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 Common Carrier Bureau's Memorandum Opinion and Order, DA 95–36, adopted January 11, 1995 and released January 11, 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 Memorandum Opinion and Order

1. In the Computer III proceeding, beginning with the Phase I Order (51 FR 24350 (July 3, 1986)), the Commission reversed its earlier decision to require the Bell Operating Companies (BOCs) to establish structurally separate subsidiaries for the provision of enhanced services. Enhanced services use the existing telephone network to deliver services—such as voice mail, E-Mail, and gateways to on-line databases—beyond a basic transmission offering. The commission established a two-step process in Computer III for the removal of structural separation restrictions. Initially, BOCs were permitted to offer individual enhanced services on a structurally integrated basis once they had received FCC approval of service-specific 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 enhanced service providers (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 Ninth Circuit partially remanded the BOC Safeguards Order. The court concluded that the Commission had scaled back its conception of ONA, and had not explained how the more limited version of ONA represented in the approved BOC ONA plans provided sufficient protection to justify fully lifting structural separation. In light of this decision, on November 14, 1994, the BOCs jointly filed a petition for an interim waiver (BOC Petition). The BOC Petition requested permission to continue offering existing enhanced services on a structurally integrated basis; to continue integrated research, development, and market trials; and to offer new integrated enhanced services associated with video dialtone service

Order, the Common Carrier Bureau (Bureau) clarified the requirements that will govern BOCs' enhanced service offerings, pending further Commission action on remand, and issued an interim

4. In this Memorandum Opinion and

waiver. Specifically, the Bureau concluded that, after the partial remand of the BOC Safeguards Order, the BOCs may generally provide enhanced services that comply with the CEI plan regime in effect before the Commission completely lifted structural separation requirements. The Bureau granted the BOCs a limited waiver to continue providing those enhanced services that they first offered after the CEI plan approval requirement had expired, conditioned on their filing CEI plans for those services within sixty days after the release of the waiver order. The Memorandum Opinion and Order also granted the BOCs a limited waiver to continue existing market trials initiated after the expiration of the CEI plan approval requirement, conditioned on the BOCs' filing market trial notifications within sixty days after the release of the waiver order. To the extent that the decision remanding the BOC Safeguards Order might be

separation requirements.
5. The Bureau concluded that the safeguards provided by the CEI plan regime would protect against potential anticompetitive conduct by the BOCs during the pendency of remand proceedings. The Memorandum

regarded as returning regulation to the

separation, the Memorandum Opinion

and Order granted the BOCs limited

waivers of the Computer II structural

Computer II framework of full structural

Opinion and Order noted that the BOCs currently offer enhanced services on an integrated basis to approximately five million customers, and determined that service disruptions and customer confusion were possible in the absence of a waiver. The Bureau observed that it had granted a similar waiver following the first remand of Computer III in 1990, and that waiver was not subsequently challenged before the Commission or in court. Given these considerations, the Bureau determined that it would be in the public interest to provide the BOCs with a limited waiver to allow them to offer integrated enhanced services subject to defined safeguards until the Commission acted on remand.

6. Accordingly, the Bureau granted any necessary waivers to enable the BOCs to: (1) Provide existing enhanced services pursuant to CEI plans approval prior to the lifting of structural separation; (2) continue providing other existing enhanced services, pending Commission consideration of CEI plans for those services; (3) file CEI plans for any new enhanced services; (4) continue to perform research and planning activities and technical trials for enhanced services; (5) continue existing market trials, conditioned on their filing the market trial notifications required under the CEI plan regime; and (6) begin market trials of new enhanced services pursuant to the market trial requirements of the CEI plan regime. The Bureau declined to treat videodialtone-related enhanced services differently from other new enhanced services.

Ordering Clauses

- 1. Accordingly, IT IS ORDERED that pursuant to §§ 0.91, 0.291, and 1.3 of the Commission's Rules, 47 CFR §§ 0.91, 0.291, and 1.3, the BOC Joint Contingency Petition for Interim Waiver of the Computer II Rules, IS GRANTED to the extent described herein and otherwise Denied.
- 2. It is further ordered that this order is effective upon issuance of the Ninth Circuit's mandate in California III.

List of Subjects in 47 CFR Part 64

Communications common carriers; Computer technology.

Federal Communications Commission.

William F. Caton,

 $Acting \, Secretary.$

[FR Doc. 95–2948 Filed 2–6–95; 8:45 am]

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