

## Federal Communications Commission

## § 53.203

whichever is earlier, a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines may not jointly market in such State telephone exchange service obtained from such company pursuant to section 251(c)(4) of the Act with interLATA services offered by that telecommunications carrier.

(b) For purposes of applying section 271(e) of the Act, telecommunications carriers described in paragraph (a) of this section may not:

(1) Market interLATA services and BOC resold local exchange services through a "single transaction." For purposes of this section, we define a "single transaction" to include the use of the same sales agent to market both products to the same customer during a single communication;

(2) Offer interLATA services and BOC resold local exchange services as a bundled package under an integrated pricing schedule.

(c) If a telecommunications carrier described in paragraph (a) of this section advertises the availability of interLATA services and local exchange services purchased from a BOC for resale in a single advertisement, such telecommunications carrier shall not mislead the public by stating or implying that such carrier may offer bundled packages of interLATA service and BOC local exchange service purchased for resale, or that it can provide both services through a single transaction.

### 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.* (1) 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.

(2) A section 272 affiliate shall not perform any operating, installation, or maintenance functions associated with facilities owned by the BOC of which it is an affiliate.

(3) A BOC or BOC affiliate, other than the section 272 affiliate itself, shall not perform any operating, installation, or maintenance functions associated with facilities that the BOC's section 272 affiliate owns or leases from a provider other than the BOC.

(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.

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(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.

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.

(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 unaffiliated 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.