because other LECs do not represent the same control of payphone facilities as the BOCs.[510] We note, however, that any basic transmission services provided by a LEC to its own payphone operations must be available under tariff to other payphone providers pursuant to Computer II.[511] States may impose further payphone service unbundling requirements that are not inconsistent with Section 276 requirements and requirements established herein.[512]

iii. Other LEC Payphone Services

149. We conclude that incumbent LECs should provide certain other services to other payphone providers if they provide those services to their own payphone operations. These services must be made available by the LEC or its affiliate to other payphone providers on a comparable basis in order to ensure that other payphone providers do not receive discriminatory service from the LECs once LEC payphones are deregulated, and to ensure that other payphone providers can compete with LEC payphone operations. Specifically, parties have indicated the need for the following services to enable them to compete effectively for the provision of payphones: fraud protection, special number assignments, installation and maintenance, billing and collection, validation, per-call tracking, and joint marketing. We have already addressed above the per-call tracking requirements. We conclude that fraud protection, special numbering assignments, and installation and maintenance of basic payphone services should be available to other providers of payphone services on a nondiscriminatory basis. Validation services are required by another proceeding.[513] We do not require the incumbent LECs to joint market the payphone operations of other providers. We have concluded that the market for payphone CPE is competitive and LECs do not have any specific advantage in marketing payphone services in a deregulated payphone market. LEC personnel or affiliates will have to market to payphone location providers in the same manner as other payphone providers to obtain payphone locations. Regarding billing and collection services, we conclude that if a LEC provides basic, tariffed payphone services that will only function in conjunction with billing and collection services from the LEC, the LEC must provide the billing and collection services it provides to its own payphone operations for these services to independent payphone providers on a nondiscriminatory basis.[514] We expect this requirement to apply, for example, in situations

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[510] See Computer III Phase II Order at 3101. For example, Congress did not require that Computer III safeguards, at a minimum be applied to other LECs. See 47 U.S.C. § 276(b)(1)(C). Under Section 251, LECs must provide nondiscriminatory access to unbundled network elements to certain carriers. See Local Competition Order.

[511] Computer II, 77 FCC 2d at 387-9; 47 C.F.R. 64.702.

[512] See para. 145, above.

[513] See Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, Report and Order and Request for Supplemental Comment, CC Docket 91-115, 7 FCC Rcd 3528 (1992); Second Report and Order, 8 FCC Rcd 4478 (1993).

[514] See note 634, below, Computer III proceeding, regarding authority over nonregulated activities like billing and collection and enhanced services.

where coin services require the LEC to monitor coin deposits and such information is not otherwise available to third parties for billing and collection. We adopt this requirement to ensure that when a LEC has structured its payphone services in a way that they could not operate without the LECs billing and collection services, those services will be available to other payphone providers on the same basis they are available to the LEC.

iv. Registration and Demarcation Point for Payphones

150. We amend our Part 68 rules to provide for the registration of central-office-implemented coin payphones to enable independent payphone providers as well as the LECs to utilize "dumb" payphones. Under the Coin Registration Order and current Part 68 rules, only instrument-implemented payphones can be registered for connection to the network.[515] Amending our rules enables independent payphone providers to have the same choices as LECs in providing payphone services. Parties did not object to proposed Part 68 changes in the Notice. Accordingly, we adopt amendments to Section 68.2(a)(1) and Section 68.3 of the Commission's rules to facilitate registration of both instrument-implemented and central-office-implemented payphones. Consistent with the Commission's prior practice with regard to existing CPE, in order to avoid unnecessary costs, and because these existing phones do not present potential harm to the network, we grandfather existing LEC payphones from the our revised Part 68 requirements, unless the basic functionality in the payphones is changed.[516] We require incumbent LECs to submit proposed interconnection requirements to effectuate such interconnection within 90 days of the effective date of this order. The California Payphone Association (CPA) filed before the Commission a Petition for Rule Making requesting that Section 68.2(a)(1) of the rules be amended to allow for the registration of all coin-operated telephones and that the Commission re-examine and clarify its interpretation of Section 68.2(a)(1). We note that our decision herein addresses the relief requested in the CPA petition. Our Report and Order also effectively grants a petition filed by the Public Telephone Council to treat payphones as CPE,[517] and resolves the issues raised in RM 8723 regarding exclusion of public payphones from end user access charges.

151. Consistent with our objective of treating incumbent LEC and independent payphone providers' payphones in a similar manner, we conclude that the demarcation point must be the same as incumbent LECs use for independent payphone providers today. Accordingly, the demarcation for all new LEC payphones must be consistent with the minimum point of entry, demarcation point standards for other wireline services.[518] The Commission has previously allowed equipment reclassified as CPE, resulting in a change in the demarcation point, to remain

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[515] See Coin Registration Order, note 490, above.

[516] The Commission has previously exempted existing CPE from Part 68 registration requirements. See 47 C.F.R.(b)-(h).

[517] 3 FCC Rcd 4779 (1988); 4 FCC Rcd 737 (1989).

[518] 47 C.F.R. § 68.3.

in the same location because of the costs involved in relocating the equipment.[519] Accordingly, we grandfather the location of all existing LEC payphones in place on the effective date of this order because of the difficulty and cost of moving these payphones to meet our new demarcation point requirements. Similarly, we do not require that network interfaces be placed for existing LEC payphones unless these payphones are substantially refurbished, for example, upgraded from dumb to smart payphones or replaced.

2. Reclassification or Transfer of Payphone Equipment to Nonregulated Status

a. The Notice

152. In the Notice, we sought comment on the specific assets to be transferred, and tentatively concluded that the assets to be transferred should be defined generally in terms of CPE deregulation.[520] Thus, we tentatively concluded that the assets to be transferred may include all facilities related to payphone service, including associated deferred income tax reserves and depreciation, but likely would not include the loops connecting the payphones to the network, or the central office "coin-service" or operator-service facilities supporting incumbent LEC payphones.[521] We proposed to transfer the payphone equipment at undepreciated baseline cost plus an interest charge based on the authorized interstate rate of return to reflect the time value of money.[522] We also tentatively concluded that a phase-in period for a transfer of payphone-related assets is not necessary, because payphone terminal equipment consists of less than one percent of total plant investment for the entire LEC industry.[523] In the Notice, we also sought comment on whether our approach to asset transfer is consistent with the 1996 Act's definition of "payphone service" as the "provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services."[524]

b. Comments

[519] Id.

[520] Notice at para. 49.

[521] Id.

[522] By baseline cost, we mean either the depreciated original cost at the time of the initial assignment or allocation of existing plant or the original cost of subsequently acquired new plant. Id.

[523] Notice at para. 49.

[524] Id.

153. Both USTA and MCI indicate that all public telephone terminal equipment, including associated assets and depreciation, should be transferred, but not loops or central office coin-service or operator-service facilities.[525] GVNW argues that the assets to be transferred should include investment, depreciation, maintenance and overhead.[526] Florida PSC asserts that loops and central office features should not be deregulated so that they will be available to all.[527] GTE argues that only pay station investment should be transferred. [528] The RBOCs list the assets that should be transferred to include: payphones, enclosures, pedestals, coin counting machines, vehicles, land, and buildings used solely for payphone services.[529]

154. GPCA argues that location contracts associated with payphones should be assigned an economic value to recover ratepayer equity and achieve competitive equity. GPCA contends that the Commission can use present value, appraisals, or auctions to value the contracts.[530] Peoples also argues that the contracts should be valued, noting that it had valued the location contracts and goodwill at approximately 70 percent in a recent purchase of payphone assets.[531] SDPOA argues that the name brand associated with LEC payphones should also be valued in the transfer of assets.[532] CPA asserts that LEC payphone assets should be valued at a going concern value and that a transfer at net book value would give the LECs a competitive advantage.[533] Brill argues that BOCs should not be allowed financial and accounting advantages, and cites other competitive advantages that, it states, the BOCs have in some jurisdictions.[534]

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525 USTA Comments at 6; MCI Comments at 15-16.

526 GVNW Comments at 8.

527 Florida PSC Comments at 6.

528 GTE Reply at 8-10.

529 RBOC Comments at 30.

530 GPCA Comments at 15-16; GPCA Reply at 13-14; See also CPA Reply at 12; SCPCA at 6-7.

531 Peoples Reply at 20-21.

532 SDPOA Reply at 3.

533 CPA Reply at 12-15.

534 Brill Comments at 4.

155. Ameritech and USTA argue that the accounting treatment for transferred assets should be governed by Section 32.27(c) of our rules regarding transactions with affiliates.[535] USTA argues that there is no need to alter our Part 64 rules to create cost pools or to change current accounting practices.[536] Ameritech states that Section 32.27(c) requires that assets be transferred at the higher of estimated fair market value or net book value and that the cost allocation manual process provides the mechanism for making the asset transfer.[537] The RBOCs argue that the payphone assets should be valued at net book value, as the Commission has done in the past including the recent Inmate Services Order,[538] and that the Commission should require LECs to transfer only those assets in their existing regulated accounts.[539] They assert that location contracts are not in their regulated accounts and are intangibles that have never been recognized in Commission rate proceedings.[540] The RBOCs also argue that establishing market value for payphone assets would be costly and cause delays.[541] AT&T asserts that payphone assets should be valued at net book value in accordance with the Commission's existing rules.[542]

156. The RBOCs contend that the asset transfer should occur within 12 months.[543] GPCA opposes a delay of up to 12 months for asset transfers and elimination of access charge elements and subsidies, and argues that these requirements must be completed by November 8, 1996.[544] GPCA recommends that the Commission implement requirements no later than 90 days after release of this Report and Order.[545] Ameritech argues that there is no need for

[535] Ameritech Comments at 14; USTA Reply at 7-8.

[536] USTA Comments at 5.

[537] Ameritech Comments at 13-14.

[538] See note 493, above.

[539] RBOC Reply at 19-21. See also SW Bell Reply at 4-6. The RBOCs assert that in the Inmate Services proceeding, only payphones were transferred and they were recorded at net book value in Account 32.2351, Public Telephone Equipment. The RBOCs also note, however, that land and buildings are transferred at appraised value. RBOC Comments at n. 28.

[540] RBOC Comments at 28 & Attachment, Anderson Report at 20.

[541] RBOC Comments at 28.

[542] AT&T Reply at 26-28.

[543] RBOC Comments at 30.

[544] GPCA Reply at 15-17.

[545] Id.

a phase-in period.[546] MCI does not object to up to 12 months for transition, but argues that the Commission should set a specific date.[547] USTA contends that the deregulation should be flash cut in order to eliminate subsidies.[548]

c. **Discussion**

157. As an initial matter, we have already determined that neither Section 276 nor our past experience requires the BOCs' competitive provision of payphone services to take place on a prospective basis through the use of structurally separate affiliates.[549] Instead, in this Report and Order, we require that, if a BOC does not provide payphone services through a separate affiliate, it must provide these payphone services using nonstructural safeguards as described in our Computer III Orders and ONA proceedings and consistent with Section 276, because we conclude that, in the absence of structural separation, our nonstructural safeguards provide sufficient protection against the possibility of cross-subsidization of nonregulated activities.[550] Those nonstructural safeguards include the cost allocation rules and affiliate transactions rules adopted in the Joint Cost Order.[551] Under those rules, the BOCs and other incumbent LECs must classify each of their activities as regulated or nonregulated in accordance with our requirements.[552] We now require that the BOCs and other incumbent LECs, subject to our joint cost rules, classify their payphone operations as nonregulated for our Part 32 accounting purposes. We note, however, that the BOCs or other incumbent LECs are free to provide these services using structurally separate affiliates if they choose to do so.[553] Therefore, our discussion below will address two possible approaches a carrier may take in reclassifying its payphone activities as nonregulated: (1) a carrier may maintain its payphone assets on the carrier's books

546 Ameritech Comments at 14.

547 MCI Reply at 9.

548 USTA Comments at 8.

549 See para 145, above.

550 See paras. 199-207, below.

551 See Separation of Costs of Regulated Telephone Service From Costs of Nonregulated Activities, 2 FCC Rcd 1298 (1987) (Joint Cost Order), recon., 2 FCC Rcd 6283 (1987) (Joint Cost Reconsideration Order), further recon., 3 FCC Rcd 6701 (1988), aff'd sub nom., Southwestern Bell Corp. v. FCC, 896 F.2d 1378 (D.C.Cir. 1990).

552 47 C.F.R. § 32.23(a).

553 In the Accounting Safeguards NPRM, we sought comment on what rules should apply to transactions between a LEC and a separate payphone affiliate. Id. at para. 118.

but treat the assets as nonregulated, or (2) a carrier may transfer its payphone assets to a separate affiliate engaged in nonregulated activities.

158. In the Notice, we sought comment on three primary aspects of the reclassification of payphone assets from regulated to nonregulated status. We solicited comment on the proper accounting treatment for the reclassification or transfer of the payphone assets from a regulated activity to a nonregulated activity. We also sought comments on the specific assets to be reclassified or transferred.[554] We tentatively concluded that the assets to be transferred should be defined generally in terms of CPE deregulation and that this would include all facilities related to payphone service, including associated depreciation and deferred income taxes, but likely would not include the loops connecting the payphones to the network, the central office "coin-service," or operator service facilities supporting incumbent LEC payphones.[555] We next tentatively concluded that a phase-in period was not necessary for the reclassification or transfer of the payphone assets to nonregulated status and sought comment on this tentative conclusion.[556] We address these questions and tentative conclusions in the sections that follow.

i. Specific Assets Reclassified or Transferred

159. We adopt our tentative conclusion, supported by numerous commenters,[557] that the payphone assets to be reclassified or transferred include all facilities related to payphone service, including associated accumulated depreciation and deferred income tax liabilities. We do not agree with GVNW that related expenses, such as maintenance, should also be reclassified and transferred[558] because expenses are period costs that should be associated with the status of the service at the time they were incurred. That is, expenses incurred during the period payphones were regulated remain as regulated expenses and expenses incurred after payphone deregulation should be classified as nonregulated expenses. We, however, do not include as payphone assets to be reclassified or transferred the loops connecting the payphones to the network, the central office "coin-service," or operator service facilities supporting incumbent LEC payphones because these are part of network equipment necessary to support basic telephone services.

554 Notice at para. 49.

555 Id.

556 Id.

557 See USTA Comments at 6; MCI Comments at 15-16; Florida PSC Comments at 6.

558 GVNW Comments at 8.

160. In adopting our tentative conclusion, we disagree with commenters such as GPCA, Peoples, SDPOA and others who assert that, in all instances, the value of intangible assets that have not been capitalized on the books of the carrier, such as location contracts and brand names, should be included in the payphone assets reclassified to nonregulated status.[559] We note that these assets are not recorded in the carriers' Part 32 accounts and, in fact, are not, without some triggering event such as a purchase or sale, required to be recorded by either generally accepted accounting principles or our Part 32 accounting rules. We do, however, discuss these intangible assets in more detail below as they relate to actual payphone asset transfers to separate affiliates or, in certain limited instances, to an operating division of the carrier.

ii. Accounting Treatment for Assets Reclassified or Transferred

161. Our tentative conclusion in the Notice called for the transfer of the LECs' payphone assets to nonregulated operations to take place at the undepreciated baseline costs plus interest charges at the authorized rate of return for interstate services. The parties have correctly pointed out that this standard only applies in those circumstances where there has been an underforecasting of demand for nonregulated usage requiring a transfer to compensate ratepayers for the additional risks they have borne due to the underforecasting.[560] Since the issue at hand does not involve an underallocation of payphone costs between regulated and nonregulated activities, we see no need to consider this approach any further.

162. The parties question whether the carriers should account for the transfer or reclassification of the payphone assets from regulated to nonregulated status at "fair market value" or the net book value of the assets.[561] While Section 276 provides us with discretion to change our accounting rules to provide safeguards in excess of those provided by Computer III, we believe that our existing rules are sufficient to meet the requirements of Section 276. We conclude that our existing rules require that this determination be based on whether a carrier maintains the assets in its regulated Part 32 accounts or instead transfers the payphone assets to a separate affiliate or an operating division within the carrier that is treated as an affiliate.

163. Carriers that do not transfer the payphone assets to a separate affiliate make no reclassification accounting entries to their Part 32 regulated accounts. The reclassification of these assets to nonregulated status is accomplished instead through the operation of our Part 64 cost allocation rules.[562] Accordingly, we conclude that payphone investment in Account 32.2351,

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[559] See GPCA Comments at 15-16; GPCA Reply at 13-14; Peoples Reply at 20-21; SDPOA Reply at 3.

[560] See Joint Cost Order, 2 FCC Rcd at 170-171.

[561] See, e.g., RBOC Reply at 19-21.

[562] 47 C.F.R. §§ 64.901-904. See also Inmate Services Order, 11 FCC Rcd at 7374.

Public telephone terminal equipment, and any other assets used in the provision of payphone service, along with the associated accumulated depreciation and deferred income tax liabilities should be directly assigned or allocated to nonregulated activities pursuant to our cost allocation rules.[563] LECs should establish whatever Part 64 cost pools[564] are needed and should file revisions to their cost allocations manuals within sixty (60) days prior to the effective date of the change.[565] This will ensure that the provision of payphone service is separate and distinct from the provision of common carrier services in accordance with our rules.

164. On the other hand, carriers that transfer their payphone assets to either a separate affiliate or an operating division that has no joint and common use of assets or resources with the LEC and maintains a separate set of books in accordance with Section 32.23(b) of our rules must account for the transfer according to the affiliate transactions rules of Section 32.27(c) which require that the transfer be recorded at the higher of fair market value or cost less all applicable valuation reserves (net book cost).[566] Fair market value has been defined as "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts."[567] We conclude, that in instances when the transfer of payphone assets is governed by Section 32.27(c), it is appropriate, as argued by CPA, that the going concern value associated with the payphone business be taken into consideration in determining fair market value.[568] Such going concern value should, as asserted by GPCA and Peoples, include intangible assets such as

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[563] RBOC Comments at 28, citing Inmate Services Order. See also Letter from Michael K. Kellogg to William F. Caton, Secretary dated August 30, 1996 at 9 (RBOC Ex Parte 8/30/96).

[564] Inmate Services Order, 11 FCC Rcd at 7374. "Cost pools" are comprised of logical homogeneous groupings of costs that maximize the extent to which cost causative allocation factors can be used to divide costs between regulated and nonregulated activities. Implementation of Further Cost Allocation Uniformity, Memorandum Opinion and Order, 8 FCC Rcd 4664 (1993).

[565] 47 C.F.R. § 64.904(b).

[566] 47 C.F.R. §§ 32.23(b), 32.27(c). In applying the affiliate transactions rules to asset transfers to operating divisions that maintain a separate set of books and do not jointly use assets or resources with the carrier, we have provided a safeguard to protect against a carrier that attempts to avoid our affiliate transactions rules by "reincarnating a nonregulated affiliate as an operating division." Joint Cost Reconsideration Order, 2 FCC Rcd at 6296.

[567] 26 C.F.R. § 1.170-1. See also, Accounting Safeguards NPRM at para. 83.

[568] See CPA Reply at 12-15.

location contracts that add value to the payphone business.[569] These intangible assets would be considered in the theoretical purchase price negotiated by a willing buyer and seller. We do not believe, however, that the intangible asset value of BOC or LEC brand names should be included in the determination of going concern or fair market value because a BOC or a LEC would not transfer the right to use its brand name to a third party willing buyer.

165. The operation of our cost allocation rules and our affiliate transactions rules serve to protect ratepayers from different concerns. The cost allocation rules are used to provide guidance to carriers as to how joint and common costs are to be allocated among regulated and nonregulated activities that impact upon regulated activities. These rules are premised on the assumption that ratepayers benefit from the economies of scope associated with integrated operations of regulated and nonregulated activities. Since costs are recorded in regulated accounts, the Commission retains the ability to scrutinize costs associated with nonregulated activities. For example, carriers must file cost allocation manuals. These manuals are subject to public comment and must be audited annually by an independent auditor.[570] The report of the independent auditor must also be submitted to the Commission.[571] These procedures promote fair cost allocation and protect regulated ratepayers from absorbing the costs of nonregulated activities. In addition, as assets are retained on the books of the carrier, any resulting gains from a sale of those nonregulated assets accrue to the carrier and to the benefit of ratepayers and shareholders.

166. Our affiliate transactions rules also afford a level of protection to ratepayers. These rules first protect ratepayers by requiring that when an affiliate transfers to or performs a service for the carrier, those assets or services are not charged to regulated ratepayers at an inflated price. In addition, when the carrier transfers assets to an affiliate, the operation of our affiliate transactions rules effectively captures on the carrier's books any appreciation in value of those assets, thus ensuring that any eventual gains would accrue to the benefit of the ratepayers and shareholders.

167. The difference in accounting treatment for payphone assets either reclassified as nonregulated pursuant to our Part 64 cost allocation rules or transferred to a separate affiliate and accounted for in accordance with our Part 32 affiliate transactions rules stems primarily from the fact that in one instance there is no transfer, only a reallocation of assets

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[569] See GPCA Comments at 15-16; GPCA Reply at 13-14; Peoples Reply at 20-21. This conclusion is also supported by the APCC and GPCA ex parte filing dated September 11, 1996 to the extent that the ex parte filing relates to transfers to separate affiliates. Letter from Albert H. Kramer, Attorney for APCC and GPCA, to William F. Caton, Secretary, dated September 11, 1996 (APCC & GPCA Ex Parte 9/11/1996).

[570] See 47 C.F.R. § 64.904(a).

[571] 47 C.F.R. § 64.904(b).

to nonregulated status, and in the other instance, there has been an actual transfer. In addition, in the first instance our rules are designed to promote fair cost allocation between regulated and nonregulated activities; in the second instance, our rules are designed to protect against cross-subsidies between separate companies by capturing any appreciated value of assets transferred on the books of the carrier.

168. We note that some parties assert that, based on the holding of the Court of Appeals for the D.C. Circuit in Democratic Central Committee,[572] the proper measure of value for an asset reclassified from regulated to nonregulated status is the asset's economic value, which would ordinarily be its fair market value.[573] Democratic Central Committee involved the distribution of capital gains realized from the sale to a third party of property that had been transferred out of the rate base. Although Democratic Central Committee provided several general guiding principles on which the Commission fashioned its affiliate transactions rules, we note that the facts in that case did not involve affiliate transactions.[574] Accordingly, we do not think that case is directly applicable either to the situation where a carrier retains the payphone assets on its books or transfers the payphone assets to a separate affiliate. In both instances, ratepayers are protected by the application of our accounting safeguards.

169. One of the primary goals of Section 276 is that a BOC shall not be allowed to subsidize its payphone operations directly or indirectly from its telephone exchange operations or its exchange access operations. In order to achieve this goal, Congress required that we adopt at a minimum the nonstructural safeguards of Computer III. In Computer III, the Commission reexamined its regulatory regime for the provision of enhanced services and established nonstructural safeguards for the provision of enhanced services on an integrated basis. These safeguards included the cost allocation rules and the affiliate transactions rules the Commission developed in the Joint Cost Order. These nonstructural safeguards include our Part 64 cost allocation rules and our Part 32 affiliate transactions rules. We also note that the Conference Report states:

> "[t]he BOC payphone operations will be transferred, at an appropriate valuation, from the regulated accounts associated with local exchange services to the BOC's unregulated books. The Commission's implementing safeguards must be at least equal to those adopted in the Commission's Computer III proceedings."[575]

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572 Democratic Central Committee v. Washington Metropolitan Area Transit Commission, 485 F.2d 786 (D.C.Cir. 1973), cert. denied, 415 U.S. 935 (1974) (Democratic Central Committee).

573 See, e.g., GPCA Comments at 16-17.

574 Joint Cost Reconsideration Order, 2 FCC Rcd at 6295.

575 Conference Report at 43.

We believe that, consistent with Computer III, our cost allocation rules and affiliate transactions rules, as discussed above, provide rules for the appropriate valuation of the reclassification or transfer of payphone assets and we see no compelling argument to deviate from those well-settled rules at this time.[576]

170. APCC and GPCA argue that the legislative history cited in the previous paragraph makes clear that Congress intended that the assets be "transferred."[577] We disagree. We have already stated that Section 276 does not require that a BOC establish a separate affiliate to hold the payphone assets.[578] In fact, the Senate version of Section 276 authorized the Commission to determine whether to require Bell operating companies "to provide payphone service...through a separate subsidiary..."[579] This authorization was deleted from the final version of Section 276. If Congress intended that there be a "transfer", we believe that Congress would have required the BOCs to establish separate affiliates for their payphone operations. Congress did not do so. Instead, Congress in the very next sentence of the legislative history states that the Commission's implementing safeguards must, at a minimum, be at least equal to those adopted in the Computer III proceedings. These safeguards include our cost allocation rules. Our cost allocation rules are applicable when a carrier maintains integrated regulated and nonregulated activities. To read congressional intent to require a "transfer" would effectively eliminate our cost allocation rules from application to payphone operations. This is contrary to Section 276 which states that the Commission shall prescribe regulations that prescribe a set of nonstructural safeguards for BOC payphone service which "at a minimum, include[s] the nonstructural safeguards equal to those adopted in the Computer Inquiry-III...proceeding."[580] Computer III included our cost allocation rules as a part of the nonstructural safeguards and thus they are applicable to BOC payphone operations. To exclude the cost allocation rules would be contrary to Section 276's intent that they be included.

171. We also agree with the RBOCs that our cost allocation rules only require a reassignment of payphone assets from regulated to nonregulated status.[581] In reality, carriers

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[576] We note that in the Accounting Safeguards NPRM, we proposed changes to the affiliate transactions rules of Section 32.27 of our rules. See Accounting Safeguards NPRM at paras. 70-88.

[577] Ex Parte Letter from Albert Kramer, Counsel, APCC to William Caton, Acting Secretary, FCC (September 11, 1996) at 3.

[578] See para. 145, above.

[579] S. 652, 104th Cong., 1st Sess., § 265(c) (1995). See also RBOC Comments at 40, n. 53.

[580] 47 U.S.C. § 276(b)(1)(C).

[581] See RBOC Ex Parte 8/30/96 at 8.

maintain these assets in regulated Part 32 accounts and do not establish "unregulated books." These accounts are considered "regulated" accounts even though a carrier may assign the entire amount in an account to nonregulated activities. Using regulated accounts serves the public interest by allowing Commission scrutiny of nonregulated activities as they potentially impact regulated activities, maintaining a minimal amount of regulatory burden while protecting regulated ratepayers from cross-subsidies and cost misallocations, and preserving economies of scope that accrue to ratepayers from integrated operations. We believe regulated ratepayers are better served by the requirement that carriers account for payphone operations in regulated accounts than if we required them to account for payphone operations in "nonregulated" accounts or "unregulated books."

iii. Other Matters

172. We require the LECs to reclassify any pay telephone investments recorded in Account 32.2351, Public telephone terminal equipment, and other assets used in the provision of payphone service, along with the associated accumulated depreciation and deferred income tax liabilities, from regulated to nonregulated status pursuant to our Part 64 and Part 32 rules by April 15, 1997 when the associated revised tariffs are effective. We thus agree with Ameritech that we should adopt our tentative conclusion that a phase-in period is unnecessary.[582]

3. Termination of Access Charge Compensation and Other Subsidies

a. The Notice

173. In the Notice, we tentatively concluded that incumbent LECs must reduce their interstate CCL charges by an amount equal to the interstate allocation of payphone costs currently recovered through those charges.[583] LECs subject to the price cap rules would treat this as an exogenous cost change to the Common Line basket pursuant to Section 61.45(d) of the Commission's rules.[584] We requested incumbent LECs to identify in their comments all accounts that contain costs attributable to their payphone operations and sought comment on whether specific cost pools and allocators should be used to capture the nonregulated investment and expenses associated with their payphone operations.[585] We also sought comment on whether a transition period is necessary to move from subsidized compensation to per-call compensation for

[582] Ameritech Comments at 14.

[583] Notice at para. 51.

[584] Id.

[585] Id.

LEC payphones, and how that transition would proceed.[586] We also proposed, in accordance with the mandate of Section 276(b)(1)(B), to require incumbent LECs to remove from their intrastate rates any charges that recover the costs of payphones.[587] Additionally, we solicited comment on whether we should set a deadline and a specific mechanism for elimination of any intrastate subsidies, or whether it would be consistent with the statute, as well as preferable from a policy perspective, to permit the states to formulate their own mechanisms for achieving this result within a specific time frame.[588]

174. We also tentatively concluded that, to avoid discrimination among PSPs, the Subscriber Line Charge should apply to subscriber lines that terminate at both LEC and competitive payphones.[589] We sought comment on whether, to the extent that LECs charge or impute to their own payphone operations only the multi-line business SLC, which is less than the full interstate cost of the subscriber lines connecting their payphones to the network, and recover the balance of the cost of these lines through the CCL charge, they may, in effect, be subsidizing their payphones with access charge revenues, in violation of Section 276.[590] We sought comment on whether LECs in those circumstances should charge or impute to their own payphone operations, as well as to independent payphone providers, an additional monthly charge representing the difference between the SLC cap and the full interstate cost of these subscriber lines.[591] We also sought comment on whether comparable changes should be made to incumbent LECs' intrastate rates.[592]

b. Comments

i. Carrier Common Line Charge

175. The Florida PSC agrees that LECs must reduce their interstate CCL charge by an amount equal to their interstate allocation of payphone set costs currently recovered through

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586 Id.

587 Id. at para. 52.

588 Id.

589 Id. at para. 53.

590 Id. at para. 54.

591 Id.

592 Id.

these charges.[593] USTA asserts that there is no need for a federally-imposed cost support, create cost pools, or change current accounting procedures.[594] USTA asserts that incumbent LECs subject to price caps should remove the costs of payphone operations through an exogenous cost adjustment to the common line price cap basket price cap index (PCI), and that rate-of-return LECs should adjust regulated rates for the charges in asset and operating costs based on the results of the accounting changes made to assets and expenses.[595]

176. Ameritech agrees that exogenous treatment is appropriate for transfer of payphone CPE from regulated to nonregulated status.[596] One Call agrees that the CCL charge should be reduced to eliminate both interstate and intrastate subsidies.[597] MCI argues that all direct and indirect costs for interstate and intrastate costs should be removed and that Account 2351 and associated expenses and additional interstate allocated costs should be removed.[598] GPCA contends that the payphone providers' end-user common line charges should be in the carrier common line fund.[599] AT&T argues that the removal of payphone costs from interstate access should not be transferred to the Base Factor Portion of the Common Line Basket, but should remain as part of the Part 69 category.[600]

177. CPA argues that attempts to extend the period should be rejected.[601] In contrast, GVNW and Texas PUC assert that a short transition period is necessary to recover costs.[602] The RBOCs argue for a transition period of up to 12 months during which per-call compensation would not be available to the RBOCs, while GPCA argues the there should be no more than a 90-day transition period after release of this Report and Order.[603] NECA asserts that

[593] Florida PSC Comments at 7.

[594] USTA Comments at 5, n.2.

[595] Id. at 9; GTE Reply at 8-10.

[596] Ameritech Comments at 14.

[597] One Call Comments at 9.

[598] MCI Comments at 17.

[599] GPCA Comments at 17.

[600] AT&T Reply at 27, n.70.

[601] CPA Reply at 8.

[602] GVNW Comments at 8.

[603] RBOC Comments at 31; GPCA Reply at 15.

the CCL charge should continue until the Commission finalizes decisions on access reform and universal service have been made. NECA argues there will be no discrimination because LECs can bill the CCL charge for all interstate calls and the SLC to all payphones.[604]

ii. Intrastate Rates

178. Florida PSC asserts that intrastate adjustments vary and that a national scheme is impractical. Instead, the Commission could set a date for removal of state subsidies.[605] California PUC is concerned that, if LECs cannot recover the interstate costs of subscriber lines because the CCL mechanisms are removed, the state's local phone charges and the state-mandated pay station service charge may not fully recover costs.[606] USTA argues that the payphone line is a common line and should be tariffed at the state level.[607] USTA also contends that states should be permitted to formulate mechanisms to remove intrastate costs.[608]

iii. Subscriber Line Charge

179. Florida PSC and the Ohio PUC argue that access lines terminating at LEC payphones should be subject to SLC imputation.[609] Ameritech and SW Bell argue that a SLC should be imputed to all payphones.[610] GPCA opposes application of the SLC to payphones but if the Commission imposes such a requirement, GPCA also opposes any additional charge in addition to what is required of other end users.[611] USTA also opposes imposition of an additional charge for the difference between the SLC cap and the full cost of subscriber lines. USTA argues that if there are any loop subsidies they will be uniform for all loops, not just payphone loops.[612] SW Bell argues that the SLC should apply to payphones because payphones use

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604 NECA Comments at 5, n. 19.

605 Florida PSC Comments at 7.

606 California PUC Comments at 15.

607 USTA Reply at 7.

608 USTA Comments at 9.

609 Florida PSC Comments at 8; Ohio PUC Comments at 12.

610 Ameritech Comments at 14; SW Bell Reply at 7-9.

611 GPCA Reply at 17-19.

612 USTA Comments at 10. See also RBOC Comments at 32.

common lines and access the public switched network just like any other common line service.[613] Sprint supports the additional charge to all PSPs including LECs to the extent that the multi-line business SLC is less than the full interstate cost of subscriber lines.[614]

c. Discussion

180. In the telephone network, payphones, as well as all other telephones, are connected to the local switch by means of a subscriber line. The costs of the subscriber line that are allocated to the interstate jurisdiction are recovered through two separate charges: a flat-rate SLC assessed upon the end-user customer who subscribes to local service; and a per-minute CCL charge assessed upon IXCs that recovers the balance of the interstate subscriber line costs not recovered through the SLC. LEC payphone costs are also included in the CCL charge. The CCL charge, however, applies to interstate switched access service that is unrelated to payphone service costs. While independent payphone providers are required to pay the SLC for the loop used by each of their payphones, LECs have not been required to pay this charge because the subscriber lines connected to LEC payphones have been recovered entirely through the CCL charge.

181. We conclude that to implement Section 276 (b)(1)(B) of the 1996 Act, incumbent LECs must reduce their interstate CCL charges by an amount equal to the interstate allocation of payphone costs currently recovered through those charges. LECs subject to the price cap rules would treat this as an exogenous cost change to the Common Line basket pursuant to Section 61.45(d) of the Commission's rules. The incumbent LECs' residential SLC is limited to $3.50 per month and their multi-line business SLC is currently subject to a $6.00 per month cap.[615] Those LECs with interstate subscriber line costs that exceed this amount recover a portion of the interstate costs of subscriber lines through the CCL charge. The issue of the appropriate interstate SLC has been referred to a Federal-State Joint Board.[616]

182. Incumbent LECs today generally recover payphone costs allocated to the interstate jurisdiction through the per-minute carrier CCL charge they assess on IXCs and other

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613 SW Bell Reply at 7-8.

614 Sprint Comments at 28.

615 47 C.F.R. § 69.104.

616 See Federal-State Joint Board on Universal Service, NPRM and Order Establishing Joint Board, FCC 96-93 at para. 114 (rel. March 8, 1996) ("Joint Board Notice"). We note that pursuant to Section 254 of the Act, we have referred to the universal service joint board the matter of how to recover the interstate allocated portion of the subscriber loop costs. Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking and Order Establishing Joint Board, CC Docket No. 96-45, FCC 96-93 (adopted and released on Mar. 8, 1996). The decision to remove payphone costs from the CCL charge and the decision to impose a SLC to all subscriber lines that terminate at both LEC and competitive payphones was not referred to the universal service joint board.

interstate access customers for originating and terminating interstate calls. The incumbent LEC assesses the independent payphone provider a SLC (at the multi-line business rate) to recover the payphone common line costs associated with that phone.[617] In the case of competitive payphones, an independent payphone provider recovers its payphone costs out of the revenue it receives from end users, premises owners, and OSPs to whom its payphones are presubscribed. The 1996 Act mandates that the Commission "discontinue the intrastate and interstate carrier access charge payphone service elements and payments ... and all intrastate and interstate subsidies from basic exchange and exchange access revenues[.]"[618]

183. Accordingly, we adopt rules that provide for the removal from regulated intrastate and interstate rate structures of all charges that recover the costs of payphones (i.e., the costs of payphone sets, not including the costs of the lines connecting those sets to the public switched network, which, like the lines connecting competitive payphones to the network, will continue to be treated as regulated). Therefore, we conclude that incumbent LECs must file revised CCL tariffs with the Common Carrier Bureau no later than January 15, 1997 to reduce their interstate CCL charges by an amount equal to the interstate allocation of payphone costs currently recovered through those charges, scheduled to take effect April 15, 1997. LECs subject to the price cap rules must treat this as an exogenous cost change to the Common Line basket pursuant to Section 61.45(d)(1)(v) of our rules.[619] Incumbent LECs must identify and report accounts that contain costs attributable to their payphone operations. Incumbent LECs must identify specific cost pools and allocators that are required to capture the nonregulated investment and expenses associated with their payphone operations. LECs must file this information with the Common Carrier Bureau by January 15, 1997.

184. LECs that file tariffs pursuant to Section 61.38 or Section 61.39, rate-of-return regulation, or Section 61.50, optional incentive regulation, must file tariffs to revise interstate CCL rates to remove the payphone investment and any other assets used in the provision of payphone service along with the accumulated depreciation and deferred income tax liabilities from the common line costs recovered through those rates. As stated previously, these LECs must reclassify payphone assets from regulated to nonregulated activity pursuant to Part 64 rules. Expenses incurred after payphones are deregulated should be classified as nonregulated

[617] We recently reaffirmed a decision by the Common Carrier Bureau concluding that independent payphone providers should be classified as "end users" under our rules. C.F. Communications Corp. v. Century Telephone of Wisconsin, Inc., Memorandum Opinion and Order, 10 FCC Rcd 9775 (1995), petition for review filed, C.F. Communications Corp. v. FCC and United States, No. 95-1563 (D.C. Cir. filed Nov. 6, 1995). Thus, independent payphone providers are required to pay a SLC for their use of common lines connected to the payphones they serve, but are not assessed a per-minute CCL charge.

[618] 47 U.S.C. § 276(b)(1)(B).

[619] 47 C.F.R. § 61.45(d)(1)(v).

expenses. The CCL rate reduction must account for overhead costs assigned to common line costs as a result of payphone investment and expenses. We require these LECs to recalculate their CCL rates, using the same data and methods they used to develop their current CCL rates, except those calculations should exclude payphone costs.

185. Price cap LECs are also required to revise their CCL rates, using the following method to remove payphone costs from their CCL rates. First, price cap LECs should develop a common line revenue requirement using ARMIS costs for calendar year 1995. Second, price cap LECs are required to develop a payphone cost allocator equal to the payphone costs in Section 69.501(d) divided by total common line costs, based on 1995 ARMIS data. Each LEC is required to reduce its PCI in the common line basket by this payphone cost allocator minus one.

186. We require, pursuant to the mandate of Section 276(b)(1)(B), incumbent LECs to remove from their intrastate rates any charges that recover the costs of payphones. Revised intrastate rates must be effective no later than April 15, 1997. Parties did not submit state-specific information regarding the intrastate rate elements that recover payphone costs. States must determine the intrastate rates elements that must be removed to eliminate any intrastate subsidies within this time frame.

187. Finally, we conclude that, to avoid discrimination among payphone providers, the multiline business SLC must apply to subscriber lines that terminate at both LEC and competitive payphones. We conclude that the removal of payphone costs from the CCL and the payment or imputation of a SLC to the subscriber line that terminates at a LEC nonregulated payphone will result in the recovery of LEC payphone costs on a more cost-causative basis consistent with the requirements of the 1996 Act.[620] No action we take today affects the authority of states to address the state ratemaking implications of reclassification or transfer of payphone assets.

4. Deregulation of AT&T Payphones

a. The Notice

188. In the Notice, we tentatively concluded that payphones provided by AT&T should be classified as CPE, finding that discontinuing possible subsidies for AT&T payphones would be congruent with the 1996 Act's requirement that the Commission discontinue subsidies for other payphones (i.e., those owned by incumbent LECs) and would provide for symmetrical

[620] See Ameritech/SW Bell Waiver at para. 25.

regulation of the payphone industry.[621] We cited two other reasons why this proposed action is in harmony with the other rules we proposed in this proceeding. First, since Tonka Tools,[622] AT&T payphones have been subject to the same regulatory treatment as BOC payphones. Once LEC telephones, including those provided by the BOCs, are declared to be CPE, the basis for treating AT&T payphones as network equipment no longer exists. Second, we believe that deregulating AT&T payphones is consistent with our general policy to deregulate non-dominant carriers. In the Notice, we also tentatively concluded that the bundling of pay telephone equipment with underlying transmission capacity would be treated pursuant to the rules proposed in the Interstate, Interexchange Marketplace proceeding.[623]

b. Comments

189. Those commenting on AT&T payphones were unanimous in concluding that AT&T payphones should be deregulated.[624] The RBOCs assert that AT&T payphones should be deregulated in the same manner as LEC payphones.[625] AT&T argues, however, that AT&T payphones should not be treated like LEC CPE but should be removed from all regulation except Part 68 registration and treated like independent payphone providers.[626]

c. Discussion

190. We conclude that AT&T payphones must be deregulated, detariffed and treated as CPE. As we concluded above, there is a competitive market for payphones, and, pursuant to Section 276, subsidies must be removed from payphone service. AT&T payphones have been treated like BOC payphones for regulatory purposes.[627] It would be incongruous to deregulate payphone equipment owned by all other carriers except AT&T. We conclude, therefore, that AT&T payphones must be removed from regulation and treated as independent

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[621] Notice at para. 56.

[622] Tonka Tools, note 489, above.

[623] Notice at para. 55.

[624] AT&T Reply at 27; RBOC Comments at 32; California PUC Comments at 15; Florida PSC Comments at 8; USTA Comments at 10; MCI Comments at 15.

[625] RBOC Comments at 32.

[626] AT&T Reply at 27. With regard to bundling of AT&T payphones and phones services, MCI suggests that the Commission review the effect of this proposal after one year. MCI argues, however, that even if the Commission allows bundling, the payphone transmission service should be available separately. MCI Comments at 16.

[627] Tonka Tools, note 489, above.

PSPs' payphones. Accordingly, we require that AT&T follow the same procedures discussed above for valuing LEC payphone assets and transferring them to nonregulated status. After deregulation, AT&T payphones will be subject to the same requirements as independent payphone provider payphones.

191. With regard to the issue of bundling of transmission capacity and payphone CPE, we note that in the Interstate, Interexchange Marketplace Notice, we stated that we would consider in this proceeding "the issue of bundling pay telephone equipment with the underlying transmission capacity."[628] In the Notice, we tentatively concluded that other IXC bundling issues should be treated under the same rules that we proposed in the Interstate, Interexchange Marketplace proceeding.[629] We decline to adopt in this proceeding any rules regarding the bundling of payphone CPE with the underlying transmission capacity.[630] We do not have a sufficient record to revise, with regard to payphone CPE, the Commission's conclusion in the Computer II proceeding that there are public interest benefits in unbundling CPE from the underlying transmission service.[631] The issue of IXC CPE bundling will be addressed in the Interstate, Interexchange Marketplace proceeding.

C. NONSTRUCTURAL SAFEGUARDS FOR BOC PROVISION OF PAYPHONE SERVICE

192. The foregoing parts establish a compensation arrangement that applies equally to the payphone operations of the BOCs, other LECs, AT&T and PSPs not affiliated with LECs. In this part, we address certain operating requirements that are imposed only on the BOCs' payphone operations.

193. Section 276(b)(1)(C) directs the Commission to "prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a), which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry - III (CC Docket No. 90-623) proceeding[.]"[632] As referred to in Section 276(b)(1)(C), Section 276(a)

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[628] Policy and Rules Concerning the Interstate, Interexchange Marketplace, Notice of Proposed Rulemaking, CC Docket No. 96-61 (rel. Mar. 25, 1996) at para. 91 (Interstate, Interexchange Marketplace Notice).

[629] Notice at para. 55.

[630] Interstate, Interexchange Marketplace Notice at para. 91.

[631] Computer II, 77 FCC 2d at 438-447; 47 C.F.R. § 64.702(e).

[632] 47 U.S.C. § 276 (b)(1)(C).

provides that a BOC "(1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and (2) shall not prefer or discriminate in favor of its payphone service."[633]

1. The Notice

194. In the Notice, we tentatively concluded that all Computer III[634] nonstructural safeguards must be applied to meet our obligation "to prescribe nonstructural safeguards for [BOC] payphone service" under the 1996 Act.[635] We also solicited comment on whether there are other nonstructural safeguards that, while not explicitly specified in Computer III, should be applied to BOC payphones.[636]

195. To ensure BOC compliance with the Computer III and Open Network Architecture (ONA) requirements, we proposed a requirement that each BOC file, within 90 days of the effective date of this Report and Order, an initial Comparably Efficient Interconnection (CEI) plan describing how it intends to comply with the CEI equal access parameters and nonstructural safeguards for the provision of payphone services.[637]

196. Currently, the Commission regulates BOC provision of enhanced services through CEI and ONA requirements that mandate unbundled nondiscriminatory access to BOC

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633 47 U.S.C. § 276(a).

634 See Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III), CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (Phase I Order), recon., 2 FCC Rcd 3035 (1987) (Phase I Reconsideration Order), further recon., 3 FCC Rcd 1135 (1988) (Phase I Further Reconsideration Order), second further recon., 4 FCC Rcd 5927 (1989) (Phase I Second Further Reconsideration Order); Phase I Order and Phase I Reconsideration Order vacated California v. FCC, 905 F.2d 1217 (9th Cir. 1990) (California I); Phase II, 2 FCC Rcd 3072 (1987) (Computer III Phase II Order), recon., 3 FCC Rcd 1150 (1988) (Phase II Reconsideration Order), further recon., 4 FCC Rcd 5927 (1989) (Phase II Further Reconsideration Order); Phase II Order vacated, California I, 905 F.2d 1217 (9th Cir. 1990); Computer III Remand Proceeding, 5 FCC Rcd 7719 (1990) (ONA Remand Order), recon., 7 FCC Rcd 909 (1992), pets. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993) (California II); Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 7571 (1991) (BOC Safeguards Order), BOC Safeguards Order vacated in part and remanded, California v. FCC, 39 F.3d 919 (9th Cir. 1994) (California III), cert. denied, 115 S.Ct. 1427 (1995).

635 Notice at para. 58.

636 Id.

637 Id. at para. 60.

network features and functionalities.[638] Pursuant to these requirements, BOCs must file a service-specific CEI plan before offering any enhanced service on an integrated basis.[639] A BOC must demonstrate in its CEI plan how it would provide competing enhanced service providers with "equal access" to all basic underlying network services the BOC used to provide its own enhanced services.[640] Subsequently, the Commission required BOCs to develop and implement ONA plans detailing more fundamental unbundling of their basic network services.[641] ONA requires further unbundling of network elements than under CEI because it is not limited to those elements associated with specific BOC enhanced services.[642] In 1993, the Common Carrier Bureau lifted structural separation requirements after each BOC demonstrated that its ONA plan complied with the BOC Safeguards Order.[643] Following the California III court decision,[644] the Commission has

[638] Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 1 (1988) (BOC ONA Order), recon., 5 FCC Rcd 3084 (1990) (BOC ONA Reconsideration Order); 5 FCC Rcd 3103 (1990) (BOC ONA Amendment Order), erratum, 5 FCC Rcd 4045, pets. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993), recon., 8 FCC Rcd 97 (1993) (BOC ONA Amendment Reconsideration Order); 6 FCC Rcd 7646, 7649-50 (1991) (BOC ONA Further Amendment Order); 8 FCC Rcd 2606 (1993) (BOC ONA Second Further Amendment Order), pet. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993).

[639] Phase I Order, 104 FCC 2d at 964-965.

[640] See Phase I Order, 104 FCC 2d at 1036.

[641] Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, Notice of Proposed Rulemaking, 10 FCC Rcd 8360, 8372, para. 17 (1995) ("Computer III Further Remand Proceedings").

[642] Id.

[643] See Bell Atlantic's Notice and Petition for Removal of the Structural Separation Requirement and Waiver of Certain State Tariffing Requirements, CC Docket Nos. 90-623 and 88-2, Phase I, 7 FCC Rcd 3877 (1992) (Bell Atlantic Order); Southwestern Bell Telephone Company Notice and Petition for Removal of the Structural Separation Requirement and Waiver of Certain State Tariffing Requirements, CC Docket Nos. 90-623 and 88-2, Phase I, 7 FCC Rcd 7294 (1992) (SWBT Order); US West Notice and Petition for Removal of the Structural Separation Requirement and Waiver of Certain State Tariffing Requirements, CC Docket Nos. 90-623 and 88-2, Phase I, 7 FCC Rcd 3639 (1992) (US West Order); Ameritech Operating Companies Notice and Petition for Removal of the Structural Separation Requirement and Waiver of Certain State Tariffing Requirements, CC Docket Nos. 90-623 and 88-2, Phase I, 7 FCC Rcd 4104 (1992) (Ameritech Order); New York Telephone Company and New England Telephone Company Notice and Petition for Removal of the Structural Separation Requirement and Waiver of Certain State Tariffing Requirements, CC Docket Nos. 90-623 and 88-2, Phase I, 7 FCC Rcd 8633 (1992) (NYNEX Order); Pacific Bell and Nevada Bell Notice and Petition for Removal of the Structural Separation Requirement and Waiver of Certain State Tariffing Requirements, CC Docket Nos. 90-623 and 88-2, Phase I, 8 FCC Rcd 3982 (1993) (Pacific Order); BellSouth Corporation Notice and Petition for Removal of the Structural Separation Requirement and Waiver of Certain State Tariffing Requirements, CC Docket Nos. 90-623 and 88-2, Phase I, 8 FCC Rcd 4864 (1993) (BellSouth Order).

[644] California v. FCC, 39 F.3d 919 (9th Cir. 1994) (California III), cert. denied, 115 S.Ct. 1427 (1995).

continued to require BOCs to file CEI plans for each individual enhanced service they offer in addition to fulfilling the access requirements of its ONA plan.[645]

2. Comments

197. California PUC, One Call, Ameritech, and USTA support Computer III safeguards and CEI.[646] Florida PSC argues that, if nonstructural safeguards are used, specific cost pools and allocators should be used to identify the existence of subsidies.[647] GPCA supports the Computer III safeguards and argues that they should be strengthened by requiring that the BOCs also: (1) provide unbundled specific services such as answer supervision and flexible call rating based on subscribers specifications, and continue to provide dialtone and blocking and screening; (2) offer volume discounts on a equal basis to aggregators; (3) provide service order processing; (4) implement safeguards against interference with letters of agency; (5) follow Customer Proprietary Network Information (CPNI) restrictions; (6) file CEI plans; (7) conduct independent audits; and (8) maintain publicly available contracts.[648] SW Bell argues that there is no incentive for cross-subsidization with price cap regulation and the elimination of sharing.[649] Ameritech disagrees with the Commission that a separate proceeding is necessary to develop accounting safeguards different than those applied in Computer III.[650] Inmate Coalition argues that additional safeguards should include accounting and fraud control, billing and collection, and CPNI availability.[651] USTA argues that pursuant to Section 276, nonstructural safeguards only apply to BOCs.[652] GPCA argues that the Computer III safeguards should apply to other LECs, particularly those with annual revenues greater than 100 million dollars, including GTE, Sprint and Alltel, and LECs that service Puerto Rico and the Virgin Islands.[653] Ohio PUC argues that

645 Regarding further proceedings on remand, see Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, 10 FCC Rcd 8360 (1995).

646 California PUC Comments at 17; Ameritech Comments at 15; One Call Comments at 9-10; USTA Comments at 10.

647 Florida PSC Comments at 8.

648 GPCA Comments at 8-12, 23-25.

649 SW Bell Reply at 4-6.

650 Ameritech Comments at 15-16; One Call Comments at 9-10.

651 Inmate Coalition Comments at 22.

652 USTA Reply at 7-8.

653 GPCA Reply at 18; GPCA Comments at 26.

Computer III nonstructural safeguards should apply to all LECs if payphones are deregulated and structural separation is not imposed.[654]

198. AT&T and GPCA support the imposition of CEI plans on the BOC provision of payphone services.[655] The RBOCs and PacTel argue that CEI plans are not necessary because these are basic, not enhanced services.[656] AT&T contends that CPNI requirements should apply to BOC provision of payphones.[657] One Call argues that if CPNI is not restricted, it should be available to all providers.[658] GPCA contends that information about the use of LEC payphones is CPNI that should be available to any party upon reasonable request.[659] AT&T supports the network information disclosure requirements established in our implementation of Section 251 of the 1996 Act, plus the addition of two requirements that BOCs file network information disclosures with the Commission, and that there be one year notification of network changes.[660]

3. Discussion

a. Nonstructural Safeguards

199. In addition to the accounting safeguards that we will adopt with respect to payphone services in the accounting safeguards proceeding, we conclude that the Computer III and ONA nonstructural safeguards will provide an appropriate regulatory framework to ensure that BOCs do not discriminate or cross-subsidize in their provision of payphone service. The Commission and the BOCs have substantial experience in the application of these safeguards that will facilitate their use in the context of BOC payphone services. We conclude that we do not have to adopt any additional safeguards beyond Computer III and ONA because of the comprehensive nature of that regulatory structure and the lack of a record necessary to conclude that a more burdensome framework should be adopted and is in the public interest. As discussed above, we decline to require structural separation requirements. To ensure that the BOCs comply with the Computer III and ONA nonstructural separation requirements for the provision of

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654 Ohio PUC Comments at 13.

655 AT&T Comments at 22; GPCA Comments at 23-25.

656 PacTel Reply at 5-6.

657 AT&T Comments at 23, n.47.

658 One Call Comments at 10.

659 GPCA Comments at 21.

660 AT&T Comments at 22-3.