

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

In the Matters 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
)	
Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services)	WC Docket No. 06-120
)	

**REPORT AND ORDER AND
MEMORANDUM OPINION AND ORDER**

Adopted: August 30, 2007

Released: August 31, 2007

By the Commission: Commissioners Copps and Adelstein concurring in part, dissenting in part, and issuing a joint statement; Commissioners Tate and McDowell issuing separate statements.

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I. INTRODUCTION

1. In this Order, we establish a new framework to govern the provision of in-region, long distance services by the Bell Operating Companies (BOCs) and their independent incumbent local exchange carrier (incumbent LEC) affiliates.¹ This framework replaces unnecessarily burdensome regulation with less intrusive measures that protect important customer interests while allowing the BOCs and their independent incumbent LEC affiliates to respond to marketplace demands efficiently and effectively. We find that this new framework will increase the BOCs' and the BOC affiliates' ability to develop and deploy innovative long distance services that meet their customers' needs.

¹ For ease of exposition, we use the term “in-region, long distance” to refer collectively to the telecommunications services that this Order addresses. This term encompasses: (1) the in-region, domestic, interLATA telecommunications services and the in-region, international telecommunications services that the BOCs were previously required to provide only through section 272 separate affiliates; (2) the in-region, domestic, interstate, interexchange telecommunications services and in-region, international telecommunications services that the BOCs' independent incumbent LEC affiliates are required to provide only through rule 64.1903 separate affiliates; and (3) the BOCs' in-region, interstate, intraLATA, interexchange telecommunications services. Each of these groups of services includes high-capacity services as well as traditional voice services.

2. Our new framework, which applies to AT&T, Qwest, and Verizon, is consistent with the Commission's decision in the *Qwest Section 272 Sunset Forbearance Order*.² As discussed in that Order, our current rules force a BOC to choose between two different regulatory regimes in providing in-region, long distance services, both of which impose significant burdens and costs: the BOC can provide these services on a nondominant carrier basis through a section 272 separate affiliate; alternatively, it can provide these services directly or through an affiliate that is not a section 272 separate affiliate subject to dominant carrier regulation, including rate regulation and tariff-filing requirements.³ AT&T's and Verizon's independent incumbent LEC affiliates must provide in-region, domestic, interexchange telecommunications services and in-region, international telecommunications services only through rule 64.1903 separate affiliates. We conclude, for the reasons discussed below, that a new regulatory framework is more appropriate. Our new framework allows AT&T, Qwest, and Verizon to provide in-region, interstate, long distance services either directly or through affiliates that are neither section 272 separate affiliates nor rule 64.1903 separate affiliates, subject to nondominant carrier regulation, as long as they comply with certain targeted safeguards set forth below as well as with other continuing statutory and regulatory obligations.⁴

3. We also forbear from application of the Equal Access Scripting Requirement (EA Scripting Requirement) to the BOCs. We find this requirement, under which incumbent LECs must provide customers seeking new telephone exchange service with certain information regarding their long distance options, no longer justified as applied to AT&T, Qwest, and Verizon, given the marketplace changes that have occurred since the requirement's adoption and the requirement's relative costs and benefits. We also find good cause to waive the EA Scripting Requirement for the BOCs' independent incumbent LEC affiliates.

II. BACKGROUND

4. Until the Commission's recent *Qwest Section 272 Forbearance Order*,⁵ all the BOCs were required to provide in-region, interLATA telecommunications services in accordance with the structural, transactional, and accounting requirements set forth in section 272 of the Communications Act of 1934,

² See *Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets*, WC Docket No. 05-333, Memorandum Opinion and Order, 22 FCC Rcd 5207 (2007) (*Qwest Section 272 Sunset Forbearance Order*).

³ See 47 U.S.C. § 272; *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5213, para. 9.

⁴ We note that certain of our actions in this Order apply to interstate, international, and intrastate telecommunications services, while other actions we take today apply only to interstate and international telecommunications services. For example, our actions regarding structural requirements for BOC provision of in-region, interLATA telecommunications services apply to certain *interstate, international, and intrastate* telecommunications services. In contrast, our actions regarding dominant carrier regulation, however, apply only to certain *interstate and international* telecommunications services. The competitive safeguards we adopt below may apply only to interstate and international services, or to interstate, international, and intrastate services, depending on the safeguard. No action that we take in this order affects the requirements imposed by section 112 of the Consolidated Appropriations Act of 2005 or the regulation of the "interstate switched wholesale service elements" addressed in that Act. See Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, 118 Stat. 2809 (2004) (addressing, among other things, the regulation of AT&T Alascom's offering of certain services).

⁵ *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5235-37, paras. 55-58 (conditionally granting Qwest's forbearance request so that Qwest could provide its in-region, interstate, interLATA telecommunications services without complying with all the requirements of section 272 and the Commission's implementing rules, and without being subject to section 203 and certain dominant carrier tariffing, price cap, rate of return, discontinuance, and transfer of control rules).

as amended (Communications Act or Act), and our implementing rules, or they would be subject to dominant carrier regulation. We summarize these regulatory requirements below.

A. Historical Regulation of InterLATA Telecommunications Services

5. In a series of orders in the *Competitive Carrier* proceeding, the Commission distinguished two kinds of carriers – those with individual market power (dominant carriers) and those without market power (nondominant carriers).⁶ The Commission found it appropriate to continue to subject dominant carriers to full regulation under Title II of the Communications Act.⁷ The Commission further found, however, that because nondominant carriers lack market power, “application of our current regulatory procedures to nondominant carriers imposes unnecessary and counterproductive regulatory constraints upon a marketplace that can satisfy consumer demand efficiently without government intervention,”⁸ and therefore it was appropriate to streamline regulation of such carriers.⁹ The Commission found AT&T to be dominant in the provision of interstate, long distance services both because of its large long distance market share and its control of bottleneck local facilities.¹⁰

6. During the years following this finding, however, the long distance marketplace became increasingly competitive and AT&T’s long distance market share declined significantly. In October 1995, the Commission found AT&T to be nondominant in the provision of interstate long distance services.¹¹ The Commission found that “AT&T neither possesses nor can exercise individual market

⁶ *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980) (*Competitive Carrier First Report and Order*); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Further Notice of Proposed Rulemaking, FCC 82-187, 47 Fed. Reg. 17308 (1982); Second Report and Order, 91 FCC 2d 59 (1982) (*Competitive Carrier Second Report and Order*); Order on Reconsideration, 93 FCC 2d 54 (1983); Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 28292 (1983); Third Report and Order, 48 Fed. Reg. 46791 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983) (*Competitive Carrier Fourth Report and Order*), vacated, *AT&T v. FCC*, 978 F.2d 727 (D.C. Cir. 1992), cert. denied, *MCI Telecommunications Corp. v. AT&T*, 509 U.S. 913 (1993); *Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorizations Therefor*, Fifth Report and Order, 98 FCC 2d 1191 (1984) (*Competitive Carrier Fifth Report and Order*); Sixth Report and Order, 99 FCC 2d 1020 (1985), vacated, *MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186 (D.C. Cir. 1985) (*Competitive Carrier Sixth Report and Order*), aff’d, *MCI v. AT&T*, 512 U.S. 218 (1994) (collectively, the *Competitive Carrier* proceeding); see 47 C.F.R. § 61.3(q), (y).

⁷ *Competitive Carrier First Report and Order*, 85 FCC 2d at 10-11, para. 26.

⁸ *Id.* at 20, para. 54.

⁹ *Id.* at 11, para. 27. Specifically, nondominant carriers generally are not subject to direct rate regulation, are subject to reduced tariff obligations, and are accorded presumptive streamlined treatment under section 214 of the Act. See *id.* at 30-49, paras. 85-147; see also 47 C.F.R. §§ 1.773(a)(ii), 61.23(c), 63.03(b), 63.71(c).

¹⁰ See *Competitive Carrier First Report and Order*, 85 FCC 2d at 22-23, para. 62. With respect to long distance market shares, the Commission found that AT&T had “significant market power” in the Message Telecommunications Service (MTS) and Wide Area Telecommunications Service (WATS) market and in the private line service market. *Id.* at 23, paras. 63-64. With respect to control of bottleneck facilities, the Commission found that “[c]ontrol of bottleneck facilities is present when a firm or group of firms has sufficient command over some essential commodity or facility in its industry or trade to be able to impede new entrants.” *Id.* at 21-22, para. 59. AT&T was found to have such control by virtue of the fact that it controlled “access to 80% of the nation’s telephones.” *Id.* at 22-23, para. 62.

¹¹ *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271 (1995) (*AT&T Reclassification Order*).

power within the interstate, domestic, interexchange market as a whole.”¹² AT&T also made voluntary commitments that were intended to allay concerns that had been raised concerning, for example, the effect of such reclassification on service to customers that make few interstate long distance calls, resellers, and geographically deaveraged rates.¹³ Based on its findings and AT&T’s commitments, the Commission granted AT&T’s motion for reclassification as a nondominant carrier.¹⁴

7. In February 1996, the Telecommunications Act of 1996 became law.¹⁵ The 1996 Act permitted the BOCs, which had been prohibited from providing interLATA telecommunications services under the Modification of Final Judgment (MFJ),¹⁶ to provide upon enactment interLATA services¹⁷ that originate outside of their regions.¹⁸ The 1996 Act required the BOCs to apply to the Commission for approval to provide *in-region*, interLATA services, however; and it conditioned such approval on certain Commission determinations.¹⁹ Specifically, under section 271 of the Act, the Commission was required to determine, *inter alia*, whether the BOC seeking permission to provide such services had complied with certain market-opening requirements contained in section 271 and whether the BOC would provide those services in accordance with the safeguards in section 272 of the Act.²⁰

8. Section 272 imposes various structural, transactional, and nondiscrimination safeguards on the BOCs’ provision of in-region, long distance services. Congress provided that the section 272 safeguards, other than those in section 272(e), would sunset three years after a BOC receives interLATA

¹² *Id.* at 3294, para. 39.

¹³ *Id.* at 3284, para. 17.

¹⁴ *Id.* at 3356, para. 163.

¹⁵ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act.

¹⁶ See *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131, 227 (D.D.C. 1982) (*United States v. AT&T*), *aff’d sub. nom. Maryland v. United States*, 460 U.S. 101 (1983); see also *SBC Communications Inc. v. FCC*, 138 F.3d 410, 412 (D.C. Cir. 1998) (stating that “[d]ivestiture was called for, in large part, because it was thought ‘that a corporation that enjoyed a monopoly on local calls would ineluctably leverage that bottleneck control in the interexchange (long distance) market’”) (quoting *United States v. Western Elec. Co.*, 969 F.2d 1231, 1238 (D.C. Cir. 1992)).

¹⁷ Under the 1996 Act, a “local access and transport area” (LATA) is “a contiguous geographic area— (A) established before the date of enactment of the [1996 Act] by a [BOC] such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or (B) established or modified by a [BOC] after such date of enactment and approved by the Commission.” 47 U.S.C. § 153(25).

¹⁸ See 47 U.S.C. § 271(b)(2).

¹⁹ 47 U.S.C. § 271.

²⁰ *Id.* The Commission adopted rules implementing section 272 in the *Non-Accounting and Accounting Safeguards Orders*. See *Implementation of the Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996) (*Accounting Safeguards Order*); Order on Reconsideration, 14 FCC Rcd 11396 (1996); Second Order on Reconsideration, 15 FCC Rcd 1161 (2000); *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*); First Order on Reconsideration, 12 FCC Rcd 2297 (1997) (*First Order on Reconsideration*), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997) (*Second Order on Reconsideration*), *aff’d sub nom. Bell Atlantic Tel. Cos. v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997), Third Order on Reconsideration, 14 FCC Rcd 16299 (1999) (*Third Order on Reconsideration*).

authority in a state, absent Commission action extending that period.²¹ These section 272 safeguards that sunset include requirements that: (1) the BOCs provide in-region, interLATA services only through separate affiliates;²² (2) the separate affiliates operate independently from their BOC affiliates;²³ (3) the separate affiliates maintain books, records, and accounts separate from those their BOC affiliates maintain;²⁴ (4) the separate affiliates conduct any transactions with their BOC affiliates on an arm's length basis;²⁵ (5) the BOCs do not discriminate between their section 272 separate affiliates and other entities in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards;²⁶ and (6) the BOCs, after receiving section 271 approval, obtain and pay for biennial joint federal/state audits to determine whether they have complied with section 272.²⁷ In addition, section 272(e) sets forth certain safeguards that do not sunset after three years, including requirements that: (1) each BOC or BOC affiliate that is classified as an incumbent LEC must "fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates;"²⁸ and (2) each BOC must charge its section 272 separate affiliate, or "impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service."²⁹

9. Non-BOC incumbent LECs (also known as independent incumbent LECs) also are subject to structural separation requirements if they wish to provide in-region, interstate, interexchange telecommunications services other than through resale. Specifically, independent incumbent LECs are required to provide these services only through separate affiliates that satisfy the separation requirements in section 64.1903 of our rules.³⁰ The separate affiliate must: (1) maintain books of account separate

²¹ See 47 U.S.C. § 272(f)(1). We note that the section 272 safeguards, other than those in section 272(e), sunset with respect to interLATA information services four years after enactment of the 1996 Act. See 47 U.S.C. § 272(f)(2).

²² 47 U.S.C. § 272(a)(1).

²³ 47 U.S.C. § 272(b)(1).

²⁴ 47 U.S.C. § 272(b)(2).

²⁵ See 47 U.S.C. §§ 272(b)(1), (b)(2), (b)(5).

²⁶ See 47 U.S.C. § 272(c)(1).

²⁷ 47 U.S.C. § 272(d).

²⁸ 47 U.S.C. § 272(e)(1); see also 47 U.S.C. §§ 251(c), (h).

²⁹ 47 U.S.C. § 272(e)(3).

³⁰ See 47 C.F.R. § 64.1903; see also *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket Nos. 96-149, 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, 15763, para. 7 (1997) (*LEC Classification Order*), recon. denied, Second Order on Reconsideration and Memorandum Opinion and Order, 14 FCC Rcd 10771 (1999) (*Second Reconsideration Order*). In the *Second Reconsideration Order*, the Commission relaxed these requirements for those independent incumbent LECs that provide in-region, interstate and international, interexchange telecommunications services exclusively through resale, by allowing them to do so through a separate corporate division subject to certain safeguards. *Second Reconsideration Order*, 14 FCC Rcd at 10777, para. 9; 47 C.F.R. § 64.1903(b)(1). Independent incumbent LEC resellers still must maintain separate books of account, comply with the affiliate transaction rules, and acquire any services from the exchange company pursuant to tariff or generally available contract rates. See generally *Competitive Carrier Fifth Report and Order*, 98 FCC 2d at 1197-205, paras. 8-18 (setting forth original separate subsidiary requirements for independent incumbent LECs, which were subsequently modified in the *LEC Classification* proceeding).

from those the independent incumbent LEC maintains; (2) purchase services from the independent incumbent LEC pursuant to the incumbent LEC's tariffs or generally available contract rates; and (3) not jointly own transmission or switching facilities with its independent incumbent LEC.³¹ Both AT&T and Verizon have independent incumbent LEC affiliates, though these affiliates voluntarily comply with the more stringent safeguards set forth in section 272 and the Commission's rules governing BOC provision of in-region, interLATA services.³²

10. In the *LEC Classification Order*, the Commission addressed the issue of whether, once a BOC received in-region, interLATA authority, its provision of in-region, interstate, long distance services should be subject to dominant carrier obligations.³³ In that Order, the Commission focused its analysis on: (1) whether a section 272 separate affiliate could unilaterally raise prices of in-region, interstate, long distance services by restricting its own output; and (2) whether the BOC could indirectly raise prices of those services by increasing the price of essential inputs that its rivals need to offer their services.³⁴ The Commission found that the section 272 separate affiliates were unlikely to be able unilaterally to raise the prices of in-region, interstate, long distance services,³⁵ and that, although the BOCs possessed exclusionary market power over bottleneck access facilities, various safeguards prevented them from raising the prices of those services indirectly by raising rivals' costs.³⁶

11. The Commission further found that dominant carrier regulations were "generally designed to prevent a carrier from raising prices by restricting its own output rather than to prevent a carrier from raising its prices by raising its rivals' costs."³⁷ Moreover, it found that dominant carrier regulation could

³¹ See 47 C.F.R. § 64.1903 (providing the Commission's separate affiliate rules for independent incumbent LECs); *LEC Classification Order*, 12 FCC Rcd at 15849-15856, paras. 162-173; *Competitive Carrier Fifth Report and Order*, 98 FCC 2d at 1197-98, para. 8.

³² See Letter from Michelle Sclater, Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, at 1 (filed Apr. 24, 2007) (AT&T Apr. 24, 2007 *Ex Parte* Letter) (stating that Southern New England Telephone Company (SNET) provides interstate long distance services through a section 272 separate affiliate); Letter from Joseph Jackson, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, at 2 (filed May 8, 2007) (Verizon May 8, 2007 *Ex Parte* Letter) (indicating that the former GTE long distance companies that are designated as section 272 separate affiliates and the former GTE LECs comply with all provisions of section 272, other than section 272(c), in their interactions with each other and with the former Bell Atlantic companies). We note that AT&T has two independent incumbent LEC affiliates, SNET and Woodbury Telephone Company (Woodbury). SNET is a price cap LEC for interstate ratemaking purposes, while Woodbury's interstate rates are set on a rate of return basis. AT&T, however, is in the process of integrating Woodbury into SNET. Once the integration process is complete, the combined entity will be a price cap LEC for interstate ratemaking purposes. Letter from Michelle Sclater, Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, at 1 (filed Apr. 27, 2007) (AT&T Apr. 27, 2007 *Ex Parte* Letter); see AT&T Apr. 24, 2007 *Ex Parte* Letter at 1.

³³ See *LEC Classification Order*, 12 FCC Rcd at 15762-63, para. 6, & 15802, para. 82.

³⁴ See *LEC Classification Order*, 12 FCC Rcd at 15802-03, para. 83. In that Order, the Commission distinguished between "classical" (or "Stiglerian") market power, which "is the ability of a firm profitably to raise and sustain its price above the competitive level by restricting its own output," and "exclusionary" (or "Bainian") market power, which is the "ability of a firm profitably to raise and sustain its price significantly above the competitive level by raising its rivals' costs and thereby causing the rivals to restrain their output." *Id.* (citing Thomas G. Krattenmaker, Robert H. Lande & Steven C. Salop, *Monopoly Power and Market Power in Antitrust Law*, 76 GEO. L. J. 241, 249-53 (1987)).

³⁵ *LEC Classification Order*, 12 FCC Rcd at 15810-12, paras. 96-97.

³⁶ *Id.* at 15812-33, paras. 98-130.

³⁷ *Id.* at 15804, para. 85.

“dampen competition” and would impose significant costs and burdens on the BOC section 272 separate affiliates.³⁸ Based on these findings, the Commission concluded that, so long as the BOCs provided in-region, interstate, long distance services through section 272 separate affiliates, these affiliates should be treated as nondominant in the provision of such services.³⁹ The Commission stated that it could not predict how competition would develop once the BOCs received in-region interLATA authority or what safeguards, if any, would be needed after the section 272 safeguards sunset.⁴⁰ Subsequently, the Commission made clear that, following sunset of the section 272 safeguards, to the extent a BOC chooses to provide in-region, interstate, interLATA telecommunications services either directly or through an affiliate that is not a section 272 separate affiliate, it would be subject to dominant carrier regulation.⁴¹

12. The Commission granted its final interLATA authority to a BOC for an in-region state on December 3, 2003,⁴² and the Commission has not extended the period for which section 272 safeguards (other than those in section 272(e)) apply. Thus the section 272 requirements, other than those in section 272(e), have sunset throughout all BOC regions. Accordingly, section 272 does not preclude the BOCs from providing in-region, interLATA, long distance services either directly or through an affiliate that is not a section 272 separate affiliate in all their in-region states.⁴³ Despite the sunset of section 272’s requirements, however, the BOCs continue to provide virtually all of their in-region, interstate, interLATA, long distance services through their section 272 separate affiliates. These affiliates provide in-region, interstate, long distance services pursuant to the Commission’s rules for nondominant carriers.⁴⁴ These rules generally preclude carriers classified as nondominant in the provision of interstate and international long distance services from filing tariffs for those services.⁴⁵ Instead, carriers subject to these rules provide those services pursuant to generally available offerings posted on their websites and under contract to large enterprise customers.⁴⁶

13. Under the *LEC Classification Order*, the BOCs would be subject to dominant carrier regulation if they provided in-region, interLATA, long distance services in a manner that did not comply with section 272 and the Commission’s implementing rules, absent Commission action relieving them of

³⁸ *Id.* at 15806-08, paras. 88-90.

³⁹ *See id.* at 15834-35, paras. 133-34. The Commission recognized, however, that the structural separation requirements in section 272 would sunset with respect to in-region, interLATA telecommunications services three years after the BOCs were authorized to provide in-region, interLATA services unless the Commission extends such period by rule or order. *Id.* at 15835, n.391; *see* 47 U.S.C. § 272(f)(1). We note that section 272(f)(3) preserves the Commission’s authority to prescribe safeguards under other sections of the Act. *See* 47 U.S.C. § 272(f)(3).

⁴⁰ *LEC Classification Order*, 12 FCC Rcd at 15835, para. 134 n.391.

⁴¹ *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Memorandum Opinion and Order, 17 FCC Rcd 26869, 26870, paras. 1-2, nn.5, 8 (2002) (*Sunset Order*) (citing *LEC Classification Order*, 12 FCC Rcd at 1576, para. 4 n.12); *see also Competitive Carrier Fifth Report and Order*, 98 FCC 2d at 1198-99, para. 9 n.23 (determining that the Commission would classify the BOCs as dominant in the provision of interstate, interLATA telecommunications services until it determined what safeguards, if any, would be necessary for the BOCs or their affiliates to qualify for nondominant treatment).

⁴² *See Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5212, para. 7 (citing *Application by Qwest Communications International Inc. for Authorization To Provide In-Region, InterLATA Services in Arizona*, WC Docket No. 03-194, Memorandum Opinion and Order, 21 FCC Rcd 7169 (2003)).

⁴³ *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5212, para. 54.

⁴⁴ *See* 47 C.F.R. §§ 61.19-61.25.

⁴⁵ 47 C.F.R. § 61.19.

⁴⁶ *See* 47 C.F.R. § 61.55.

the obligation to comply with dominant carrier rules.⁴⁷ These rules, among other things, would require the BOCs to file tariffs setting forth the prices, terms, and conditions under which they offer such services.⁴⁸ According to our tariffing rules, these tariff filings would have to contain detailed information including twelve-month cost projections, and working papers and statistical support for any new services offered.⁴⁹ The tariffs, cost projections, and supporting documentation would have to be filed at least seven or fifteen days before the BOCs would be permitted to initiate new services or revise existing services.⁵⁰ The BOCs would also have to perform and file calculations as specified in our rules to change their maximum rates.⁵¹

B. Section 272 Sunset Rulemaking

14. In May 2002, the Commission initiated a rulemaking proceeding (the *Section 272 Sunset* proceeding) to determine what regulatory framework should apply to BOC provision of in-region, interLATA telecommunications services after the section 272 safeguards (other than those in section 272(e)) had sunset pursuant to section 272(f)(1).⁵² The Commission invited comment on whether it should extend those safeguards beyond the three-year period Congress established for each state.⁵³ The Commission also invited comment on what, if any, alternative safeguards it might apply to the BOCs' provision of in-region, interLATA, telecommunications services.⁵⁴

15. In May 2003, the Commission issued a *Further Notice* seeking comment on whether the BOCs should be classified as dominant if they provided in-region, interstate and international, long distance services in a way that did not comply with the section 272 separate affiliate requirements.⁵⁵ This *Further Notice* also invited further comment on the issues raised in the *Independent Incumbent LEC* proceeding, concerning whether independent incumbent LECs should be classified as dominant in their provision of in-region, interstate and international, interexchange telecommunications services if the Commission eliminated or modified the separate affiliate requirements in section 64.1903 of the Commission's rules.⁵⁶

⁴⁷ See *LEC Classification Order*, 12 FCC Rcd at 15834-36, paras. 133-34; see also *Sunset Order*, 17 FCC Rcd at 26869-71, paras. 1-2, nn.5, 8.

⁴⁸ 47 C.F.R. § 61.58.

⁴⁹ 47 C.F.R. § 61.38(i)-(ii).

⁵⁰ See 47 C.F.R. § 61.58.

⁵¹ See 47 C.F.R. §§ 61.41-61.49. As discussed in part III.A.2.c, other dominant carrier requirements include certain price cap, rate of return, discontinuance, transfer of control, contract filings, and reporting requirements.

⁵² *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Notice of Proposed Rulemaking, 17 FCC Rcd 9916 (2002) (*Section 272 Sunset Notice*).

⁵³ *Id.* at 9917, para. 1, & 9920, para. 10.

⁵⁴ *Id.* at 9917, para. 1.

⁵⁵ *Section 272(f) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Further Notice of Proposed Rulemaking, 18 FCC Rcd 10914 (2003) (*Section 272 Sunset and Independent LEC Further NPRM*).

⁵⁶ *Section 272 Sunset and Independent Incumbent LEC Further NPRM*, 18 FCC Rcd at 10914-15, para. 2; see also *2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, CC Docket No. 00-175, Notice of Proposed Rulemaking, 16 FCC Rcd 17270 (2001) (*Independent Incumbent LEC NPRM*). For purposes of citing to the record, we use the format "NPRM Comments or NPRM Reply" when referring to comments or reply comments filed in response to the *Section 272 Sunset Notice*, and "FNPRM (continued....)"

C. Equal Access Scripting Requirement

16. In June 2006, AT&T filed a petition asking the Commission to forbear from, among other things, “obligations that require BOCs to inform new customers that they have a choice of long distance providers and to read them a list of providers.”⁵⁷ This EA Scripting Requirement requires incumbent LECs to inform customers who call to obtain new local exchange service that they may obtain long distance service from other carriers, and to read the customers a list of carriers offering long distance service in their area upon request.⁵⁸ This requirement originated during the implementation of equal access following divestiture and is preserved by section 251(g) of the Act.⁵⁹

D. Qwest Forbearance Proceeding

17. In November 2005, Qwest filed a petition asking the Commission to forbear from applying its dominant carrier rules to Qwest if Qwest were to provide in-region, interstate, interLATA, telecommunications services in a manner that did not meet the requirements of section 272 and the Commission’s implementing rules.⁶⁰ The Commission granted in part and denied in part Qwest’s

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Comments or FNPRM Reply” when referring to comments or reply comments filed in response to the *Section 272 Sunset and Independent Incumbent LEC Further NPRM*.

⁵⁷ Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services, WC Docket No. 06-120, at 1, 37-38 (filed June 2, 2006) (AT&T Petition). On June 23, 2006, the Wireline Competition Bureau (Bureau) issued a public notice inviting comment on the AT&T Petition. *See Pleading Cycle Established for Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160(c) with Regard To Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket No. 06-120, Public Notice, 21 FCC Rcd 6862 (WCB 2006). On May 30, 2007, the Bureau, pursuant to section 10(c) of the Act, extended by 90 days (until August 31, 2007) the date by which the petition shall be deemed granted in the absence of a Commission decision that the petition fails to meet the standards for forbearance under section 10(a) of the Act. *Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket No. 06-120, Order, 22 FCC Rcd 9960 (WCB 2007). AT&T also requested that the Commission forbear from applying certain dominant carrier regulations to in-region, interstate, interexchange services, including international services, provided by any AT&T affiliates, and from applying the Commission’s separate affiliate requirements for independent incumbent local exchange carriers (independent incumbent LECs) to AT&T’s provision of interexchange services in AT&T’s independent incumbent LEC service areas. AT&T Petition at 31-36.

⁵⁸ *See Investigation of Access and Divestiture Related Tariffs, Allocation Plan Waivers and Tariffs*, CC Docket No. 83-1145 Phase I, Memorandum Opinion and Order, 101 FCC 2d 935, 949-50, para. 40 (CCB 1985), *recon. denied*, 102 FCC 2d 503 (1985) (*Equal Access Allocation Tariff Order*); *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22046, para. 292; *Application of BellSouth Corp., et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-208, Memorandum Opinion and Order, 13 FCC Rcd 539, 667-72, paras. 231-39 (1997) (*BellSouth South Carolina Order*) (stating that BOCs are permitted to market their own long distance services as long as their marketing scripts fulfill the equal access requirements), *aff’d*, *BellSouth Corp. v. FCC*, 162 F.3d 678 (D.C. Cir. 1998).

⁵⁹ *See* 47 U.S.C. § 251(g). In general terms, section 251(g) requires continued compliance with equal access and nondiscrimination requirements established prior to the enactment of the Telecommunications Act of 1996 by court order, consent decree, or the Commission until those requirements are explicitly superseded by subsequent Commission action.

⁶⁰ Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission’s Dominant Carrier Rules As They Apply After Section 272 Sunset Pursuant to 47 U.S.C. §160, at 1 (filed Nov. 22, 2005), as amended by Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission’s Dominant Carrier Rules As They Apply After Section 272 Sunset Pursuant To 47 U.S.C. § 160 (filed Nov. 30, 2005) (Qwest Petition).

forbearance request, subject to certain conditions.⁶¹ The Commission found that Qwest lacked classical market power in the provision of in-region, interstate, interLATA, telecommunications services,⁶² but further found that Qwest might continue to have exclusionary market power in relation to these services by reason of its control of bottleneck facilities. It determined, however, that, despite Qwest's possibly possessing exclusionary market power, the burden of compliance with dominant carrier regulation outweighed the benefits.⁶³ The Commission further found that existing safeguards, along with certain special access performance metrics and imputation conditions that it adopted, were adequate to prevent Qwest from exercising this exclusionary market power.⁶⁴ Accordingly, the Commission found that Qwest could provide its in-region, interstate, interLATA telecommunications services without complying with all the requirements of section 272 and the Commission's implementing rules in its provision of these services, and that it would not be subject to section 203 and certain dominant carrier tariffing, price cap, rate of return, discontinuance, and transfer of control rules, provided that it complied with its ongoing statutory obligations and the conditions adopted in the Order.⁶⁵

III. DISCUSSION

18. As discussed below, we establish a new regulatory framework for the BOCs' and their independent incumbent LEC affiliates' provision of in-region, long distance services. As in prior orders, we begin by analyzing whether these carriers could exercise either classical or exclusionary market power. We then consider the relative costs and benefits of both dominant carrier regulation and the section 272 structural safeguards. As explained below, we find that dominant carrier regulation is not warranted, and that the current structural safeguards should be replaced with other, less costly regulations that still protect consumers and competition. We also find that forbearance from the application of the EA Scripting Requirement to the BOCs is warranted here. We also find good cause to waive the EA Scripting Requirement for the BOCs' independent incumbent LEC affiliates.

A. Report and Order in WC Docket No. 02-112 and CC Docket No. 00-175

1. Market Analysis

19. In this part, we address whether the BOCs could exercise either classical or exclusionary market power with respect to in-region, long distance services provided either directly or through an affiliate that is not a section 272 separate affiliate. Our analysis builds upon the Commission's analyses in prior proceedings. Specifically, in the *Competitive Carrier* proceeding, the Commission determined that dominant carrier regulation was not necessary to ensure just, reasonable, and nondiscriminatory rates and practices where a carrier lacked individual market power.⁶⁶ In the *LEC Classification Order*, the Commission elaborated on the conditions under which a carrier could exercise market power.⁶⁷

⁶¹ See *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5235-37, paras. 55-58.

⁶² See *id.* at 5233, para. 51. Qwest committed to providing certain calling plans and billing information to address the Commission's concern that Qwest's residential customers who make relatively few interstate long distance calls and who do not also subscribe to wireless or broadband Internet access service may not be able to avoid the impact of a price increase by engaging in usage substitution. *Id.* at 5233, para. 52, & 5243-44, paras. 71-72.

⁶³ See *id.* at 5233-34, para. 53.

⁶⁴ See *id.* at 5233-35, paras. 53-54.

⁶⁵ See *id.* at 5208, para. 1.

⁶⁶ See, e.g., *Competitive Carrier First Report and Order*, 85 FCC 2d at 19, para. 51, & 20-21, paras. 55-56.

⁶⁷ See *LEC Classification Order*, 12 FCC Rcd at 15802-04, paras. 83-85.

20. We follow these precedents and begin our analysis by first defining the relevant product and geographic markets.⁶⁸ We then consider whether each BOC could exercise market power with respect to in-region, interstate and international, long distance services if they provide such services through an affiliate that is not compliant with section 272, by either: (1) unilaterally raising the retail price of its in-region, interstate, long distance services (*i.e.*, exercising “classical” market power),⁶⁹ or (2) using its control over bottleneck local facilities to raise its rivals’ costs (*i.e.*, exercising “exclusionary” market power).⁷⁰ We conclude that the BOCs lack classical market power with respect to these services. We further conclude, however, that the BOCs have failed to demonstrate that they lack exclusionary market power with regard to these services by reason of their control of bottleneck facilities.

21. We note that the Commission recently performed a classical market analysis with respect to Qwest’s in-region, interstate, long distance services in the *Qwest Section 272 Sunset Forbearance Order*, where it concluded that Qwest lacked classical market power in the provision of these services.⁷¹ Nothing in the record in this proceeding compels a different finding with regard to Qwest. We therefore find it appropriate to rely on this prior Commission finding with respect to Qwest, and do not restate our prior analysis here. Consequently, our analysis in this Order of whether the BOCs possess classical market power in the provision of in-region, interstate, long distance services focuses on AT&T and Verizon.

⁶⁸ A relevant product market has been defined as the smallest group of competing products for which a hypothetical monopoly provider of the products would profitably impose at least a “small but significant and nontransitory” increase in price.” Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, §§ 1.11, 1.12 (Apr. 2, 1992, revised Apr. 8, 1997) (*DOJ/FTC Guidelines*); *see also Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20605-06, para. 106 (2002) (*EchoStar/DirecTV Order*). A relevant geographic market has been defined “as the region where a hypothetical monopolist that is the only producer of the relevant product in the region would profitably impose at least a ‘small but significant and nontransitory’ increase in the price of the relevant product, assuming that the prices of all products provided elsewhere do not change.” *EchoStar/DirecTV Order*, 17 FCC Rcd at 20609, para. 117 (citing *DOJ/FTC Guidelines* § 1.21). We reject Americatel’s request to establish a working group to commission studies to determine the relevant service market because the Commission has extensive expertise in defining telecommunications markets. *See Americatel FNPRM Erratum Comments* at 10. We also reject legacy BellSouth’s suggestion that we need not conduct a detailed market analysis to determine whether the BOCs have market power. *Legacy BellSouth FNPRM Comments* at 5; *see, e.g., AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5711-18, paras. 89-102 (2007) (*AT&T/BellSouth Order*); *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18336-47, paras. 82-96 (2005) (*SBC/AT&T Order*); *Verizon Communications Inc. and MCI, Inc. Application for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18477-86, paras. 82-97 (2005) (*Verizon/MCI Order*); *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5217-20, paras. 15-20. We use the term “BOC Merger Orders” to refer collectively to the *SBC/AT&T Order*, the *Verizon/MCI Order*, and the *AT&T/BellSouth Order*.

⁶⁹ *See infra* parts III.A.1.a(iv)(a) (classical market power analysis for in-region, interstate, long distance services); III.A.1.b (classical market power analysis for in-region, international telecommunications services).

⁷⁰ *See infra* part III.A.1.c. Commenters generally support this analytic approach. *See, e.g., Legacy AT&T FNPRM Comments* at 2, 8-11; *Legacy BellSouth FNPRM Comments* at 7-8; *NJ Ratepayer FNPRM Comments* at 2-3; *Qwest FNPRM Comments* at 7-8; *VarTec et al. FNPRM Comments* at 3-4; *Verizon FNPRM Comments* at 21-27; *Legacy SBC FNPRM Comments* at 15, 23-37; *Americatel FNPRM Reply* at 7-12.

⁷¹ *See Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5224-31, paras. 32-46.

a. Domestic, In-region, Interstate, Long Distance Services
(i) Relevant Product Markets
(a) Mass Market Services

22. Based on the record in this proceeding and consistent with the *AT&T/BellSouth Order*, the *AT&T/SBC Order*, the *Verizon/MCI Order*, and the *Qwest Section 272 Sunset Forbearance Order*,⁷² we identify two relevant product markets for our mass market analysis: (1) stand-alone long distance services; and (2) bundled local and long distance services. Also, consistent with those orders, we consider both the demand for “access” and demand for “usage” when defining our relevant product markets.⁷³

(i) Stand-Alone Long Distance Services

23. As the Commission found in the *BOC Merger Orders* and the *Qwest Section 272 Sunset Forbearance Order*, we find here that long distance service purchased on a stand-alone basis is becoming a fringe market. Evidence of this includes the 2004 decision by legacy AT&T to cease marketing long distance services and the declining proportion of consumers that choose a long distance provider different

⁷² *AT&T/BellSouth Order*, 22 FCC Rcd at 5711-18, paras. 89-104; *SBC/AT&T Order*, 20 FCC Rcd at 18336-46, paras. 82-99; *Verizon/MCI Order*, 20 FCC Rcd at 18477-87, paras. 83-100; *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5217-20, paras. 15-20. In prior proceedings, the Commission has defined mass market customers as residential and small business customers that purchase standardized offerings of communications services. See, e.g., *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18040, para. 24 (1998) (*WorldCom/MCI Order*); *Application of Ameritech Corp. and SBC Communications Inc. for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14746, para. 68 (1999) (*SBC/Ameritech Order*). We reject commenters’ suggestions that we adopt a different approach for identifying relevant mass market services because these commenters do not explain why their proposed approaches would improve our mass market analysis. See, e.g., Americatel FNPRM Comments at 10 (requesting that a working group be established to commission studies to determine the relevant mass market service categories); Legacy BellSouth FNPRM Comments at 5 (claiming that the Commission need not engage in a detailed market analysis).

⁷³ *AT&T/BellSouth Order*, 22 FCC Rcd at 5670-71, paras. 16-17; *SBC/AT&T Order*, 20 FCC Rcd at 18336-37, para. 84; *Verizon/MCI Order*, 20 FCC Rcd at 18477-78, para. 85; *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5218, para. 17. As the Commission explained, a consumer requires “access” in order to connect to a communications network, whether it be a wireline telephone network, a mobile wireless network, or the public Internet. Because a mass market consumer today can choose one or more access providers, his demand for usage – i.e., how much of a service he actually consumes – will be determined by the set of access providers he has chosen, the prices and terms set by those access providers, and other personal characteristics of the consumer. Thus, for example, if a consumer has a wireless phone, a wireline phone, and a broadband connection plus an interconnected voice over Internet Protocol (VoIP) service subscription, he can make a long distance call either using his wireline or wireless phones or through the broadband connection using his VoIP subscription. To the extent that consumers view these choices as reasonable substitutes, they are in the same product market for purposes of our analysis. See *EchoStar/DirecTV Order*, 17 FCC Rcd at 20606, para. 106. While some commenters express concern about the inclusion of services provided over alternative platforms such as wireless or VoIP because they might not act as a competitive constraint, consistent with our precedent, we include such services in our product markets only to the extent that they are, in fact, a substitute for the BOCs’ and their independent incumbent LEC affiliates’ services for access and/or usage. See, e.g., Sage FNPRM Comments at 9-15; NJ Ratepayer FNPRM Reply at 2-3; Legacy AT&T FNPRM Comments at 16-18; VarTec *et al.* FNPRM Comments at 5; Sprint FNPRM Comments at 4; Legacy MCI FNPRM Reply at 4-5.

from their local service provider.⁷⁴ Nonetheless, out of an abundance of caution and to ensure consistency with Commission precedent,⁷⁵ we analyze stand-alone interstate long distance as a separate relevant product market.

24. As discussed below, we consider two alternative measures of market share in analyzing stand-alone long distance services. The first measure considers only consumers with a presubscribed wireline long distance carrier. This approach is consistent with the approach the Commission adopted in the *BOC Merger Orders* and the *Qwest Section 272 Sunset Forbearance Order*.⁷⁶ We recognize that this approach is overly narrow, however, and will tend to overstate AT&T's and Verizon's market positions, because it ignores two important factors: the ability of all presubscribed interexchange customers to make interstate, long distance calls using transaction services, such as prepaid calling cards and dial-around services; and the fact that a majority of these customers also subscribe to mobile wireless service and can make interstate, long distance calls using their wireless phones.⁷⁷ In order to capture the possibility of such usage substitution, we therefore also perform a second market share calculation, which attempts to take into account the ability of presubscribed customers to engage in usage substitution.⁷⁸

⁷⁴ In the *BOC Merger Orders* and the *Qwest Section 272 Sunset Forbearance Order*, the Commission determined that the stand-alone market was becoming a fringe market based upon documentary evidence submitted in those proceedings. There is no information in this proceeding that causes us to reconsider this conclusion. See *AT&T/BellSouth Order*, 22 FCC Rcd at 5715-16, para. 97; *SBC/AT&T Order*, 20 FCC Rcd at 18342, para. 91; *Verizon/MCI Order*, 20 FCC Rcd at 18483, para. 92; *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5217, para. 16.

⁷⁵ See *AT&T/BellSouth Order*, 22 FCC Rcd at 5715-17, paras. 97-100; *SBC/AT&T Order*, 20 FCC Rcd at 18336, para. 82; *Verizon/MCI Order*, 20 FCC Rcd at 18477, para. 83; *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5217-19, paras. 16-18.

⁷⁶ See *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5218, para. 17; *AT&T/BellSouth Order*, 22 FCC Rcd at 5711, para. 89, n.261; *SBC/AT&T Order*, 20 FCC Rcd at 18347, n.309; *Verizon/MCI Order*, 20 FCC Rcd at 18489, n.308.

⁷⁷ See, e.g., *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5218, para. 17 (finding that customers substitute, at least to some extent, mobile wireless services and transaction services for long distance calls made through their presubscribed wireline carrier); *AT&T/BellSouth Order*, 22 FCC Rcd at 5716-17, paras. 98-100; *SBC/AT&T Order*, 20 FCC Rcd at 18342-44, paras. 92-94 (same); *Verizon/MCI Order*, 20 FCC Rcd at 18484-85, paras. 93-95 (same); see also Letter from Michelle Sclater, Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, at 2 and Attach. at 4 (filed Apr. 24, 2007) (*AT&T Apr. 24, 2007 Ex Parte Letter*) (stating that as of December 2005, more than 70 percent of households in the United States have a wireless phone).

⁷⁸ Our consideration of these two alternative market share measures responds to certain parties' concerns regarding the treatment of mobile wireless services in the analysis. Compare, e.g., Sage Comments at 9-10 (arguing that our analysis should not include mobile wireless services) with, e.g., Letter from Brett A. Kissel, Associate Director, Federal Regulatory, SBC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Attach. at 12-15 (filed Dec. 16, 2003) (arguing that we must consider the effects of mobile wireless services on the demand for wireline interexchange telecommunications services); Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Attach. 2 at 2-3 (filed Oct. 21, 2003); Letter from Dee May, Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Attach. at 7-10 (Feb. 13, 2004). We note that, because of limitations in available data, our calculations do not include over-the-top VoIP services or transaction services (such as prepaid calling cards). The exclusion of these services will tend to overstate AT&T's and Verizon's market positions. For the reasons given in the *BOC Merger Orders*, we reject Verizon's assertion that email and instant messaging are significant competitive alternatives to traditional wireline services provided to mass market consumers. Compare, e.g., Letter from Dee May, Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, at 12-13 (filed Feb. 15, 2007) (*Verizon Feb. 15, 2007 Ex Parte Letter*) with, e.g., *SBC/AT&T* (continued....)

25. In prior orders, the Commission has found that it may be appropriate to define narrower relevant product markets based on customer class if service providers engage in price discrimination.⁷⁹ Both the record and the long distance carriers' web sites indicate that carriers generally offer multiple alternative long distance service packages to mass-market customers, which vary in terms of their monthly recurring charges and per-minute charges.⁸⁰ These alternative packages appear designed to appeal to customer groups with differing demand patterns for long distance services. While such pricing plans generally benefit consumers, we believe that certain consumers who make relatively few interstate, long distance calls and who do not subscribe to mobile wireless service or broadband Internet access service in addition to their wireline long distance provider, may not face the same wide choice of alternative providers. Moreover, although there is insufficient information in the record for us to conclude that such customers constitute a separate relevant product market, we are concerned, as was the Commission in the *AT&T Reclassification* and the *Qwest Section 272 Sunset Forbearance Orders*,⁸¹ that competition for such customers may not be as intense as it is for higher volume interstate, long distance users.

(ii) Bundled Local and Long Distance Services

26. Consistent with the *BOC Merger Orders* and the *Qwest Section 272 Sunset Forbearance Order*, we also find it appropriate to define and examine a separate relevant product market for bundled local and long distance services.⁸² Because of the varied marketing strategies and limitations in the available data, we define a local and long distance service bundle,⁸³ for purposes of this proceeding only,

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Order, 20 FCC Rcd at 18342, para. 91, n.282 (recognizing that email and instant messaging have qualitative differences from voice services); *Verizon/MCI Order*, 20 FCC Rcd at 18484, para. 92 n.282 (same).

⁷⁹ See, e.g., *SBC/AT&T Order*, 20 FCC Rcd at 18323, para. 60; *Verizon/MCI Order*, 20 FCC Rcd at 18465, para. 60; see generally *DOJ/FTC Guidelines* at § 1.12.

⁸⁰ For example, Verizon offers a number of unlimited all-distance domestic calling plans for \$35 to \$50 per month; a usage-based plan with a \$6 monthly recurring charge and a \$0.05 per minute usage-based charge; and a usage-based plan with a \$3 monthly recurring charge and a \$0.10 per minute usage-based charge (for consumers that also purchase a qualifying local service plan). See Verizon Feb. 15, 2007 *Ex Parte Letter*, Ex. 6; http://www2.verizon.com/ForYourHome/sas/sas_localplans.aspx (visited May 2, 2007). AT&T offers an unlimited all-distance calling plan for approximately \$33.00 per month and a usage based plan with a \$2.99 monthly recurring charge and a \$0.10 per minute usage-based charge. See http://www.consumer.att.com/plans/long_distance (visited May 2, 2007).

⁸¹ *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5243-44, paras. 71-72; *AT&T Reclassification Order*, 11 FCC Rcd at 3315-16, paras. 84-85.

⁸² See *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5219-20, paras. 19-20; *AT&T/BellSouth Order*, 22 FCC Rcd at 5717-18, paras. 101-02; *SBC/AT&T Order*, 20 FCC Rcd at 18344-45, paras. 95-96; *Verizon/MCI Order*, 20 FCC Rcd at 18485-86, paras. 95-96 (concluding that it no longer makes sense for the Commission to subdivide the mass market into discrete product markets for local and long distance voice services); see also Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Attach. (filed May 26, 2004); Letter from Brett A. Kissel, Associate Director, Federal Regulatory, SBC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Attach. at 4-12 (filed Dec. 16, 2003); Letter from Dee May, Vice President-Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Attach at 13-14 (filed July 9, 2004).

⁸³ The economics literature generally discusses two types of bundles: a pure bundle, where the bundled services are only sold together and are not sold individually; and a mixed bundle, where the bundled services are sold individually, as well as in a package. In a mixed bundle, the package generally is sold at a discount relative to the sum of the individual service component prices. See, e.g., Barry Nalebuff, *Bundling, Tying and Portfolio Effects*, DTI Economics Paper No. 1, at 14-15 (2003), available at <http://www.dti.gov.uk/files/file14774.pdf>. There is (continued....)

as a customer's purchase of local and long distance services from the same carrier, regardless of whether these services are purchased together as part of an advertised bundle from a single carrier or the consumer creates the bundle by selecting separately-offered local and long distance service plans from the same provider. The evidence indicates that a majority of consumers purchase local and long distance services from a single provider today and that this percentage has been increasing over time.⁸⁴ We find that this trend is likely to continue and that the stand-alone wireline long distance market is steadily declining in size relative to the bundled services market.⁸⁵

27. Several other factors support our defining a separate relevant product market for bundled local and long distance services. First, the Commission recently determined that the BOCs' marketing and pricing strategies are designed to encourage subscription to a bundled service package.⁸⁶ Second, the Commission has recently determined, and the evidence in this record indicates, that intermodal competition between wireline services and services provided on alternative service platforms, such as

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significant variation across providers as to whether they offer a pure bundle or a mixed bundle of communications services.

⁸⁴ As of June 2006, 59 percent of regional BOC retail local consumer lines and 85 percent of competitive local service lines were presubscribed to the local provider's long distance service, compared with 52 percent of regional BOC lines and 80 percent of competitive local service lines as of June 2005. See Local Telephone Competition: Status as of June 30, 2006, at Table 6 (Industry Analysis and Technology Div., WCB Jan. 2007) (*2007 Local Competition Report*); Local Telephone Competition: Status as of June 30, 2005, at Table 6 (Industry Analysis and Technology Div., WCB Apr. 2006) (*2006 Local Competition Report*); see also *SBC/AT&T Order*, 20 FCC Rcd at 18344-45, paras. 95-96; *Verizon/MCI Order*, 20 FCC Rcd at 18485-86, paras. 96-97. As of December 2006, the proportion of Verizon's and AT&T's residential local consumer lines that also were pre-subscribed to the carrier's long distance services were respectively [REDACTED] and [REDACTED]. Figures are calculated from data submitted in this record. See Letter from Joseph Jackson, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Exhs. 1.A.1, 1.A.2 (filed Mar. 27, 2007) (Verizon Mar. 27, 2007 *Ex Parte* Letter); Letter from Joseph Jackson, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Exhs. 1.A.1.a, 1.A.2.a (filed Apr. 3, 2007) (Verizon Apr. 3, 2007 *Ex Parte* Letter); Letter from Joseph Jackson, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Exh. 1.A.1.b (filed Apr. 5, 2007) (Verizon Apr. 5, 2007 *Ex Parte* Letter); Letter from Joseph Jackson, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, at 2 (filed Apr. 17, 2007) (Verizon Apr. 17, 2007 *Ex Parte* Letter) ("MCI is the presubscribed long-distance carrier to approximately [REDACTED] of residential lines for which MCI is the local provider"); Letter from Frank S. Simone, Executive Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Exhs. 1.a, 1.a.i, 1.a.ii, 1.d, 1.f, and 2 (filed Apr. 23, 2007) (AT&T Apr. 23, 2007 *Ex Parte* Letter).

⁸⁵ We note that the Commission had anticipated that a bundled product market might become a relevant product market sometime after the BOCs completed the section 271 process. See, e.g., *Applications of NYNEX Corporation and Bell Atlantic Corporation for Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd 19985, 20010-11, paras. 39-42 (1997) (*Bell Atlantic/NYNEX Order*); *WorldCom/MCI Order*, 13 FCC Rcd at 18038-39, para. 22 n.60. Verizon completed the section 271 process in March 2003 and AT&T completed the section 271 process in October 2003. See *Section 272 Sunsets for Verizon Communications Inc. in the District of Columbia and the States of Maryland and West Virginia by Operation of Law on March 19, 2006 Pursuant to Section 272(f)(1)*, WC Docket No. 02-112, Public Notice, 21 FCC Rcd 2949 (WCB 2006); *Section 272 Sunsets for AT&T in the States of Illinois, Indiana, Ohio and Wisconsin by Operation of Law on October 15, 2006, Pursuant to Section 272(f)(1)*, WC Docket No. 02-112, Public Notice, 21 FCC Rcd 11738 (WCB 2006).

⁸⁶ See *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5219-20, para. 20; *AT&T/BellSouth Order*, 22 FCC Rcd at 5717-18, para. 102; *SBC/AT&T Order*, 20 FCC Rcd at 18344-45, paras. 95-96; *Verizon/MCI Order*, 20 FCC Rcd at 18486, para. 97.

facilities-based VoIP and mobile wireless, has been increasing and is likely to continue to increase.⁸⁷ These intermodal services tend to be offered as a bundle of local and long distance services.⁸⁸ These findings suggest that competition is increasingly occurring between bundled offerings, rather than between a bundled package offered by an intermodal competitor and stand-alone local and long distance services offered by incumbent LECs.

(b) Enterprise Services

28. Retail enterprise customers purchase a variety of different communications services, including local voice, long distance and international voice, and data services.⁸⁹ In addition, enterprise customers frequently purchase high-capacity transmission services,⁹⁰ including Frame Relay,⁹¹ Asynchronous Transfer Mode (ATM),⁹² Gigabit Ethernet,⁹³ and similar services provided via emerging

⁸⁷ See *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5219-20, para. 20; *AT&T/BellSouth Order*, 22 FCC Rcd at 5717-18, para. 102; *SBC/AT&T Order*, 20 FCC Rcd at 18344-45, paras. 95-96; *Verizon/MCI Order*, 20 FCC Rcd at 18486, para. 97; see also *2007 Local Competition Report*, at Table 2.

⁸⁸ Promotional information for facilities-based VoIP providers generally appears to focus on bundled offerings. See, e.g., Optimum Voice, What is It?, available at <http://www.optimum.com/voice/what.jsp> (visited Feb. 16, 2007) (Cablevision's product "offers unlimited local, regional and long-distance calling within the United States, Puerto Rico and Canada"); Comcast, Services for You, available at <http://www.comcast.com/Benefits/VoiceBenefits.ashx?.link1k=59> (visited Feb. 16, 2007) (offering "unlimited local and long distance"); Time Warner Cable, Unlimited Calling, available at <http://www.timewarnercable.com/corporate/products/digitalphone/unlimitedcallingdigitalphone.html> (visited Feb. 16, 2007) (offering "unlimited calls anywhere in the U.S. and Canada for one low monthly price"). Mobile wireless service providers likewise promote bundled offerings. See, e.g., Cingular Wireless, Cingular Plans, available at http://www.cingular.com/cell-phone-service/cell-phone-plans/?_requestid=87830 ("Never pay domestic long distance or roaming charges!"); T-Mobile, T-Mobile Stick Together, available at http://www.t-mobile.com/templates/generic.aspx?passet=Pln_Lst_MyFavesLrnDemo ("Unlimited nationwide calling to any five numbers* on any network, even landlines."); Verizon Wireless, America's Choice, available at <http://www.verizonwireless.com/b2c/store/controller?item=planFirst&action=viewPlanList&sortOption=priceSort&typeId=1&subTypeId=1&catId=323> ("Unlimited Domestic Long Distance").

⁸⁹ See, e.g., *SBC/AT&T Order*, 20 FCC Rcd at 18321-22, para. 57; *Verizon/MCI Order*, 20 FCC Rcd at 18463, para. 56.

⁹⁰ The specific technology used by the individual enterprise customer depends on availability, needed capacity, services required, and desired service quality levels. Enterprise services could include multiple DS0 circuits or high-capacity circuits of DS1 or higher bandwidth, such as DS3 and OCn circuits. See, e.g., *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17155-56, para. 298 (2003) (*Triennial Review Order*) (discussing services typically purchased by enterprise customers). A DS0 is a two-wire basic connection, which operates at 64,000 bits per second (bps), the worldwide standard speed for digitizing voice conversation using pulse code modulation. HARRY NEWTON, NEWTON'S TELECOM DICTIONARY, 324 (22nd ed., 2006) (defining "DS-0") (NEWTON'S TELECOM DICTIONARY). A DS1 is a four-wire connection equivalent to 24 DS0s. A DS3 is equivalent to 28 DS1s. These circuits may be purchased by customers from state and federal tariffs. See *Triennial Review Order*, 18 FCC Rcd at 17155-56, para. 298.

⁹¹ Frame Relay is a data service that allows local area networks (LANs) to be connected across a public network. See TELECOMMUNICATIONS INDUSTRY ASSOCIATION, 2006 TELECOMMUNICATIONS MARKET REVIEW AND FORECAST 138 (2006) (TIA 2006 MARKET REVIEW). A T-1 provides the same speed and capacity service as a DS1. See *Triennial Review Order*, 18 FCC Rcd at 17104-05, para. 202 n.634. Similarly, a T-3 provides the same speed and capacity service as a DS3.

⁹² ATM service can guarantee different quality of service levels to meet various customer needs. ATM offers higher reliability and greater capacity because it combines the advantages of circuit-switched and packet-switched (continued....)

technologies.⁹⁴ Retail enterprise customers also purchase other facilities and customer premises equipment (CPE).⁹⁵

29. Consistent with Commission precedent and with the record in this proceeding,⁹⁶ we find that the services offered to enterprise customers fall into a number of separate relevant product markets. More specifically, we find that long distance voice and data services constitute distinct relevant product markets.

30. We have less information about the substitutability of different transmission services. Although there are data indicating that the number of customers for Frame Relay is declining on a nationwide basis, and that the number of IP transmission services customers is increasing,⁹⁷ we do not have data on elasticities (and cross elasticities) of demand for particular transmission services. Similarly, we lack sufficient information about the migration time, price differences, and service quality differences that customers face when deciding to change from one transmission service to another. Thus, the evidence is insufficient for us to define precisely the boundaries of those transmission service markets. Given the data available in the record, and for purposes of this proceeding only, we focus on five interstate services: long distance voice services, ATM, Frame Relay, T1, and T3 services.⁹⁸

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networks, guaranteeing the delivery of information that is intolerant of delays, while allocating bandwidth more efficiently. *See* TIA 2006 MARKET REVIEW at 140-42.

⁹³ Gigabit Ethernet is a LAN standard that allows a network to accommodate the high-bandwidth requirements of converged voice, video, and data network applications. *See* TIA 2006 MARKET REVIEW at 125.

⁹⁴ Enterprises are increasing their use of IP Virtual Private Networks (IP-VPNs), which deliver private network services over shared IP-based backbones; and carriers are migrating to Multiprotocol Label Switching (MPLS), which provides label switching to move packets between network locations. *See* TIA 2006 MARKET REVIEW at 134-36. MPLS is similar to other circuit-switched, ATM, and Frame Relay network protocols, except that MPLS is not dependent on a particular technology. *See, e.g.*, MPLS Resource Center, *The MPLS FAQ*, available at <http://www.mplsresource.com/faq1.shtml#MPLS%20History> (visited July 31, 2006).

⁹⁵ *See SBC/AT&T Order*, 20 FCC Rcd at 18322, para. 57.

⁹⁶ *See SBC/AT&T Order*, 20 FCC Rcd at 18322, para. 58; *Verizon/MCI Order*, 20 FCC Rcd at 18464, para. 58; *see also* AT&T Apr. 23, 2007 *Ex Parte* Letter, Exhs. 3, 4; Letter from Frank S. Simone, Executive Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Attach. (filed May 1, 2007) (AT&T May 1, 2007 *Ex Parte* Letter); Verizon Mar. 27, 2007 *Ex Parte* Letter, Attach. at 26-27; Letter from Joseph Jackson, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Exh. 4.5 (filed Apr. 19, 2007) (Verizon Apr. 19, 2007 *Ex Parte* Letter).

⁹⁷ From 1997 through 2002, the number of Frame Relay ports more than tripled to 1.3 million; since then, however, the market has shifted to IP-VPNs, and Frame Relay port growth has dropped. *See* TIA 2006 MARKET REVIEW at 140. From 2000 through 2005, ATM service revenues nearly tripled, from \$1.1 billion to \$2.70 billion. *Id.* at 143. The number of ATM ports in the United States reached a peak of 40,000 in 2005, however, and that number was expected to decline thereafter. *Id.* at 142. As newer technologies emerge, ATM's role as a backbone technology appears to be declining as enterprise customers increase their use of IP-VPNs. *Id.*

⁹⁸ Our analysis of particular product markets is determined by the availability of data in this record. AT&T May 1, 2007 *Ex Parte* Letter, Attach.; AT&T Apr. 23, 2007 *Ex Parte* Letter, Exh. 4 (state-wide and MSA data); Verizon Apr. 19, 2007 *Ex Parte* Letter, Exh. 4.5 (franchise area data); Verizon Apr. 20, 2007 *Ex Parte* Letter, Exh. 4.5 (MSA data). AT&T and Verizon have independently provided data for their regions from a third party vendor (Harte-Hanks). These data are based on a telecommunications survey that queries businesses about their contracting for services, including long distance voice services, ATM, Frame Relay, T1, and T3 services. Harte-Hanks surveys businesses on a rolling basis throughout the year and periodically updates the information for each business in its survey. The data AT&T and Verizon provided was extracted from the Harte-Hanks database during April 2007. (continued...)

31. In previous orders, the Commission has found it appropriate to define separate relevant product markets based on the class of customer (particularly where there is “price discrimination”).⁹⁹ As the Commission previously has discussed, however, there does not appear to be industry-wide consensus as to how to differentiate one class of enterprise customers from another.¹⁰⁰ The Commission generally has found that a number of factors influence how carriers price their services to particular types of customers, including: the customer’s total telecommunications spending; the types of services and technologies ordered; the customer’s total employee count; the customer’s total annual revenues; and whether the customer obtains customized services.¹⁰¹ Based on the data available to us in the record, we find it appropriate to focus our analysis on two categories of business customers: small/medium businesses and large enterprises.¹⁰²

(ii) Relevant Geographic Markets

32. The Commission previously has recognized that each customer location constitutes a separate relevant geographic market. For reasons of administrative practicality, however, the Commission has aggregated customers facing similar competitive choices to create larger relevant geographic markets.¹⁰³

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See Letter from Michelle Sclater, Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112 at 1 (filed May 9, 2007) (AT&T May 9, 2007 *Ex Parte* Letter); Verizon May 8, 2007 *Ex Parte* Letter, at 2. In general, we limit our analysis to geographic areas with at least 30 observations. We exclude the “UNSPECIFIED” category from our analysis because it represents incomplete responses. *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5221-22, para. 23 n.82.

⁹⁹ See, e.g., *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5222, para. 24; *AT&T/BellSouth Order*, 22 FCC Rcd at 5699, para. 66; *SBC/AT&T Order*, 20 FCC Rcd at 18323, para. 60; *Verizon/MCI Order*, 20 FCC Rcd at 18465, para. 60.

¹⁰⁰ See, e.g., *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5222, para. 24; *AT&T/BellSouth Order*, 22 FCC Rcd at 5699, para. 66; *SBC/AT&T Order*, 20 FCC Rcd at 18323-24, para. 61; *Verizon/MCI Order*, 20 FCC Rcd at 18465-66, para. 61; AT&T Apr. 23, 2007 *Ex Parte* Letter, Exh. 3; AT&T May 1, 2007 *Ex Parte* Letter, Attach; Verizon Mar. 27, 2007 *Ex Parte* Letter, Attach. at 26-27.

¹⁰¹ See, e.g., *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5222, para. 24; *AT&T/BellSouth Order*, 22 FCC Rcd at 5699, para. 66; *SBC/AT&T Order*, 20 FCC Rcd at 18323-24, para. 61; *Verizon/MCI Order*, 20 FCC Rcd at 18465-66, para. 61; AT&T Apr. 23, 2007 *Ex Parte* Letter, Exh. 3; AT&T May 1, 2007 *Ex Parte* Letter, Attach; Verizon Mar. 27, 2007 *Ex Parte* Letter, Attach. at 26-27.

¹⁰² See, e.g., *SBC/AT&T Order*, 20 FCC Rcd at 18323-24, para. 61; *Verizon/MCI Order*, 20 FCC Rcd at 18465-66, para. 61; AT&T Apr. 23, 2007 *Ex Parte* Letter, Exh. 3; AT&T May 1, 2007 *Ex Parte* Letter, Attach; Verizon Mar. 27, 2007 *Ex Parte* Letter, Attach. at 26-27. Our analysis of particular enterprise customer classes is determined by the availability of data in this record. The Harte-Hanks customer count data for enterprise customers submitted by AT&T and Verizon is segmented into [REDACTED]. See AT&T Apr. 23, 2007 *Ex Parte* Letter, Exh. 4 (state-wide and MSA data); Verizon Apr. 19, 2007 *Ex Parte* Letter, Exh. 4.5 (state franchise data); Verizon Apr. 20, 2007 *Ex Parte* Letter, Exh. 4.5 (MSA data). These business segments do not, however, generally conform to the categorization schemes used by AT&T or Verizon, and in a number of cases include markets with fewer than 30 observations. We therefore analyze two customer classes utilizing aggregated Harte-Hanks data: small/medium and large.

¹⁰³ See *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5222-23, paras. 25-28; *AT&T/BellSouth Order*, 22 FCC Rcd at 5700-01, paras. 68-69 & 5718, paras. 103-104; *SBC/AT&T Order*, 20 FCC Rcd at 18324, para. 62 & 18345-46, paras. 97-99; *Verizon/MCI Order*, 20 FCC Rcd at 19466-67, paras. 62-63, & 18486-87, paras. 98-100. Our market analyses above and in the *Qwest Section 272 Sunset Forbearance Order* consider the competitive circumstances in each BOC in-region state, and therefore respond to certain parties’ arguments that the levels of competition in particular states require that we maintain the safeguards in those states.

(a) Mass Market Services

33. The data in the record are not sufficiently detailed to define localized relevant geographic markets in which customers face similar competitive choices. Accordingly, consistent with the approach adopted in, and for the reasons given in, the *BOC Merger Orders*, we analyze stand-alone long distance and bundled local and long distance services for each BOC in their respective franchise area within a state.¹⁰⁴

(b) Enterprise Services

34. The data in the record are likewise not sufficiently detailed to define localized relevant geographic markets in which all enterprise customers face the same competitive choices. Consistent with Commission precedent, we will use the most disaggregated data available in performing our structural analysis for different types of business services and for certain broad classes of business customers. For enterprise customers with single locations in AT&T's and Verizon's respective regions, we use the most disaggregated data in this record to complete our analysis. Consequently, for AT&T we analyze state-wide and MSA-level data; and for Verizon we analyze franchise area data and MSA-level data to determine their market presence for the services and customer classes considered in this Order.¹⁰⁵

35. For larger, multi-location enterprise customers, we find that these customers typically seek service from a provider that can serve all their locations, and generally only a few carriers serving a particular location have such capabilities. In light of the fact that there are relatively few providers that can offer a high level of ubiquitous service, the Commission in previous orders has concluded that this geographic market should encompass all the geographic locations where these multi-location business

¹⁰⁴ See *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5222-23, para. 26; *AT&T/BellSouth Order*, 22 FCC Rcd at 5718, para. 104; *SBC/AT&T Order*, 20 FCC Rcd at 18346, para. 99; *Verizon/MCI Order*, 20 FCC Rcd at 18487, para. 100. We reject the BOCs' suggestions that we define the relevant geographic market for mass market services as the nation or their respective regions. See, e.g., Verizon FNPRM Reply at 17 (calculating market shares on a national basis). Although the Commission only distinguished between a BOC's in-region territory and its out-of region territory in the *LEC Classification Order*, the Commission stated that "the market to purchase [a long distance] plan is a localized market, not a national one." *LEC Classification Order*, 12 FCC Rcd at 15794, para. 66; see also *SBC/AT&T Order*, 20 FCC Rcd at 18345-46, paras. 97-98; *Verizon/MCI Order*, 20 FCC Rcd at 18486-87, paras. 98-99. We further recognize that the competitive choices customers face may vary within a state (e.g., cable companies may provide cable VoIP in some areas of a state but not others), and that a BOC might be able to offer more localized promotions for bundled service offerings. Although these factors suggest that we should define the relevant geographic market at a more disaggregated level than a BOC's or independent incumbent LEC's franchise area within each of its in-region states, the data in the record are not sufficiently detailed for us to perform such a disaggregated analysis. We find, however, as we did in the *BOC Merger Orders* and the *Qwest Section 272 Sunset Forbearance Order*, that analyzing the data at the franchise level is reasonable, particularly given that AT&T's and Verizon's pricing for stand-alone long distance service does not vary within their respective franchise areas. See <http://www22.verizon.com/Residential/Phone/Long+Distance/Long+Distance.htm> (visited May 7, 2007); <http://www.att.com/gen/general?pid=7908> (visited May 7, 2007).

¹⁰⁵ AT&T Apr. 23, 2007 *Ex Parte* Letter, Exh. 4 (state-wide and MSA-level data); Verizon Apr. 19, 2007 *Ex Parte* Letter, Exh. 4.5 (franchise area data); Verizon Apr. 20, 2007 *Ex Parte* Letter, Exh. 4.5 (MSA data). To avoid relying on results that are based on too few observations, we present results only for those markets for which there are at least 30 observations. See, e.g., *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5222-23, para. 26, n.88; *SBC/AT&T Order*, 20 FCC Rcd at 18324-25, para. 62 (same).

customers may have a presence.¹⁰⁶ Thus, we analyze national data for long distance services provided to these multi-location businesses.¹⁰⁷

(iii) Market Participants

(a) Mass Market

36. The record indicates that Verizon and AT&T face competition within their respective franchise areas from a variety of providers of retail mass market services. These competitors include competitive wireline local exchange and long distance carriers, stand-alone long distance providers, facilities-based VoIP providers, cable circuit-switched service providers, and wireless carriers, to the extent that consumers use their services as a replacement for local or long distance services.¹⁰⁸

(b) Enterprise Market

37. Likewise, the record indicates that there are numerous categories of competitors providing services to enterprise customers. These include interexchange carriers, competitive LECs, data/IP network providers, cable companies, other incumbent LECs, and VoIP providers.¹⁰⁹

(iv) Analysis of Traditional Market Power Factors

38. We consider first whether Verizon and AT&T individually have such a significant presence in the relevant markets for interstate, long distance services that either could unilaterally and profitably raise and maintain the price of such services within their respective franchise areas. Our analysis examines these BOCs' respective market shares for the aforementioned relevant product markets, trends in their market shares, demand substitutability, and supply substitutability.¹¹⁰

(a) Mass Market Services

39. We conclude that Verizon and AT&T each lack classical market power with respect to the mass market interstate, long distance services within their respective franchise areas. Although the market share calculations for stand-alone interstate, long distance services indicate a moderately high level of concentration in certain franchise areas, we find that these calculations significantly overstate their respective market positions in those markets, particularly when one considers other market factors that affect market power.¹¹¹ As discussed in greater detail below,¹¹² we are concerned, as was the

¹⁰⁶ See, e.g., *SBC/AT&T Order*, 20 FCC Rcd at 18325, para. 63; *Verizon/MCI Order*, 20 FCC Rcd at 18467, para. 63.

¹⁰⁷ The Commission previously has recognized that large business customers with multiple locations throughout the United States may constitute a separate relevant product market. See, e.g., *SBC/AT&T Order*, 20 FCC Rcd at 18325, para. 63; *Verizon/MCI Order*, 20 FCC Rcd at 18467, para. 63; AT&T May 1, 2007 *Ex Parte* Letter, Exh. 5a.

¹⁰⁸ As discussed below, we do not include over-the-top VoIP in this market analysis because of data limitations. See *infra* para. 41. This will tend to result in an overstatement of Verizon's and AT&T's respective market shares.

¹⁰⁹ See, e.g., AT&T Apr. 23, 2007 *Ex Parte* Letter, Exh. 4 (state data and MSA data); AT&T May 1, 2007 *Ex Parte* Letter, Attach.; Verizon Apr. 19, 2007 *Ex Parte* Letter, Exh. 4.5 (franchise area data); Verizon Apr. 20, 2007 *Ex Parte* Letter, Exh. 4.5 (MSA data).

¹¹⁰ As indicated previously, see *supra* para. 20, we rely in this Order on the Commission's prior finding, in the *Qwest Section 272 Sunset Forbearance Order*, that Qwest lacks classical market power in the provision of in-region, interstate, long distance services. Therefore, the analysis below focuses on AT&T and Verizon.

¹¹¹ We find it appropriate to rely on the more recent data cited in this Order, rather than market share estimates cited by the Commenters. See, e.g., Legacy AT&T FNPRM Reply at 27-28; Texas AG FNPRM Comments at 2; Texas Commission FNPRM Comments at 4-5; Legacy AT&T June 8, 2004 *Ex Parte* Letter, Attach. Declaration of Lee Selwyn, para. 32 and Appendix.

Commission in the *AT&T Reclassification Order* and the *Qwest Section 272 Sunset Forbearance Order*,¹¹³ that residential customers who make relatively few interstate long distance calls and who do not also subscribe to wireless or broadband Internet access service may have fewer competitive choices among interstate, interLATA long distance providers and may be unable to avoid the impact of a price increase by engaging in usage substitution. We also are concerned that these customers may not receive the information regarding their monthly long distance usage that they need to make informed choices among alternative long distance calling plans.

(i) Stand-Alone Long Distance Market Share

40. Consistent with the Commission's analysis in the *BOC Merger Orders*, we first consider AT&T's and Verizon's market shares of wireline customers that have a presubscribed interexchange carrier (PIC).¹¹⁴ Using this methodology, the data in the record suggest that Verizon and AT&T have significant market shares in most of their franchise areas within their respective territories.¹¹⁵ Under this approach, AT&T's market share of stand-alone, interstate, long distance services ranges from [REDACTED] percent to [REDACTED] percent, with a median market share of [REDACTED] percent.¹¹⁶ The respective figures for Verizon are [REDACTED] percent, [REDACTED] percent, and [REDACTED] percent.¹¹⁷

41. As discussed above, however, these market shares likely overstate AT&T's and Verizon's respective shares of the interstate long distance market, and their potential market power, for a number of reasons. First, this analysis is limited to customers who have a PIC. In recent years, however, an increasing number of customers are choosing to have no PIC. For example, [REDACTED] of AT&T's

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¹¹² See *infra* paras. 47-48.

¹¹³ *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5243-44, paras. 71-72; *AT&T Reclassification Order*, 11 FCC Rcd at 3313-14, paras. 81-82.

¹¹⁴ See *AT&T/BellSouth Order*, 22 FCC Rcd at 5720, n.308; *SBC/AT&T Order*, 20 FCC Rcd at 18347, n.309; *Verizon/MCI Order*, 20 FCC Rcd at 18489, n.308.

¹¹⁵ Appendix B, Table 1, Note 1, Table 2, and Note 4. Our analysis of concentration in the mass market relies upon data for residential customers because of the administrative difficulty of distinguishing small business data from data for other classes of businesses. An analysis of market shares of residential consumers is likely to accurately represent an analysis of market shares for the entire mass market because residential customers and small businesses have similar demand patterns are served primarily through mass marketing techniques, purchase similar volumes and types of communications services, and would likely face the same competitive alternatives within a geographic market. Thus, we conclude that a market share analysis for residential consumers is likely to accurately represent Verizon's and AT&T's respective positions in the mass market as a whole. See, e.g., *SBC/AT&T Order*, 20 FCC Rcd at 18347, para. 102, n.307; *Verizon/MCI Order*, 20 FCC Rcd at 18488, para. 103, n.306.

¹¹⁶ Appendix B, Table 1. We base our analysis of the stand-alone long distance market on AT&T's and Verizon's telephone exchange service customers with a PIC, AT&T's and Verizon's interexchange customers that do not subscribe to AT&T's and Verizon's local service, the number of resold lines leased by the BOC's competitors, the number of commercially negotiated lines leased by AT&T's and Verizon's competitors, and the BOC's estimates of facilities-based lines. See Appendix B, Notes 1 and 4. This analysis implicitly assumes that customers that receive local services from a competitive local service provider generally subscribe to that carrier for their interstate, long distance services. We believe this to be a reasonable assumption given that 85 percent of residential lines receiving service from a competitive LEC are presubscribed to the competitive LEC's long distance services. *2007 Local Competition Report*, at Table 6.

¹¹⁷ Appendix B, Table 2.

residential customers and [REDACTED] of Verizon's residential customers have no PIC.¹¹⁸ More importantly, this approach to calculating market shares fails to take into account possible usage substitution between wireless and wireline long distance services (for customers that subscribe to both wireless and wireline telephone services) or between wireline and over-the-top VoIP (for customers that subscribe to both wireline telephone service and broadband Internet access service). Although we lack the data necessary to estimate the impact of usage substitution between traditional wireline long distance service and long distance service provided by *over-the-top VoIP*, we can calculate market shares in a way that attempts to capture usage substitution between wireline and *wireless* long distance service providers.¹¹⁹ Taking such wireline-wireless usage substitution into account, AT&T's market share ranges from [REDACTED] percent to [REDACTED] percent, with a median market share of [REDACTED] percent.¹²⁰ The corresponding figures for Verizon's residential customers are [REDACTED] percent, [REDACTED] percent, and [REDACTED] percent.¹²¹ Given the large and growing percentage of consumers who subscribe to both wireline service and wireless or broadband Internet access service,¹²² and who thus have the ability to shift interstate, long distance usage in response to price changes, we find that these market share numbers are likely to provide a more accurate picture of AT&T's and Verizon's market power for the stand-alone, interstate, long distance market within their respective franchise areas.¹²³

(ii) Bundled Local and Long Distance Market Shares

42. As discussed above, an increasing number of customers are shifting to bundled service offerings and away from stand-alone long distance offerings. We acknowledge the conceptual difficulties associated with estimating market shares for this bundled services market; nevertheless, we believe that we have adopted a conservative approach, which, if anything, will again tend to overstate AT&T's and

¹¹⁸ We follow the procedure set forth in Appendix B, Notes 1 and 4, to calculate these percentages. See AT&T Apr. 23, 2007 *Ex Parte* Letter, Exhs. 1.a, 1.a.i, 1.a.ii, 1.d, 1.f, 2; Verizon Mar. 27, 2007 *Ex Parte* Letter, Exhs. 1.A.1, 1.A.2, 1.A.4; Verizon Apr. 3, 2007 *Ex Parte* Letter, Exh. 1.A.1.a, 1.A.1.b, 1.A.2.a; Verizon Apr. 13, 2007 Exh. 2 Supplement *Ex Parte* Letter, Exh. 2B.

¹¹⁹ This analysis focuses on those customers that subscribe to *both* a wireline and a mobile wireless service. Our analysis assumes that 10 percent of households have "cut-the-cord" (*i.e.*, no longer subscribe to local or long distance service from a wireline carrier), and that 70 percent of households subscribe to a mobile wireless services provider. See *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5225-26, para. 34; AT&T Apr. 24, 2007 *Ex Parte* Letter at 2, Attach. at 4 (citing December 2005 Yankee Report that 70 percent of households have a mobile wireless phone). We follow the procedure set forth in Appendix B, notes 2 and 5, to estimate AT&T's and Verizon's market shares.

¹²⁰ Appendix B, Tables 1 and 2.

¹²¹ Appendix B, Tables 1 and 2.

¹²² See AT&T Apr. 24, 2007 *Ex Parte* Letter at 2, Attach. at 4 (citing December 2005 Yankee Report that 70 percent of households have a mobile wireless phone); *High-Speed Services for Internet Access: Status as of June 30, 2006*, at Table 3 (Industry Analysis and Technology Div., WCB Jan. 2007) (*High-Speed Services Jan. 2007 Report*), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-270128A1.pdf.

¹²³ We note that, while our analysis is intended to focus on consumers that subscribe to both a mobile wireless service and a wireline long distance service and thus can engage in usage substitution, our methodology makes a number of simplifying assumptions, including: failing to exclude wireline consumers that do not subscribe to a mobile wireless service; and failing to exclude consumers with mobile wireless plans that have a wireline service but no wireline presubscribed interexchange carrier. We conclude the offsetting effects of these simplifications are likely to result in a slight overestimate of AT&T's and Verizon's market share.

Verizon's respective market positions.¹²⁴ We estimate that, for its franchise areas within its in-region states, AT&T's market share of bundled local and long distance services ranges from [REDACTED] percent to [REDACTED] percent, with a median market share of [REDACTED] percent.¹²⁵ The corresponding figures for Verizon's residential customers are [REDACTED] percent, [REDACTED] percent, and [REDACTED] percent.¹²⁶

(iii) Other Factors

43. Traditionally, the Commission, in evaluating whether a carrier possesses individual market power, has considered not only current market share, but also such factors as trends in market share, elasticity of demand, and elasticity of supply.¹²⁷ Consideration of these factors further supports our conclusion that AT&T and Verizon each lack individual market power with respect to mass market, interstate, long distance services within their respective franchise areas.

44. We begin by considering trends in market shares. We acknowledge that AT&T's and Verizon's shares of the stand-alone long distance market, measured in terms of presubscribed wireline customers, have increased over the past three years. Although such increases might normally be indicative of market power, there are several reasons to reject such an inference here. First, since AT&T and Verizon each entered the market with a zero market share relatively recently, it is to be expected that their market shares would be increasing. Second, reflecting the decline in the stand-alone long distance market legacy AT&T and legacy MCI (traditionally, the two largest stand-alone interexchange carriers) decided in 2004 to cease marketing such services; this led to a decrease in their market shares and a concomitant increase in the BOCs' respective market shares. A more important trend, however, has been the increasing number of consumers who now subscribe to multiple access services, including wireless services and broadband Internet access services (which permit customers then to subscribe to an over-the-top VoIP service with a long distance component).¹²⁸ This increase in access choices has allowed customers to engage in increasing usage substitution. This trend evidence provides further support for our

¹²⁴ Our analysis here focuses on those customers that subscribe to local and long distance services from the same carrier as a bundle. Our analysis for wireless customers only considers customers who have "cut-the-cord." Consumers that subscribe to local service from one carrier and long distance service from another carrier are included in our analysis of the stand-alone long distance market. *See supra* part III.A.1.a(i)(a)(i).

¹²⁵ Appendix B, Table 1. Like our analysis of the stand-alone long distance market, *see supra* n.119, our analysis of this bundled market assumes that 10 percent of households have "cut-the-cord." We follow the procedure set forth in Appendix B, notes 3 and 6, to estimate AT&T's and Verizon's shares of the bundled market.

¹²⁶ Appendix B, Table 2.

¹²⁷ *See, e.g., AT&T Reclassification Order*, 11 FCC Rcd at 3346, para. 139.

¹²⁸ *See* AT&T Apr. 24, 2007 *Ex Parte* Letter at 2, Attach. at 4 (citing December 2005 Yankee Report that 70 percent of households have a mobile wireless phone); *High-Speed Services Jan. 2007 Report* at Table 3. We note that these market developments have occurred since the Commission adopted the *LEC Classification Order* in 1997. Specifically, at that time, personal communications service (PCS) carriers were only beginning to initiate services in a relatively small number of markets. *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Second Report, 12 FCC Rcd 11266, 11290 (1997) (reporting that PCS licensees had initiated services in portions of 29 major trading areas). Mobile wireless carriers had not yet begun to offer regional or national calling plans that permit consumers to place what would have been toll calls without incurring additional per minute charges. *See Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, 16 FCC Rcd 13350, 13377 (2001) (reporting that, in 1998, AT&T became the first wireless carrier to offer a large bucket of minutes plan with a regional or national footprint, but that virtually all of the major operators offered similar plans by 2001). Further, few customers had access to, or subscribed to broadband Internet access services. *High-Speed Services Jan. 2007 Report* at Table 3 (showing less than 3.2 million subscribers nationwide in 2000).

finding that AT&T and Verizon lack market power in the provision of mass market interstate, long distance services within their franchise areas.

45. In addition, the Commission traditionally considers demand substitutability factors. The record in this proceeding does not include data sufficient for us to estimate precisely the own-price elasticity of demand for stand-alone, interstate, long distance or bundled local and long distance services.¹²⁹ Nor does the record permit us to determine the cross-elasticity of demand between interstate, long distance services provided by wireline carriers and similar services provided by wireless carriers and over-the-top VoIP providers. Nevertheless, the evidence in the record is consistent with the Commission's previous finding that customers are willing to shift usage to wireless and over-the-top VoIP providers in response to changes in relative prices.¹³⁰ More specifically, the increase in the number of customers subscribing to competitive wireline and cable services suggests an increase in the elasticity of demand for AT&T's and Verizon's interstate, long distance services.¹³¹ In addition, the increase in subscriptions to broadband Internet access services,¹³² the increase in subscriptions to mobile wireless services,¹³³ and the migration of wireline minutes to mobile wireless minutes indicate that consumers are increasingly finding that these alternatives serve as substitutes for traditional wireline long distance services offered by AT&T, Verizon and other carriers.¹³⁴

46. Finally, with respect to supply substitutability, we note that the Commission, in the *LEC Classification Order*, found that there was significant excess capacity for the provision of interstate long distance services, which would permit competitors to expand their output should a BOC attempt to raise the price of these services.¹³⁵ Moreover, in the recent *BOC Merger Orders*, the Commission reaffirmed

¹²⁹ The "own-price elasticity" of demand refers to the percentage change in the quantity demanded of a particular service that results from a change in the price of that service.

¹³⁰ *AT&T/BellSouth Order*, 22 FCC Rcd at 5716, paras. 98-99; *SBC/AT&T Order*, 20 FCC Rcd at 18342-43, paras. 93-94; *Verizon/MCI Order*, 20 FCC Rcd at 18484-86, paras. 93-94.

¹³¹ See Appendix B, Tables 1 and 2. Facilities-based residential competitive local service lines have increased from [REDACTED] to [REDACTED] within AT&T's franchise areas and from [REDACTED] to [REDACTED] within Verizon's franchise areas. See, e.g., AT&T April 23, 2007 *Ex Parte* Letter, Exh. 1.f; Verizon March 27, 2007 *Ex Parte* Letter, Exh. 1.f; Verizon April 13, 2007 *Ex Parte* Letter, Exh. 1.f.4, and notes accompanying Appendix B, Tables 1 and 2.

¹³² *High-Speed Services Jan. 2007 Report* at Table 3. We base this conclusion on the Commission's findings in the *SBC/AT&T Order* and *Verizon/MCI Order*. See, e.g., *SBC/AT&T Order*, 20 FCC Rcd at 18369-72, paras. 147-52; *Verizon/MCI Order*, 20 FCC Rcd at 18337-40, paras. 86-88. There is no evidence in the record to suggest that consumers within the legacy BellSouth region would view VoIP services differently than would consumers in the legacy SBC region.

¹³³ See *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 06-17, Eleventh Report, 21 FCC Rcd 10947, 11009-11, paras. 157-61 (2006) (*Eleventh CMRS Competition Report*).

¹³⁴ See, e.g., *id.* at 11027, para. 206; *Universal Service Contribution Methodology*, WC Docket No. 06-122, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (*Universal Service Contribution Methodology Order*), *aff'd in part, vacated in part, Vonage Holdings Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007). We find the studies of price elasticity for intraLATA services in Arizona and Oregon cited by legacy AT&T inapposite to our analysis of interLATA services, and find, moreover, that legacy AT&T's argument is inconsistent with the evidence of increasing access and usage substitution for traditional wireline long distance services.

¹³⁵ *LEC Classification Order*, 12 FCC Rcd at 15811, para. 97.

its finding that the wholesale long distance market is competitive due to substantial excess capacity.¹³⁶ There is no evidence in this record that would cause us to reconsider these findings.

47. Accordingly, based on the foregoing market analysis, we find that AT&T and Verizon lack individual, classical market power in the provision of interstate, long distance services for the mass market. Despite this general finding, the record does raise two areas of potential concern. The first concern relates to customers that make relatively few interstate long distance calls. In the *AT&T Reclassification Order*, the Commission expressed concern that, while AT&T lacked individual market power in the provision of mass market, interstate interLATA telecommunications services, customers that make few interstate long distance calls might nevertheless be harmed by the elimination of price cap regulation for AT&T's Basket One services.¹³⁷ In response, AT&T offered certain commitments to protect these consumers, which the Commission accepted and made conditions of its Order.¹³⁸ Here, we are concerned that consumers that make relatively few interstate long distance calls and that do not subscribe to wireless service or broadband Internet access service may have fewer competitive choices among interstate, interLATA long distance providers, and may not be able to avoid the impact of a price increase by engaging in usage substitution. We address this concern in part III.A.4.b(iii) below.

48. Our second concern relates to a potential information failure that may prevent consumers from selecting the most cost-effective long distance plan. Consumers today that subscribe to wireline unlimited long distance plans often are not informed of their monthly usage of wireline long distance minutes. Without such information on their toll usage, however, they may have insufficient information to determine whether it might be more cost-effective for them to select a long distance plan that offers a limited number of toll minutes or charges long distance calls on a per-minute basis. In this regard, we believe that a consumer needs transparency in pricing to ensure that he chooses the carrier that best suits his or her needs.¹³⁹ We address this concern in part III.A.4.b(iv) below.

(b) Retail Enterprise Services

49. We conclude that AT&T and Verizon separately lack classical market power with respect to interstate, long distance services for the enterprise market. In evaluating whether AT&T and Verizon separately possess market power, we consider AT&T's and Verizon's market share, their competitors' market shares, trends in their market shares, factors affecting demand substitutability, and supply substitutability. Although we find that AT&T's and Verizon's market shares within their respective franchise areas are relatively high for some relevant products,¹⁴⁰ we nonetheless conclude that they each separately lack market power with respect to in-region, interstate, enterprise, long distance services.

¹³⁶ See, e.g., *SBC/AT&T Order*, 20 FCC Rcd at 18369-72, paras. 147-52; *Verizon/MCI Order*, 20 FCC Rcd at 18510-12, paras. 145-51.

¹³⁷ AT&T's Basket One services included residential and small business services. See *AT&T Reclassification Order*, 11 FCC Rcd at 3277, para. 8.

¹³⁸ See *AT&T Reclassification Order*, 11 FCC Rcd at 3315, para. 84; see also *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5243-44, para. 71 (Qwest committed for two years to freeze the per-minute prices for two calling plans that it currently offers which are tailored to the needs of those customers who make few long distance calls and who do not subscribe to wireless or broadband Internet access service. Qwest also committed not to increase the monthly fee that applies to one of these plans by more than one dollar.)

¹³⁹ See *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5244, para. 72.

¹⁴⁰ See Appendix C, Tables 1-8.

(i) Market Shares

50. We begin our analysis by calculating market shares and Herfindahl-Hirschman Index (HHI) estimates for long distance voice and data enterprise services for each of AT&T's and Verizon's franchise areas for which we have sufficient data.¹⁴¹ In general, the market share calculations indicate a moderate level of concentration in most franchise areas for many relevant services for *large* enterprise customers with significant operations in AT&T's region and Verizon's region.¹⁴² As noted above, our analysis of particular geographic areas is limited by the data submitted by AT&T and Verizon. We report figures for state-wide data for AT&T's regions, while we report figures for Verizon's Bell Atlantic franchise areas and GTE territories. We note that Verizon submitted combined Bell Atlantic/GTE data for the two states (Pennsylvania and Virginia) in which it has both a Bell Atlantic franchise area and a GTE territory.

51. AT&T's median market share for large enterprise customers for long distance voice services is [REDACTED] percent for the states within its BOC region.¹⁴³ For data services provided within AT&T's BOC regions, AT&T's median market share for T-1 data services is [REDACTED] percent,¹⁴⁴ its median market share for T-3 data services is [REDACTED] percent,¹⁴⁵ and its median market share for ATM data services is [REDACTED] percent.¹⁴⁶

52. For Verizon, we report figures separately for its BOC franchise areas and for its former GTE franchise areas. Verizon's median market share for large enterprise customers for long distance voice services is [REDACTED] percent for its former Bell Atlantic region¹⁴⁷ and [REDACTED] percent for its former GTE territory.¹⁴⁸ Verizon's median market share for T-1 data services is [REDACTED]

¹⁴¹ The HHI is calculated as the sum of the squares of the market shares of each firm participating in a relevant market. The HHI can range from nearly zero in the case of an atomistic market to 10,000 in the case of a pure monopoly. Because the HHI is based on the squares of the market shares of the participants, it gives proportionately greater weight to carriers with larger market shares. *See DOJ/FTC Guidelines* at § 1.5. We only report the median market share for services with sufficient data in at least five geographic markets. In Appendix C, we report market share information for all relevant services and all relevant geographic markets in which there are sufficient data.

¹⁴² Our analysis of AT&T's and Verizon's market positions are based upon data AT&T and Verizon obtained from third parties. *See* AT&T Apr. 23, 2007 *Ex Parte* Letter, Exh. 4 (state-wide and MSA data); Verizon Apr. 19, 2007 *Ex Parte* Letter, Attach. 4.5 (franchise area data); Verizon Apr. 20, 2007 *Ex Parte* Letter, Exh. 4.5 (MSA-level data). The business segments reported in the third party data do not generally conform to the categorization schemes used by AT&T or Verizon, and thus, may overstate or understate the actual level of concentration in each relevant geographic market. *See supra* para. 26. In general, we limit our analysis to geographic areas with at least 30 observations. We exclude the "UNSPECIFIED" category from our analysis because it represents incomplete responses.

¹⁴³ Appendix C, Table 1. AT&T's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁴⁴ *Id.* AT&T's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁴⁵ *Id.* AT&T's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁴⁶ *Id.* AT&T's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED]. We do not report figures for Frame Relay data services because of insufficient data for these services. *See* Appendix C, Table 1.

¹⁴⁷ Appendix C, Table 2. Bell Atlantic's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁴⁸ *Id.* GTE's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

percent for its former Bell Atlantic region¹⁴⁹ and [REDACTED] percent for its former GTE territory.¹⁵⁰ Verizon's median market share for T-3 data services is [REDACTED] percent within its former Bell Atlantic region.¹⁵¹ Verizon's median market share for Frame Relay data services is [REDACTED] percent within its former Bell Atlantic region¹⁵² and [REDACTED] percent within its former GTE territory.¹⁵³

53. Similarly, the market share calculations indicate a moderate level of concentration in most franchise areas for many relevant services for small/medium business customers with significant operations in AT&T's and Verizon's respective regions. Within its region, AT&T's median statewide market share for long distance voice services provided to small/medium enterprise customers is [REDACTED] percent,¹⁵⁴ its median statewide market share for T-1 data services is [REDACTED] percent,¹⁵⁵ its median statewide market share for T-3 data services is [REDACTED] percent,¹⁵⁶ and its median statewide market share for ATM data services is [REDACTED] percent.¹⁵⁷

54. Verizon's median state franchise area market share for long distance voice services provided to small/medium enterprise customers is [REDACTED] percent within its former Bell Atlantic region¹⁵⁸ and [REDACTED] percent within its former GTE territory.¹⁵⁹ Verizon's median state franchise area market share for T-1 data services is [REDACTED] percent within its former Bell Atlantic region¹⁶⁰

¹⁴⁹ *Id.* Bell Atlantic's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁵⁰ *Id.* GTE's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁵¹ *Id.* Bell Atlantic's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED]. We do not report figures for T-3 services in GTE's franchise areas or ATM data services in Bell Atlantic's franchise areas or GTE's territories because we have insufficient data for fewer than [REDACTED] of these franchise areas. *See* Appendix C, Table 2.

¹⁵² *Id.* Bell Atlantic's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁵³ *Id.* GTE's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁵⁴ Appendix C, Table 3. AT&T's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁵⁵ *Id.* AT&T's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁵⁶ *Id.* AT&T's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁵⁷ *Id.* AT&T's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED]. *See* Appendix C, Table 3 for individual state results for Frame Relay services within AT&T's franchise areas with more than 30 observations.

¹⁵⁸ Appendix C, Table 4. Bell Atlantic's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁵⁹ *Id.* GTE's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁶⁰ *Id.* Bell Atlantic's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

and [REDACTED] percent within its former GTE territory.¹⁶¹ Within the former Bell Atlantic region, Verizon's median state franchise area market share for T-3 data services is [REDACTED] percent,¹⁶² and its median state franchise area market share for ATM data services is [REDACTED] percent within its former Bell Atlantic region.¹⁶³ Verizon's median state franchise area market share for Frame Relay data services is [REDACTED] percent within its former Bell Atlantic region¹⁶⁴ and [REDACTED] percent within its former GTE territory.¹⁶⁵

55. These market shares and accompanying estimates of level of concentration suggest that AT&T and Verizon each operate in moderately concentrated in-region markets for the long distance voice services and the data services discussed above. These data further suggest that a significant number of competitors operate within each of these markets.

56. Finally, we find that AT&T and Verizon separately lack classical market power with respect to interstate, long distance services provided to large enterprise customers with national, multi-location operations both inside and outside of AT&T's and Verizon's respective franchise areas. First, AT&T's and Verizon's estimated market shares for these services do not raise concerns with respect to classical market power. For long distance services provided to the largest enterprise customers, AT&T's market share is [REDACTED] percent measured in revenues and their market share is [REDACTED] percent measured in minutes.¹⁶⁶ The corresponding figures for Verizon are [REDACTED] percent and [REDACTED] percent.¹⁶⁷ Second, consistent with the Commission's conclusions in the *SBC/AT&T Order* and the *Verizon/MCI Order*, we find that these large, multi-location enterprise customers tend to be sophisticated purchasers of communications services that make their decisions about communications services by using either communications consultants or employing in-house communications experts. This is significant not only because it demonstrates that these users are aware of the multitude of choices available to them, but also because it shows that these users are likely to make informed choices based on expert advice about service offerings and prices. Thus, so long as competitive choices remain in this

¹⁶¹ *Id.* GTE's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁶² *Id.* Bell Atlantic's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED]. Refer to Appendix C, Table 4 for individual franchise area results for T-3 services (GTE franchise area). We do not report figures in the text because fewer than [REDACTED] geographic areas have sufficient data for our analysis.

¹⁶³ *Id.* Bell Atlantic's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED]. We do not report figures for ATM services in the GTE franchise area in the text because fewer than [REDACTED] geographic areas have sufficient data for our analysis.

¹⁶⁴ *Id.* Bell Atlantic's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁶⁵ *Id.* GTE's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁶⁶ Appendix C, Table 9.

¹⁶⁷ *Id.* These estimates are based upon services provided to the largest purchasers of telecommunications services (*i.e.*, enterprise customers spending at least \$1,000,000 annually). AT&T May 1, 2007 *Ex Parte* Letter, Exh. 5a. Verizon estimates it has a [REDACTED] percent market share for long distance voice services provided to all business customers, but it is unable to distinguish national, multi-locational enterprise customers from other types of enterprise customers. Letter from Joseph Jackson, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112 at 1, Exh. 5.1 (filed Apr. 12, 2007) (Verizon Apr. 12, 2007 *Ex Parte* Letter).

market, these large multi-location enterprise customers should seek out best-priced alternatives, and neither AT&T nor Verizon should be able to raise and maintain prices above competitive levels.¹⁶⁸

(ii) Other Factors

57. Although the record in this proceeding does not include estimates of either the price elasticities of demand or the elasticities of supply for interstate, long distance services within AT&T's and Verizon's regions, the Commission's findings in the recent *BOC Merger Orders* help to inform our analysis here. Specifically, consistent with the Commission's conclusions in the recent *BOC Merger Orders*, we find that enterprise customers tend to be sophisticated purchasers of communications services, whether they are located solely within AT&T's or Verizon's respective regions, or have locations both inside and outside these regions. Because enterprise customers tend to make their decisions about communications services by employing communications consultants or in-house communications experts, we expect them to be aware of the multitude of choices available to them.¹⁶⁹

(c) Wholesale Interexchange Competition

58. The Commission previously has identified wholesale domestic, interstate, interexchange (*i.e.*, long distance) services as a separate product market, although it has not always found it necessary to conduct a separate analysis of that product market.¹⁷⁰ Consistent with our definition of the relevant geographic markets for retail enterprise and retail mass market services,¹⁷¹ we conclude that the relevant geographic market for wholesale, interstate, long distance services is the customer's location.¹⁷² We then aggregate locations where customers face similar competitive choices. Since all the major providers of wholesale long distance services have nationwide networks,¹⁷³ we can aggregate customers of wholesale long distance service who are located throughout the United States. Moreover, wholesale long distance customers generally need to connect to the wholesale long distance provider at multiple locations throughout the United States. Consequently, we find it appropriate to aggregate customer locations and evaluate wholesale long distance services at the national level.¹⁷⁴

59. Consistent with prior Commission findings, we find that the market for wholesale, interstate, long distance services is competitive, and that significant spare capacity exists in this market.¹⁷⁵ Specifically, AT&T's market share for wholesale long distance voice services is approximately [REDACTED] percent, and its market share for wholesale data services is [REDACTED] percent. The

¹⁶⁸ See *SBC/AT&T Order*, 20 FCC Rcd at 18332-33, para. 76; *Verizon/MCI Order*, 20 FCC Rcd at 18474, para. 76.

¹⁶⁹ See *SBC/AT&T Order*, 20 FCC Rcd at 18332-33, para. 75; *Verizon/MCI Order*, 20 FCC Rcd at 18474, para. 75.

¹⁷⁰ See, e.g., *SBC/AT&T Order*, 20 FCC Rcd at 18369, para. 147; *Verizon/MCI Order*, 20 FCC Rcd at 18510, para. 146; *WorldCom/MCI Order*, 13 FCC Rcd at 18041-42, para. 28.

¹⁷¹ See *supra* parts III.A.1.a(iv)(b) (Retail Enterprise Competition), III.A.1.a(iv)(a) (Mass Market Competition).

¹⁷² We note that individual customers of wholesale, interstate, long distance services are, like larger, multi-location enterprise customers, likely to require access to service at multiple geographic locations, often throughout the United States or a region thereof. See *supra* part III.A.1.a(iv)(b) (Retail Enterprise Competition).

¹⁷³ See, e.g., *SBC/AT&T Order*, 20 FCC Rcd at 18369, para. 148; *Verizon/MCI Order*, 20 FCC Rcd at 18510, para. 147.

¹⁷⁴ We note that this approach is consistent with our definition of the relevant geographic markets for larger multi-location enterprise customers with a nationwide presence. See *supra* part III.A.1.a(iv)(b) (Retail Enterprise Competition).

¹⁷⁵ See *SBC/AT&T Order*, 20 FCC Rcd at 18369-18371, para. 149-151; *Verizon/MCI Order*, 20 FCC Rcd at 18510-18512, para. 148-151.

corresponding figures for Verizon's wholesale services are [REDACTED] percent and [REDACTED] percent.¹⁷⁶ We find that, in addition to AT&T and Verizon, Qwest, and others have a significant presence in this market.¹⁷⁷ Moreover, as the Commission recently determined, there is significant spare capacity in this market, and this industry segment faces increasing pressure from the migration of minutes to packet-switched voice services, Internet-based applications, and other technological substitutes.¹⁷⁸ There is no information in this record that would cause us to alter these findings. The evidence of continued competition from a variety of wholesale interexchange service providers convinces us that the BOCs lack individual classical market power with respect to these wholesale markets.¹⁷⁹ Based on the foregoing, we find that the BOCs are not dominant in the wholesale segment of the domestic, interstate, long distance services market.

b. International Telecommunications Services

60. We conclude that AT&T, Verizon, and Qwest lack individual classical market power in the markets for in-region, international telecommunications services.¹⁸⁰ We examine two wholesale markets for these services – facilities-based international message telecommunications services (IMTS)¹⁸¹ and international private line services¹⁸² – and two retail IMTS markets – mass market IMTS and international enterprise services.

¹⁷⁶ Appendix D, Table 1 and 2.

¹⁷⁷ *Id.* See *SBC/AT&T Order*, 20 FCC Rcd at 18370, para. 150; *Verizon/MCI Order*, 20 FCC Rcd at 18511, para. 149; see also *AT&T Reclassification Order*, 11 FCC Rcd at 3308, paras. 70, 72; *WorldCom/MCI Order*, 13 FCC Rcd at 18052-56, paras. 43-50 & 18066-67, para. 70.

¹⁷⁸ See *SBC/AT&T Order*, 20 FCC Rcd at 18370, para. 150; *Verizon/MCI Order*, 20 FCC Rcd at 18511, para. 149.

¹⁷⁹ Appendix D, Tables 1 and 2.

¹⁸⁰ We do not consider whether AT&T, Verizon, or Qwest should be classified as dominant based on an affiliation with a foreign carrier that has market power on the foreign end of a U.S. route. Qwest and AT&T have certified that none of their international affiliates are classified as dominant pursuant to section 63.10 of the Commission rules, 47 C.F.R. § 63.10. See AT&T Apr. 24, 2007 *Ex Parte* Letter at 1-2; Letter from Timothy M. Boucher, Qwest Corporate Counsel, to Marlene H. Dortch, Secretary, FCC, WC Docket. No. 05-333, at 1 (filed Jan. 22, 2007) (Qwest Jan. 22, 2007 *Ex Parte* Letter). Although Verizon has been classified as dominant on three international routes (U.S.-Dominican Republic, U.S.-Gibraltar, and U.S.-Venezuela) based on its affiliations with foreign carriers, Verizon has terminated these affiliations. Specifically, Verizon Communications sold its Verizon Dominicana affiliate to America Movil on December 1, 2006, and was reclassified as nondominant on the U.S.-Dominican Republic route on June 20, 2007. See *International Authorizations Granted*, Report No. TEL-01159, Public Notice, 22 FCC Rcd 11176, 11177 (2007). Verizon sold its interest in Gibtelecom Limited to Slovene Telekom on April 24, 2007, and filed for reclassification as nondominant on the U.S.-Gibraltar route. See *Verizon International FCC Licensees Application to Modify Regulatory Classification on the U.S.-Gibraltar Route*, File No. ITC-MOD-20070514-00322 (filed May 14, 2007). Verizon tendered its entire interest in, and the Bolivarian Republic of Venezuela assumed operational control of, Compañía Anónima Nacional Teléfonos de Venezuela (CANTV) as of May 21, 2007, and Verizon filed for reclassification as nondominant on the U.S.-Venezuela route. See *Verizon International FCC Licensees Application to Modify Regulatory Classification from Dominant to Non-Dominant on the U.S.-Venezuela Route*, File No. ITC-MOD-20070524-00323 (filed May 24, 2007).

¹⁸¹ Facilities-based IMTS refers to services provided using international transmission facilities owned in whole or in part by the carrier providing the service. See *2005 International Telecommunications Data* at 3 (Strategic Analysis and Negotiations Div., International Bur. Apr. 2007) (*2005 Section 43.61 Report*).

¹⁸² International private line service is the provision by a U.S. carrier of dedicated connectivity between points in the United States and foreign destinations. See *Verizon/MCI Order*, 20 FCC Rcd at 18519, para. 168. Private line facilities are offered to the public in sizes ranging from 64-Kbps circuits (DS0) up to very high speed trunks equivalent to 1,890 64-Kbps circuits (STM-1), or higher. *Id.*

(i) Wholesale Markets

61. We find that AT&T, Verizon, and Qwest do not possess individual, classical market power in the markets for facilities-based IMTS or international private line services. We base these findings on AT&T's, Verizon's, and Qwest's traffic shares for all international routes combined, their respective market shares on a route-specific basis, and prior Commission findings regarding characteristics of this market. Qwest is not a facilities-based provider of IMTS, and thus has no ability to exercise classical market power in this market.¹⁸³ In addition, AT&T's and Verizon's respective market shares and the characteristics of this market support a finding that AT&T and Verizon also each lack individual classical market power in this market. As of 2005, the most recent year for which data are available, there were 45 facilities-based IMTS carriers. In 2005, AT&T and Verizon respectively accounted for [REDACTED] percent and [REDACTED] percent of the total number of all IMTS facilities-based minutes.¹⁸⁴ While AT&T and Verizon account for a significant proportion of minutes on some specific routes,¹⁸⁵ these are generally "thin" routes. Moreover, the Commission has found the IMTS market to be competitive. Specifically, in the *Verizon/MCI Order*, the Commission found that: (1) there were not significant barriers to entry on most international routes; (2) substantial international transport capacity exists in all regions; and (3) there were at least 10 reporting facilities-based IMTS carriers on 218 of the 247 international routes; and (4) there is a growing "spot market" for international termination services whereby carriers with excess capacity to various foreign destinations can auction foreign termination services to any U.S. carrier seeking such services.¹⁸⁶ The Commission further found that, with improvements in quality of service and customer access, international VoIP services from the United States to foreign destinations could become a substitute for facilities-based IMTS services.¹⁸⁷ There is no evidence in this record that would cause us to reconsider these findings. Finally, with respect to international private line service, we find that AT&T's, Verizon's, and Qwest's traffic shares, as well as the number of providers operating in this market,¹⁸⁸ indicate that AT&T, Verizon, and Qwest individually could not exercise classical market power in this market. Therefore, we find it unlikely that AT&T,

¹⁸³ 2005 Section 43.61 Report at Table D.

¹⁸⁴ *Id.*

¹⁸⁵ AT&T's market share is less than [REDACTED] percent on all but [REDACTED] of the 247 international routes. The exceptions are: [REDACTED]. Verizon's market share is less than [REDACTED] percent on all but [REDACTED] of 247 international routes, with the following exceptions: [REDACTED]. As noted, the routes where AT&T and Verizon's market share exceed [REDACTED] percent generally are "thin" routes, which would be unlikely to support a significant number of additional providers. See Verizon May 8, 2007 *Ex Parte* Letter at 1 & Attach.; Letter from Frank S. Simone, Executive Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112 at 1 & Attach. (filed May 4, 2007) (AT&T May 4, 2007 *Ex Parte* Letter); 2005 Section 43.61 Report, at Table A.

¹⁸⁶ *Verizon/MCI Order*, 20 FCC Rcd at 18518, para. 166; *AT&T/BellSouth Order*, 22 FCC Rcd at 5744-45, para. 167.

¹⁸⁷ *Verizon/MCI Order*, 20 FCC Rcd at 18518, para. 167; see also *AT&T/BellSouth Order*, 22 FCC Rcd at 5745, para. 168.

¹⁸⁸ In 2005, there were 46 carriers that competed in the U.S. markets for international private line services. The shares of total U.S. international private lines were only [REDACTED] percent for AT&T, [REDACTED] percent for Qwest, and [REDACTED] percent for Verizon. See Verizon May 8, 2007 *Ex Parte* Letter at 1 & Attach.; AT&T May 4, 2007 *Ex Parte* Letter at 1 & Attach.; 2005 Section 43.61 Report, at Table A. Although AT&T, Verizon, and Qwest had substantial market shares on certain routes, many of these routes are thin routes. Moreover, the existence of substantial U.S. international transport capacity, from which private lines are derived, makes it unlikely that providers of private line service with large market shares on any route can exercise market power. In 2005, private lines comprised approximately 4 percent of all lit U.S. submarine cable capacity, which is the primary transmission medium for non-thin route private lines. See 2005 *Circuit Status Report*, Tables 5 and 7 (Jan. 19, 2007).

Verizon, or Qwest individually could exercise market power in the wholesale markets for facilities-based IMTS or international private line services.

(ii) End-User Markets

62. We also find that AT&T, Verizon, and Qwest do not possess individual, classical market power in the provision of international telecommunications services provided to mass market customers and to retail enterprise customers. The market for mass market, international telecommunications services resembles in many respects the market for domestic long distance services in that these customers generally have the same presubscribed interexchange carrier or wireless carrier when making both domestic and international long distance calls.¹⁸⁹ The Commission has found that presubscription to a particular IMTS provider is generally less important for mass market consumers because consumers placing a large number of international calls often use “dial-around” services or prepaid calling cards to reduce the prices they pay for those calls.¹⁹⁰ Thus, AT&T’s, Verizon’s, and Qwest’s market shares for in-region, interstate, long distance services likely provide an upper bound for their respective market shares in the IMTS mass market. Given our conclusion that AT&T, Verizon, and Qwest lack individual, classical market power with respect to in-region interstate, long distance services for the mass market,¹⁹¹ we thus conclude that AT&T, Verizon, and Qwest also lack individual, classical market power with respect to mass market IMTS.

63. We also conclude that AT&T, Verizon, and Qwest do not possess individual, classical market power with respect to IMTS provided to enterprise customers. Like purchasers of domestic enterprise services,¹⁹² international enterprise customers are sophisticated purchasers of telecommunications services that are likely to make informed choices based on expert advice about service offerings and prices. In addition, the provision of international telecommunications services to enterprise customers depends in large part on the ability to obtain critical inputs, such as international transport capacity and operating agreements with carriers on the foreign end, as well as the technical ability to provide the specific services demanded by larger business customers. Given the Commission’s prior findings that there are no structural barriers to entry for international telecommunications services provided to enterprise customers, we therefore find that AT&T, Verizon, and Qwest lack individual classical market power with respect to international enterprise services.¹⁹³

c. Control of Bottleneck Access Facilities

64. We next consider whether the BOCs’ provision of in-region, interLATA telecommunications services directly or through an affiliate that is not compliant with section 272 would permit them to raise the price of those services by raising their rivals’ costs through their control over bottleneck facilities.¹⁹⁴ The BOCs assert that they face significant competition within their respective

¹⁸⁹ See *Verizon/MCI Order*, 20 FCC Rcd at 18520, para. 171.

¹⁹⁰ *Id.*

¹⁹¹ See *supra* part III.A.1.a(iv)(a); Appendix B; *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5224-25, para. 32 & Appendix B.

¹⁹² See *supra* part III.A.1.a(iv)(b).

¹⁹³ See, e.g., *Verizon/MCI Order*, 20 FCC Rcd at 18518, para. 166. Most of the 45 facilities-based IMTS carriers and all of the 46 international private line carriers listed above provide service to enterprise customers.

¹⁹⁴ See *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5231, para. 47; *LEC Classification Order*, 12 FCC Rcd at 15812-13, paras. 98, 100.

regions from wireline, wireless, and other intermodal competitors,¹⁹⁵ and that their respective retail access line bases have declined significantly.¹⁹⁶ We find, however, that the BOCs have failed to present persuasive evidence that they no longer possess exclusionary market power within their regions as a result of their control over ubiquitous telephone exchange service and exchange access networks. We therefore assume, for the purposes of this proceeding, that each of the BOCs individually continues to possess exclusionary market power within its respective regions by reason of its control over these bottleneck access facilities.¹⁹⁷

2. Dominant Carrier Regulation

65. In the *Section 272 Sunset and Independent Incumbent LEC Further NPRM*, the Commission sought comment on whether it should apply dominant carrier regulation to any in-region, interstate, long distance services that the BOCs and the independent incumbent LECs provide either directly or through affiliates that are neither section 272 separate affiliates nor rule 64.1903 separate affiliates.¹⁹⁸ We find here that application of dominant carrier regulation to AT&T's, Verizon's, and Qwest's in-region, interstate, long distance services is unwarranted. First, as our market analysis indicates, AT&T, Qwest, and Verizon do not possess classical market power in the provision of in-region, interstate, long distance services, which is the type of market power that dominant carrier regulation is designed to address.¹⁹⁹ Second, as the Commission recognized in the *LEC Classification Order*, dominant carrier regulation is not designed to guard against potential abuse of exclusionary market power.²⁰⁰ Instead, as discussed below, existing safeguards, combined with the additional safeguards set forth below, adequately address the ability of AT&T, Qwest, and Verizon to raise their long distance rivals' costs through their control of bottleneck access facilities.²⁰¹

¹⁹⁵ See, e.g., Legacy BellSouth FNPRM Comments at 7-9; Legacy SBC FNPRM Comments at 16-20; Verizon FNPRM Comments at 11-18; Verizon Feb. 15, 2007 *Ex Parte* Letter at 2-15.

¹⁹⁶ See, e.g., Legacy BellSouth FNRPM Reply at 5-8; Verizon Feb. 15, 2007 *Ex Parte* Letter at 15-25.

¹⁹⁷ See, e.g., *LEC Classification Order*, 12 FCC Rcd at 15835, para. 134; Legacy AT&T NPRM Comments at 12-14 (arguing that BOCs continue to retain and exercise market power through their control of bottleneck facilities); Legacy AT&T FNPRM Comments at 8-21 (same); AdHoc FNPRM Reply at 3-5 (arguing that incumbent LECs continue to dominate local exchange and exchange access markets).

¹⁹⁸ *Section 272 Sunset and Independent Incumbent LEC Further NPRM*, 18 FCC Rcd at 10932-36, paras. 29-43.

¹⁹⁹ AT&T, Qwest, and Verizon also provide in-region, interstate, intraLATA, long distance services, which are interexchange telecommunications services that cross state lines but remain within a single LATA. See *Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 98-157, CCB/CPD File No. 98-63, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14245, para. 48 (1999) (*Pricing Flexibility Order*) (explaining that “[i]nterstate intraLATA toll calls are calls that leave an immediate local calling area and cross state lines but remain within a single LATA, such as some calls from Chicago, Illinois, to Gary, Indiana”), *aff’d sub nom. WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001). We find there is no practical distinction between these services and the BOCs’ in-region, interstate, interLATA, long distance services.

²⁰⁰ See *LEC Classification Order*, 12 FCC Rcd at 15762-63, para. 6 (concluding that “regulating BOC in-region interLATA affiliates as dominant carriers generally would not help to prevent improper allocation of costs, discrimination by the BOCs against rivals of their interLATA affiliates, or price squeezes by the BOCs or the BOC interLATA affiliates”).

²⁰¹ See *LEC Classification Order*, 12 FCC Rcd at 15835, para. 134.

a. In-Region, Interstate, Long Distance Services
(i) Classical Market Power

66. As our market analysis makes clear, we find that AT&T, Qwest, and Verizon generally lack classical market power in long distance markets.²⁰² Consequently, we find it unlikely that these carriers will be able unilaterally to raise and maintain the prices of in-region, interstate, long distance services above competitive levels, or otherwise impose and maintain unjust, unreasonable, or unreasonably discriminatory terms and conditions in relation to these services.²⁰³ When the Commission made similar findings concerning classical market power in the *LEC Classification Order*, it concluded that the burdens of dominant carrier regulation outweigh its benefits.²⁰⁴ Nothing in the record leads us to question that conclusion. Therefore, consistent with that precedent, we do not apply dominant carrier regulation to the BOCs' provision of in-region, interstate, long distance services either directly or through an affiliate that is neither a section 272 separate affiliate nor a rule 64.1903 separate affiliate.

67. Despite this general finding, we remain concerned, as the Commission was in the *Qwest Section 272 Sunset Forbearance Order*,²⁰⁵ that BOC residential customers who make relatively few interstate long distance calls may have fewer competitive choices among in-region, interstate long distance providers. Such customers also may not subscribe to wireless or broadband Internet access service, and therefore may be unable to avoid the impact of a price increase by engaging in usage substitution.²⁰⁶ Our concern regarding such customers is twofold. First, customers who make very few interstate, long distance calls, or whose usage patterns do not justify subscription to unlimited calling plans, should be able to choose among reasonable and affordable alternatives to such plans. Second, customers who make relatively few interstate long distance calls should receive sufficient information regarding their monthly long distance usage to make informed choices whether calling plans with large numbers of monthly minutes and unlimited calling plans suit their needs.

68. As we discuss more fully below,²⁰⁷ AT&T, Qwest, and Verizon have made commitments to address these concerns. Specifically, AT&T and Verizon have committed, for three years, to offer rate plans tailored to low-volume customers.²⁰⁸ In addition, both AT&T and Verizon have committed, for three years, to make available monthly long distance usage information for customers who subscribe to

²⁰² See *supra* part III.A.1.a(iv); see also Verizon Feb. 15, 2007 *Ex Parte* Letter at 2-21 (arguing there is extensive competition for mass market voice services from cable, wireless, over-the-top VoIP, traditional competitive LECs, and broadband over power line (BPL) providers).

²⁰³ Our market analysis also makes clear that competition may be expected to constrain AT&T, Qwest, and Verizon in both the mass market and in the market for enterprise customers. See *supra* at parts III.A.1.a(iv)(a) (AT&T and Verizon mass market analysis) & III.A.1.a(iv)(b) (AT&T and Verizon enterprise market analysis); para. 21 (determining that it is appropriate to rely on the Commission's finding that Qwest lacks classical market power with regard to in-region, interstate, long distance services).

²⁰⁴ *LEC Classification Order*, 12 FCC Rcd at 15804, para. 85, 15806-08, paras. 88-90, & 15812-33, paras. 98-130; see *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5233, para. 51.

²⁰⁵ *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5233, para. 52, & paras. 71-72; see *AT&T Reclassification Order*, 11 FCC Rcd at 3313-14, paras. 81-82.

²⁰⁶ See *supra* market analysis of usage substitution part III.A.1.a(iv)(a)(iii).

²⁰⁷ See *infra* part III.A.4.b.

²⁰⁸ See Letter from Frank Simone, Executive Director-Federal Regulatory, AT&T, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 02-112, 06-120, at 1-2 (filed Aug. 15, 2007) (AT&T Aug. 15, 2007 *Ex Parte*); Letter from Susanne A. Guyer, Senior Vice President, Federal Regulatory Affairs, Verizon, to Marlene Dortch, Secretary, FCC, WC Docket No. 02-112, at 1-2 (filed Aug. 21, 2007) (Verizon Aug. 21, 2007 *Ex Parte*).

certain single-rate telecommunications service plans.²⁰⁹ As discussed below, we find it appropriate to adopt these rate plans and usage information requirements as enforceable obligations. We note that, under the *Qwest Section 272 Sunset Forbearance Order*, Qwest made similar commitments that were adopted as a condition of the Commission's forbearance.²¹⁰

(ii) Exclusionary Market Power

69. As explained above, we assume for purposes of this proceeding that AT&T, Qwest, and Verizon continue to possess exclusionary market power within their respective regions as a result of their control over ubiquitous telephone exchange service and exchange access networks. We conclude, however, that imposing dominant carrier regulation on the BOCs' and their independent incumbent LEC affiliates' provision of in-region, long distance services is not a reasonable and cost-effective method of constraining exercise of this market power.

70. The Commission previously concluded that dominant carrier regulation is not designed to prevent the exercise of exclusionary market power.²¹¹ Nothing in the record of this proceeding persuades us to change this conclusion. AT&T's, Qwest's, and Verizon's exclusionary market power raises the possibility that they could leverage market power in the telephone exchange service or exchange access markets to impede competition in the in-region, interstate, long distance services market, through discrimination against competitors, improper cost shifting, or price squeezes.²¹² We find, however, that alternative safeguards, as described below,²¹³ address these concerns far more directly than would dominant carrier regulation of AT&T's, Qwest's, and Verizon's in-region, long distance services.

71. We recognize, of course, that dominant carrier regulation of AT&T's, Qwest's, and Verizon's in-region, long distance services could provide some increased level of protection against the exercise of exclusionary market power, beyond that provided by these alternative safeguards. Such regulation would impose significant costs, however. These costs include the administrative costs imposed on both the carriers and this Commission that are associated with price regulation, tariff-filing requirements, and reporting requirements.²¹⁴ Application of dominant carrier regulation to these services

²⁰⁹ See AT&T Aug. 15, 2007 *Ex Parte* at 2; Verizon Aug. 21, 2007 *Ex Parte* at 2.

²¹⁰ *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5243-44, paras. 71-72.

²¹¹ *LEC Classification Order*, 12 FCC Rcd at 15804, para. 85 ("dominant carrier regulations are generally designed to prevent a carrier from raising prices by restricting its output rather than to prevent a carrier from raising its prices by raising its rivals' costs"); *id.* at 15818, para. 106 & 15832, para. 129 (the Commission also concluded that dominant carrier regulation would not prevent improper cost shifting, and would not be necessary or appropriate to constrain the BOC and its affiliate from attempting to execute a predatory price squeeze).

²¹² See, e.g., *LEC Classification Order*, 12 FCC Rcd at 15815-19, paras. 103-08, 15821-26, paras. 111-19, 15829-33, paras. 125-30, & 15847-15857, paras. 158-75 (describing the incentives, ability, and means for an incumbent LEC to improperly allocate costs, engage in price and non-price discrimination, and engage in a price squeeze); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, WC Docket No. 96-149, Notice of Proposed Rulemaking, 11 FCC Rcd 18877, 18944, para. 139 (1996) (*Non-Accounting Safeguards NPRM*) (BOCs could use market power in the provision of local exchange and exchange access services to discriminate against interLATA affiliates' competitors to gain an advantage for their interLATA affiliates).

²¹³ See *infra* part III.A.4.

²¹⁴ See, e.g., Legacy BellSouth FNPRM Comments at 22-28 (claiming that dominant carrier regulation imposes significant costs and burdens with no countervailing benefits to consumers); Qwest FNPRM Comments at 21-23 (same); *LEC Classification Order*, 12 FCC Rcd at 15806-08, paras. 88-90.

also would restrict AT&T's, Qwest's, and Verizon's ability to respond to competitors' pricing and product initiatives, and would give competitors advance notice of AT&T's, Qwest's, and Verizon's own pricing plans and new products.²¹⁵ By impeding the BOCs' ability to compete, these requirements could dampen competition.²¹⁶ Given the relative inefficiency of dominant carrier regulation in constraining the exercise of exclusionary market power and the significant costs associated with such regulation, we find that alternative safeguards we discuss and adopt below are more cost-effective than, and preferable to, imposing dominant carrier regulation.²¹⁷

(iii) Conclusion

72. Based on the preceding analysis, we find the BOCs to be nondominant in the provision of in-region, interstate, long distance services that they provide either directly or through affiliates that are not section 272 separate affiliates as long as they comply with certain targeted safeguards set forth below as well as continuing statutory and regulatory obligations. We also find the BOCs' independent incumbent LEC affiliates to be nondominant in the provision of in-region, long distance services either directly or through affiliates that are not rule 64.1903 separate affiliates. We discuss the effects of these findings in part III.A.2.c, below.

b. International Telecommunications Services

73. As discussed in part III.A.1.b, we conclude that AT&T, Verizon, and Qwest do not have the ability separately to exercise classical market power in the markets for in-region, international telecommunications services. Therefore, consistent with the Commission's conclusions in the *LEC Classification* and the *Qwest Section 272 Sunset Forbearance Orders*,²¹⁸ we find no practical distinctions between AT&T's, Verizon's, and Qwest's incentives and ability to use any in-region market power in their provision of international and interstate, long distance services. Accordingly, to the extent the BOCs are deemed nondominant in the provision of any in-region, international telecommunications service provided through a section 272 separate affiliate, we find them to be nondominant in the provision of that service in the event they provide it directly or through an affiliate that is not a section 272 separate affiliate. Moreover, to the extent the BOCs' independent incumbent LEC affiliates are deemed nondominant in the provision of any in-region, international telecommunications service provided through a rule 64.1903 separate affiliate, we find them to be nondominant in the provision of that service in the event they provide it directly or through an affiliate that is not a rule 64.1903 separate affiliate.

²¹⁵ See, e.g., SBC FNPRM Comments at 6 (arguing that dominant carrier regulation impedes competition because the dominant carrier must provide advance notice of new service offerings and price changes to competitors); *LEC Classification Order*, 12 FCC Rcd at 15806-08, paras. 88-90.

²¹⁶ See, e.g., Verizon FNPRM Comments at 28 (arguing the advance notice requirement under dominant competition would stifle competition); Verizon Feb. 15, 2007 *Ex Parte* Letter at 29 (arguing that dominant carrier regulation would "hinder deployment of advanced broadband networks and services"); *LEC Classification Order*, 12 FCC Rcd at 15805-07, paras. 87-88.

²¹⁷ See, e.g., Legacy BellSouth FNPRM Comments at 22-28; Legacy SBC FNPRM Comments at 4; Verizon FNPRM Comments at 28-29; see also Verizon Feb. 15, 2007 *Ex Parte* Letter at 29 (stating that "re-regulating" Verizon and other carriers as dominant will reduce efficiency, increase costs, and hinder deployment of broadband services); *LEC Classification Order*, 12 FCC Rcd at 15806-08, paras. 88-90. We reject the arguments of certain commenters that dominant carrier regulation should be maintained, since the commenters implicitly assume that structural safeguards are necessary. See, e.g., Texas AG FNPRM Comments at 1; Legacy AT&T FNPRM Comments at 47-53; NJ Ratepayer FNPRM Reply at 2; Sprint FNPRM Reply at 4. Rather, as we discuss below, we find that the alternative regulatory framework we adopt in this Order is more appropriate than the regulatory safeguards that previously had applied to the BOCs and their independent incumbent LEC affiliates.

²¹⁸ *LEC Classification Order*, 12 FCC Rcd at 15838, para. 138; see also *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5247, para. 81.

These findings are subject to the BOCs' and their independent incumbent LEC affiliates' compliance with the targeted safeguards set forth in part III.A.4.b of this Order. We discuss the effects of these findings in part III.A.2.c, below.

74. As a general matter, the BOCs and their independent incumbent LEC affiliates are not subject to dominant carrier regulation for their in-region provision of international telecommunications services to the same extent that they are not subject to those requirements for their in-region provision of domestic, interstate, long distance services. AT&T, Qwest, and Verizon remain subject, however, to our dominant carrier rules that apply specifically to U.S. carriers that provide international telecommunications services.²¹⁹ For example, to the extent that Verizon remains affiliated, or AT&T, Verizon, or Qwest become affiliated, within the meaning of section 63.09 of our rules, with a foreign carrier that has the ability to discriminate against these carriers' rivals through control of bottleneck services or facilities in a foreign destination market,²²⁰ the BOCs and their independent incumbent LEC affiliates will continue to be presumptively classified as dominant under section 63.10 of our rules and subject to the safeguards in that rule, which apply to carriers that we classify as dominant based on a foreign carrier affiliation.²²¹ Thus, our framework for addressing issues raised by the provision of international telecommunications services, either by the BOCs or their affiliates, will remain in effect.

c. Effect of Nondominance Findings

75. In this part, we discuss the specific regulatory implications of our decisions to classify the BOCs and their independent incumbent LEC affiliates as nondominant in the provision of in-region, interstate and international, long distance services, whether they provide these services directly or through affiliates that are neither section 272 nor rule 64.1903 separate affiliates. We emphasize that the BOCs and their affiliates are still subject to any rule that applies to carriers classified as nondominant in the provision of in-region, interstate and international, long distance services.²²²

76. *Price Cap, Rate of Return, and Tariffing.* In view of our nondominance determinations in this Order, we find that, subject to the conditions set forth below, AT&T, Verizon, and Qwest are no longer subject to the requirements in section 203 of the Act and certain of our price cap, rate of return, and tariffing rules with respect to in-region, interstate and international, long distance services. Specifically: (1) AT&T, Verizon, and Qwest are not required to, and are in fact barred from, filing tariffs for in-region, interstate and international, long distance services pursuant to section 203 of the Act and sections 61.31-61.38 and 61.43 of our rules;²²³ (2) AT&T, Verizon, and Qwest are not required to

²¹⁹ 47 C.F.R. § 63.10 (regulatory classification of U.S. international carriers); *see LEC Classification Order*, 12 FCC Rcd at 15838-39, para. 139 (preserving rules designed to address the incentives and ability of a foreign carrier to discriminate against the rivals of its U.S. affiliate).

²²⁰ *See supra* note 180.

²²¹ *See* 47 C.F.R. § 63.10.

²²² *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5235, para. 55.

²²³ *See* 47 U.S.C. § 203; 47 C.F.R. §§ 61.31-61.38 (tariffing requirements for dominant carriers); *see also* 47 C.F.R. § 61.43 (requiring annual price cap filings); *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730 (1996) (*Detariffing Order*); *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934*, CC Docket No. 96-61, Order on Reconsideration, 12 FCC 15014 (1997) (*Detariffing Reconsideration Order*); *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934*, CC Docket No. 96-61, Second Order on Reconsideration and Erratum, 14 FCC Rcd 6004 (1999) (*Detariffing Second Reconsideration Order*).

establish an “interexchange basket” pursuant to section 61.42(d)(4) of our rules,²²⁴ to the extent that section 61.42(d)(4) would require the establishment of an interexchange basket for the services covered by this Order when those services are provided directly or through an affiliate that is neither a section 272 nor a rule 64.1903 separate affiliate; and (3) AT&T, Verizon, and Qwest need not comply with section 61.28 of our rules for the provision of in-region, international telecommunications services to the extent that, and only to the extent that, the BOCs or their affiliates that are neither section 272 nor rule 64.1903 separate affiliates would be treated as dominant carriers under section 61.28 for no other reason than their provision of in-region, international telecommunications services.²²⁵ To the extent that the BOCs or their affiliates that are neither section 272 nor rule 64.1903 separate affiliates otherwise would be treated as dominant carriers under section 61.28, this Order has no effect on that treatment.²²⁶

77. Discontinuance and Streamlined Transfer of Control. In view of our nondominance determinations in this Order, we find that, subject to the conditions set forth below, AT&T, Qwest, and Verizon are not subject to certain of our discontinuance and streamlined transfer of control rules in connection with their in-region, interstate and international, long distance services. Specifically, AT&T, Qwest, and Verizon are not subject to sections 63.03, 63.19, 63.21, 63.23, and 63.60-63.90 of our rules for their provision of in-region, interstate and international, long distance services to the extent that, and only to the extent that, the BOCs or their affiliates would be treated as dominant carriers under these rules for no reason other than their provision of those services directly or through an affiliate that is neither a section 272 nor a rule 64.1903 separate affiliate.²²⁷ To the extent that the BOCs or their affiliates otherwise would be treated as dominant carriers under these rules, that treatment shall continue.²²⁸

78. Contract Filing and Reporting. In light of our nondominance determinations in this Order, we find that, subject to the conditions set forth below, AT&T, Qwest, and Verizon are not subject to section 43.51 of our rules with respect to their provision of in-region, interstate or international, long distance services directly or through an affiliate that is neither a section 272 nor a rule 64.1903 separate affiliate.²²⁹ Specifically, the BOCs and their affiliates are not subject to section 43.51 of our rules for their provision of in-region, interstate or international, long distance services directly or through an affiliate that is neither a section 272 nor a rule 64.1903 separate affiliate to the extent that, and only to the extent that, the BOCs or their affiliates would be treated as dominant carriers under section 43.51 for no other reason than their provision of in-region, interstate or international, long distance services directly or through an affiliate that is neither a section 272 nor a rule 64.1903 separate affiliate. To the extent that the BOCs or their affiliates otherwise would be treated as dominant carriers under section 43.51, that treatment shall continue.

²²⁴ 47 C.F.R. § 61.42(d)(4) (interexchange basket for services that are not classified as access services).

²²⁵ 47 C.F.R. § 61.28 (tariffing requirements for dominant international carriers).

²²⁶ See *supra* paras. 60-63 (addressing in-region, international telecommunications services).

²²⁷ See 47 C.F.R. § 63.03 (procedures for domestic transfer of control applications); 47 C.F.R. § 63.19 (procedures for discontinuing international services); 47 C.F.R. § 63.21 (conditions that apply to international section 214 authorizations); 47 C.F.R. § 63.23 (conditions that apply to resale-based international common carriers); 47 C.F.R. §§ 63.60-90 (definitions, rules, and procedures that apply to the discontinuance, reduction, outage, and impairment of services).

²²⁸ Our finding with respect to section 63.03 extends only to those circumstances in which the BOCs seek to assign or transfer control of assets used solely for the purpose of providing in-region, interstate or international, long distance services or to transfer control of an affiliate that does not jointly own any assets with another entity that uses such assets to provide services that are subject to dominant carrier regulation.

²²⁹ 47 C.F.R. § 43.51 (filing of carrier contracts and concessions).

3. Structural Safeguards

a. Section 272 Safeguards

79. In this part, we conclude that the section 272 safeguards, other than those in section 272(e), impose significant costs. Because we find that other less costly safeguards adequately address the concerns raised by the BOCs' possession of exclusionary market power, we decline to impose on the BOCs the section 272 safeguards that have sunset.²³⁰

80. In the *Section 272 Sunset Notice*, the Commission invited comment on whether it should extend the section 272 structural separation and other requirements, or variations of these requirements, beyond the three-year period in order to protect against anticompetitive discrimination and improper cost shifting by the BOCs in the provision of in-region, interLATA telecommunications services.²³¹ The Commission also invited comment on what, if any, alternative safeguards it should apply to BOC provisioning of in-region, interLATA, telecommunications services in the event it decided not to extend that statutory period.²³²

81. As discussed above, the BOCs have failed to demonstrate that they lack exclusionary market power associated with their control of bottleneck facilities.²³³ Accordingly, we must assume, for purposes of this proceeding, that the BOCs possess exclusionary market power.²³⁴ In the *LEC Classification Order*, the Commission relied in part on the presence of section 272 safeguards as protection against the BOCs' possible exercise of exclusionary market power.²³⁵ We find, based on the current record, however, that the section 272 safeguards, other than those in section 272(e), are not necessary to protect against the exercise of any market power the BOCs possess given our ability to rely on less costly alternatives.²³⁶

82. We find that the section 272 safeguards impose a variety of significant costs, including administrative costs on both the BOCs and the Commission. For example, providing interstate, interLATA telecommunications services through a section 272 separate affiliate requires the BOCs, *inter alia*, to operate these services independently of their telephone exchange service and exchange access

²³⁰ For convenience, in this part, we use the term "section 272 safeguards" to refer exclusively to those section 272 safeguards that have sunset. This term excludes the safeguards in section 272(e).

²³¹ See *Section 272 Sunset Notice*, 17 FCC Rcd at 9920, para. 9.

²³² See *id.*

²³³ See *supra* part III.A.1.c.

²³⁴ See *id.*

²³⁵ See *LEC Classification Order*, 12 FCC Rcd at 15762-63, para. 6 (stating that, "[i]n light of the requirements established by, and pursuant to, sections 271 and 272, together with other existing Commission rules, we conclude that the BOCs will not be able to use, or leverage, their market power in the local exchange or exchange access markets to such an extent that their section 272 interLATA affiliates could profitably raise and sustain prices of in-region, interstate, domestic, interLATA services significantly above competitive levels by restricting the affiliate's own output").

²³⁶ See, e.g., Legacy BellSouth NPRM Comments at 18-19 (arguing that continuing safeguards will protect competition more efficiently and at a lesser expense than section 272 requirements); see also Qwest NPRM Comments at 13 (describing that costs of section 272 requirements stem from inefficiencies in maintaining separate networks and workforces); Legacy SBC NPRM Comments at 7 (claiming that as a result of the section 272 requirements, SBC must duplicate resources, which its competitors do not); Verizon NPRM Comments at 8 (stating that "continuing the 272 separate affiliate requirements will distort competition and discourage investment and innovation").

operations, and to maintain duplicate sets of officers, directors, and employees.²³⁷ These restrictions not only impose additional costs, but also prevent the BOCs from taking advantage of the economies of scope and scale associated with integrated operation that their competitors are able to realize.²³⁸ Moreover, structural separation between a BOC's local telephone and long distance operations are at odds with a market environment where the distinction between those local and long distance services has been blurred by the way those services are marketed and delivered to consumers.²³⁹ As a general matter, these restrictions and their associated costs make the BOCs less effective competitors in the market.

83. These restrictions also may prevent the BOCs and their affiliates from quickly responding to technological and marketplace developments. For example, although competitors may purchase a single piece of new technology and quickly deploy it, because of prohibitions against jointly owning facilities and sharing directors, officers, and employees,²⁴⁰ a BOC might be required to purchase two pieces of equipment and might suffer delays in bringing the technology to market because it must coordinate deployment with its long distance affiliate's officers and employees.²⁴¹ The joint ownership prohibition could also prevent a BOC from deploying the latest, most innovative technology, or cause delays in bringing services relying on that technology to market.²⁴² Additionally, the requirement that a

²³⁷ See 47 U.S.C. § 272(b); see generally *Accounting Safeguards Order*, 11 FCC Rcd 17539; *Non-Accounting Safeguards Order*, 11 FCC Rcd 21905; Qwest NPRM Comments at 13; Verizon NPRM Comments at 9-11.

²³⁸ See Legacy SBC NPRM Reply at 15-17 (arguing that competitors that can integrate their local and long distance operations are at an advantage, especially with respect to complex services to large business customers that want end-to-end services); see also USTA NPRM Comments at 7. The Commission has previously found that structural separation may sacrifice innovation, efficiency, and economies of scale and scope. See, e.g., *Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*; and *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Thereof Communications Protocols under Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85-229, Report and Order, 104 FCC 2d 958, 964, para. 3 (1986) (*Computer III Phase I Order*) (finding that the decreased efficiency and innovation imposed by structural safeguards outweighed their benefits); *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21911, 21913, paras. 7, 13; *Non-Accounting Safeguards Second Order on Reconsideration*, 12 FCC Rcd at 8683, para. 55; *COMSAT Corporation Petition Pursuant to § 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier*, IB Docket No. 98-60, CC Docket No. 80-654, Order and Notice of Proposed Rulemaking, 13 FCC Rcd 14083, 14165, para. 166 (1998) (finding that "Comsat's continued dominance in the provision of switched voice, private line and occasional-use video services in non-competitive markets is not sufficient reason to continue structural separation because the costs would exceed the benefits").

²³⁹ See *supra* part III.A.1.a(i)(a)(ii) (evidence indicating that a majority of consumers purchase local and long distance services from a single provider today). See, e.g., Verizon Feb. 15, 2007 *Ex Parte* Letter at 26, nn.126, 127 (citing J.D. Power & Associates Press Release, *J.D. Power & Associates Reports: Three-Quarters of Households Now Bundle Local and Long-Distance Telephone Service with One Provider* (July 13, 2005); D. Lemelin, In-Stat, *Wireline Remains in Decline: US Wireline Service 2005* (Mar. 2006)) (stating that local and long distance services are offered to consumers in competitive bundles).

²⁴⁰ See 47 U.S.C. § 272(b); see also 47 C.F.R. § 53.203.

²⁴¹ See, e.g., Verizon NPRM Comments, Jeannie H. Diefenderfer Decl. at 1-3 (discussing the inefficiencies associated with providing broadband services through a multiple affiliate structure).

²⁴² In today's market, vendors typically do not develop equipment according to artificial demarcations between local and long distance calling or between voice and data. A prohibition against joint ownership would prevent a BOC from purchasing these unified platforms for its local and long distance services and thus prevent the BOC from deploying a new platform as quickly as its competitors. See, e.g., Legacy SBC NPRM Comments at 8. A prohibition on joint ownership of facilities could hinder a BOC from developing innovative VoIP products that integrate legacy services, such as local and long distance voice. See, e.g., Qwest NPRM Comments at 13-14 (stating that separate affiliate requirement would prevent an RBOC from purchasing a next generation switch that handles local and long distance calls).

BOC and its section 272 separate affiliate “operate independently” hinders their ability to alter business priorities quickly in response to changing market demands. The required duplicative management of the two affiliated companies creates unnecessary inefficiencies in decision making and may therefore increase the costs and delay deployment of new services.²⁴³

84. We reject arguments that we should retain the section 272 safeguards, in whole or in part, to protect against BOCs’ use of any exclusionary market power they may possess.²⁴⁴ Instead, we find that other existing safeguards, in combination with the safeguards we adopt in this Order, provide sufficient protection against these concerns and impose fewer costs and burdens.²⁴⁵ We find that commenters advocating retention of the section 272 safeguards do not adequately consider the costs of structural separation, nor do they adequately consider less costly alternatives, such as the targeted safeguards we adopt in this Order.²⁴⁶

²⁴³ Opportunity cost is the value of a foregone alternative action. Slow and ill-coordinated decision making imposes opportunity costs that include the forgone services that could have been provided in the absence of artificial dividing lines between a company’s decision makers. See *Section 272(b)(1)’s “Operate Independently” Requirement for Section 272 Affiliates*, WC Docket No. 03-228, CC Docket Nos. 96-149, 98-141, 01-337, Report and Order in WC Docket No. 03-228, Memorandum Opinion and Order in CC Docket Nos. 96-149, 98-141, 01-337, 19 FCC Rcd 5102, 5120, para. 30 n.100 (2004) (*OI&M Order*) (citing *The MIT Dictionary of Modern Economics* 315 (David W. Pearce ed., 4th ed. 1996)). We are also guided by the fact that the BOCs have quantified substantial costs associated with the section 272 separate affiliate requirement. See, e.g., Legacy SBC NPRM Comments at 8; Verizon NPRM Comments at 9; Legacy SBC NPRM Reply at 16.

²⁴⁴ See, e.g., Legacy AT&T NPRM Comments at 7-10 (arguing that the 272 safeguards are critical tools to promote competition); Sprint NPRM Comments at 6-16 (supporting extension of the 272 safeguards); Missouri Commission NPRM Comments at 4 (suggesting the Commission extend the section 272 separate affiliate safeguards); Pennsylvania Commission NPRM Comments at 4 (same); Texas Commission NPRM Comments at 3 (same); Wyoming Commission NPRM Comments at 2 (same); NASUCA NPRM Comments at 2, 6 (urging the Commission to extend by rule the section 272 safeguards); NJ Ratepayer NPRM Comments at 4-5 (same). Because our decision not to extend the section 272 safeguards applies throughout each BOC region, we deny legacy AT&T’s petitions to extend those safeguards in particular BOC, in-region states. See Legacy AT&T, Petition for Extension of Section 272 Obligations of Southwestern Bell Telephone Co. in the States of Arkansas and Missouri, WC Docket No. 02-112 (filed Sept. 24, 2004) (Legacy AT&T Arkansas and Missouri Petition); Legacy AT&T, Petition for Extension of Section 272 Obligations of Verizon in the State of Massachusetts, WC Docket No. 02-112 (filed Feb. 29, 2004) (Legacy AT&T Massachusetts Petition); Legacy AT&T, Petition for Extension of Section 272 Obligations of Southwestern Bell Telephone Co. in the States of Kansas and Oklahoma, WC Docket No. 02-112 (filed Dec. 8, 2003) (Legacy AT&T Kansas and Oklahoma Petition); Legacy AT&T, Petition for Extension of Section 272 Obligations of Southwestern Bell Telephone Co. in the State of Texas, WC Docket No. 02-112 (filed April 10, 2003) (Legacy AT&T Texas Petition).

²⁴⁵ See *infra* part III.A.4; see also *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5240-43, paras. 64-70; *Computer III Phase I Order*, 104 FCC 2d at 964, para. 3 (abolishing structural separation requirement upon a finding that targeted nonstructural requirements were sufficient to address discrimination and cross-subsidization concerns); *OI&M Order*, 19 FCC Rcd at 5112-15, paras. 18-22; see also, e.g., *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21983-84, 21986, 21991, paras. 162, 167-68, 179; *Non-Accounting Safeguards Second Order on Recon.*, 12 FCC Rcd at 8683, para. 55; *Competitive Carrier Fifth Report and Order*, 98 FCC 2d at 1197-98, para. 8 (determining that “[w]hile structural separation decreases opportunities for cost-shifting and anticompetitive conduct, it can also decrease efficiency and affect the interexchange carrier’s ability to compete”).

²⁴⁶ Commenters, such as state commissions, legacy AT&T, legacy MCI, Sprint, and Covad, argue variously that structural separation is necessary because local telephone competition has not taken root; that the BOCs discriminate in their special access services provisioning; that cross-subsidies are difficult to detect; and that the BOCs maintain market power. See, e.g., Legacy AT&T NPRM Comments at 10-34 (arguing *inter alia* that the BOCs maintain significant market power in all markets and engage in improper cost shifting); Covad NPRM Reply at 1-5 (claiming the section 272 safeguards provide a “bulwark” against abuses of monopoly power); Legacy MCI FNPRM (continued...)

85. We also reject arguments that we should impose an alternative set of structural safeguards on the BOCs, such as the rule 64.1903 requirements under which independent incumbent LECs provide interexchange telecommunications services on a nondominant carrier basis.²⁴⁷ Structural safeguards like those imposed in section 64.1903 of the Commission's rules include a number of the same obligations that we find lead to costs, as discussed above, that make the BOCs less effective marketplace competitors.²⁴⁸ In addition, proponents of alternative structural safeguards make no showing comparing the relative effectiveness of their proposed structural regime with either the section 272 structural regime or the non-structural safeguards regime set forth in this Order. We find, however, that these non-structural safeguards provide substantial protection against anticompetitive discrimination and improper cost shifting by the BOCs in connection with their provision of in-region, long distance services.

86. We conclude that our decisions not to extend the section 272(b) safeguards and to refrain from applying alternative structural safeguards to BOC provision of in-region, interLATA telecommunications services are consistent with section 272(f)(1) of the Act and with the D.C. Circuit's opinion in *AT&T v. FCC*.²⁴⁹ Section 272(f)(1) does not mandate that we extend the section 272 safeguards or adopt alternative safeguards as replacements, but rather simply states that the section 272 safeguards, other than those in section 272(e) "shall cease to apply" with respect to a BOC's interLATA telecommunications services three years after the BOC was authorized to provide those services unless the Commission extends that period.²⁵⁰ Moreover, the D.C. Circuit's opinion in *AT&T v. FCC* requires

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Comments at 16-20 (arguing that a separate affiliate requirement remains necessary to protect against a price squeeze from the BOCs); Sprint NPRM Comments at 7-16 (claiming the BOCs remain dominant in the local and exchange access markets and behavior warrants strong regulatory safeguards); Missouri Commission NPRM Comments at 4 (asserting that without the section 272 audit process, there is no way to detect and deter discrimination and anticompetitive behavior); Texas Commission FNPRM Comments at 4 (arguing that without separate books of account, it will be practically impossible to evaluate complaints by competitors of practices such as discrimination and cross-subsidization); Texas AG NPRM Reply at 1, 3 (arguing that BOCs possess substantial market power and that the BOCs have all been fined for violating statutory and regulatory obligations).

²⁴⁷ See, e.g., NJ Ratepayer NPRM Comments at 38 (recommending the Commission apply section 64.1903 safeguards to the BOCs); NJ Ratepayer FNPRM Comments at 4-6 (same).

²⁴⁸ For example, an independent incumbent LEC's long distance affiliate must maintain separate books of account from the independent incumbent LEC, must purchase services from the independent incumbent LEC pursuant to the incumbent LEC's tariffs, and is forbidden from jointly owning transmission or switching facilities with the independent incumbent LEC affiliate. See 47 C.F.R. § 64.1903 (providing the Commission's separate affiliate rules for independent incumbent LECs). Of course, the rule 64.1903 safeguards differ in some respects from the section 272 structural safeguards. Thus, the costs are not identical.

²⁴⁹ *AT&T Corp. v. FCC*, 369 F.3d 554, 556 (D.C. Cir. 2004) (*AT&T v. FCC*). *AT&T v. FCC* involved judicial review of the Commission's decision to allow the section 272 safeguards, other than those in section 272(e), to sunset in the state of New York without explaining why those safeguards should not be extended and without addressing whether alternative safeguards should replace the safeguards that had sunset. *Id.* at 558-60; see *Section 272 Sunsets for Verizon in New York State by Operation of Law on December 23, 2002 Pursuant to Section 272(f)(1)*, CC Docket No. 02-112, Public Notice, 17 FCC Rcd 26864 (2002) (*Verizon New York Sunset Notice*). The court held that section 272(f)(1) does not require the Commission to issue a reviewable decision prior to allowing the safeguards to sunset through operation of law and indicated that the Commission would resolve through rulemaking any open questions regarding whether safeguards are needed for the BOCs' provision of in-region, interLATA telecommunications services. *AT&T v. FCC*, 369 F.3d at 362-63.

²⁵⁰ 47 U.S.C. § 272(f)(1); see *AT&T v. FCC*, 369 F.3d at 360.

only that we resolve open questions regarding whether safeguards are needed for the BOCs' provision of in-region, interLATA telecommunications services, a task we complete in this Order.²⁵¹

b. AT&T's and Verizon's Independent Incumbent LEC Affiliates

87. As discussed above,²⁵² both AT&T and Verizon have independent incumbent LEC affiliates.²⁵³ Separate and apart from the applicability of section 272 safeguards to the BOCs, these independent incumbent LEC remain subject to the structural separation requirements in section 64.1903 of the Commission's rules.²⁵⁴ As noted above, however, AT&T's and Verizon's independent incumbent LEC affiliates voluntarily comply with the section 272 safeguards for consistency of operations within each company.²⁵⁵

88. We find good cause to waive section 64.1903 of the Commission's rules for the BOCs' independent incumbent LEC affiliates.²⁵⁶ As a practical matter, AT&T's and Verizon's independent incumbent LEC affiliates have been operating consistent with the section 272 safeguards to avoid the inefficiency of using two different affiliate structures and sets of operational methods for the BOC incumbent LECs and the independent incumbent LECs, particularly where the independent incumbent LEC operations are a relatively small portion of AT&T's and Verizon's local operations. Thus, the concerns expressed above regarding the costs of the section 272 safeguards effectively apply to both the BOCs and their independent incumbent LEC affiliates. We further find that AT&T and Verizon can more

²⁵¹ *AT&T v. FCC*, 362 F.3d at 362-63. Because our decision not to extend the section 272 safeguards applies throughout each BOC region, we deny legacy AT&T's petitions to extend those safeguards in particular BOC, in-region states. See Legacy AT&T, Petition for Extension of Section 272 Obligations of Southwestern Bell Telephone Co. in the States of Arkansas and Missouri, WC Docket No. 02-112 (filed Sept. 24, 2004); Legacy AT&T, Petition for Extension of Section 272 Obligations of Verizon in the State of Massachusetts, WC Docket No. 02-112 (filed Feb. 29, 2004); Legacy AT&T, Petition for Extension of Section 272 Obligations of Southwestern Bell Telephone Co. in the States of Kansas and Oklahoma, WC Docket No. 02-112 (filed Dec. 8, 2003); Legacy AT&T, Petition for Extension of Section 272 Obligations of Southwestern Bell Telephone Co. in the State of Texas, WC Docket No. 02-112 (filed April 10, 2003).

²⁵² See *supra* para. 9.

²⁵³ AT&T Apr. 24, 2007 *Ex Parte* Letter at 1; Verizon May 8, 2007 *Ex Parte* Letter, at 2. The franchise areas of these independent incumbent LECs, (former GTE, former SNET, and Woodbury) represent only a small percentage of the total company franchise areas and a comparable percentage of their in-region, interstate, interexchange telecommunications services.

²⁵⁴ Under section 64.1903 of our rules, the BOCs' independent incumbent LEC affiliates that provide in-region, interstate, interexchange telecommunications services or in-region, international services are required to maintain separate books of account from the independent incumbent LEC and to purchase services from the independent incumbent LEC pursuant to the incumbent LEC's tariffs. 47 C.F.R. § 64.1903(a). Section 64.1903 of the Commission's rules also forbids incumbent LECs' affiliates from jointly owning transmission or switching facilities with the independent incumbent LEC. 47 C.F.R. § 64.1903(a).

²⁵⁵ See *supra* n.32.

²⁵⁶ The Commission may waive its rules when good cause is demonstrated. 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*), cert. denied, 409 U.S. 1027 (1972). The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In doing so, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. See *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

effectively implement the new regulatory framework adopted in this Order if their independent incumbent LEC affiliates are subject to the same targeted safeguards as the rest of the company as a whole.²⁵⁷ These special circumstances convince us that it is consistent with the public interest to deviate from the general obligations imposed by section 64.1903 of the Commission's rules, conditioned upon the AT&T and Verizon independent incumbent LECs' complying with the targeted safeguards discussed below. We therefore conditionally waive section 64.1903 as applied to SNET, including Woodbury, and former GTE.²⁵⁸

4. Other Safeguards

89. As discussed below, we conclude that a new regulatory framework for the BOCs' in-region, long distance services is appropriate. Our new framework is based in part on the substantial legal obligations that continue to apply to the BOCs in addition to the targeted safeguards we adopt below. We find that this regulatory framework adequately and comprehensively addresses the competitive concerns described above, but imposes fewer costs and burdens than full section 272 safeguards.

a. Continuing Requirements

90. AT&T, Verizon, and Qwest remain subject to a number of legal obligations that are an important component of the regulatory framework that we find appropriate for the BOCs and their independent incumbent LEC affiliates. In particular, these carriers are still subject to: dominant carrier regulation of their interstate exchange access services, including price cap regulation of most exchange access services;²⁵⁹ the Commission's accounting and cost allocation rules and related reporting requirements;²⁶⁰ equal access obligations under longstanding Commission precedent and section 251(g) of the Act;²⁶¹ section 251 obligations;²⁶² section 271 obligations, including the obligation to continue to

²⁵⁷ See *infra* part III.A.4.b. In addition, as discussed below, other existing safeguards apply to the BOC independent incumbent LEC affiliates, such as accounting and tariffing rules. See *infra* part III.A.4.a.

²⁵⁸ We condition this waiver on AT&T's and Verizon's independent incumbent LECs' compliance with all of the safeguards we impose in this Order on the BOCs. We also condition this waiver as applied to Woodbury on its integration into SNET and on its operating as a price cap LEC for interstate ratemaking purposes once the integration process is complete. See *supra* note 32; see also AT&T Apr. 27, 2007 *Ex Parte* Letter at 1 (stating that Woodbury will be integrated into SNET, effective June 1, 2007).

²⁵⁹ BOCs are not subject to price cap regulation for: (1) the exchange access services for which they have been granted phase II pricing flexibility; and (2) certain of their services that are provided pursuant to rate of return regulation. See *Pricing Flexibility Order*, 14 FCC Rcd 14221; see also 47 U.S.C. §§ 203(b), 204(a)(3); 47 C.F.R. §§ 61.38, 61.41, 61.58; *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, CC Docket No. 96-187, Report and Order, 12 FCC Rcd 2170, 2182, para. 19, 2188, para. 31, 2191-92, para. 40, & 2202-03, para. 67 (1997); *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Memorandum Opinion and Order, 20 FCC Rcd 19415, 19424, para. 15 (2005) (*Qwest Omaha Order*), review denied in part, dismissed in part, *Qwest Corp. v. FCC*, 2007 WL 860987 (D.C. Cir. Mar. 23, 2007).

²⁶⁰ For example, BOCs are required to file on an annual basis a cost allocation manual describing how they allocate costs between regulated and nonregulated activities, and to have an independent auditor audit that cost allocation manual every two years. See 47 C.F.R. §§ 43.21(d), 64.901-64.905; see also 47 C.F.R. §§ 32.23(c), 32.5280. BOCs are subject to certain reporting requirements under ARMIS. See *Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules)*, CC Docket No. 86-182, Report and Order, 2 FCC Rcd 5770 (1987) (*ARMIS Order*), modified on recon., 3 FCC Rcd 6375 (1988) (*ARMIS Reconsideration Order*); see also 47 C.F.R. § 43.21.

²⁶¹ 47 U.S.C. § 251(g); *MTS and WATS Market Structure, Phase III*, Docket No. 78-72, Report and Order, 100 FCC 2d 860 (1985); *Investigation into the Quality of Equal Access Services*, Memorandum Opinion and Order, 60 Rad. Reg. 2d (P&F) 417, 419, 1986 WL 291752 (1986). We note that in part III.B, *infra*, we forbear from application of (continued...)

comply with the market-opening requirements that the BOCs had to meet in order to receive authority to provide in-region, interLATA services;²⁶³ and the continuing general obligation to provide service on just, reasonable, and not unreasonably discriminatory rates, terms, and conditions pursuant to sections 201 and 202 of the Act.²⁶⁴ In addition, the nondiscrimination requirement in section 272(e)(1) of the Act and the imputation requirement in section 272(e)(3) of the Act (which we discuss below) continue to apply.²⁶⁵

91. These continuing legal obligations help address the competitive concerns raised above in a variety of ways. For example, under section 202(a) of the Act, the BOCs and their independent incumbent LEC affiliates will remain obligated to provide any of their special access services that their competitors rely on as inputs for the competitors' own interLATA telecommunications service offerings on rates, terms, and conditions that are not unreasonably discriminatory.²⁶⁶ The BOCs also will remain obligated, under section 272(e)(1), to "fulfill any requests" from their interLATA telecommunications services competitors "for telephone exchange service and exchange access" within periods no longer than the periods in which they provide such telephone exchange service and exchange access to themselves or their affiliates.²⁶⁷ Moreover, the BOCs and their independent incumbent LEC affiliates will remain subject to unbundling obligations pursuant to section 251(c)(3), which, as the Commission has found previously, provides "a check on special access pricing,"²⁶⁸ and the BOCs also have unbundling obligations under section 271(c)(2)(B) as conditions of their authority to provide in-region, interLATA services.²⁶⁹

92. The BOCs and their independent incumbent LEC affiliates also remain obligated, under section 251(a), to interconnect with other carriers, and, pursuant to section 251(c), to interconnect on "rates, terms, and conditions that are just, reasonable, and nondiscriminatory," which is an important tool for facilitating intermodal competition.²⁷⁰ In addition, the BOCs' continuing equal access obligations under longstanding Commission precedent and section 251(g) of the Act should protect against

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the EA Scripting Requirement to the BOCs and find good cause to waive the EA Scripting Requirement for the BOCs' independent incumbent LEC affiliates. However, all other equal access obligations continue to apply.

²⁶² 47 U.S.C. § 251.

²⁶³ 47 U.S.C. § 271(d)(6). Section 271 does not apply to the BOCs' independent incumbent LEC affiliates.

²⁶⁴ 47 U.S.C. §§ 201, 202.

²⁶⁵ 47 U.S.C. § 272(e)(1), (e)(3); *see infra* part III.A.4.b(ii). We note that the safeguards adopted in the *Non-Accounting Safeguards* and the *Accounting Safeguards Orders* to implement these provisions also remain in effect.

²⁶⁶ 47 U.S.C. § 202(a).

²⁶⁷ 47 U.S.C. § 272(e)(1).

²⁶⁸ *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, 20 FCC Rcd 2533, 2574-75, para. 65 (2004) (*Triennial Review Remand Order*) (subsequent history omitted).

²⁶⁹ 47 U.S.C. § 271(d)(6).

²⁷⁰ *See* 47 U.S.C. § 251(c)(2); *cf. Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd 3308 (WCB 2007) (clarifying that wholesale telecommunications carriers are entitled to the same rights as retail telecommunications carriers under sections 251(a) and 251(b), ensuring that new entrants have the ability to interconnect to incumbent LECs).

anticompetitive discrimination in connection with areas such as dialing parity, network control signaling, and automatic calling number identification.²⁷¹

93. In the *Section 272 Sunset Further NPRM*, the Commission sought comment on the adequacy of safeguards to prevent anticompetitive conduct by the BOCs and their independent incumbent LEC affiliates, including improper cost shifting, as a result of the direct provision of interLATA services.²⁷² As explained in the *Qwest Section 272 Sunset Forbearance Order*, based on the Commission's conclusions in the *Accounting Safeguards Order*, in-region, interLATA telecommunications services provided by the BOCs on an integrated basis currently are required to be treated as nonregulated for accounting purposes.²⁷³ Similarly, the independent incumbent LECs are currently required to treat their interLATA telecommunications services as nonregulated for accounting purposes.²⁷⁴ This treatment is consistent with the current accounting treatment by the BOCs of directly-provided, incidental and out-of-region interLATA telecommunications services.²⁷⁵

94. We find that the continued treatment of the costs of, and revenues from, the direct provision of in-region, long distance services as nonregulated for accounting purposes will provide an important protection against improper cost shifting by the BOCs' and their independent incumbent LEC affiliates. This accounting treatment also will address concerns of continued compliance with section 254(k) of the Act, and will lessen the chance that costs associated with such services are inadvertently assigned to a local exchange or exchange access category.²⁷⁶ First, the revised cost allocation manuals we require AT&T, Verizon, and Qwest to file describing how they separate regulated from nonregulated costs will be subject to public comment.²⁷⁷ This public disclosure requirement will provide an opportunity for interested parties to review and comment on whether the identified methodology could result in improper cost-shifting between the BOCs' in-region, long distance services and their telephone local exchange and

²⁷¹ 47 U.S.C. § 251(g); *MTS and WATS Market Structure, Phase III*, Docket No. 78-72, Report and Order, 100 FCC 2d 860 (1985); *Investigation into the Quality of Equal Access Services*, Memorandum Opinion and Order, 60 Rad. Reg. 2d (P&F) 417, 419, 1986 WL 291752 (1986).

²⁷² See *Section 272 Sunset and Independent Incumbent LEC Further NPRM*, 18 FCC Rcd at 10934, para. 40.

²⁷³ *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5238-39, para. 62; see also 47 C.F.R. § 32.23(a).

²⁷⁴ See *Accounting Safeguards Order*, 11 FCC Rcd 17539, 17655, para. 257 (concluding "interLATA telecommunications services should be treated like nonregulated activities for federal accounting purposes whenever these services are provided by any incumbent local exchange carrier through an affiliate").

²⁷⁵ See *Accounting Safeguards Order*, 11 FCC Rcd 17539, 17573 para. 76 (noting that treatment of out-of-region and certain types of incidental interLATA services as nonregulated for accounting purposes will achieve greater accuracy in safeguarding against cross-subsidization and will lessen the chance that costs associated with such services are inadvertently assigned to a local exchange or exchange access category).

²⁷⁶ See *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5239, para. 62, n.179 (citing *Accounting Safeguards Order*, 11 FCC Rcd at 17573, para. 76); see also *Accounting Safeguards Order*, 11 FCC Rcd at 17572-73, para. 74 (concluding that "if interLATA telecommunications services . . . that may be provided by incumbent local exchange carriers on an integrated basis, were treated as regulated for accounting purposes, our part 64 rules would not prevent any improper cost allocations that may occur between local exchange and exchange access services and these interLATA telecommunications services"); *id.* at 17572, para. 75 (stating that "we can most efficiently and comprehensively satisfy sections 254(k) and 271(h) if, solely for federal accounting purposes, we treat like nonregulated activities both out-of-region and certain types of incidental interLATA services that may be provided by incumbent local exchange carriers on an integrated basis"); *id.* at 17573, para. 76 (stating that "the Part 36 jurisdictional separations process and the Part 69 access charge process were not designed to prevent subsidization of competitive telecommunications services by subscribers to exchange and exchange access services").

²⁷⁷ 47 C.F.R. § 64.903.

exchange access services. Second, we require disclosure in ARMIS filings of the access charges the independent incumbent LEC affiliates impute to themselves through debits to their nonregulated revenues.²⁷⁸ This public disclosure requirement will provide interested parties with information they can evaluate to determine whether the BOCs and their independent incumbent LECs properly impute the costs of the access they provide their in-region, long distance service offerings. We note that the BOCs all have petitioned for and been granted pricing flexibility within their service regions.²⁷⁹ Accordingly, they, and their independent incumbent LEC affiliates, are prohibited from making any low-end adjustments pursuant to section 61.45(d)(1)(vii) of our rules.²⁸⁰ This fact reduces the incentives of the independent incumbent LEC affiliates to improperly shift costs to local exchange and exchange access services, because they are precluded from seeking rate increases for these services based on low earning levels.

b. Additional Requirements

95. In this Order, we adopt targeted safeguards that will apply to the BOCs to the extent they choose to provide in-region, interstate or international, long distance services either directly or through an affiliate that is not a section 272 separate affiliate. As a further condition of this Order, the BOCs' independent incumbent LEC affiliates also must comply with these safeguards to the extent they provide in-region, interstate, interexchange telecommunications services either directly or through an affiliate that does not comply with the requirements of either section 272 or section 64.1903 of our rules. The targeted safeguards include: (1) special access performance metrics to prevent non-price discrimination in the provision of special access services; (2) imputation requirements to help monitor BOC provisioning of these services for possible price discrimination; (3) the offering of calling plans to protect residential customers who make few interstate, long distance calls; and (4) providing subscribers monthly usage information to enable them to make cost-effective decisions concerning alternative long distance plans. We will carefully monitor the BOCs' compliance with these safeguards and will not hesitate to take appropriate remedial action if necessary. We also retain the authority to adjust these safeguards in the future as appropriate to reflect any competitive changes that might occur in the markets for in-region, long distance services.

(i) Special Access Performance Metrics

96. As part of the Commission's implementation of the section 272 structural safeguards, the BOCs have implemented special access performance metrics designed to help ensure that they refrain from non-price discrimination in their provision of special access services.²⁸¹ Once a BOC chooses to provide in-region, interLATA telecommunications services either directly or through an affiliate that is not a section 272 separate affiliate, those metrics would cease to be available. AT&T, Verizon, and Qwest also are required to implement special access metrics in accordance with their voluntary commitments in connection with the *BOC Merger Orders* and the *Qwest Section 272 Sunset Forbearance*

²⁷⁸ See *supra* part III.A.4.b(ii).

²⁷⁹ *Qwest Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD No. 02-01, Memorandum Opinion and Order, 17 FCC Rcd 7363 (WCB 2002); *Petition of Ameritech Illinois, et al., for Pricing Flexibility*, CCB/CPD Nos. 00-26, 00-23, 00-25, Memorandum Opinion and Order, 16 FCC Rcd 5889 (Com. Car. Bur. 2001); *Verizon Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD Nos. 00-24, 00-28, Memorandum Opinion and Order, 16 FCC Rcd 5876 (Com. Car. Bur. 2001); *BellSouth Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD No. 00-20, Memorandum Opinion and Order, 15 FCC Rcd 24588 (Com. Car. Bur. 2000).

²⁸⁰ 47 C.F.R. § 69.731; *Pricing Flexibility Order*, 14 FCC Rcd at 14307, para. 167.

²⁸¹ The BOCs' implementation of these metrics is reviewed as part of the biennial audits.

Order.²⁸² This latter group of special access metrics addresses order taking, provisioning, and maintenance and repair of the BOCs' DS0, DS1, DS3, and OCn services.

97. We find the metrics the Commission approved in the *BOC Merger Orders* and the *Qwest Section 272 Sunset Forbearance Order* are necessary to monitor whether the BOCs and their independent incumbent LEC affiliates are engaging in non-price discrimination in the provision of special access services to unaffiliated entities in light of the regulatory relief we are granting those carriers in this order.²⁸³ The information that AT&T, Qwest, and Verizon record and report to the Commission under these metrics will provide the Commission and other interested parties with reasonable tools to monitor each BOC's performance in providing these special access services to itself and its competitors.²⁸⁴ This obligation shall apply beginning the first full quarter following provision of any in-region, interLATA telecommunications service through the BOC or through an affiliate that is not a section 272 separate affiliate. In addition, each of AT&T's and Verizon's independent incumbent LEC affiliates shall implement these metrics for the first full quarter following provision of any in-region, interstate, interexchange telecommunications service through the BOC or through an affiliate that is not a section 272 separate affiliate. The BOCs and their independent incumbent LEC affiliates must continue to abide by special access performance metrics until there is an affirmative Commission determination that such metrics no longer are necessary.

98. Each BOC and each of AT&T's and Verizon's independent incumbent LEC affiliates shall implement these metrics to the extent the BOC or independent incumbent LEC provides one or more of the covered special access services to itself, to any affiliate, or to third parties. The BOCs and their independent incumbent LEC affiliates shall provide the Commission with their performance measurement results on a quarterly basis.²⁸⁵ We conclude that the metrics and the associated reporting requirements

²⁸² See *AT&T/BellSouth Order*, 22 FCC Rcd at 5807, Appendix F (Special Access); *SBC/AT&T Merger Order*, 20 FCC Rcd at 18317-18, para. 51; *Verizon/MCI Order*, 20 FCC Rcd at 18459-60, para. 51; *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5243-44, paras. 71-72.

²⁸³ 47 U.S.C. § 202(a) (requiring that common carriers refrain from "unjust or unreasonable discrimination in . . . practices . . . or services for or in connection with like communication service" and making it "unlawful for any common carrier . . . to make or give any undue or unreasonable preference or advantage to any particular person [or] class of persons, . . . or to subject any particular person [or] class of persons to any undue or unreasonable prejudice or disadvantage"); 47 U.S.C. § 272(e)(1) (requiring that a BOC "fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates"). Because we are extending the special access performance plans that the BOCs voluntarily submitted in prior proceedings, and which the Commission adopted as conditions of its orders in those proceedings, this Order does not terminate the independent obligation of the BOCs to implement those special access performance metrics pursuant to those prior orders. With regard to the BOCs, this requirement is therefore independent of their obligations to implement special access metrics as a result of their voluntary commitments in connection with the *BOC Merger Orders* and the *Qwest Section 272 Sunset Forbearance Order*.

²⁸⁴ For example, the "Firm Order Confirmation Timeliness" metric should provide data measuring whether each AT&T, Verizon, and Qwest incumbent LEC confirms orders for the covered special access services within nondiscriminatory time frames. Similarly, the "Percent Installation Services Met" and "New Installation Trouble Report Rate" metrics should measure whether each of these carriers provisions these special access services to itself and its competitors in nondiscriminatory time frames and with nondiscriminatory levels of quality. In addition, the "Failure Rate/Trouble Rate" metric should measure whether each of these carriers provides its competitors with the same level of special access quality as that provided to its own operations. Finally, the "Average Repair Interval/Mean Time to Restore" metric should measure whether each of these carriers repairs covered special access services in a nondiscriminatory manner.

²⁸⁵ Such reports shall be provided in an Excel spreadsheet format and shall be designed to demonstrate the BOCs' and, with regard to AT&T and Verizon, their independent incumbent LEC affiliates' monthly performance in (continued....)

that we impose in this Order adequately address commenters' concerns about the BOCs' and their independent incumbent LEC affiliates' incentives and ability to engage in non-price discrimination in their provisioning of special access services in order to impede competition in the market for in-region, interstate, long distance services.²⁸⁶

(ii) Imputation

99. We also provide guidance to AT&T, Qwest, and Verizon regarding the treatment of charges for any access services that their incumbent LEC affiliates provide their in-region, long distance operations. In providing this guidance, we address three situations: (1) the BOCs' imputation in the event they provide in-region, long distance services on an integrated basis; (2) the obligations of AT&T's and Verizon's independent incumbent LEC affiliates in the event they provide in-region, long distance services on an integrated basis; and (3) AT&T's, Qwest's, and Verizon's obligations in the event they provide in-region, long distance services through an affiliate that is neither a section 272 nor a rule 64.1903 separate affiliate.²⁸⁷ We provide this guidance pursuant to our authority under sections 201, 202(a), 220(a), and 272(e)(3) of the Act.²⁸⁸

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 delivering the covered interstate special access services within each of the states in their respective regions. These data shall be reported on an aggregated basis for interstate special access services as identified in the attachment. The BOCs and their independent incumbent LEC affiliates shall provide performance measurement results (broken down on a monthly basis) for each quarter to the Commission by the 45th day after the end of the quarter.

²⁸⁶ See, e.g., Legacy MCI FNPRM Comments at 19-23; Legacy MCI FNPRM Reply at 8-12; Ad Hoc FNPRM Comments at 17-18; Ad Hoc FNPRM Reply at 5-6; see also *Triennial Review Order*, 18 FCC Rcd at 17012, para. 45 (recognizing that special access services provide competitors with wholesale inputs that they typically combine with other competitively provisioned services or facilities to build complete services for sale to retail customers), corrected by *Errata*, 18 FCC Rcd 19020 (2003), *aff'd in part, remanded in part, vacated in part, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*), cert. denied sub nom. *National Ass'n Regulatory Util. Comm'rs v. United States Telecom Ass'n*, 534 U.S. 925 (2004). Imposing dominant carrier regulation on AT&T, Verizon, and Qwest in their provision of in-region, long distance services will not address these commenters' concerns. Rather, the targeted safeguards adopted in this Order specifically address the BOCs' and their independent incumbent LECs' control over bottleneck access facilities. Accordingly, we find that, in comparison to dominant carrier regulation of those services, the safeguards adopted in this Order, together with other existing safeguards, provide a cost-effective means of limiting the AT&T, Verizon's, and Qwest's ability to use any market power they have in the local exchange and exchange access markets to impede competition in the enterprise market. We also decline to adopt a grooming metric requested by legacy MCI. See Legacy MCI FNPRM Comments at 12. We find that the record fails to demonstrate a current need for a grooming metric. To the extent that carriers believe a grooming metric is necessary, we encourage them to refresh the record to support its adoption. We note that both AT&T and Verizon have agreed to merger conditions that require that they "will not unreasonably discriminate in favor of [their] affiliates in establishing terms and conditions for grooming special access facilities." See *AT&T/BellSouth Order*, 22 FCC Rcd at 5807, Appendix F (Special Access); *SBC/AT&T Order*, 20 FCC Rcd at Appendix F (Special Access); *Verizon/MCI Order*, 20 FCC Rcd at Appendix G (Special Access). These merger conditions will continue to apply as described in the merger orders, regardless of whether AT&T and Verizon provide their in-region, interstate, long distance services directly, instead of through an affiliate as described in the conditions.

²⁸⁷ Imputation is an accounting and regulatory device that is used in recognizing intra-company transactions. In the context of access services, this Commission and state commissions have long recognized the potential for LECs to use their control over their local networks to impede competition in services for which local network access is a needed input. Imputation requirements address this concern by requiring the BOC to recognize for accounting and other regulatory purposes charges for local network access equal to the amounts that an unaffiliated third party would pay for comparable access. See, e.g., *Application of Access Charges to the Origination and Termination of Interstate, IntraLATA Services and Corridor Services*, Memorandum Opinion and Order, FCC 85-172, 1985 FCC Lexis 3510, para. 9 & n.22 (Apr. 12, 1985) (*Corridor Services Order*) (requiring that LECs impute access charges to (continued...))

100. In order to ensure the BOCs' continued compliance with their imputation obligations under section 272(e)(3), we direct each BOC to continue to impute to itself its highest tariffed rate for access, including access provided over joint-use facilities.²⁸⁹ We also require AT&T's and Verizon's independent incumbent LEC affiliates, as a condition of the waiver we grant them in part III.A.3.b of this Order, to comply with the same requirement with regard to their provision of access to any in-region, long distance services that they provide directly. In addition, we require the BOCs and their independent incumbent LEC affiliates to charge any non-section 272 affiliate through which they provide in-region, long distance services the same amount for access that they would have charged a section 272 separate affiliate under section 272(e)(3).²⁹⁰ Although the statute does not address these latter two situations directly, applying protections paralleling those in section 272(e)(3) to these situations will assure that the degree of protection against improper cost shifting does not vary with AT&T's, Qwest's, and Verizon's choice of corporate structure for the provision of in-region, long distance services.

101. Section 69.727(a)(iii) of our rules requires that a price cap LEC cannot provide contract tariff services to either a section 272 separate affiliate or a rule 64.1903 affiliate until after it "certifies to the Commission that it provides service pursuant to that contract tariff to an unaffiliated customer."²⁹¹ To ensure that equivalent protection is in place in the event the BOCs provide in-region, long distance services directly, we require that each AT&T, Verizon, and Qwest incumbent LEC provide such a certification to the Commission prior to providing contract tariff services to itself or to any affiliate that is neither a section 272 nor a rule 64.1903 separate affiliate for use in the provision of any in-region, long distance services.²⁹²

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 themselves in calculating their interstate, intraLATA toll rates); *see also 1998 Biennial Regulatory Review – Part 61 of the Commission's Rules and Related Tariffing Requirements*, CC Docket No. 98-131, Report and Order and First Order on Reconsideration, 14 FCC Rcd 12293, 12312, para. 53 (1999) (requiring that price cap LECs offering interexchange services impute to themselves the same access charges that they impose on interexchange carriers).

²⁸⁸ 47 U.S.C. § 201(b) (requiring that all charges for interstate or foreign telecommunications services shall be "just and reasonable"); 47 U.S.C. § 202(a) (requiring that common carriers refrain from "unjust or unreasonable discrimination in . . . practices . . . or services for or in connection with like communication service" and making it "unlawful for any common carrier . . . to make or give any undue or unreasonable preference or advantage to any particular person [or] class of persons, . . . or to subject any particular person [or] class of persons to any undue or unreasonable prejudice or disadvantage"); 47 U.S.C. § 220(a) (authorizing the Commission to "prescribe the forms of any and all accounts, records, and memoranda to be kept by carrier subject to this Act"); 47 U.S.C. § 272(e)(3) (requiring each BOC that uses access to its local network for the provision of its own interLATA services to "impute to itself . . . an amount for access . . . that is no less than the amount charged to any unaffiliated interexchange carriers for such access").

²⁸⁹ *Accounting Safeguards Order*, 11 FCC Rcd at 17577, para. 87 (stating that "where a BOC charges different rates to different unaffiliated carriers for access to its telephone exchange service, the BOC must impute to its integrated operations the highest rate paid for such access by unaffiliated carriers").

²⁹⁰ Section 272(e)(3) requires that each BOC "shall charge" its section 272 separate affiliate "an amount for access . . . that is no less than the amount charged to any unaffiliated interexchange carriers for such access." 47 U.S.C. § 272(e)(3).

²⁹¹ 47 C.F.R. § 69.727(a)(iii).

²⁹² 47 C.F.R. § 69.727(a)(iii). We note that AT&T and Verizon have agreed to merger conditions that, in the case of AT&T, preclude reliance on the provision of services to Verizon or Verizon's wireline affiliates and, in the case of Verizon, preclude reliance on the provision of services to AT&T or AT&T's wireline affiliates to meet the rule 69.727(a)(iii) requirement of provision of services to an unaffiliated customer. *See AT&T/BellSouth Order*, 22 FCC Rcd at 5807, Appendix F (Special Access); *SBC/AT&T Order*, 20 FCC Rcd at 18318, para. 51; *Verizon/MCI Order*, 20 FCC Rcd at 18459-60, para. 51. These merger conditions continue to apply as described in the merger orders, (continued....)

102. We require that AT&T, Qwest, and Verizon revise the cost allocation manuals they filed pursuant to section 64.903 of our rules to include their imputation methodologies, which will be subject to public comment.²⁹³ We also require that AT&T, Qwest, and Verizon to revise their cost allocation manuals to include a description of how their provision of access services will comply with the affiliate transaction rules, to the extent they will offer in-region, interstate, long distance service through an affiliate that is not a section 272 separate affiliate or a rule 64.1903 affiliate. Consistent with the Commission's findings in the *Accounting Safeguards Order*,²⁹⁴ we require that the BOCs and their independent incumbent LEC affiliates continue to treat in-region, long distance services as nonregulated for accounting purposes. These carriers also must continue to apply our affiliate transaction rules to any transactions they have with affiliates that provide long distance services.

103. AT&T, Qwest, and Verizon indicate that a significant reason underlying their desire to provide in-region, long distance services outside of the section 272 and rule 64.1903 separate affiliate structures is to realize the efficiencies of an integrated network over time.²⁹⁵ This integration will change both how each carrier's in-region, long distance network interconnects with its local network and the degree to which some facilities are jointly used to provide both local and interLATA services. The degree of integration does not alter AT&T's, Qwest's, and Verizon's obligations under section 272(e)(3) and this Order.²⁹⁶ We direct AT&T, Qwest, and Verizon to modify their cost allocation manuals as necessary, however, to ensure that their imputation and access charge methodologies remain consistent with section 272(e)(3) and this Order as each of these carriers changes the degree to which it integrates its local telephone and long distance operations.²⁹⁷

104. Finally, under our rules, amounts imputed to each BOC's or BOC independent incumbent LEC affiliate's in-region, long distance operations pursuant to section 272(e)(3) and this Order must be debited to account 32.5280,²⁹⁸ which includes nonregulated operating revenue.²⁹⁹ To facilitate

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regardless of whether the in-region, interstate, long distance services are provided directly or through an affiliate instead of a section 272 affiliate as described in the conditions. We note further that both AT&T and Verizon have agreed to merger conditions that require that they "not provide special access offerings to [their] wireline affiliates that are not available to other similarly situated special access customers on the same terms and conditions." *See id.* These merger conditions continue to apply as described in the merger orders, regardless of whether the in-region, interstate, long distance services are offered directly instead of through a wireline affiliate as described in the conditions.

²⁹³ 47 C.F.R. § 64.903 (cost allocation manual requirements).

²⁹⁴ *See Accounting Safeguards Order*, 11 FCC Rcd at 17620, para. 176 (directing that the BOCs treat services provided by their section 272 interLATA affiliates, such as affiliates providing in-region services, as nonregulated activities for accounting purposes). The *Accounting Safeguards Order* does not limit the applicability of nonregulated accounting treatment for services provided by section 272 separate affiliates to specific services.

²⁹⁵ *See, e.g.*, Legacy SBC NPRM Comments at 5-8 (discussing the substantial costs imposed on BOCs by the section 272 separate affiliate requirements); Qwest NPRM Comments at 13-15 (discussing inefficiency costs associated with structural separation requirements); Verizon NPRM Comments at 2, 9-11 (discussing the burdens and costs of duplicative efforts resulting from the section 272 separation requirements).

²⁹⁶ 47 U.S.C. § 272(e)(3).

²⁹⁷ 47 C.F.R. § 64.903(b) (accuracy of cost allocation manuals).

²⁹⁸ 47 C.F.R. § 32.5280 (nonregulated operating revenue).

²⁹⁹ 47 C.F.R. § 32.5280; *Accounting Safeguards Order*, 11 FCC Rcd at 17576-77, para. 86; *see also* 47 C.F.R. § 64.901(b)(1) (specifying that tariffed services, such as exchange access services, provided to a nonregulated operation must be charged to nonregulated activities at the tariffed rates and credited to the regulated revenue account for that service).

transparency of each carrier's imputation of in-region, long distance costs, we require AT&T, Qwest, and Verizon, as a condition of this Order, to include the imputation charges it debits to account 32.5280 in its ARMIS filings, accompanied by an explanatory footnote for each line item identifying the amount imputed.³⁰⁰ This requirement should pose at most a minimal additional burden to the carriers because they already record imputation charges in a subsidiary record account for revenues derived from regulated services treated as nonregulated for federal accounting purposes,³⁰¹ and already must file ARMIS reports.³⁰²

105. We conclude that the requirements set forth above adequately address the commenters' concerns regarding the incentives and ability of the BOCs and BOC independent incumbent LEC affiliates to use their pricing of access services, including special access services, to impede competition in the provision of in-region, long distance services.³⁰³ At the same time, these imputation and access charge requirements should not in any way hamper the BOCs' and their independent incumbent LEC affiliates' ability to compete. Instead, they should give AT&T, Qwest, and Verizon, their access services customers, and the Commission meaningful information for evaluating whether these carriers' imputation and access charge practices and procedures comply with section 272(e)(3) and this Order. We also believe that, in comparison with dominant carrier regulation, these imputation requirements provide a less costly but more effective method of assuring that the BOCs and their independent incumbent LEC affiliates will not discriminate between their own operations and their competitors in the pricing of special access services.

(iii) Low-Volume Usage Plans

106. As discussed above, although we find that Qwest, Verizon, and AT&T generally lack classical market power in the provision of in-region, interstate, long distance services, we are concerned that their customers who make relatively few interstate long distance calls and who do not also subscribe to wireless or broadband Internet access service may have fewer competitive choices among interstate, long distance providers and may not be able to avoid the impact of a price increase by engaging in usage substitution. To address this concern, AT&T and Verizon each have committed for three years to offer a rate plan tailored to these customers' needs.³⁰⁴ We note that, under the *Qwest Section 272 Sunset Forbearance Order*, Qwest committed to freeze for two years the per-minute prices for two calling plans

³⁰⁰ These data values with explanatory footnotes are to be provided in FCC Report 43-01, ARMIS Annual Summary Report, table I, row 1045, columns (b) and (c); FCC Report 43-02, ARMIS USOA Report, table I-1, row 5280, column (b); and in FCC Report 43-03, ARMIS Joint Cost Report, table I, row 5280, columns (b), (d), and (j).

³⁰¹ See 47 C.F.R. § 32.5280(c) (specifying that separate subsidiary record categories be maintained for nonregulated revenues).

³⁰² See, e.g., *ARMIS Order*, 2 FCC Rcd at 5772, para. 22; see also 47 C.F.R. § 43.21.

³⁰³ See, e.g., Legacy MCI FNPRM Comments at 19-23; Legacy MCI FNPRM Reply at 8-12; Ad Hoc Comments at 17-18; Ad Hoc Reply at 5-6. We reject legacy AT&T's and legacy MCI's calls for more intrusive imputation requirements. See, e.g., Legacy MCI FNPRM Reply at 14-16; Legacy AT&T FNPRM Comments at 51, 70 (arguing that the Commission should adopt rules requiring BOCs to impute access costs for each identifiable service offering, including each component in a bundled offering of multiple services, to prevent cross-subsidization). We find that the current regime with narrowly-targeted accounting and pricing safeguards remains adequate to address competitive concerns.

³⁰⁴ See AT&T Aug. 15, 2007 *Ex Parte* at 1-2; Verizon Aug. 21, 2007 *Ex Parte* at 1-2. Specifically, AT&T and Verizon each commit to offer a rate plan under which residential consumers with a local access line may obtain 1+ long distance telecommunications services at a rate of 12 cents per minute with no monthly minimum or monthly recurring charge. AT&T and Verizon both agree to make these rate plans available within 60 days of the effective date of this Order, and continuing for 36 months thereafter. *Id.*

that it currently offers which are tailored to these customers' needs, and to not increase the monthly fee that applies to one of these plans by more than one dollar as a condition of the Commission's forbearance.³⁰⁵

107. We agree with Consumers Union that the availability of such rate plans is important,³⁰⁶ and thus require that AT&T, Qwest, and Verizon adhere to these commitments as a condition of the relief we grant in this Order.³⁰⁷ We take this action pursuant to our authority under section 201 of the Act.³⁰⁸ We find that this condition will help protect against the exercise of any classical market power that Verizon, AT&T, or Qwest may have in relation to customers that make relatively few interstate long distance calls. We also find that this condition provides a more effective and less costly means of protecting against the exercise of such classical market power than would applying dominant carrier regulation to the BOCs' and their independent incumbent LECs' in-region, interstate long distance services.

(iv) Monthly Usage Information

108. We also are concerned that interstate long distance consumers need adequate information regarding their monthly usage in order to make informed choices among alternative long distance calling plans.³⁰⁹ To address this concern, AT&T has committed to provide, for three years, each residential customer who subscribes to a calling plan that establishes a single rate for unlimited wireline local exchange and long distance telecommunications service with the total number of long distance telecommunications service minutes used by that customer each month.³¹⁰ Similarly, Verizon has committed, for three years, to offer monthly long distance usage information to customers who subscribe

³⁰⁵ *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5243-44, para. 71. Specifically, for 24 months after the effective date of the *Qwest Section 272 Sunset Forbearance Order*, Qwest committed to freeze the per minute price of both its *Managed Long Distance Plan* (\$0.18 per minute; no monthly fee; predetermined monthly limit of \$20.00) and its *15 Cent Single Rate Plan* (\$0.15 per minute, monthly fee of \$0.99). In addition, Qwest committed for the same period of time to charge no monthly fee for its *Managed Long Distance Plan* and not to raise the monthly fee for its *15 Cent Single Rate Plan* by more than \$1.00. See *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5243, para. 71 n.204.

³⁰⁶ See Letter from Chris Murray, Senior Counsel, Consumers Union, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 02-112, 06-120 (dated Aug. 17, 2007) (Consumers Union Aug. 17, 2007 *Ex Parte*) (expressing Consumers Union's support for AT&T's "significant" voluntary commitments with respect to low volume users).

³⁰⁷ At a minimum, interexchange carriers must make their rates available to the public upon reasonable request in an easy to understand format and timely manner. See 47 C.F.R. § 42.10(a). An interexchange carrier that maintains a website also must make available its current rates, terms, and conditions for all of its interstate and international services on the website in a timely and easily accessible manner. See 47 C.F.R. § 42.10(b). Further, Consumers Union recommends that the carriers display the low volume plans "prominently" on their websites. Consumers Union Aug. 17, 2007 *Ex Parte*. We expect that AT&T, Qwest, and Verizon will take such steps to ensure that consumers are informed of these plans.

³⁰⁸ 47 U.S.C. § 201(b) (requiring that all charges for interstate or foreign telecommunications services shall be "just and reasonable"); see also 47 U.S.C. § 272(f)(3) (stating that section 272(f) shall not be construed "to limit the authority of the Commission under any other section of this Act to prescribe safeguards consistent with the public interest, convenience, and necessity").

³⁰⁹ We note that Qwest already provides this information to its residential long distance customers, and has committed to continue providing this information for a period of at least two years from the effective date of the *Qwest Section 272 Sunset Forbearance Order*. See *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5244, para. 72.

³¹⁰ See AT&T Aug. 15, 2007 *Ex Parte* at 2. AT&T agrees to make this information available within 60 days of the effective date of this Order.

to wireline interstate, interexchange telecommunications service plans that establish a single rate for unlimited wireline local exchange, intraLATA toll, and 1+ long distance telecommunications service.³¹¹ In addition, in the *Qwest Section 272 Sunset Forbearance Order*, the Commission conditioned its relief on Qwest's commitment to ensure that its subscribers continue to receive in their bills the monthly usage information that they may need to make cost-effective decisions concerning alternative long distance plans. As a condition of the regulatory relief granted in this order, we require AT&T, Verizon, and Qwest to provide such usage information without an additional charge.

c. Advantages of Our New Framework

109. We find that the new regulatory framework adopted in this Order is preferable to the regulatory requirements previously in place for the BOCs and their independent incumbent LEC affiliates. In particular, we find that the new framework imposes significantly fewer costs than the prior regulations. Because the new framework does not involve retail price regulation or tariff filing with respect to in-region interLATA telecommunications services, it also imposes fewer costs than would dominant carrier regulation.³¹² The new framework also does not impose the costs and inefficiencies associated with the full section 272 safeguards, including the costs and inefficiencies from maintaining structural separation between local telephone and long distance operations, operating these services independently, and maintaining duplicate sets of officers, directors, and employees.³¹³ The new framework also does not impose the same constraints on the ability of the BOCs and their independent incumbent LEC affiliates to respond to technological and marketplace developments as do the section 272 and rule 64.1903 safeguards.³¹⁴

110. Further, as discussed above, we find the regulatory safeguards adequately address the limited classical market power concerns, as well as the concerns associated with exclusionary market power. As discussed in our market analysis, although we generally find that the BOCs lack classical market power with regard to in-region, interstate, long distance services, we identify concerns relating to consumers who make relatively few interstate long distance calls.³¹⁵ As discussed above, we find that the low-volume usage plan and monthly usage information requirements are targeted responses to these concerns.³¹⁶ We also find that the continuing legal requirements, including section 251(c) and 271(c)(2)(B) unbundling and sections 272(e)(1) and 272(e)(3), as well as the special access performance metrics and imputation requirements set forth in this Order, adequately address concerns associated with exclusionary market power.³¹⁷ We also find that the improved ability of AT&T, Verizon, and Qwest to develop and deploy innovative interLATA services that meet their customers' needs is a significant benefit associated with the new framework adopted in this Order. We find that customers and competition will benefit from the Commission's elimination of hindrances previously imposed by the section 272 safeguards by allowing AT&T, Verizon, and Qwest to become more effective competitors.

³¹¹ See Verizon Aug. 21, 2007 *Ex Parte* at 2. Verizon agrees to make this service available within 60 days of the effective date of this Order. *Id.* We therefore reject any proposal to provide such usage information as a "subscription service." *Id.*

³¹² See *supra* para. 76.

³¹³ See *supra* para. 82.

³¹⁴ See *supra* para. 83.

³¹⁵ See *supra* paras. 39-48.

³¹⁶ See *supra* parts III.A.4.b(ii), III.A.4.b(iv).

³¹⁷ See *supra* paras. 90-91, 96-105.

111. Finally, in concluding that dominant carrier regulation and structural safeguards no longer are appropriate for AT&T's, Verizon's, and Qwest's in-region, interstate, long distance services, we exercise our "expert policy judgment" with respect to a "subject matter [that] is technical, complex, and dynamic."³¹⁸ We find, in particular, that the section 272 safeguards impose higher costs than the new framework we adopt, but while we find both the section 272 safeguards and the new framework adequate to address our competitive concerns, the relative magnitudes of the benefits of each approach do not lend themselves to precise balancing. Given our expertise and experience with the regulation historically imposed on the BOCs and their independent incumbent LEC affiliates; the evidence of significant competition and evolution in the marketplace for interstate long distance services within the AT&T, Verizon, and Qwest incumbent LEC territories; and our conclusions regarding the adequacy of other safeguards, we find it appropriate to remove hindrances to the BOCs' and their independent incumbent LEC affiliates' becoming more effective competitors in a manner that we believe is administrable and adequately protects customers and competition.

d. Alternative Proposed Safeguards

112. We reject commenters' calls for safeguards in addition to those we adopt above. Specifically, we do not adopt safeguards in this proceeding in response to arguments by legacy AT&T and Working Assets that the BOCs have significant advantages in the marketing of long distance services to residential customers,³¹⁹ because those arguments have either been addressed in prior Commission orders or are better addressed in our pending *Equal Access* proceeding.³²⁰ We also reject legacy MCI's arguments that the BOCs have unfair marketing advantages resulting from their historic local market share and their established business relationships with subscribers that require changes to our do-not-call rules.³²¹ The Commission has previously rejected those arguments.³²² For the same reason, we reject

³¹⁸ *Brand X v. FCC*, 545 U.S. 967, 1002-03 (2005) (quoting *NCTA v. Gulf Power*, 534 U.S. 327, 339 (2001)).

³¹⁹ Legacy AT&T FNPRM Comments at 74-75 (arguing that a BOC, as the incumbent local service provider, has significant advantage over long distance competitors because the BOC may market its long distance services when consumers call to order local telephone service or to add an additional line); Working Assets FNPRM Comments at 4 (same).

³²⁰ The Commission addressed BOC joint marketing of long distance services in an order denying legacy AT&T's formal complaint against Bell Atlantic-NY. *AT&T Corp. v. New York Telephone Company*, File No. EB-00-MD-011, Memorandum Opinion and Order, 15 FCC Rcd 19997, 19999-20003, paras. 7-15 (2000) (*AT&T v. BA-NY Order*). We note that, subsequent to the *AT&T v. BA-NY Order*, legacy AT&T raised these same issues in its comments in the *Equal Access* proceeding. See Legacy AT&T Docket No. 02-39 Comments at 26-31; *Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, CC Docket No. 02-39, Notice of Inquiry, 17 FCC Rcd 4015 (2002) (*Equal Access NOI*). The Wireline Competition Bureau (Bureau) recently requested that parties refresh the record in the *Equal Access NOI* proceeding. *Parties Asked to Refresh Record Regarding Review of Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, CC Docket No. 02-39, Public Notice, 22 FCC Rcd 4553 (WCB 2007). Because the Commission's consideration of Legacy AT&T's arguments in the *Equal Access NOI* is pending, we decline to address those arguments here.

³²¹ Legacy MCI Section 272 FNPRM Comments at 5.

³²² See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) (*TCPA Order*). The Commission rejected legacy MCI's arguments for three reasons. First, the Commission noted that with the establishment of the national do-not-call registry, carriers are still permitted to telephone competitors' customers who have not placed their numbers on the national list. Second, the Commission explained that carriers will be able to call their prior and existing customers for 18 months after a previous purchase or transaction to market new products and services, such as local, long distance, or DSL services, as long as those customers have not asked to be placed on that carrier's company-specific, do-not-call list. Finally, the Commission pointed out that, for the remaining consumers with whom common carriers have no established business relationship and who are registered with the national do-not-call list, carriers may (continued...)

commenters' concerns regarding the BOCs' ability to market using customer proprietary network information (CPNI).³²³

113. We also reject certain commenters' suggestion that we should impose safeguards addressing the BOCs' billing and collection practices.³²⁴ In the *Billing and Collection Detariffing Order*, the Commission concluded that billing and collection services provided by LECs are not subject to regulation under Title II of the Act because they are not communications services.³²⁵ The Commission further found that unregulated treatment of LECs' billing and collection services would best serve the interests of the LECs, their subscribers, and their competitors.³²⁶ Commenters do not demonstrate that we should adopt different conclusions in this proceeding. Furthermore, we note that carriers have the option of providing their own billing and collection services as well as using the billing and collection services of companies other than the BOCs.

114. We also decline to impose additional safeguards to address the rates, terms, and conditions under which the BOCs and their independent incumbent LEC affiliates provide access services. Specifically, we decline to address at this time certain parties' concerns regarding AT&T's, Verizon's, and Qwest's special access services rates and regarding growth discounts these carriers have made available to their switched access services customers.³²⁷ We find that existing law and Commission rules and procedures are designed to address such concerns as they arise,³²⁸ and that to the extent that

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market to them using different advertising methods, such as direct mail. Because of the availability of consumers who have not registered for the national do-not-call list, and the 18-month window that enables competitors to contact customers who change from one provider to another, we find that these rules do not confer upon AT&T, Verizon, and Qwest an "unfair" advantage in marketing their services. *Id.* at 14085-86, para. 123.

³²³ See Working Assets FNPRM Comments at 4; Legacy MCI FNPRM Comments at 45-46. The Commission has found that interpreting the Act to impose no additional obligations on the BOCs when they share CPNI with their section 272 affiliates than are imposed by section 222 and the Commission's CPNI rules most reasonably reconciles the goals of section 222 and section 272. *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Information and Other Customer Information*, Second Report and Order, 13 FCC Rcd 8061 at paras. 158-169 (1998), *vacated sub nom. U.S. West, Inc. v. FCC*, 182 F.3d 1224 (10th Cir. 1999), *cert. denied*, 530 U.S. 1213 (2000); see also *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Information and Other Customer Information*, CC Docket Nos. 96-115, 96-149, and 00-257, Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd 14860, 14919, para. 135 (2002) (stating that "[o]ur adoption today of an opt-out customer approval mechanism for the use of CPNI by carriers and their affiliates that provide communications-related services does not affect our prior statutory interpretation regarding the interplay between Sections 222 and 272, nor does it alter our ultimate conclusion that the term 'information' in Section 272(c)(1) does not include CPNI").

³²⁴ See, e.g., Legacy MCI FNPRM Comments at 24; Legacy AT&T FNPRM Comments at 45-46; see also *id.* at Selwyn Decl., pp. 66-67.

³²⁵ *Detariffing of Billing and Collection Services*, CC Docket No. 85-88, Report and Order, 102 FCC 2d 1150, at para. 34 (1986) (*Billing and Collection Detariffing Order*).

³²⁶ *Billing and Collection Detariffing Order*, 102 FCC 2d 1150, at para. 53.

³²⁷ See, e.g., Legacy AT&T FNPRM Comments at 31-33; Legacy AT&T FNPRM Reply at 48-51; Legacy MCI FNPRM Reply at 2 (claiming that additional safeguards to reduce BOCs' special access rates are necessary); Legacy AT&T FNPRM Comments at 38-40 (arguing that the BOCs unlawfully offer discounts on switched access services to carriers, including the BOCs' own affiliates, based on growth in traffic).

³²⁸ For example, carriers have the option of filing a complaint with the Commission if a carrier believes that a tariff contains an unlawful growth discount. See 47 U.S.C. § 208; cf. *BellSouth Telecommunications, Inc. v. FCC*, 469 F.3d 1052 (D.C. Cir. 2006) (vacating and remanding for further proceedings a Commission decision, in a section (continued...))

commenters have other specific concerns, they are better addressed in the context of the broader records in other Commission proceedings.³²⁹

115. Similarly, we find that existing rules and legal protections adequately address commenters' concerns regarding the primary interexchange carrier (PIC) process.³³⁰ We believe that the Commission rules designed to implement fairly the PIC administration process are sufficient to guard against the type of anticompetitive concerns raised by commenters.³³¹ Moreover, as the Commission has observed previously, the Commission's carrier freeze rules place subscribers in control over whether there is a PIC freeze in place on their carrier selection.³³² Carriers are able to use the Commission's section 208 complaint process if they believe that AT&T, Verizon, or Qwest has violated the Act or the Commission's rules.

116. We also are not persuaded that asserted BOC violations of particular section 272 safeguards require that we extend those safeguards, either in particular states or throughout the individual BOC's region.³³³ To the extent the parties expressed concerns regarding the need for safeguards in particular BOC in-region states, we believe that this Order adequately addresses those concerns.³³⁴

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208 complaint proceeding, that certain volume discounts for special access services violated sections 272(c)(1) and 272(e)(3)).

³²⁹ See, e.g., *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005) (*Special Access Pricing Reform NPRM*) (initiating a rulemaking to establish an appropriate regulatory regime for interstate special access charges once the Coalition for Affordable Local and Long Distance Service (CALLS) plan expires).

³³⁰ See, e.g., Legacy AT&T FNPRM Comments at 7-8, 40, 71 (criticizing BOC implementation of the PIC process; calling for an independent PIC administrator; and seeking the implementation of a PIC administration performance metric); Working Assets FNPRM Comments at 5-6 (criticizing BOC implementation of the PIC process and calling for an independent PIC administrator); Legacy MCI FNPRM Comments at 28-31 (criticizing BOC implementation of the PIC process; calling for an electronic authorization process; and seeking a reduction in the PIC change charge); COMPTTEL NPRM Comments at 11-12 (asserting that the BOCs process PIC changes in a discriminatory manner).

³³¹ Our rules require the LEC to promptly execute, without any unreasonable delay, PIC changes that have been verified by the submitting carrier. See 47 C.F.R. § 64.1120(a)(2). Our rules also state that no LEC shall implement a preferred carrier freeze unless the LEC confirms the subscriber's request to impose a freeze by the subscriber's: (a) written or electronically signed authorization; (b) electronic authorization; or (c) oral authorization through a qualified independent third party. See 47 C.F.R. § 64.1190. The BOC and their independent incumbent LEC affiliates, therefore, are prohibited by our rules from routinely placing PIC freezes on the accounts of customers who select that carrier or its affiliate for long distance service without first getting the proper authorization from the subscriber. Legacy AT&T FNPRM Comments at 40; see also Legacy MCI FNPRM Comments at 28-30.

³³² *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996, 16031, para. 76 (2000).

³³³ See, e.g., Legacy AT&T NPRM Comments at 41 (asserting that Verizon violated the Act in New York); Legacy AT&T Kansas and Oklahoma Petition at 10 (asserting violations in Kansas and Oklahoma); Legacy AT&T Massachusetts Petition at 10-11 (alleging violations of the Act by Verizon in Massachusetts); Sprint FNPRM Comments at 9-11 (alleging various violations by legacy SBC, Qwest, and Verizon).

³³⁴ See Legacy AT&T Arkansas and Missouri Petition; Legacy AT&T Massachusetts Petition at 1 (discussing the levels of competition in Massachusetts); Legacy AT&T Kansas and Oklahoma Petition at 5, 7 (discussing the levels of competition in Kansas and Oklahoma); Legacy AT&T Texas Petition at 5, 11-12 (discussing levels of competition in Texas). Commenters in various section 272 sunset proceedings raised arguments about the levels of competition in various states. See, e.g., Texas Commission Reply at 1-2 (Legacy AT&T Texas Petition); Texas (continued....)

Indeed, the arguments the parties present regarding whether we should extend the section 272 safeguards in particular states are closely-related to similar issues raised in the general rulemaking.³³⁵ Thus, the conclusions that we reach in this Order on these issues also apply to the issues raised in arguing against allowing the section 272 safeguards to sunset in individual states. For example, one of the parties' primary arguments against allowing those safeguards to sunset in individual states is that the BOCs have discriminated against their interLATA telecommunications services competitors in the provisioning of special access services.³³⁶ The special access metrics we adopt in this Order address this alleged discrimination far more directly, and at lesser cost, than would extension of the section 272 safeguards.

B. Memorandum Opinion and Order in WC Docket No. 06-120

1. Equal Access Scripting Requirement

a. Overview

117. We now turn to AT&T's petition pursuant to section 10 of the Act for forbearance from application of the equal access scripting requirement (EA Scripting Requirement).³³⁷ The EA Scripting Requirement requires incumbent LECs to inform customers calling to obtain new local exchange service that they may obtain stand-alone long distance service from other carriers, and to read the customers a list of carriers offering long distance service in their area upon request.³³⁸ This requirement originated during the implementation of equal access following divestiture and is preserved by section 251(g) of the Act.³³⁹ For the reasons set forth below, we forbear from application of this requirement to the BOCs, and waive the requirement with respect to their independent incumbent LEC affiliates.

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OAG Reply at 2 (Legacy AT&T Texas Petition).

³³⁵ See, e.g., Sprint Comments at 4 (Legacy AT&T Texas Petition) (arguing that section 272 safeguards should be extended); Sprint NPRM Comments at 6-11 (same); see also, e.g., Texas Commission Reply at 1-2 (Legacy AT&T Texas Petition) (arguing that the Commission should not permit section 272 requirements to sunset in Texas).

³³⁶ See, e.g., Legacy AT&T NPRM Comments at 34-35 (arguing that a biennial audit in New York showed that Verizon's special access performance was discriminatory); *id.* at 41-42 (alleging PIC change violations by Verizon in New York); Sprint Comments (Legacy AT&T Texas Petition) at 15-18 (arguing that a biennial audit of legacy SBC failed to demonstrate compliance with section 272 in Texas); Sprint Reply (Legacy AT&T Texas Petition) at 2-3 (same); Legacy AT&T NPRM Comments at 36-37 (complaining that legacy SBC manipulated the biennial audit process in Texas); Legacy AT&T Reply (Legacy AT&T Texas Petition) at 10 (arguing that a biennial audit showed that legacy SBC gave favorable treatment to DSO, DS1, and DS3 orders from its affiliates); Legacy AT&T NPRM Comments at 36 (same); Texas Commission Comments (Legacy AT&T Texas Petition) at 2 (complaining that legacy SBC met the state performance requirements in only six of the first 31 months following its gaining section 271 authority in Texas).

³³⁷ See AT&T Petition at 1, 4, 37. Appendix A provides a list of commenters on AT&T's Petition. We expressly limit the forbearance we grant here to the EA Scripting Requirement. The remainder of the AT&T Petition is addressed in a companion order that we release today. See *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket No. 06-120, Memorandum Opinion and Order, FCC 07-160 (rel. Aug. 31, 2007); see also *supra* n. 57.

³³⁸ See *Equal Access Allocation Tariff Order*, 101 FCC 2d at 949-50, para. 40; *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22046, para. 292; *BellSouth South Carolina Order*, 13 FCC Rcd at 667-72, paras. 231-39 (stating that BOCs are permitted to market their own long distance services as long as they offer to read in random order a list of the names and, if requested, telephone number of all available interexchange carriers).

³³⁹ See 47 U.S.C. § 251(g). In general terms, section 251(g) requires continued compliance with equal access and nondiscrimination requirements established prior to the enactment of the Telecommunications Act of 1996 by court order, consent decree, or the Commission until those requirements are explicitly superseded by subsequent Commission action.

118. Section 10 of the Act is an integral part of the “pro-competitive, de-regulatory national framework” established in the Telecommunications Act of 1996.³⁴⁰ Section 10 provides that the Commission shall forbear from applying any provision of the Act, or any of the Commission’s regulations, if the Commission makes certain findings with respect to such provisions or regulations.³⁴¹ Specifically, the Commission is required to forbear from any such provision or regulation if it determines that: (1) enforcement of the provision or regulation is not necessary to ensure the telecommunications carriers’ charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the provision or regulation is not necessary to protect consumers; and (3) forbearance is consistent with the public interest.³⁴² In making such determinations, the Commission also must consider “whether forbearance from enforcing the provision or regulation will promote competitive market conditions.”³⁴³ We conclude below that continued application of the EA Scripting Requirement to the BOCs and their independent incumbent LEC affiliates is no longer justified. We thus find that forbearance from application of this requirement to the BOCs satisfies the requirements for forbearance in section 10 of the Act, and that waiver of these requirements is appropriate for their independent incumbent LEC affiliates.

b. Discussion

119. Section 10(a)(1) of the Act requires that we consider whether the EA Scripting Requirement is “necessary to ensure that the charges, practices, and classifications, or regulations by, for, or in connection with [these carriers’ long distance telecommunications services] are just and reasonable and are not unjustly or unreasonably discriminatory.”³⁴⁴

120. The EA Scripting Requirement was designed to foster fair competition in the provision of stand-alone long distance service at a time when competition in the provision of stand-alone long distance services was nascent and there was little, if any, competition in the provision of local exchange service.³⁴⁵ Since that time, market conditions have changed substantially, greatly reducing the benefits of the EA Scripting Requirement.

121. First, there is significant evidence that the stand-alone long distance market is becoming a fringe market.³⁴⁶ In particular, the stand-alone long distance competition that the EA Scripting Requirement was designed to protect has largely given way to competition between service bundles that include both local exchange and long distance service or “any distance” minutes that can be used for both local exchange and long distance calling.³⁴⁷ For example, service bundles are increasingly available from cable operators and interconnected VoIP providers.³⁴⁸ Wireless telephone subscribers also regularly use

³⁴⁰ Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996); *see also* Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 113.

³⁴¹ 47 U.S.C. § 160(a).

³⁴² 47 U.S.C. § 160(a)(1)-(3).

³⁴³ 47 U.S.C. § 160(b).

³⁴⁴ 47 U.S.C. § 160(a)(1).

³⁴⁵ *See* AT&T Petition at 37; Verizon Comments, WC Docket No. 06-120, at 7.

³⁴⁶ *See SBC/AT&T Order*, 20 FCC Rcd at 18342, para. 91; *Verizon/MCI Order*, 20 FCC Rcd at 18483, para. 92; *AT&T/BellSouth Order*, 22 FCC Rcd at 5715-16, para. 97.

³⁴⁷ *See* AT&T Comments, WC Docket No. 06-120, at 37; ACS Comments, WC Docket No. 06-120, at 3-4; Verizon Comments, WC Docket No. 06-120, at 2-3, 7; *see also supra* paras. 23-27; *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5217-5220, paras. 16-20.

³⁴⁸ *See supra* para. 27 & n.88.

their “any distance” minutes for long distance calling.³⁴⁹ Indeed, the entity whose market position was the original focus of the EA Scripting Requirement, AT&T:³⁵⁰ (1) no longer is an independent interexchange carrier competing primarily in the stand-alone long distance market;³⁵¹ (2) actually had started to “harvest” stand-alone long distance customers by increasing rates prior to merging with a BOC;³⁵² and (3) now, as a BOC and incumbent LEC, apparently encourages consumers to subscribe to a local and long distance service bundle rather than a stand-alone long distance product.³⁵³

122. Second, the minority of consumers that still take stand-alone long distance services now have additional options available for making long distance calls. As discussed above, the majority of residential customers also subscribes to mobile wireless services and can use their buckets of minutes to make long distance calls at zero marginal cost. And all residential customers also have the option of making long distance calls using transaction services, such as prepaid calling cards. These alternative methods of making long distance calls, which were not readily available when the EA Scripting Requirement was adopted, enable residential customers to engage in usage substitution.³⁵⁴ Despite the development of these competitive alternatives, the EA Scripting Requirement focuses solely on alternative presubscribed wireline long distance providers. Instead of increasing consumer awareness of competitive alternatives, we find that the artificially narrow focus of the EA Scripting Requirement may, in fact, confuse or mislead consumers and cause them not to investigate alternative means of making long distance calls. We further find that competition for stand-alone long distance services would function better absent the potential marketplace-distorting effects of the current EA scripting requirement. As previously found by the Commission, “competition is the most effective means of ensuring that the charges, practices, classifications, and regulations . . . are just and reasonable, and not unjustly or unreasonably discriminatory.”³⁵⁵ Accordingly, we conclude that the first prong of the section 10 forbearance test is satisfied.

123. Section 10(a)(2) of the Act requires that we determine whether the EA Scripting Requirement is “necessary for the protection of consumers.”³⁵⁶ As explained above, consumers have significant competitive alternatives available to them in the stand-alone long distance market, as well as

³⁴⁹ See *id.* As a result of these marketplace changes, legacy AT&T stopped marketing stand-alone long distance services to residential customers a number of years ago, and MCI reduced its marketing of such services. See *SBC/AT&T Order*, 20 FCC Rcd at 18342, para. 91; *Verizon/MCI Order*, 20 FCC Rcd at 18483, para. 92; *AT&T/BellSouth Order*, 22 FCC Rcd at 5715-16, para. 97.

³⁵⁰ See *Equal Access Allocation Tariff Order*, 101 FCC 2d at 935, 949-50, paras. 1, 40.

³⁵¹ See *SBC/AT&T Order*, 20 FCC Rcd at 18291-92, paras. 1-2.

³⁵² See *SBC/AT&T Order*, 20 FCC Rcd at 18348, para. 103 & n.313.

³⁵³ See *SBC/AT&T Order*, 20 FCC Rcd at 18345, para. 96 & n.297; AT&T Petition at 37.

³⁵⁴ See *SBC/AT&T Order*, 20 FCC Rcd at 18342-44, paras. 91-94; *Verizon/MCI Order*, 20 FCC Rcd at 18483-85, paras. 92-95; *AT&T/BellSouth Order*, 22 FCC Rcd at 5715-17, paras. 97-100; see also AT&T Petition at 9.

³⁵⁵ *Petition of US West Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance, Petition of US West Communications, Inc. for Forbearance*, CC Docket No. 97-172; *Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105, Memorandum Opinion and Order, 14 FCC Rcd 16252, 16270, para. 31 (1999). For the reasons stated above, we are not persuaded by commenters that contend that retention of the EA Scripting Requirement is necessary to prevent BOC dominance in the local exchange market from undermining competition in the long distance market. See COMPTTEL Opposition, WC Docket No. 06-120, at 2, 11-12; NASUCA Comments, WC Docket No. 06-120, at 5-6; NASUCA Reply Comments, WC Docket No. 06-120, at 2-4; Sprint Nextel Opposition, WC Docket No. 06-120, at 6-7; COMPTTEL Reply, WC Docket No. 06-120, at 3-4.

³⁵⁶ 47 U.S.C. § 160(a)(2).

numerous options for bundled service offerings by, among others, LECs, cable operators and interconnected VoIP providers. As discussed above, however, we find that the current EA Scripting Requirement is likely to distort competition for stand-alone long distance services by focusing solely on one type of competitive alternative. Thus, rather than being necessary for the protection of consumers, we find that the current EA Scripting Requirement could hinder consumers' awareness of competitive alternatives, and we find that the second prong of the section 10 forbearance test is satisfied.

124. Section 10(a)(3) of the Act requires that we determine whether forbearance from enforcement of the EA Scripting Requirement "is consistent with the public interest."³⁵⁷ For the reasons described above, we find that the current EA Scripting Requirement could distort competition and harm consumers, and thus we find that forbearance from that requirement is in the public interest. We also note that the EA Scripting Requirement imposes unnecessary costs on the BOCs.³⁵⁸ Even without the EA Scripting Requirement, the BOCs' local customers will retain the right to obtain long distance service from a long distance carrier other than the BOC. In cases in which customers ask whether they can obtain long distance service from another carrier or select a stand-alone long distance service, the BOCs remain subject to nondiscrimination obligations and must allow customers to exercise their rights under the remaining equal access obligations.³⁵⁹ Accordingly, we conclude that the third prong of the forbearance test is satisfied.

125. Moreover, we find that our analysis of the EA Scripting Requirement would not vary for any of the BOCs. Given that we find the BOCs to be similarly situated with regard to the factors relevant to forbearance from the EA Scripting Requirement, we conclude that it is reasonable to forbear for Verizon and Qwest, as well as for AT&T. Thus, we exercise our authority under section 10(a) to forbear from application of the EA Scripting Requirement to BOCs as a class.³⁶⁰

³⁵⁷ 47 U.S.C. § 160(a)(3).

³⁵⁸ See Verizon Comments, WC Docket No. 06-120, at 7-8; AT&T Petition at 37.

³⁵⁹ See *BellSouth South Carolina Order*, 13 FCC Rcd at 671-72, para. 239.

³⁶⁰ Section 10 provides for forbearance from "applying any regulation or any provision of the Act to a telecommunications carrier or telecommunications service, or *class of telecommunications carriers or telecommunications services*" if the Commission determines that the regulation at issue satisfies section 10's three-prong test. 47 U.S.C. § 160(a) (emphasis added). Because the language in the AT&T Petition is couched in general terms and addresses the effect of this requirement on all of the BOCs, we understand the petition to request relief from the EA Scripting Requirement for all BOCs. See AT&T Petition at 37 ("Finally, the Commission should also forbear from enforcing equal access script requirements[.]" noting that "[t]hose requirements force AT&T and other BOCs to market their services inefficiently . . ."). In addition, Verizon requests that the Commission eliminate the scripting requirement and other equal access requirements for all of the BOCs in this proceeding. See Verizon Comments, WC Docket No. 06-120, at 10. Moreover, opponents to forbearance from the EA Scripting Requirement do not focus on factors that are unique to AT&T. Rather, they raise points that are relevant to the BOCs as a group. See, e.g., NASUCA Comments, WC Docket No. 06-120, at 4-7; COMPTTEL Opposition, WC Docket No. 06-120, at 11-12; NASUCA Reply at 2-5. However, even if the AT&T Petition were viewed more narrowly, as a request only on its own behalf, we believe that it is reasonable to grant AT&T's request for forbearance from the EA Scripting Requirement and extend forbearance to the class as discussed above, given that the reasoning applies equally to all BOCs. We also note that the Commission has previously extended grants of forbearance on its own motion to include similarly situated carriers other than the individual petitioner. See *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, Order, WC Docket No. 03-171, 19 FCC Rcd 20179, 20182, 20189, paras. 10, 27 (2004), *petition for review denied*, *In re Core Communications, Inc.*, 455 F.3d 267 (D.C. Cir. 2006); see also *Federal-State Joint Board on Universal Service Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15098-99, para. 16 n.23 (2005).

126. Finally, for similar reasons as indicated above with respect to our waiver of section 64.1903, we find good cause to waive the EA Scripting Requirement for the BOCs' independent incumbent LEC affiliates.³⁶¹ As previously discussed with respect to our waiver of section 64.1903 of the Commission's rules, we find it more sensible for the BOC incumbent LECs and their independent incumbent LEC affiliates to operate pursuant to a uniform regulatory framework, particularly where the independent incumbent LEC operations are a relatively small portion of AT&T's and Verizon's local operations. These special circumstances convince us that it is consistent with the public interest to deviate from the general EA Scripting Requirement.³⁶² We reject, however, ACS's request to broaden AT&T's forbearance request to include all independent incumbent LECs at this time, nor do we find it appropriate to grant a waiver for such carriers here.³⁶³ Given the potential for significant differences in competitive circumstances³⁶⁴ and the lack of record with regard to non-BOC-affiliate, independent incumbent LECs, we do not extend this regulatory relief to these carriers at this time. The Commission is currently considering whether there is a continued need for the EA Scripting Requirement for independent incumbent LECs in a separate proceeding, and the independent incumbent LECs also otherwise remain free to seek relief from the EA Scripting Requirement.³⁶⁵

2. Effective Date

127. Consistent with section 10 of the Act and our rules, the Commission's forbearance and EA Scripting Requirement waiver decisions shall be effective on Friday, August 31, 2007.³⁶⁶ The time for appeal shall run from the release date of this Memorandum Opinion and Order.

IV. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Act Certification

128. Final Regulatory Flexibility Certification. The Regulatory Flexibility Act of 1980, as amended (RFA)³⁶⁷ requires that a regulatory flexibility analysis be prepared for rulemaking proceedings,

³⁶¹ The Commission may waive its rules when good cause is demonstrated. 47 C.F.R. § 1.3; *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*), *cert. denied*, 409 U.S. 1027 (1972). The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In doing so, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *See WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *See Northeast Cellular*, 897 F.2d at 1166.

³⁶² We thus deny as moot AT&T's request for forbearance from the EA Scripting Requirement to the extent that it extends to its independent incumbent LEC affiliates.

³⁶³ *See ACS Comments*, WC Docket No. 06-120, at 5-8.

³⁶⁴ *See GCI Reply*, WC Docket No. 06-120, at 8-11.

³⁶⁵ *See Equal Access NOI*, 17 FCC Rcd 4015; *Parties Asked to Refresh Record Regarding Review of Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, CC Docket No. 02-39, Public Notice, 22 FCC Rcd 4553 (2007).

³⁶⁶ *See* 47 U.S.C. § 160(c) (deeming the petition granted as of the forbearance deadline if the Commission does not deny the petition within the time period specified in the statute); 47 C.F.R. § 1.103(a) ("The Commission may, on its own motion or on motion by any party, designate an effective date that is either earlier or later in time than the date of public notice of such action.").

unless the agency certifies that “the rule will not have a significant economic impact on a substantial number of small entities.”³⁶⁸ The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”³⁶⁹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.³⁷⁰ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).³⁷¹ In the context of this Regulatory Flexibility analysis, SBA regulations define small wired telecommunications carriers as entities with fewer than 1,500 employees.³⁷²

129. In this Report and Order, the Commission establishes a new framework to govern the provision of in-region, long distance services by AT&T, Qwest, and Verizon. This new framework replaces burdensome regulation with less intrusive measures that protect important customer interests while allowing AT&T, Qwest, and Verizon to respond to marketplace demands efficiently and effectively. The issues addressed by the Commission in this Report and Order directly affect only the BOCs and their affiliates, which do not qualify as small entities under the RFA. In particular, none of the BOCs is a small entity because each BOC is an affiliate of a Regional Holding Company (RHC), and all of the BOCs or their RHCs have more than 1,500 employees. Insofar as this Report and Order applies to other BOC or RHC affiliates, those affiliates are controlled by the BOCs or by the RHC. Accordingly, they are not “independently owned and operated” entities for purposes of the RFA.

130. Therefore, we certify that the requirements adopted in this Report and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Report and Order including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. § 801(a)(1)(A). In addition, a summary of the Report and Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register.³⁷³

B. Paperwork Reduction Act

131. The actions in this Report and Order include new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information

(Continued from previous page) _____

³⁶⁷The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

³⁶⁸5 U.S.C. § 605(b).

³⁶⁹ 5 U.S.C. § 601(6).

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

³⁷¹ Small Business Act, 15 U.S.C. § 632.

³⁷² *See generally* 13 C.F.R. § 121.201; NAICS code 517110 (changed from 513310 in Oct. 2002).

³⁷³ 5 U.S.C. § 605(b).

collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,³⁷⁴ we previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

132. We have assessed the effects of the new or modified information collection requirements adopted in this Report and Order and find that they do not affect businesses with fewer than 25 employees.

C. Congressional Review Act

133. The Commission will include a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. *See* 5 U.S.C. § 801(a)(1)(A).

D. Accessible Formats

134. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov; phone: 202-418-0530 or TTY: 202-418-0432.

V. ORDERING CLAUSES

135. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), 201-204, 214, 220(a), 251, 252, 271, 272, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-204, 214, 220(a), 251, 252, 271, 272, and 303(r), the Report and Order IS ADOPTED.

136. IT IS FURTHER ORDERED, pursuant to sections 1, 2, 4(i), 4(j), 201-204, 214, 220(a), 251, 252, 271, 272, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-204, 214, 220(a), 251, 252, 271, 272, and 303(r), the Petition for Extension of Section 272 Obligations of Southwestern Bell Telephone Co. in the States of Arkansas and Missouri that Legacy AT&T Corp. filed September 24, 2004 in WC Docket No. 02-112; the Petition for Extension of Section 272 Obligations of Verizon in the State of Massachusetts that Legacy AT&T Corp. filed February 29, 2004 in WC Docket No. 02-112; the Petition for Extension of Section 272 Obligations of Southwestern Bell Telephone Co. in the States of Kansas and Oklahoma that Legacy AT&T Corp. filed December 8, 2003 in WC Docket No. 02-112; and the Petition for Extension of Section 272 Obligations of Southwestern Bell Telephone Co. in the State of Texas in WC Docket No. 02-112 that Legacy AT&T Corp. filed April 10, 2003 in WC Docket No. 02-112 ARE DENIED.

137. IT IS FURTHER ORDERED, pursuant to sections 1, 2, 4(i), 4(j), 201-204, 214, 220(a), 251, 252, 271, 272, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-154(j), 201-204, 214, 220(a), 251, 252, 271, 272, and 303(r), that section 64.1903 of the Commission’s rules IS WAIVED as applied to Southern New England Telephony Company and the General Telephone Operating Companies, subject to the conditions set forth in this Report and Order.

138. IT IS FURTHER ORDERED, pursuant to sections 1.103(a) and 1.427(b) of the Commission’s rules, 47 C.F.R. §§ 1.103(a), 1.427(b), that this Report and Order SHALL BE

³⁷⁴ *See* 44 U.S.C. § 3506(c)(4).

EFFECTIVE 30 days after publication of notice of the Report and Order in the FEDERAL REGISTER, subject to Office of Management and Budget (OMB) approval for new or modified information collection requirements.

139. IT IS FURTHER ORDERED, pursuant to sections 1, 2, 4(i), 4(j), 10, 201-204, 214, 220(a), 251, 252, 271, 272, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 160, 201-204, 214, 220(a), 251, 252, 271, 272, and 303(r) that AT&T's Petition for Forbearance, filed June 2, 2006, IS GRANTED in part, to the extent set forth herein.

140. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 4(j), 201-204, 251(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-154(j), 201-204, 251(g), and 303(r), and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that the Equal Access Scripting Requirement IS WAIVED as applied to Southern New England Telephone Company and the General Telephone Operating Companies as described in the Memorandum Opinion and Order, effective on August 31, 2007.

141. IT IS FURTHER ORDERED, pursuant to section 10 of the Communications Act of 1934, as amended, 47 U.S.C. § 160, and section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), that the Memorandum Opinion and Order SHALL BE EFFECTIVE on August 31, 2007. Pursuant to sections 1.4 and 1.13 of the Commission's rules, 47 C.F.R. §§ 1.4, 1.13, the time for appeal from that Memorandum Opinion and Order shall run from its release date.

142. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

**Comments to Notice of Proposed Rulemaking
in WC Docket No. 02-112**

Commenter	Abbreviation
Association for Local Telecommunications Services	ALTS
AT&T Corp.	Legacy AT&T
BellSouth Corporation	Legacy BellSouth
The Competitive Telecommunications Association	COMPTEL
Assistant Professor Reza Dibadj, University of Miami School of Business Administration	Dibadj
Focal Communications Corp., Pac-West Telecomm, US LEC Corp.	Focal Communications
MCI	Legacy MCI
Missouri Public Service Commission	Missouri Commission
National Association of State Utility Consumer Advocates	NASUCA
New Jersey Division of the Ratepayer Advocate	NJ Ratepayer
New York State Department of Public Service	NY Dept. Public Service
Pennsylvania Public Utility Commission	Pennsylvania Commission
Public Service Commission of Wisconsin	Wisconsin Commission
Public Service Commission of Missouri	Missouri Commission
Public Utility Commission of Texas	Texas Commission
Qwest Services Corporation	Qwest
SBC Communications, Inc.	Legacy SBC
Sprint Corporation	Sprint
State of Texas, Office of Attorney General	Texas AG
Time Warner Telecom	Time Warner Telecom
Touch America Holdings, Inc., <i>et al.</i>	Touch America
United States Telecom Association	USTA
Western Wireless Corp.	Western Wireless
Verizon	Verizon
Washington Utilities and Transportation Commission	Washington Commission
WorldCom	WorldCom
Wyoming Public Service Commission	Wyoming Commission

**Comments to Further Notice of Proposed Rulemaking
in WC Docket No. 02-112**

Commenter	Abbreviation
Ad Hoc Telecommunications Users Committee	Ad Hoc
Americatel Corporation	Americatel
AT&T Corp.	Legacy AT&T
AT&T Wireless Services, Inc.	AT&T Wireless
BellSouth Corporation	Legacy BellSouth

Coalition of Incumbent Independent Local Exchange Carriers	Coalition of Independent ILECS
Independent Telephone & Telecommunications Alliance	ITTA
BT Americas Inc.	BT Americas
California Public Utilities Commission	California Commission
GVNW Consulting, Inc.	GVNW
MCI	Legacy MCI
National Telecommunications Cooperative Association	NTCA
New Jersey Division of the Ratepayer Advocate	NJ Ratepayer
Public Utility Commission of Texas	Texas Commission
Qwest Services Corporation	Qwest
Sage Telecom Inc.	Sage
SBC Communications, Inc.	Legacy SBC
Sprint Corporation	Sprint
State of Texas, Office of Attorney General	Texas AG
United States Telecom Association	USTA
VarTec Telecom, Inc., Excel Telecommunications, Inc., & eMeritus Communications	VarTec <i>et al.</i>
Verizon	Verizon
Working Assets Long Distance	Working Assets
WorldCom	WorldCom
Z-Tel Communications, Inc.	Z-Tel

**Reply Comments to Notice of Proposed Rulemaking
in WC Docket No. 02-112**

Reply Commenter	Abbreviation
AT&T Corp.	Legacy AT&T
BellSouth Corporation	Legacy BellSouth
Covad Communications	Covad
NASUCA	NASUCA
New Jersey Division of the Ratepayer Advocate	NJ Ratepayer
Nextel Communications, Inc.	Nextel
SBC Communications Inc.	Legacy SBC
Sprint Corporation	Sprint
United States Telecom Association	USTA
Verizon	Verizon
WorldCom	WorldCom

**Reply Comments to Further Notice of Proposed Rulemaking
in WC Docket No. 02-112**

Reply Commenter	Abbreviation
Association for Local Telecommunications Services	ALTS
AT&T Corp.	Legacy AT&T
BellSouth Corporation	Legacy BellSouth
Coalition of Incumbent Independent Local Exchange Carriers	Coalition of Independent ILECS
General Communication, Inc.	General Communication
MCI	Legacy MCI
New Jersey Division of the Ratepayer Advocate	NJ Ratepayer
SBC Communications Inc.	Legacy SBC
Sprint Corporation	Sprint
Time Warner Telecom	Time Warner Telecom
United States Telecom Association	USTA
Verizon	Verizon

**Comments to AT&T Petition for Forbearance
In WC Docket No. 06-120**

Commenter	Abbreviation
ACS of Anchorage, Inc.	ACS
COMPTEL	COMPTEL
General Communication, Inc.	GCI
McLeodUSA Telecommunications Services, Inc.	McLeod
Sprint Nextel Corporation	Sprint Nextel
NASUCA	NASUCA
Verizon	Verizon

**Reply Comments to AT&T Petition for Forbearance
In WC Docket No. 06-120**

Commenter	Abbreviation
ACS of Anchorage, Inc.	ACS
AdHoc Telecommunications Users Committee	AdHoc
AT&T Inc.	AT&T
COMPTEL	COMPTEL
General Communications, Inc.	GCI
The National Association of State Utility Consumer Advocates	NASUCA
Verizon	Verizon

APPENDIX B

MASS MARKET DATA

Appendix B - Table 1 AT&T's Market Share for Mass Market Customers within its Franchise Area (December 2006)			
	Long Distance Services*	Wireline and Wireless Long Distance Usage**	Local and Long Distance Bundle***
Alabama	REDACTED		
Arkansas			
California			
Connecticut			
Florida			
Georgia			
Illinois			
Indiana			
Kansas			
Kentucky			
Louisiana			
Michigan			
Missouri			
Mississippi			
North Carolina			
Nevada			
Ohio			
Oklahoma			
South Carolina			
Tennessee			
Texas			
Wisconsin			
Minimum			
Maximum			
Median			
Source: *Refer to Note 1. **Refer to Note 2. ***Refer to Note 3.			

Note 1 (Interstate Long Distance Services). For each AT&T franchise area, we estimate AT&T's market share for interstate long distance services as follows:

$$MS_{AT\&T} = Local_{AT\&T} / (AT\&T_{PIC} + COMP)$$

Where $MS_{AT\&T}$ = AT&T's market share
 $Local_{AT\&T}$ = The total number of local service lines with a AT&T PIC.³⁷⁵
 $AT\&T_{PIC}$ = The total number of AT&T local service lines with a PIC.³⁷⁶
 $COMP$ = The total number of competitive local service lines.³⁷⁷

Note 2 (Wireline and Wireless Interstate Long Distance Usage). We attempt to account for wireline-wireless usage substitution by including, in our market share calculations, estimates of the number of residential mobile wireless customers that have not cut-the-cord.³⁷⁸ We follow four steps for each AT&T franchise area.

Step 1. We estimate the total number of customers that have telephone service (whether wireline or mobile wireless) and the number of customers that exclusively subscribe to mobile wireless service (*i.e.*, customers that have cut-the-cord). To do this we assume 10 percent of households have cut-the-cord³⁷⁹ and that the typical wireline household has one wireline phone.³⁸⁰

$$(AT\&T + COMP) = 0.90 * C_{\text{telephone}}$$

³⁷⁵ Primary Interexchange Carrier (PIC) information for legacy AT&T lines and legacy SBC lines is reported in Exh. 1.a.i. PIC information for legacy BellSouth lines is reported in Exh. 1.a.ii, and PIC information for AT&T legacy lines within legacy BellSouth's region is reported in Exh. 2. Exhibit 2 reports statewide data and may overstate AT&T legacy PIC counts in the BOC's franchise areas. (AT&T Apr. 23, 2007 *Ex Parte* Letter, Exhs. 1a.i, 1a.ii, 2).

³⁷⁶ *Id.*

³⁷⁷ We estimate competitive lines by summing the number of AT&T's resold residential lines, AT&T's local wholesale complete (UNE-P) lines, and AT&T's estimate of facilities-based lines. See AT&T Apr. 23, 2007 *Ex Parte* Letter, Exh. 1.b, 1.d, 1.f. Consistent with Commission precedent, we assume all competitive local service customers have a PIC. See, e.g., *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5225, para. 33, n.99 (2007). This may result in a slight underestimate of AT&T's market share for interstate residential long distance service.

³⁷⁸ We exclude wireless customers who have cut-the-cord because they cannot engage in usage substitution. We reject AT&T's estimates of the number of residential mobile wireless subscribers that have cut-the-cord because that estimate is for the state as a whole, and assumes a [REDACTED] percent penetration among residential consumers. The source document AT&T cites suggests a 61 percent penetration rate among residential consumers for 2006. AT&T Apr. 23, 2007 *Ex Parte* Letter, Exh. 1.h, note 1 and IDC Attachment, pp. 8-9.

³⁷⁹ *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5225-26, para. 34, n.101. We note that AT&T's analysis assumes [REDACTED] percent of residential consumers have cut-the-cord. AT&T Apr. 23, 2007 *Ex Parte* Letter, Exh. 1.h, note 2.

³⁸⁰ In December 2005, there were 95.6 million primary residential lines and 12.1 non-primary residential lines nationwide. See Trends in Telephone Service, Table 4, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-270407A1.pdf. This suggests that 89 percent of households with wireline service have a single wireline phone.

Where $C_{\text{telephone}}$ = The total number of customers that have telephone service (whether wireline or mobile wireless).
 AT&T = The total number of AT&T local service customers.³⁸¹
 COMP = The total number of competitive local service customers.³⁸²

Rearranging the expression yields,

$$C_{\text{telephone}} = (\text{AT\&T} + \text{COMP})/0.90$$

We estimate, $\text{Wireless}_{\text{CTC}}$, the total number of customers that have cut-the-cord, by

$$\text{Wireless}_{\text{CTC}} = C_{\text{telephone}} - \text{AT\&T} - \text{COMP}$$

Step 2. We estimate the total number of mobile wireless customers by assuming that the percentage of households that subscribe to mobile wireless services is 70 percent.³⁸³

$$\text{Wireless} = 0.70 * C_{\text{telephone}}$$

Where $\text{Wireless}_{\text{C}_{\text{telephone}}}$ = The total number of mobile wireless customers.
 = The total number of customers that have telephone service (whether wireline or mobile wireless) (as derived in Step 1).

Step 3. We estimate the total number of residential mobile wireless customers that have not cut-the-cord, (i.e., consumers that subscribe to both mobile wireless service and wireline service).

$$\text{Wireless}_{\text{Not-CTC}} = \text{Wireless} - \text{Wireless}_{\text{CTC}}$$

Where $\text{Wireless}_{\text{CTC}}$ = The total number of mobile wireless customers (as derived above in Step 2).
 $\text{Wireless}_{\text{CTC}}$ = The number of customers that have cut-the-cord (as derived above in Step 1).

Step 4. Finally, we amend the market share formula in Note 1 above by adding to the numerator AT&T wireless customers that have not cut-the-cord and by adding to the denominator Wireless service customers that have not cut-the-cord.

$$MS_{\text{AT\&T}} = \frac{[\text{Local}_{\text{AT\&T}} + \text{AT\&TWireless}_{\text{Not-CTC}}]}{[\text{AT\&T}_{\text{PIC}} + \text{COMP} + \text{Wireless}_{\text{Not-CTC}}]}$$

Where $\text{AT\&TWireless}_{\text{Not-CTC}}$ = AT&T Wireless customers that have not cut-the-cord³⁸⁴

³⁸¹ AT&T April 23, 2007 *Ex Parte* Letter, Exhs. 1.a., 1.d, 1.f.

³⁸² See *supra* n.377.

³⁸³ AT&T Apr. 24, 2007 *Ex Parte* Letter at 2, Attach. at 4, citing a Yankee Group Report, “Pervasive Substitution Precedes Displacement and Fixed-Mobile Convergence in Latest Wireless Trends.”

³⁸⁴ We use the National Resource Utilization and Forecast (NRUF) database to estimate AT&T’s share of mobile wireless numbers. See Section 272(f)(1) *Sunset of the BOC Separate Affiliate and Related Requirements; Information Derived from Numbering Resource Utilization and Forecast Report Data Placed Into the Record, Subject to Protective Order*, WC Docket No. 02-112, Public Notice, DA 07-3727 (WCB rel. Aug. 24, 2007) (*NRUF Public Notice*); Letter from Brian Fontes, Vice President, Federal Regulatory, AT&T, to Marlene H. Dortch, (continued....)

$Wireless_{Not-CTC}$ = Wireless subscribers that have not cut-the-cord (as derived in Step 3).

Note 3 (Local and Long Distance Bundle). For each AT&T franchise area, we calculate AT&T's share of the local and long distance service bundle by focusing on residential wireline customers that purchase a local and long distance service bundle from a single wireline provider and residential mobile wireless customers that have cut-the-cord.

$$MS_{AT\&T} = [AT\&T_{PIC} + AT\&TWireless_{CTC}] / [AT\&T_{AT\&T} + COMP + Wireless_{CTC}]$$

Where $AT\&T_{AT\&T}$ = The total number of AT&T local service customers with a AT&T PIC.³⁸⁵

$AT\&TWireless_{CTC}$ = AT&T Wireless customers that have cut-the-cord.³⁸⁶

$Wireless_{CTC}$ = Wireless customers that have cut-the-cord (as derived in Note 2, Step 1).

(Continued from previous page) _____

Secretary, FCC, WC Docket No. 02-112 at 1 (filed May 9, 2007) (AT&T May 9, 2007 *Ex Parte* Letter) (consenting to the inclusion of confidential NRUF data in the record in this proceeding). We estimate the number of AT&T mobile wireless customers that *have not* cut-the-cord by multiplying AT&T's share of mobile wireless numbers by the total number of mobile wireless service customers that have not cut-the-cord.

³⁸⁵ See *supra* n.375. We include only those AT&T long distance customers that subscribe to an AT&T local service offering.

³⁸⁶ We estimate the number of AT&T mobile wireless customers that have cut-the-cord by multiplying AT&T's share of mobile wireless numbers, as derived from the NRUF database, by the total number of mobile wireless customers that have cut-the-cord.

Appendix B - Table 2 Verizon's Market Share for Mass Market Customers within its Franchise Area (December 2006)			
	Long Distance Services*	Wireline and Wireless Long Distance Usage**	Local and Long Distance Bundle***
Arizona			
California			
Connecticut			
District of Columbia			
Delaware			
Florida			
Idaho			
Illinois			
Indiana			
Massachusetts			
Maryland			
Maine			
Michigan			
North Carolina			
New Hampshire			
New Jersey		REDACTED	
Nevada			
New York			
Ohio			
Oregon			
Pennsylvania/BA			
Pennsylvania/GTE			
Rhode Island			
South Carolina			
Texas			
Virginia/BA			
Virginia/GTE			
Vermont			
Washington			
Wisconsin			
West Virginia			
Minimum			
Maximum			
Median			
Source: *Refer to Note 4. **Refer to Note 5. ***Refer to Note 6.			

Note 4 (Interstate Long Distance Services). For each Verizon franchise area, we estimate Verizon's market share for interstate long distance services as follows

$$MS_{VZ} = \text{Local}_{VZ} / (\text{Verizon}_{PIC} + \text{COMP})$$

Where MS_{VZ} = Verizon's market share
 Local_{VZ} = The total number of local service customers with a Verizon PIC.³⁸⁷
 Verizon_{PIC} = The total number of Verizon local service customers with a PIC.³⁸⁸
 COMP = The total number of competitive local service lines.³⁸⁹

Note 5 (Wireline and Wireless Long Distance Usage). We take into account wireline-wireless usage substitution, and amend our estimates of Verizon's market share of long distance service by including estimates of the number of residential mobile wireless consumers that have not cut-the cord. For each Verizon franchise area, we apply the four-step procedure we described in Note 2 above with respect to AT&T. Similarly, we modify our calculation of Verizon's market share for long distance services by amending the numerator to include Verizon's wireless customers that have not cut-the-cord and by amending the denominator to include all mobile wireless service customers that have not cut-the-cord.³⁹⁰

³⁸⁷ Verizon Mar. 27, 2007 *Ex Parte* Letter, Exhs. 1.A.1, 1.A.2; Verizon Apr. 3, 2007 *Ex Parte* Letter, Exh. 1.A.1.b., 1.A.2.a; Verizon Apr. 13, 2007 *Ex Parte* Letter, Exh. 2 Supplement, Exh. 2B. Verizon provides PIC information for legacy MCI residential local lines on a state-wide basis. For each Verizon franchise area, we estimate the number of legacy MCI residential local lines with a legacy MCI PIC in two steps. First, we take the difference between Verizon's residential local lines that include legacy MCI local lines and Verizon's residential local line lines that exclude legacy MCI local lines. See Verizon Mar. 27, 2007 *Ex Parte* Letter, Exh. 1.A.4; Verizon Apr. 3, 2007 *Ex Parte* Letter, Exh. 1.A.1.a. Verizon did not provide a combined count of its Verizon and legacy MCI local lines for its Bell Atlantic and GTE regions of Pennsylvania and Virginia. We estimate the number of combined Verizon/MCI lines for Verizon's Bell Atlantic region in Pennsylvania by multiplying the number of its combined Verizon/MCI lines for Pennsylvania as a whole by (the number of Bell Atlantic local lines in Pennsylvania divided by the total number of Verizon's local lines in Pennsylvania). Likewise, we estimate the number of combined Verizon/MCI lines for Verizon's GTE region in Pennsylvania by multiplying the number of its combined Verizon/MCI lines for Pennsylvania as a whole by (the number of GTE local lines in Pennsylvania divided by the total number of Verizon's local lines in Pennsylvania). We use the same method to estimate Verizon Bell Atlantic and GTE lines in Virginia. Second, we assume [REDACTED] percent of legacy MCI's local lines have a MCI PIC. Verizon Apr. 17, 2007 *Ex Parte* Letter at 2 ("In December 2006, MCI or VZ was the presubscribed long-distance carrier for approximately [REDACTED] percent of residential lines for which the former MCI was the local provider.").

³⁸⁸ See *supra* n. 387 and *Ex Parte* Letters cited therein for sources.

³⁸⁹ See *supra* n. 387 and *Ex Parte* Letters cited therein for sources. We estimate the number of competitive lines by summing the number of Verizon's resold residential lines, the number of Verizon's residential wholesale advantage lines and Verizon's estimate of the number of facilities-based residential lines. Verizon Mar. 27, 2007 *Ex Parte* Letter, Exhs. 1.B, 1.D and 1.F; Verizon Apr. 5, 2007 *Ex Parte* Letter at 2-3, Exh. 1.F.3; Verizon Apr. 13, 2007 *Ex Parte* Letter, Specification 1 Supplement, Exhs. 1.B.1, 1.D.1, 1.F.4. Consistent with Commission precedent, we assume all legacy MCI local service customers and all competitive local service customers have a PIC. (See, e.g., *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5225, para. 33, n.99). This may result in a slight underestimate of Verizon's market share for long distance services.

³⁹⁰ We exclude wireless customers who have cut-the-cord because they cannot engage in usage substitution.

$$MS_{VZ} = [Local_{VZ} + VerizonWireless_{Not-CTC}] / [Verizon_{PIC} + COMP + Wireless_{Not-CTC}]$$

Where $VerizonWireless_{Not-CTC}$ = Verizon Wireless subscribers that have not cut-the-cord.³⁹¹

$Wireless_{Not-CTC}$ = Wireless subscribers that have not cut-the-cord (as derived in Step 3).

Note 6 (Local and Long Distance Bundle). For each Verizon franchise area, we calculate Verizon's market share of the local and long distance service bundle by focusing on residential consumers that purchase a local and long distance service bundle from a single provider and residential mobile wireless consumers that have cut-the-cord. We apply the procedures described in Note 2, Step 1 to the Verizon data to incorporate these mobile wireless consumers that have cut-the-cord into our analysis.

$$MS_{VZ} = [Verizon_{VZ} + VerizonWireless_{CTC}] / [Verizon_{VZ} + COMP + Wireless_{CTC}]$$

Where $Verizon_{VZ}$ = The total number of Verizon local service customers with a Verizon PIC.³⁹²

$VerizonWireless_{CTC}$ = Verizon Wireless customers that have cut-the-cord.³⁹³

COMP = The total number of competitive local service lines.³⁹⁴

$Wireless_{CTC}$ = Wireless customers that have cut-the-cord (as derived in Note 2, Step 1 for the Verizon franchise area).

³⁹¹ We use the NRUF database to estimate Verizon Wireless' share of mobile wireless numbers. *See* Letter from John T. Scott, III, Vice President & Deputy General Counsel, Regulatory Law, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112 at 1 (filed May 8, 2007) (Verizon May 8, 2007 *Ex Parte* Letter) (consenting to the inclusion of confidential NRUF data in the record in this proceeding). We estimate the number of Verizon Wireless mobile wireless customers that have *not* cut-the-cord by multiplying Verizon Wireless' share of mobile wireless numbers by the total number of mobile wireless service customers that have not cut-the-cord (as derived in Step 3).

³⁹² *See supra* n.387. We include only those Verizon long distance customers that subscribe to a Verizon local service offering.

³⁹³ We use the NRUF database to estimate Verizon Wireless's share of mobile wireless numbers. *See NRUF Public Notice*. We multiply this share by the estimate of the total number of mobile wireless customers that have cut-the-cord described in Note 2, Step 1.

³⁹⁴ *See supra* n.389.

APPENDIX C

ENTERPRISE MARKET DATA

Appendix C - Table 1 AT&T Market Share – Large Enterprise Customers (2006)			
Long Distance Services			
State	Market Share	HHI	Rivals
Alabama			
Arkansas			
California			
Connecticut			
Florida			
Georgia			
Illinois			
Indiana			
Kansas			
Kentucky			
Louisiana			
Michigan			
Missouri			
Mississippi			
Nevada			
North Carolina			
Ohio			
Oklahoma			
South Carolina			
Tennessee			
Texas			
Wisconsin			
Minimum			
Maximum			
Median			

REDACTED

Appendix C - Table 1			
AT&T Market Share - Large Enterprise Customers (2006) - Continued			
T-1 Services			
State	Market Share	HHI	Rivals
Alabama			
Arkansas			
California			
Connecticut			
Florida			
Georgia			
Illinois			
Indiana			
Kansas			
Kentucky			
Louisiana			
Michigan			
Missouri			
Mississippi			
Nevada			
North Carolina			
Ohio			
Oklahoma			
South Carolina			
Tennessee			
Texas			
Wisconsin			
Minimum			
Maximum			
Median			

REDACTED

Appendix C - Table 1			
AT&T Market Share - Large Enterprise Customers (2006) – Continued			
T-3 Services			
State	Market Share	HHI	Rivals
California	REDACTED		
Connecticut			
Florida			
Georgia			
Illinois			
Indiana			
Louisiana			
Michigan			
Missouri			
Mississippi			
North Carolina			
Ohio			
Oklahoma			
South Carolina			
Tennessee			
Texas			
Wisconsin			
Minimum			
Maximum			
Median			
Frame Relay Services			
California	REDACTED		
Florida			
Texas			

Appendix C - Table 1			
AT&T Market Share - Large Enterprise Customers (2006) – Continued			
State	Market Share	HHI	Rivals
ATM Services			
California	REDACTED		
Florida			
Georgia			
Illinois			
Michigan			
Missouri			
North Carolina			
Ohio			
Texas			
Minimum			
Maximum			
Median			
<p>Source: AT&T Apr. 23, 2007 <i>Ex Parte</i> Letter, Exh. 4 (State-wide data). Staff calculations are done for markets with at least 30 observations. Large Enterprise Customers are businesses with at least 250 employees.</p>			

Appendix C - Table 2			
Verizon Market Share - Large Enterprise Customers (2006)			
Franchise Area	Market Share	HHI	Rivals
Long Distance Services – Bell Atlantic			
District of Columbia	REDACTED		
Delaware			
Massachusetts			
Maryland			
Maine			
New Hampshire			
New Jersey			
New York			
Pennsylvania			
Rhode Island			
Virginia			
Vermont			
West Virginia			
Minimum			
Maximum			
Median			
Long Distance Services – GTE			
California	REDACTED		
Florida			
Illinois			
Indiana			
Michigan			
Ohio			
Texas			
Washington			
Wisconsin			
Minimum			
Maximum			
Median			

Appendix C - Table 2			
Verizon Market Share - Large Enterprise Customers (2006)			
Franchise Area	Market Share	HHI	Rivals
T-1 Services – Bell Atlantic			
District of Columbia	REDACTED		
Delaware			
Massachusetts			
Maryland			
Maine			
New Hampshire			
New Jersey			
New York			
Pennsylvania			
Rhode Island			
Virginia			
Vermont			
West Virginia			
Minimum			
Maximum			
Median			
T-1 Services – GTE			
California	REDACTED		
Florida			
Illinois			
Indiana			
Michigan			
North Carolina			
Ohio			
Texas			
Washington			
Wisconsin			
Minimum			
Maximum			
Median			

Appendix C - Table 2			
Verizon Market Share - Large Enterprise Customers (2006)			
Franchise Area	Market Share	HHI	Rivals
T-3 Services – Bell Atlantic			
Massachusetts	REDACTED		
Maryland			
New Jersey			
New York			
Pennsylvania			
Virginia			
Minimum			
Maximum			
Median			
T-3 Services – GTE			
California	REDACTED		
Florida			
ATM Services – Bell Atlantic			
New Jersey	REDACTED		
New York			
Pennsylvania			
Virginia			

Appendix C - Table 2			
Verizon Market Share - Large Enterprise Customers (2006)			
Franchise Area	Market Share	HHI	Rivals
ATM Services – GTE			
Florida	REDACTED		
Frame Relay – Bell Atlantic			
District of Columbia	REDACTED		
Massachusetts			
Maryland			
New Jersey			
New York			
Pennsylvania			
Virginia			
Minimum			
Maximum			
Median			
Frame Relay Services – GTE			
California	REDACTED		
Florida			
Illinois			
Indiana			
Texas			
Minimum			
Maximum			
Median			
Source: Verizon Apr. 19, 2007 <i>Ex Parte</i> Letter, Exh. 4.5 (State Franchise area). Data are presented for the combined Bell Atlantic and GTE franchise areas for two states, Pennsylvania and Virginia. Staff calculations are done for markets with at least 30 observations. Large Enterprise Customers are businesses with at least 250 employees.			

Appendix C - Table 3			
AT&T Market Share - Small/Medium Enterprise Customers (2006)			
Long Distance Services			
State	Market Share	HHI	Rivals
Alabama	REDACTED		
Arkansas			
California			
Connecticut			
Florida			
Georgia			
Illinois			
Indiana			
Kansas			
Kentucky			
Louisiana			
Michigan			
Missouri			
Mississippi			
North Carolina			
Nevada			
Ohio			
Oklahoma			
South Carolina			
Tennessee			
Texas			
Wisconsin			
Minimum			
Maximum			
Median			

Appendix C - Table 3			
AT&T Market Share - Small/Medium Enterprise Customers (2006) Continued			
State	Market Share	HHI	Rivals
T-1 Services			
Alabama	REDACTED		
Arkansas			
California			
Connecticut			
Florida			
Georgia			
IL			
Illinois			
Kansas			
Kentucky			
Louisiana			
Michigan			
Missouri			
Mississippi			
North Carolina			
Nevada			
Ohio			
Oklahoma			
South Carolina			
Tennessee			
Texas			
Wisconsin			
Minimum			
Maximum			
Median			

Appendix C - Table 3			
AT&T Market Share - Small/Medium Enterprise Customers (2006) Continued			
State	Market Share	HHI	Rivals
T-3 Services			
California	REDACTED		
Florida			
Georgia			
Illinois			
Indiana			
Michigan			
Missouri			
North Carolina			
Ohio			
Tennessee			
Texas			
Wisconsin			
Minimum			
Maximum			
Median			
Frame Relay			
California	REDACTED		
Texas			
ATM Services			
California	REDACTED		
Florida			
Illinois			
Michigan			
Ohio			
Texas			
Minimum			
Maximum			
Median			
Source: AT&T Apr. 23, 2007 <i>Ex Parte</i> Letter, Exh. 4 (State-wide data). Staff calculations are done for markets with at least 30 observations. Small/Medium Enterprise Customers are defined as businesses with 5 to 249 employees.			

Appendix C - Table 4			
Verizon Market Share - Small/Medium Enterprise Customers (2006)			
Franchise Area	Market Share	HHI	Rivals
Long Distance Services – Bell Atlantic			
Delaware	REDACTED		
District of Columbia			
Maine			
Maine			
Maryland			
Massachusetts			
New Hampshire			
New Jersey			
New York			
Pennsylvania			
Rhode Island			
Vermont			
Virginia			
West Virginia			
Minimum			
Maximum			
Median			
Long Distance Services – GTE			
California	REDACTED		
Florida			
Illinois			
Indiana			
North Carolina			
Ohio			
Oregon			
Texas			
Washington			
Wisconsin			
Minimum			
Maximum			
Median			

Appendix C - Table 4			
Verizon Market Share - Small/Medium Enterprise Customers (2006) – Continued			
Franchise Area	Market Share	HHI	Rivals
T-1 Services - Bell Atlantic			
Delaware	REDACTED		
District of Columbia			
Maine			
Maryland			
Massachusetts			
New Hampshire			
New Jersey			
New York			
Pennsylvania			
Rhode Island			
Vermont			
Virginia			
West Virginia			
Minimum			
Maximum			
Median			
T-1 Services - GTE			
California	REDACTED		
Florida			
Illinois			
Indiana			
Michigan			
North Carolina			
Ohio			
Oregon			
Texas			
Washington			
Wisconsin			
Minimum			
Maximum			
Median			

Appendix C - Table 4			
Verizon Market Share - Small/Medium Enterprise Customers (2006) – Continued			
Franchise Area	Market Share	HHI	Rivals
T-3 Services – Bell Atlantic			
Massachusetts	REDACTED		
New Jersey			
New York			
Pennsylvania			
Virginia			
Minimum			
Maximum			
Median			
T-3 Services – GTE			
California	REDACTED		
ATM Services – Bell Atlantic			
Massachusetts	REDACTED		
New Jersey			
New York			
Pennsylvania			
Virginia			
Minimum			
Maximum			
Median			

Appendix C - Table 4			
Verizon Market Share - Small/Medium Enterprise Customers (2006)			
Continued			
Franchise Area	Market Share	HHI	Rivals
Frame Relay – Bell Atlantic			
Maine	REDACTED		
Maryland			
Massachusetts			
New Hampshire			
New Jersey			
New York			
Pennsylvania			
Virginia			
West Virginia			
Minimum			
Maximum			
Median			
Frame Relay – GTE			
California	REDACTED		
Florida			
Illinois			
Indiana			
Texas			
Minimum			
Maximum			
Median			
Source: Verizon Apr. 19, 2007 <i>Ex Parte</i> Letter, Exh. 4.5 (State Franchise area). Data are presented for the combined Bell Atlantic and GTE franchise areas for two states, Pennsylvania and Virginia. Staff calculations are done for markets with at least 30 observations. Small/Medium Enterprise Customers are businesses with 5 to 249 employees.			

Appendix C - Table 5			
AT&T Market Share - Large Enterprise Customers (2006)			
MSA	Market Share	HHI	Rivals
Long Distance Services			
Appltn-Oshksh-Nee WI	REDACTED		
Atlanta-Sndy Spr GA			
Baton Rouge-Pierr LA			
Brmnghm-Hoovr-CII AL			
Charlotte-Gast NC-SC			
Chicago-Npr IL-IN-WI			
Cincinnati OH-KY-IN			
Cleveland-Akron OH			
Columbus-Marion OH			
Dallas-FT Worth TX			
Dayton-Springfld OH			
Detroit-Warrn-Flt MI			
Ft Wayne-Huntgton IN			
Gr Rapids-Muskegn MI			
Greenvll-Spartnbg SC			
Grnsboro-WnstSalm NC			
Hartford-Wilmntic CT			
Houston-Baytown TX			
Indianapls-Andrsn IN			
Jackson-Yazoo Cty MS			
Kansas City MO-KS			
Knoxville-Seviervl TN			
Las Vegas-Paradse NV			
Lexington-Fayette KY			
Little Rock-PnBlf AR			
Los Angeles-LngBc CA			
Louisville-Elzb KY-IN			
Madison-Baraboo WI			
Miami-Ft Lauderdale FL			
Milwaukee-Racine WI			
Nashville-Davidsn TN			
New Orleans-Mtrie LA			
New York-Newrk NY-NJ			
Oklahoma Ct-Shnee OK			
Orlando-Villages FL			
Raleigh-Durham NC			

Appendix C - Table 5			
AT&T Market Share - Large Enterprise Customers (2006) Continued			
MSA	Market Share	HHI	Rivals
Long Distance Services			
Sacramento-Arden CA	REDACTED		
San Antonio TX			
San Diego CA			
San Jose-San Fran CA			
St Louis-St Chrls MO			
Tampa-St Petrbrg FL			
Toledo-Fremont OH			
Tulsa-Bartlsvll OK			
Minimum			
Maximum			
Median			
T-1 Services			
Appltn-Oshksh-Nee WI	REDACTED		
Atlanta-Sndy Spr GA			
Baton Rouge-Pierr LA			
Brmnghm-Hoovr-Cll AL			
Charlotte-Gast NC-SC			
Chicago-Npr IL-IN-WI			
Cincinnati OH-KY-IN			
Cleveland-Akron OH			
Columbia-Newberry SC			
Columbus-Marion OH			
Dallas-FT Worth TX			
Dayton-Springfld OH			
Detroit-Warrn-Flt MI			
Ft Wayne-Huntgton IN			
Gr Rapids-Muskegn MI			
Greenvll-Spartnbg SC			
Grnsboro-WnstSalm NC			
Hartford-Wilmntic CT			
Houston-Baytown TX			
Huntsvll-Decatur AL			
Indianapls-Andrsn IN			
Jackson-Yazoo Cty MS			
Kansas City MO-KS			
Knoxvll-Seviervl TN			
Las Vegas-Paradse NV			
Lexington-Fayette KY			

Appendix C - Table 5			
AT&T Market Share - Large Enterprise Customers (2006) Continued			
MSA	Market Share	HHI	Rivals
T-1 Services			
Little Rock-PnBlf AR	REDACTED	REDACTED	REDACTED
Los Angeles-LngBc CA			
Louisville-Elzb KY-IN			
Madison-Baraboo WI			
Miami-Ft Lauderdale FL			
Milwaukee-Racine WI			
Nashville-Davidsn TN			
New Orleans-Mtrie LA			
New York-Newrk NY-NJ			
Oklahoma Ct-Shnee OK			
Orlando-Villages FL			
Peoria-Canton IL			
Raleigh-Durham NC			
Sacramento-Arden CA			
San Antonio TX			
San Diego CA			
San Jose-San Fran CA			
St Louis-St Chrls MO			
Tampa-St Petrsbrg FL			
Toledo-Fremont OH			
Tulsa-Bartlsvle OK			
Wichita-Winfield KS			
Minimum			
Maximum			
Median			
T-3 Services			
Atlanta-Sndy Spr GA	REDACTED	REDACTED	REDACTED
Chicago-Npr IL-IN-WI			
Dallas-FT Worth TX			
Detroit-Warrn-Flt MI			
Houston-Baytown TX			
Kansas City MO-KS			
Los Angeles-LngBc CA			
Miami-Ft Lauderdale FL			
San Jose-San Fran CA			
Minimum			
Maximum			
Median			

Appendix C - Table 5			
AT&T Market Share - Large Enterprise Customers (2006) - Continued			
MSA	Market Share	HHI	Rivals
ATM Services			
Chicago-Npr IL-IN-WI	REDACTED		
Los Angeles-LngBc CA			
San Jose-San Fran CA			
Frame Relay Services			
Los Angeles-LngBc CA	REDACTED		
Source: AT&T Apr. 23, 2007 <i>Ex Parte</i> Letter, Exh. 4 (MSA data). Staff calculations based upon product market/geographic area combinations with at least 30 observations. Large Enterprise Customers are defined as businesses with at least 250 employees.			

Appendix C - Table 6			
AT&T Market Share - Small/Medium Enterprise Customers (2006)			
MSA	Market Share	HHI	Rivals
Long Distance Services			
Appltn-Oshksh-Nee WI			
Ashville-Brevard NC			
Atlanta-Sndy Spr GA			
Baton Rouge-Pierr LA			
Brmnghm-Hoovr-Cll AL			
Charlotte-Gast NC-SC			
Chicago-Npr IL-IN-WI			
Chttnoog-Clevl TN-GA			
Cincinnati OH-KY-IN			
Cleveland-Akron OH			
Colmbus-Auburn GA-AL			
Columbia-Newberry SC			
Columbus-Marion OH			
CorpusChr-Kingsvl TX			
Dallas-FT Worth TX			
Dayton-Springfld OH			
Deltona-Daytona FL			
Detroit-Warrn-Flt MI			
Fresno-Madera CA			
Ft Wayne-Huntgton IN			
Gr Rapids-Muskegn MI			
Greenvll-Spartnbg SC			
Grnsboro-WnstSalm NC			
Gulfport-Biloxi MS			
Hartford-Wilmntic CT			
Houston-Baytown TX			
Huntsville-Decatur AL			
Indianapls-Andrsn IN			
Jackson-Yazoo Cty MS			
Kansas City MO-KS			
Knoxville-Seviervl TN			
Lafayette-Acadana LA			
Lansing-Owosso MI			
Las Vegas-Paradse NV			
Lexington-Fayette KY			
Little Rock-PnBlf AR			
Los Angeles-LngBe CA			
Louisville-Elzb KY-IN			
Lubbock-Levelland TX			

REDACTED

Appendix C - Table 6			
AT&T Market Share - Small/Medium Enterprise Customers (2006) - Continued			
MSA	Market Share	HHI	Rivals
Long Distance Services			
Macon-Wrnr-Robins GA	REDACTED		
Madison-Baraboo WI			
Miami-Ft Lauderdale FL			
Milwaukee-Racine WI			
Mobile-Daphne AL			
Montgomery-Alx Cty AL			
Nashville-Davidson TN			
New Orleans-Metairie LA			
New York-Newark NY-NJ			
Oklahoma City-Shreveport OK			
Orlando-Villages FL			
Peoria-Canton IL			
Raleigh-Durham NC			
Rockford-Freeport IL			
Sacramento-Arden CA			
Saginaw-Bay City MI			
San Antonio TX			
San Diego CA			
San Jose-San Francisco CA			
Shreveport-Bossier LA			
St Louis-St Charles MO			
Tampa-St Petersburg FL			
Toledo-Fremont OH			
Tulsa-Bartlesville OK			
Wichita-Winfield KS			
Youngstown-Warren OH-PA			
Minimum			
Maximum			
Median			
T-1 Services			
Appleton-Oshkosh-Neenah WI	REDACTED		
Asheville-Brevard NC			
Atlanta-Sandy Springs GA			
Baton Rouge-Pierre LA			
Birmingham-Hoover-Cullman AL			
Charlotte-Gaston NC-SC			
Chicago-Northbrook IL-IN-WI			
Chattanooga-Cleveland TN-GA			

Appendix C - Table 6			
AT&T Market Share - Small/Medium Enterprise Customers (2006) Continued			
MSA	Market Share	HHI	Rivals
T-1 Services			
Cincinnati OH-KY-IN			
Cleveland-Akron OH			
Columbia-Newberry SC			
Columbus-Marion OH			
CorpusChr-Kingsvl TX			
Dallas-FT Worth TX			
Dayton-Springfld OH			
Deltona-Daytona FL			
Detroit-Warrn-Flt MI			
Fresno-Madera CA			
Ft Wayne-Huntgton IN			
Gr Rapids-Muskegn MI			
Greenvll-Spartnbg SC			
Grnsboro-WnstSalm NC			
Hartford-Wilmntic CT			
Houston-Baytown TX			
Huntsville-Decatur AL			
Indianapls-Andrsn IN			
Jackson-Yazoo Cty MS			
Kansas City MO-KS			
Knoxville-Seviervl TN			
Lafayette-Acadana LA			
Lansing-Owosso MI			
Las Vegas-Paradse NV			
Lexington-Fayette KY			
Little Rock-PnBlf AR			
Los Angeles-LngBc CA			
Louisville-Elzb KY-IN			
Madison-Baraboo WI			
Miami-Ft Lauderdale FL			
Milwaukee-Racine WI			
Mobile-Daphne AL			
Montgomry-Alx Cty AL			
Nashville-Davidsn TN			
New Orleans-Mtrie LA			
New York-Newrk NY-NJ			
Oklahoma Ct-Shnee OK			
Orlando-Villages FL			

REDACTED

Appendix C - Table 6			
AT&T Market Share - Small/Medium Enterprise Customers (2006) Continued			
MSA	Market Share	HHI	Rivals
T-1 Services			
Peoria-Canton IL	REDACTED		
Raleigh-Durham NC			
Rockford-Freeport IL			
Sacramento-Arden CA			
San Antonio TX			
San Diego CA			
San Jose-San Fran CA			
Shreveprt-Bossier LA			
St Louis-St Chrls MO			
Tampa-St Petrsbrg FL			
Toledo-Fremont OH			
Tulsa-Bartlsvllle OK			
Witchita-Winfield KS			
Youngstwn-Wrrn OH-PA			
Minimum			
Maximum			
Median			
T-3 Services			
Chicago-Npr IL-IN-WI	REDACTED		
Dallas-FT Worth TX			
Houston-Baytown TX			
Los Angeles-LngBc CA			
San Jose-San Fran CA			
ATM Services			
Chicago-Npr IL-IN-WI	REDACTED		
Los Angeles-LngBc CA			
San Jose-San Fran CA			
Frame Relay			
Los Angeles-LngBc CA	REDACTED		
Source: AT&T Apr. 23, 2007 <i>Ex Parte</i> Letter, Exh. 4 (MSA data). Staff calculations based upon markets with at least 30 observations. Small/Medium Enterprise Customers are businesses with 5 to 249 employees.			

Appendix C - Table 7			
Verizon Market Share - Large Enterprise Customers (2006)			
MSA	Market Share	HHI	Rivals
Long Distance Services – Bell Atlantic			
Albany-Schenectdy NY	REDACTED		
Boston-Cambrdg MA-NH			
Bridgeport-Stmfrd CT			
Buffalo-Niagra FI NY			
New York NY-NJ-PA			
Providence RI-MA			
Rochester NY			
Worcester MA			
Allentown-Bethlhm PA			
Baltimore-Towson MD			
Harrisbrg-Carlisl PA			
Phildlph PA-NJ-DE-MD			
Pittsburgh PA			
Richmond VA			
Scranton-WilkesBr PA			
Virginia Beach VA-NC			
Washngtn DC-MD-VA-WV			
York-Hanover PA			
Minimum			
Maximum			
Median			
Long Distance Services – GTE			
Akron OH	REDACTED		
Austin-Round Rock TX			
Charlotte-Gstn NC-SC			
Chicago-Npr IL-IN-WI			
Cincinnati OH-KY-IN			
Cleveland-Elyria OH			
Columbus OH			
Dallas-Fort Worth TX			
Dayton OH			
Detroit-Wrn-Lvnia MI			
Grand Rapids-Wyo MI			
Greenville SC			
Houston-Baytown TX			
Indianapolis IN			
Los Angeles-LngBc CA			
Madison WI			

Appendix C - Table 7			
Verizon Market Share - Large Enterprise Customers (2006) (Continued)			
MSA	Market Share	HHI	Rivals
Long Distance Services – GTE (Continued)			
Milwaukee-Wauksha WI	REDACTED	REDACTED	REDACTED
Portland-Vncvr OR-WA			
Riversd-SnBrn-Ont CA			
Sacramento-Arden CA			
San Antonio TX			
San Francisco-Okl CA			
San Jose-Sunnyvle CA			
Seattle-Tacoma WA			
Tampa-St Petersburg FL			
Toledo OH			
Minimum			
Maximum			
Median			
T-1 Services – Bell Atlantic			
Albany-Schenectdy NY	REDACTED	REDACTED	REDACTED
Boston-Cambrdg MA-NH			
Bridgeport-Stmfrd CT			
Buffalo-Niagra FI NY			
New York NY-NJ-PA			
Providence RI-MA			
Rochester NY			
Springfield MA			
Syracuse NY			
Worcester MA			
Allentown-Bethlhm PA			
Baltimore-Towson MD			
Harrisbrg-Carlisl PA			
Phildlph PA-NJ-DE-MD			
Pittsburgh PA			
Richmond VA			
Scranton-WilkesBr PA			
Virginia Beach VA-NC			
Washngtn DC-MD-VA-WV			
York-Hanover PA			
Minimum			
Maximum			
Median			

Appendix C - Table 7			
Verizon Market Share - Large Enterprise Customers (2006) (Continued)			
MSA	Market Share	HHI	Rivals
T-1 Services – GTE			
Austin-Round Rock TX			
Charleston SC			
Charlotte-Gstn NC-SC			
Chicago-Npr IL-IN-WI			
Cincinnati OH-KY-IN			
Cleveland-Elyria OH			
Columbia SC			
Columbus OH			
Dallas-Fort Worth TX			
Dayton OH			
Detroit-Wrn-Lvnia MI			
Elkhart-Goshen IN			
Fort Wayne IN			
Grand Rapids-Wyo MI			
Greenville SC			
Houston-Baytown TX			
Indianapolis IN			
Lakeland FL			
Los Angeles-LngBc CA			
Madison WI			
Milwaukee-Wauksha WI			
Oxnard-Thous Oaks CA			
Peoria IL			
Portland-Vncvr OR-WA			
Riversd-SnBrn-Ont CA			
Sacramento-Arden CA			
San Antonio TX			
San Francisco-Okl CA			
San Jose-Sunnyvle CA			
Seattle-Tacoma WA			
Spokane WA			
Tampa-St Petersburg FL			
Toledo OH			
Minimum			
Maximum			
Median			

REDACTED

Appendix C - Table 7			
Verizon Market Share - Large Enterprise Customers (2006) (Continued)			
MSA	Market Share	HHI	Rivals
T-3 Services – Bell Atlantic			
Boston-Cambrdg MA-NH	REDACTED		
New York NY-NJ-PA			
Baltimore-Towson MD			
Phildlph PA-NJ-DE-MD			
Washngtn DC-MD-VA-WV			
T-3 Services – GTE			
Chicago-Npr IL-IN-WI			
Dallas-Fort Worth TX	REDACTED		
Houston-Baytown TX			
Los Angeles-LngBc CA			
San Francisco-Okl CA			
Frame Relay – Bell Atlantic			
Boston-Cambrdg MA-NH	REDACTED		
New York NY-NJ-PA			
Baltimore-Towson MD			
Phildlph PA-NJ-DE-MD			
Pittsburgh PA			
Washngtn DC-MD-VA-WV			
Minimum			
Maximum			
Median			

Appendix C - Table 7			
Verizon Market Share - Large Enterprise Customers (2006) (Continued)			
MSA	Market Shares	HHI	Rivals
Frame Relay – GTE			
Chicago-Npr IL-IN-WI	REDACTED		
Cincinnati OH-KY-IN			
Cleveland-Elyria OH			
Dallas-Fort Worth TX			
Detroit-Wrn-Lvnia MI			
Houston-Baytown TX			
Los Angeles-LngBc CA			
Milwaukee-Wauksha WI			
Portland-Vncvr OR-WA			
Riversd-SnBrn-Ont CA			
Sacramento-Arden CA			
San Antonio TX			
San Francisco-Okl CA			
Seattle-Tacoma WA			
Tampa-St Petersbrg FL			
Minimum			
Maximum			
Median			
ATM Services – Bell Atlantic			
New York NY-NJ-PA	REDACTED		
Washngtn DC-MD-VA-WV			
ATM Services – GTE			
Chicago-Npr IL-IN-WI	REDACTED		
Los Angeles-LngBc CA			
Source: Verizon Apr. 20, 2007 <i>Ex Parte</i> Letter, Exh. 4.5 (MSA data). Staff calculations based upon product market/geographic area combinations with at least 30 observations. Large Enterprise Customers are defined as businesses with at least 250 employees.			

Appendix C - Table 8			
Verizon Market Share - Small/Medium Enterprise Customers (2006)			
MSA	Market Share	HHI	Rivals
Long Distance Services – Bell Atlantic			
Albany-Schenectdy NY			
Binghamton NY			
Boston-Cambrdg MA-NH			
Bridgeport-Stmfrd CT			
Buffalo-Niagra FI NY			
Burlington VT			
Manchester-Nashua NH			
New York NY-NJ-PA			
Portland-S Prtlnd ME			
Poughkeepsie-Nwbr NY			
Providence RI-MA			
Rochester NY			
Springfield MA			
Syracuse NY			
Worcester MA			
Allentown-Bethlhm PA			
Baltimore-Towson MD			
Charleston WV			
Erie PA			
Harrisbrg-Carlisl PA			
Lancaster PA			
Phildlph PA-NJ-DE-MD			
Pittsburgh PA			
Reading PA			
Richmond VA			
Roanoke VA			
Scranton-WilkesBr PA			
Trenton-Ewing NJ			
Virginia Beach VA-NC			
Washngtn DC-MD-VA-WV			
York-Hanover PA			
Youngstwn-Wrrn OH-PA			
Minimum			
Maximum			
Median			

REDACTED

Appendix C - Table 8			
Verizon Market Share - Small/Medium Enterprise Customers (2006) - Continued			
MSA	Market Share	HHI	Rivals
Long Distance Services – GTE			
Akron OH			
Ann Arbor MI			
Asheville NC			
Austin-Round Rock TX			
Bakersfield CA			
Beaumont-Pt Arthr TX			
Canton-Massillon OH			
Charleston SC			
Charlotte-Gstn NC-SC			
Chicago-Npr IL-IN-WI			
Cincinnati OH-KY-IN			
Cleveland-Elyria OH			
Columbia SC			
Columbus OH			
Corpus Christi TX			
Dallas-Fort Worth TX			
Dayton OH		REDACTED	
Detroit-Wrn-Lvnia MI			
Durham NC			
Elkhart-Goshen IN			
Evansville IN-KY			
Fort Wayne IN			
Fresno CA			
Grand Rapids-Wyo MI			
Greenville SC			
Houston-Baytown TX			
Indianapolis IN			
Kalamazoo-Portage MI			
Lakeland FL			
Lansing-E Lansing MI			
Los Angeles-LngBc CA			
Madison WI			
Milwaukee-Wauksha WI			
Oxnard-Thous Oaks CA			
Peoria IL			
Portland-Vncvr OR-WA			
Riversd-SnBrn-Ont CA			

Appendix C - Table 8			
Verizon Market Share - Small/Medium Enterprise Customers (2006) - Continued			
MSA	Market Share	HHI	Rivals
Long Distance Services – GTE			
Rockford IL	REDACTED	REDACTED	REDACTED
Sacramento-Arden CA			
Salem OR			
Salinas CA			
San Antonio TX			
San Francisco-Okl CA			
San Jose-Sunnyvale CA			
Santa Barbara CA			
Santa Rosa-Petlma CA			
Sarasota-Bradentn FL			
Seattle-Tacoma WA			
South Bend-Msh IN-MI			
Spokane WA			
Springfield IL			
St Louis MO-IL			
Stockton CA			
Tampa-St Petersburg FL			
Toledo OH			
Minimum			
Maximum			
Median			
T-1 Services – Bell Atlantic			
Albany-Schenectdy NY	REDACTED	REDACTED	REDACTED
Boston-Cambrdg MA-NH			
Bridgeport-Stmfrd CT			
Buffalo-Niagra Fl NY			
Burlington VT			
Manchester-Nashua NH			
New York NY-NJ-PA			
Portland-S Prtlnd ME			
Poughkeepsie-Nwbr NY			
Providence RI-MA			
Rochester NY			
Springfield MA			
Syracuse NY			

Appendix C - Table 8			
Verizon Market Share - Small/Medium Enterprise Customers (2006) - Continued			
MSA	Market Share	HHI	Rivals
T-1 Services – Bell Atlantic (Continued)			
Utica-Rome NY	REDACTED	REDACTED	REDACTED
Worcester MA			
Allentown-Bethlhm PA			
Baltimore-Towson MD			
Charleston WV			
Harrisbrg-Carlisl PA			
Lancaster PA			
Phildlph PA-NJ-DE-MD			
Pittsburgh PA			
Reading PA			
Richmond VA			
Roanoke VA			
Scranton-WilkesBr PA			
Trenton-Ewing NJ			
Virginia Beach VA-NC			
Washngtn DC-MD-VA-WV			
York-Hanover PA			
Youngstwn-Wrrn OH-PA			
Minimum			
Maximum			
Median			
T-1 Services – GTE			
Akron OH	REDACTED	REDACTED	REDACTED
Ann Arbor MI			
Asheville NC			
Austin-Round Rock TX			
Beaumont-Pt Arthr TX			
Canton-Massillon OH			
Charleston SC			
Charlotte-Gstn NC-SC			
Chicago-Npr IL-IN-WI			
Cincinnati OH-KY-IN			
Cleveland-Elyria OH			
Columbia SC			
Columbus OH			

Appendix C - Table 8			
Verizon Market Share - Small/Medium Enterprise Customers (2006)- Continued			
MSA	Market Share	HHI	Rivals
T-1 Services – GTE (Continued)			
Corpus Christi TX			
Dallas-Fort Worth TX			
Davenport-Moln IA-IL			
Dayton OH			
Detroit-Wrn-Lvnia MI			
Durham NC			
Elkhart-Goshen IN			
Evansville IN-KY			
Fort Wayne IN			
Fresno CA			
Grand Rapids-Wyo MI			
Greenville SC			
Houston-Baytown TX			
Indianapolis IN			
Kalamazoo-Portage MI			
Lakeland FL			
Lansing-E Lansing MI			
Los Angeles-LngBc CA			
Madison WI			
McAllen-Edinburg TX			
Milwaukee-Wauksha WI			
Oxnard-Thous Oaks CA			
Peoria IL			
Portland-Vncvr OR-WA			
Riversd-SnBrn-Ont CA			
Rockford IL			
Sacramento-Arden CA			
Salem OR			
San Antonio TX			
San Francisco-Okl CA			
San Jose-Sunnyvle CA			
Santa Barbara CA			
Sarasota-Bradentn FL			
Seattle-Tacoma WA			

REDACTED

Appendix C - Table 8			
Verizon Market Share - Small/Medium Enterprise Customers (2006) - Continued			
MSA	Market Share	HHI	Rivals
T-1 Services – GTE (Continued)			
South Bend-Msh IN-MI	REDACTED		
Spokane WA			
Springfield IL			
St Louis MO-IL			
Stockton CA			
Tampa-St Petersbrg FL			
Toledo OH			
Minimum			
Maximum			
Median			
T-3 Services Bell Atlantic			
Boston-Cambrdg MA-NH	REDACTED		
New York NY-NJ-PA			
Washngtn DC-MD-VA-WV			
T-3 Services GTE			
Chicago-Npr IL-IN-WI	REDACTED		
Dallas-Fort Worth TX			
Los Angeles-LngBc CA			
San Francisco-Okl CA			
ATM Services – Bell Atlantic			
New York NY-NJ-PA	REDACTED		
Chicago-Npr IL-IN-WI			
Los Angeles-LngBc CA			
Frame Relay Services – Bell Atlantic			
Boston-Cambrdg MA-NH	REDACTED		
New York NY-NJ-PA			
Baltimore-Towson MD			
Phildlph PA-NJ-DE-MD			
Pittsburgh PA			
Washngtn DC-MD-VA-WV			
Minimum			
Maximum			
Median			

Appendix C - Table 8			
Verizon Market Share - Small/Medium Enterprise Customers (2006) - Continued			
MSA	Market Share	HHI	Rivals
Frame Relay Services – GTE			
Charlotte-Gstn NC-SC	REDACTED		
Chicago-Npr IL-IN-WI			
Cleveland-Elyria OH			
Columbus OH			
Dallas-Fort Worth TX			
Detroit-Wrn-Lvnia MI			
Houston-Baytown TX			
Indianapolis IN			
Los Angeles-LngBc CA			
Milwaukee-Wauksha WI			
Portland-Vncvr OR-WA			
Sacramento-Arden CA			
San Francisco-Okl CA			
San Jose-Sunnyvle CA			
Seattle-Tacoma WA			
Tampa-StPetersbrg FL			
Minimum			
Maximum			
Median			
Source: Verizon Apr. 20, 2007 <i>Ex Parte</i> Letter, Exh. 4.5 (MSA data). Staff calculations are done for markets with at least 30 observations. Small/Medium Enterprise Customers are defined as businesses with 5 to 249 employees.			

Appendix C - Table 9		
Long Distance Services Provided to Multi-Location Enterprises (Fourth Quarter, 2006)		
Provider	Market Share (Revenues)	Market Share (Minutes)
AT&T/BS	REDACTED	
Verizon		
JA*		
Qwest		
Other		
Total		
HHI		
Source: AT&T May 1, 2007 <i>Ex Parte</i> Letter, Exh. 5a. Market shares are for customers purchasing more than [REDACTED] of services per year. See Letter from Frank S. Simone, Executive Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Exh. 5a. (filed Mar. 29, 2007) (AT&T Mar. 29, 2007 <i>Ex Parte</i> Letter). * “JA” is an alias for another carrier that was listed in the confidential data submitted by AT&T.		

APPENDIX D

WHOLESALE LONG DISTANCE VOICE AND DATA MARKETS

Appendix D - Table 1 Wholesale Service Revenues (%)	
Wholesale Voice Long Distance (2006)	
Carrier	Market Share
AT&T	REDACTED
Verizon	
JA*	
Qwest	
EG*	
Other	
Total	
HHI	
Wholesale Data Revenue (2006)	
Carrier	Market Share
AT&T	REDACTED
Verizon	
JA*	
Qwest	
EG*	
Other	
Total	
HHI	
Source: AT&T May 1, 2007 <i>Ex Parte</i> Letter, Exh. 5b. * "JA" and "EG" are aliases for other carriers that were listed in the confidential data submitted by AT&T.	

**JOINT STATEMENT OF
COMMISSIONER MICHAEL J. COPPS AND
COMMISSIONER JONATHAN S. ADELSTEIN,
CONCURRING IN PART, DISSENTING IN PART**

Re: *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services, WC Docket No. 02-112, CC Docket No. 00-175, WC Docket No. 06-120, Report and Order and Memorandum Opinion and Order (Aug. 31, 2007).*

In this Order, the Commission allows the Bell Operating Companies (BOCs) to provide long-distance services on an integrated basis and subject to non-dominant carrier regulations, as long as they comply with targeted safeguards adopted in this Order and with their continuing statutory and regulatory obligations. We support this relief, with the conditions and commitments included herein, because the Commission must take into account the changing long-distance market.

We cannot fully join this decision because we are concerned that the Order does not fully take into account the significant consolidation that has taken place in the marketplace and what this means for consumers. Nor does the Order put in place a comprehensive mechanism for monitoring changes in the marketplace (*e.g.*, in the long-distance, wireless, and access markets) that would enable the Commission to reliably make decisions. Consumers will not be well-served if the Commission allows the competitive options to dwindle to a choice of bundles from a duopoly of providers. With this concern in mind, we cannot support the decision to reach beyond the rulemaking proceeding to use forbearance to take away equal access scripting – a long-standing and useful tool for consumers seeking information about competitive options.

This Order finally addresses the important issue of what rules should govern the BOCs' provision of long-distance services after the sunset of Section 272 separate affiliate and related requirements. After much urging, we are pleased that the Commission here engages in a credible analysis of the need for alternative safeguards. Indeed, there are notable changes in the long distance market for which the Commission must account.

We also support the combination of conditions – some voluntarily offered, others not – that address concerns which the separate affiliate rules were designed, at least in part, to address – such as cost shifting, non-discrimination and the availability of competitive service for all consumers. Not all customers have benefited equally from changes in the marketplace because of a lack of effective choice of providers. We therefore appreciate the commitments made by AT&T and Verizon to offer calling plans targeted for residential consumers who make relatively few long-distance calls and to provide call detail information to enable consumers to make informed decisions about the most cost effective long-distance plans. We are grateful to Consumers Union and others who have drawn much-needed attention to these issues. The needs of low-volume consumers are too often overlooked, even though they have a real need for our vigilance.

As the Commission did in the *Qwest Section 272 Sunset Forbearance Order*, here we make a number of important findings regarding the potential for price and performance discrimination. Notably, the Order acknowledges that incumbent providers retain the ability to raise their rivals' costs, and the Order maintains dominant carrier regulation for critical access services used by alternative long-distance providers. The Order correctly concludes that certain requirements of Section 272 will continue to apply, and it adopts rules for imputation and reporting that should help the Commission and competitors evaluate whether the petitioner is engaging in price discrimination. In addition, we are pleased that the

Order makes permanent the BOCs' current commitments via merger orders and the *Qwest 272 Sunset Forbearance Order* to comply with special access performance metrics in order to ensure that they do not engage in non-price discrimination in the provision of special access services.

We have consistently stated our view that competition must mean more for consumers than a choice between two providers – a cable and a telephone company – and that such a result would represent an unfortunate back-sliding for consumers. So while we are pleased that the Order acknowledges the rapid changes to the long-distance market, we are also aware that some of these changes favor incumbent providers. It is imperative for the Commission rigorously to monitor the effect of these safeguards. We would have preferred that the Commission adopt a formal, comprehensive mechanism for verifying whether the predictions in this Order prove accurate.

In particular, the evidence in this record shows that the BOCs have enjoyed dramatic success in the long distance market in a relatively short period of time, particularly among consumers who choose bundles of local and long distance service. So, we are disappointed that the Commission reaches beyond the rulemaking proceeding to grant forbearance from the long-standing equal access scripting rules that require customers be informed of their right to select the long-distance provider of their choice. Given the BOCs' high share of the bundled marketplace, we dissent to this portion of the Order as the Commission should not be taking this valuable tool away from consumers.

For these reasons, we concur in part and dissent in part.

**STATEMENT OF
COMMISSIONER DEBORAH T. TATE**

Re: *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services, WC Docket No. 02-112, CC Docket No. 00-175, WC Docket No. 06-120, Report and Order and Memorandum Opinion and Order (Aug. 31, 2007).*

In this decision we establish a new framework to govern the provision of in-region, long distance services by the Bell Operating Companies and their independent incumbent local exchange carrier affiliates. Once again we recognize the significant competition that exists in the long distance market. I support moving away from regulation where the record shows that a competitive market exists, rendering those regulations unnecessary. Today's decision takes a carefully balanced approach, providing regulatory relief to the incumbent Bell Operating Companies, allowing them to respond to marketplace demands efficiently and effectively, but ensuring that less intrusive or less costly regulation remains that protects important consumer interests and competition. Accordingly, I support today's Order removing legacy regulations where robust competition has rendered those regulations no longer necessary to maintain a competitive market.

STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL

Re: *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. Sec. 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region Interchange Services, WC Docket No. 02-112, CC Docket No. 00-175, and WC Docket No. 06-120, Report and Order and Memorandum Opinion and Order*

Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services, WC Docket No. 06-120, Memorandum Opinion and Order

In these orders, we grant relief from dominant carrier regulation of the Bell Operating Companies' (BOCs') in-region, interstate, long distance services. This is a classic instance where regulation had been appropriate to protect emerging competitors and consumers, but where the relevant market has become sufficiently competitive to warrant less onerous regulation, while continuing to protect consumers.

In place of the outmoded regulation, we establish a more appropriate regulatory framework that responds to the level of competition in the long distance services market and is uniformly applicable to all the BOCs. One of those safeguards is the adoption of special access metrics that were approved in the *BOC Merger Orders* and the *Qwest Section 272 Sunset Forbearance Order*. This is an example where a condition of specific mergers has market-wide validity. I am pleased to support adoption of this narrowly-tailored requirement on a uniform basis. Our order today also establishes regulatory parity.

While we grant relief to the BOCs, the independent incumbent local exchange carriers continue to be subjected to regulation that may be ripe for a lighter regulatory touch. If those carriers choose to seek such relief, I would seriously consider those requests based on relevant substantiation of their competitive situations.

I thank Chairman Martin for his leadership and hard work on these orders and I am delighted to support his effort.