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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	CC Docket No. 96-61
	)	
Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	
	)	
1998 Biennial Regulatory Review -- Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets	)	CC Docket No. 98-183

FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: October 1, 1998 **Released: October 9, 1998**

Comment Date: November 23, 1998
Reply Comment Date: December 23, 1998

By the Commission: Commissioner Furchtgott-Roth issuing a separate statement.

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I. INTRODUCTION

1. In this Further Notice of Proposed Rulemaking (Further Notice), we examine restrictions that limit a common carrier's ability to bundle certain goods and services together and offer such bundles to the public. The goods and services at issue include telecommunications services,[1] enhanced services,[2] and customer premises equipment (CPE).[3] Bundling means selling different goods and/or services together in a single package.[4] Our

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[1] The Communications Act defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(46).

[2] Basic services are regulated under Title II of the Communications Act. Enhanced services, which are not regulated by the Commission under Title II of the Communications Act, use transmission facilities to deliver services that provide more than a basic transmission offering. *Bell Operating Companies' Joint Petition for Waiver of Computer II Rules*, Memorandum Opinion & Order, 10 FCC Rcd 1724 n.3 (1995) (*Interim Waiver Order*); 47 C.F.R. § 64.702(a). Examples of services the Commission has treated as enhanced include voice mail, E-Mail, fax store-and-forward, interactive voice response, protocol processing, gateway, and audiotext information services. *See Bell Operating Companies Joint Petition for Waiver of Computer II Rules*, Order, 10 FCC Rcd 13,758, 13,770-13,774, App. A (Com. Car. Bur. 1995) (*BOC CEI Plan Approval Order*). We note that the Telecommunications Act of 1996 (1996 Act) does not utilize the Commission's basic/enhanced terminology, but instead refers to "telecommunications services" and "information services." Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 151 *et seq*; *see also 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*, CC Docket Nos. 95-20, 98-10, Further Notice of Proposed Rulemaking, FCC 98-8 at ¶ 39 (rel. Jan. 30, 1998) (*Computer III Further Notice)*. The Commission has concluded, however, that Congress sought to maintain the basic/enhanced distinction in its definition of "telecommunications services" and "information services," and that "enhanced services" and "information services" should be interpreted to extend to the same functions. *See Federal -State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, FCC 98-67 at ¶¶ 33, 39, 45-46 (rel. April 10, 1998) (*Universal Service Report to Congress)*. For a further discussion of these terms, see *infra* ¶ 130.

[3] CPE is defined in the Act as "equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications." 47 U.S.C. § 153(14); *see also Amendment of Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 20828, Final Decision, 77 FCC 2d 384, 398 n.10 (1980) (*Computer II Final Decision*); Memorandum Opinion and Order on Reconsideration, 84 FCC 2d 50 (1980); Memorandum Opinion and Order on Further Reconsideration, 88 FCC 2d 512 (1981), *aff'd sub nom., Computer and Communications Indus. Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983). The requirement that all common carriers sell or lease CPE separate and apart from such carriers' regulated communications services is codified at section 64.702(e) of the Commission's rules. 47 C.F.R. § 64.702(e); *see also Computer II Final Decision*, 77 FCC 2d 384.

[4] *See generally* F.M. Scherer and David Ross, *Industrial Market Structure and Economic Performance* 565-69 (3d ed. 1990); *see also Computer II Final Decision*, 77 FCC 2d at 442-443; *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 22039 (1996) (*Non-Accounting Safeguards Order)*, Order on Reconsideration, 12 FCC Rcd 2297 (1997), *further recon. pending*, Second Report and Order, 12 FCC Rcd 15756 (1997), *aff'd sub nom. Bell Atlantic Telephone Companies, et al. v. FCC, et al.*, 131 F.3d 1044 (D.C. Cir. 1997). The economic analysis of "bundling" is a

rules currently prohibit telecommunications carriers from bundling telecommunications services with CPE, and place restrictions on the bundling of telecommunications services with enhanced services. Our current restrictions not only prevent carriers from offering distinct goods and/or services only on a bundled basis, but also prohibit carriers from offering "package discounts," which enable "customers [to] purchase an array of products in a package at a lower price than the individual products could be purchased separately."[5]

2. Historically, the Commission has restricted bundling of CPE and enhanced services with telecommunications services out of a concern that carriers could use such bundling in anticompetitive ways.[6] For example, a carrier in the long-distance market could require customers that wished to purchase just long-distance services also to purchase telephone equipment from that carrier.[7] Not only would those customers be forced to buy a product they may not want, but other companies trying to sell telephone equipment could be unfairly deprived of customers. As a result, the Commission concluded that bundling could restrict customer choice and retard the development of competitive CPE and enhanced services markets.[8] We believe that our no-bundling rules have fostered more competitive markets for CPE and enhanced services and afforded consumers more options in obtaining equipment and services that best suit their needs. We believe, however, that it is appropriate to consider whether these rules are no longer necessary and whether bundles of goods and/or services can provide benefits to consumers.

3. In this proceeding, we examine whether market conditions have changed sufficiently to warrant lifting our restrictions on the bundling of CPE and enhanced services with basic telecommunications services. At the time the Commission adopted the CPE and enhanced services bundling restrictions, the Commission recognized, "[i]f the markets for components of [a] commodity bundle are workably competitive, bundling may present no

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subset of the modern industrial organization literature on tying arrangements. *See Computer II Final Decision*, 77 FCC 2d at 442 n.51.

[5] *See Bundling of Cellular Customer Premises Equipment and Cellular Service*, CC Docket No. 91-34, Report and Order, 7 FCC Rcd 4028, 4032 (1992) (*Cellular Bundling Order*) (noting that package discounts are commonplace in a variety of industries). Economists have also examined the welfare effects of such package discounts, using the term "mixed bundling" to describe the situation in which a seller offers goods or services separately as well as in a package, with the package priced below the sum of the prices of individual goods or services. *See generally* William James Adams & Janet L. Yellen, *Commodity Bundling and the Burden of Monopoly*, 90 Q.J. Econ. 475 (1976). We note that our rules do not prohibit carriers from offering "one-stop shopping" for CPE and telecommunications services; the rules require only that the goods or services be priced separately.

[6] *See Computer II Final Decision*, 77 FCC 2d at 443 & n.52, 463-66, 474-75.

[7] *See id.*

[8] *Id.* at 443 n.52.

major societal problems so long as the consumer is not deceived concerning the content and quality of the bundle."[9]

4. This review is consistent with our overall effort to reduce regulation wherever conditions warrant. The review we take in this notice is also consistent with our statutory obligation, as part of our biennial review of regulations, to eliminate or modify regulations that "are no longer necessary in the public interest as the result of meaningful economic competition."[10]

5. Three complementary goals underlie our efforts in this proceeding. First, we seek to benefit consumers by enabling them to take advantage of innovative and attractive packages of telecommunications equipment, enhanced services, and telecommunications services, while at the same time ensuring that carriers are unable to act anticompetitively to harm consumers. Second, we seek to foster increased competition in the markets for CPE, enhanced services, and telecommunications services. Finally, as a general matter, we seek to eliminate any existing regulatory requirement that no longer makes sense in light of current technological, market, and legal conditions. As a guiding principle, we believe that allowing competitive markets to be driven by market forces, rather than unnecessary regulatory requirements, will produce maximum benefits for consumers, companies, and the nation's economy.

II. BACKGROUND

6. In light of changes in the interexchange market over the past decade and the passage of the Telecommunications Act of 1996 (1996 Act),[11] the Commission issued a Notice of Proposed Rulemaking (*Interexchange Notice*) on March 25, 1996, initiating a review of the Commission's regulation of interstate, domestic, interexchange services.[12] The *Interexchange*

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[9] *Id; see also Cellular Bundling Order*, 7 FCC Rcd at 4030-31 (finding that bundling may be used as an "efficient distribution mechanism" and an "efficient promotional device" that may allow consumers to obtain goods and services "more economically than if it were prohibited"); *Jefferson Parish Hospital District No. 2 v. Hyde*, 466 U.S. 2, 11-12 (1984) (*Jefferson Parish*) ("Buyers often find package sales attractive; a seller's decision to offer such packages can merely be an attempt to compete effectively -- conduct that is entirely consistent with the Sherman Act.").

[10] 47 U.S.C. § 161; *see also infra* ¶ 8; *FCC Staff Proposes 31 Proceedings as Part of 1998 Biennial Regulatory Review*, FCC New Release, Report No. GN 98-1 (rel. Feb. 5, 1998) (*Biennial Review Feb. 5 News Release*).

[11] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 151 *et seq*. Hereinafter, all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code. The 1996 Act amended the Communications Act of 1934. We will refer to the Communications Act of 1934, as amended, as "the Communications Act" or "the Act."

[12] *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61, Notice of Proposed Rulemaking, 11 FCC Rcd 7141 (1996) (*Interexchange Notice*).

Notice, *inter alia*, sought comment on the Commission's tentative conclusion to revise its rule against bundling of common carrier communications services and CPE by allowing nondominant interexchange carriers to bundle CPE with interstate, domestic, interexchange telecommunications services.[13]

7. In the *Interexchange Second Report and Order*, the Commission deferred action on its tentative conclusion to modify the CPE bundling restriction.[14] The Commission noted that AT&T, in its comments on the Commission's tentative conclusions regarding CPE bundling, raised the issue of whether the Commission should also eliminate the restrictions on bundled packages of enhanced and interexchange services offered by nondominant interexchange carriers. The enhanced services restriction (which is not codified in the Commission's rules) was adopted by the Commission in the *Computer II* proceeding.[15] In the *Interexchange Second Report and Order*, the Commission stated that it would issue a Further Notice addressing the continued application of both the CPE and enhanced services bundling restrictions.[16]

8. We note, in addition, that Congress required the Commission to conduct a biennial review of regulations that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be "no longer necessary in the public interest."[17] Accordingly, the Commission has begun a comprehensive 1998 biennial review of telecommunications and other regulations to promote "meaningful deregulation and streamlining where competition or other considerations warrant such action."[18] In this Further Notice, therefore, we seek comment on the extent to which the continued application of both the CPE and enhanced services bundling restrictions is "no longer necessary in the public interest."

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[13] *Interexchange Notice*, 11 FCC Rcd at 7144, 7184-87; *see also* 47 C.F.R. 64.702(e).

[14] *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730, 20732, 20790-93 (1996) (*Interexchange Second Report and Order*), *stay granted, MCI Telecommunications Corp. v. FCC*, No. 96-1459 (D.C. Cir. Feb. 13, 1997), *Order on Reconsideration*, 12 FCC Rcd 15014 (1997), *further recon. pending.*

[15] *Computer II Final Decision*, 77 FCC 2d at 475; *see also Competition in the Interstate Interexchange Marketplace*, CC Docket No. 90-132, Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 4562, 4580 (1995); *Independent Data Communications Manufacturers Association, Inc. Petition for Declaratory Ruling and American Telephone and Telegraph Company Petition for Declaratory Ruling*, Memorandum Opinion and Order, 10 FCC Rcd 13717, 13719 (1995).

[16] *Interexchange Second Report and Order* 11 FCC Rcd at 20732, 20790-93.

[17] 47 U.S.C. § 161(a)(2).

[18] *1998 Biennial Review of FCC Regulations Begun Early*, FCC News Release (rel. Nov. 18, 1997); *see also Biennial Review Feb. 5 news Release.*

9. The revision of the CPE unbundling rule was one of a host of issues raised in the *Interexchange Proceeding*, which dealt generally with regulation of interstate, interexchange services. Among the other issues raised in that proceeding was whether to detariff such services completely, the appropriate definition of the relevant product and geographic markets for interexchange services, and implementation of the 1996 Act's rate averaging and rate integration provisions.[19] Although many parties submitted at least some general comments on the CPE bundling question,[20] most commenters focused their detailed comments on the other issues raised in the *Interexchange Notice*. Moreover, some commenters raised broader questions concerning the bundling of services. AT&T, as noted above, suggested that we allow nondominant interexchange carriers to bundle enhanced services with interexchange services.[21] SBC asserted that the elimination of the CPE bundling prohibition for nondominant interexchange carriers would adversely affect competition between incumbent LECs and interexchange carriers.[22] More specifically, SBC argued that, under the Commission's proposal, nondominant interexchange carriers that enter the local market would offer "bundles of local service, long distance, and CPE that local exchange carriers would be unable to match."[23] SBC therefore contended that the Commission should extend its proposal and eliminate the CPE bundling restriction for all carriers.[24]

10. In order to develop a more detailed and complete record than was possible in the context of the much larger *Interexchange Proceeding*, we issue this Further Notice focused solely on the bundling and package discount issues. In addition to developing a more complete record on the issues surrounding bundling and discounts on packages of CPE and interstate, domestic, interexchange services offered by nondominant interexchange carriers, we seek further comment on the issues raised by AT&T and SBC. We believe that developing a more complete record on our previous tentative conclusions, and the issues raised by the parties, will facilitate more informed decision-making. We therefore ask interested parties to respond to the issues raised in this Further Notice. To the extent that parties want any arguments made in response to the *Interexchange Notice* to be made part of the record for this Further Notice, we ask them to restate those arguments in their comments.

III. DISCUSSION

A. CPE Unbundling

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[19] *See Interexchange Notice*, 11 FCC Rcd at 7144-45.

[20] A complete list of the parties that commented on the CPE bundling issue and their abbreviations is contained in Appendix A.

[21] AT&T Comments at 28-30.

[22] SBC Comments at 7.

[23] *Id.*

[24] SBC in its comments did not address whether carriers should be permitted to bundle enhanced services.

11. In the *Computer II* proceeding, the Commission adopted a rule requiring all common carriers to sell or lease CPE separate and apart from such carriers' regulated communications services, and to offer CPE solely on a deregulated, non-tariffed basis.[25] Section 64.702(e) of our rules provides:

> Except as otherwise ordered by the Commission, after March 1, 1982, the carrier provision of customer-premises equipment used in conjunction with the interstate telecommunications network shall be separate and distinct from provision of common carrier communications services and not offered on a tariffed basis.[26]

Carriers previously had provided CPE to customers as part of a bundled package of services.[27] The Commission required carriers to separate the provision of CPE from the provision of telecommunications services because it found that continued bundling of telecommunications services with CPE could force customers to purchase unwanted CPE in order to obtain necessary transmission services, thus restricting customer choice and retarding the development of a competitive CPE market.[28] The Commission recognized, however, that there may not be any anticompetitive effects of bundling "[i]f the markets for components of [a] commodity bundle are workably competitive."[29]

12. In the *Interexchange Notice*, the Commission tentatively concluded that it should modify the CPE bundling restriction codified in section 64.702(e) to allow nondominant interexchange carriers to bundle CPE with their interstate, domestic, interexchange services.[30] The Commission noted that bundling may benefit consumers and promote competition, as long as the markets for the components of the bundle are substantially competitive so that carriers could not engage in anticompetitive conduct.[31] The Commission tentatively concluded that, in light of the development of substantial competition in the markets for CPE and interstate, interexchange services, it was unlikely that nondominant interexchange carriers could engage in the type of anticompetitive conduct that led the Commission to prohibit the bundling of CPE with the provision, *inter alia*, of

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[25] *Computer II Final Decision*, 77 FCC 2d at 496.

[26] 47 C.F.R. § 64.702(e).

[27] *Computer II Final Decision*, 77 FCC 2d at 442.

[28] *Id.* at 443 n.52.

[29] *Id.*

[30] *Interexchange Notice*, 11 FCC Rcd at 7186.

[31] *Id.* at 7185.

interstate, domestic, interexchange services.[32] In support of this tentative conclusion, we note that the Commission has previously determined that the CPE market is competitive,[33] and that the interstate, domestic, interexchange market is substantially competitive.[34]

13. We seek comment on whether the restriction against bundling CPE with interstate, domestic, interexchange services "is no longer necessary in the public interest due to meaningful economic competition" in both the CPE and interstate, domestic, interexchange markets.[35] In particular, we seek further comment on our tentative conclusion that both the CPE market and the interstate, domestic, interexchange services market demonstrate sufficient competition that it is unlikely that nondominant interexchange carriers could engage in anticompetitive behavior should the Commission allow the bundling of CPE with interstate, domestic, interexchange services. Commenters should provide empirical data on the level of competition in the interexchange and CPE markets to support their comments on these issues. We note that IDCMA argues that an interexchange carrier, even if lacking market power, nevertheless might have the ability to force consumers of their interstate, interexchange service offerings to purchase CPE from that same interexchange carrier.[36] We seek comment on IDCMA's argument.[37] We also seek comment on whether interexchange carriers that lack

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[32] *Id.* at 7185-86.

[33] *See, e.g., Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, First Report and Order, 10 FCC Rcd 8961, 9122 (1995) ("competition today is a fact in both the customer-premises equipment and the long-distance market"); *Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services*, 8 FCC Rcd 3891, 3891 (1993) (removing the National Security and Emergency Preparedness CPE reporting requirement as unnecessary, in part, because "[t]he CPE market has been very competitive for a number of years and there are many suppliers available to provide CPE") (citations omitted).

[34] *See Non-Accounting Safeguards Order*, 11 FCC Rcd at 21971; *Interexchange Second Report and Order*, 11 FCC Rcd at 20733, 20742-43; *Motion of AT&T to be Reclassified as a Nondominant Carrier*, Order, 11 FCC Rcd 3271, 3278-79, 3288 (1995) (*AT&T Reclassification Order*), Order on Reconsideration, Order Denying Petition for Rulemaking, Second Order on Reconsideration in CC Docket No. 96-61, 12 FCC Rcd 20787 (1997); *Competition in the Interstate, Interexchange Marketplace*, CC Docket No. 90-132, Report and Order, 6 FCC Rcd 5880, 5887 (1991), Order, 6 FCC Rcd 7255 (1991), Memorandum Opinion and Order, 7 FCC Rcd 2677 (1992), Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 2659 (1993), Second Report and Order, 8 FCC Rcd 3668 (1993), Memorandum Opinion and Order, 8 FCC Rcd 5046 (1993), Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 4562 (1995).

[35] 47 U.S.C. § 161.

[36] IDCMA argues that an interexchange carrier would violate the antitrust restriction against tying arrangements if it either requires an interexchange service customer to purchase carrier-provided CPE or if the carrier prices CPE at a level so low that the only economically viable option is for the customer to purchase the interexchange service and the CPE together in a single package. IDCMA Comments at 33-36.

[37] *See, e.g., Jefferson Parish*, 466 U.S. 2 (discussing antitrust standard for tying arrangements). In *Jefferson Parish*, the Supreme Court stated that "the essential characteristic of an invalid tying arrangement lies in the seller's exploitation of its control over the tying product to force the buyer into the purchase of a tied

market power could "lock in" customers, through the use of long-term contracts and early termination penalties, and thus impede competition in the CPE market.[38]

14. The Commission has previously found that bundling may be used as an "efficient distribution mechanism" and an "efficient promotional device" that may allow consumers to obtain goods and services "more economically than if it were prohibited."[39] We seek comment on whether we would benefit consumers and foster increased competition in the CPE and interexchange services markets by eliminating the CPE unbundling rule for nondominant interexchange carriers. We also seek comment on whether other benefits or costs would result from modifying the CPE unbundling rule as it applies to these carriers. Parties should address whether amending the CPE unbundling rule for nondominant interexchange carriers would benefit consumers, as AT&T and the Florida Commission contend, by enabling carriers as well as CPE vendors to offer consumers innovative packages at prices that reflect reduced transaction costs.[40] Parties should also address the contention raised by IDCMA, CERC, and ITAA that allowing nondominant interexchange carriers to bundle CPE and interstate, domestic, interexchange services would not benefit consumers, because the unbundling rule does not preclude interexchange carriers from offering one-stop shopping and creating service/equipment packages; it only requires them to charge separately for each component.[41] We also seek comment on whether the Commission should adopt transition mechanisms if we were to permit bundling of CPE and interstate, domestic, interexchange services, and if so, what transition mechanisms should be adopted.

15. In the *Interexchange Notice*, the Commission also sought comment on the effect that the proposed amendment of section 64.702(e) would have on the Commission's

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product . . . Accordingly, we have condemned tying arrangements where the seller has some special ability -- *usually called 'market power'* -- to force a purchaser to do something that he would not do in a competitive market . . . [A]s a threshold matter there must be a substantial potential for impact on competition in order to justify *per se* condemnation [of the tying arrangement] . . . In sum, any inquiry into the validity of a tying arrangement must focus on the market or markets in which the two products are sold, for this is where the anticompetitive forcing has its impact." *Id.* at 12-14, 16-18 (emphasis in the original); *see also, e.g., Digidyne Corp v. Data General Corp.* 734 F.2d 1336, 1341 (9th Cir. 1984), *cert. denied*, 473 U.S. 908 (1985) ("In a tying case, the issue is not whether the defendant has market power in the tying market, it is whether -- because of the market structure -- the defendant has the ability to 'force' some of its customers to purchase tied products that they would have preferred not to buy.").

[38] *Cf. Eastman Kodak Company v. Image Technical Services, Inc.*, 504 U.S. 451 (1992) (discussing the ability of firms without market power in one market to act anticompetitively in another market by locking in customers).

[39] *Cellular Bundling Order*, 7 FCC Rcd at 4030-31.

[40] *See* AT&T Comments at 26; Florida Commission Comments at 18.

[41] CERC Comments at 8; IDCMA Comments at 38.

other policies or rules.[42] We seek comment on whether the proposal to allow bundling and discounts for packages of CPE with interstate, domestic, interexchange service is consistent with the purposes of the Act. In particular, we seek further comment on whether there are any other provisions of the Act or the Commission's rules and regulations that are relevant to our analysis. For example, IDCMA and CERC assert that the Commission's proposal is inconsistent with the intent of Congress, as demonstrated by section 629 of the Act, which prohibits the bundling of multichannel video programming service with the equipment used by consumers to access multichannel video programming service.[43]

16. In addition, we seek comment on whether or under what conditions bundling of CPE with interstate, domestic, interexchange services would violate the requirements in sections 201 and 202 of the Act that rates, practices, and classifications be just, reasonable, and not unjustly or unreasonably discriminatory. Parties should address whether, as IDCMA contends, an interexchange carrier that provides transmission service at a lower price to customers that agree to use carrier-provided CPE would violate sections 201 and 202.[44] Parties should also address whether an interexchange carrier that provides CPE at a discount to customers that agree to use that carrier's interstate, domestic, interexchange services would violate sections 201 and 202. Parties should further address IDCMA's assertion that an interexchange carrier "could choose to make transmission service available *only* to customers that agreed to obtain carrier-provided CPE," in violation of the nondiscrimination requirements found in section 202 of the Act.[45]

17. We also seek further comment on IDCMA's assertion that allowing interexchange carriers to bundle CPE with interstate, domestic, interexchange services would cause the Commission to reregulate CPE because interexchange carriers could offer CPE as a part of their regulated transmission offering.[46] Parties should address IDCMA's contention that, because the Commission would have to ensure that a bundle of CPE and the regulated transmission offering comply with Title II pricing requirements, the Commission would necessarily need to impose Title II regulation on CPE.[47] Parties should further address whether such concerns about reregulation of CPE would apply if the CPE and the interstate, domestic, interexchange services are priced separately, but a package discount is given for customers that purchase both products. U S West, citing the *Cellular Bundling Order*,

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[42] *Interexchange Notice*, 11 FCC Rcd at 7187.

[43] IDCMA Comments at 20; CERC Comments at 10-11; 47 U.S.C. § 549; *see also* 47 U.S.C. § 544A; *Implementation of Section 304 of the Telecommunications Act of 1996*, CS Docket No. 97-80, 13 FCC Rcd 14775 (1998) (implementing section 629 of the Act).

[44] IDCMA Comments at 15.

[45] IDCMA Comments at 14 (emphasis in original).

[46] IDCMA Comments at 22-24.

[47] *Id.* at 23-24.

suggests that the Commission could avoid the regulation of CPE by permitting packaging of CPE and transmission services, but continuing to require that CPE and common carrier services be treated, for regulatory purposes, as different products subject to different regulatory regimes (*i.e.* that CPE remain unregulated).[48] We seek comment on whether such an approach is appropriate in this instance. We further seek comment on any other issues that may arise when CPE is packaged with a telecommunications service that is regulated under Title II of the Act.

18. We further seek comment on the contention raised by IDCMA, CERC, and ITAA that permitting nondominant interexchange carriers to bundle CPE and interstate, domestic, interexchange services would allow such carriers to subsidize the provision of equipment from the charges for service.[49] In addition, we seek comment on the basis upon which to allocate revenue between telecommunications services and CPE when priced as a package for purposes of calculating a carrier's universal service contribution.[50]

19. Moreover, we seek comment on whether and how the CPE bundling proposal would affect the Commission's Part 68 rules. Specifically, although we have not proposed modifications to the Commission's Part 68 registration program in this Further Notice, we seek comment on whether the "demarcation point" between telephone company communications facilities and terminal equipment, as defined in section 68.3 of the Commissions rules, would change if CPE and interexchange carriers network offerings were

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[48] U S West Comments at 9; *see also Cellular Bundling Order*, 7 FCC Rcd 4028.

[49] CERC Comments at 8; IDCMA Comments at 38. *Cf.* 47 U.S.C. § 254(k).

[50] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9206-12 (1997) (*Universal Service Order*); Errata, FCC 97-157 (rel. June 4, 1997), appeal pending *sub nom. Texas Office of Public Utility Counsel v. FCC*, No. 97-60421 (5th Cir. 1997); Order on Reconsideration, 12 FCC Rcd 10095 (1997); *Changes to the Board of Directors of the National Exchange Carrier Association Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400 (1997), Order on Reconsideration, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12444 (1997); *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-160, Third Report and Order, 12 FCC Rcd 22485 (1997); Erratum, (rel. Oct. 15, 1997); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket No. 97-21, Report and Order and Second Order on Reconsideration in CC Docket 97-21, 12 FCC Rcd 22423 (1997); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-24, Third Order on Reconsideration, 12 FCC Rcd 22801 (1997); *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration, 13 FCC Rcd 5318 (1997), Errata, DA 98-158 (rel. Jan 29, 1998), appeal pending *sub nom. Alenco Communications, Inc. v. FCC*, No. 98-60213 (5th Cir. 1998); *Federal-State Joint Board on Universal Service*, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, FCC 98-120 (rel. June 22, 1998); Order on Reconsideration, CC Docket No. 96-45, FCC 98-160 (rel. July 17, 1998).

bundled or packaged together at a discount, and what effect, if any, this would have on the Commission's Part 68 program.[51]

20. We further seek comment on whether and how the CPE bundling proposal would affect a carrier's disclosure obligation under section 64.702(d)(2), the "all-carrier rule."[52] Section 64.702(d)(2) requires that all carriers owning basic transmission facilities disclose to the public all information relating to network design "insofar as such information affects either intercarrier interconnection or the manner in which interconnected CPE operates."[53] We seek comment on the concern expressed by IDCMA and CERC that carriers that offer bundled CPE and service packages will not provide independent or unaffiliated equipment manufacturers with the necessary technical interface information.[54] In particular, we seek comment on whether we need to require public disclosure of network interfaces beyond what is already required in section 64.702(d)(2) of our rules should we remove the CPE bundling restriction.

21. In the *Interexchange Notice* we also asked parties to comment on whether we should require interexchange carriers offering packages of CPE and interstate, domestic, interexchange services to continue to offer separately unbundled, interstate, domestic, interexchange services.[55] We seek further comment on this issue. In particular, we seek further comment on whether this "unbundled option" requirement would benefit consumers by ensuring that those consumers that do not wish to purchase carrier-provided CPE may obtain transmission services only. For example, as U S West notes, the Commission allows bundling of cellular CPE and cellular service, provided that the cellular service is also offered

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[51] *See* IDCMA Comments at 25 (arguing that when CPE is bundled with a regulated transmission offering, the CPE would become part of the telephone network, thereby altering the demarcation point). We note the Commission has an on-going proceeding which addresses the demarcation point definition. *See Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 88-57 (Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network and Petition for Modification of Section 68.213 of the Commission's Rules filed by the Electronic Industries Association), 5 FCC Rcd 4686 (1990), *stay denied, Order* 5 FCC Rcd 5228 (Com. Car. Bur. 1990); *see also Telecommunications Services Inside Wiring and Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, CS Docket No. 95-184 and MM Docket No. 92-260, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 97-376 (rel. October 17, 1997).

[52] 47 C.F.R. § 64.702(d)(2). We note that we recently sought comment in the *Computer III Further Notice* on whether the "all-carrier rule" should be retained in light of the disclosure requirements established in the 1996 Act. *Computer III Further Notice* at ¶¶ 117-123. We tentatively concluded that the network disclosure rules established in *Computer II*, including the "all-carrier rule," should continue to apply. *Id.* at ¶ 122.

[53] *Amendment of Section 64.702 of the Commissions Rules and Regulations,* Memorandum Opinion and Order on Reconsideration, 84 FCC 2d 50, 82-83 (1980) (*Computer II Order on Reconsideration*); *see also* 47 C.F.R. § 64.702(d)(2).

[54] CERC Comments at 13; IDCMA Comments at 26, n. 63.

[55] *Interexchange Notice*, 11 FCC Rcd at 7186.

separately.[56] We also seek comment on whether any additional safeguards are necessary to protect consumers and how any such safeguards should be structured. We seek further comment on CERC's proposal that the Commission should require carriers that offer packages of CPE and interexchange services to state separately the charges for CPE and service in both advertising materials and bills, even when the bundled service is being sold at a single price.[57] We also seek comment on CERC's further suggestion that the Commission permit the customer to obtain the service separately at a price which, when added to the CPE price, does not exceed the price for obtaining CPE and the telecommunications service jointly.[58] Parties should address whether adopting this proposal would undermine the benefits to consumers of allowing package discounts for bundles of CPE and interstate, domestic, interexchange services.

22. In a related vein, we sought comment in the *Interexchange Notice* on whether the U.S. Government's obligations under the General Agreement on Trade in Services (GATS)[59] to ensure that "service suppliers" are permitted "to purchase or lease and attach terminal or other equipment which interfaces with the [public telecommunications transport] network and which is necessary to supply [their] services" implies that interexchange carriers should be required to offer separately unbundled, interstate, domestic, interexchange services on a nondiscriminatory basis if they are permitted to bundle CPE with the provision of such services.[60] We seek further comment on whether amending the unbundling rule is consistent with U.S. international obligations under both the GATS and the North American Free Trade Agreement (NAFTA),[61] and whether such obligations require that interexchange carriers bundling CPE and interstate, domestic, interexchange services also continue to offer such services separately and unbundled from CPE.

23. We also seek comment on whether eliminating the prohibition against bundling CPE with interstate, domestic, interexchange services offered by nondominant interexchange carriers would adversely affect competition in the international market. The impact on the international market may arise because many carriers currently offer bundled interstate,

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[56] *See* U S West Comments at 9; *see also Cellular Bundling Order*, 7 FCC Rcd at 4032.

[57] CERC Comments at 13. Under CERC's proposal, a carrier would not be able to provide a single-price for the bundled offering, but would instead need to separate the charges for each component of the bundle.

[58] *Id.*

[59] *See* GATS Annex of Telecommunications, ¶ 5(b). The GATS is Annex 1B of the Marrakesh Agreement Establishing the World Trade Organization, 33 I.L.M. 1167 (1994).

[60] *Interexchange Notice*, 11 FCC Rcd at 7186-87.

[61] *See* North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., Art. 1302(2), H.R. Treaty Doc. 159, 103d Cong., 1st Sess. (1993).

domestic, interexchange, and international services.[62] Nondominant interexchange carriers would thus be able to offer packages that include CPE, international services, and interstate, domestic, interexchange services. We therefore seek comment on whether there are any anticompetitive effects of allowing nondominant interexchange carriers to bundle CPE with interstate, domestic, interexchange services, when such services, in turn, are packaged with international services. Parties should address whether any anticompetitive effects they identify should preclude a nondominant interexchange carrier from bundling CPE with interstate, domestic, interexchange services, when such services, in turn, are packaged with international services. Parties should also address whether there are any safeguards to prevent anticompetitive conduct that are less restrictive than prohibiting such bundles.

24. Furthermore, the *Interexchange Notice* sought comment on whether and how the entry of incumbent local exchange carriers (LECs),[63] including the Bell Operating Companies (BOCs), into the market for interstate, domestic, interexchange services should affect our analysis.[64] After the *Interexchange Notice* was issued, the Commission, in the *LEC Classification Order*, classified the BOCs' section 272 affiliates as nondominant in the provision of in-region, interstate, interLATA services.[65] The Commission also classified the BOCs and their affiliates as non-dominant in the provision of out-of-region interstate, domestic, interexchange services.[66] The Commission concluded that the requirements established by, and the rules implemented pursuant to, sections 271 and 272 of the Act, together with other existing Commission rules, sufficiently limit the ability of a BOC and its section 272 affiliate to use the BOC's market power in the local exchange or exchange access

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[62] *See Interexchange Second Report and Order*, 11 FCC Rcd at 20781.

[63] For purposes of this Further Notice, we define incumbent local exchange carrier as it is defined in section 251(h) of the Act. 47 U.S.C. § 251(h).

[64] *Interexchange Notice*, 11 FCC Rcd at 7187. Upon enactment, the 1996 Act permitted the BOCs to provide interLATA services that originate outside their regions. 47 U.S.C. § 271(b)(2). The 1996 Act conditions the BOCs entry into in-region, interLATA service on their compliance with the requirements in section 271 of the Act. One such condition is that the BOC comply with section 272 of the Act and our implementing rules thereunder, which require, among other things, that a BOC provide in-region, interLATA service through a separate affiliate (hereinafter, BOC section 272 affiliate) that meets the structural and nondiscrimination requirements of section 272. *See* 47 U.S.C. §§ 271(d)(3)(B), 272(a)(1). The Act does not require BOCs to provide interLATA service originating outside their regions through a separate affiliate. *See* 47 U.S.C. § 272(a)(2)(B)(ii).

[65] *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Market Place*, CC Docket Nos. 96-149, 96-61, Second Report in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, 15802 (*LEC Classification Order*), Order on Reconsideration, 12 FCC Rcd 8730 (1997), Order, DA 98-556 (rel. March 24, 1998) (*LEC Classification Partial Stay Order*), *further recon. pending*.

[66] *Id.* at 15873-15878.

markets to raise and sustain prices of interstate, interLATA services above competitive levels.[67] In addition, the Commission classified independent incumbent LECs and their affiliates as nondominant in the provision of interstate, interexchange services.[68] The Commission further required these independent LECs to provide in-region, interexchange services through separate affiliates that satisfy the requirements established in the *Competitive Carrier Fifth Report and Order*, but did not require such separation in order to be classified as nondominant in the provision of out-of-region interstate, interexchange services.[69]

25. Based on the safeguards imposed by the Act and the Commission's rules thereunder, we tentatively conclude that, to the extent the BOCs and their section 272 affiliates, as well as independent LECs and their affiliates, are classified as nondominant in the provision of interstate, domestic, interexchange services, these carriers may bundle CPE with such services to the same extent as other nondominant interexchange carriers. We seek comment on this tentative conclusion.

26. We also seek comment on whether there are any anticompetitive effects of allowing any nondominant interexchange carrier to bundle CPE with interstate, domestic, interexchange services, when such services, in turn, are packaged with local exchange services. Parties should address whether any anticompetitive effects they identify should preclude a nondominant interexchange carrier from bundling CPE with interstate, domestic, interexchange services, when such services, in turn, are packaged with local exchange

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[67] *Id.* at 15802-40, 15873-78; *see also Non-Accounting Safeguards Order*, 11 FCC Rcd 21905; *Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 12 FCC Rcd 2993 (1996) (*Accounting Safeguards Order*); *Implementation of Section 273 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996*, CC Docket No. 96-472, Notice of Proposed Rulemaking, 11 FCC Rcd 21784 (1996) (implementing section 273, which imposes additional restrictions on BOCs that manufacture CPE).

[68] *LEC Classification Order*, 12 FCC Rcd at 15840-15865.

[69] *Id.* at 15840-65, 15873-78. These requirements are that the affiliate: (1) maintain separate books of account; (2) not jointly own transmission or switching facilities with the LEC; and (3) acquire any services from its affiliated exchange company at tariffed rates, terms, and conditions. *Id.* at 15767-77; *see Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980) (*Competitive Carrier First Report and Order*); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Further Notice of Proposed Rulemaking, FCC 82-187, 47 Fed. Reg. 17,308 (1982); Second Report and Order, 91 FCC 2d 59 (1982); Order on Reconsideration, 93 FCC 2d 54 (1983); Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 28,292 (1983); Third Report and Order, 48 Fed. reg. 46,791 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983) (*Competitive Carrier Fourth Report and Order*), *vacated, AT&T v. FCC*, 978 F.2d 727 (D.C. Cir. 1992), *cert. denied, MCI Telecommunications Corp. v. AT&T*, 13 S. Ct. 3020 (1993); *Competitive Carrier Fifth Report and Order*, 98 FCC 2d 1191 (1984); Sixth Report and Order, 99 FCC 2d 1020 (1985), *vacated, MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186 (D.C. Cir. 1985) (*Competitive Carrier Sixth Report and Order*) (collectively referred to as the *Competitive Carrier Proceeding*); *see also LEC Classification Partial Stay Order*, DA 98-556 (staying the deadline by which independent LECs providing in-region, interstate, interexchange services on an integrated basis must comply with the Commission's separate affiliate requirement).

services. Parties should also address whether there are any safeguards to prevent anticompetitive conduct that are less restrictive than prohibiting such bundles.

27. Furthermore, we seek comment on the broader question raised by SBC in previous comments in this proceeding of whether to continue the prohibition on bundling interstate CPE with local exchange or exchange access services.[70] We recognize that nondominant interexchange carriers are entering the local exchange and exchange access markets. As they do so, they may be able to offer local exchange and exchange access services in conjunction with the bundled offering of CPE and interstate, domestic, interexchange services. Nondominant interexchange carriers may thus be able to offer a package that includes CPE, local exchange services, and interstate, domestic, interexchange services.[71] SBC argues that local exchange carriers would be at a disadvantage, because they would be unable to offer packages that included CPE.[72] In this Further Notice, we seek comment on the issues raised by SBC as to whether to allow bundling of CPE with local exchange and exchange access services.

28. We note that the basis for the Commission's tentative conclusion in the *Interexchange Notice* to allow nondominant interexchange carriers to bundle CPE with interstate, domestic, interexchange services is that both the CPE and interstate, domestic, interexchange markets are substantially competitive and that nondominant interexchange carriers do not possess market power in the interstate, interexchange market.[73] Thus, the Commission tentatively concluded in the *Interexchange Notice* that allowing such carriers to bundle CPE with interstate, domestic, interexchange services is unlikely to lead to the anticompetitive conduct that led the Commission to prohibit the bundling of CPE with telecommunications services.[74]

29. We seek comment on whether a similar analysis should be adopted in assessing whether to allow the bundling of CPE with local exchange and exchange access services. The analysis, as noted, contains two parts. The first part of the analysis focuses on the nature of the component markets. We seek comment on whether the differences in the structures of and the market conditions in the local exchange, exchange access, and interexchange markets

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[70] SBC Comments at 7.

[71] We recognize that interstate, interexchange services are currently tariffed at the Commission and that states have tariff filing requirements for local exchange services. *See* 47 U.S.C. § 152. In addition, the Commission has the authority to regulate CPE. For a discussion of the jurisdictional issues that may arise when carriers bundle a service regulated by the Commission with one regulated by the states, see *infra* ¶ 29.

[72] SBC Comments at 7.

[73] *Interexchange Notice*, 11 FCC Rcd at 7185-86; *See also Interexchange Second Report and Order*, 11 FCC Rcd at 20790.

[74] *Interexchange Notice*, 11 FCC Rcd at 7186. *See also Computer II Final Decision*, 77 FCC 2d at 443 & n.52, 463-66, 474-75.

warrant continued applicability of the CPE bundling restrictions to local exchange and exchange access markets. The second part of the analysis in the *Interexchange Notice* concludes that allowing nondominant interexchange carriers to bundle CPE and interstate, domestic, interexchange services would be unlikely to lead to anticompetitive conduct, because such carriers do not have market power. We seek comment on whether there are carriers in the local exchange or exchange access markets that would similarly not raise anticompetitive concerns if allowed to bundle CPE with local exchange and exchange access services. In this regard, parties should address what role market power should play in the analysis and whether carriers that do not possess market power in the local exchange and exchange access markets would be able to engage in the anticompetitive conduct which led the Commission to prohibit such bundling.[75] Parties should also address whether lifting the CPE bundling restrictions on only certain categories of carriers in the local exchange and exchange access markets would promote competition and the provision of innovative services and packages, thereby benefitting consumers.

30. Finally, we seek comment on the jurisdictional issues that may arise if we allow bundling of CPE and local exchange services. We note that, although the Commission has deregulated CPE, the Commission has the authority, under Title I of the Communications Act, to regulate CPE that is used for both interstate and intrastate communications and to preempt inconsistent regulation on the part of the states.[76] States have the authority to regulate the provision of local exchange services. As discussed above, an issue regarding the regulation of CPE may arise if CPE, which was deregulated by the Commission, is bundled or packaged with a regulated service.[77] Moreover, jurisdictional questions may arise if CPE is bundled with local exchange services, because states have the authority to regulate local exchange services, while the Commission has the authority to regulate CPE. We therefore seek comment on what, if any, impact allowing the bundling or packaging of CPE with local exchange service may have on the states' regulation of local exchange service or on the Commission's regulation of CPE. We note that similar jurisdictional issues may arise with bundles or packages of interexchange and local exchange services, although we do not consider such jurisdictional issues in this proceeding.

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[75] *See Computer II Final Decision*, 77 FCC 2d at 443 & n.52, 463-66, 474-75; *see also, e.g.*, Michael D. Whinston, *Tying, Foreclosure, and Exclusion*, 80 Am. Econ. Rev. 837 (1990) (concluding that, if a firm is a monopolist in one market and is bundling its product in another market where it faces rivals, allowing bundling may lead to higher prices and fewer firms in the market where there is competition). *But see, e.g.*, Patrick DeGraba, *Why Lever into a Zero-Profit Industry: Tying, Foreclosure, and Exclusion*, 5 J. Econ. & Mgmt. 433 (1996) (concluding that, if a firm with market power in one market is bundling its product with a separate product in a market where no firm has market power, then prices will be lower and welfare higher due to bundling).

[76] *See Computer and Communications Indus. Ass'n v. FCC*, 693 F.2d at 214-18 (D.C. Cir. 1982); *North Carolina Utils. Comm'n v. FCC*, 552 F.2d 1036; *North Carolina Utils. Comm'n v. FCC*, 537 F.2d 787.

[77] IDCMA, for example, argued that allowing the bundling of CPE with a regulated transmission service could lead to the reregulation of CPE. *See supra* ¶ 17.

B. Enhanced Services

31. In the *Computer II* proceeding, the Commission adopted a regulatory scheme that distinguished between the common carrier offering of basic transmission services and the offering of enhanced services.[78] The Commission defined a "basic transmission service" as the common carrier offering of "pure transmission capability" for the movement of information "over a communications path that is virtually transparent in terms of its interaction with customer-supplied information."[79] The Commission further stated that a basic transmission service should be limited to the offering of transmission capacity between two or more points suitable for a user's transmission needs.[80] The common carrier offering of basic services is regulated under Title II of the Communications Act.[81] In contrast, the Commission defined enhanced services as:

> services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information.[82]

Enhanced services are not regulated under Title II of the Communications Act.[83]

32. We note that the 1996 Act does not utilize the Commission's basic/enhanced terminology, but instead refers to "telecommunications services" and "information services." We concluded in the *Non-Accounting Safeguards Order* that, although the text of the Commission's definition of "enhanced services" differs from the 1996 Act's definition of "information services," the two terms should be interpreted to extend to the same functions.[84] We recently issued a report reviewing the Commission's interpretation of the terms

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[78] *Computer II Final Decision*, 77 FCC 2d at 387.

[79] *Id.* at 419-20.

[80] *Id.*

[81] *Id.* at 428.

[82] 47 C.F.R. § 64.702(a).

[83] *Id.*; *see also Computer II Final Decision*, 77 FCC 2d at 428-30. In *Computer II*, the Commission determined that, while we have jurisdiction over enhanced services under the general provisions of Title I, it would not serve the public interest to subject enhanced service providers to traditional common carriage regulation under Title II because, among other things, the enhanced services market was "truly competitive." *Id.* at 430, 432-33.

[84] *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21955-56.

"telecommunications services" and "information services."[85] In that report, we concluded that, in the 1996 Act, Congress intended these terms to refer to distinct categories of services and that Congress sought "to maintain the *Computer II* framework" and the basic/enhanced distinction in its definition of "telecommunications services" and "information services."[86] To avoid confusion in this Further Notice, we will continue to use the terms "basic services" and "enhanced services" to refer to the restrictions adopted in the *Computer II* proceeding.

33. In the *Computer II* proceeding, the Commission required common carriers that own transmission facilities and provide enhanced services to "acquire transmission capacity pursuant to the same prices, terms, and conditions reflected in their tariffs when their own facilities are utilized."[87] This requirement has been interpreted in decisions since *Computer II* to mean that "carriers that own common carrier transmission facilities and provide enhanced services must unbundle basic from enhanced services and offer transmission capacity to other enhanced service providers under the same tariffed terms and conditions under which they provide such services to their own enhanced service operations."[88]

34. Although the Commission did not specifically seek comment in the *Interexchange Notice* on the restriction against bundling of enhanced and basic telecommunications services, AT&T urged the Commission, in its comments, to issue a further notice of proposed rulemaking on this issue.[89] Specifically, AT&T proposes that the Commission eliminate the prohibition on bundled packages of enhanced services and interstate, interexchange services offered by nondominant interexchange carriers.[90] The Commission declined in the *Interexchange Second Report and Order* to determine whether it should eliminate the CPE unbundling rule because it found, in part, that AT&T's request presented issues similar to those raised in the *Interexchange Notice* relating to bundling of CPE with interstate, domestic, interexchange services by nondominant interexchange carriers.[91]

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[85] *Universal Service Report to Congress* at ¶¶ 33-48; *see also Universal Service Order*, 12 FCC Rcd at 9179-81; *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21955-56; *Computer III Further Notice* at ¶¶ 39-41.

[86] *Universal Service Report to Congress* at ¶¶ 33, 39, 45-46.

[87] *See Computer II Final Decision*, 77 FCC 2d at 475. We note that this requirement is not codified in the Commission's rules.

[88] *See, e.g., Independent Data Communications Manufacturers Association, Inc. Petition for Declaratory Ruling and American Telephone and Telegraph Company Petition for Declaratory Ruling*, Memorandum Opinion and Order, 10 FCC Rcd 13717, 13719 (1995); *see also Competition in the Interstate Interexchange Marketplace*, CC Docket No. 90-132, Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 4562, 4580 (1995).

[89] AT&T Comments at 28-30.

[90] *Id.*; *see also* MCI Comments at 22-23, n.33 (assuming that the proposed amendment of section 64.702(e) would allow bundling of transmission with enhanced services as well as CPE or "any other product or service that the carrier chooses to include in a bundle").

[91] *Interexchange Second Report and Order*, 11 FCC Rcd at 20793.

The Commission found in the *Interexchange Second Report and Order* that it did not have a sufficient record to address AT&T's proposal to remove the restriction on bundling enhanced services with interstate, domestic, interexchange services.[92]

35. We thus seek comment in this Further Notice on whether we should remove the restrictions on the bundling of enhanced services with interstate, domestic, interexchange services offered by nondominant interexchange carriers. We also seek comment on whether the restrictions against bundling enhanced services with interstate, domestic, interexchange services offered by nondominant interexchange carriers is no longer necessary in the public interest.[93]

36. As we noted above, the Commission found that BOC section 272 affiliates would be classified as nondominant interexchange carriers.[94] We note that, in the *Non-Accounting Safeguards Order*, the Commission allowed the BOCs' section 272 affiliates to bundle interLATA telecommunications service with interLATA information services, as long as the affiliate provided interLATA telecommunications services on a resale basis.[95] The Commission noted that if "a BOC's section 272 affiliate were classified as a facilities-based telecommunications carrier (*i.e.*, it did not provide interLATA telecommunications services solely through resale), the affiliate would be subject to a *Computer II* obligation to unbundle and tariff the underlying telecommunications services used to furnish any bundled service offering."[96] In its discussion of this issue in the *Non-Accounting Safeguards Order*, the Commission noted that the market for interLATA information services "is fully competitive" and the market for interLATA telecommunications services is "substantially competitive."[97] Because of these market conditions, the Commission stated that there was "no basis for concern that a section 272 affiliate providing an information service bundled with an interLATA telecommunications service would be able to exercise market power."[98] We seek comment on the effect on this proceeding of the decision in the *Non-Accounting Safeguards Order* to permit BOC section 272 affiliates that provide interLATA telecommunications services solely on a resale basis to bundle such telecommunications services and interLATA information services. Specifically, we seek comment on whether the enhanced services

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[92] *Id.*

[93] *See* 47 U.S.C. § 161.

[94] *LEC Classification Order*, 12 FCC Rcd at 15802.

[95] *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21971-21972.

[96] *Id.* at 21972.

[97] *Id.* at 21971 (citations omitted). As noted above, the Commission determined in the *Non-Accounting Safeguards Order* that the terms "enhanced services" and "information services" should be interpreted to extend to the same functions. *Id.* at 21955-56.

[98] *Id.* at 21971-92.

market and the interstate, domestic, interexchange services market are sufficiently competitive so that it is unlikely that nondominant interexchange carriers could engage in anticompetitive behavior should the Commission eliminate the restrictions on bundling of enhanced services with interstate, domestic, interexchange services. Commenters should provide empirical data on the level of competition in the interexchange and enhanced services markets to support their comments on these issues. We also seek comment on whether, as claimed by ITAA,[99] AT&T or any other nondominant interexchange carriers have the ability, to discriminate in favor of their own enhanced service offerings.[100]

37. Commenters should also address AT&T's assertion that the rationale underlying the elimination of the CPE bundling restriction applies with equal force to the enhanced services bundling restriction, and therefore, that the Commission must lift the restriction on bundling enhanced services with interexchange services if the CPE bundling restriction is lifted.[101] Commenters should explain how the similarities or differences between the CPE and enhanced services markets should affect our analysis. Commenters should address not only whether the issues raised in the CPE discussion above apply to the proposal to remove the enhanced services bundling restriction, but also whether additional issues are raised. Commenters should also discuss whether any transition mechanisms or safeguards, such as those discussed with respect to modifying the CPE unbundling rule, would be necessary or sufficient to protect against anticompetitive behavior if the Commission were to permit interexchange carriers to bundle enhanced services with interstate, domestic, interexchange services.

38. As in the CPE bundling discussion above, we also seek comment on whether there are any anticompetitive effects of allowing nondominant interexchange carriers to bundle enhanced services with interstate, domestic, interexchange services, when such services, in turn, are packaged with international services.

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[99] ITAA Comments at 8 (arguing that enhanced service providers must purchase the transmission services they require from the three largest facilities-based interexchange carriers (AT&T, MCI, and Sprint), and therefore, that these carriers may have the ability to discriminate in favor of their own enhanced service offerings).

[100] We note that AT&T remains subject to a modified Open Network Architecture (ONA) Plan that the Commission approved in 1988. *See Filing and Review of Open Network Architecture Plan*, CC Docket No. 88-2, Memorandum Opinion and Order, 4 FCC Rcd 2449 (1988); *see also Computer III Further Notice* at ¶¶ 2, 116. AT&T must currently submit an annual affidavit that affirms that it has followed the installation procedures in its ONA plan and has not discriminated in the quality of network services provided to competing enhanced service providers. *See id.* at ¶ 116. We further note that, in another proceeding, we have tentatively concluded that we should no longer require AT&T to file this affidavit, because the level of competition in the interexchange services market is an effective check on AT&T's ability to discriminate in the quality of network services provided to competing enhanced service providers. *Id.*

[101] *See* AT&T Comments at 28-29.

39. We seek comment on whether there are any anticompetitive effects of allowing nondominant interexchange carriers to bundle, or provide discounts on packages of, enhanced services and interstate, domestic, interexchange services, when such services, in turn, are packaged with local exchange services.[102] Parties should further address whether any effects they identify should preclude a nondominant interexchange carrier from bundling, or offering discounts on packages of, enhanced services and interstate, domestic, interexchange services, when such services, in turn, are packaged with local exchange services. Parties should also address whether there are any safeguards to prevent anticompetitive conduct that are less restrictive than prohibiting such bundles.

40. In addition, as in the CPE discussion above,[103] we seek comment on the broader question of whether to amend the enhanced services bundling restriction to allow any carrier to bundle enhanced services with local exchange and exchange access services. Commenters should address not only whether the issues raised in the CPE discussion above apply to the elimination of the enhanced services bundling restriction, but also whether additional issues are raised. We note, as discussed below, that we consider in this Further Notice only those services that are within the scope of the Commission's recognized jurisdiction.[104] We recognize that states have authority to regulate local exchange services and enhanced services that are offered purely on an intrastate basis.[105] Thus, in this Further Notice, we do not consider the bundling of local exchange services and purely intrastate enhanced services.

41. As noted above, the basis for the Commission's tentative conclusion in the *Interexchange Notice* to allow nondominant interexchange carriers to bundle CPE with interstate, domestic, interexchange services is that both the CPE and interstate, domestic, interexchange markets are substantially competitive and that nondominant interexchange carriers do not possess market power in the interstate, interexchange market.[106] We seek comment on whether a similar analysis should be adopted in assessing whether to allow the bundling of enhanced services with local exchange and exchange access services. We also seek comment on whether the differences in the structures of and the market conditions in the local exchange, exchange access, and interexchange markets warrant continued applicability of the enhanced services bundling restrictions to the local exchange and exchange access markets. We further seek comment on whether there are carriers in the local exchange or exchange access markets that would not raise anticompetitive concerns if allowed to bundle enhanced services with local exchange and exchange access services. In this regard, parties

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[102] As discussed above, jurisdictional issues may arise depending on the structure of interexchange/local exchange packages offered by nondominant interexchange carriers. *See supra* ¶ 24.

[103] *See supra* ¶ ?.

[104] *See infra* ¶ 40.

[105] *See California v. FCC*, 905 F.2d 1217, 1239-1242 (9th Cir. 1990) (*California I*).

[106] See *supra* ¶ ?; *see also Interexchange Notice*, 11 FCC Rcd at 7185-86.

should address what role market power should play in the analysis and whether carriers that do not possess market power in the local exchange and exchange access markets would be able to engage in the anticompetitive conduct which led the Commission to prohibit such bundling.[107] Parties should also address whether lifting the enhanced services bundling restrictions on only certain categories of carriers in the local exchange and exchange access markets would promote competition and the provision of innovative services and packages, thereby benefitting consumers. In addition, as in the CPE discussion above, we seek comment on what, if any, impact allowing the bundling of enhanced services with local exchange service may have on the states' regulation of local exchange service and intrastate enhanced services, or on the Commission's regulation of enhanced services.[108]

42. We note that the Commission has authority to regulate interstate enhanced services.[109] We also have authority to regulate jurisdictionally mixed enhanced services where it is "not possible to separate the interstate and intrastate components" and to preempt inconsistent regulations on the part of the states for the intrastate portion of those services where "state regulations would negate valid FCC regulatory goals."[110] Thus, we tentatively conclude that the questions upon which we seek comment in this Further Notice fall within the scope of our authority.

IV. PROCEDURAL MATTERS

A. Ex Parte Presentations

43. 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.[111] 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

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[107] *See Computer II Final Decision*, 77 FCC 2d at 443 & n.52, 463-66, 474-75.

[108] *See supra* ¶ 29.

[109] *See* 47 U.S.C. § 152(a); *see also Computer and Communications Indus. Ass'n v. FCC*, 693 F.2d at 213 (upholding the Commission's regulation of enhanced services as ancillary to the Commission's authority over interstate transmission services).

[110] *See California v. FCC*, 39 F.3d 919, 931-33 (9th Cir. 1994) (*California III*), *cert. denied*, 115 S. Ct. 1427 (1995).

[111] *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 (citing 47 C.F.R. § 1.1204(b)(1)) (1997).

and arguments presented is generally required.[112] Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) as well.

B. Initial Regulatory Flexibility Act Analysis

44. Pursuant to the Regulatory Flexibility Act (RFA),[113] the Commission has prepared the following Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules in this Further Notice of Proposed Rulemaking (Further Notice). Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Further Notice, and should have a separate and distinct heading designating them as responses to the IRFA. The Commission shall send a copy of this Further Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the RFA, 5 U.S.C. § 603(a).

45. *Need for and Objectives of the Proposed Rules.* The Commission is issuing this Further Notice to review our regulatory framework for interstate, domestic, interexchange telecommunications services with regard to the bundling of customer premises equipment (CPE) and enhanced services. The Commission seeks comment on amending the Commission's rules and regulations restricting the bundling of CPE and enhanced services, respectively, with interexchange services, in our continuing effort to establish a pro-competitive, de-regulatory national policy framework. The Commission also seeks comment on the impact that amending these rules and regulations may have on the local market and on local exchange carriers, and whether the Commission should amend these rules and regulations for carriers in the local exchange or exchange access markets.

46. *Legal Basis.* The proposed action is authorized under sections 1, 2, 4, 10, 11 201-205, 215, 218, 220, 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 160, 161, 201-205, 215, 218, 220, 303.

47. *Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply.* Under the RFA, small entities include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. § 601(6). The RFA generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632.[114] A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation;

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[112] *See* 47 C.F.R. § 1.1206(b)(2), as revised.

[113] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, was 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).

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

and (3) meets any additional criteria established by the Small Business Administration (SBA).[115] 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 no more than 1,500 employees.[116]

48. In this IRFA, we consider the potential impact of this Further Notice on three categories of entities, "small interexchange carriers," "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 IRFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass "small incumbent LECs." Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small incumbent LECs within this analysis and use the term "small incumbent LECs" to refer to any incumbent LECs[117] that arguably might be defined by SBA as "small business concerns."[118] Finally, we note that our analysis below includes the description of those small entities that might be directly effected by this Further Notice. We also recognize, however, that this Further Notice may have an indirect effect on small CPE and enhanced services providers.

49. *Interexchange Carriers.* The proposals in this Further Notice would affect all interexchange carriers that meet the definition of a "small business concern." Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interstate, domestic, interexchange services. The SBA, however, has defined small businesses for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees.[119] According to our most recent data, 143 companies are engaged in the provision of interexchange services.[120] Several of these carriers have more than 1,500 employees, and it seems certain that some of these carriers are not independently owned and operated. Because we cannot estimate with greater precision the number of interexchange carriers that would qualify as small business concerns under the SBA definition, we estimate that there are fewer than 143 small entity interexchange carriers that may be affected by the proposed decisions in this Further Notice. We seek comment on this estimate.

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[115] 15 U.S.C. § 632.

[116] 13 C.F.R. § 121.201.

[117] For purposes of this Further Notice, we adopt the definition of "incumbent LEC" found in section 251(h) of the Act.

[118] *See* 13 C.F.R. § 121.201 (SIC 4813).

[119] 13 C.F.R. § 121.201.

[120] Federal Communications Commission, CCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data,* Figure 2 (Number of Carriers Reporting by Type of Carrier and Type of Revenue) (Nov. 1997) (*TRS Worksheet*).

50. *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, 1,371 companies reported that they were engaged in the provision of local exchange services.[121] 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 1,371 small incumbent LECs that may be affected by the decisions and regulations adopted in this Further Notice. We seek comment on this estimate.

51. *Non-Incumbent LECs.* SBA has not developed a definition of small non incumbent LECs. For purposes of this Further Notice, 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.[122] We believe it is impracticable to estimate the number of small entities in this category.[123] 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, 109 companies identify themselves in the category "Competitive Access Providers (CAPs) & Competitive LECs (CLECs)."[124] 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,[125] 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. We seek comment on this estimate.

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[121] *Id.*

[122] 47 U.S.C. § 251(h).

[123] *See* 5 U.S.C. § 607.

[124] *TRS Worksheet.*

[125] 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.

52. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* The Further Notice does not place any reporting, record keeping, or other compliance requirements on small interexchange carriers or on small local exchange carriers. The Further Notice does seek comment on what, if any, safeguards are necessary to guard against potential competitive abuses by interexchange carriers, or local exchange carriers, should the Commission amend its rules restricting bundling of CPE and enhanced services. If any such safeguards are adopted, they may have an impact on interexchange carriers and local exchange carriers that qualify as small business concerns.

53. *Steps Taken to Minimize Any Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* As mentioned above, the Commission believes that our proposed rules may have a significant economic impact on interexchange carriers and local exchange carriers insofar as they are small businesses. The rules we propose in this Further Notice are designed to have a positive impact on interexchange carriers, including small interexchange carriers, and local exchange carriers, including small local exchange carriers, because such rules would remove restrictions from their operations. Such carriers would then be able to create and offer service and equipment packages that, under the current rules, cannot be bundled and offered. We seek comment on these tentative determinations, and on additional actions we might take in this regard to relieve burdens on small interexchange and local exchange carriers.

54. *Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules.* The Commission is proposing to amend Section 64.702(e) of the Commission's Rules, 47 C.F.R. § 64.702(e), as well as the Commission's rules and regulations that restrict the bundling of CPE and enhanced services, respectively, with interexchange services. The Commission is also seeking comment on the impact that amending these rules and regulations may have on the local market and on local exchange carriers, and whether the Commission should amend these rules and regulations for carriers in the local exchange or exchange access markets. We are aware of no rules that may duplicate, overlap, or conflict with the proposed rules. We seek comment on this conclusion.

C. Comment Filing Procedures

55. 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 November 23, 1998 and reply comments on or before December 23, 1998. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number, which in this instance is CC Docket No. 96-61. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words

in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

56. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 1919 M St. N.W., Room 222, Washington, D.C. 20554.

57. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to Janice Myles, Common Carrier Bureau, Policy and Program Planning Division, 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 format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the docket number), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

58. Regardless of whether parties choose to file electronically or by paper, 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.

59. 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.[126] 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.

D. Further Information

60. For further information regarding this proceeding, contact Michael Pryor, Deputy Division Chief, Policy and Program Planning Division, Common Carrier Bureau, at 202-418-1580 or mpryor@fcc.gov. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: 202-418-0484.

[126] *See* 47 C.F.R. § 1.49.

V. ORDERING CLAUSES

61. Accordingly, IT IS ORDERED that pursuant to Sections 1, 2, 4, 10, 11, 201-205, 215, 218, 220, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 160, 161, 201-205, 215, 218, 220, and 303(r), a FURTHER NOTICE OF PROPOSED RULEMAKING IS ADOPTED.

62. 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 Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

APPENDIX A
LIST OF PARTIES
(CC Docket No. 96-61)

List of Commenters in CC Docket No. 96-61 Commenting on CPE Bundling Issues

ACA Communications (ACA)
Robert M. McDowell, Deputy General Counsel, ACTA
Ad Hoc Telecommunications Users
Alabama Public Utilities Commission (Alabama Commission)
Alternative Data Communication Sources, Inc.
AT&T Corporation (AT&T)
Atlanta Datacom, Inc.
Atrion Communications Resources
Bell Atlantic Telephone Companies (Bell Atlantic)
Bradley Stillman, Telecommunications Policy Director, Consumer Federation of America
Cato Institute
Commercial Telecom Systems, Inc.
Compaq Computer Corporation (Compaq)
Consumer Electronics Retailers Coalition (CERC)
John W. Pettit, Counsel to Consumer Electronics Retailers Coalition
Data Connect Enterprise
Datanode, Inc.
Datastore
Digital Connections Inc.
Don Gilbert, Senior Vice President, National Retail Federation
Excel Telecommunications, Inc. (Excel)
Ficomp Systems, Inc.
Ficomp, Inc.
Florida Public Utilities Commission (Florida Commission)
Frontier Corporation (Frontier)
General Communications Inc. (GCI)
Glasgal Communications, Inc.
GTE Service Corporation (GTE)
Independent Data Communications Manufacturers Association (IDCMA)
Jonathan Jacob Nadler, Counsel to IDCMA
Information Technology Association of America (ITAA)
Maura Colleton, Vice President -- ISEC Division, ITAA
LDDS World Com (LDDS)
Louisiana Public Utilities Commission (Louisiana Commission)
Main Resource Incorporated
MCI Corporation (MCI)
Network Communications Incorporated
NOVA Electronics Data Inc.

NYNEX Telephone Companies (NYNEX)
Ohio Consumers Counsel
Pacific Telesis (PacTel)
John A. Anheier, Director of Information Systems Services, Payless Cashways, Inc.
Pennsylvania Public Utilities Commission (Pennsylvania Commission)
Quantum Leap Incorporated
Rural Telephone Coalition
SBC Communications Inc. (SBC)
William L. Salter, Sears, Roebuck and Co.
Smith Communications, Inc.
Source Communications Group
Sprint Corporation (Sprint)
Telecommunications Resellers Association (TRA)
Triangle Technologies, Inc.
U S WEST, Inc. (U.S. West)
United States Telephone Association (USTA)
Voice & Data Network, Inc.
Western Data Group, Inc.
William J. Johnson, Director of Telecommunications, Woolworth Corporation

Separate Statement of Commissioner Harold W. Furchtgott-Roth

In Re: Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended

1998 Biennial Regulatory Review -- Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets

I support adoption of this *Further Notice of Proposed Rulemaking*. In my view, any reduction of unnecessary regulatory burdens is beneficial. To that extent, this item is good and I am all for it. This item should not, however, be mistaken for complete compliance with Section 11 of the Communications Act.

As I have explained previously, the FCC is not planning to "review *all* regulations issued under this Act . . . that apply to the operations or activities of any provider of telecommunications service," as required under Subsection 11(a) in 1998 (emphasis added). *See generally 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements*, 13 FCC Rcd 6040 (released Jan. 30, 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.

In one important respect, however, the FCC's current efforts are more ambitious and difficult than I believe are required by the Communications Act. Subsection 11(a) -- "Biennial Review" -- requires only that the Commission "*determine* whether any such regulation is no longer necessary in the public interest" (emphasis added). It is pursuant to Subsection 11(b) -- "Effect of Determination" -- that regulations determined to be no longer in the public interest must be repealed or modified. Thus, the repeal or modification of our rules, which requires notice and comment rule making proceedings, need not be accomplished during the year of the biennial review. Yet the Commission plans to complete roughly thirty such proceedings this year.

I encourage parties to participate in these thirty rule making proceedings. I also suggest that parties submit to the Commission -- either informally or as a formal filing -- specific suggestions of rules we might determine this year to be no longer necessary in the public interest as well as ideas for a thorough review of all our rules pursuant to Subsection 11(a).

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