"Public Health Service Policy on Humane Care and Use of Laboratory Animals," Office for Protection from Research Risks, NIH (Revised September 1986) 59 FR 14508 (as republished March 28, 1994)—NIH Guidelines on the Inclusion of Women and Minorities as Subjects in Clinical Research

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 95-20; FCC 95-48]

Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On October 18, 1994, the United States Court of Appeals for the Ninth Circuit remanded in part the Commission's BOC Safeguards Order in the Computer III proceedings, which had established procedures for the Bell Operating Companies (BOCs) to offer enhanced services on a structurally integrated basis. This Notice of Proposed Rulemaking responds to the court decision. The Notice reviews the nonstructural safeguards that have been implemented under the Computer III framework, and asks parties to comment on the specific issue remanded by the court, as well as on the broader question of whether structural separation should be reimposed for some or all BOC enhanced services.

DATES: Comments must be filed on or before April 7, 1995, and reply comments must be filed on or before April 28, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rose Crellin at (202) 418–1571 or Kevin Werbach at (202) 418–1597, Policy and Program Planning Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 95–48, adopted February 7, 1995 and released February 21, 1995. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

- 1. In the *Computer III* proceeding, beginning with the Phase I Order (51 FR 24350 (July 3, 1986)), the Commission concluded that the Bell Operating Companies (BOCs) should be permitted to offer enhanced services without establishing structurally separate subsidiaries. Enhanced services use the existing telephone network to deliver services—such as voice mail, E-Mail, and gateways to on-line databasesbeyond a basic transmission offering. Under structural separation requirements, the BOCs had to form subsidiary companies, with separate personnel, facilities, and equipment, to offer these services. The need for safeguards on BOC provision of enhanced services arises from the fact that competing enhanced service providers generally must depend on the BOC networks to transport their services to customers. The Commission has identified two primary forms of anticompetitive conduct that may arise from BOC involvement in the enhanced services marketplace: (1) Improper cross-subsidization, in which the BOCs undercut competing enhanced service providers (ESPs) by shifting costs from their enhanced services to their regulated basic services; and (2) access discrimination, in which BOCs provide competing ESPs with inferior interconnection and access to network services that these companies need for their enhanced services.
- 2. In Computer III, the Commission determined that the benefits of lifting structural separation requirements—in terms of increased availability of enhanced services—outweighed the risks of anticompetitive conduct by the BOCs, and that a regime of nonstructural safeguards could provide adequate protection against crosssubsidization and access discrimination. The Commission established a two-step process in *Computer III* for lifting structural separation restrictions. Initially, BOCs were permitted to offer individual enhanced services on a structurally integrated basis once they had received FCC approval of servicespecific Comparably Efficient Interconnection (CEI) plans. Those plans were required to detail how the BOCs would make the underlying network services used by their own enhanced service offerings available to

competing ESPs on an equal access basis. In the second stage of Computer III, BOCs were required to develop Open Network Architecture (ONA) plans detailing how they would unbundle and make available basic network services, and describing how they would comply with other nonstructural safeguards. Upon FCC approval of the initial BOC ONA plans, the remaining structural separation requirements were to be lifted. Following a remand from the Court of Appeals for the Ninth Circuit, the Commission strengthened and reaffirmed its regime of nonstructural safeguards in the 1991 BOC Safeguards Order (57 FR 4373 (February 5, 1992)). Between 1992 and 1993, the Common Carrier Bureau granted full structural relief to the BOCs upon a showing that they had complied with the requirements of the BOC Safeguards *Order*, and those decisions were subsequently ratified by the Commission.

3. In October, 1994, the United States Court of Appeals for the Ninth Circuit partially remanded the BOC Safeguards Order. The court concluded that the Commission had scaled back its conception of ONA from the original vision in Computer III, and had not explained how the more limited version of ONA represented in the approved **BOC ONA plans provided sufficient** protection against BOC access discrimination. On this basis, the court held that the FCC's cost benefit analysis for fully lifting structural separation restrictions was flawed. On January 11, 1995, the Common Carrier Bureau clarified the requirements for BOC provision of enhanced services after the Ninth Circuit decision, and granted the BOCs interim waivers to offer new services, subject to certain restrictions and filing requirements, during the pendancy of remand proceedings.

4. In this Notice of Proposed Rulemaking, the Commission has initiated a proceeding to reexamine its Computer III rules in light of the most recent Ninth Circuit remand. The Commission noted that the partial vacation of the BOC Safeguards Order generally reinstates the *Computer III* service-by-service CEI plan regime, subject to the modification spelled out in the Common Carrier Bureau's waiver order. The Commission concluded that the Ninth Circuit had remanded the specific issue of whether the existing nonstructural safeguards including the level of network unbundling under ONA, are sufficient to justify fully lifting structural separation requirements.

5. The Notice of Proposed Rulemaking reviewed the various nonstructural