

Federal Communications Commission

§ 53.209

§ 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.

(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]

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: