

provisions of this” is corrected to read “(3) Example. The provisions of this”.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 53 and 64

[WC Docket No. 02-112; FCC 02-336]

Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses certain issues concerning the scope of the section 272(f)(1) sunset provisions and interprets section 272(f)(1) of the Act as providing for a state-by-state sunset of the separate affiliate and certain other requirements that apply to BOC provision of in-region, interLATA telecommunications services. It concludes that the meaning of section 272(f)(1) concerning the scope of the sunset is not clear and unambiguous and finds that this section is most reasonably interpreted as providing for a state-by-state sunset of the section 272 separate affiliate and related requirements. This approach is most consistent with the state-by-state in-region, interLATA authorization provisions in section 271 and the general structure of the Act.

DATES: Effective March 10, 2003.

FOR FURTHER INFORMATION CONTACT: Claudia Pabo, Senior Attorney Advisor, or Pamela Arluk, Attorney Advisor, Wireline Competition Bureau, at (202) 418-1580, TTY number: (202) 418-0484. It is also available on the Commission's Web site at <http://www.fcc.gov>.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in WC Docket No. 02-112, FCC 02-336, adopted December 20, 2002, and released December 23, 2002. The full text may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail qualexint@aol.com.

Synopsis of the Memorandum Opinion and Order

1. In a rulemaking initiated in May of 2002, the Commission sought comment on whether the separate affiliate and related safeguards of section 272, that apply to Bell Operating Company (BOC) provision of in-region, interLATA telecommunications services, should sunset as provided in the statute or be extended by the Commission. It also sought comment on possible alternative safeguards for BOC provision of in-region, interLATA services after sunset of the 272 structural and related requirements. In this Order, the Commission addresses certain issues concerning the scope of the section 272(f)(1) sunset provisions raised by parties to this proceeding. The Commission interprets section 272(f)(1) of the Act as providing for a state-by-state sunset of the separate affiliate and certain other requirements that apply to BOC provision of in-region, interLATA telecommunications services. The Commission concludes that the meaning of section 272(f)(1) concerning the scope of the sunset is ambiguous and that this section is best interpreted as providing for a state-by-state sunset because this approach is consistent with the state-by-state in-region, interLATA authorization provisions in section 271 and the general structure of the Act.

2. *Background.* The section 272(f)(1) sunset language that the Commission addresses in this Order is part of the Act's provisions for allowing the BOCs to enter the in-region, interLATA long distance telecommunications market once they have opened their local exchange markets to competition. Prior to entering the in-region, interLATA market in a particular state, a BOC must demonstrate compliance with the requirements of section 271 in that state, and obtain Commission authorization to provide such services. Among other things, Section 271 requires that a BOC applying for in-region, interLATA entry demonstrate that it will provide the authorized interLATA service in compliance with the requirements of section 272. Section 272(a), among other things, provides that a BOC may not provide originating in-region, interLATA telecommunications services, subject to certain limited exceptions, unless it provides that service through one or more affiliates that are separate from the incumbent BOC. The separate affiliate and other related requirements of section 272 sunset as provided in section 272(f)(1).

3. In this Order, the Commission applies to section 272(f)(1) a two step process for statutory analysis. First, it

finds that the meaning of section 272(f)(1) is not clear and unambiguous. Then, after a careful review of other closely related provisions of the Act, its underlying purposes, and its legislative history, the Commission concludes that section 272(f)(1) is most reasonably interpreted as providing for a state-by-state sunset of the section 272 separate affiliate and related requirements. The Commission therefore rejects the contentions advanced by Verizon, BellSouth and USTA that section 272(f)(1) unambiguously provides for a region-wide sunset of the separate affiliate and related requirements three years after the first BOC or an affiliate, including another affiliated BOC within the region, receives its first section 271 authorization. For the same reasons, the Commission cannot accept SBC's narrower argument that this language unambiguously requires a BOC-by-BOC sunset three years after an individual BOC or its affiliated interexchange carrier receives its first section 271 authorization.

4. Section 272(f)(1) cannot properly be viewed as unambiguous so as to foreclose the interpretation the Commission adopts in this Order. Both of the readings of section 272(f)(1) advocated by the BOCs and USTA produce anomalous results when considered in conjunction with the requirements of section 271, which specifically references section 272. The anomalous results produced by both the region-wide and BOC-by-BOC interpretations of the sunset provisions in section 272(f)(1) flow from the interaction of the sunset provisions and the requirements of section 271. Both of the purported “plain language” readings of section 272(f)(1) would effectively read the requirement for a showing of compliance with the requirements of section 272 out of section 271 to a large extent. Under the region-wide sunset approach, this section 271 requirement would effectively be eliminated three years after a BOC received section 271 authority for the first state in the region, regardless of whether it had obtained section 271 authority in all of its other in-region states. The BOC-by-BOC approach could potentially have produced similarly anomalous results. In addition, the BOC-by-BOC and region-wide interpretations of the section 272 sunset appear to produce arbitrary results when applied in conjunction with the definition of a BOC contained in the Act. In particular, under this reading, the scope of the sunset turns on matters of corporate structure, which are subject to control by the BOCs. In contrast, the language

of section 272(f)(1) can also be read as requiring a state-by-state sunset, thus avoiding anomalous results under section 271.

5. After a careful review of other closely related provisions of the Act, its underlying purposes, and its legislative history, the Commission concludes that section 272(f)(1) is most reasonably interpreted as providing for a state-by-state sunset of the section 272 separate affiliate and related requirements. A state-by-state sunset parallels the state-by-state authorization process provided for in section 271 and is consistent with the definition of a BOC contained in the Act. A state-by-state sunset also avoids the anomalous results under section 271(d)(3)(B) and the statutory definition of a BOC that are produced by application of a BOC-by-BOC or region-wide sunset.

Final Regulatory Flexibility Analysis

6. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

7. In the NPRM in this proceeding (67 FR 42211, June 21, 2002), the Commission certified that none of the proposals, if adopted, would have a significant economic impact on a substantial number of small entities because the issues under consideration in this proceeding directly affect only the BOCs and their affiliates, which do not qualify as small entities under the Regulatory Flexibility Act (RFA). The NPRM stated that none of the BOCs is a small entity because each BOC is an affiliate of a Regional Holding Company (RHC) and all of the BOCs or their RHCs have more than 1,500 employees under the applicable SBA size standard. The NPRM also stated that insofar as this proceeding applies to other BOC or RHC affiliates, those affiliates are controlled by the BOCs or by the RHC and thus are not "independently owned and

operated" entities for purposes of the RFA. Furthermore, comment was requested on this initial certification, and no party addressed this issue. Therefore we certify that the requirements of this Order will not have a significant economic impact on a substantial number of small entities.

8. The Commission will send a copy of this Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**.

Final Paperwork Reduction Act Analysis

9. This Memorandum Opinion and Order does not contain information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will not be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA.

Ordering Clauses

10. Accordingly, pursuant to the authority contained in sections 1, 2, 4(i)-(j), 201-205, 218-220, 251, 271, 272, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154 (i)-(j), 201-205, 218-220, 251, 271, 272, 303(r) and 403, this Order IS ADOPTED.

11. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 03-3068 Filed 2-6-03; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 90-571; FCC 02-269]

Telecommunications Relay Services and the Americans With Disabilities Act of 1990

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document eliminates the requirement that common carriers provide coin sent-paid

telecommunications relay service (TRS) from payphones on the grounds that it is currently technologically infeasible to provide coin sent-paid relay service through payphones. This document requires common carriers to provide local payphone calls made through TRS centers to TRS users on a cost-free basis. This document requires TRS providers to accept credit and calling cards and third party collect billing for toll calls from payphones. This document, also, encourages specific outreach and education programs to inform TRS users of their options when placing calls from payphones.

DATES: Effective March 10, 2003 except § 64.604(c)(3) of the Commission's rules which contain information collection(s) requirements shall become effective following approval by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT:

Janet Sievert, of the Consumer & Governmental Affairs Bureau at (202) 418-1362 (voice), (202) 418-1398 (TTY), or e-mail jsievert@fcc.gov. For additional information concerning the information collections contained in this *Fifth Report and Order*, contact Judy Boley at (202) 418-0214, or via the Internet at jbolely@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fifth Report and Order* on coin sent-paid TRS, adopted September 17, 2002, and released October 25, 2002. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail qualexint@aol.com. Copies of this document in other alternative formats (computer diskette, large print, and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau at (202) 418-7426 (voice), (202) 418-7365 (TTY), or e-mail bmillin@fcc.gov. This *Fifth Report and Order* can also be downloaded in Text and ASCII formats at: <http://www.fcc.gov/cgb/dro>.