

(June 19, 1934, ch. 652, title II, §271, as added Pub. L. 104-104, title I, §151(a), Feb. 8, 1996, 110 Stat. 86.)

### Editorial Notes

#### REFERENCES IN TEXT

Section 153 of this title, referred to in subsec. (c)(1)(A), was subsequently amended and no longer contains a par. (47)(A). However, the term “telephone exchange service” is defined elsewhere in that section.

Section 254(h)(5) of this title, referred to in subsec. (g)(2), was redesignated section 254(h)(7) of this title by Pub. L. 106-554, §1(a)(4) [div. B, title XVII, §1721(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A-343.

## § 272. Separate affiliate; safeguards

### (a) Separate affiliate required for competitive activities

#### (1) In general

A Bell operating company (including any affiliate) which is a local exchange carrier that is subject to the requirements of section 251(c) of this title may not provide any service described in paragraph (2) unless it provides that service through one or more affiliates that—

(A) are separate from any operating company entity that is subject to the requirements of section 251(c) of this title; and

(B) meet the requirements of subsection (b).

#### (2) Services for which a separate affiliate is required

The services for which a separate affiliate is required by paragraph (1) are:

(A) Manufacturing activities (as defined in section 273(h) of this title).

(B) Origination of interLATA telecommunications services, other than—

(i) incidental interLATA services described in paragraphs (1), (2), (3), (5), and (6) of section 271(g) of this title;

(ii) out-of-region services described in section 271(b)(2) of this title; or

(iii) previously authorized activities described in section 271(f) of this title.

(C) InterLATA information services, other than electronic publishing (as defined in section 274(h) of this title) and alarm monitoring services (as defined in section 275(e) of this title).

### (b) Structural and transactional requirements

The separate affiliate required by this section—

(1) shall operate independently from the Bell operating company;

(2) shall maintain books, records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the Bell operating company of which it is an affiliate;

(3) shall have separate officers, directors, and employees from the Bell operating company of which it is an affiliate;

(4) may not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the Bell operating company; and

(5) shall conduct all transactions with the Bell operating company of which it is an affiliate on an arm's length basis with any such transactions reduced to writing and available for public inspection.

### (c) Nondiscrimination safeguards

In its dealings with its affiliate described in subsection (a), a Bell operating company—

(1) may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards; and

(2) shall account for all transactions with an affiliate described in subsection (a) in accordance with accounting principles designated or approved by the Commission.

### (d) Biennial audit

#### (1) General requirement

A company required to operate a separate affiliate under this section shall obtain and pay for a joint Federal/State audit every 2 years conducted by an independent auditor to determine whether such company has complied with this section and the regulations promulgated under this section, and particularly whether such company has complied with the separate accounting requirements under subsection (b).

#### (2) Results submitted to Commission; State commissions

The auditor described in paragraph (1) shall submit the results of the audit to the Commission and to the State commission of each State in which the company audited provides service, which shall make such results available for public inspection. Any party may submit comments on the final audit report.

#### (3) Access to documents

For purposes of conducting audits and reviews under this subsection—

(A) the independent auditor, the Commission, and the State commission shall have access to the financial accounts and records of each company and of its affiliates necessary to verify transactions conducted with that company that are relevant to the specific activities permitted under this section and that are necessary for the regulation of rates;

(B) the Commission and the State commission shall have access to the working papers and supporting materials of any auditor who performs an audit under this section; and

(C) the State commission shall implement appropriate procedures to ensure the protection of any proprietary information submitted to it under this section.

### (e) Fulfillment of certain requests

A Bell operating company and an affiliate that is subject to the requirements of section 251(c) of this title—

(1) shall fulfill any requests from an unaffiliated entity 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 to its affiliates;

(2) shall not provide any facilities, services, or information concerning its provision of exchange access to the affiliate described in subsection (a) unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions;

(3) shall charge the affiliate described in subsection (a), or impute 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

(4) may provide any interLATA or intraLATA facilities or services to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions, and so long as the costs are appropriately allocated.

**(f) Sunset**

**(1) Manufacturing and long distance**

The provisions of this section (other than subsection (e)) shall cease to apply with respect to the manufacturing activities or the interLATA telecommunications services of a Bell operating company 3 years after the date such Bell operating company or any Bell operating company affiliate is authorized to provide interLATA telecommunications services under section 271(d) of this title, unless the Commission extends such 3-year period by rule or order.

**(2) InterLATA information services**

The provisions of this section (other than subsection (e)) shall cease to apply with respect to the interLATA information services of a Bell operating company 4 years after February 8, 1996, unless the Commission extends such 4-year period by rule or order.

**(3) Preservation of existing authority**

Nothing in this subsection shall be construed to limit the authority of the Commission under any other section of this chapter to prescribe safeguards consistent with the public interest, convenience, and necessity.

**(g) Joint marketing**

**(1) Affiliate sales of telephone exchange services**

A Bell operating company affiliate required by this section may not market or sell telephone exchange services provided by the Bell operating company unless that company permits other entities offering the same or similar service to market and sell its telephone exchange services.

**(2) Bell operating company sales of affiliate services**

A Bell operating company may not market or sell interLATA service provided by an affiliate required by this section within any of its in-region States until such company is authorized to provide interLATA services in such State under section 271(d) of this title.

**(3) Rule of construction**

The joint marketing and sale of services permitted under this subsection shall not be con-

sidered to violate the nondiscrimination provisions of subsection (c).

**(h) Transition**

With respect to any activity in which a Bell operating company is engaged on February 8, 1996, such company shall have one year from February 8, 1996, to comply with the requirements of this section.

(June 19, 1934, ch. 652, title II, §272, as added Pub. L. 104-104, title I, §151(a), Feb. 8, 1996, 110 Stat. 92.)

**Editorial Notes**

REFERENCES IN TEXT

This chapter, referred to in subsec. (f)(3), was in the original "this Act", meaning act June 19, 1934, ch. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

**§ 273. Manufacturing by Bell operating companies**

**(a) Authorization**

A Bell operating company may manufacture and provide telecommunications equipment, and manufacture customer premises equipment, if the Commission authorizes that Bell operating company or any Bell operating company affiliate to provide interLATA services under section 271(d) of this title, subject to the requirements of this section and the regulations prescribed thereunder, except that neither a Bell operating company nor any of its affiliates may engage in such manufacturing in conjunction with a Bell operating company not so affiliated or any of its affiliates.

**(b) Collaboration; research and royalty agreements**

**(1) Collaboration**

Subsection (a) shall not prohibit a Bell operating company from engaging in close collaboration with any manufacturer of customer premises equipment or telecommunications equipment during the design and development of hardware, software, or combinations thereof related to such equipment.

**(2) Certain research arrangements; royalty agreements**

Subsection (a) shall not prohibit a Bell operating company from—

(A) engaging in research activities related to manufacturing, and

(B) entering into royalty agreements with manufacturers of telecommunications equipment.

**(c) Information requirements**

**(1) Information on protocols and technical requirements**

Each Bell operating company shall, in accordance with regulations prescribed by the Commission, maintain and file with the Commission full and complete information with respect to the protocols and technical requirements for connection with and use of its telephone exchange service facilities. Each such