

Federal Communications Commission

§ 53.209

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