the surface water of the adjoining wetlands where ground water contamination is being reduced by natural attenuation, and thus, limiting migration of contaminants to the surface water.

This ROD addresses remediation of contaminated shallow ground water, prevention of significant impacts on surface water from the discharge of contaminated shallow ground water, and provides for continued use of the deep aquifer as a drinking water supply. The primary contaminants of concern affecting the ground water are VOCs including benzene, toluene, and xylenes; and metals including arsenic.

On October 15, 1990, the Remedial Investigation/Feasibility Study (RI/FS Report) and the Proposed Plan for the Oak Grove Sanitary Landfill Site were released to the public for comment.

The selected remedial action for this site includes long term monitoring of the shallow and deep aquifers, surface water, and sediment at a frequency of three times per year for the first year and semi-annually thereafter; natural attenuation of shallow ground water; abandoning non-essential wells; and implementing institutional controls including ground water use restrictions.

During Phase 1 of the Remedial Action, debris was removed from the site and a security fence was installed around the perimeter off the Landfill. Warnings signs were posted along the fence to provide site information as well as telephone number for further information. This was completed by August 1993.

Phase II began and consisted of soil excavation, installation of monitoring wells, groundwater, surface water, and sediment sampling; air monitoring, and construction of the Landfill Cover. The process began approximately on August 1992 and final inspection was completed on September 2, 1993, by representatives of MPCA and EPA.

In 1994, the Legislature of the State of Minnesota enacted the Landfill Cleanup Law, Minnesota Laws 1994, ch. 639, codified at Minnesota Stat. § § 115B.39 to 115B.46 (the Act), authorizing the Commissioner of the Minnesota Pollution Control Agency (MPCA) to assume responsibility for future environmental response actions at qualified landfills that have receive notices of compliance from the Commissioner of MPCA. Additionally, the Act established funds to enable the MPCA to perform all necessary response, operation and maintenance at such landfills. At sites where no response for issuing a notice of compliance, all work would be expected, (under a state order or under state closure requirements) to be completed.

A notice of compliance was issued by MPCA for the Oak Grove Sanitary Landfill on May 14, 1996. MPCA has since assumed all responsibility for the Oak Grove Sanitary Landfill under the Act. Therefore, no further response actions under CERCLA are appropriate at this time. Consequently, U.S. EPA proposes to delete the site from the NPL.

V. Conclusion

EPA, with concurrence of the State of Minnesota has determined that all appropriate Fund-financed responses under CERCLA at the Oak Grove Sanitary Landfill Site have been completed, and no further Superfund response is appropriate in order to provide protection of human health and the environment. Therefore, it is proposed that the site be deleted from the NPL.

Dated: July 16, 1996.

Michelle D. Jordan,

Acting Regional Administrator, U.S. EPA, Region V.

[FR Doc. 96–19088 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 96–152, FCC 96–310]

Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing this Notice of Proposed Rulemaking (NPRM) which seeks comment on proposed regulations to clarify, where necessary, and to implement the non-accounting separate affiliate and nondiscrimination safeguards prescribed by Congress in sections 274, 275 and 260 of the Telecommunications Act of 1996 (47 U.S.C. 274, 275 and 260) with respect to BOC and/or LEC provision of electronic publishing, alarm monitoring and telemessaging services, respectively. In the NPRM, the Commission seeks to promote competition in the provision of electronic publishing, alarm monitoring, and telemessaging services by minimizing the burden of the rules it must adopt pursuant to the requirements of the new law.

DATES: Comments are due on or before September 4, 1996 and Reply Comments are due on or before September 20, 1996. Written comments by the public on the proposed and/or modified information collections are due September 4, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before September 27, 1996.

ADDRESSES: Comments and Reply Comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Michelle Carey, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1557, Robert MacDonald, Attorney, Common Carrier Bureau, Policy and Program Planning Division (202) 418–2764, or Raelynn Tibayan, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–2698. For additional information concerning the information collections contained in this NPRM contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted July 18, 1996 and released July 18, 1996 (FCC 96–310). This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. The full text of this Notice

of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, D.C. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington, D.C. 20037.

Paperwork Reduction Act

This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due September 27, 1996. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None.

Title: Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services.

Form No.: N/A.

Type of Review: New collection.

Information collection	Number of respondents (approx.)	Estimated time per response (hours)	Total annual burden (hours)
Network disclosure	1,400	48	67,200
Installation and maintenance reporting—timeliness	1,400	8	11,200
Installation and maintenance reporting—quality	1,400	1	1,400
Annual report	1,400	2	2,800
Biannual tariff report	1,400	2	5,600

Total Annual Burden: 88,200.

Respondents: Incumbent local exchange carriers and/or Bell Operating Companies.

Estimated costs per respondent: $0

Needs and Uses: The NPRM seeks comments on a number of issues, the resolution of which may lead to the imposition of information collections subject to the Paperwork Reduction Act. The NPRM seeks comment on certain reporting requirements to implement the non-accounting, separate affiliate and/or nondiscrimination requirements of the 1996 Act.

SYNOPSIS OF NOTICE OF PROPOSED RULEMAKING

I. Introduction

1. In enacting the Telecommunications Act of 1996 (''1996 Act''), Congress sought to establish ''a pro-competitive, de-regulatory national policy framework'' for the U.S. telecommunications industry. In furtherance of that goal, the 1996 Act seeks to eliminate or modify artificial barriers to competition in telecommunications markets. Such barriers include the legal restrictions that have excluded the Bell Operating Companies (''BOCs'') from various markets, such as the manufacturing of telecommunications equipment and the provision of interLATA telecommunications services. The 1996 Act permits the BOCs to enter those and other markets from which they previously were restricted, including the provision of electronic publishing, alarm monitoring and telemessaging on an interLATA basis, subject to certain safeguards.

2. Section 274 establishes separate affiliate and nondiscrimination requirements that are applicable to BOC provision of electronic publishing service. Sections 275 and 260 establish nondiscrimination and cross-subsidization safeguards that apply to local exchange carrier (''LEC'') provision of alarm monitoring and telemessaging services, respectively. The purpose of this *Notice of Proposed Rulemaking* (''NPRM'') is to clarify, where necessary, and to implement the non-accounting separate affiliate and nondiscrimination safeguards prescribed by Congress in sections 274, 275 and 260 with respect to BOC and/or LEC provision of electronic publishing, alarm monitoring and telemessaging services, respectively.

3. This proceeding is one of a series of interrelated rulemakings that collectively will implement the 1996 Act. Certain of those proceedings focus on opening markets to entry by new competitors. Other proceedings focus on the separate affiliate, nondiscrimination and other safeguards that Congress adopted in the 1996 Act to foster the development of robust competition in all telecommunications markets. As discussed more fully below, those safeguards are intended both to protect subscribers to BOC monopoly services against the potential risk of having to ''foot the bill'' for BOC entry into competitive services and to protect competition in the new markets that the BOCs will enter against the potential risk that the BOCs will use their existing market power to obtain an unfair advantage in those new markets.

A. Background

4. Prior to the enactment of the 1996 Act, the BOCs and their affiliates were effectively precluded under the Modification of Final Judgment (''MFJ'') from providing information services across local access and transport area (''LATA'') boundaries. While the MFJ, as originally entered, prohibited the BOCs from providing any information services, that restriction was eliminated in 1991. BOCs nevertheless were precluded from providing information services across LATA boundaries because the MFJ still prohibited the BOCs from providing interLATA telecommunications services. Therefore, BOCs could provide information services only between points located in the same LATA. They were allowed to do so on an integrated basis, subject to certain nondiscrimination and cross-subsidization safeguards established by the Commission.

5.The 1996 Act seeks to eliminate artificial statutory and regulatory barriers to entry into telecommunications markets. Such barriers may be particularly inimical to the interests of consumers when the excluded potential entrants are engaged in a complementary business and, as a consequence, could realize economies of scope (both technical and marketing) if they were allowed to enter. Such economies of scope should benefit consumers in both the markets in which

the entrant currently offers service and the markets it seeks to enter.

6. The 1996 Act opens the way for BOCs to provide, among other things, electronic publishing and telemessaging, and, in the future, alarm monitoring services on an interLATA basis in states in which they currently provide local exchange and exchange access services. The provision by the BOCs of such interLATA information services offers the prospect of fostering vigorous competition among providers of such services, because of the unique assets that the BOCs possess. BOCs can offer a widely recognized brand name that is associated with telecommunications services, the benefits of ''one-stop shopping,'' and other advantages of vertical integration.

7. At the same time, Congress recognized that BOC entry into the provision of in-region interLATA information services such as electronic publishing, alarm monitoring and telemessaging raises serious concerns for competition and consumers. A BOC's existing core business of providing local exchange and exchange access service is still a near-monopoly. If it is regulated under rate-of-return regulation, a price cap structure with sharing (either for interstate or intrastate services), or a price cap scheme that adjusts the X-factor periodically based on changes in industry productivity, a BOC may have an incentive to improperly allocate to its regulated core business costs that would be properly attributable to its competitive ventures. In addition, a BOC could potentially discriminate in providing exchange access services and facilities that its rivals need to compete in the electronic publishing, alarm monitoring and telemessaging markets. Specifically, a BOC could seek to use its control over exchange access services and facilities to weaken its competitors' offerings.

8. Our goal in this proceeding is to establish non-accounting separate affiliate and nondiscrimination safeguards that fulfill those statutory objectives. Pursuant to sections 274, 275 and 260, we seek to guard against the potential that BOCs offering electronic publishing, as well as BOCs and other incumbent LECs offering alarm monitoring and telemessaging services, would improperly allocate costs in a way that adversely affects local telephone ratepayers or competition in markets those entities will enter. We intend to achieve that objective without depriving those carriers of legitimate competitive advantages that can benefit both subscribers to their monopoly local services and consumers of the carriers' new services. We must also adopt rules that prevent potential anticompetitive discrimination by BOCs and other incumbent LECs against rivals without eliminating efficiencies derived from economies of scope.

9. We recognize that these objectives are a means to an overriding end: the replacement of stagnant monopoly regulation with the discipline of dynamic competition. When competition takes hold in what are now the bottleneck markets of local exchange and exchange access, we will no longer need the safeguards that Congress prescribed in the 1996 Act and the implementing rules that we will adopt in this proceeding. We note that, by providing for sunset of the section 274 provisions on February 8, 2000, Congress may have recognized that the level of competition in the electronic publishing industry at that time would be such that the structural safeguards in section 274 would no longer be necessary. We began the movement toward the goal of fostering competition when we adopted our *Notice of Proposed Rulemaking* to implement section 251 (61 FR 18311 (April 25, 1996)). That proceeding seeks to eliminate the legal barriers and reduce the economic and regulatory impediments to entry into the monopoly markets of incumbent LECs. Our upcoming access reform and jurisdictional separations reform rulemakings also will contribute to achieving our goal of fostering effective competition in local telecommunications markets. Until we reach that goal, we seek to minimize the burden of the rules that we adopt in this proceeding, but not at the cost of exposing ratepayers in local markets controlled by BOCs and independent LECs and competitors of BOC/LEC services to potential improper cost allocations and unlawful discrimination.

B. Overview of Sections 274, 275 and 260

10. Section 274 allows a BOC to provide electronic publishing service disseminated by means of its basic telephone service only through a ''separated affiliate'' or an ''electronic publishing joint venture'' that meets the separation and nondiscrimination requirements prescribed by that section. BOCs that were offering electronic publishing services at the time the 1996 Act was enacted have until February 8, 1997, to meet those requirements. The requirements under section 274 expire on February 8, 2000, four years after the date of enactment of the 1996 Act.

11. Section 275(a) prohibits a BOC that was not engaged in the provision of alarm monitoring services as of November 30, 1995, from providing such services for five years after the date of enactment of the 1996 Act. Section 275(a), however, allows BOCs to provide alarm monitoring services under certain conditions if they were already providing such services as of November 30, 1995. In addition, section 275 permits an incumbent LEC, including any grandfathered BOC, to provide alarm monitoring services on an integrated basis so long as it complies with certain nondiscrimination and cost allocation safeguards.

12. Section 260 permits incumbent LECs (including the BOCs) to provide telemessaging service subject to certain nondiscrimination safeguards. Although section 260 does not require a LEC to provide telemessaging through a separate subsidiary, in the *BOC In-Region NPRM,* we tentatively concluded that telemessaging service constitutes an ''information service,'' and therefore proposed that BOC provision of telemessaging on an interLATA basis would be subject to the separate affiliate, nondiscrimination and cross-subsidization requirements of section 272, in addition to the requirements of section 260.

13. This NPRM addresses the non-accounting separate affiliate and nondiscrimination requirements of sections 274, 275 and 260. We address in separate proceedings the non-accounting separate affiliate and nondiscrimination requirements established by sections 272 (applicable to BOC provision of in-region interLATA telecommunications services and interLATA information services other than electronic publishing and alarm monitoring) and 273 (applicable to BOC manufacturing activities). The accounting safeguards required to implement sections 271 through 276 and section 260 also will be addressed in a separate rulemaking proceeding.

14. The structural separation requirement for electronic publishing imposed by section 274 of the 1996 Act seeks to guard against improper cost allocations by the BOCs in two principal ways. First, by requiring the BOCs to use separate facilities and employees for local exchange service and electronic publishing service, that requirement seeks to reduce the joint and common costs that would require allocation between the telephone operating company and the affiliate engaged in competitive businesses. Second, by requiring a BOC to maintain records documenting transactions between the BOC and its affiliate, section 274 discourages the improper allocation of costs between the two entities by

facilitating its detection. Thus, while they do not eliminate the potential for improper cost allocations by a BOC, structural safeguards seek to reduce the likelihood that any such cost misallocation would go undetected.

15. The provisions of section 274 concerning electronic publishing joint ventures represent an alternative to structural separation as a means of addressing the potential problems of improper cost allocations and discrimination. Rather than making undetected cost shifting and discrimination more difficult, those provisions limit the potential likelihood that the BOCs will engage in such behavior by limiting their ownership interest in the electronic publishing entity. Because much of the benefit of favoring an electronic publishing joint venture would accrue to unrelated participants in such joint venture, the gains to the BOC from such activity would be small.

16. The structural separation requirements of section 274(b) for BOCs, along with the prohibitions on discrimination and cross-subsidization in sections 260(a) and 275(b) that apply to all incumbent LECs, address concerns about the BOCs' or the LECs' use of their market power to confer an unlawfully discriminatory competitive advantage on themselves or their affiliates when they provide competitive services. Those safeguards prevent a BOC or LEC from using its control over local exchange and exchange access markets to: (1) PProvide higher quality service to itself or its affiliate than the service provided to competing service providers at the same price; (2) provide exchange access services to itself or its affiliate at a lower rate than the rate charged to competing unaffiliated firms; or (3) improperly shift costs from its electronic publishing, alarm monitoring or telemessaging operations to the local telephone ratepayers, thus artificially reducing the costs of providing such competitive services below those of other providers and resulting in higher rates for local exchange subscribers.

17. Each of these examples of anticompetitive behavior has the potential to harm consumers in the electronic publishing, alarm monitoring and telemessaging markets. If a BOC or LEC provided poorer quality service to its competitor than to itself or its affiliate, but did not correspondingly lower the price charged to the competitor, then consumers would likely face a less attractive menu of offerings from competitors. This would harm both competitors and consumers, and would raise the BOC's profits. If the BOC or LEC exploited its market power to charge rivals supracompetitive prices for inputs, or otherwise raised its rivals' costs, the effect would be similar in degrading the options available to consumers from unaffiliated providers. The resulting ''price squeeze'' would also force competing providers either to match the price of the BOC or LEC or affiliate in the competitive market and absorb lower profit margins, or maintain their retail prices and accept smaller market shares. Thus, a less efficient producer might expand at the expense of a more efficient one.

18. In the discussion that follows, we first examine the scope of the Commission's authority to adopt rules implementing sections 274, 275 and 260. We subsequently discuss, in turn, the structural separation, joint marketing and nondiscrimination requirements relating to BOC provision of electronic publishing under section 274, and the general nondiscrimination requirements applicable to LEC provision of alarm monitoring and telemessaging under sections 275 and 260, respectively. Finally, we discuss enforcement provisions in sections 274, 275 and 260.

II. Scope of Commission's Authority

A. Telemessaging Services

19. In the BOC In-Region NPRM, we tentatively concluded that telemessaging is an information service that, when provided by BOCs on an interLATA basis, is subject to the requirements of section 272 in addition to the requirements of section 260. We also tentatively concluded in the BOC In-Region NPRM that our authority under sections 271 and 272 applies to intrastate and interstate interLATA information services provided by BOCs or their affiliates.

20. Section 260 of the Act imposes additional safeguards regarding the provision of telemessaging services, not only on the BOCs, but on all incumbent LECs. We seek comment on whether, in light of our tentative conclusion that sections 271 and 272 give the Commission jurisdiction over intrastate interLATA information services including telemessaging, section 260 can also be read to give us jurisdiction over intrastate telemessaging services in implementing and enforcing section 260. We note, however, that unlike sections 271 and 272, the scope of section 260 is not strictly limited to interLATA services, nor is it limited to the BOCs. We seek comment, therefore, on whether any such intrastate jurisdiction would extend only to the BOCs, as only BOCs are covered by sections 271 and 272, or to all incumbent LECs.

21. We also seek comment, as we did in the BOC In-Region NPRM, on the extent to which, assuming section 260 does not itself apply to intrastate services, the Commission may nevertheless have authority to preempt state regulation with respect to the matters addressed by section 260. The Commission has authority to preempt state regulation of intrastate communications services where such state regulation would ''thwart or impede'' the Commission's exercise of its lawful authority over interstate communications services, such as when it is not ''possible to separate the interstate and intrastate portions of the asserted FCC regulation.'' Thus, we seek specific comment on the extent to which (1) it may not be possible to separate the interstate and intrastate portions of the regulations we propose here to implement section 260, and (2) state regulation inconsistent with our regulations may thwart or impede the Commission's exercise of lawful authority over interstate telemessaging services. We seek comment, for example, on the extent to which the Commission would have authority to preempt potentially inconsistent state regulations regarding a LEC's ability to provide telemessaging services on an integrated basis under section 260. We also seek comment on the extent to which the Commission would not have the authority to preempt the state regulation of an intrastate telemessaging service.

B. Electronic Publishing Services

22. Although electronic publishing is specifically included within the definition of ''information service'' in section 3(20) of the Act, it is specifically exempted from the separate affiliate and nondiscrimination requirements of section 272. Section 274, which applies only to BOCs, requires the use of a ''separated affiliate'' or ''electronic publishing joint venture'' in order for a BOC to engage in the provision of electronic publishing services disseminated by means of its basic telephone service.

23. Section 274 imposes a number of safeguards on the provision by BOCs of electronic publishing through a separated affiliate or electronic publishing joint venture. Unlike sections 260 and 275, however, section 274 specifically refers to State commission jurisdiction regarding one of these safeguards. Section 274(b)(4) provides that a separated affiliate or joint venture and the BOC with which it is affiliated shall: value any assets that

are transferred directly or indirectly from the Bell operating company to a separated affiliate or joint venture, and record any transactions by which such assets are transferred, in accordance with such regulations as may be prescribed by the Commission or a State commission to prevent improper cross subsidies. This explicit reference to State commission regulations indicates that the requirements of this section apply to both interstate and intrastate electronic publishing services. We tentatively conclude, therefore, that the Commission may not have exclusive jurisdiction over all aspects of intrastate services pursuant to section 274. We seek comment on this tentative conclusion. We ask parties to comment specifically on the extent of our authority, if any, under section 274 over intrastate electronic publishing services.

24. Section 274(e) also provides that any person claiming a violation of this section may file a complaint with the Commission, or may bring suit pursuant to section 207. It also provides that an application for a cease and desist order may be made to the Commission, or in any federal district court. No reference is made to complaints being filed with State commissions. We thus encourage parties to clearly identify the Commission's jurisdiction under section 274 over intrastate electronic publishing services, particularly in light of the specific provisions of sections 274(b)(4) and 274(e). We also ask that commenters clearly identify whether specific subsections of section 274 confer intrastate authority on the Commission.

25. We also seek comment on the extent to which, apart from any intrastate jurisdiction conferred by section 274 itself, the Commission may have authority to preempt state regulation with respect to the matters addressed by section 274 pursuant to Louisiana PSC. Thus, we seek specific comment on the extent to which (1) it may not be possible to separate the interstate and intrastate portions of the regulations we propose here to implement section 274, and (2) state regulation inconsistent with our regulations may thwart or impede the Commission's exercise of lawful authority over interstate electronic publishing services. We also seek comment on the extent to which the Commission would not have the authority to preempt the state regulation of an intrastate electronic publishing service.

C. Alarm Monitoring Services

26. Alarm monitoring, as defined in section 275(e), appears to fall within the definition of ''information service'' in section 3(20) of the Act. Alarm monitoring services, however, are specifically exempted from the separate affiliate and nondiscrimination requirements of section 272. Section 275 of the Act delays until February 8, 2001, entry into alarm monitoring by a BOC or its affiliate that was not providing this service as of November 30, 1995, and imposes safeguards regarding the provision of alarm monitoring, not only on BOCs, but on all other incumbent LECs. We seek comment on the extent of our authority, if any, under section 275 over intrastate alarm monitoring services.

27. We also seek comment, as we did in the BOC In-Region NPRM, on the extent to which, assuming section 275 does not itself apply to intrastate alarm monitoring services, the Commission may have authority to preempt state regulation with respect to the matters addressed by section 275 pursuant to Louisiana PSC. Thus, we seek specific comment on the extent to which (1) it may not be possible to separate the interstate and intrastate portions of the regulations we propose here to implement section 275, and (2) state regulation inconsistent with our regulations may thwart or impede the Commission's exercise of lawful authority over interstate alarm monitoring services. We seek comment, for example, on the extent to which the Commission would have authority to preempt potentially inconsistent state regulations regarding an incumbent LEC's, including a BOC's, ability to provide alarm monitoring services on an integrated basis under section 275. We also seek comment on the extent to which the Commission would not have the authority to preempt the state regulation of an intrastate alarm monitoring service.

III. BOC Provision of Electronic Publishing—Section 274

28. At the time of enactment of the 1996 Act, the BOCs were providing certain intraLATA information services, including electronic publishing services, on an integrated basis. Under the Commission's existing regulatory regime, electronic publishing is regulated as an enhanced service, and is provided pursuant to comparably efficient interconnection (''CEI'') plans filed with the Commission. Section 274, however, imposes structural separation and other requirements on BOCs that provide electronic publishing services. Any BOC or BOC affiliate providing electronic publishing service on the date of enactment of the 1996 Act has until February 8, 1997, to meet the requirements of the Act and our regulations. Our task, therefore, is to adopt the rules necessary to implement these requirements.

A. Definition of ''Electronic Publishing''

29. As noted above, electronic publishing is specifically included within the definition of information services. BOC provision of electronic publishing, however, is explicitly exempted from the separate affiliate and nondiscrimination requirements of section 272 that apply to BOC provision of interLATA information services. Instead, section 274 establishes more detailed requirements for BOC provision of electronic publishing services. We note that, in contrast to section 272, which applies only to BOC provision of interLATA information services, section 274 does not distinguish between the intraLATA and interLATA provision of electronic publishing. We seek comment, therefore, on whether section 274 applies to BOC provision of both intraLATA and interLATA electronic publishing services.

30. Section 274(h)(1) defines ''electronic publishing'' as:

> the dissemination, provision, publication, or sale to an unaffiliated entity or person, of any one or more of the following: news (including sports); entertainment (other than interactive games); business, financial, legal, consumer, or credit materials; editorials, columns, or features; advertising; photos or images; archival or research material; legal notices or public records; scientific, educational, instructional, technical, professional, trade, or other literary materials; or other like or similar information.

Section 274(h)(2) also lists specific services that are excluded from the definition of electronic publishing. These excepted services include, among other things, common carrier provision of telecommunications service, information access service, information gateway service, voice storage and retrieval, electronic mail, certain data and transaction processing services, electronic billing or advertising of a BOC's regulated telecommunications services, language translation or data format conversion, ''white pages'' directory assistance, caller identification services, repair and provisioning databases, credit card and billing validation for telephone company operations, 911–E and other emergency assistance databases, and video programming and full motion video entertainment on demand.

31. We seek to define those services that are properly included in the definition of electronic publishing in section 274(h)(1) and those services that

are excluded under 274(h)(2). We ask parties to identify any enhanced services that BOCs currently provide that appear to meet the definition of an electronic publishing service under the 1996 Act. To the extent that it is unclear whether a particular service, or a particular group of services, is encompassed by the statutory definition of electronic publishing, we invite parties to identify the basis for the ambiguity and to make recommendations on how the service, or services, should be classified.

B. ''Separated Affiliate'' and ''Electronic Publishing Joint Venture'' Requirements

1. Definitions

32. Section 274 prescribes the terms under which a BOC may offer electronic publishing. Section 274(a) states that no BOC or BOC affiliate ''may engage in the provision of electronic publishing that is disseminated by means of such [BOC's] or any of its affiliates' basic telephone service, except that nothing in this section shall prohibit a separated affiliate or electronic publishing joint venture operated in accordance with this section from engaging in the provision of electronic publishing.'' We tentatively conclude, therefore, that a BOC or BOC affiliate may engage in the provision of electronic publishing services disseminated by means of a BOC or its affiliate's basic telephone service only through a ''separated affiliate'' or an ''electronic publishing joint venture.'' We seek comment on this tentative conclusion.

33. Section 274(i)(9) defines a ''separated affiliate'' as ''a corporation under common ownership or control with a [BOC] that does not own or control a [BOC] and is not owned or controlled by a [BOC] and that engages in the provision of electronic publishing which is disseminated by means of such [BOC's] or any of its affiliates' basic telephone service.'' The term ''control'' (including the terms ''controlling,'' ''controlled by'' and ''under common control with'') is defined as the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

34. Section 274(i)(5) defines an ''electronic publishing joint venture'' as ''a joint venture owned by a [BOC] or affiliate that engages in the provision of electronic publishing which is disseminated by means of such [BOC's] or any of its affiliates' basic telephone service.'' As will be discussed in more detail below, however, this definition of an electronic publishing joint venture may be circumscribed by section 274(c)(2)(C), which appears to limit the percentage of ownership and the right to revenues a BOC may have in an electronic publishing joint venture. Parties are invited to comment on this interpretation.

2. Structural Separation and Transactional Requirements

35. Section 274(b) provides that a ''separated affiliate or electronic publishing joint venture shall be operated independently'' from the BOC and then lists nine structural separation and transactional requirements that apply to the separated affiliate or electronic publishing joint venture established pursuant to section 274(a). As indicated below, the structural separation requirements of section 274(b) do not apply equally to separated affiliates and electronic publishing joint ventures. In light of these differences, we seek comment on whether Congress intended the phrase ''operated independently'' to have a different meaning for separated affiliates and for electronic publishing joint ventures. Moreover, we invite parties to comment on what additional regulatory requirements we should adopt, if any, to ensure compliance with the ''operated independently'' requirement of section 274(b).

a. Section 274(b)(2)

36. Section 274(b)(2) states that a separated affiliate or electronic publishing joint venture and the BOC with which it is affiliated shall ''not incur debt in a manner that would permit a creditor of the separated affiliate or joint venture upon default to have recourse to the assets of the [BOC].'' In the BOC In-Region NPRM, we noted that such a restriction appears to be designed to protect subscribers to a BOC's exchange and exchange access services from bearing the cost of default upon the part of BOC affiliates.

37. We request comment on what types of activities a BOC, a separated affiliate, or an electronic publishing joint venture are precluded from engaging in under this provision. We tentatively conclude that a BOC may not cosign a contract, or any other instrument, with a separated affiliate or an electronic publishing joint venture that would incur debt in violation of section 274(b)(2). We seek comment on this tentative conclusion. We also seek comment on whether this subsection affects a separated affiliate differently from an electronic publishing joint venture because of the different corporate relationship that exists between a separated affiliate and a BOC, and an electronic publishing joint venture and a BOC.

38. Parties are invited to comment on whether we should establish specific requirements regarding the types of activities that are contemplated by section 274(b)(2). To the extent that there are a range of options, we seek comment on the relative costs and benefits of each.

b. Section 274(b)(5)

39. Section 274(b)(5) states that a separated affiliate and a BOC shall ''(A) have no officers, directors, and employees in common after the effective date of this section; and (B) own no property in common.'' Because this provision explicitly refers only to the relationship between a separated affiliate and a BOC, we tentatively conclude that a BOC may share officers, directors, and employees with an electronic publishing joint venture. For this same reason, we also tentatively conclude that a BOC and an electronic publishing joint venture may own ''property in common.'' We seek comment on these tentative conclusions.

40. We also seek comment on the extent of the separation between a BOC and a separated affiliate required by section 274(b)(5)(A). We note, for example, that section 274(c)(2) permits joint marketing activities between a BOC and either a separated affiliate or electronic publishing joint venture under certain conditions. With respect to a BOC and a separated affiliate, therefore, we seek comment on whether, to the extent that they are engaged in permissible joint marketing activities, the separated affiliate may share marketing personnel with the BOC. Further, we seek comment on how BOCs may engage in joint marketing activities with a separated affiliate pursuant to section 274(c)(2)(A) if they cannot share marketing personnel. For example, although it is possible that the statute would allow the separate marketing personnel of the BOC and the separated affiliate to each market the services of the other, this scenario would reduce the efficiencies generally associated with joint marketing ventures. We seek guidance, therefore, on the practical implications of these provisions and whether they can be harmonized.

41. We also invite parties to comment on the types of property encompassed by the phrase ''property in common.'' We tentatively conclude that section 274(b)(5)(B) prohibits a BOC and its separated affiliate from jointly owning goods, facilities, and physical space. In

addition, we tentatively conclude that it also prohibits the joint ownership of telecommunications transmission and switching facilities, one of the separation requirements we previously adopted for independent LECs in the Competitive Carrier Fifth Report and Order (49 FR 34824 (September 4, 1984)). We seek comment on these tentative conclusions.

42. In addition, although section 274(b)(5)(B) explicitly prohibits the ownership of common property between a BOC and a separated affiliate, does it also prohibit a BOC and a separated affiliate from sharing the use of property owned by one entity or the other? Does it prohibit them from jointly leasing any property? We seek comment on these issues.

c. Section 274(b)(6)

43. Section 274(b)(6) states that a separated affiliate or electronic publishing joint venture and the BOC with which it is affiliated shall ''not use for the marketing of any product or service of the separated affiliate or joint venture, the name, trademarks, or service marks of an existing [BOC] except for names, trademarks, or service marks that are owned by the entity that owns or controls the [BOC].'' Because this provision appears to be quite precise, we tentatively conclude that the adoption of regulations to implement this provision is unnecessary. We seek comment on this tentative conclusion.

d. Section 274(b)(7)

44. Section 274(b)(7) states that a BOC is not permitted ''(A) to perform hiring or training of personnel on behalf of a separated affiliate; (B) to perform the purchasing, installation, or maintenance of equipment on behalf of a separated affiliate, except for telephone service that it provides under tariff or contract subject to the provisions of this section; or (C) to perform research and development on behalf of a separated affiliate.'' Similar to section 274(b)(5), this provision refers explicitly to the relationship between a BOC and a separated affiliate. We tentatively conclude, therefore, that a BOC is permitted to perform these activities on behalf of an electronic publishing joint venture. We seek comment on this tentative conclusion.

45. To the extent that a BOC and a separated affiliate are engaged in permissible joint marketing activities, we seek comment on whether they may perform the hiring or training of marketing personnel on behalf of the separated affiliate under section 274(b)(7)(A). We also seek comment on the type of ''equipment'' encompassed by section 274(b)(7)(B). For example, if a BOC is providing telephone service to a separated affiliate under tariff or contract subject to the requirements of section 274, does this subsection permit the BOC to purchase, install, and maintain transmission equipment for the separated affiliate? We invite parties to comment on these issues.

46. In addition, although the statute is clear that a BOC may not perform research and development on behalf of a separated affiliate under 274(b)(7)(C), are there any circumstances under which a BOC may share its research and development with a separated affiliate? Does this provision simply limit a BOC's ability to perform research and development for the sole and exclusive use of a separated affiliate, or must the BOC refrain from performing any research or development that may potentially be of use to a separated affiliate? We also seek comment on other ways in which this provision may limit a BOC's ability to perform research and development generally.

3. Comparison to Separate Affiliate Requirement of Section 272

47. We seek comment on the interrelationship between the requirements for a ''separate affiliate'' in section 272(b) and the requirements for a ''separated affiliate'' and ''electronic publishing joint venture'' in section 274(b). We believe that identifying the specific differences in these statutory requirements is important for two reasons. First, it will facilitate BOC compliance with the statute. As mentioned above, BOCs are currently providing electronic publishing as well as other information services on an integrated basis and have until February 8, 1997, to bring their provision of electronic publishing services into compliance with the structural separation requirements of section 274(b). Under the 1996 Act, therefore, BOCs must first distinguish electronic publishing services from other information services and then provide their electronic publishing services consistent with the requirements of section 274(b) and their other information services consistent with the requirements of section 272(b). To the extent that certain BOCs currently are providing all of their information services on an integrated basis, we seek comment on what modifications BOCs would have to make to their current provision of service in order to provide electronic publishing services in compliance with the separated affiliate or electronic publishing joint venture requirements of section 274.

48. Second, in the BOC In-Region NPRM we tentatively concluded that a BOC may engage in the manufacturing activities, interLATA telecommunications services, and interLATA information services permitted by section 272 through a single separate affiliate as long as all the requirements imposed by section 272 and our implementing regulations were satisfied. In view of this tentative conclusion, we seek comment on whether a BOC may provide electronic publishing services through the same entity or affiliate through which it provides its interLATA information services. We also seek comment on whether a BOC may provide electronic publishing services through the same entity or affiliate through which it provides in-region interLATA telecommunications services, manufacturing activities, and interLATA information services. In addition, if the BOC does choose to provide any or all of its section 272 services and its section 274 electronic publishing services through the same entity, we seek comment on whether the BOC would have to comply with the requirements of section 272, section 274, or both.

C. Joint Marketing

1. Restrictions on Joint Marketing Activities—Section 274(c)(1)

49. Section 274(c)(1) of the 1996 Act sets forth several restrictions on joint marketing activities in which a BOC and an affiliate may engage, with certain exceptions. Section 274(c)(1)(A) specifically states that ''a [BOC] shall not carry out any promotion, marketing, sales, or advertising for or in conjunction with a separated affiliate.'' Section 274(c)(1)(B) provides that ''a [BOC] shall not carry out any promotion, marketing, sales, or advertising for or in conjunction with an affiliate that is related to the provision of electronic publishing.'' Because the definition of ''affiliate'' in section 274 expressly excludes a ''separated affiliate,'' we seek comment on what is meant by section 274(c)(1)(B).

50. We note that the clause ''that is related to the provision of electronic publishing'' in section 274(c)(1)(B) may be interpreted to modify either the ''promotion, marketing, sales, or advertising'' activities that are circumscribed by that section, or the word ''affiliate.'' If we were to adopt the former interpretation, then section 274(c)(1)(B) would prohibit a BOC from carrying out any promotion, marketing, sales or advertising activities ''related to the provision of electronic publishing''

with any affiliate, regardless of the type of business in which such affiliate engaged. On the other hand, if we were to adopt the latter interpretation, i.e., that the clause ''that is related to the provision of electronic publishing'' modifies the word ''affiliate,'' then the affiliate prohibited by section 274(c)(1)(B) from engaging in joint marketing activities with a BOC would be one that were in some manner related to the provision of electronic publishing. We therefore seek comment on the proper interpretation of section 274(c)(1)(B). Parties arguing for a particular interpretation should state the basis for their interpretation and should demonstrate why an alternative construction is not warranted.

51. The joint marketing prohibitions in section 274(c)(1)(B) would appear not to apply to an electronic publishing joint venture. Under section 274(c)(2)(C), a BOC is expressly permitted to ''provide promotion, marketing, sales or advertising personnel and services'' to an electronic publishing joint venture in which it participates. We therefore tentatively conclude that the term ''affiliate'' in subsection (c)(1)(B) excludes an electronic publishing joint venture. We seek comment on whether that interpretation is consistent with other provisions in section 274.

52. Assuming section 274(c)(2)(C) may be read to except electronic publishing joint ventures from the joint marketing restrictions in section 274(c)(1), it is still unclear to what extent section 274(c)(2)(C) authorizes BOCs to engage in marketing activities with such joint ventures. Other provisions in section 274 appear to circumscribe a BOC's otherwise permissible joint marketing activities under section 274(c)(2)(C). In particular, section 274(b)(6) prohibits an electronic publishing joint venture or a separated affiliate from using the ''name, trademark, or service marks of an existing [BOC]'' for the marketing of any product or service, while section 274(c)(2)(A) permits a BOC to provide inbound telemarketing services to, among other things, an electronic publishing joint venture under certain conditions. We thus seek comment on the extent to which section 274(c)(2)(C) allows a BOC to market jointly with an electronic publishing joint venture in light of those other sections.

53. The term ''joint marketing'' is not explicitly defined in the 1996 Act. Similarly, the legislative history does not address the meaning of that term. In the context of section 274(c)(1), ''joint marketing'' appears to contemplate the ''promotion, marketing, sales, or advertising'' by a BOC for or with an affiliate. We tentatively conclude that such activities encompass prohibitions on advertising the availability of local exchange or other BOC services together with the BOC's electronic publishing services, making those services available from a single source and providing bundling discounts for the purchase of both electronic publishing and local exchange services. We seek comment on that tentative conclusion and on whether any other types of prohibitions are contemplated. We also request comment on the distinction, if any, between the term ''carry out'' in sections 274(c)(1)(A) and (B) and the term ''provide'' in section 274(c)(2)(C). We seek comment on whether and to what extent the joint marketing provisions in section 272(g) and the customer proprietary network information (''CPNI'') provisions in section 222 affect implementation of section 274.

2. Permissible Joint Activities—Section 274(c)(2)

54. Section 274(c)(2) permits three types of joint activities between a BOC and a separated affiliate, electronic publishing joint venture, affiliate, or unaffiliated electronic publisher under specified conditions. Under subsection (c)(2)(A), a BOC may provide ''inbound telemarketing'' or ''referral services related to the provision of electronic publishing for a separated affiliate, electronic publishing joint venture, affiliate, or unaffiliated electronic publisher: [p]rovided [t]hat if such services are provided to a separated affiliate, electronic publishing joint venture, or affiliate, such services shall be made available to all electronic publishers on request, at nondiscriminatory terms.''

55. The statute is silent as to the specific types of obligations section 274(c)(2)(A) imposes on a BOC. Similarly, the Joint Explanatory Statement does not address that question. According to the Committee Report accompanying H.R. 1555, a BOC is permitted under the provision to refer a customer who requests information regarding an electronic publishing service to its affiliate, but that BOC must make such referral service available to unaffiliated providers on the same terms, conditions and prices. The Report also states that outbound telemarketing or similar activities in which a call is initiated by a BOC, its affiliate or someone on its behalf, is prohibited. We seek comment on whether the conditions imposed on inbound telemarketing discussed in the House Report should be adopted. We also seek comment on the significance of the legislative history regarding the prohibition on outbound telemarketing and whether we should adopt any regulations pertaining to outbound telemarketing.

56. In addition to certain joint telemarketing activities, a BOC is permitted to engage in ''teaming'' or ''business arrangements'' to provide electronic publishing under certain conditions pursuant to section 274(c)(2)(B). Section 274(c)(2)(B) specifically states that ''a [BOC] may engage in nondiscriminatory teaming or business arrangements to engage in electronic publishing with any separated affiliate or with any other electronic publisher if (i) the [BOC] only provides facilities, services, and basic telephone service information as authorized by this section, and (ii) the [BOC] does not own such teaming or business arrangement.'' Neither the statute nor the legislative history defines ''teaming or business arrangement.'' We request comment on what types of arrangements are encompassed by those terms.

57. Section 274(c)(2)(B) appears to permit a BOC to participate in any type of business arrangement to engage in electronic publishing so long as the BOC complies with the conditions set forth therein. On the other hand, that section arguably may apply only to joint marketing arrangements in which a BOC participates, since it was placed under the ''Joint Marketing'' subheading in section 274(c). We seek comment on the significance, if any, of section 274(c)(2)(B)'s placement under the ''Joint Marketing'' provisions in section 274(c) and the extent to which section 274(c)(2)(B) may be interpreted to address joint business activities for which joint marketing is allowed under certain conditions. We also seek comment on what regulations, if any, are necessary to ensure that the arrangements in which BOCs engage pursuant to section 274(c)(2)(B) are ''nondiscriminatory.'' In addition, we seek comment on how the provision of ''basic telephone service information'' under that section relates to the requirements in section 222 for access to and use of CPNI.

58. The third joint activity in which a BOC is permitted to engage is an electronic publishing joint venture. Section 274(c)(2)(C) expressly permits a BOC or affiliate ''to participate on a nonexclusive basis in electronic publishing joint ventures with entities that are not a [BOC], affiliate, or separated affiliate to provide electronic publishing services.'' The BOC or affiliate, however, may not hold more than a 50 percent direct or indirect

equity interest (or the equivalent thereof) or the right to more than 50 percent of the gross revenues under a revenue sharing or royalty agreement in any electronic publishing joint venture. In addition, officers and employees of a BOC or affiliate participating in an electronic publishing joint venture may hold no greater than 50 percent of the voting control over the joint venture. The House Report states that such restriction prohibits officers and employees of a BOC from ''collectively having more than 50 percent of the voting control of the venture.''

59. The term ''electronic publishing joint venture,'' as defined in section 274(i)(5), contemplates a degree of ownership by a BOC or affiliate. As noted above, the term ''own'' with respect to an entity means ''to have a direct or indirect equity interest (or the equivalent thereof) of more than 10 percent of an entity, or the right to more than 10 percent of the gross revenues of an entity under a revenue sharing or royalty agreement.'' Therefore, it appears that an electronic publishing joint venture is a joint venture in which a BOC or affiliate, inter alia, holds greater than a 10 percent ownership interest or the right to more than 10 percent of the venture's gross revenues. Section 274(c)(2)(C) appears to prohibit a BOC, or its affiliate, or their officers and employees from owning more than 50 percent of a joint venture or obtaining the right to more than 50 percent of the venture's gross revenues. We tentatively conclude that a BOC is deemed to ''own'' an electronic publishing joint venture if it holds greater than a 10 percent but not more than a 50 percent direct or indirect equity interest in the venture, or has the right to greater than 10 percent but not more than 50 percent of the venture's gross revenues. We seek comment on that conclusion.

60. Section 274(c)(2)(C) also provides that, ''in the case of joint ventures with small, local electronic publishers, the Commission for good cause shown may authorize [a BOC] or affiliate to have a larger equity interest, revenue share, or voting control but not to exceed 80%.'' The term ''small, local electronic publisher'' is not defined in the statute. While the Joint Explanatory Statement also is silent, according to the House Report, the term was intended to apply to publishers serving communities of fewer than 50,000 persons.

61. Unlike services whose geographic market areas are defined by analog technical limitations or pre-established geographic boundaries, electronic publishing, by definition, contemplates the dissemination of information to the general public. If we adopt a rule that defines a small, local electronic publisher as an entity serving communities of fewer than 50,000, how should we determine the service area of a ''small, local electronic publisher'' for the purpose of applying the 80% threshold? To the extent parties conclude that the service area of such an electronic publisher cannot readily be defined by the number of persons within a community, we request comment on whether it would be consistent with the intent of Congress as expressed in the legislative history for us to adopt additional standards for determining which electronic publishers are subject to the 80% threshold, and, if so, what such standards should be. Commenters answering that question in the affirmative also are asked to address whether ''small'' should be defined in terms of the gross revenues of an electronic publisher, or in other terms. We also seek comment on how we should define ''local'' under section 274(c)(2)(C).

62. With respect to section 274(c)(2)(C)'s provision allowing waiver of the 50% equity interest and revenue share limitation in the case of joint ventures with small, local electronic publishers for ''good cause shown,'' we note that the Commission currently may waive its rules for ''good cause.'' We seek comment on the ''good cause'' showing that is required in order for a BOC to hold a greater interest in a small, local electronic publisher under section 274(c)(2)(C), and whether any additional regulations are necessary to implement the ''good cause'' waiver provision in section 274(c)(2)(C).

63. We also seek comment on what regulations, if any, are necessary to ensure that a BOC participates in an electronic publishing joint venture under section 274(c)(2)(C) on a ''nonexclusive'' basis. Neither the statute nor the legislative history indicates what types of arrangements are prohibited under that provision. As an initial matter, we note that this prohibition appears to bar arrangements whereby a BOC participates in an electronic publishing joint venture with an electronic publishing entity to the exclusion of all other such entities. We invite parties to comment specifically on whether the provision prohibits contracts between a BOC and an electronic publisher whereby the electronic publisher is committed to purchase basic transmission services necessary to provide electronic publishing exclusively from such BOC or whether the provision contemplates other types of prohibitions.

D. Nondiscrimination Safeguards

64. We also seek comment on whether and the extent to which regulations are necessary to implement the nondiscrimination safeguards for electronic publishing set forth in section 274(d). That section states that a BOC ''under common ownership or control with a separated affiliate or electronic publishing joint venture shall provide network access and interconnections for basic telephone service to electronic publishers at just and reasonable rates that are tariffed (so long as rates for such services are subject to regulation) and that are not higher on a per-unit basis than those charged for such services to any other electronic publisher or any separated affiliate engaged in electronic publishing.''

65. Prior to the 1996 Act, electronic publishing services were regulated as enhanced services and were subject to the nondiscrimination requirements established under our Computer II and Computer III regimes. Under Computer III, BOCs have been allowed to provide enhanced services on an integrated basis pursuant to approved CEI plans as well as rules regarding nondiscriminatory access to unbundled network elements, network information disclosure, limitations on use of CPNI, and nondiscrimination in quality of service, installation and maintenance. Moreover, under Computer III and Open Network Architecture (''ONA''), BOCs have been required to provide at tariffed rates nondiscriminatory interconnection to unbundled network elements used to provide enhanced services. We conclude that these requirements continue to apply to the extent they are not inconsistent with the 1996 Act. We seek comment on whether the requirements of Computer III and ONA are consistent with the nondiscrimination requirements of section 274(d). To the extent that parties argue they are inconsistent, we seek comment on what regulations are necessary to implement section 274(d). Commenting parties should propose specific regulations and demonstrate in detail how section 274(d) makes them necessary.

66. Section 274(d) requires that a BOC under common ownership or control with a separated affiliate or electronic publishing joint venture must provide other electronic publishers ''network access and interconnections for basic telephone service'' at ''just and reasonable rates that are tariffed'' and that are not higher than the rates it charges to its own affiliates or other competing electronic publishers. The term ''basic telephone service'' is

defined in section 274(i)(2) as ''any wireline telephone exchange service, or wireline telephone exchange service facility, provided by a [BOC] * * *'' excluding competitive services introduced after divestiture and mobile services. We interpret this section to require BOCs to provide unaffiliated electronic publishers with access to ''any wireline telephone exchange service'' and/or interconnection to any ''wireline telephone exchange service facility'' that it provides to its electronic publishing affiliate or joint venture. We seek comment on this interpretation. We tentatively conclude that the unbundling and network disclosure requirements of Computer III apply to this situation to the extent they are not inconsistent with the 1996 Act. We seek comment on whether those requirements are consistent with the requirements set forth in section 274(d).

67. We also seek comment on the meaning of the requirement that access and interconnection be provided to electronic publishers ''at just and reasonable rates that are tariffed (so long as rates for such services are subject to regulation).'' We note that carriers currently are obligated under section 201(b) to provide communications services at ''charges'' that are ''just and reasonable.'' Section 274(d), in contrast, requires that rates not be ''higher on a per-unit basis than those charged for such services to any other electronic publisher.'' We interpret this provision to require that BOCs offer necessary ''basic telephone service'' to all electronic publishers at uniform rates. Volume discounts or other preferential rates, therefore, would be unlawful because basic telephone services would be provided to some electronic publishers at higher per-unit rates than rates charged to other publishers. We seek comment on this tentative conclusion. We also seek comment on how we should interpret the requirement that ''rates be tariffed (so long as rates for such services are subject to regulation).'' We tentatively conclude that this section does not require BOCs to file tariffs for services that no longer are subject to tariff regulation. We seek comment on this tentative conclusion.

IV. Alarm Monitoring

68. Section 275(e) defines ''alarm monitoring service'' as ''a service that uses a device located at a residence, place of business, or other fixed premises (1) to receive signals from other devices located at or about such premises regarding a possible threat at such premises to life, safety, or property, from burglary, fire, vandalism, bodily injury, or other emergency, and (2) to transmit a signal regarding such threat by means of transmission facilities of a [LEC] or one of its affiliates to a remote monitoring center to alert a person'' of such threat. Section 275(a) delays until February 8, 2001 entry into alarm monitoring by a BOC or its affiliate that was not providing this service as of November 30, 1995.

69. We seek to define more clearly the services that are included in the definition of alarm monitoring. Alarm monitoring service as defined in section 275(e) appears to fall within the definition of ''information service'' in section 3(20) of the Act. We also note that section 272(a)(2)(C) specifically exempts alarm monitoring service from the separate affiliate requirement applicable to other interLATA information services. We tentatively conclude, therefore, that the provision of underlying basic tariffed telecommunications services alone, without an enhanced or information component, does not fall within the definition of alarm monitoring service under section 275(e). We note, for example, that Ameritech and US West both provide basic tariffed telecommunications services used for alarm monitoring. These tariffed services do not involve enhanced or information features and, therefore, do not appear to be subject to the 1996 Act requirements. We seek comment on this tentative conclusion.

70. Currently, it appears that only one BOC provides alarm monitoring service as an information service. Ameritech provides an alarm monitoring service directly to end-user customers, including the sale, installation, monitoring and maintenance of monitoring and control systems for end-users. This service is provided on an integrated basis pursuant to a CEI plan on file. We tentatively conclude that this service qualifies as an alarm monitoring service under section 275(e) and is therefore grandfathered under section 275(a)(2). We seek comment on this tentative conclusion. We also seek comment on whether any other services provided by BOCs should be considered alarm monitoring services under section 275(e) and grandfathered under section 275(a)(2). For example, US West asserts that an enhanced service it provides called ''Versanet'' which is used by alarm monitoring companies to monitor residence and business locations for burglary, fire, or life safety events, is an alarm monitoring service under section 275(e). US West provides this service on an integrated basis pursuant to a waiver of Commission rules. We seek comment on whether this service constitutes an alarm monitoring service under section 275(e) and is grandfathered under section 275(a)(2).

71. We also seek comment on what types of activities constitute the ''provision'' of alarm monitoring services subject to the 1996 Act. Parties should address, with specificity, the levels and types of involvement in alarm monitoring that would rise to the level of ''engag(ing) in the provision'' of alarm monitoring. For example, we tentatively conclude that resale of an alarm monitoring service constitutes the provision of such service. We seek comment on this tentative conclusion. We also seek comment on whether, among other things, billing and collection, sales agency, marketing, and/or various compensation arrangements, either individually or collectively, would constitute the provision of alarm monitoring. Parties should also address any other factors that may be relevant in determining whether an incumbent LEC, including a BOC, is providing an alarm monitoring service subject to the 1996 Act.

72. Section 275(a)(2) prohibits a BOC already providing alarm monitoring service from ''acquir(ing) any equity interest in, or obtain(ing) financial control of, any unaffiliated alarm monitoring service entity'' prior to February 8, 2001. Specifically excepted from this prohibition, however, is an ''exchange of customers for the customers of an unaffiliated alarm monitoring service entity.'' We seek comment on whether there is a need to issue regulations to further define the terms of section 275(a)(2). For example, we seek comment specifically on what is meant by ''equity interest'' and ''financial control'' for the purpose of determining what types of transactions are prohibited under section 275(a)(2). We also seek comment on the conditions under which an ''exchange of customers'' would be consistent with the Act's purposes.

73. Under section 272 the provision of alarm monitoring service is specifically exempted from the separate affiliate and nondiscrimination requirements that would otherwise apply to the provision of interLATA information services. We also note that, in contrast to section 272 which applies only to BOC provision of interLATA information services, section 275 does not distinguish between the intraLATA and interLATA provision of alarm monitoring. We seek comment, therefore, on whether section 275 applies to BOC provision of both intraLATA and interLATA alarm monitoring services.

74. Section 275(b)(1) requires that an incumbent LEC ''provide nonaffiliated

entities, upon reasonable request, with the network services it provides to its own alarm monitoring operations, on nondiscriminatory terms and conditions.'' As discussed above, sections 201 and 202 of the Communications Act already place significant nondiscrimination obligations on common carriers. In addition, alarm monitoring has been considered an enhanced service under the Computer III and ONA regime, so that the BOCs have been free to provide alarm monitoring services on an integrated basis pursuant to CEI plans filed with the Commission. We conclude that these Computer III nondiscrimination provisions continue to apply to the extent they are not inconsistent with the nondiscrimination requirements of section 275(b)(1). We seek comment on whether the existing nondiscrimination and network unbundling rules in Computer III as they apply to BOC provision of alarm monitoring service are consistent with the requirements of section 275 and whether they should be applied to all incumbent LECs for the provision of alarm monitoring. To the extent that parties argue that the nondiscrimination provisions of Computer III and ONA are inconsistent or should not be applied, we seek comment on whether and what types of specific regulations are necessary to implement section 275(b)(1). Commenting parties should state specifically what rules, if any, are required and how section 275(b)(1) makes them necessary.

V. Telemessaging

75. Section 260 sets forth various requirements for the provision of telemessaging service by LECs subject to the requirements of section 251(c). Our rules permit the BOCs to provide telemessaging on an integrated basis, subject to CEI and ONA requirements. Other LECs have been permitted to provide telemessaging subject only to the requirements of sections 201 and 202, which apply to all common carriers, including the BOCs. Like sections 274 and 275, section 260 does not distinguish between the intraLATA and interLATA provision of telemessaging. We seek comment, therefore, on whether section 260 applies to BOC provision of telemessaging, both on an intraLATA and interLATA basis. In the BOC In-Region NPRM, we tentatively concluded that telemessaging is an information service subject to section 272's separate affiliate and nondiscrimination requirements, and therefore, BOC provision of this service on an interLATA basis would be subject to the requirements of section 272 in addition to the requirements of section 260. If we decide not to adopt that tentative conclusion, we seek comment on whether BOCs providing telemessaging services on either an inter- or intraLATA basis would be subject only to the requirements of section 260.

76. Section 260 defines ''telemessaging service'' as ''voice mail and voice storage and retrieval services, any live operator services used to record, transcribe, or relay messages (other than telecommunications relay services), and any ancillary services offered in combination with these services.'' We seek comment on whether rules are necessary to clarify any ambiguities that may exist in this definition. We also invite parties to address the types of services contemplated by the term ''ancillary services,'' and to provide specific examples.

77. Section 260 also sets out specific nondiscrimination requirements applicable to LECs that are engaged in the provision of telemessaging. Section 260(a)(2) provides that a LEC that provides telemessaging service ''shall not prefer or discriminate in favor of its telemessaging service operations in its provision of telecommunications services.'' We seek comment on the extent to which this section imposes greater obligations on LECs providing telemessaging service than currently exist under sections 201 and 202 of the Act. We conclude that the requirements of Computer III and ONA continue to apply to the extent not inconsistent with section 260. We seek comment on whether the nondiscrimination provisions of Computer III and ONA are consistent with section 260(a)(2), and whether these provisions should be applied just to BOCs or to all incumbent LECs to fulfill the requirements of section 260(a)(2). To the extent that parties argue that the nondiscrimination provisions of Computer III and ONA are inconsistent or should not be applied, we seek comment on whether and what types of specific regulations are necessary to implement section 260(a)(2). Commenting parties should state specifically what rules, if any, are required and how section 260(a)(2) makes them necessary.

VI. Enforcement Issues

A. Electronic Publishing—Section 274(e)

78. Section 274(e) provides a private right of action to any person claiming that an act or practice of a BOC, affiliate, or separated affiliate has violated section 274. Under section 274(e)(1), such person may file a complaint with the Commission or bring suit as provided in section 207. Section 274(e)(1) also states that a BOC, affiliate, or separated affiliate shall be liable as provided in section 206, except that damages may not be awarded for a violation ''that is discovered by a compliance review'' as required by section 274(b)(8) and ''corrected within 90 days.'' In addition to damages, section 274(e)(2) permits an aggrieved person to apply to the Commission for a cease and desist order or to a U.S. District Court for an injunction or an order compelling compliance.

79. Parties are invited to comment on the legal and evidentiary standards necessary to establish that a BOC has violated section 274. Commenters should describe what specific acts or omissions are sufficient to state a prima facie claim for relief under this section. Currently, in a typical complaint proceeding, the complainant generally has the burden of establishing that a common carrier has violated the Communications Act or a Commission rule or order. Ordinarily, this burden of proof does not, at any time in the proceeding, shift to the defendant carrier. In the *BOC In-Region NPRM* we sought comment on whether, for purposes of complaints arising under section 271(d)(6)(B), shifting the ultimate burden of proof from the complainant to the defendant advances the pro-competitive goals of the 1996 Act. We seek comment on whether there are similar policy concerns for doing this in the context of section 274 as well.

80. We also ask parties to comment specifically on what showing, if any, is required for the issuance of a cease and desist order under section 274. For example, would the evidentiary showing be different for a complainant seeking damages under section 274(e)(1) as opposed to one seeking a cease and desist order under 274(e)(2)? We also seek comment on what actions, if any, the Commission should take to deter violations of, and facilitate the prompt disposition of, complaints under section 274.

B. Telemessaging and Alarm Monitoring—Sections 260(b) and 275(c)

81. Sections 260(b) and 275(c) require that the Commission establish expedited procedures for the receipt and review of complaints alleging violations of the nondiscrimination provisions in sections 260(a) and 275(b), or regulations adopted pursuant thereto, that result in ''material financial harm'' to a provider of alarm monitoring or telemessaging service, respectively. Such procedures must ''ensure that the

Commission will make a final determination with respect to any such complaint within 120 days after receipt of the complaint.'' In addition, these sections provide that if a complaint ''contains an appropriate showing that the alleged violation occurred, as determined by the Commission in accordance with such regulations,'' the Commission must, within 60 days, order the incumbent LEC and its affiliates ''to cease engaging in such violation pending such final determination.''

82. Apart from the expedited complaint procedures themselves, which will be addressed in a separate proceeding, we seek comment on the legal and evidentiary standards necessary to ensure a full and fair resolution of complaints filed under section 260 and 275 within the 120-day statutory window. Parties are invited to comment on what prima facie showing should be required of a complainant that invokes the 120-day complaint resolution requirement. Commenters should describe what specific acts or omissions are sufficient to state a prima facie claim for relief under section 260 and 275. As noted above, in the *BOC In-Region NPRM* we sought comment on whether, for purposes of complaints arising under section 271(d)(6)(B), shifting the ultimate burden of proof from the complainant to the defendant advances the pro-competitive goals of the 1996 Act. We seek comment on whether there are similar policy concerns for doing this in the context of sections 260 and 275 as well.

83. Although parties filing complaints under section 208 are not required to show direct damage, sections 260(b) and 275(c) require that complainants availing themselves of the expedited complaint procedures establish ''material financial harm.'' We seek comment, therefore, on the meaning of ''material financial harm'' in these sections. Should there be a particular legal or evidentiary showing that the complaint must make in order to demonstrate material financial harm, or should the Commission decide the materiality of the harm on an individual case basis? If the complainant's pleadings allege a violation of the nondiscrimination requirements of sections 260 or 275, but do not demonstrate material financial harm, should the complainant still be entitled to an expedited review? We invite parties to comment on these issues.

84. In addition, we seek comment on what type of showing constitutes an ''appropriate showing'' for the Commission to issue the LEC an order ''to cease engaging'' in an alleged violation of section 260 or 275. Would it be enough for the complainant to establish a *prima facie* showing of discrimination? We also seek comment on the meaning of an order ''to cease engaging'' under sections 260(b) and 275(c). Do these sections give the Commission authority to issue a cease and desist order similar to the one in section 274(e)(2)? If so, parties should comment on whether the showing under section 274 differs in any material respect from the showing required under sections 260 and 275. We also seek comment on what actions the Commission should take to deter violations of, and facilitate the prompt disposition of, complaints under sections 260 and 275.

VII. Conclusion

85. We seek comment on the foregoing issues regarding the implementation of the non-accounting separate affiliate and nondiscrimination requirements of sections 274, 275 and 260 of the 1996 Act. Any party disagreeing with our tentative conclusions should explain with specificity in terms of costs and benefits its position and suggest alternative regulatory policies.

VIII. Procedural Issues

A. Ex Parte Presentations

86. This is a non-restricted notice-and-comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206.

B. Regulatory Flexibility Analysis

87. Section 603 of the Regulatory Flexibility Act, as amended, requires an initial regulatory flexibility analysis in notice and comment rulemaking proceedings, unless we certify that ''the rule will not, if promulgated, have a significant economic impact on a significant number of small entities.'' The Regulatory Flexibility Act generally defines the term ''small entity'' as having the same meaning as ''small-business concern'' under the Small Business Act, which defines ''small-business concern'' as ''one which is independently owned and operated and which is not dominant in its field of operation * * *.'' This proceeding pertains to the BOCs and other ILECs which, because they are dominant in their field of operations, are by definition not small entities under the Regulatory Flexibility Act. We therefore certify, pursuant to Section 605(b) of the Regulatory Flexibility Act, that the rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The Secretary shall send a copy of this Notice, including this certification and statement, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this certification will also be published in the Federal Register notice.

C. Initial Paperwork Reduction Act of 1995 Analysis

88. This NPRM contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due September 4, 1996; OMB comments are due September 27, 1996. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

D. Comment Filing Procedures

89. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before September 4, 1996 and reply comments on or before September 20, 1996. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you would like each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, NW., Room 544, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services,

Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, NW., Room 239, Washington, DC 20554.

90. In order to facilitate review of comments and reply comments, both by parties and by Commission staff, we require that comments be no longer than thirty-five (35) printed pages and reply comments be no longer than twenty-five (25) printed pages. Page limits do not include proposed rules, which parties are encouraged to submit. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with Section 1.49 and all other applicable sections of the Commission's Rules. We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. Comments and reply comments must clearly identify the specific portion of this Notice to which a particular comment or set of comments is responsive. If a portion of a party's comments does not fall under a particular topic listed in the Table of Contents of this Notice, such comments must be included in a clearly labelled section at the beginning or end of the filing. Parties may not file more than a total of ten (10) pages of *ex parte* submissions, excluding cover letters. This 10 page limit does not include: (1) Written *ex parte* filings made solely to disclose an oral *ex parte* contact; (2) written material submitted at the time of an oral presentation to Commission staff that provides a brief outline of the presentation; or (3) written materials filed in response to direct requests from Commission staff. *Ex parte* filings in excess of this limit will not be considered as part of the record in this proceeding.

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

92. Written comments by the public on the proposed and/or modified information collections are due on September 4, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before September 27, 1996. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

IX. Ordering Clauses

93. Accordingly, *it is ordered* that pursuant to sections 1, 4, 260, 274, 275, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 260, 274, 275, and 303(r), a Notice of Proposed Rulemaking is hereby Adopted.

94. *It is Further Ordered* that, the Secretary shall send a copy of this Notice of Proposed Rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1981).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–19136 Filed 7–25–96; 8:45 am]

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47 CFR Chapter I

[CC Docket No. 96–149, FCC 96–308]

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

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing this Notice of Proposed Rulemaking seeking comment on proposed regulations to implement, and, where necessary, to clarify the non-accounting separate affiliate and nondiscrimination safeguards prescribed by Congress in section 272 of the Telecommunications Act of 1996. Congress enacted these safeguards to help prevent Bell Operating Companies (BOCs) from improperly using their market power in the local telephone market to gain an unfair advantage over their rivals in the in-region interLATA service markets and certain other businesses, such as the manufacturing of telecommunications equipment. These safeguards are intended to encourage the development of robust competition in all telecommunications markets. The Commission also seeks comment on whether to relax the dominant carrier classification that currently applies to the (BOCs) provision of in-region, interstate, domestic interLATA services, as well as whether it should modify its existing rules for regulating independent local exchange carriers' (LECs) provision of interstate, interexchange services in areas where those LECs provide local telephone service. The Commission also considers whether to apply the same regulatory classification to BOC and independent LEC provision of in-region international service as the Commission adopts for their provision of in-region, interstate, domestic, interLATA services and in-region, interstate, domestic, interexchange services, respectively.

DATES: Comments are due on or before August 15, 1996 and Reply Comments are due on or before August 30, 1996. Written comments by the public on the proposed and/or modified information collections are due August 15, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before September 27, 1996.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, NW., Room 544, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications