

3. *Identification of BOC and Independent LEC In-Region, Interstate and International Interexchange Markets.* The Commission seeks comment on the relevant markets in which BOCs and independent LECs provide these interstate and international interexchange services. The Commission seeks comment on whether the mass market and enterprise markets are the appropriate customer classes for this proceeding. The Commission also asks commenters to consider services provided over traditional wireline local telephone networks as well as comparable services provided over other platforms. This FNPRM seeks comment on the relevant service and geographic markets in which these carriers provide services and the ability of BOCs and independent LECs to exercise market power in any relevant market. The Commission seeks to develop a record on both the retail long distance and upstream access markets.

4. *Market Power Analysis.* The FNPRM recognizes that there have been significant changes in the competitive landscape since the Commission considered whether to categorize the incumbent LECs' long distance affiliates as dominant or non-dominant, including: BOC authority to offer in-region, interLATA services in 41 states (and the District of Columbia); an increase in bundled telecommunications services offerings; an increase in offerings of wide area pricing plans by mobile telephony carriers; and an increase in the provision of Internet-based applications. Accordingly, the Commission seeks comment on how these changes should affect its relevant market and market power analysis.

5. *Appropriate Regulatory Requirements.* The Commission seeks comment on whether there is a continued need for dominant carrier regulation of BOCs' in-region, long distance services after sunset of the section 272 structural and related requirements. In addition, the Commission asks whether it should classify independent LECs as non-dominant or dominant in their provision of in-region, long distance services if it eliminates or modifies the separate affiliate requirements currently imposed on independent LECs. The Commission also seeks comment on alternatives to dominant carrier regulation as a means of addressing any issues that arise when telephone companies provide in-region, long distance services on an integrated basis.

6. The Commission seeks comment on whether the statutory requirements that

continue to apply to BOCs under section 272(e) reduce the need for dominant carrier regulation. For instance, the Commission asks parties whether sections 272(e)(1) and (e)(3) provide adequate safeguards to deter anticompetitive behavior and whether the Commission should rely on enforcement activity alone or should adopt additional requirements to implement these provisions.

7. The Commission also asks parties to comment on whether adoption of the measures considered in the Special Access Performance Metrics proceeding would aid enforcement of section 272(e)(1), and thus provide sufficient post-sunset safeguards. In addition, it asks whether similar measures would be appropriate to apply to independent LECs. Finally, the Commission seeks comment on whether additional safeguards are necessary to prevent potential cost misallocation and discrimination.

#### **Initial Regulatory Flexibility Analysis**

8. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this FNPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice provided previously. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

#### **Need for, and Objectives of, the Proposed Rules**

9. In this proceeding, the Commission seeks comment on: (1) The appropriate regulatory classification of BOCs for the provision of in-region, interstate and international interexchange services post sunset of the section 272 safeguards; (2) the appropriate regulatory classification of independent LECs for the provision of in-region, interstate and international interexchange services absent the *Fifth Report and Order* requirements; (3) the relevant identification of service markets affecting the provision of in-region, interstate and international interexchange services; and (4) the appropriate regulatory requirements for the provision of in-region, interstate and

international interexchange services by BOCs and independent LECs, given current market conditions. The basic elements of the existing dominant carrier regulatory requirements were initially developed some 25 years ago and have focused on constraining the ability of dominant carriers to exercise market power. Application of these requirements to carriers without the ability to leverage market power by restricting output could lead to incongruous results. Thus, the Commission asks interested parties to address whether dominant carrier regulations are well or ill-suited to prevent the risks associated with the BOCs' and independent LECs' provision of in-region, interstate and international interexchange services post section 272 sunset (for the BOCs) and absent the separation safeguards (applicable to independent LECs). The Commission also requests that parties address how it can best balance the goals of deterring BOC and independent LEC anticompetitive and discriminatory behavior and eliminating unnecessary regulation.

#### **Legal Basis**

10. The legal basis for any action that may be taken pursuant to the FNPRM is contained in sections 1, 2, 4(i)–4(j), 201, 202, 272 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–4(j), 201, 202, 272 and 303(r).

#### **Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

11. 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 the proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" 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) satisfies any additional criteria established by the Small Business Administration (SBA).

12. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not