goals such safeguards were intended to achieve.³³⁹ The *California III* court upheld the Commission's narrowly tailored preemption, stating that the Commission had met its burden of demonstrating that it was preempting only state regulations that would negate valid federal regulatory goals.³⁴⁰

132. Thus, we believe that the proposals we make in the current Further Notice, and the options upon which we seek comment, fall within the scope of our authority previously established in the context of this proceeding, as outlined above. To the extent that our proposals go beyond our recognized preemption authority, we ask that commenters identify those proposals and comment on our authority to adopt them.

³³⁵ *Computer III Phase I Order*, 104 FCC 2d at 1127-28, ¶ 348.

³³⁶ *California I*, 905 F.2d at 1239-1245.

³³⁷ *BOC Safeguards Order*, 6 FCC Rcd at 7631, ¶ 121. The Commission noted that many cases have recognized the impracticality of separate provision of interstate and intrastate basic communications and cited, among other cases, *Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355, 375 n.4 (1986).

³³⁸ *BOC Safeguards Order*, 6 FCC Rcd at 7631, ¶ 121.

³³⁹ *Id.*

³⁴⁰ *California III*, 39 F.3d at 933.

VI. PROCEDURAL MATTERS

A. Ex Parte Presentations

133. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's revised *ex parte* rules, which became effective June 2, 1997. See *Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings*, GC Docket No. 95-21, Report and Order, 12 FCC Rcd 7348, 7356-57, ¶ 27 (citing 47 C.F.R. § 1.1204(b)(1)) (1997). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) as well.

B. Initial Paperwork Reduction Act Analysis

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

C. Initial Regulatory Flexibility Certification

135. The Regulatory Flexibility Act (RFA)³⁴¹ requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."³⁴² The RFA generally defines "small entity" as having

³⁴¹ The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

³⁴² 5 U.S.C. § 605(b).

the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."³⁴³ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.³⁴⁴ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).³⁴⁵

136. This Further Notice pertains to the Bell Operating Companies (BOCs), each of which is an affiliate of a Regional Holding Company (RHC), as well as to GTE and AT&T. Neither the Commission nor SBA has developed a definition of "small entity" specifically applicable to the BOCs, GTE, or AT&T. The closest definition under SBA rules is that for establishments providing "Telephone Communications, Except Radiotelephone," which is Standard Industrial Classification (SIC) code 4813. Under this definition, a small entity is one employing no more than 1,500 persons.³⁴⁶ We note that each BOC is dominant in its field of operation and all of the BOCs as well as GTE and AT&T have more than 1,500 employees. We therefore certify that this Further Notice will not have a significant economic impact on a substantial number of small entities. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this Further Notice, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.³⁴⁷ A copy will also be published in the Federal Register.

D. Comment Filing Procedures

137. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before March 27, 1998, and reply comments on or before April 23, 1998. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M

³⁴³ *Id.* § 601(6).

³⁴⁴ *Id.* § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

³⁴⁵ Small Business Act, 15 U.S.C. § 632.

³⁴⁶ 13 C.F.R. § 121.201, SIC code 4813.

³⁴⁷ 5 U.S.C. § 605(b).

Street, N.W., Room 222, Washington, D.C., 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C., 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C., 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C., 20554.

138. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules.³⁴⁸ We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

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

140. You may also file informal comments or an exact copy of your formal comments electronically via the Internet at <<http://www.fcc.gov/e-file/>> or via e-mail <computer3@comments.fcc.gov>. Only one copy of electronically-filed comments must be submitted. You must put the docket number of this proceeding in the subject line if you are using e-mail (CC Docket No. 95-20), or in the body of the text if by Internet. You must note whether an electronic submission is an exact copy of formal comments on the subject line. You also must include your full name and Postal Service mailing address in your submission.

VII. ORDERING CLAUSES

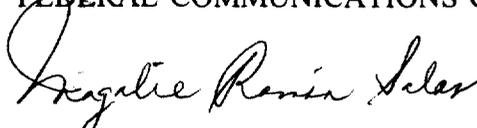
141. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 2, 4, 10, 11, 201-205, 251, 271, 272, and 274-276, of the Communications Act of 1934, as amended, 47

³⁴⁸ See 47 C.F.R. § 1.49. However, we require here that a summary be included with all comments and reply comments, regardless of length. This summary may be paginated separately from the rest of the pleading (e.g., as "i, ii").

U.S.C. §§ 151, 152, 154, 160, 161, 201-205, 251, 271, 272, and 274-276. a FURTHER NOTICE OF PROPOSED RULEMAKING IS ADOPTED.

142. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this FURTHER NOTICE OF PROPOSED RULEMAKING, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act, *see* 5 U.S.C. § 605(b).

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

Separate Statement of Commissioner Harold W. Furchtgott-Roth**Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services
and
1998 Biennial Regulatory Review -- Review of *Computer III* and ONA Safeguards and Requirements****Further Notice of Proposed Rulemaking**

I support adoption of this Further Notice of Proposed Rulemaking. I question, however, whether the FCC is prepared to meet its statutory obligation to review all of its regulations in 1998.

Contrary to the captioning of this Further NPRM (and at least one other item that the staff has presented to the Commission for decision), we may be neglecting the express directives of a terse but important provision of the Telecommunications Act of 1996. In this provision, codified as Section 11 of the Communications Act, Congress directed the FCC to conduct, beginning in 1998, a biennial review of "*all* regulations issued under [the Act] in effect at the time of the review that apply to the operations or activities of any provider of telecommunications service" and determine whether any of these regulations are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such service." 47 U.S.C. Section 161 (emphasis added). Section 11 also requires that the FCC "repeal or modify any regulation it determines to be no longer necessary in the public interest."

Clearly, Section 11 has two components: a policy against unnecessary regulations and a procedure to find and remove all such regulations every two years. In this Further NPRM, the Commission fully addresses only the policy component of Section 11.

Although the Commission thus appears to have fulfilled its duty to implement the policy of Section 11 in the context of this particular proceeding, I am concerned that -- because of this item's caption and the many references to Section 11 throughout the text -- we may be leaving the misimpression that we also are addressing the procedural requirements of Section 11. To my knowledge, the FCC has no plans to review affirmatively *all* regulations that apply to the operations or activities of any provider of telecommunications service and to make specific findings as to their continued necessity in light of current market conditions. Indeed, the comprehensive and systematic review of all FCC regulations required under Section 11 certainly would take many months to complete, yet we have not published a specific schedule to ensure completion of this task in 1998.

Nor has the Commission issued general principles to guide our "public interest" analysis and decision making process across the wide range of FCC regulations. I believe

that, in addition to the direction given us within the law, the public interest determinations we eventually make pursuant to Section 11 should be made based on a straightforward analysis: regulations are in the public interest only if their benefits significantly outweigh their costs. We have not yet adopted any such guidance.

It is unfortunate that this public discussion of our responsibilities under Section 11 has first surfaced in the context of a seemingly unrelated action in the decade-old *Computer III* proceedings. In my view, however, we should not let this or any other such limited Commission analysis and decision making (or even the sum of such limited actions) be mistaken for complete compliance with Section 11 as envisioned by Congress.

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