

remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: September 29, 2003.

James W. Newsom,

Acting Regional Administrator, Region III.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 96-128; FCC 03-220]

Implementation of Section 273 of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document terminates the pending Notice of Proposed Rulemaking to implement provisions of section 273 of the Telecommunications Act of 1996 (the Act) that pertain to manufacturing by the Bell Operating Companies (BOCs). (*In the Matter of Implementation of Section 273 of the Communications Act of 1934, as Amended in the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, CC Docket No. 96-254, 62 FR 3638, January 24, 1997 (*BOC Manufacturing NPRM*)). The statute, as written, is sufficiently detailed and clear as to cover most circumstances at this time. Adopting rules to implement the provisions of section 273 would not serve the public interest and would impose unnecessary regulatory burdens inconsistent with the pro-competitive, deregulatory goals of the Act. Accordingly, for the reasons indicated below, the Commission concludes that it is unnecessary to adopt rules to implement section 273 at this juncture and terminates this proceeding.

DATES: This proposed rule is withdrawn as of October 17, 2003.

FOR FURTHER INFORMATION CONTACT: Henry L. Thaggert, Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418-7941, or via the Internet at hthaggert@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in CC Docket No. 96-254, FCC 03-220, adopted September 15, 2003, and released September 16, 2003. The complete text of this Memorandum

Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. This document may also 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. It is also available on the Commission's Web site at <http://www.fcc.gov>.

Synopsis of the Memorandum Opinion and Order

1. *Background.* Section 273 permits a BOC to manufacture telecommunications equipment and customer premises equipment through a structurally separate corporate affiliate once the Commission authorizes the BOC to provide in-region, interLATA services pursuant to section 271(d) of the Act. Section 273 provides for two important exceptions to the requirement that a BOC refrain from all manufacturing activity until after it receives section 271 approval. First, section 273(b)(1) permits a BOC at any time to engage in "close collaboration" with manufacturers on product design and development. Second, section 273 (b)(2) permits a BOC at any time to enter into "royalty agreements" with manufacturers.

2. The *BOC Manufacturing NPRM* invited comment and proposed numerous tentative conclusions to implement rules governing section 273. The *BOC Manufacturing NPRM* generated comment from BOCs, competitive LECs, manufacturers, and others. Since the issuance of the *BOC Manufacturing NPRM*, each BOC has obtained section 271 authority to provide in-region interLATA service in at least one of its states, and Verizon and BellSouth have received section 271 authority throughout their regions. Yet to our knowledge, no BOC has created a manufacturing affiliate, nor has the Commission received complaints that BOCs have violated section 273.

3. The Commission concludes that the provisions of section 273 are sufficiently detailed as to be self-executing and sufficiently clear as to cover most circumstances. Thus, section 273 requires no further elaboration at this time. More than seven years have passed since the passage of the Act, and the Commission has granted section 271 authorization to provide in-region interLATA service in forty-two states and the District of Columbia. Our experience over this time frame

persuades us, with the benefit of hindsight, that the concerns the Commission articulated in the *BOC Manufacturing NPRM* were unwarranted because the competitive harms the Commission envisioned simply have not materialized.

4. Whenever the Commission adopts rules, it must consider whether the benefit of such rules outweighs the burden on regulated entities. As written, section 273 provides detailed requirements that should facilitate quick review and disposal of alleged violations on a case-by-case basis. Moreover, if a party believes that section 273 does not clearly indicate the proper course of conduct, the Commission has in place adequate mechanisms for addressing the party's concerns. Accordingly, we believe a case-by-case approach would serve the public interest more efficiently than imposing a new rules regime.

Regulatory Flexibility Act

5. The Commission concludes that, because it does not adopt rules in this Memorandum Opinion & Order to implement section 273, our resolution of this matter raises no Regulatory Flexibility Act issues. Although section 273 focuses primarily on BOC manufacturing activity, in the *BOC Manufacturing NPRM* the Commission questioned whether development of rules would "have a significant economic impact on a substantial number of small businesses insofar as they apply to entities that develop standards, develop generic requirements and conduct certification activity." However, in this Memorandum Opinion & Order, the Commission neither promulgates new rules nor revises existing rules, thus the action does not require any change in the current practices of any standard setting entities, large or small. Accordingly, because the Commission implements no rules, it takes no action that would require entities to modify their practices. Thus, the Commission finds that the action will not have a "significant economic impact on a substantial number of small entities."

Paperwork Reduction Act of 1995

6. The Commission finds that this Memorandum Opinion and Order does not contain information collection provisions and therefore does not implicate the Paperwork Reduction Act of 1995.

Ordering Clauses

1. Accordingly, pursuant to sections 1, 3, 4(i)-(j), 7, 201-209, 218-220, 251, 271-273 and 403 of the