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[62 FR 18295, Apr. 15, 1997]

PART 53—SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

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- 53.501 [Reserved]
- AUTHORITY: Sections 1-5, 7, 201-05, 218, 251, 253, 271-75, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151-55, 157, 201-05, 218, 251, 253, 271-75, unless otherwise noted.
- SOURCE: 62 FR 2967, Jan. 21, 1997, unless otherwise noted.

Subpart A—General Information

§ 53.1 Basis and purpose.

- (a) *Basis.* The rules in this part are issued pursuant to the Communications Act of 1934, as amended.
- (b) *Purpose.* The purpose of the rules in this part is to implement sections 271 and 272 of the Communications Act of 1934, as amended, 47 U.S.C. 271 and 272.

§ 53.3 Terms and definitions.

Terms used in this part have the following meanings:

Act. The Act means the Communications Act of 1934, as amended.

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

AT&T Consent Decree. The AT&T Consent Decree is the order entered August 24, 1982, in the antitrust action styled *United States v. Western Electric*, Civil

Action No. 82-0192, in the United States District Court for the District of Columbia, and any judgment or order with respect to such action entered on or after August 24, 1982.

Bell Operating Company (BOC). The term *Bell operating company*

(1) Means any of the following companies: Bell Telephone Company of Nevada, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, New England Telephone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, U S West Communications Company, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, Southwestern Bell Telephone Company, The Bell Telephone Company of Pennsylvania, The Chesapeake and Potomac Telephone Company, The Chesapeake and Potomac Telephone Company of Maryland, The Chesapeake and Potomac Telephone Company of Virginia, The Chesapeake and Potomac Telephone Company of West Virginia, The Diamond State Telephone Company, The Ohio Bell Telephone Company, The Pacific Telephone and Telegraph Company, or Wisconsin Telephone Company; and

(2) Includes any successor or assign of any such company that provides wireline telephone exchange service; but

(3) Does not include an affiliate of any such company, other than an affiliate described in paragraphs (1) or (2) of this definition.

In-Region InterLATA service. *In-region interLATA service* is *interLATA service* that originates in any of a BOC's in-region states, which are the states in which the BOC or any of its affiliates was authorized to provide wireline telephone exchange service pursuant to the reorganization plan approved under the AT&T Consent Decree, as in effect on February 7, 1996. For the purposes of this part, 800 service, private line service, or equivalent services that terminate in a BOC's in-region state and allow the called party to determine the interLATA carrier are considered to be in-region interLATA service.

InterLATA Information Service. An *interLATA information service* is an in-

formation service that incorporates as a necessary, bundled element an interLATA telecommunications transmission component, provided to the customer for a single charge.

InterLATA Service. An *interLATA service* is a service that involves telecommunications between a point located in a LATA and a point located outside such area. The term "interLATA service" includes both interLATA telecommunications services and interLATA information services.

Local Access and Transport Area (LATA). A *LATA* is a contiguous geographic area:

(1) Established before February 8, 1996 by a BOC such that no exchange area includes points within more than one metropolitan statistical area, consolidated metropolitan statistical area, or state, except as expressly permitted under the AT&T Consent Decree; or

(2) Established or modified by a BOC after February 8, 1996 and approved by the Commission.

Local Exchange Carrier (LEC). A *LEC* is any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of commercial mobile service under section 332(c) of the Act, except to the extent that the Commission finds that such service should be included in the definition of such term.

Out-of-Region InterLATA service. *Out-of-region interLATA service* is *interLATA service* that originates outside a BOC's in-region states.

Section 272 affiliate. A *section 272 affiliate* is a BOC affiliate that complies with the separate affiliate requirements of section 272(b) of the Act and the regulations contained in this part.

Subpart B—Bell Operating Company Entry Into InterLATA Services

**Subpart C—Separate Affiliate;
Safeguards**

§ 53.201 Services for which a section 272 affiliate is required.

For the purposes of applying section 272(a)(2) of the Act:

(a) *Previously authorized activities.* When providing previously authorized activities described in section 271(f) of the Act, a BOC shall comply with the following:

(1) A BOC shall provide previously authorized interLATA information services and manufacturing activities through a section 272 affiliate no later than February 8, 1997.

(2) A BOC shall provide previously authorized interLATA telecommunications services in accordance with the terms and conditions of the orders entered by the United States District Court for the District of Columbia pursuant to section VII or VIII(C) of the AT&T Consent Decree that authorized such services.

(b) *InterLATA information services.* A BOC shall provide an interLATA information service through a section 272 affiliate when it provides the interLATA telecommunications transmission component of the service either over its own facilities, or by reselling the interLATA telecommunications services of an interexchange provider.

(c) *Out-of-region interLATA information services.* A BOC shall provide out-of-region interLATA information services through a section 272 affiliate.

§ 53.203 Structural and transactional requirements.

(a) *Operational independence.* A section 272 affiliate and the BOC of which it is an affiliate shall not jointly own transmission and switching facilities or the land and buildings where those facilities are located.

(b) *Separate books, records, and accounts.* A section 272 affiliate shall maintain books, records, and accounts, which shall be separate from the books, records, and accounts maintained by the BOC of which it is an affiliate.

(c) *Separate officers, directors, and employees.* A section 272 affiliate shall have separate officers, directors, and

employees from the BOC of which it is an affiliate.

(d) *Credit arrangements.* A section 272 affiliate shall not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the BOC of which it is an affiliate.

(e) *Arm's-length transactions.* A section 272 affiliate shall conduct all transactions with the BOC of which it is an affiliate on an arm's length basis, pursuant to the accounting rules described in § 32.27 of this chapter, with any such transactions reduced to writing and available for public inspection.

[62 FR 2967, Jan. 21, 1997, as amended at 69 FR 16496, Mar. 30, 2004; 70 FR 55302, Sept. 21, 2005]

EFFECTIVE DATE NOTE: At 62 FR 2967, Jan. 21, 1997, § 53.203 was added. Paragraphs (b) and (e) of this section contain information collection requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 53.205 Fulfillment of certain requests. [Reserved]

§ 53.207 Successor or assign.

If a BOC transfers to an affiliated entity ownership of any network elements that must be provided on an unbundled basis pursuant to section 251(c)(3) of the Act, such entity will be deemed to be an "assign" of the BOC under section 3(4) of the Act with respect to such transferred network elements. A BOC affiliate shall not be deemed a "successor or assign" of a BOC solely because it obtains network elements from the BOC pursuant to section 251(c)(3) of the Act.

[62 FR 2967, Jan. 21, 1997; 63 FR 34604, June 25, 1998]

§ 53.209 Biennial audit.

(a) A Bell operating company required to operate a separate affiliate under section 272 of the Act shall obtain and pay for a Federal/State joint audit every two years conducted by an independent auditor to determine whether the Bell operating company has complied with the rules promulgated under section 272 and particularly the audit requirements listed in paragraph (b) of this section.

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(b) The independent audit shall determine:

(1) Whether the separate affiliate required under section 272 of the Act has:

(i) Operated independently of the Bell operating company;

(ii) Maintained books, records, and accounts in the manner prescribed by the Commission that are separate from the books, records and accounts maintained by the Bell operating company;

(iii) Officers, directors and employees that are separate from those of the Bell operating company;

(iv) Not obtained credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the Bell operating company; and

(v) Conducted all transactions with the Bell operating company on an arm's length basis with the transactions reduced to writing and available for public inspection.

(2) Whether or not the Bell operating company has:

(i) Discriminated between the separate affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or the establishment of standards;

(ii) Accounted for all transactions with the separate affiliate in accordance with the accounting principles and rules approved by the Commission.

(3) Whether or not the Bell operating company and an affiliate subject to section 251(c) of the Act:

(i) Have fulfilled requests from unaffiliated entities for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or its affiliates;

(ii) Have made available facilities, services, or information concerning its provision of exchange access to other providers of interLATA services on the same terms and conditions as it has to its affiliate required under section 272 that operates in the same market;

(iii) Have charged its separate affiliate under section 272, or imputed to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any un-

affiliated interexchange carriers for such service; and

(iv) Have provided any interLATA or intraLATA facilities or services to its interLATA affiliate and made available such services or facilities to all carriers at the same rates and on the same terms and conditions, and allocated the associated costs appropriately.

(c) An independent audit shall be performed on the first full year of operations of the separate affiliate required under section 272 of the Act, and biennially thereafter.

(d) The Chief, Enforcement Bureau, shall work with the regulatory agencies in the states having jurisdiction over the Bell operating company's local telephone services, to attempt to form a Federal/State joint audit team with the responsibility for overseeing the planning of the audit as specified in §53.211 and the analysis and evaluation of the audit as specified in §53.213. The Federal/State joint audit team may direct the independent auditor to take any actions necessary to ensure compliance with the audit requirements listed in paragraph (b) of this section. If the state regulatory agencies having jurisdiction choose not to participate in the Federal/State joint audit team, the Chief, Enforcement Bureau, shall establish an FCC audit team to oversee and direct the independent auditor to take any actions necessary to ensure compliance with the audit requirements in paragraph (b) of this section.

[62 FR 2926, Jan. 21, 1997, as amended at 67 FR 13226, Mar. 21, 2002]

§ 53.211 Audit planning.

(a) Before selecting an independent auditor, the Bell operating company shall submit preliminary audit requirements, including the proposed scope of the audit and the extent of compliance and substantive testing, to the Federal/State joint audit team organized pursuant to §53.209(d);

(b) The Federal/State joint audit team shall review the preliminary audit requirements to determine whether it is adequate to meet the audit requirements in §53.209 (b). The Federal/State joint audit shall have 30 days to review the audit requirements and determine any modifications that

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shall be incorporated into the final audit requirements.

(c) After the audit requirements have been approved by the Federal/State joint audit team, the Bell operating company shall engage within 30 days an independent auditor to conduct the biennial audit. In making its selection, the Bell operating company shall not engage any independent auditor who has been instrumental during the past two years in designing any of the accounting or reporting systems under review in the biennial audit.

(d) The independent auditor selected by the Bell operating company to conduct the audit shall develop a detailed audit program based on the final audit requirements and submit it to the Federal/State joint audit team. The Federal/State joint audit team shall have 30 days to review the audit program and determine any modifications that shall be incorporated into the final audit program.

(e) During the course of the biennial audit, the independent auditor, among other things, shall:

(1) Inform the Federal/State joint audit team of any revisions to the final audit program or to the scope of the audit.

(2) Notify the Federal/State joint audit team of any meetings with the Bell operating company or its separate affiliate in which audit findings are discussed.

(3) Submit to the Chief, Enforcement Bureau, any accounting or rule interpretations necessary to complete the audit.

[62 FR 2926, Jan. 21, 1997, as amended at 67 FR 13226, Mar. 21, 2002]

§ 53.213 Audit analysis and evaluation.

(a) Within 60 days after the end of the audit period, but prior to discussing the audit findings with the Bell operating company or the separate affiliate, the independent auditor shall submit a draft of the audit report to the Federal/State joint audit team.

(1) The Federal/State joint audit team shall have 45 days to review the audit findings and audit workpapers, and offer its recommendations concerning the conduct of the audit or the audit findings to the independent auditor. Exceptions of the Federal/State

joint audit team to the finding and conclusions of the independent auditor that remain unresolved shall be included in the final audit report.

(2) Within 15 days after receiving the Federal/State joint audit team's recommendations and making appropriate revisions to the audit report, the independent auditor shall submit the audit report to the Bell operating company for its response to the audit findings and send a copy to the Federal/State joint audit team. The independent auditor may request additional time to perform additional audit work as recommended by the Federal/State joint audit team.

(b) Within 30 days after receiving the audit report, the Bell operating company will respond to the audit findings and send a copy of its response to the Federal/State joint audit team. The Bell operating company's response shall be included as part of the final audit report along with any reply that the independent auditor wishes to make to the response.

(c) Within 10 days after receiving the response of the Bell operating company, the independent auditor shall make available for public inspection the final audit report by filing it with the Commission and the state regulatory agencies participating on the joint audit team.

(d) Interested parties may file comments with the Commission within 60 days after the audit report is made available for public inspection.

[62 FR 2927, Jan. 21, 1997]

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Subpart D—Manufacturing by Bell Operating Companies

§ 53.301 [Reserved]

Subpart E—Electronic Publishing by Bell Operating Companies

§ 53.401 [Reserved]

Subpart F—Alarm Monitoring Services

§ 53.501 [Reserved]

PART 54—UNIVERSAL SERVICE

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