FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 96–152; FCC 97–101]

Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; interpretation.

SUMMARY: The Second Report and Order (Order) released March 25, 1997 clarifies the definition of ''alarm monitoring service'' and the manner in which the Commission will apply the nondiscrimination provisions of section 275(b) of the Telecommunications Act of 1996 (the 1996 Act). This Order implements the alarm monitoring provisions of section 275 of the 1996 Act.

EFFECTIVE DATE: May 5, 1997.

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted March 21, 1997, and released March 25, 1997. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW., Room 239, Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc97–101.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, the Order contains a Final Regulatory Flexibility Certification which is set forth in the Order. A brief description of the certification follows.

The Commission certifies, pursuant to 5 U.S.C. 605(b), that the regulations adopted in this Order will not have a significant economic impact on a substantial number of ''small entities,'' as this term is defined in 5 U.S.C. 601(6). The Commission therefore is not required to prepare a final regulatory flexibility analysis of the regulations adopted in this Order. This certification and a statement of its factual basis are set forth in the Order, as required by 5 U.S.C. 605(b).

Synopsis of Second Report and Order

I. Introduction

1. In February 1996, the ''Telecommunications Act of 1996'' became law. The intent of the 1996 Act is ''to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.''

2. On July 18, 1996, the Commission released a Notice of Proposed Rulemaking (61 FR 39385 (July 29, 1996)) (*NPRM*) regarding implementation of sections 260, 274, and 275 of the Communications Act addressing telemessaging, electronic publishing, and alarm monitoring services, respectively. This Order implements the alarm monitoring provisions of section 275.

3. Section 275 prohibits Bell Operating Companies (BOCs) from providing alarm monitoring service until February 8, 2001, although it exempts from this prohibition those BOCs that were providing alarm monitoring service as of November 30, 1995. This Order clarifies the definition of ''alarm monitoring service'' and the manner in which we will apply the nondiscrimination provisions of section 275(b). We address the enforcement issues related to sections 260, 274, and 275 in a separate proceeding.

II. Scope of the Commission's Authority

A. Scope of Authority Over Alarm Monitoring Services

i. Background

4. Pursuant to *Computer III*, the Commission has traditionally regulated alarm monitoring services provided by BOCs as enhanced (or information) services. The Commission has determined that ''all of the services that the Commission has previously considered to be 'enhanced services' are 'information services.' '' *See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96–149, First Report and Order and Further Notice of Proposed Rulemaking, (62 FR 2927 (January 21, 1997)) at ¶ 102 (*Non-Accounting Safeguards Order*). Accordingly, we use the term ''information services'' to apply to both. These rules applied to all BOC-provided alarm monitoring services—intrastate as well as interstate. Because the Modified Final Judgment (MFJ) prohibition on BOC provision of interLATA telecommunications services also applied to interLATA information services, however, the BOCs were limited to providing alarm monitoring services on an intraLATA basis.

5. Section 275 of the Act refers generally to BOC and incumbent local exchange carrier (LEC) provision of alarm monitoring services and does not differentiate between interLATA and intraLATA or between interstate and intrastate alarm monitoring services. In the *NPRM*, we sought comment on the extent of the Commission's authority over intrastate alarm monitoring services. We also asked whether, if the Commission lacks express authority over intrastate alarm monitoring services, the Commission has authority to preempt state regulation with respect to these matters pursuant to *Louisiana PSC*.

ii. Discussion

6. For the reasons stated below, we find that section 275, and the Commission's authority thereunder, applies to intrastate as well as interstate alarm monitoring services provided by incumbent LECs and their affiliates. We also find that section 2(b) does not limit the Commission's authority to establish rules governing intrastate alarm monitoring service pursuant to section 275. We hold, therefore, that the states may regulate incumbent LEC provision of alarm monitoring services, but may not do so in a manner that is inconsistent with section 275 and the interpretations established in this Order.

7. We find that section 275, by its terms, applies to interstate and intrastate alarm monitoring services. The statute makes no distinction between interstate and intrastate alarm monitoring services, but rather enacts a broad prohibition on all BOC provision of alarm monitoring services, except for ''grandfathered'' BOCs. Significantly, section 275(b) provides that ''an incumbent *local exchange* carrier * * * engaged in the provision of alarm monitoring service shall not subsidize its alarm monitoring services either directly or indirectly *from telephone exchange service operations*.'' Because telephone exchange service is a local, intrastate service, section 275(b) plainly addresses intrastate service. Thus, the safeguards provided in section 275(b) clearly and explicitly relate to intrastate service. Given that section 275(b) applies explicitly to intrastate service, we find that Congress intended that all of section 275 apply to intrastate alarm monitoring service.

8. This interpretation of section 275 also is consistent with existing

Commission regulation of alarm monitoring and other enhanced services. As discussed above, alarm monitoring services provided by BOCs are currently regulated as enhanced services and are subject to *Computer III* nondiscrimination safeguards. These safeguards apply to the intrastate as well as interstate aspects of alarm monitoring services.

9. We also find that adopting the view that section 275, and our authority thereunder, applies only to interstate services would lead to implausible results. If section 275 were interpreted to apply only to interstate alarm monitoring services, the five-year prohibition on BOC entry into alarm monitoring service in section 275(a) would apply only to the extent that a BOC provides alarm monitoring services on an interstate basis. Because the jurisdictional nature of an alarm monitoring service depends on whether the monitoring center is situated in the same state as the monitored premises, a BOC could escape a prohibition on providing interstate alarm monitoring service by establishing a monitoring center in each state in which it sought to do business. We agree with AICC and AT&T that such a reading would render the section 275(a) prohibition against BOC entry into the alarm monitoring business nearly meaningless, a result that in our view is contrary to the plain intent of this section. We further find that limiting the scope of the prohibition to interstate alarm monitoring services would be contrary to the rule of statutory construction ''that one provision should not be interpreted in a way * * * that renders other provisions of the same statute inconsistent or meaningless.''

10. Nevertheless, several parties argue that sections 2(b) of the 1934 Act and 601(c) of the 1996 Act prevent the Commission from exercising authority over intrastate alarm monitoring services. Section 2(b) provides that ''nothing in this Act shall be construed to apply to or give the Commission jurisdiction with respect to * * * charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communications service * * *.'' In *Louisiana PSC*, the Supreme Court held that, in order to overcome section 2(b)'s limitation of Commission authority over intrastate service, Congress must either modify section 2(b) or grant the Commission additional authority over intrastate services.

11. As discussed above, we find that Congress, by the Act's use of the term ''telephone exchange service,'' explicitly granted the Commission authority over intrastate alarm monitoring services for the purpose of section 275. Accordingly, consistent with the Court's statement in *Louisiana*, we find that section 2(b) does not limit our authority over intrastate alarm monitoring services. Consistent with our finding in the *Local Competition Order* (61 FR 45476 (August 29, 1996)) and the *Non-Accounting Safeguards Order*, we find that in enacting section 275 after section 2(b) and addressing services that are intrastate in nature, Congress intended the express language of section 275 to take precedence over any limiting language in section 2(b).

12. We similarly are not persuaded that section 601(c) of the 1996 Act evinces an intent by Congress to preserve states' authority over intrastate alarm monitoring. Section 601(c) of the 1996 Act provides that the Act and its amendments ''shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments.'' As shown above, we conclude that section 275 expressly modifies the Commission's existing statutory authority and authorizes adoption of regulations implementing the requirements of section 275 that apply to incumbent LECs' provision of both intrastate and interstate alarm monitoring service.

13. We also find implausible the suggestion that we should interpret section 275 to apply broadly to all alarm monitoring services, but that the Commission's rulemaking authority under that section is limited to interstate services. Rather, we conclude that the Commission's rulemaking authority pursuant to section 275 is coextensive with the reach of the statute. As discussed below, the Commission possesses broad rulemaking authority to implement and interpret provisions of the Communications Act. Nothing in section 275 or elsewhere in the Act deprives the Commission of this authority.

14. We therefore find that section 275 and the Commission's authority thereunder apply to all alarm monitoring services—interstate or intrastate—and affirm our tentative conclusion that section 275 applies to interLATA and intraLATA alarm monitoring services. We further hold that the rules we establish to implement section 275 are binding upon the states and that states may not impose any requirements that are inconsistent with section 275 or the Commission's rules. Because we find that section 275 provides the Commission with direct authority over intrastate alarm monitoring services, we reject the argument of the New York Commission that the Commission lacks authority to preempt inconsistent state rules regarding intrastate alarm monitoring services.

B. Scope of Authority to Issue Rules to Implement Section 275

i. Background

15. Section 275 contains several terms that are subject to varying interpretation. The *NPRM* sought comment on whether several provisions of section 275 should be clarified.

ii. Discussion

16. In the *NPRM*, we identified areas of ambiguity in the requirements of section 275 that may benefit from the adoption of rules that clarify and implement those mandates. We find that Congress enacted in section 275 principles that can best be implemented if we give affected parties more specific guidelines concerning the requirements of that section, which will enable the Commission to carry out effectively and efficiently its enforcement obligations under the Communications Act.

17. We reject the suggestion of the California Commission that we issue nonbinding ''guidelines'' that would be applied by the states if they so choose. Such an approach could result in inconsistent and uncertain application of the requirements of section 275, which may deter or hamper alarm monitoring service providers that wish to offer service on a nationwide basis.

18. Based on the foregoing, we find, pursuant to the general rulemaking authority vested in the Commission by sections 4(i), 201(b), and 303(r) of the Communications Act, and consistent with fundamental principles of administrative law, that the Commission has the requisite authority to promulgate rules implementing section 275 of the Communications Act.

19. It is well-established that the Commission possesses authority to adopt rules to implement the requirements of the Communications Act. Sections 4(i), 201(b), and 303(r) of the Act authorize the Commission to adopt rules it deems necessary or appropriate in order to carry out its responsibilities under the Communications Act, so long as those rules are not otherwise inconsistent with the Communications Act. Moreover, courts repeatedly have held that the Commission's general rulemaking authority is ''expansive'' rather than limited. In addition, it is well-established that an agency has the authority to adopt rules to administer congressionally mandated requirements.

C. Constitutional Issues

20. BellSouth and U S WEST raise constitutional concerns with respect to our implementation of section 275. BellSouth contends that the Commission must be ''circumspect'' in its construction of section 275 because the prohibition on alarm monitoring services ''impose[s an] impermissible prior restraint[] on BOCs' speech activities,'' in violation of the First Amendment. Further, it maintains that section 275, as well as other sections of the Act, are unconstitutional ''bills of attainder'' to the extent they single out BOCs by name and impose restrictions on them alone. Recognizing that we have no discretion to ignore Congress' mandate to apply sections 275, BellSouth urges us to construe these sections, and others, narrowly. U S WEST concurs with BellSouth that section 275 is an unlawful bill of attainder and urges the Commission not to adopt any structural rules beyond the express terms of the statute.

21. Although decisions about the constitutionality of congressional enactments are generally outside the jurisdiction of administrative agencies, we have an obligation under Supreme Court precedent to construe a statute ''where fairly possible to avoid substantial constitutional questions'' and not to ''impute to Congress an intent to pass legislation that is inconsistent with the Constitution as construed by the [Supreme Court].'' As BellSouth concedes, we have no discretion to ignore Congress' mandate respecting these sections or any other sections of the Act. Nevertheless, we find BellSouth's argument to be without merit. We find that the prohibition on the provision of alarm monitoring services in section 275 is not a restriction on BellSouth's speech under the First Amendment.

22. Similarly, we reject BellSouth and U S WEST's argument that section 275 is an unconstitutional ''bill of attainder'' because the statute singles out BOCs by name and imposes restrictions on them alone. We conclude that section 275 is not an unconstitutional bill of attainder simply because it applies only to the BOCs. Rather, judicial precedent teaches that, in determining whether a statute amounts to an unlawful bill of attainder, we must consider whether the statute ''further[s] nonpunitive legislative purposes,'' and whether Congress evinced an intent to punish. We find no evidence, and BellSouth and U S WEST have offered none, that would support a finding that Congress enacted section 275 to punish the BOCs. Thus, we conclude that the section 275 restrictions imposed on BOCs do not violate the Bill of Attainder Clause.

III. Alarm Monitoring Service Defined

A. Scope of Section 275(e)

i. Background

23. Section 275(e) defines ''alarm monitoring service'' as: A service that uses a device located at a residence, place of business, or other fixed premises—(1) to receive signals from other devices located at or about such premises regarding a possible threat at such premises to life, safety, or property, from burglary, fire, vandalism, bodily injury, or other emergency, and (2) to transmit a signal regarding such threat by means of transmission facilities of a [LEC] or one of its affiliates to a remote monitoring center to alert a person at such center of the need to inform the customer or another person or police, fire, rescue, security, or public safety personnel of such threat * * *.

The *NPRM* tentatively concluded that the provision of underlying basic tariffed telecommunications services does not fall within the definition of alarm monitoring service under section 275(e). The *NPRM* further tentatively concluded that Ameritech's alarm monitoring service falls within the definition in section 275(e) and is therefore grandfathered under section 275(a)(2). The *NPRM* sought comment on whether any other services provided by incumbent LECs should be considered alarm monitoring services under section 275(e) and grandfathered under section 275(a)(2).

ii. Discussion

24. We find that a service provided by incumbent LECs to transmit information for use in connection with an alarm monitoring service, such as U S WEST's ''ScanAlert'' or ''Versanet,'' does not constitute an alarm monitoring service as defined by the Act. We further find, for the reasons discussed below, that the service provided by Ameritech constitutes an alarm monitoring service, as defined by section 275(e).

25. *Incumbent LEC Services Used to Transmit Alarm Monitoring Information.* We conclude that an incumbent LEC that provides a service used to transmit alarm monitoring information used by a third party to furnish alarm monitoring service is not engaged in the provision of alarm monitoring service under the Act. U S WEST argues that its basic service ''Scan-Alert'' and enhanced ''Versanet'' service qualify as alarm monitoring services under section 275(e) because these services ''use'' a device to receive signals from other devices at the customer's premises and transmit a signal to a remote monitoring center. U S WEST neither operates the monitoring center nor provides the ''devices'' that transmit the alarm signal. Rather, U S WEST only provides the transmission link between the two locations.

26. The definition of alarm monitoring service in section 275(e) does not specify whether the ''device'' that transmits the information or the service provided by the ''remote monitoring center'' that receives the information must be offered by a BOC in order for its service to qualify as an alarm monitoring service. Nor does the legislative history address this issue. We find, however, that a service that only transmits a signal from the monitored premises to the monitoring center, and therefore does not ''use a device * * * to receive signals from other devices located at or about such premises * * *'' cannot qualify as alarm monitoring service regardless of whether it is regulated as a telecommunications service or an information service. Since alarm monitoring service is offered throughout the country by alarm companies that use BOC-provided basic telephone service to provide transmission between the monitored premises and the alarm monitoring center, the statutory interpretation advocated by U S WEST would grandfather all BOCs and, consequently, would make none subject to the prohibition in section 275(a). We reject this interpretation because it would render section 275(a) superfluous. For the same reason, we also reject U S WEST's contention that an information service used to transmit signals used for alarm monitoring, such as its ''Versanet'' service, should be classified as an alarm monitoring service merely because it includes an enhanced component. Whether a particular service qualifies as an enhanced or information service does not necessarily qualify it as an alarm monitoring service. We therefore affirm our tentative conclusion that an incumbent LEC that provides a basic telecommunications service that is used by third parties to offer an alarm monitoring service is not engaged in the provision of an alarm monitoring service. We further find that an incumbent LEC that provides an enhanced service that transmits an alarm signal to a third party is not engaged in the provision of alarm monitoring service. We find that our conclusion will satisfy Congress's intent to impose a five-year restriction on BOC entry into the alarm monitoring services

market and the associated protections to nonaffiliated alarm monitoring providers.

27. We clarify, however, that the prohibition on BOC provision of alarm monitoring services in section 275(a) applies only to alarm monitoring services as defined in section 275(e). Neither U S WEST nor any other BOC is precluded from continuing to provide telecommunications and information services used by unaffiliated firms to provide alarm monitoring service. We also clarify, in accord with BellSouth's request, that ''service offerings such as remote meter reading * * *, remote monitoring of customer premises equipment (CPE) for maintenance and other purposes, or other services in which the purpose of the service offering is not to alert public safety personnel of [a] threat'' do not constitute alarm monitoring services because such services do not fall within the definition of alarm monitoring service in section 275(e). Since section 275(e) defines alarm monitoring service specifically to include transmission of signals ''regarding a possible threat at such premises to life, safety, or property from burglary, fire, vandalism, bodily injury or other injury * * *'' we find that service offerings that do not involve a possible threat, such as those BellSouth mentions, do not fall within the definition in section 275(e).

28. *Ameritech's Service.* Ameritech's ''SecurityLink'' service was described in its 1995 CEI plan as ''the sale, installation, monitoring and maintenance of intrusion and motion detection systems, fire detection systems, and other types of monitoring and control systems, * * * the transmission of a non-voice message from the residential, commercial or governmental alarm system to a central monitoring station * * * [and] a voice call placed by personnel at the monitoring station to the police or fire department and to persons designated to be contacted in the event of an alarm * * *.'' This service fits squarely within the definition of alarm monitoring service in section 275(e). We therefore find that Ameritech's ''SecurityLink'' service falls within the definition of an alarm monitoring service under section 275(e). Since Ameritech is the only BOC that was authorized to provide alarm monitoring service as of November 30, 1995, we find that Ameritech is the only BOC that qualifies for ''grandfathered'' treatment under section 275(a)(2).

B. Meaning of ''Provision'' in Section 275(a)

i. Background

29. Section 275(a)(1) prevents BOCs from ''engag[ing] in the provision'' of alarm monitoring service until February 8, 2001. Section 275(b) places certain nondiscrimination obligations on all incumbent LECs ''engaged in the provision'' of alarm monitoring services. In the *NPRM*, we sought comment on the types of activities that constitute the ''provision'' of alarm monitoring services subject to this section. We asked parties to address, with specificity, the levels and types of involvement in alarm monitoring that would constitute ''engag[ing] in the provision'' of alarm monitoring service. We tentatively concluded that resale of alarm monitoring service constitutes the provision of such service and sought comment on whether, among other things, billing and collection, sales agency, marketing and/or various compensation arrangements, either individually or collectively, would constitute the provision of alarm monitoring. We also asked parties to address any other factors that may be relevant in determining whether an incumbent LEC, including a BOC, is providing alarm monitoring service under section 275.

ii. Discussion

30. We conclude, consistent with our reading of the statutory definition of alarm monitoring service, that an incumbent LEC, including a BOC, is engaged in the ''provision'' of alarm monitoring service if it operates the ''remote monitoring center'' in connection with the provision of alarm monitoring service to end users. As noted above, if an incumbent LEC is merely providing the CPE and/or the underlying transmission service, it is not engaged in the provision of alarm monitoring service under section 275. We further find, consistent with Commission precedent, that the resale of a service constitutes the provision of that service. We therefore affirm our tentative conclusion that the resale of alarm monitoring service constitutes the provision of such service under section 275. We also conclude that BOC performance of the billing and collection for a particular alarm monitoring company does not, in itself, constitute the provision of alarm monitoring service under section 275(a). Indeed, BOCs perform billing and collection for many services that they themselves do not offer and, in some cases, are barred from offering.

31. We find that BOC participation in sales agency, marketing, and/or various compensation arrangements in connection with alarm monitoring services does not necessarily constitute the provision of alarm monitoring under section 275(a). Whereas other provisions of the Act explicitly bar BOCs from engaging in such activities in connection with other services, section 275 does not, by its terms, prohibit a BOC from acting as a sales agent or marketing alarm monitoring service. We therefore reject AICC's suggestion that we should flatly prohibit BOCs from entering into arrangements to act as sales agents on behalf of alarm monitoring service providers or to market on behalf of, or in conjunction with, alarm monitoring service providers.

32. We recognize, however, that there may be certain situations where a BOC is not directly providing alarm monitoring service, but its interests are so intertwined with the interests of an alarm monitoring service provider that the BOC itself may be considered to be ''engag[ed] in the provision'' of alarm monitoring in contravention of section 275(a). We conclude therefore that we will examine sales agency and marketing arrangements between a BOC and an alarm monitoring company on a case-by-case basis to determine whether they constitute the ''provision'' of alarm monitoring service. In evaluating such arrangements, we will take into account a variety of factors including whether the terms and conditions of the sales agency and marketing arrangement are made available to other alarm monitoring companies on a nondiscriminatory basis.

33. In addition, we will also consider how the BOC is being compensated for its services. For example, if a BOC, acting as a sales agent or otherwise marketing the services of a particular alarm monitoring service provider, has a financial stake in the commercial success of that provider, such involvement with the alarm monitoring company may constitute the ''provision'' of alarm monitoring service. Such a BOC may be unlawfully providing alarm monitoring services if its compensation for marketing such services is based on the net revenues of an alarm monitoring service provider to which the BOC furnishes such marketing services. In that circumstance, a BOC's compensation would not be tied to its performance in marketing the unaffiliated firm's service, but rather would depend on the unaffiliated firm's performance in offering alarm monitoring service. We find that this approach to evaluating

sales agency and marketing arrangements will preserve the strength of the five-year restriction on BOC entry into the alarm monitoring services market and the associated protections to nonaffiliated alarm monitoring providers.

34. Some parties have noted that the question of what constitutes ''engag[ing] in the provision'' of alarm monitoring service under section 275(a) is at issue in the context of Southwestern Bell Telephone Company's (SWBT) comparably efficient interconnection (CEI) plan to provide ''security services.'' The lawfulness of SWBT's security services is a fact-specific determination that is outside the scope of this rulemaking. We will not address, therefore, any comments filed in this proceeding that address the merits of SWBT's CEI plan. The SWBT CEI plan proceeding, however, will be resolved consistent with the policies adopted in this Order.

35. Finally, we reject BellSouth's contention that section 275(a)(2) permits non-grandfathered BOCs to engage in the provision of alarm monitoring to the extent that they do not obtain an ''equity interest in'' or ''financial control of'' an alarm monitoring service provider. We find that section 275(a)(2) pertains exclusively to alarm monitoring activities by a grandfathered BOC and, therefore, has no applicability to non-grandfathered BOCs.

IV. Existing Alarm Monitoring Service Providers

A. Background

36. Section 275(a)(1) generally prohibits the BOCs from engaging in the provision of alarm monitoring services until February 8, 2001. Section 275(a)(2) allows BOCs that were providing alarm monitoring services as of November 30, 1995, to continue to do so, but provides that ''[s]uch Bell operating company or affiliate may not acquire any equity interest in, or obtain financial control of, any unaffiliated alarm monitoring service entity after November 30, 1995, and until 5 years after the date of enactment of the Telecommunications Act of 1996, except that this sentence shall not prohibit an exchange of customers for the customers of an unaffiliated alarm monitoring service entity.'' The *NPRM* sought comment on whether regulations are needed to define further the terms of section 275(a)(2) and, in particular, on what is meant by the terms ''equity interest'' and ''financial control.'' It also sought comment on the conditions under which an ''exchange of customers'' is permitted by the Act.

B. Discussion

37. We conclude that regulations further interpreting the terms of section 275(a)(2) are not needed at this time. Both Ameritech and AICC offer differing interpretations of these terms and disagree on the applicability of section 275 in the context of a specific factual situation. These circumstances have led us to conclude that the scope of section 275(a)(2) is better addressed on a case-by-case basis where the Commission is able to consider all of the facts that may apply to a particular transaction.

V. Nondiscrimination Safeguards

A. Background

38. Section 275(b)(1) requires an incumbent LEC engaged in the provision of alarm monitoring services to ''provide nonaffiliated entities, upon reasonable request, with the network services it provides to its own alarm monitoring operations, on nondiscriminatory terms and conditions.'' Prior to the Act, alarm monitoring services were regulated as enhanced services and were subject to the nondiscrimination requirements established under the Commission's *Computer II* and *Computer III* regimes. Under *Computer III* and *Open Network Architecture*, BOCs have been permitted to provide enhanced services on an integrated basis. Moreover, BOCs have been required to provide at tariffed rates nondiscriminatory interconnection to unbundled network elements used to provide enhanced services.

39. We noted in the *NPRM* that sections 201 and 202 of the Communications Act already place significant nondiscrimination obligations on common carriers. We concluded that the *Computer III* nondiscrimination provisions continue to apply to the extent they are not inconsistent with the nondiscrimination requirements of section 275(b)(1). We sought comment on whether the existing nondiscrimination and network unbundling rules in *Computer III*, as they apply to BOC provision of alarm monitoring service, are consistent with the requirements of section 275 and whether they should be applied to all incumbent LECs for the provision of alarm monitoring. We also sought comment on whether and what types of specific regulations are necessary to implement section 275(b)(1), to the extent that parties argue that the nondiscrimination provisions of *Computer III* and *ONA* are inconsistent or should not be applied.

B. Discussion

40. *Meaning of Section 275(b)(1).* We conclude that no rules are necessary to implement section 275(b)(1), based on the record before us; we will reconsider this decision if circumstances warrant.

41. As noted above, section 275(b)(1) obligates an incumbent LEC to provide nonaffiliated entities the same network services it provides to its own alarm monitoring operations on nondiscriminatory terms and conditions. We find that this nondiscrimination requirement does not require an incumbent LEC to provide network services that the LEC does not use in its own alarm monitoring operations. In addition, we agree with U S WEST that, if an incumbent LEC is not providing alarm monitoring services, it is not subject to the nondiscrimination requirement of section 275(b)(1).

42. We also conclude that the nondiscrimination requirement of section 275(b)(1) is independent of the nondiscrimination requirement of section 202(a). Section 275(b)(1) requires incumbent LECs to provide nonaffiliated entities, upon reasonable request, ''network services * * * on nondiscriminatory terms and conditions.'' Section 202(a) prohibits ''any unjust and unreasonable discrimination * * *, or * * * any undue or unreasonable preference or advantage'' by common carriers. Because the section 275(b)(1) nondiscrimination bar, unlike that of section 202(a), is not qualified by the terms ''unjust and unreasonable,'' we conclude that Congress intended a more stringent standard in section 275(b)(1).

43. We interpret the term ''network services'' to include all telecommunications services used by an incumbent LEC in its provision of alarm monitoring service. We do not find that this section requires incumbent LECs to provide information services or other services that use LEC facilities or features not part of the LECs' bottleneck network because there is little danger of discrimination in the provision of such services. We also decline to interpret the term ''network services'' as we do the term ''network elements,'' to include ''features, functionalities and capabilities available through those services,'' as AICC suggests. Our definition of ''network elements'' is based on the statutory definition of that term, and we find no basis in section 275 or elsewhere in the Act for the definition of ''network services'' advocated by AICC.

44. *Computer III/ONA Requirements and Section 275(b)(1).* We also conclude

that the *Computer III/ONA* requirements are consistent with the requirements of section 275(b)(1). We affirm our conclusion, therefore, that the *Computer III/ONA* requirements continue to govern the BOCs' provision of alarm monitoring services. In addition, we find that the nondiscrimination requirements of section 275(b)(1) apply to the BOCs' provision of both intraLATA and interLATA alarm monitoring services, as well as other incumbent LECs' provision of alarm monitoring services. The parties have not indicated that there is any inconsistency between the nondiscrimination requirements of *Computer III/ONA* and section 275(b)(1). Section 275(b)(1), moreover, does not repeal or otherwise affect the *Computer III/ONA* requirements. We will consider in the Commission's *Computer III Further Remand* proceeding whether the *Computer III/ONA* requirements need to be revised or eliminated. For the same reason, we also decline to extend the *Computer III/ONA* requirements to all incumbent LECs, as recommended by AT&T.

VI. Procedural Matters

A. Final Regulatory Flexibility Certification

45. The Commission certified in the *NPRM* that the conclusions it proposed to adopt would not have a significant economic impact on a substantial number of small entities because the proposed conclusions did not pertain to small entities. No comments were received in response to the Commission's request for comment on its certification. For the reasons stated below, we certify that the conclusions adopted herein will not have a significant economic impact on a substantial number of small entities. This certification conforms to the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

46. The RFA provides that the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. The Small Business Act defines a ''small business concern'' as one that is independently owned and operated; is not dominant in its field of operation; and meets any additional criteria established by the Small Business Administration (SBA). SBA has not developed a definition of ''small incumbent LECs.'' The closest applicable definition under SBA rules is for Standard Industrial Classification (SIC) code 4813 (Telephone Communications, Except Radiotelephone). The SBA has prescribed the size standard for a ''small business concern'' under SIC code 4813 as 1,500 or fewer employees.

47. Many of the conclusions adopted in this Order apply only to the BOCs which, because they are large corporations that are dominant in their field of operation and have more than 1,500 employees, do not fall within the SBA's definition of a ''small business concern.'' Some of the conclusions adopted in this Order apply, however, to all incumbent LECs. Some of these incumbent LECs may have fewer than 1,500 employees and thus meet the SBA's size standard to be considered ''small.'' Because such incumbent LECs, however, are either dominant in their field of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definition of ''small entity'' and ''small business concern.'' Accordingly, our use of the terms ''small entities'' and ''small businesses'' does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility purposes, we will consider small incumbent LECs within this certification and use the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by SBA as ''small business concerns.''

48. The Commission adopts the conclusions in this Order to ensure the prompt implementation of section 275 of the Act, which addresses the provision of alarm monitoring services by BOCs and other incumbent LECs. We certify that although there may be a substantial number of small incumbent LECs affected by the decisions adopted herein, the conclusions we adopt in this Order will not have a significant economic impact on those affected small incumbent LECs. First, section 275(a) applies only to Bell Operating Companies, prohibiting them, with certain exceptions, from providing alarm monitoring service until February 8, 2001. Thus, in clarifying the definition of ''alarm monitoring service'' and the manner in which we will apply the nondiscrimination provisions of section 275(b)(1), this Order has no significant economic impact on small incumbent LECs. Second, we have not adopted additional rules governing the nondiscrimination requirements of section 275(b), which applies to all incumbent LECs; therefore, there is no change in the *status quo* as to the regulation of incumbent LECs in this regard.

49. Third, our conclusion that section 275(b)(1) imposes a more stringent standard for determining whether discrimination is unlawful than that which already exists under sections 201 and 202 and applies to all incumbent LECs, will not have a significant economic impact on small incumbent LECs. Incumbent LECs, including small incumbent LECs, are subject to pre-existing nondiscrimination requirements under the Act and state law and therefore already are required to respond to complaints of discriminatory behavior or more strictly limit their participation in discriminatory activities. We therefore find that the impact of the Order on incumbent LECs, including small incumbent LECs, of the more stringent standard of section 275(b)(1) will be *de minimis*.

50. Finally, our decision not to extend the *Computer III/ONA* nondiscrimination requirements to all incumbent LECs providing intraLATA alarm monitoring services, as noted in Section V, will prevent any significant economic impact on incumbent LECs, particularly small incumbent LECs, by sparing them the regulatory burdens and economic impact of complying with those additional rules.

51. For all of these reasons, we certify pursuant to section 605(b) of the RFA that the conclusions adopted in this Order will not have a significant economic impact on a substantial number of small entities. The Commission shall provide a copy of this certification to the Chief Counsel for Advocacy of the SBA, and include it in the report to Congress pursuant to the SBREFA. A copy of this certification will also be published in the **Federal Register**.

B. Final Paperwork Reduction Analysis

52. As required by the Paperwork Reduction Act of 1995, Public Law 104–13, the *NPRM* invited the general public and the OMB to comment on the Commission's proposed changes to its information collection requirements. Specifically, the Commission proposed to extend various reporting requirements, which apply to the BOCs under *Computer III*, to all incumbent LECs pursuant to section 275(b)(1). The OMB, in approving the proposed changes in accordance with the Paperwork Reduction Act, ''encourage[d] the [Commission] to investigate the potential for sunsetting these requirements as competition and other factors allow.'' In this Order, the Commission adopts none of the changes to our information collection requirements proposed in the *NPRM*.

We therefore need not address the OMB's comment, although we note that our decision is consistent with the OMB's recommendation.

VII. Ordering Clauses

53. Accordingly, *It is ordered* that pursuant to sections 1, 2, 4, 201–202, 275, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201–202, 275, and 303(r), the Report and Order is Adopted, and the requirements contained herein will become effective May 5, 1997.

54. *It is further ordered* that the Secretary shall send a copy of this Report and Order, including the final regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Note: This attachment will not appear in the Code of Federal Regulations.

Attachment—List of Commenters in CC Docket No. 96–152

Alarm Detection Systems, Inc.
Alarm Industry Communications Committee (AICC)
Alert Holdings Group, Inc.
Ameritech
Association of Directory Publishers
Association of Telemessaging Services International
AT&T Corporation (AT&T)
Atlas Security Service, Inc.
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Corporation (BellSouth)
Checkpoint Ltd.
Cincinnati Bell Telephone (Cincinnati Bell)
Commercial Instruments & Alarm Systems, Inc.
Commonwealth Security Systems, Inc.
ElectroSecurity Corporation
Entergy Technology Holding Company
George Alarm Company, Inc.
Information Industry Association
Joint Parties
MCI Telecommunications Corporation (MCI)
Merchant's Alarm Systems
Midwest Alarm Company, Inc.
Morse Signal Devices
New York State Department of Public Service (New York Commission)
Newspaper Association of America
NSS National Security Service
NYNEX Corporation (NYNEX)
Pacific Telesis Group (PacTel)
Peak Alarm Company, Inc.
People of the State of California/California PUC (California Commission)
Per Mar Security Services
Post Alarm Systems
Rodriguez, Francisco
Safe Systems
Safeguard Alarms, Inc.
SBC Communications, Inc. (SBC)
SDA Security Systems, Inc.
Security Systems by Hammond, Inc.
Sentry Alarm Systems of America, Inc.
Sentry Protective Systems
Smith Alarm Systems
Superior Monitoring Service, Inc.
SVI Systems, Inc.
Time Warner Cable
United States Telephone Association (USTA)
U S WEST, Inc. (U S WEST)
Valley Burglar & Fire Alarm Co., Inc.
Vector Security
Voice-Tel
Wayne Alarm Systems
Yellow Pages Publishers Association

[FR Doc. 97–8605 Filed 4–3–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 27

[GN Docket No. 97–50; FCC 96–278]

The Wireless Communications Service (''WCS''); Correction

AGENCY: Federal Communications Commission.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to the final rules which were published Monday, March 3, 1997 (62 FR 9636). The rules contain the licensing procedures and technical standards for the Wireless Communications Service (''WCS'').

EFFECTIVE DATE: March 21, 1997.

FOR FURTHER INFORMATION CONTACT: Josh Roland or Matthew Moses, Wireless Telecommunications Bureau, (202) 418–0660.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction designated the information required to be disclosed on applications in the WCS for a radio station authorization or for consent to assignment or transfer of control, including applications filed on FCC Forms 175 and 600.

Need for Correction

As published, the final rules contains an inadvertent omission in the text which is in need of correction.

Correction of Publication

Accordingly, in FR Doc. 97–5128 published on March 3, 1997 (62 FR 9636), make the following correction. On page 9669, in column 2, the first sentence of paragraph (a)(1) is corrected to read as follows:

§ 27.307 [Corrected]

(a) * * *

(1) A list of its subsidiaries, if any. Subsidiary means any FCC-regulated business five per cent or more of whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, stockholder or key management personnel of the applicant. This list must include a description of each subsidiary's principal business and a description of each subsidiary's relationship to the applicant. * * *

* * * * *

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 97–8482 Filed 4–3–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 235

[DFARS Case 96–D028]

Defense Federal Acquisition Regulation Supplement; Streamlined Research and Development Clause Lists

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to authorize continued use of streamlined research and development solicitation and contracting procedures at the contracting activities that participated in the test of such procedures.

EFFECTIVE DATE: April 4, 1997.

FOR FURTHER INFORMATION CONTACT: Defense Acquisition Regulations Council, Attn: Mr. Michael Pelkey, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax number (703) 602–0350. Please cite DFARS Case 96–D028 in all correspondence related to this issue.

SUPPLEMENTARY INFORMATION:

A. Background

On October 18, 1994, the Director of Defense Procurement authorized a test of streamlined research and development contracting procedures for complex, detailed requirements for which the Broad Agency Announcement process is inappropriate. This rule will permit the contracting activities that participated in the test to continue to use the streamlined procedures pending development and publication of permanent procedures.