

§ 53.201

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 [Reserved]

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.

47 CFR Ch. I (10–1–16 Edition)

(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]

§ 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.

(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]