Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of		
	)	
Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements	)	**WC Docket No. 02-112**
	)	
2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules	)	**CC Docket No. 00-175**

MCI COMMENTS

WorldCom, Inc. d/b/a MCI (MCI) hereby submits its comments on the Further Notice of Proposed Rulemaking (Notice) in the above-captioned proceeding. In the Notice, the Commission proposes to address the appropriate classification of in-region interstate and international interexchange telecommunications services provided by Bell Operating Companies (BOCs) outside of a section 272 affiliate and by independent LECs. The Commission also asks whether there are alternative regulatory approaches, in lieu of dominant carrier regulation, that the Commission could adopt to detect or deter any potential anticompetitive behavior.

MCI's comments focus on the provision of interLATA service by the BOCs. With respect to the provision of interLATA services by independent LECs, MCI incorporates by reference its comments in CC Docket No. 00-175.[1]

I. Introduction and Summary

After the breakup of AT&T in 1984, the interLATA market became the most competitive sector of the telecommunications industry. Prices dropped quickly as MCI and other firms built nationwide fiber networks and introduced an array of innovative new services. By 1995, interLATA competition had developed sufficiently for the Commission to declare AT&T nondominant.

With BOC entry into the interLATA market, beginning in 1999, the long distance competition success story has been placed at risk. In every state in which the BOCs have obtained interLATA authority, they have gained market share at an unprecedented rate. Verizon, for example, claims to have achieved a 30 percent share of the market in New York barely two years after receiving interLATA authority;[2] by contrast, Commission data show that MCI did not achieve a 20 percent market share until 1994, a decade after divestiture, and has never achieved a 30 percent market share.[3] Across the six states where SBC has had interLATA authority the longest,[4] SBC enjoys an astonishing 43 percent market share overall and about a 50 percent market share for "consumer" lines.[5]

The BOCs have achieved their rapid market share gains even though they generally provide interLATA service through resale, and therefore are no more efficient than their rivals in the interLATA market. The BOCs' interLATA market share gains are almost entirely attributable to the BOCs' continued local market power, which provides them an array of tools for gaining anticompetitive advantage in the interLATA

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[1] WorldCom Comments, CC Docket No. 00-175, filed November 1, 2001.
[2] http://investor.verizon.com/news/VZ/2002-07-31_X668027.html
[3] Statistics of Communications Common Carriers, 2000/2001 Edition, Table 1.5.
[4] Texas, Missouri, Oklahoma, Kansas, Arkansas, and Connecticut.
[5] SBC Investor Briefing, 1Q03, at 7, available at
http://www.sbc.com/Investor/Financial/Earning_Info/docs/1Q_03_IB_FINAL.pdf

market. Consistent with their strategy of leveraging local market power into the interLATA market, the BOCs have made almost no effort to compete for long distance customers outside their home regions, and generally require customers to obtain local service from the BOC in order to obtain the most favorable interLATA pricing.

If the BOCs were permitted to provide interLATA services and local services on an integrated basis, as nondominant carriers, the risks to interLATA competition would only be exacerbated. The Commission should continue to regulate the BOCs as nondominant only if they provide interLATA services pursuant to the separate affiliate requirements of section 272 and additional safeguards.

II. The BOCs Continue to Possess Local Bottleneck Control

Under Commission precedent, the Commission must consider the significance of the BOCs' control of bottleneck exchange access facilities in assessing whether the BOCs possess market power in the provision of in-region interLATA services.[6]

Although the local market is deemed to be "open" when the BOCs receive interLATA authority, the grant of interLATA authority is by no means tantamount to a finding that the BOCs' local bottleneck control has evaporated. As the Commission explained in the 1996 Non-Accounting Safeguards Order, "Congress recognized that the local exchange market will not be fully competitive upon its opening."[7] And, as

[6] Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, CC Docket No. 96-149; Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, 15812 (LEC Classification Order).

[7] Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149, released December 24, 1996, at ¶ 9 (Non-Accounting Safeguards Order).

discussed in more detail below, the local market is still not "fully competitive" even in those states where the BOCs have had interLATA authority the longest.

Three years after the grant of interLATA authority in New York and Texas, the Commission continues to regulate Verizon-New York and SWBT-Texas (and every other BOC) as dominant in the provision of interstate access services. Furthermore, the Commission's local competition data show that CLECs have only achieved a modest toehold in the local market, even in those states where the BOCs have had interLATA authority the longest. The incumbent still controls 75 percent of local access lines in New York and 83 percent of local access lines in Texas.[8] The story is much the same in the next states where the BOCs obtained interLATA authority: in Kansas, the incumbent still controls 83 percent of access lines; in Oklahoma, the incumbent still controls 89 percent of access lines; and in Massachusetts the incumbent still controls 83 percent of access lines.[9]

Moreover, the Commission's local competition data show that CLEC market share growth has slowed significantly in those states where the BOCs have had interLATA authority the longest. In New York, CLEC market share has remained unchanged at 25 percent since December 2001, after increasing from 9 percent to 23 percent between December 1999 and June 2001.[10] In Texas, similarly, CLEC market share has increased only one percentage point, from 16 percent to 17 percent, since December 2001. As the Texas PUC noted in its January, 2003 study of local competition in Texas, "[t]he rate of overall CLEC market share growth, which measures

[8] Wireline Competition Bureau, Industry Analysis and Technology Division, Local Telephone Competition: Status as of December 31, 2002, June 2003 (June 2003 Local Competition Report), Table 6.
[9] Id.

the momentum of competitors in the local exchange market, has shown a sharp downward trend over the last two year period."[11]

Competitive conditions in the local market today provide the BOCs with many tools to gain an anticompetitive advantage in the interLATA market. As an initial matter, although the Commission has declined to take local market share into account when evaluating section 271 applications, the BOCs' continued high local market share is directly relevant to an assessment of the BOCs' market power in the interLATA market. First, because there are a large number of inbound customer contacts inherent in the local exchange service customer relationship, and because each such contact provides the BOCs with an opportunity to market interLATA service, the BOCs' continued high local market share provides them with a unique cost advantage in marketing interLATA service – an advantage that derives solely from their monopoly legacy, not from superior products or pricing.

Second, the marketing cost advantages derived from the BOCs' monopoly legacy will only become more significant as a result of the adoption of "do not call" rules. As discussed in MCI's comments in the "do not call" proceeding, the national do-not-call list will have a detrimental impact on telecommunications competition. The national do-not-call list will (1) burden new entrants trying to enter the local market; (2) diminish price competition; and (3) grant incumbents an enormous marketing advantage over competitive providers, due to the statutory exemption for companies that have an

[10] Id., Table 7.
[11] Public Utility Commission of Texas, "Scope of Competition in Telecommunications Markets of Texas," January 2003 (Texas PUC Scope Report) at 19.

established business relationship with the customers.[12] Because the BOCs' monopoly legacy provides them with an established business relationship with the vast majority of customers, the BOCs will be able to market interLATA service to most customers in their region, even those that have placed their names on the national do-not-call list, while MCI and other interLATA carriers will not.

Third, the growing consumer demand for bundles of local and interLATA services provides the BOCs with additional tools for leveraging their local market power into the interLATA market. As the Commission has explained:

> unlike BOC entry into long distance…the competing carriers' entry into the local market is handicapped by the unique circumstance that their success in competing for BOC customers depends upon the BOCs' cooperation. Moreover, BOCs will have access to a mature, vibrant market in the resale of long distance capacity that will facilitate their rapid entry into long distance and, consequently, their provision of bundled long distance and local service. Additionally, switching customers from one long distance company to another is now a time-tested, quick, efficient, and inexpensive process. New entrants into the local market, on the other hand, do not have available a ready, mature market for the resale of local services or for the purchase of unbundled network elements, and the processes for switching customers for local service from the incumbent to the new entrant are novel, complex and still largely untested. For these reasons, BOC entry into the long distance market is likely to be much easier than entry by potential BOC competitors into the local market, a factor that may work to a BOC's advantage in competing to provide bundled services.[13]

Thus, because of the growing demand for bundled products, the BOCs can use their superior ability to offer local exchange service (including, in most instances, the fact that they are already the customer's provider of local exchange services) to gain interLATA market share even if they are less efficient than their rivals in the provision of interLATA service.

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[12] *See* WorldCom Comments, GC Docket No. 02-278, at 8.

[13] Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region InterLATA Services in Michigan, Memorandum Opinion and Order, CC

Finally, as the Commission has discussed on numerous occasions, it is the "fundamental postulate underlying modern telecommunications law" that the BOCs will "have both the incentive and ability to discriminate against their competitors" in the interLATA market as long as the local market is not fully competitive.[14] Due to the BOCs' continued high local market share, and the barriers that continue to limit interLATA competitors' ability to find alternative providers of access services or win the local customer themselves, interLATA competitors remain dependent on the BOCs for access services, billing and collection, PIC administration, and other essential inputs. In both the mass market and the larger business market, that dependence gives the BOCs the ability to implement a price squeeze or to discriminate in the provisioning of access services.

A. The BOCs' Local Bottleneck Control Confers an Anticompetitive Advantage in the Provision of Mass Market InterLATA Services

As the Commission confirmed in its recent Triennial Review decision, UNE-P is necessary for competitive mass market local entry.[15] However, the mere availability of UNE-P does not render the local mass market fully competitive. Although CLECs have been able to use UNE-P to offer service to certain segments of the local mass market in New York, Texas, and other states where the BOCs have obtained section 271 authority, the virtual halt in CLEC market share growth in Texas and New York shows that inflated UNE-P pricing, restrictions on the availability of certain UNEs, and

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Docket No. 97-137, released August 19, 1997, at ¶17.

[14] Applications of Ameritech Corp. and SBC Communications, Inc., for Consent to Transfer Control, Memorandum Opinion and Order, CC Docket No. 98-141, released October 8, 1999, at ¶ 190.

[15] FCC Adopts New Rules for Network Unbundling Obligations of Incumbent Local Exchange Carriers, News Release, Feb. 20, 2003

discriminatory provisioning of UNEs places firm limits on the potential for further competitive inroads.

UNE-P Pricing Issues

A key factor that limits UNE-P competition in the local mass market is excessive UNE-P prices. Currently, MCI serves about 3 million local customers, and offers local service to approximately 65 percent of U.S. households. However, MCI cannot viably expand its local offering to the remaining households because excessive UNE-P prices in certain pricing zones, or entire states, create a price squeeze that precludes local market entry in those areas. As Wall Street analysts have found, excessive UNE-P pricing serves to limit the potential for successful local competition in a large number of states.[16]

Even in those areas where elevated UNE-P prices do not currently create a price squeeze, above-cost UNE-P prices place CLECs at a competitive disadvantage relative to the BOCs in the local market. Because rational firms take into account the incumbent's likely pricing responses when making entry decisions, CLECs are hesitant to enter the local exchange market in areas where the BOCs have a cost advantage that they could use to implement aggressive "winback" strategies and other price reductions that would drive the CLEC from the market.

UNE-P Provisioning Issues

MCI's market experience confirms that the BOCs' provisioning and OSS remains a barrier to entry. In April SBC was unable, for the third time, to receive long

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[16] Morgan Stanley, "Wireline Telecom Services," October 8, 2002, at 34 ("We believe that Verizon is vulnerable to UNE-P in four states;" "BellSouth appears to be primarily at risk in Georgia because it is the only state where UNE-P economics make sense for competitors.")

distance authorization for the state of Michigan. SBC withdrew its application because it failed to provide accurate and timely wholesale bills to competitive LECs.[17] In the Qwest region, MCI has experienced and continues to experience extremely high reject rates of its local orders due to Qwest's deficient OSS and poor documentation of Qwest's non-standard OSS. In fact, MCI's reject rate is about 50 percent.[18] This is down from a reject rate of nearly 100 percent when MCI launched the Neighborhood product on MCI's systems in the Qwest region in January.[19]

CLECs face particular challenges when signing up a key class of customers: those who are ordering service for a new line (i.e., "new installs"). For example, AT&T recently filed a request for dispute resolution with the New York PSC because AT&T's customers face significantly longer delays in receiving service for new lines than is appropriate and longer provisioning intervals than comparable Verizon retail customers receive.[20] Verizon customer service representatives are able to offer Verizon customers more favorable service delivery dates than CLECs are able to provide their customers.[21] MCI has filed a letter in support of AT&T, having been concerned for several years that Verizon's "SMARTS Clock" tool used to provide the next-available installation date for new lines does not provide CLECs with parity intervals.[22] The Commission has relied on assertions by Verizon in section 271 applications that the SMARTS Clock provides

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[17] Statement of FCC Chairman Michael Powell on Withdrawal of SBC's 271 Application for Michigan, News Release, April 16, 2003.

[18] *See* Letter from Lori Wright, MCI, to Marlene Dortch, FCC, *In the Matter of Application by Qwest for Authorization to Provide In-Region, InterLATA Services in Minnesota,* WC Docket No. 03-90, filed June 13, 2003.

[19] WorldCom Comments, *In the Matter of Application by Qwest to Provide In-Region, InterLATA Services in New Mexico, Oregon, and South Dakota*, WC Docket No. 03-11, Feb. 5, 2003.

[20] Letter from Harry M. Davidow, AT&T, to Dennis Taratus, New York PSC, Re: Discriminatory and Lengthy Provisioning Intervals (Service Interval Disparity) for UNE-Platform, dated June 3, 2003 (AT&T Interval Letter).

[21] AT&T Interval Letter at 3.

parity.[23]

Restrictions on UNE Availability

The scope of local mass market competition will be further limited by the restrictions that the recent Triennial Review decision places on CLECs' access to fiber-fed loops for the provision of advanced services. As a result of that decision, CLECs will not be able to offer a bundled product that includes DSL to residential and small business customers served by fiber-fed loops. Because fiber-fed loops represent approximately 60 percent of access lines, and because of rapid growth in the number of customers that require DSL in addition to local exchange service, the Commission's decision will substantially limit the addressable market for CLECs' local exchange offerings.

A similar obstacle that competitors face in the local exchange market is that the BOCs refuse to continue providing DSL service to customers who want to switch their voice service to a competitor. Because the Commission has declined to require the ILECs to continue providing DSL service to customers served by voice CLECs, MCI is frequently unable to offer local service to the millions of customers with BOC DSL service.[24]

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[22] Letter from Curtis Groves, MCI, to Mr. Dennis Taratus, NY PSC, dated June 12, 2003.

[23] See, e.g., In the Matter of Section 271 Application of Bell Atlantic New York to Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, Dec. 22, 1999, ¶ 197; In the Matter of Verizon Pennsylvania for Authorization to Provide In-Region, InterLATA Services in Pennsylvania, CC Docket No. 01-138, rel., Sept. 19, 2001, n.301; In the Matter of Verizon New England Application to Provide In-region, InterLATA Services in Massachusetts, CC Docket No. 01-9, rel. April 16, 2001, ¶ 90.

[24] WorldCom Triennial Review Comments at 105. A class action lawsuit is pending at the U.S. District Court in New York alleging that Verizon's practice of refusing to provide DSL service where a customer wants to obtain voice service from a competitor is a violation of anti-trust law. *See* John Greco v. Verizon, United States District Court, Southern District of New York, 03 Civ. 0718.

B. The BOCs' Local Bottleneck Control Confers an Anticompetitive Advantage in the Provision of Large Business InterLATA Services

In the larger business market, competing IXCs remain dependent on BOC access services to reach their customers. In particular, IXCs continue to rely on BOC special access services to provide frame relay, ATM, and integrated voice/data services to their larger business customers. As the record in the Triennial Review proceeding shows, CLEC fiber extends to only a tiny fraction of the commercial buildings in the nation, and extension of fiber to additional buildings is both costly and time-consuming.[25] Even if CLECs have built fiber to high-density customer locations, such as a bank headquarters building, competing interLATA carriers are still dependent on BOC special access facilities to reach bank branches and other lower-density locations.

The New York PSC recently found that Verizon remains dominant in the provision of special access services in the New York metropolitan area – the most competitive sector of the most competitive access market in the nation.[26] In its comprehensive review of special access competition in New York, the New York PSC found that in LATA 132 Verizon has 7,364 buildings on its fiber network compared to less than 1,000 for most competing carriers.[27] This disparity in buildings served by fiber is magnified by the fact that Verizon's ubiquitous copper loops allow it to provision DS-1, voice grade, and other low-speed special access services to thousands of other special access customer locations that competitors' networks do not reach.[28]

Grooming Issues

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[25] WorldCom Comments, CC Docket No. 01-338, filed April 4, 2002, at 15-22.
[26] New York Public Service Commission, Opinion and Order Modifying Special Services Guidelines for Verizon New York, Inc., Conforming Tariff and Requiring Additional Performance Reporting, Case Nos. 00-C-2051, 92-C-0665 at 9 (June 15, 2001) (New York Special Services Order).
[27] Id. at 7.

The BOCs are able to place roadblocks to local competition even on those routes where CLECs have built their own fiber. In particular, SBC and Verizon – the RBOCs that were first to obtain interLATA authority – have refused to "groom" (migrate) circuits from their special access services to MCI's local fiber network in a timely manner.[29] By slow-rolling the grooms requested by MCI, these RBOCs are seeking to force MCI to continue paying inflated BOC special access charges. Artificial limits on grooming are poisonous to local competition, because they block CLECs from realizing a return on the substantial investment that they have made in local fiber networks, and limit the attractiveness of additional facilities construction.

UNE Restrictions

InterLATA carriers remain dependent on BOC special access services in part because the Commission has precluded IXCs from using combinations of unbundled loop and transport (the enhanced extended link or EEL) to self-provide special access to their frame relay, ATM, and integrated voice/data customers. Since the Commission's adoption of the Supplemental Order[30] and Supplemental Order Clarification,[31] CLECs have been able to use unbundled loop/transport combinations only to provide local exchange services (and even then, only those local exchange services that that meet the unreasonably stringent tests spelled out in the Supplemental Order Clarification). Although the recent Triennial Review decision has apparently changed the details of the

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[28] Id. at 7-8.
[29] See letter from Henry G. Hultquist, Senior Attorney, WorldCom, to Marlene H. Dortch, FCC, CC Docket Nos. 01-338; 96-98; and 98-147, October 4, 2002.
[30] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Supplemental Order, released November 24, 1999 (Supplemental Order)
[31] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Supplemental Order Clarification, 15 FCC Rcd 9587 (2000)

use restriction, "service eligibility criteria" will continue to apply to combinations of unbundled loop and transport.[32]

Whatever the merits of the Commission's decision to restrict access to combinations of loop and transport, the Commission must recognize that its decision preserves the local bottleneck. If the "service eligibility criteria" place restrictions on the use of unbundled network elements to reach certain interLATA customers, interLATA carriers are by definition dependent on BOC special access services to reach those customers.

C. Risks to Sustainable Local Competition

Not only do CLECs already face an array of barriers to viable local entry, but the post-1996 Act record shows that the dependence of new entrants on BOC facilities to enter the local market poses significant risks to the sustainability of local competition.

As an initial matter, local competition is fragile simply because the market-opening mechanisms of the 1996 Act are under constant regulatory attack by the BOCs. Immediately following the Commission's decision in February, 2003 to preserve UNE-P, the BOCs pledged to litigate. This is only the most recent in a long series of attempts by the BOCs to weaken or even eliminate Commission rules that provide competitors with the opportunity to compete in the local market. Since the passage of the Telecommunications Act of 1996, the BOCs have repeatedly challenged the Commission's local competition rules through litigation and regulatory proceedings.

Furthermore, even though the FCC did not eliminate the availability of UNE-P in

[32] Triennial Review Press Release, Attachment at 3.

its February, 2003 Triennial Review decision, it delegated to the state commissions the task of conducting a state-by-state analysis of whether competitors would be impaired in a particular market without access to UNE-P. Thus the BOCs' campaign against UNE-P will continue not only in the courts but in each of the 50 states.

The BOCs' efforts to eliminate or limit UNE-P have not stopped with the courts or regulatory agencies. Recently, SBC lobbyists tried to perform an end-run around the Telecommunications Act by drafting a bill behind closed doors that would nearly double unbundled loop rates in Illinois. Although the bill was approved by the Illinois legislature and governor, a U.S. District Court judge recognized the legal and procedural infirmities associated with the rate increase and issued an injunction. If the higher rates had gone into effect, MCI would have been forced to substantially increase the prices it charges its customers and abandon marketing efforts in geographic areas that include 66 percent of Illinois' residential customers. This is just one example of the BOC shenanigans that competitive providers must spend time and effort fighting every day.

In addition to the risks posed by the BOCs' attacks on the Commission's local competition rules, significant risks are posed by the BOCs' ability to discriminate in the provision of unbundled elements and interconnection. Competitors have filed numerous complaints at the Commission regarding the BOCs' failure to provide non-discriminatory access to facilities for the provision of local service. Some of these complaints have resulted in enforcement action, but for the most part they have languished. Even when the Commission found in favor of Core Communications in a complaint proceeding filed under section 251 of the Act,[33] Core waited nearly two years

[33] In the Matter of Core Communications, Inc. v. Verizon-Maryland, File No. EB-01-MD-007,

for a decision finding that Verizon had unreasonably delayed Core Communications' ability to interconnect, had failed to inform Core Communications about the delay and its potential duration, and had failed to make any significant effort to solve the cause of the delay – all of which disrupted Core Communications' business plans and prevented it from serving its customers.[34]

The risks to local competition have increased still further, now that the BOCs have received long-distance authority in 42 states. The granting of section 271 applications eliminates the "carrot" that led the BOCs to agree to reductions in UNE prices and to make a variety of other commitments, including performance metrics. Moreover, the granting of section 271 applications eliminates the primary incentive for the BOCs to comply with the Act's unbundling obligations and non-discrimination requirements. For example, only months after obtaining section 271 authorization in New York, Verizon entered into a consent decree with the Commission in which it agreed to pay $3 million to the U.S. Treasury for failure to provide competitors with various notifications concerning the status of certain orders placed by competitors or otherwise failed to process properly those orders.[35] Since then, Verizon has made payments to the U.S. Treasury every month from August 2001 through March 2003 for failure to provide non-discriminatory performance to competitors as measured by the performance standards it agreed to as a condition of the Bell Atlantic/GTE merger.[36]

Memorandum Opinion and Order, rel. April 23, 2003.

[34] Id. at ¶33.

[35] "FCC Ensures Bell Atlantic Compliance with Terms of Long Distance Approval; Bell Atlantic Agrees to Pay Up to $27 Million, $3 Million Payment Now and Up to $24 Million Later if Bell Atlantic Fails to Meet Specified Performance Standards," News Release, March 9, 2000, www.fcc.gov/eb.

[36] *See* Notice of Verizon Voluntary Payments Pursuant to Merger Condition, CC Docket No. 95-154, rel.

III. The BOCs Should Be Regulated as Dominant in the Provision of InterLATA Services Unless They Provide InterLATA Services Through a Separate Affiliate

Because the BOCs continue to enjoy market power in the local market, they possess the ability to extend that market power into the interLATA market, unless subject to appropriate safeguards. Given that the local market is not materially more competitive than the Commission predicted in the LEC Classification Order, the Commission should retain that order's regulatory framework for BOC interLATA service, i.e., the Commission should continue to regulate the BOCs as dominant in the provision of interLATA services, unless the BOC provides interLATA services subject to the separate affiliate requirements of section 272 and certain other safeguards. At a minimum, the Commission should require the BOCs to provide interLATA services subject to the separate affiliate requirements that currently apply to independent LEC providers of interLATA services, sections 64.1901-64.1903 of the Commission's rules.[37]

A. A Separate Affiliate Requirement Remains Necessary to Guard Against a Price Squeeze

As the Commission explained in the Non-Accounting Safeguards Order, a BOC with local market power has the ability to create a price squeeze, if it charges other firms prices for inputs higher than those charged, or effectively charged, to the BOC's long distance operations.[38] This artificial advantage would allow the BOC to win long distance customers even though a competing carrier may be a more efficient provider in

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April 2, 2003.

[37] 47 C.F.R. §§ 64.1901-64.1903. See LEC Classification Order at ¶ 163.

[38] Non-Accounting Safeguards Order at ¶ 12.

serving the customer.[39] The Commission has recognized that a price squeeze can occur whenever BOC access charges are above cost, even if they are limited by price caps.[40]

The risk of a price squeeze has increased substantially since the Commission addressed the price squeeze issue in the LEC Classification Order and Non-Accounting Safeguards Order. First, it is no longer true that price cap regulation can be relied upon to prevent a BOC from increasing the access charges that competing interLATA carriers must pay.[41] Since the Commission's adoption in 1999 of "pricing flexibility" rules under which the LECs can escape price cap regulation,[42] the BOCs have been allowed to remove their special access and switched dedicated transport access services from price cap regulation in many cities,[43] even though the Commission continues to regulate the BOCs as dominant in the provision of these services.[44] Not surprisingly, the BOCs began increasing special access rates as soon as they were freed from price cap regulation.[45]

Second, the LEC Classification Order's prediction that the risk of a price squeeze would be mitigated by access charge reductions has, at best, been only partially fulfilled.[46] While interstate switched access charges have been reduced since 1996, they

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[39] Id.
[40] LEC Classification Order at ¶ 127; See also Access Charge Reform, First Report and Order, CC Docket No. 96-262, released May 16, 1997, at ¶ 276 (Access Reform Order).
[41] See LEC Classification Order, 12 FCC Rcd at 15829, ¶ 126.
[42] Access Charge Reform, Fifth Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-262, released August 27, 1999 (Pricing Flexibility Order).
[43] Based on incumbent LEC pricing flexibility petitions, MCI estimates that switched dedicated transport and the interoffice portion of special access services have been removed from price cap regulation in 86% of LEC territories in the top 100 MSAs and that channel termination services have been removed from price cap regulation in 40% of LEC territories in the top 100 MSAs.
[44] Pricing Flexibility Order at ¶ 151 ("Phase II relief is not tantamount to non-dominant treatment")
[45] AT&T Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access, RM No. 10593, October 15, 2002, at 12.
[46] See LEC Classification Order, 12 FCC Rcd at 15832-15833, ¶ 130.

still remain above cost.[47] More importantly, interstate special access prices remain well above cost, which creates a substantial risk of a price squeeze for frame relay, ATM, and other data services that rely on special access services. And intrastate access charges remain well above cost, which creates a substantial risk of a price squeeze for bundled service packages that combine interstate and intrastate interLATA calling, particularly in Texas and other states with high intrastate access charges and significant volumes of intrastate interLATA calling.

Third, the LEC Classification Order's assumption that CLECs' "ability to acquire access through the purchase of unbundled elements enables them to avoid originating access charges and thus partially protect themselves against a price squeeze" is only partially valid.[48] As the discussion above shows, interLATA carriers' ability to avoid BOC access services by winning a mass market customer's local exchange business using UNE-P is limited by excessive UNE-P pricing, ongoing provisioning issues, and Commission-imposed restrictions on the availability of fiber-fed loops. Similarly, in the larger business market, the Commission's "use restrictions" on unbundled loop and transport combinations (i.e., EELs) have made it impossible for competing interLATA providers of frame relay, ATM, and other advanced services to use UNEs to avoid a price squeeze resulting from high (and ever-increasing) BOC special access rates.

Finally, the LEC Classification Order's assumption that the potential for a price squeeze is mitigated because BOCs have to pay terminating access in out-of-region

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[47] Although the network functions are essentially the same, the 0.55 cents per minute switched access "target rate" adopted for the BOCs and GTE in the CALLS Order is many times higher than the 0.07 cents per minute cap for ISP-bound reciprocal compensation adopted in the ISP Remand Order.

states is no longer valid.[49] Since 1996, the Bell Atlantic-NYNEX, SBC-Pacific, SBC-Ameritech, and SBC-SNET mergers have dramatically increased the percentage of routes on which an RBOC controls both the originating and terminating ends of the call.

Whatever the merits of the Commission's decisions to remove certain BOC services from price cap regulation and restrict access to EELs or other UNEs – and MCI continues to believe that those decisions should be reconsidered – the Commission must recognize in this proceeding that those decisions substantially increase the risk of a price squeeze in the interLATA market. The only sure way for the Commission to prevent price squeezes in the interLATA market is to ensure that all BOC access charges, including intrastate access charges, have been driven to cost, either through direct regulatory action or by eliminating all restrictions on the availability of EELs and other UNEs.

As long as the BOCs are permitted to continue imposing access charges that are far in excess of cost on their interLATA rivals, a separate affiliate structure provides the only, albeit partial, means of guarding against a price squeeze.[50] Indeed, when the Commission adopted the EELs use restrictions in the Supplemental Order Clarification, it relied exclusively on the section 272 and independent LEC separate affiliate requirements to guard against the price squeeze that those use restrictions could create.[51] Under a separate affiliate structure, the Commission and competitors are more readily able to determine whether the BOC is pricing its interLATA services below incremental

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[48] See LEC Classification Order, 12 FCC Rcd at 15832, ¶ 130.
[49] See LEC Classification Order, 12 FCC Rcd at 15832, ¶ 129.
[50] LEC Classification Order at ¶ 163 (Separate affiliate structure for independent LECs "reduces somewhat the risk of a price squeeze to the extent that an affiliate's long distance prices are required to exceed their costs for tariffed services."); See also Access Reform Order at ¶¶ 278-279.
[51] Supplemental Order Clarification, 15 FCC Rcd at 9598, ¶¶ 19-20.

cost, including properly imputed access costs, in violation of section 201 and 202.[52] The separate affiliate structure facilitates such determinations because (1) the prices of BOC interLATA services are published separately and thus readily available for Commission review; (2) the interLATA affiliate maintains separate books of account;[53] and (3) the key components of the BOCs' incremental costs are available for review, because transactions between the BOC and the affiliate must be "reduced to writing and available for public inspection."[54]

In light of the fact that the safeguards that the LEC Classification Order relied upon to combat a price squeeze have already been weakened, or would not be available if the BOCs were to provide interLATA service on an integrated basis, the BOCs should be subject to dominant carrier regulation if they provide interLATA service on an integrated basis. As the Commission recognized in the Non-Accounting Safeguards Order, requiring the BOCs to file tariffs with advance notice and cost support data would help to detect and prevent predatory pricing.[55] Indeed, the Commission rejected an AT&T tariff in 1985 based on a review of cost support data.[56]

B. A Separate Affiliate Requirement Remains Necessary to Guard Against Unlawful Discrimination

Because the BOCs' interLATA competitors remain dependent on the BOCs' facilities to reach their customers, the BOCs continue to have the ability to discriminate against those competitors. For example, the BOCs' control over the PIC change process

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[52] See LEC Classification Order at ¶ 128; Non-Accounting Safeguards Order at ¶ 258.
[53] 47 U.S.C. § 272(b)(2).
[54] 47 U.S.C. § 272(b)(5).
[55] LEC Classification Order at ¶ 87.
[56] AT&T Communications Tariff FCC No. 1; PRO America Optional Calling Plan, Memorandum Opinion

for the vast majority of residential and small business lines gives them the ability to discriminate against competitors in the residential and small business market. Similarly, the BOCs' control over the special access facilities that their rivals need to reach the vast majority of business customer locations gives them the ability to discriminate against competitors in the larger business market.

Access Services

Concerns about BOC discrimination are well founded. Even though the section 272 safeguards have prevented the most egregious exercises of BOCs' market power, there is clear evidence that the BOCs have still misused their market power to favor their own long distance operations. The first Verizon section 272(d) audit report showed that Verizon processed PIC changes more rapidly for its interLATA affiliates than for unaffiliated carriers, and also showed that Verizon's special access provisioning intervals were shorter for Verizon's interLATA affiliates than for unaffiliated carriers.[57] Moreover, Verizon's ability to discriminate in favor of its own customers was confirmed by the New York PSC's recent finding that "Verizon treats other carriers less favorably than its own end users" in the provisioning of special access services.[58]

BOC provision of interLATA services on an integrated basis would open the floodgates to more-frequent and less-detectable exercises of the BOCs' market power. As the Commission has found, integrated operation *inherently* creates substantial risks of discriminatory access service provisioning. Shared provisioning of access and interLATA services "would inevitably afford the [BOC's long distance services] access

and Order, 103 FCC 2d 134 (1985).

[57] CC Docket No. 96-150, PricewaterhouseCoopers, Report of Independent Accountants on Applying Agreed-Upon Procedures, attachment to letter from PricewaterhouseCoopers, LLP to William F. Caton,

to the BOC's facilities superior to that granted to [] competitors."[59] In contrast, a separate affiliate structure protects against discrimination by ensuring that both the BOC's interLATA operations and competitors "will have to follow the same procedures when obtaining services and facilities from the BOC."[60]

Section 272(e)(1) does not, by itself, provide sufficient protection against access discrimination by a BOC providing local and interLATA services on an integrated basis. As the Commission has found, the "nondiscrimination safeguards [of section 272(e)] would offer little protection" if a BOC's local and interLATA facilities were operated on an integrated basis.[61] By increasing the transparency of transactions, and ensuring that the BOC's long distance operations obtain the same access services using the same procedures, the separate affiliate structure facilitates the comparison required by section 272(e)(1), i.e., comparison of the intervals provided to competitors with intervals provided to the BOC's interLATA operations.

In any event, the Commission has still not put in place the information disclosure requirements that are necessary to implement section 272(e)(1). In 1996, the Commission adopted a Further Notice of Proposed Rulemaking that proposed a comprehensive reporting regime to detect violations of section 272(e)(1),[62] but that proceeding remains open. In 2001, the record from that proceeding was incorporated into the CC Docket No. 01-321 special access metrics proceeding,[63] but that proceeding

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FCC, February 6, 2002 (Verizon Audit Report), Appendix A at 34-37.
[58] New York Special Services Order at 10.
[59] Non-Accounting Safeguards Order at ¶ 163.
[60] Non-Accounting Safeguards Order at ¶ 160.
[61] Non-Accounting Safeguards Order at ¶ 160.
[62] Non-Accounting Safeguards Order at ¶¶ 362-382.
[63] Performance Measurements and Standards for Interstate Special Access Services, CC Docket No. 01-321, Notice of Proposed Rulemaking, released November 19, 2001, at ¶ 5.

also remains open. Because the Commission has not adopted comprehensive performance reporting requirements to implement section 272(e)(1), the section 272(d) audit reports are the only source of data that permit the Commission and competitors to compare provisioning and repair intervals for access services provided by the BOCs to their long distance operations with the BOCs' performance when providing access services to unaffiliated carriers.[64]

The Commission should act promptly to adopt the Joint Competitive Industry Group's (JCIG's) proposal for comprehensive special access performance measures, performance requirements, and remedies. As JCIG has demonstrated, adoption of the JCIG proposal is necessary to address an ongoing pattern of unacceptable and discriminatory performance by the incumbent LECs with respect to the provisioning and maintenance of the interstate special access services on which competitors rely to serve their end-user customers. The JCIG proposal would provide a uniform and reliable set of metrics for section 272 purposes; not only is each RBOC that has obtained section 271 authority currently using a different set of metrics, but the RBOCs have not provided well-defined business rules for the metrics that they are using.

Billing and Collection

The BOCs' ability to leverage their bottleneck control would be further expanded in the absence of the section 272(c)(1) nondiscrimination requirement. Not only does section 272(c)(1) represent "a more stringent standard" than the "unjust or

[64] See, e.g., CC Docket No. 96-150, Ernst & Young LLP, Section 272 Biennial Report for SBC Communications Inc., September 16, 2002, Attachment A-7.

unreasonable" standard found in section 202,[65] but section 272(c)(1)'s protections extend to key non-common carrier services such as billing and collection.[66]

The lack of competition in the billing and collection market is as true today as it was when MCI filed a Petition for Rulemaking in 1997 requesting that the Commission establish a proceeding to ensure that LECs offer to IXCs billing and collection services for non-subscribed services on the same terms and conditions as the LECs provide to themselves and to their affiliates.[67] The BOCs repeatedly seek to impose an array of unreasonable terms and conditions in their billing and collection contracts. For example, in a recent negotiations with MCI concerning a new billing and collection contract, a BOC sought provisions that included the BOC being able to suspend billing and collection service indefinitely if MCI is in breach of *any other agreement* with the BOC, including payment of access charges; the BOC being entitled to withhold any funds to satisfy unpaid or potential obligations for any amounts due under any tariff, access charge arrangement, or any other agreement; and the BOC being entitled to reject any messages on the bill that the BOC determines do not conform to its own "requirements" or that advertise a service that is competitive with a service offered by the BOC or one of its affiliates.

Without billing and collection services offered at reasonable prices and on fair terms, providers of non-presubscribed interLATA services (e.g., 10-10XXX products) will be less inclined to offer these services to consumers, harming universal service and

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[65] Non-Accounting Safeguards Order at ¶ 197.
[66] Id. at ¶ 217.
[67] *See In the Matter of MCI Telecommunications Corporation, Billing and Collection Services Provided by Local Exchange Carriers for Non-Subscribed Interexchange Carriers*, Petition for Rulemaking, RM-9108, May 19, 1997. MCI withdrew this petition due to the passage of time, noting that the withdrawal should not be interpreted as indicating that the requested relief was unwarranted. *See* Letter from Karen Reidy,

competition, or will be forced to charge higher prices for those services in order to recover the LEC-imposed cost of billing and collection. Presubscribed services are equally vulnerable to anti-competitive billing and collection arrangements.

To the extent that section 272(c)(1) were to no longer apply, the Commission should adopt alternative safeguards to prevent the BOCs from discriminating against their competitors in the provision of billing and collection service.

C. A Separate Affiliate Requirement is Necessary to Guard Against Cost Shifting

As long as the local market is not fully competitive, and the BOCs remain rate-regulated in the local exchange and exchange access markets, they have every incentive to overallocate costs and underallocate revenues to their regulated operations. Joint provision of local and interLATA services by the BOCs would dramatically increase the risks of such cost shifting. As the Commission found in the Non-Accounting Safeguards Order, "because the costs of wired telephony and network premises are fixed and largely shared among local, access, and other services, sharing of switching and transmission facilties may provide a significant opportunity for improper allocation of costs . . . ."[68] Similarly, allowing the same individuals to perform maintenance on both local and interLATA facilities "would create substantial opportunities for improper cost allocation, in terms of both the personnel time spent in performing such functions and the equipment utilized."[69]

WorldCom, to William F. Caton, FCC, RM-9108, filed March 13, 2003.
[68] Non-Accounting Safeguards Order at ¶ 159.

IV. Additional Safeguards Are Necessary

Experience with BOC participation in the interLATA market during the past three years has shown that additional safeguards are required in order to ensure that the BOCs do not leverage their local market power into the interLATA market:

Grooming Safeguards

As discussed above, SBC and Verizon have refused to groom circuits from their special access services to MCI's fiber transport facilities in a timely and efficient manner. In order to prevent the BOCs and other incumbent LECs from using such tactics to reinforce their local bottleneck control, the Commission should require incumbent LECs to migrate circuits from incumbent LEC facilities to CLEC facilities in a timely manner, and in the quantities requested by competitive carriers.

The Commission Should Update and Clarify Equal Access Requirements

The unique marketing advantages that derive from the BOCs' continued high local market share have been exacerbated by the Commission's unreasonably narrow interpretation of the equal access rules. The Commission has, for example, found acceptable marketing scripts in which the BOCs "recommend" their own long distance servie to be acceptable, even though pre-1996 Act rules required the BOCs to provide customers with the names of interexchange carriers in random order.[70] Similarly, in the AT&T/Bell Atlantic Order, the Commission permitted Bell Atlantic to market its long distance services to inbound callers ordering additional lines, without informing those

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[69] Non-Accounting Safeguards Order at ¶ 163.

[70] Application of BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina, Memorandum Opinion

callers that they have a choice of long distance carriers.[71] By permitting the BOCs to transform the frequent customer contacts that are a byproduct of the BOCs' continued local market power into one-sided opportunities to market BOC long distance service, the Commission has undermined the equal access principles preserved by section 251(g).

The Commission ruled against AT&T in the AT&T/Bell Atlantic Order because, the Commission found, AT&T was unable to cite a pre-1996 Act court order or Commission order that was "squarely on point," i.e., that specifically "requir[ed] the BOCs to inform existing callers making inbound calls . . . of their long distance choices."[72] The "squarely on point" standard sharply limits the effectiveness of section 251(g) as a tool for policing discrimination by BOCs that have received interLATA authority. Because pre-1996 Act orders necessarily dealt only with issues that arose while the BOCs were excluded from the interLATA market, those orders may not meet the "squarely on point" requirement with respect to the far broader range of discriminatory behavior that is likely to be exhibited by a BOC that has interLATA authority and thus has the incentive to favor its interLATA affiliate.

The Commission should update and clarify the equal access rules to recognize that BOCs that are active in the long distance market have greater incentives to discriminate against other long distance providers. At a minimum, the Commission should adopt the suggestion in the CC Docket No. 02-39 Notice of Inquiry that ILECs, including BOCs, be required to provide information regarding all available

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and Order, 13 FCC Rcd 539, 667-671 (1997).

[71] AT&T Corp. v. New York Telephone Company, d/b/a Bell Atlantic-New York, Memorandum Opinion and Order, 15 FCC Rcd 19997 (2000) (AT&T/Bell Atlantic Order).

interexchange carriers to all inbound callers, not just new customers.[73] The BOCs' incentive to discriminate in favor of their own long distance operations is the same for all inbound calls; consequently, there is no basis for imposing full equal access obligations only with respect to "new customers."

Moreover, it is essential that the Commission retain the section 272(d) audit requirement or an equivalent audit requirement to monitor BOC compliance with the equal access rules. The most recent Verizon section 272(d) audit report calls into question whether the BOCs are even complying with the minimal equal access requirements that still exist. The auditors report that the Verizon customer service representative failed to comply with the equal access rules in 9 percent of the sampled customer service calls[74]

Nondiscriminatory Control Over PIC Freezes

The BOCs continue to exert bottleneck control over the PIC change process by making it difficult for competitors to (1) determine whether a customer's account has a PIC freeze; and (2) to lift the PIC freeze if it is determined that one exists.

Because the BOCs continue to own the vast majority of local customers, they control the PIC change process, including the implementation and lifting of PIC freezes, for most consumers. One problem with PIC freezes arises because competing carriers typically cannot determine whether there is a PIC freeze on the line until they submit the PIC-change request. Often, customers who want to change their long distance provider to another carrier such as MCI have forgotten, or in fact never really knew, that they had

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[72] AT&T/Bell Atlantic Order, 15 FCC Rcd 20000-20001, ¶ 9.

[73] Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers, Notice of Inquiry, 17 FCC Rcd 4015, ¶ 14 (2002)

a PIC freeze on their account. An MCI-commissioned survey in the Ameritech region found that 70 percent of Ameritech customers with PIC freezes were either unaware or had forgotten that they had a PIC freeze.[75] A significant number of MCI's long-distance orders are rejected because MCI and the customer were unaware that there was a PIC freeze on the line.[76]

After the order rejects, MCI then has to renew contact with the customer in order to inform the customer that the order was rejected due to a PIC freeze. Renewing contact with the customer incurs significant expense for MCI and inconvenience for the customer. And in the end, MCI is able to re-contact and provide service to only approximately 40 percent of residential customers and approximately 55 percent of small business customers whose order was rejected due to a PIC freeze on the account. In contrast, the BOCs are able to satisfy a customer's request for service by lifting a PIC freeze and completing a PIC change in one sales call.

As MCI has demonstrated to the New York PSC, Verizon representatives use a proprietary system that is not made available to competitors to check customers' PIC freeze status during live calls.[77] The New York PSC agreed that Verizon discriminates between long distance carriers in favor of its own long distance affiliate by requiring competitors to use a system for querying PIC-freeze status information that is more

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[74] Verizon Communications, Inc., Section 272 Biennial Agreed-Upon Procedures Report, Appendix A, p. 62, CC Docket No. 96-150, June 12, 2003.

[75] The survey is posted on the Illinois Commerce Commission's website at www.eweb.icc.state.il.us/e-docket, under Docket No. 01-0412, Testimony of Andrew Graves, Attachment AG-B.

[76] Recent data shows that approximately 10 percent of our long-distance orders reject in the Ameritech, BellSouth, and Qwest regions. The problem is even greater with the independent LECs, where the reject rate for PIC freezes is around 30 percent and as high as 54 percent for Rochester Tel.

[77] *See* Letter from Curtis L. Groves, WorldCom, to Hon. Janet Hand Deixler, New York Public Service Commission, Cases 00-C-0897, 00-C-0188, filed Jan. 18, 2002; *See also* WorldCom Comments, Cases 00-C-0897, 00-C-0188, filed with the New York PSC, May 7, 2001.

cumbersome and more expensive than the system that Verizon's own service representatives use.[78]

In the past the LECs sold MCI a "universe list" that identified customers with PIC freezes. That list was electronically transmitted to MCI upon request for a fee, and it allowed MCI to determine whether the customer's account had a PIC freeze. Unfortunately, the ILECs have ceased providing such universe lists. In order to at least partially address the differential between BOC customer service representatives' access to PIC freeze information and competing carriers' access to PIC freeze information, the Commission should require the BOCs to resume providing competing interLATA carriers with a universe list showing PIC freeze status.

If the acquiring carrier is able to re-contact the customer, the next step is to get the PIC freeze lifted either through a three-way call between the acquiring carrier, customer, and the LEC, or some other equally burdensome process. For example, in the Verizon region, after the order rejects and MCI reinitiates contact, the customer must then endure Verizon's Voice Response Unit (VRU) to lift the PIC freeze. The VRU system is burdensome because the customer must have his or her phone bill handy in order to find a special code; if the customer cannot find the bill, the PIC freeze can be lifted only by contacting Verizon customer service.

MCI has advocated an electronic authorization process that allows an independent third-party to make available to the BOC a customer's recorded voice authorization to lift the PIC freeze and process a PIC-change order. Electronic

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[78] *See* Order Requiring Non-Discriminatory Provision of PIC Freeze Status Information and Clarifying Prior Order, Case 00-C-0897 and 00-C-0188, New York Public Service Commission, Oct. 30, 2001, at 2-4.

authorization is consistent with the Commission's rules,[79] and has already been successfully implemented in Illinois. The Commission should explicitly require all BOCs to adopt such an electronic authorization process as part of any safeguards adopted in this proceeding. As the Commission has recognized, "…although preferred carrier freezes offer consumers an additional and beneficial level of protection against slamming, they also create the potential for unreasonable and anticompetitive behavior that might affect negatively efforts to foster competition in all markets."[80]

Cost-Based PIC Change Charges

With the exception of BellSouth,[81] the BOCs currently charge consumers at least $5.00 to change interLATA carriers. The $5.00 charge has remained unchanged for almost twenty years, even though the Commission has found that MCI "offered persuasive evidence that the costs to LECs [of processing PIC changes] have dropped significantly due to the automation of the PIC-change process. . . ."[82]

The inflated PIC change charge provides the BOCs with a tool to leverage their continued local market control. While the PIC change charge represents a real cost for unaffiliated IXCs, it represents little more than a paper transfer from the BOC's long distance operations to its local operations. The BOC's cost is not the $5.00 that

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[79] As MCI has explained to the FCC, this process is not inconsistent with federal rules because the acquiring carrier does not effect the lifting of the PIC freeze, which the Commission has found would render the freeze mechanism ineffective in providing any additional protection against unauthorized carrier changes. Under MCI's proposal, consumers communicate with the LEC itself – neither the acquiring carrier or the third party is communicating the consumer's desire to life the freeze or submitting an order to lift the freeze on behalf of the consumer. *See* Letter from Karen T. Reidy, MCI, to Magalie Roman Salas, FCC, CC Docket No. 94-129, filed April 9, 2001.

[80] *Implemenation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-129, rel. Dec. 23, 1998, ¶ 113.

[81] BellSouth charges $1.49.

[82] MCI Telecommunications Corp. v. U.S. West Communications, Inc., Memorandum Opinion and Order, 15 FCC Rcd 9328, 9329 (2000).

competing interLATA carriers pay, but the far lower actual cost of processing PIC changes.

The Commission has initiated a proceeding in CC Docket No. 02-53 to examine the level of the BOCs' PIC change charges, but that proceeding remains open.[83] In order to eliminate the anticompetitive advantage provided by above-cost PIC change charges, the Commission should act immediately on its proposal to reduce PIC changes to cost.[84]

V. Conclusion

For the reasons stated herein, the Commission should continue to regulate the BOCs as dominant in the provision of interLATA services, unless they provide interLATA services subject to the separate affiliate requirements of section 272 of the Act and certain other safeguards.

Respectfully submitted,
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June 30, 2003

[83] Presubscribed Interexchange Carrier Charges, Order and Notice of Proposed Rulemaking, 17 FCC Rcd 5568 (2002).
[84] Id. at ¶ 16.