PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: http://www.fcc.gov
TTY: 1-888-835-5322

DOCKET FILE COPY ORIGINAL

FCC 03-155
Released: June 30, 2003

SECTION 272 SUNSETS FOR SBC IN THE STATE OF TEXAS BY OPERATION OF LAW ON JUNE 30, 2003 PURSUANT TO SECTION 272(f)(1)

WC Docket No. 02-112

The provisions of section 272 (other than section 272(e)) of the Communications Act of 1934, as amended (the Act), applicable to BOC provision of in-region, interLATA telecommunications services sunset for SBC's operations in Texas by operation of law as provided in section 272(f)(1), effective June 30, 2003.

Section 272 of the Act requires BOCs to provide in-region, interLATA telecommunications services through separate corporate affiliates, subject to certain safeguards. 47 U.S.C. § 272(a)(2). Section 272(f)(1) provides that the provisions in section 272 (other than section 272(e)) expire three years after a BOC or BOC affiliate is authorized under section 271 to provide in-region, interLATA services, unless the Commission extends such 3-year period by rule or order. 47 U.S.C. § 272(f)(1).

The Commission granted SBC section 271 authorization for the provision of in-region, interLATA services in the State of Texas in an order released on June 30, 2000.[1] Pursuant to section 272(f)(1), section 272 (other than section 272(e)) sunsets by operation of law for SBC in the State of Texas, effective June 30, 2003.[2]

---

1 *See Application by SBC Communications, Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354 (2000).

2 *See Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Memorandum Opinion and Order, 17 FCC Rcd 26,869 (2002) (finding that section 272(f)(1) is best interpreted as providing for a state-by-state sunset).

For further information, please contact William Dever or Christine Newcomb, Competition Policy Division, Wireline Competition Bureau, at (202) 418-1580.

Action by the Commission on June 30, 2003: Commissioner Martin concurring and issuing a statement; Commissioners Copps and Adelstein dissenting and issuing a joint statement.

CONCURRING STATEMENT OF COMMISSIONER KEVIN J. MARTIN

Re: *Public Notice, Section 272 Sunsets For SBC in the State of Texas By Operation of Law on June 30, 2003 Pursuant To Section 272(f)(1), WC Docket No. 02-112.*

Today, the Commission—in a public notice—declares that the statutory requirement that BOCs provide in-region, interLATA telecommunications services through a separate corporate affiliate will sunset for SBC's operations in Texas by operation of law.[3]

Last December, I expressed my concerns regarding the Commission's decision to summarily allow the section 272 requirements to sunset for Verizon in New York through a public notice rather than a Commission order responding to questions raised on the record.[4]

In response to a petition for extension of the separate affiliate requirements, many parties, including the Texas Public Utility Commission, contend that it is premature to lift the separate affiliate safeguards provided by section 272.

As I have said before, I would have preferred that we affirmatively set forth, in a separate Commission order, our analysis and justification for granting the relief we announce in today's public notice rather than remain silent.

[3] 47 USC Section 272.

[4] *See* Concurring Statement of Commissioner Kevin J. Martin, *Public Notice, Section 272 Sunsets for Verizon in New York State By Operation of Law on December 23, 2002 Pursuant to Section 272(f)(1); In the Matter of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, WC Docket 02-112, (rel. Dec. 23, 2002).*

JOINT STATEMENT OF COMMISSIONER JONATHAN S. ADELSTEIN AND COMMISSIONER MICHAEL J. COPPS, DISSENTNG

Re: *Section 272(f) Sunset of the BOC Separate Affiliate and Related Requirements, WC Docket No. 02-112.*

Today the Commission releases a Public Notice announcing the sunset of the separate affiliate requirement in section 272 for SBC in Texas. We are troubled that the Commission reaches this result without providing any analysis and that it does so despite the clear reservations of our state colleagues at the Texas Public Utility Commission.

In section 272, Congress required Bell companies to provide long distance and manufacturing services through a separate affiliate. In implementing these requirements, the Commission concluded that Congress adopted these safeguards because it recognized that Bell companies might still exercise market power at the time they enter long-distance markets. Congress provided that these requirements would continue for three years, but could be extended by the Commission by rule or order.

Congress clearly gave the Commission the charge to determine whether these structural, accounting and auditing safeguards remain necessary to prevent anticompetitive discrimination in the market. Yet the Commission has neglected to analyze the market in Texas and determine whether there is a continuing need for these or alternative safeguards.

We have been here before. Last December, the Commission allowed the separate affiliate requirements in section 272 to sunset for Verizon in New York without the review we believe is required and at a time when the New York Public Service Commission found that elimination of these requirements would be premature. Just as we did last year, we give short shrift to the opinion of our state colleagues here.

Only last week the Commission noted in its *Qwest Minnesota 271 Order* that, "compliance with section 272 is of 'crucial importance' because the structural, transactional, and nondiscrimination safeguards of section 272 seek to ensure that [Bell companies] compete on a level playing field." Just last month, the Commission sought comment in a second proceeding involving issues related to the continuing need for section 272 affiliates. We are left to wonder how the Commission can justify sunset while it seeks comment on these related matters and leaves stalled on the side development of alternative safeguards in its performance measurements docket.

Against this background, the Commission fails to address arguments raised in the record in the instant proceeding and does not provide any analysis supporting its action in today's Public Notice. For these reasons, we believe the Commission has fallen short of fulfilling its statutorily mandated responsibilities.