

on section 272 separate affiliates beyond those detailed in section 272(b)(2) through (b)(5). As a result, the Commission adopted rules to implement the “operate independently” requirement that prohibits a BOC and its section 272 affiliate from (1) jointly owning switching and transmission facilities or the land and buildings on which such facilities are located; and (2) providing OI&M services associated with each other’s facilities. Specifically with regard to sharing OI&M functions, the Commission’s rules prohibit a section 272 affiliate from performing OI&M functions associated with the BOC’s facilities. Likewise, they bar a BOC or any BOC affiliate, other than the section 272 affiliate itself, from performing OI&M functions associated with the facilities that its section 272 affiliate owns or leases from a provider other than the BOC with which it is affiliated. At the time of the *Non-Accounting Safeguards Order*, the Commission reasoned that allowing joint ownership of facilities and sharing of OI&M functions between BOCs and their 272 affiliates would create opportunities for improper cost allocation and discrimination that the separate affiliate requirement was intended to prevent. At the same time, the Commission recognized that restrictions on sharing of facilities and services impose costs, including inefficiencies within the BOCs’ corporate structures, and that the economies of scale and scope inherent to integration produce economic benefits to consumers. The Commission explained that it was “striking an appropriate balance between allowing the BOCs to achieve efficiencies within their corporate structures and protecting ratepayers against improper cost allocation and competitors against discrimination.”

4. *Operating, Installation, and Maintenance Functions.* The Commission seeks comment on whether the cost data suggest that the costs of the OI&M sharing prohibition outweigh the benefits. It seeks comment on whether eliminating the prohibition on sharing OI&M functions would materially increase the BOCs’ ability or incentive to discriminate against unaffiliated rivals in the long distance market. The Commission also seeks comment on whether it would diminish the ability of the Commission to monitor and enforce compliance with the Act.

5. The Commission seeks comment on whether the potential savings to be gained by BOC operations and the potential for increased interLATA competition outweigh any benefits from continuing to apply the OI&M sharing

prohibition. It seeks comment on whether the OI&M sharing prohibition imposes inefficiencies and what the extent of those inefficiencies is. The Commission also seeks comment on the benefits to consumers of allowing more integrated OI&M operations between BOCs and their section 272 affiliates and on the magnitude of the risks and adverse consequences of possible anti-competitive conduct facilitated by OI&M sharing. Parties are asked to address in their comments the effectiveness of non-structural safeguards alone, rather than maintaining the OI&M sharing prohibition, to prevent and detect cost misallocation and discrimination.

6. *Joint Facilities Ownership.* In addition to the OI&M sharing prohibition, the Commission adopted a rule to implement section 272(b)(1) that prohibits joint ownership of switching and transmission facilities or the land and buildings on which such facilities are located. Although the Commission reaches no tentative conclusion with regard to this restriction, it seeks comment on whether it is needed to prevent cost misallocation and discrimination. Parties are asked to identify both the costs and benefits of maintaining or eliminating the joint facilities ownership restriction. The Commission seeks comment on whether existing non-structural safeguards are adequate to serve the purpose that the joint facilities ownership restriction was intended to serve. Parties are also asked to discuss whether any new safeguards may be needed in the event that the joint facilities ownership restriction is eliminated. Finally, commenters should address how a conclusion by the Commission to eliminate both the joint facilities ownership restriction and the OI&M sharing prohibition would relate to the Commission’s conclusion in the *Non-Accounting Safeguards Order* that the “operate independently” language of section 272(b)(1) imposes separate and independent requirements on section 272 separate affiliates beyond those detailed in section 272(b)(2) through (b)(5).

Initial Paperwork Reduction Act Certification

7. This NPRM may contain a new or modify an existing information collection. As part of our 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 possible changes in information collection contained in the NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public

and agency comments are due 60 days from the date of publication of this NPRM in the **Federal Register**.

Comments should address: (1) Whether the possible changes in the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the Commission’s burden estimates; (3) ways to enhance the quality, utility, and clarity of any information collected; and (4) ways to minimize the burden of any collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Initial Regulatory Flexibility Certification

8. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” 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).

9. In this NPRM, the Commission seeks comment on whether it should modify or eliminate the rules adopted to implement the “operate independently” requirement of section 272(b)(1) of the Act. Specifically, it seeks comment on whether the OI&M sharing prohibition is an overbroad means of preventing cost misallocation or discrimination by BOCs against unaffiliated rivals. The Commission also seeks comment on whether the prohibition against joint ownership by BOCs and their section 272 affiliates of switching and transmission facilities, or the land and buildings on which such facilities are located, should be modified or eliminated. The rules under consideration in this NPRM apply only to BOCs and their section 272 affiliates. Neither the Commission nor the SBA has developed a small business size standard specifically applicable to providers of incumbent local exchange service and interexchange services. The