FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 22

[WT Docket No. 96–162; FCC 97–352]

Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services and Implementation of Section 601(d) of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this *Report and Order*, the Commission modifies the current structural separation requirement for the provision of cellular service by the Bell Operating Companies (BOCs), and adopts a new requirement that all incumbent local exchange carriers (LECs) provide in-region broadband CMRS, including cellular services, through a CMRS affiliate, subject to the Commission's accounting and affiliate transactions rules. Rural telephone companies will be exempt from this requirement; however, a competing carrier, interconnected with the rural carrier, may petition the Commission to remove the exemption, or the Commission may do so on its own motion, where the rural telephone company has engaged in anti-competitive conduct, such as discrimination. Companies serving fewer than two percent of the nation's subscriber lines that seek to provide broadband CMRS may petition the Commission for suspension or modification of the requirement that broadband CMRS be provided through a separate affiliate. These safeguards are adopted to address concerns that recent developments in the CMRS market, such as direct competition among telecommunications carriers and the development of fixed wireless services, may increase the incentive for anti-competitive behavior by incumbent LECs. The separate affiliate requirement will sunset on January 1, 2002, unless the Commission determines that the competitive conditions in the local exchange market are such that continuation of these safeguards is in the public interest.

EFFECTIVE DATE: February 11, 1998.

FOR FURTHER INFORMATION CONTACT: David Krech, Commercial Wireless Division, Wireless Telecommunications Bureau, (202) 418–0620. For additional information concerning the information collections contained in this Order contact Dorothy Conway at (202) 418–7349, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This *Report and Order* in WT Docket No. 96–162, adopted September 30, 1997, and released October 3, 1997 (erratum released October 29, 1997), clarification Order (FCC 97–389) adopted October 24, 1997, and released October 27, 1997, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 230, 1919 M Street N.W., Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington D.C. 20036 (202) 857–3800. Synopsis of the *Report and Order*:

I. Background

1. *Safeguards Under Section 22.903 for BOC Provision of Cellular Service.* Section 22.903 of the Commission's rules comprises two principal parts: the requirement that BOCs provide cellular service through a structurally separate corporation; and a series of restrictions on the separate affiliate, including restrictions on use and ownership of landline transmission facilities and requirements for the independent operation of the separate cellular affiliate through separate books of account, officers, operating, marketing, installation, and maintenance personnel and utilization of separate computer and transmission facilities in the provision of cellular service. This requirement was adopted in order to preserve the competitive potential of the non-wireline cellular provider, the Commission required the wireline carrier to provide its cellular service through a structurally separate affiliate, *i.e.*, an independent corporation with separate officers, separate books of account, and separate operating, marketing, installation, and maintenance personnel. The Commission also prohibited the wireline carrier's cellular affiliate from owning facilities for the provision of landline telephone service. These structural separation requirements were intended to prevent wireline carriers from using their market power in the local exchange market to engage in anti-competitive practices, such as improper cost allocation between the wireline carrier and its cellular affiliate and discrimination by the wireline carrier in favor of its cellular affiliate. The Commission also prohibited the wireline carrier's cellular affiliate from owning facilities for the provision of landline telephone service.

2. *Section 22.903 Separate Affiliate Not Required for LEC Provision of personal communications services (PCS) and specialized mobile radio (SMR).* Section 22.903 applies only to BOC provision of cellular service. Structural safeguards are not required for LEC, including BOC, provision of other CMRS, such as broadband PCS. *See* Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90–314, *Second Report and Order*, 58 FR 59174 (Nov. 8, 1993), *recon.*, 59 FR 32830 (June 24, 1994) (*Broadband PCS Second Report and Order*); Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Service, GN Docket No. 93–252, *Report and Order*, 59 FR 18493 (April 19, 1994) (*CMRS Second Report and Order*). In addition, non-BOC LECs may provide cellular service without structural safeguards.

3. *Cincinnati Bell.* In *Cincinnati Bell Telephone* v. *FCC*, 69 F.3d 752 (6th Cir. 1995) the Sixth Circuit found that the Commission had failed to justify adequately the conclusion in the *Broadband PCS Second Report and Order* that the record was insufficient to repeal section 22.903. The Court held that, in light of the decision that all LECs, including BOCs, could provide broadband PCS without establishing a structurally separate affiliate, the Commission was required—but had failed—to give a reasoned explanation for the disparate treatment of BOC provision of cellular and PCS, as well as the disparity in BOC and non-BOC provision of cellular service.

4. *NPRM.* In the *NPRM, Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, WT Docket No. 96–162, Notice of Proposed Rulemaking, Order on Remand, and Waiver Order*, 61 FR 46420 (Sept. 3, 1996), the Commission observed that the BOCs currently retain market power in the local exchange market because they control bottleneck facilities and serve the vast majority of customers within their service areas, and other carriers must seek interconnection from the BOC. To address this issue, the Commission proposed two alternatives to the existing structural safeguards for BOC cellular operations, and asked commenters to submit information regarding the costs of the structural separation requirement: (1) to retain the structural separations requirements of section 22.903 for BOC provision of in-region cellular service, but sunset the restrictions for a particular BOC when that BOC receives authorization to provide interLATA service originating in any in-region state; or (2) to eliminate the structural safeguards of section

22.903 immediately in favor of uniform safeguards for all Tier 1 LEC provision of broadband CMRS. With respect to both options, the Commission proposed to replace section 22.903 with safeguards similar to those adopted in the *Competitive Carrier Fifth Report and Order* proceeding. *See* Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79–252, *Fifth Report and Order*, 49 FR 34824 (Sept. 4, 1984) (*Competitive Carrier Fifth Report and Order*). In that order, the Commission concluded that, in order to qualify for treatment as a nondominant carrier, an independent local exchange company must provide interstate interexchange services through a separate affiliate that (1) has separate books of account; (2) does not jointly own transmission or switching facilities with that local exchange company; and (3) acquires any services from the affiliated local exchange carrier at tariffed rates, terms, and conditions. In addition, the Commission subjected the affiliate to the Commission's joint cost and affiliate transaction rules. In the *NPRM*, the Commission proposed a similar framework of safeguards for Tier 1 LECs providing in-region broadband CMRS

II. Report and Order

A. General Issues Regarding Incumbent LEC Provision of CMRS

5. Section 22.903 was intended to apply only to cellular service; however, the anti-competitive practices it was meant to address are by their nature not unique to cellular service, but can occur any time a competing service provider requests interconnection with a local exchange network. That is because LECs that own CMRS subsidiaries have the incentive to engage in such anti-competitive practices in order to benefit their own CMRS subsidiaries and to protect their local exchange monopolies from wireless competition. At the same time, LEC control of bottleneck local exchange facilities, upon which competing CMRS providers must rely, gives LECs the opportunity to engage in anti-competitive behavior.

6. Improper cost allocation occurs when a LEC shifts costs from its CMRS subsidiary to its regulated local exchange service. Cost shifting has the effect of both subsidizing the LEC's CMRS subsidiary, thus giving the subsidiary a substantial competitive advantage over non-LEC affiliated CMRS providers, and of raising the costs borne by the LEC's captive local exchange ratepayers. *See* Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, *Second Report and Order in CC Docket No. 96–149 and Third Report and Order in CC Docket No. 96–61*, 62 FR 35974 (Jul. 3, 1997) (*Dom/Nondom Order*).

7. Requiring LECs to create a separate affiliate for the provision of CMRS services helps deter the LECs' incentive and ability to engage in anti-competitive practices and facilitates their detection. Arm's length transactions between LECs and their CMRS affiliates and the requirement that agreements be reduced to writing will help the Commission and competing CMRS providers to detect, and address, competitive abuses. Ease of detection will, in turn, deter a LEC from engaging in such abuses in the first place.

8. The Commission observes that in the past structural separation requirements were applied in the wireless context only to BOC provision of cellular service. In the *Broadband PCS Second Report and Order* and the *CMRS Second Report and Order* the Commission concluded that nonstructural accounting safeguards were sufficient to protect against improper cost allocations and interconnection discrimination by LECs providing PCS or other CMRS. Not only did the Commission, prior to divestiture, apply structural separation in the wireless context only to cellular service, but in formulating rules for cellular service, the Commission applied the structural separation rules only to the BOCs, and not to the non-BOC LECs, in the provision of cellular service. The Commission believes that the rules should treat similar services consistently and that any structural separation requirements should be uniform to avoid disparate treatment. Thus, the choices for achieving regulatory symmetry are either to extend the section 22.903 structural safeguards for BOC provided cellular service to all LECs and all CMRS services, or to eliminate section 22.903 in favor of less restrictive safeguards applicable to the provision of all broadband CMRS.

B. Separate Affiliate Requirements for In-Region Incumbent LEC Provision of CMRS

9. Anti-competitive interconnection practices, particularly discriminatory behavior, pose a substantial threat to full and fair competition in the CMRS marketplace, and all LECs, not just the BOCs, have the ability and incentive to engage in anti-competitive behavior. There are ways to lessen the threat of discrimination, predatory price squeezes, and cost misallocation that are less burdensome than the requirements currently imposed by section 22.903. For example, accounting safeguards, section 251 of the Communications Act, 47 U.S.C. 251, and related interconnection rules, and price cap regulation all serve to protect local exchange ratepayers from bearing the costs and risks of the telephone companies' other nonregulated activities and reduce the likelihood that LECs will raise interconnection rates in order to effect a predatory price squeeze. Such mechanisms do not, however, eliminate the possibility of interconnection discrimination.

10. In this *Report and Order*, the Commission requires that incumbent LECs offering in-region broadband CMRS services do so through a separate corporate affiliate. The CMRS affiliate must: (1) maintain separate books of account, and must maintain the books, records, and accounts in accordance with generally accepted accounting principles; (2) not jointly own transmission or switching facilities with the affiliated LEC that the affiliated LEC uses for the provision of local exchange services in the same in-region market; and (3) acquire any services from the affiliated LEC on a compensatory arm's length basis, as required by our affiliate transactions rules. The affiliate will be subject to the Commission's joint cost and affiliate transaction rules. Title II common carrier services or services, facilities, or network elements provided pursuant to sections 251 and 252 that are acquired from the affiliated LEC must be available to all other carriers, including CMRS providers, on the same terms and conditions.

11. *Applicability of Safeguards to Out-of-Region CMRS Operations.* The Commission's concerns regarding incumbent LEC provision of CMRS services extend only to the provision of in-region CMRS services because concerns regarding discrimination in interconnection arrangements are not present outside of an incumbent LEC's wireline service territory. In addition, the geographic separation between an incumbent LEC's in-region service area and out-of-region CMRS mitigates the potential for undetected improper allocation of costs. With regard to interconnection, the lack of control of ''bottleneck'' local facilities means that an incumbent LEC providing CMRS ''out-of-region'' is similar to any other provider of CMRS.

12. The Commission is not requiring any LEC to provide out-of-region CMRS offerings through a separate affiliate. To the extent there is potential for incumbent LECs that provide out-of-

region CMRS to engage in anti-competitive behavior or cost misallocations such potential is adequately addressed through accounting requirements and other non-structural safeguards.

13. The Commission also recognizes that CMRS license areas and incumbent LEC wireline service areas are not generally congruent. Moreover, non-BOC incumbent LECs, particularly smaller companies, do not necessarily have distinct service areas but may have discrete patches of coverage over a large area. With respect to CMRS, on the other hand, licensees typically have a well-defined geographic service area (*e.g.*, major trading area (MTA), basic trading area (BTA)) under our rules. The Commission observes that an incumbent LEC's incentives and ability to act anti-competitively are significantly attenuated where the area served by its bottleneck wireline facilities is a small fraction of the area served by its wireless operations. Indeed, in situations where there is de minimis overlap between the incumbent's wireline service area and its CMRS license area, that incumbent LEC is close to offering ''out-of-region'' services. Therefore, the Commission is applying ''in-region'' CMRS structural safeguards only to an incumbent LEC whose wireline service area substantially overlaps its CMRS license area. The Commission defines ''in-region'' CMRS to be a CMRS offering where 10 percent or more of the population covered by the CMRS service area is within the incumbent LEC's wireline service area. The Commission concludes that the standard 10 percent attribution criteria should apply with respect to ownership relationships between an incumbent LEC and an in-region CMRS licensee.

14. *Applicability of Safeguards to All Broadband CMRS Services and All In-Region Incumbent LECs.* The separate affiliate rules adopted herein will apply to all in-region LEC broadband CMRS operations because all incumbent LECs have the incentive and ability to discriminate against unaffiliated broadband CMRS providers of every type—not just cellular operators—where there is sufficient overlap between the incumbent LEC's wireline service area and the CMRS service area. Thus, limited safeguards applicable to all in-region incumbent LECs for all broadband CMRS services are necessary to promote competitive communications markets and to achieve regulatory symmetry.

15. Increased competition and convergence of services in the CMRS market has heightened the need for regulatory symmetry among commercial mobile radio services and among different kinds of CMRS providers. In applying a separate affiliate requirement to all in-region incumbent LEC provision of CMRS and not just BOC provision of cellular service, the Commission is imposing certain costs on, and limiting flexibility for, independent LECs, which were not previously subject to these requirements or to any of the other requirements of section 22.903. Nevertheless, the competitive concerns regarding the ownership and control of bottleneck facilities are significant so long as there is a substantial geographic overlap between the incumbent LEC's wireline local telephone service area and the LEC's CMRS service area. When that overlap passes the 10 percent overlap threshold, the benefits of preventing the competitive harm inherent in the incumbent LEC-CMRS relationship significantly outweigh the costs imposed by safeguards. To the extent that incumbent LECs are concerned that imposition of a separate affiliate requirement will impair their ability to offer integrated wireline and wireless services, the rules permit the creation of certain bundled and integrated service packages, either through an incumbent LEC's offering facilities and services to the CMRS affiliate on nondiscriminatory terms, or solely through the CMRS affiliate that is able to offer competitive local exchange service. Absent a separate affiliate requirement, it would be more difficult for the Commission and competitors to detect and prevent cost misallocation, discrimination and other anti-competitive behavior by incumbent LECs. Particularly with respect to interconnection, a separate affiliate requirement is an effective way to afford the requisite degree of ''transparency'' to enable competitors and the Commission to detect discrimination in interconnection. Without a separate affiliate requirement, non-affiliated CMRS providers would have greater difficulty determining whether their interconnection arrangements with the LEC are comparable to those between the LEC and its CMRS provider.

16. The Commission recognizes that this decision represents a departure from prior decisions in the *Broadband PCS Second Report and Order* and *CMRS Second Report and Order* where the Commission declined to impose structural safeguards for broadband PCS providers affiliated with LECs, and for LECs with CMRS affiliates, respectively. The Commission similarly declined to impose structural safeguards in the *SMR Wireline Order*, in which we permitted wireline carriers to obtain SMR licenses without restriction. The Commission's decision in this Report and Order strikes a different balance between the interest in fostering efficient provision of CMRS and the commitment to prevent unlawful discrimination and other anti-competitive practices by incumbent LECs than our decisions in the *Broadband PCS Second Report and Order, CMRS Second Report and Order, SMR Wireline Order,* and *Cellular Reconsideration Order.* These earlier decisions were not based on a full analysis of the competitive harms that might result from LEC provision of SMR, PCS, and cellular, particularly with respect to discrimination against unaffiliated competitors requesting interconnection.

17. *Basis for Level of Safeguards.* These structural safeguards are substantially similar to those recently adopted with regard to independent LEC provision of in-region interstate, domestic, interexchange service, and are similar to the separate affiliate requirements the Commission adopted in the *Competitive Carrier Fifth Report and Order.* These safeguards provide an adequate measure of transparency between an incumbent LEC's wireline and in-region CMRS operations so as to prevent improper cost allocations and to ensure that competing CMRS providers are receiving nondiscriminatory treatment. The affiliate transactions rules and the requirement of separate books of account are useful to detect and address potential misallocation of costs and/or assets between a LEC and its CMRS affiliate. Any transaction between the incumbent LEC and its CMRS affiliate becomes subject to the Commission's affiliate transactions rules, which serve to prevent cost misallocation. The Commission concludes that, while price cap regulation may reduce the incentive for misallocation of costs of the nonregulated wireless services, it does not entirely eliminate that incentive. The Commission's requirement that any services and facilities provided by the incumbent LEC to its CMRS affiliate must also be available to independent CMRS operators on the same prices, terms, and conditions ensures that these transactions between the incumbent and its CMRS affiliate will be arms-length transactions. The Commission anticipates that interconnection arrangements between the incumbent LEC and its CMRS affiliate will be undertaken pursuant to tariff or through section 251 negotiated or arbitrated

interconnection agreements that are available to all CMRS carriers.

18. *Differences between In-Region Incumbent LEC-CMRS Safeguards and Current BOC Cellular Safeguards.* In two critical respects, the requirements adopted herein are less stringent than the section 22.903 restrictions. First, the CMRS separate affiliate does not need to have separate officers and employees from the incumbent LEC. Second, the CMRS separate affiliate is permitted to own its own wireline local exchange facilities, and the CMRS affiliate may operate as a competitive local exchange carrier in its region. The only restriction on the wireline LEC activities of the CMRS affiliate is that the affiliate may not jointly own transmission and switching facilities that the affiliated LEC uses for the provision of local exchange service in the region. This safeguard is generally consistent with the proposal made in the *NPRM.* This does not preclude the CMRS affiliate from using the affiliated incumbent LEC's central office, switch, roof space or other facilities—the incumbent LEC and the CMRS affiliate are merely precluded from jointly owning such facilities. This does not preclude the affiliate from jointly using the LEC's landline facilities to provide integrated service (subject to applicable interconnection and other regulations). Such transactions between the CMRS affiliate and the incumbent LEC for joint use would be subject to the affiliate transaction rules and the requirement that any facilities or services an incumbent LEC makes available to its CMRS affiliate also be made available to independent CMRS operators on the same rates, terms, and conditions.

C. In-Region Safeguards Applicable to Rural and Certain Mid-Sized Incumbent LECs

19. In the 1996 Act Congress expressed particular concern about burdens placed on small and rural LECs. In determining where to draw the appropriate balance between concerns about burdens on LECs other than the largest LECs, Congress, in section 251 of the Communications Act, excluded two groups of LECs from the same good faith negotiation, interconnection, unbundling, resale, network disclosure and physical collocation requirements imposed on other LECs. First, rural telephone companies are exempt from the above-referenced section 251 requirements until such company receives a *bona fide* request for interconnection and the state commission acts to terminate the exemption. Second, local exchange carriers with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide may petition a state commission for suspension or modification of requirements in section 251 (b) and (c).

20. The Commission finds that it is appropriate and equitable to exempt rural telephone companies from the separate affiliate requirement. A competing carrier, interconnected with the rural telephone company may petition the Commission to remove the exemption, or the Commission may do so on its own motion, where the rural telephone company has engaged in anti-competitive conduct, such as discrimination. We also find, consistent with Congress's treatment of LECs in section 251, that incumbent LECs with fewer than two percent of the nation's subscriber lines, may petition the Commission for suspension or modification of the separate affiliate requirement. The Commission will grant such a petition where petitioner can show that suspension or modification of the separate affiliate requirement is necessary to avoid a significant adverse economic impact on users of telecommunications services generally, or to avoid a requirement that would be unduly economically burdensome. In addition, petitioners must demonstrate that suspension or modification of the requirement is consistent with the public interest, convenience and necessity. Some LECs, especially rural telephone companies, might not have the resources to comply with the separate affiliate requirements and still provide CMRS. By reducing the regulatory burden on rural LECs the Commission will encourage the development of wireless services in areas where otherwise there may be no wireless service at all. Rural telephone companies may find it economical to use CMRS licenses to provide fixed wireless services in remote areas as an alternative means of extending the local exchange network to unserved or hard to serve areas. Moreover, under section 309(j)(3) of the Communications Act, 47 U.S.C. § 309(j)(3), the Commission is required to promote the development and rapid deployment of new technologies, products, and services for benefit of the public, including those residing in rural areas, and to disseminate licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. Thus, foregoing a separate affiliate requirement for rural incumbent LECs and allowing these carriers to minimize any additional costs and reporting requirements promotes the goals set by Congress in section 309(j).

21. For similar reasons, the Commission will permit carriers serving fewer than two percent of the nation's subscriber lines to petition the Commission for suspension or modification of the separate affiliate requirement.

D. Joint Marketing

22. *Overview.* Section 601(d) of the 1996 Act provides: ''Notwithstanding section 22.903 of the Commission's regulations (47 CFR 22.903) or any other Commission regulation, a Bell operating company or any other company may, except as provided in sections 271(e)(1) and 272 of the Communications Act of 1934 as amended by this Act as they relate to wireline service, jointly market and sell commercial mobile services in conjunction with telephone exchange service, exchange access, intraLATA telecommunications service, interLATA telecommunications service, and information services.''

23. While section 601(d) negates section 22.903(e), the Commission retains authority to determine the permissible scope of LEC/CMRS joint marketing, including the rules to define the relationship between the affiliated entities engaged in such joint marketing. Section 601(d) expressly permits a BOC to market jointly and sell CMRS in conjunction with several types of landline services. Nothing in the plain language of section 601(d) prohibits or circumscribes the Commission from imposing conditions on, or defining the permissible scope of, such joint marketing. The authority to engage in joint marketing and sale of landline and CMRS services is expressly made subject to the provisions of section 272, which include separate affiliate requirements. The Commission requires that all incumbent LECs, other than LECs exempt from the separate affiliate rules, engaging in joint marketing of local exchange and exchange access and CMRS services, do so subject to the affiliate transactions rules (*i.e.*, governing the transaction between the company's wireline and wireless affiliates). Such CMRS activity will be classified as nonregulated under the Commission's accounting rules, and must be conducted on a compensatory, arm's-length basis. These agreements must be reduced to writing and must be made available for public inspection upon request. Pursuant to the procedures set forth in Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96–150, *Report and Order,*

62 FR 2927 (Jan. 21, 1997), concerning making agreements available for public inspection, the CMRS affiliate, at a minimum, must provide a detailed written description of the terms and conditions of the transaction on the Internet within ten days of the transaction through the company's home page. The broad access of the Internet will increase the availability and accessibility of this information to interested parties, while imposing a minimum burden. The Commission also requires that the description of the terms and conditions of the transaction be sufficiently detailed to allow evaluation of compliance with the accounting rules. This information must also be made available for public inspection at the principal place of business of the parties, and must include a certification statement identical to the certification statement currently required to be included with all Automated Reporting and Management Information Systems (ARMIS) reports.

E. Resale

24. The Commission's analysis with respect to authority to impose conditions on resale is necessarily quite similar to the analysis of such authority with respect to joint marketing. Section 601(d) clearly permits LECs to resell CMRS provided by their wireless affiliates, and as discussed above, the Commission retains authority to place conditions on, or define the scope of, resale of wireline and CMRS services. There is a considerable amount of CMRS spectrum capacity available in the open market. In addition, broadband CMRS providers (including LEC affiliates) are prohibited from restricting resale of their services or discriminating against resellers. In this environment, there is no reason to be particularly concerned about the terms and conditions in which the CMRS affiliate makes available CMRS to its incumbent LEC parent for resale. Therefore, the Commission does not believe it is appropriate to impose any further regulation upon incumbent LEC resale of its CMRS affiliate's CMRS, aside from other Commission rules such the accounting and affiliate transaction rules.

25. With respect to joint billing and collection, which is not currently prohibited under § 22.903, and other collateral activities that are currently prohibited under § 22.903, including joint installation, maintenance, and repair for BOC cellular and wireline local exchange services, the Commission is not imposing any restrictions at this time. Carriers must adhere to other applicable Commission rules such as accounting and affiliate transactions rules.

F. Customer Proprietary Network Information

26. Section 22.903(f) of the Commission's rules, 47 CFR 22.903(f), states that BOCs must not provide to their cellular separate affiliate any customer proprietary information, unless such information is publicly available on the same terms and conditions. The 1996 amendments to the Communications Act address telecommunications carriers' use, disclosure and permission of access to Customer Proprietary Network Information (CPNI) in general. Specifically, section 222(c)(1), 47 U.S.C. 222(c)(1), provides: ''PRIVACY REQUIREMENTS FOR TELECOMMUNICATIONS CARRIERS.—Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.'' Section 222(c)(2), 47 U.S.C. 222(c)(2), provides that, ''[a] telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer.'' Section 222(c)(3), 47 U.S.C. 222(c)(3), allows a local exchange carrier to use, disclose, or permit access to aggregate customer information for purposes other than those described in section 222(c)(1) only if the LEC provides such information to other carriers or persons on reasonable and nondiscriminatory terms and conditions upon reasonable request.

27. The Commission recently initiated a separate proceeding to consider the formulation of CPNI regulations pursuant to section 222 that would apply to all telecommunications carriers. *See* Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96–115, *Notice of Proposed Rulemaking,* 61 FR 26483 (May 28, 1996) (*CPNI NPRM*). In the *CPNI NPRM,* the Commission sought comment on whether § 22.903(f) is inconsistent with section 222 of the Communications Act. The Commission also sought comment on whether § 22.903(f) should be eliminated even if the rule is consistent with section 222, on the grounds that § 22.903(f) is superfluous in light of section 222.

28. Based on the record, the ability to use CPNI obtained from the wireline monopoly service for marketing purposes is clearly a competitive advantage the BOC CMRS providers would be very interested in utilizing, and other carriers are equally anxious to obtain. So that the Commission does not prejudge any aspect of the CPNI rulemaking, however, the appropriate interpretation of the scope of section 222's CPNI protections is deferred to CC Docket No. 96–115. Accordingly, pending the decision in the CPNI proceeding, the Commission will not eliminate § 22.903(f) at this time, nor will § 22.903(f) be extended to non-BOC LECs and to all CMRS. The Commission will take appropriate action regarding § 22.903(f) upon resolution of the section 222 proceeding.

29. As described above, section 222 provides general requirements regarding a telecommunications carrier's use, disclosure and permission of access to CPNI. These statutory provisions are self-executing. Consequently, the requirements of section 222 are applicable to the provision of CPNI by all incumbent LECs to their CMRS affiliates. (We note that section 222 applies to all telecommunications carriers and not just incumbent LECs. For the purposes of this Report and Order, however, we address only the issue of section 222 as it applies to incumbent LECs and their CMRS affiliates. This in no way limits the statutory obligations of other telecommunications carriers under section 222.) Specifically, we expect all incumbent LECs and their CMRS affiliates to comply with the limitations on use, disclosure, and access to CPNI set forth in section 222(c) in their provision of CMRS and LEC services respectively. Further, we expect BOCs to continue to comply with § 22.903(f) of the Commission's rules with respect to BOC provision of CPNI to their cellular affiliates.

G. Network Information Disclosure

30. Section 251(c)(5) of the Communications Act, 47 U.S.C. 251(c)(5), imposes a duty on incumbent LECs to provide reasonable public notice of changes to the network necessary for the transmission and routing of services using that LEC's facilities or networks, as well as any other changes that would affect the

interoperability of those facilities and networks. The Commission tentatively concluded that no specific Part 22 rule pertaining to network information disclosure by the BOCs would be necessary or appropriate due to the requirement in section 251(c)(5). Incumbent LECs are required to ''provide public notice of changes in the information necessary for the transmission and routing of services'' using the incumbent LEC's CMRS facilities or networks, pursuant to section 251(c)(5). The Communications Act imposes on incumbent LECs the duty to provide reasonable public notice of changes in the information needed to transmit and route services using a LEC's facilities or networks. Incumbent LECs must provide reasonable public notice of any other changes that would affect the interoperability of those facilities or networks. Section 51.325(c) of the Commission's rules, 47 CFR 51.325(c), provides that until public notice has been given, an incumbent LEC may not disclose information about planned network changes to ''separate affiliates, separated affiliates, or unaffiliated entities.'' Accordingly, the Commission adopts the conclusion in the *NPRM* that no specific Part 22 rule pertaining to network information disclosure by the BOCs is needed.

VI. Conclusion

31. In this proceeding, the Commission has modified the rules to reflect the Congressionally mandated goal of consistent treatment of like services and to afford telecommunications providers flexibility in structuring service offerings in response to changing consumer demand. In so doing, the Commission has considered the increasing convergence of regulated wireline services and nonregulated wireless services and consumer demand for ''one-stop shopping'' for telecommunications customers. At the same time, the Commission is mindful of concerns that incumbent wireline providers, seeking to offer wireless services, may take advantage of their wireline market power to allocate costs improperly, discriminate against competitors, or engage in a predatory price squeeze, all to the detriment of consumers. The Commission believes that the approach adopted in this Report and Order, including requiring incumbent LECs to offer in-region broadband CMRS through a separate CMRS affiliate, appropriately balances the LECs' need for flexibility in an evolving marketplace with competitors' concerns regarding the incentive for anti-competitive behavior by incumbent LECs. Further, the goals of section 22.903 are fulfilled through the separate CMRS affiliate requirement and through other factors in the marketplace, including increasing competition and convergence, accounting safeguards, price cap regulation, new interconnection requirements and other existing rules. Rural telephone companies are exempt from the separate affiliate requirement, and companies serving fewer than two percent of the nation's subscriber lines that seek to provide broadband CMRS without forming a separate affiliate may petition the Commission for suspension or modification of that requirement.

32. The separate affiliate requirement will sunset on January 1, 2002, unless the Commission determines that the competitive conditions in the local exchange market are such that continuation of these safeguards is in the public interest.

IV. Procedural Matters and Ordering Clauses

A. Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*NPRM*) in WT Docket No. 96–162. The Commission sought written comments on the proposals in the *NPRM*, including the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) for the Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996.

1. Need for and Purpose of the Action

The Report and Order in this docket sets forth a consistent regulatory framework for the provision of commercial mobile radio services (CMRS) by incumbent local exchange carriers (LECs) and their affiliates. This framework will treat all broadband CMRS, including cellular services, uniformly and is narrowly tailored to address specific concerns about potential anti-competitive use of bottleneck wireline local exchange facilities.

2. Issues Raised in Response to the IRFA

The Commission sought comment generally on the IRFA. No comments were submitted specifically in response to the IRFA.

3. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Report and Order Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction,'' and the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). The SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be small entities having fewer than 1,500 employees. This FRFA discusses generally the total number of small telephone entities potentially affected by this Report and Order.

The rules adopted in this Report and Order apply to all incumbent LECs offering in-region broadband CMRS. Incumbent LEC is defined in section 251(h)(1) of the Communications Act of 1934, as amended (Communications Act), 47 U.S.C. 251(h)(1), with respect to an area, as ''the local exchange carrier that (A) on the date of enactment of the Telecommunications Act of 1996, provided local exchange service in such area; and (B)(i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 CFR 69.601(b)); or (ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i).'' Rural telephone companies are exempt from the structural safeguards imposed in this Report and Order; however, a competing carrier, interconnected with the rural telephone company, may petition the Commission to remove the exemption, or the Commission may do so on its own motion, where the rural telephone company has engaged in anti-competitive conduct. In addition, companies serving fewer than two percent of the nation's subscriber lines may petition the Commission for

suspension or modification of the separate affiliate requirement.

Small incumbent LECs subject to these rules are either dominant in their field of operation or are not independently owned and operated, and, consistent with our prior practice, they are excluded from the definition of ''small entity'' and ''small business concerns.'' Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this analysis and use the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by the SBA as ''small business concerns.''

The United States Bureau of the Census (''the Census Bureau'') reports that at the end of 1992 there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, wireless carriers, operator service providers, pay telephone operators, and resellers. It seems certain that some of the 3,497 telephone service firms may not qualify as small incumbent LECs because they are not incumbent LECs or they are not independently owned and operated. It seems reasonable to conclude that fewer than 3,497 telephone service firms would qualify as small incumbent LECs that may be affected by this Report and Order.

The SBA has developed a definition of small entities for telecommunications companies other than radiotelephone (Telephone Communications, Except Radiotelephone). The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons. Of the 2,321 non-radiotelephone companies listed by the Census Bureau, 2,295 were reported to have fewer than 1,000 employees. Thus, at least 2,295 non-radiotelephone companies might qualify as small entities or small incumbent LECs based on these statistics. As it seems certain that some of these carriers are not independently owned and operated, this figure necessarily overstates the actual number of non-radiotelephone companies that would qualify as small businesses under the SBA definition. Consequently, the Commission estimates that using this methodology there are fewer than 2,295 small entity telephone communications companies (other than radiotelephone companies) that may be affected by the proposed decisions and rules adopted in this Report and Order.

Neither the Commission nor the SBA has developed a definition of small providers of local exchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone companies. The most reliable source of information regarding the number of LECs nationwide of which the Commission is aware appears to be the data collected annually in the *TRS Worksheet.* According to the most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. As some of these carriers have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules adopted in this Report and Order.

4. Reporting, Recordkeeping, and Other Compliance Requirements

The rule adopted in this Report and Order requires incumbent LECs offering in-region broadband CMRS services to do so through a separate corporate affiliate. The CMRS affiliate must:

(1) Maintain separate books of account, and must maintain the books, records, and accounts in accordance with generally accepted accounting principals (GAAP);

(2) Not jointly own transmission or switching facilities with the affiliated LEC that the affiliated LEC uses for the provision of local exchange services in the same in-region market; and

(3) Acquire any services from the affiliated LEC on a compensatory arm's length basis, as required by our affiliate transactions rules. The affiliate will be subject to the Commission's joint cost and affiliate transaction rules. Title II common carrier services or services, facilities, or network elements provided pursuant to sections 251 and 252 that are acquired from the affiliated LEC must be available to all other carriers, including CMRS providers, on the same terms and conditions.

This rule may require incumbent LECs to have additional reporting and recordkeeping with respect to transactions with the CMRS affiliate.

Affiliate transactions. Some incumbent LECs may now be required to comply with the affiliate transactions rules in Part 32 of the Commission's rules if they offer broadband CMRS through a separate affiliate and conduct transactions with the CMRS affiliate. Prior to the adoption of the rule in this Report and Order, the Commission required the BOCs to establish a separate affiliate for provision of cellular services, otherwise a separate affiliate was not required for LEC provision of broadband CMRS. Therefore, LECs that previously did not have a separate affiliate for broadband CMRS, and thus did not have affiliate transactions, will now have to establish a separate affiliate and comply with the Commission's affiliate transactions rules.

Joint marketing agreements. The rule adopted in this Report and Order requires all incumbent LECs and the CMRS affiliates engaging in joint marketing of local exchange and exchange access and CMRS to reduce all such agreements to writing and make the agreements available for public inspection upon request at the principal place of business of the affiliate and the incumbent LEC. The documentation also must include a certification statement identical to the certification statement currently required to be included with all Automated Reporting and Management Information Systems (ARMIS) reports. The affiliate must also provide a detailed written description of the terms and conditions of the transaction on the Internet within ten days of the transaction through the affiliate's home page.

5. Steps Taken To Minimize Burdens on Small Entities and Significant Alternatives Considered

The Commission sought to minimize burdens on small entities by providing an exemption for rural telephone companies. Rural telephone companies are exempted from the separate affiliate requirement; however, a competing local exchange carrier, interconnected with the rural telephone company, may petition the Commission to remove the exemption, or the Commission may do so on its own motion, if the rural telephone company has engaged in anti-competitive conduct.

The Commission sought to minimize burdens on small entities by permitting incumbent LECs with fewer than two percent of the nation's subscriber lines to petition the Commission for suspension or modification of the separate affiliate requirement. The Commission will grant such a petition if the incumbent LEC can demonstrate that suspension or modification of the separate affiliate requirement is necessary to avoid a significant adverse

economic impact on users of telecommunications services generally or to avoid a requirement that would be unduly burdensome, and consistent with the public interest, convenience, and necessity.

The Commission considered and rejected the proposals in the *NPRM*: (1) to retain, but sunset, section 22.903 of the Commission's rules, or (2) to require all Tier 1 (or Class A) LECs providing in-region broadband CMRS to file a safeguards plan. Neither of the proposals in the *NPRM* would impose additional regulation on Class B LECs. The Commission instead decided to impose structural separation regulations on all incumbent LECs providing broadband CMRS because anti-competitive interconnection practices, particularly discriminatory behavior, pose a substantial threat to full and fair competition in the CMRS marketplace, and all incumbent LECs have the ability and incentive to engage in anti-competitive behavior. The Commission observed that increased competition in the CMRS market and the possibility that CMRS in the future may substitute for wireline local loops may actually increase incumbent LECs' incentive to discriminate against unaffiliated CMRS providers. The Commission concluded that it was appropriate to apply structural safeguards to all incumbent LECs. As described above, however, the Commission has considered, and taken measures to address, the additional burdens these requirements might have on rural telephone companies and on those entities serving two percent of the nations' subscriber lines.

6. *Report to Congress*

The Commission shall send a copy of this Final Regulatory Flexibility Analysis with this Report and Order in a report to Congress pursuant to section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A).

B. Paperwork Reduction Act

This *Report and Order* contains a modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, has submitted this to Office of Management and Budget (OMB) for emergency approval under the Paperwork Reduction Act of 1995, Pub. L. No. 104–13.

Paperwork Reduction Act Comment Filing Procedures. Written comments by the public on the proposed and/or modified information collections are due on or before January 2, 1998. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before February 2, 1998. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

Further Information: For additional information concerning the information collections contained in this *Notice of Proposed Rulemaking* contact Dorothy Conway at (202) 418–7349 or via the Internet at dconway@fcc.gov.

Supplementary Information

Title: Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services and Implementation of section 601(d) of the Telecommunications Act of 1996.

Type of Review: Revision of currently approved Collection.

Respondents:

Number of Respondents: We estimate up to 19.

Estimated Time Per Response: The average burden on the applicant is 6056 hours for the information necessary to maintain books of account of incumbent LEC's in-region CMRS affiliate separate from LEC's local exchange and other activities. The average burden on the applicant is 72 hours to conduct arms length transactions between the incumbent LEC and the CMRS affiliate. The average burden on the affiliate is 1 hour for making the written contracts available for public inspection at their principal place of business and posting a written description of the terms and conditions of the transaction in the Internet.

Total burden = 116,456 hours,

We estimate that up to five respondents may have to estabish separate affiliates and thus would incur start-up costs.

Estimated Cost Per Respondent: $200,600.

Total Respondent Costs: $1,003,000.

Needs and Uses: The Commission imposes the recordkeeping collection to ensure that incumbent LECs providing broadband CMRS in-region through a separate affiliate are in compliance with the Communications Act, as amended, and with Commission policies and regulations.

C. Authority

33. The above action is authorized under the Communications Act, 4(i), 303(r), 309(c), 309(j), and 332, 47 U.S.C. 154(i), 303(r), 309(c), 309(j), and 332, as amended.

D. Ordering Clauses

34. Accordingly, it is ordered that, pursuant to the authority of sections 4(i), 303(g), 303(r), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(g), 303(r), and 332(a), Part 22 of the Commission's Rules, 47 CFR Parts 20 and 22, is amended in the rule changes.

35. It is further ordered that the rules adopted in this *Report and Order* will be effective February 11, 1998.

List of Subjects in 47 CFR Parts 20 and 22

Communication common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations part 20 is amended as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: Secs. 4, 251–52, 303, and 332, 48 Stat. 1066, 1062, as amended; 47 U.S.C. 154, 251–52, 303, and 332 unless otherwise noted.

2. Section 20.20 is added to read as follows:

§ 20.20 Conditions applicable to provision of CMRS service by incumbent Local Exchange Carriers.

(a) *Separate affiliate.* An incumbent LEC providing in-region broadband CMRS shall provide such services through an affiliate that satisfies the following requirements:

(1) The affiliate shall maintain separate books of account from its affiliated incumbent LEC. Nothing in this section requires the affiliate to maintain separate books of account that comply with part 32 of this chapter;

(2) The affiliate shall not jointly own transmission or switching facilities with its affiliated incumbent LEC that the affiliated incumbent LEC uses for the provision of local exchange service in the same in-region market. Nothing in this section prohibits the affiliate from sharing personnel or other resources or

assets with its affiliated incumbent LEC; and

(3) The affiliate shall acquire any services from its affiliated incumbent LEC for which the affiliated incumbent LEC is required to file a tariff at tariffed rates, terms, and conditions. Other transactions between the affiliate and the incumbent LEC for services that are not acquired pursuant to tariff must be reduced to writing and must be made on a compensatory, arm's length basis. All transactions between the incumbent LEC and the affiliate are subject to part 32 of this chapter, including the affiliate transaction rules. Nothing in this section shall prohibit the affiliate from acquiring any unbundled network elements or exchange services for the provision of a telecommunications service from its affiliated incumbent LEC, subject to the same terms and conditions as provided in an agreement approved under section 252 of the Communications Act of 1934, as amended.

(b) *Independence.* The affiliate required in paragraph (a) of this section shall be a separate legal entity from its affiliated incumbent LEC. The affiliate may be staffed by personnel of its affiliated incumbent LEC, housed in existing offices of its affiliated incumbent LEC, and use its affiliated incumbent LEC's marketing and other services, subject to paragraphs (a)(3) and (c) of this section.

(c) *Joint marketing.* Joint marketing of local exchange and exchange access service and CMRS services by an incumbent LEC shall be subject to part 32 of this chapter. In addition, such agreements between the affiliate and the incumbent LEC must be reduced to writing and made available for public inspection upon request at the principle place of business of the affiliate and the incumbent LEC. The documentation must include a certification statement identical to the certification statement currently required to be included with all Automated Reporting and Management Information Systems (ARMIS) reports. The affiliate must also provide a detailed written description of the terms and conditions of the transaction on the Internet within 10 days of the transaction through the affiliate's home page.

(d) Exceptions. (1) *Rural telephone companies.* Rural telephone companies are exempted from the requirements set forth in paragraphs (a), (b) and (c) of this section. A competing telecommunications carrier, interconnected with the rural telephone company, however, may petition the FCC to remove the exemption, or the FCC may do so on its own motion, where the rural telephone company has engaged in anticompetitive conduct.

(2) *Incumbent LECs with fewer than 2 percent of subscriber lines.* Incumbent LECs with fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide may petition the FCC for suspension or modification of the requirements set forth in paragraphs (a), (b) and (c) of this section. The FCC will grant such a petition where the incumbent LEC demonstrates that suspension or modification of the separate affiliate requirement is

(i) Necessary to avoid a significant adverse economic impact on users of telecommunications services generally or to avoid a requirement that would be unduly economically burdensome, and

(ii) Consistent with the public interest, convenience, and necessity.

(e) *Definitions.* Terms used in this section have the following meanings:

Affiliate. ''Affiliate'' means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership with, another person. For purposes of this section, the term ''own'' means to own and equity interest (or the equivalent thereof) of more than 10 percent.

Broadband Commercial Mobile Radio Service (Broadband CMRS). For the purposes of this section, ''broadband CMRS'' means Domestic Public Cellular Radio Telecommunications Service (part 22, subpart H of this chapter), Specialized Mobile Radio (part 90, subpart S of this chapter), and broadband Personal Communications Services (part 24, subpart E of this chapter).

Incumbent Local Exchange Carrier (Incumbent LEC). ''Incumbent LEC'' has the same meaning as that term is defined in § 51.5 of this chapter.

In-region. For the purposes of this section, an incumbent LEC's broadband CMRS service is considered ''in-region'' when 10 percent or more of the population covered by the CMRS affiliate's authorized service area, as determined by the 1990 census figures, is within the affiliated incumbent LEC's wireline service area.

Rural Telephone Company. ''Rural Telephone Company'' has the same meaning as that term is defined in § 51.5 of this chapter.

(f) *Sunset.* This section will no longer be effective after January 1, 2002.

Title 47 of the Code of Federal Regulations part 22, subpart H is amended as follows:

Subpart H—Cellular Radiotelephone Service

3. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

4. Section 22.903 is revised to read as follows:

§ 22.903 Conditions applicable to former Bell Operating Companies.

Ameritech Corporation, Bell Atlantic Corporation, BellSouth Corporation, NYNEX Corporation, Pacific Telesis Group, Southwestern Bell Corporation, U.S. West Inc., their successors in interest and affiliated entities (BOCs) may engage in the provision of cellular service only in accordance with the conditions in this section and § 20.20 of this chapter, unless otherwise authorized by the FCC. BOCs may, subject to other provisions of law, have a controlling or lessor interest in or be under common control with separate corporations that provide cellular service only under the following conditions:

(a) Through (e) [Reserved].

(f) *Proprietary information.* BOCs must not provide to any such separate corporation any customer proprietary information, unless such information is publicly available on the same terms and conditions.

(g) Reserved.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 970908229–7277–02; I.D. 082797A]

RIN 0648–AJ55

Fisheries of the Northeastern United States; Amendment 10 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the approved measures contained in Amendment 10 to the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP). Approved measures of Amendment 10 include a continuation of the moratorium for commercial vessels; minimum mesh-size requirements throughout the body, extension, and codend of trawl nets for