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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[CC Docket No. 96–149, FCC 99–242]

Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document declines to reconsider the Commission's *Non-Accounting Safeguards Order*. It also clarifies several points concerning the non-accounting safeguards requirements set forth in section 272 of the Act, which prescribes the manner in which the Bell Operating Companies may enter certain markets.

DATES: Effective December 13, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle Carey, Deputy Chief, Policy and Program Planning Division, Common Carrier Bureau, (202) 418–1580 or via the Internet at mcarey@fcc.gov. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: 202/418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted September 8, 1999, and released October 1, 1999. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Room CY–A257, Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc99242.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., NW., Washington, DC 20036.

Synopsis of Third Order on Reconsideration

I. Introduction

1. On December 24, 1996, the Commission adopted the *Non-Accounting Safeguards Order*, 62 FR 2927, (January 21, 1997), in its proceeding implementing the non-accounting safeguards provisions of the Communications Act of 1934 (the Act), as amended by the Telecommunications Act of 1996 (the 1996 Act). On February 2, 1997, several parties (the Association for Local Telecommunications Services, AT&T, BellSouth, Cox Communications, MCI, TCG, Time Warner Cable and US WEST) filed separate petitions to reconsider various aspects of the Non-Accounting Safeguards Order. For the reasons discussed, we deny all of the petitions. We also, on our own motion, clarify certain language in the *Non-Accounting Safeguards Order* relating to so-called teaming arrangements.

II. Background

2. Section 272 addresses the safeguards and statutory separate affiliate requirements necessary for the BOCs' provision of manufacturing activities, interLATA telecommunications services originating in their in-region states, and interLATA information services. Consistent with the statutory framework, the Commission held in the *Non-Accounting Safeguards Order* that section 272 allows a BOC to engage in manufacturing activities, origination of certain interLATA telecommunications services, and the provision of interLATA information services, as long as the BOC provides these activities through a separate affiliate.

3. Parties request reconsideration with respect to the Commission's interpretation in the *Non-Accounting Safeguards Order* of various provisions in section 272. We deny these petitions, and affirm and clarify the decisions in the underlying Order as follows:

(a) We affirm the prior conclusion that section 272(b)(1)'s ''operate independently'' requirement has no plain or ordinary meaning.

(b) We affirm the conclusion that specific reporting requirements to implement section 272(e)(1) are unnecessary at this time.

(c) We find unpersuasive BellSouth's argument that a broader reading of ''marketing'' and ''sale of services'' is consistent with the language and purpose of section 272, and affirm the view that the question of whether a section 272 affiliate is operating independently if a BOC designs and develops its affiliate's services should be decided on a case-by-case basis.

(d) We affirm the conclusion that section 272(a)(2)(C) does not exclude out-of-region interLATA information services from the separate affiliate requirement.

(e) We clarify that the conclusions in the *Non-Accounting Safeguards Order* are binding regardless of whether they are codified in the Code of Federal Regulations and decline to codify further those conclusions.

(f) We conclude in this *Third Order on Reconsideration* that section 272 of the Act does not require BOCs to provide video programming services through a separate affiliate.

(g) We clarify, on our own motion, that the *Non-Accounting Safeguards Order* was not intended as an affirmative sanction of teaming arrangements between a BOC and an unaffiliated entity.

(h) We find that Cox's petition requesting the Commission to reconcile the *Non-Accounting Safeguards* with certain other proceedings is moot.

III. Third Order on Reconsideration

A. Section 272(b)(1)'s ''Operate Independently'' Requirement

1. Inadequate Separation Of Operations

a. Background.

4. Section 272(b)(1) directs that the separate affiliate required pursuant to section 272(a) ''shall operate independently from the [BOC].'' In the *Non-Accounting Safeguards Order*, the Commission concluded that the ''operate independently'' requirement of section 272(b)(1) imposes certain requirements beyond the structural separation requirements contained in sections 272(b)(2)–(5), including the preclusion of joint ownership of transmission and switching facilities by a BOC and its section 272 affiliate, as well as the joint ownership of the land and buildings where those facilities are located. Additionally, we found that the ''operate independently'' requirement precludes a section 272 affiliate from performing operating, installation, and maintenance functions associated with the BOC's facilities, and also prohibits the BOC from performing such functions associated with the facilities that its section 271 affiliate owns, or leases from a third party provider. The Order declined, however, to impose additional restrictions on the sharing of services or on the joint ownership of other property between the BOC and its section 272 affiliate, concluding that additional structural separation requirements were unnecessary ''given the nondiscrimination safeguards, the biennial audit requirement, and other public disclosure requirements imposed by section 272.'' The Order also concluded that section 272(b)(3)'s ''separate employee'' requirement does not prohibit the sharing of services (other than operating, installation and maintenance services) between a BOC and its section 272 affiliate.

b. Discussion.

5. AT&T and MCI contend that the requirements the Commission adopted pursuant to section 272(b)(1) inadequately separate the functions of the BOC from those of its section 272

affiliate. In contrast, BellSouth contends that the Commission's interpretation of the ''operate independently'' requirement is too stringent. The arguments put forth by AT&T, MCI and BellSouth here are largely the same as those raised, considered, and rejected previously in this docket. Accordingly, we deny the parties' petitions to reconsider the interpretation of section 272(b)(1)'s ''operate independently'' requirement.

6. *The Relationship between Sections 274(b) and 272(b)(1).* AT&T asserts that section 271(b)(1)–(9) should be read into the ''operate independently'' requirement of section 272(b)(1). We affirm the conclusion in the *Non-Accounting Safeguards Order*, however, that the structural differences in the two sections indicate that the term ''operate independently'' in section 272(b)(1) ''should not be interpreted to impose the same obligations'' as the enumerated requirements in sections 274(b)(1)–(9). Moreover, construing ''operate independently'' in section 272(b)(1) to mean the same thing as ''operated independently'' in section 274(b) would render sections 272(b)(2)–(5), 272(c), and 272(e) redundant because the requirements in those sections and the enumerated requirements in sections 274(b)(1)–(9) overlap. This would violate the maxim that statutes must be construed, where possible, so that no provision is rendered inoperative or superfluous. Thus, we reject this argument.

7. *Computer II and the Cellular Separation Rules.* We also reject AT&T's contention that the Commission's interpretation of the ''operate independently'' requirement is irreconcilable with the prior interpretation of that same phrase in the *Computer II* and cellular structural separation rules. We agree with Ameritech that there is no ''precedent'' in the Commission's rules that defines the term ''operate independently'' as used in section 272(b). Rather, the *Non-Accounting Safeguards Order* interpreted ''operate independently'' to implement a new statutory provision, relying upon its accumulated expertise and predictive judgment. Moreover, we note that the *Non-Accounting Safeguards Order* determined that the requirements of *Computer II* would not necessarily increase an affiliate's operational independence. For instance, we noted that prohibiting an affiliate from constructing, owning, or operating its own local exchange facilities, as the requirements of *Computer II* would necessitate, could actually increase the affiliate's reliance on the BOC's facilities.

8. *Shared Administrative Services.* MCI's contention that the ''operate independently'' requirement of section 272(b)(1) requires fully separate operations was considered and rejected in the *Non-Accounting Safeguards Order*. Consistent with the letter and purposes of section 272, the term ''operate independently'' does not require total structural separation. We affirm that the economic benefits to consumers from allowing a BOC and its section 272 affiliate to derive the economies of scale and scope inherent in the integration of some services outweigh any potential for harm to competition created thereby. We reject as well MCI's argument that the explicit permission for joint marketing in section 272(g) would not be necessary had Congress not contemplated fully separate operations. Indeed, contrary to MCI's assertions, provisions such as the arm's length requirement in section 272(b)(5), the nondiscrimination requirement in section 272(c)(1), the Commission's accounting principles implemented in accordance with section 272(c)(2), and the joint marketing provision in section 272(g), suggest that Congress envisioned the type of sharing that MCI claims section 272(b)(1) prohibits.

9. We are also unpersuaded by MCI's suggestion that allowing a BOC to provide administrative services to its section 272 affiliate undermines the ''separate employees'' requirement of section 272(b)(3). The *Non-Accounting Safeguards Order* addressed these contentions, and the parties provide no new reasons for us to reconsider the interpretation of section 272(b)(3).

10. *Joint Provision of Operating, Installation, and Maintenance Services.* BellSouth argues that the Commission improperly determined that section 272(b)(1) prohibits a BOC affiliate, other than the section 272 affiliate, from providing installation and maintenance services to both the BOC and its section 272 affiliate. The *Non-Accounting Safeguards Order* addressed and rejected this argument, and BellSouth has not offered persuasive reasons to reverse course. The Order determined that allowing the same personnel to perform operating, installation, and maintenance services for the BOC and the section 272 affiliate would create a loophole around the separate affiliate requirement. Furthermore, the Commission determined that such sharing also would heighten the risk of improper cost allocation with regard to time spent and equipment utilized. Recognizing the burdensome regulatory involvement that would be necessary to detect and deter such cost misallocation, the Commission concluded that an outright prohibition of shared operating, installation and maintenance functions is necessary in the context of a section 272 affiliate.

2. Provision Of Local Exchange Service By Section 272 Affiliates

a. Background.

11. The *Non-Accounting Safeguards Order* concluded that section 272 does not prohibit a section 272 affiliate from providing local exchange service in addition to interLATA services, provided that the section 272 affiliate does not qualify as an incumbent LEC subject to the requirements of section 251(c). The Order also concluded that 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), the entity would be considered an ''assign'' of the BOC under section 3(4) of the Act with respect to those network elements.'' As a successor or assign, the affiliate would then be subject to the requirements of section 272. MCI and TCG petition the Commission to reconsider the decision to allow section 272 affiliates to provide local service.

b. Discussion.

12. We reaffirm that section 272 does not, on its face, prohibit a section 272 affiliate from providing both local exchange and interLATA services. We reject MCI's and TCG's arguments that allowing a section 272 affiliate to provide local exchange services violates the ''operate independently'' requirement and the separate affiliate requirement. We agree with the BOCs that Congress' intent in enacting section 272 was not to prevent a section 272 affiliate from providing both local exchange and long distance services. Rather, as concluded in the *Non-Accounting Safeguards Order*, the purpose of the ''operate independently'' requirement is to prevent BOCs from abusing bottleneck control of local exchange facilities. The BOCs' control over local exchange facilities does not extend to their section 272 affiliates.

13. In addition to finding that there is no statutory bar to allowing a section 272 affiliate to provide local service, we agree with the BOCs that allowing a section 272 affiliate to provide local services does not pose a competitive risk or violate sound public policy. TCG offers no new support for its argument, which we reject once again, that the risks of anticompetitive behavior are greater when a BOC provides UNEs rather than resold services to its section 272 affiliate. We reiterate that the existing safeguards in sections 251, 252, and 272, as well as antitrust laws,

possible state regulations, and the Commission's existing cost allocation and affiliate transaction rules provide protection against improper cost allocation and discrimination. Finally, we disagree with TCG and reaffirm that the increased flexibility from being able to offer ''one-stop shopping'' for both local and interLATA services would allow section 272 affiliates to create packages of services they would not be able to offer if confined to the rates and services of the BOCs.

3. BOC Transfer Of Official Service Networks

a. Background.

14. The *Non-Accounting Safeguards Order* determined that a BOC that seeks to transfer ownership of its Official Services Network to its section 272 affiliate in order to provide interLATA services must ensure that the transfer takes place in a nondiscriminatory manner, in accordance with section 272(c)(1), and must adhere to the affiliate transaction rules. MCI petitions the Commission to prohibit a BOC from transferring or making available its Official Services Networks to its section 272 affiliate under any conditions. Alternatively, should the Commission permit the transfer of Official Services Networks, ACTS urges the Commission to indicate that competitive Lees may bid on any BOC ownership transfers of those networks.

b. Discussion.

15. We reaffirm that a BOC may transfer its Official Services Network to its section 272 affiliate, provided that the transfer takes place in a nondiscriminatory manner, consistent with section 272(c)(1), and complies with the affiliate transaction rules. The parties dispute the scope of the restrictions that the MAJ placed on the use of Official Services Networks, but we need not resolve this dispute because we have found that a BOC may, under the Act, transfer its Official Services Network to its section 272 affiliate. Similarly, to implement the Act, we need not determine whether BOCs have overbuilt their Official Services Networks, as MCI contends. Rather, pursuant to the language of section 272(c) and 272(b)(5), we must only ensure that the terms of the transfer of Official Services Networks are fair and consistent with our accounting rules.

16. We reaffirm the conclusion in the *Non-Accounting Safeguards Order* that the nondiscrimination obligations established pursuant to section 272, other provisions of the Act, and state statutes and regulations provide sufficient protection in the event of a transfer of Official Services Network facilities. We are unpersuaded by MCI's argument that such a transfer cannot take place at arm's length in accordance with section 272(b)(5). Transactions between a BOC and its section 272 affiliate involving the BOC's Official Services Network would have to comply with our affiliate transactions rules, which generally satisfy the arm's length requirement of section 272. Furthermore, our public disclosure requirements help ensure the arm's length nature of the transaction by subjecting a BOC's transfer of its Official Services Network to intense scrutiny by both policymakers and the public.

17. We also reject MCI's unsupported assertion that the BOCs' transfer of Official Services Networks would inherently discriminate in favor of their section 272 affiliates. The Commission has explained that the BOC must ensure that unaffiliated entities are given an equal opportunity, along with the section 272 affiliate, to obtain ownership of this network in the event it decides to transfer. We clarify, as requested by ACTS, that one way in which a BOC may provide such an equal opportunity to obtain ownership is to allow competing Lees to bid for ownership of its Official Services Network.

B. Reporting Requirements

1. Background

18. The *Non-Accounting Safeguards Order* concluded that, with the exception of section 272(e)(1), none of the reporting requirements of *Computer III/ONA* were needed at that time to facilitate the detection and adjudication of violations of the separate affiliate and nondiscrimination requirements of section 272. The Order noted, however, that the Commission would revisit the need for reporting requirements should future developments warrant. MCI and TRA petition the Commission to reconsider its decision not to impose reporting requirements pursuant to section 272(c)(1), arguing that these requirements are unenforceable absent information about the quality of services that the BOCs provide to their section 272 affiliates.

2. Discussion

19. We deny the request by MCI and TRA to impose reporting requirements at this time. Our decision not to adopt specific reporting requirements was reinforced by the Commission's subsequent adoption of a Notice of Proposed Rulemaking setting forth a set of model performance measurements and reporting requirements for Operation Support Systems (OSS), interconnection and access to operator services and directory assistance. *See Performance Measurements Notice of Proposed Rulemaking*, 63 FR 27012 (May 15, 1998). We determined to establish model rules, rather than legally binding rules, in order to allow states that have begun performance measurement and reporting requirement proceedings to incorporate the model rules as they deem beneficial, and as an aid to those states that have not yet begun such proceedings.

20. The model performance measurements and reporting requirements are designed to help ensure that BOCs meet their nondiscrimination obligations when providing competing carriers access to critical support functions. Moreover, the model performance measurements include certain of the measurements that MCI seeks in its reconsideration petition. Finally, states, the Department of Justice, and the BOCs themselves have proposed performance measurements. The specific measurements that BOCs are proposing, or in some cases have begun to implement, are in many respects similar to those proposed in the Performance Measurements Notice. For the foregoing reasons, we deny the MCI and TRA requests for reconsideration.

C. The Joint Marketing Restrictions Of Sections 271(e)(1) And 272(g)(3)

1. Section 271(e)(1)—Joint Marketing Of Local And Long Distance Services By Certain Interexchange Carriers

21. We deny US WEST's request that the Commission clarify on reconsideration its interpretation of section 271(e)(1). This section provides that, for a period no longer than 36 months after implementation of the Telecommunications Act, certain interexchange carriers may not market interLATA services jointly with BOC local services purchased for resale. Because the 36-month period specified in this provision expired on February 8, 1999, this provision is no longer in effect and US WEST's petition for reconsideration on this issue is moot.

2. Section 272(g)(3)—''Marketing'' And ''Sale Of Service''

a. Background.

22. Section 272(g)(3) of the Act states that ''[t]he joint marketing and sale of services permitted under this section [272(g)] shall not be considered to violate the nondiscrimination provisions of section 272(c). The *Non-Accounting Safeguards Order* declined to develop an exhaustive list of specific

BOC activities covered by section 272(g). The Order did state, however, that activities such as customer inquiries, sales functions, and ordering are permitted under section 272(g)(3), because they involve only the marketing and sales of a section 272 affiliate's services. BellSouth contends that the Commission construed the terms ''marketing'' and ''sale of services'' too narrowly and urges the Commission to include planning, design, and development within the meaning of those terms.

b. Discussion.

23. We affirm that the reading of the section 272(g)(3) exemption from the nondiscrimination requirements of section 272(c) for ''joint marketing and sale of services'' is consistent with the language and purpose of section 272. We further conclude that the broad interpretation of the ''joint marketing and sale of services'' exception BellSouth advocates would create a loophole that would allow potential BOC discrimination in countless activities. We disagree with BellSouth that the reading that we adopt imposes an unqualified obligation on the BOCs to develop and design their competitors' interLATA services. As noted in the *Non-Accounting Safeguards Order,* a BOC must develop these services on a nondiscriminatory basis for or with other entities *only if* the BOC develops such services for or with its section 272 affiliate. Finally, as to MCI's contention that a BOC that designs and develops its affiliate's services will not be operating independently, as required by section 272(b)(1), we affirm the view in the *Non-Accounting Safeguards Order* that such determinations should be made on a case-by-case basis.

D. InterLATA Information Services

1. Out-of-Region InterLATA Information Services. Out-of-Region InterLATA Information Services

a. Background.

24. The *Non-Accounting Safeguards Order* concluded that section 272(a)(2) of the Act requires the BOCs to provide out-of-region interLATA information services through a section 272 separate affiliate. Section 272(a)(2)(B)(ii) requires a separate affiliate for the ''origination of telecommunication services,'' other than ''out-of-region services described in section 271(b)(2).'' The Order concluded that the section 272(a)(2)(B)(ii) exception extends only to out-of-region interLATA services that are telecommunications services and does not extend to out-of-region interLATA information services. The Order also found that section 272(a)(2)(C) requires a separate affiliate for ''interLATA information services,'' and exempts electronic publishing and alarm monitoring services from that requirement. The Order concluded that the explicit exclusion of out-of-region interLATA telecommunications services in one subsection of the statute, and the lack of such an express exclusion of out-of-region interLATA information services in another subsection of the same provision, suggests that Congress did not intend to exclude out-of-region interLATA information services from the separate affiliate requirement. BellSouth and US WEST petition us to allow BOCs to provide out-of-region information services on an integrated basis.

b. Discussion.

25. We affirm the determination that the statute does not exclude out-of-region interLATA information services from the separate affiliate requirement. Accordingly, we reject US WEST's contention that the exception to the separate affiliate requirement in section 272(a)(2)(B)(ii) for ''out-of-region services'' applies to both interLATA telecommunications services and interLATA information services, in the same way that the reference to ''incidental interLATA services'' in section 272(a)(2)(B)(i) applies to both telecommunications services and information services. We note, moreover, in response to US WEST's assertion, the conclusion in the *Non-Accounting Safeguards Order* that the incidental interLATA services exception contained in section 272(a)(2)(B)(i) ''applies, by its terms, to the origination of incidental interLATA services that are telecommunications services.'' Although services such as video and audio programming services, which do not appear to be solely telecommunications services, are listed within the exception, the Order stated that the limitation in section 271(h) ''specifies that these incidental interLATA services 'are limited to *those interLATA transmissions incidental to* the provision' '' of those services. Therefore, US WEST's argument that the incidental interLATA exception encompasses both telecommunications and information services is not persuasive.

26. Instead, we agree with MCI and TRA that the only exceptions to the separate affiliate requirement for interLATA information services are the two specifically identified in section 272(a)(2)(C), i.e., electronic publishing and alarm monitoring. Thus, we likewise reject BellSouth's argument that interLATA information services must fall within the scope of exempted out-of region ''interLATA services'' because, by definition, interLATA information services are provided via telecommunications that cross LATA boundaries. We instead agree with MCI that if Congress had intended to exclude out-of-region interLATA information services from the separate affiliate requirement, it would have done so explicitly. We further reject US WEST's and BellSouth's contention that it is incongruous as a policy matter to exclude out-of-region interLATA telecommunications services from the separate affiliate requirement, but to require a separate affiliate for out-of-region interLATA information services. This policy argument is foreclosed given that the statute requires that BOC out-of-region interLATA information services be offered through a separate section 272 affiliate. We, therefore, deny US WEST's and BellSouth's petitions for reconsideration on these grounds.

2. Codification Of Non-Accounting Safeguards Order Requirements

a. Background.

27. Several new rules, enumerated in Appendix B of the *Non-Accounting Safeguards Order,* were promulgated upon adoption of that order. The Order also imposed numerous other requirements that were not codified in our rules. ACTS submits that we should codify the conclusion in the *Non-Accounting Safeguards Order* that ''BOCs may not provide interLATA information services, except for information services covered by section 271(g)(4), in any of their in-region states prior to obtaining section 271 authorization.'' ACTS claims that codifying this requirement would reduce the potential for non-compliance and litigation by the BOCs.

b. Discussion.

28. We note that the requirement addressed by ACTS in its petition has been modified by subsequent Commission action. In the *First Order on Reconsideration* 62 FR 02927 (January 21, 1997) in this proceeding, we clarified that, prior to obtaining section 271 authorization, BOCs may provide *any* interLATA information service designated as an incidental interLATA service under section 271(g), not just those enumerated in sub-section 271(g)(4), as suggested in the *Non-Accounting Safeguards Order.* Like other conclusions in the *Non-Accounting Safeguards Order* and in the *First Order on Reconsideration,* this requirement is binding regardless of whether it is codified in the CFR. We decline to single out this particular requirement for codification because, as ACTS recognizes, ''there can be no

possible confusion about this requirement.'' We therefore deny the ACTS petition for reconsideration on this issue.

E. Other Issues

1. Applicability Of Section 272 To Video Programming Services

a. Background.

29. The *Non-Accounting Safeguards Order* concluded that, ''pursuant to section 272(a)(2)(B)(i), BOCs are not required to provide the interLATA telecommunications transmission incidental to the provision of programming services listed in sections 271(g)(1)(A), (B), and (C) through a section 272 affiliate.'' We found this conclusion to be consistent with the determination in the *OVS Second Report and Order,* 61 FR 28698 (June 5, 1996). Time Warner asks us to clarify on reconsideration that section 272 requires a BOC to establish a separate affiliate to provide video programming services to end users, while it exempts the underlying transmission service or the OVS platform, which may be provided by a BOC's local telephone company. Several BOCs maintain, other hand, that video programming services are not information services and therefore are not subject to section 272(a)(2)(C).

b. Discussion.

30. We agree with the BOCs that section 272 of the Act does not require BOCs to provide video programming services through a separate affiliate. We conclude that interLATA transmissions incidental to the provision by a BOC or its affiliate of video, audio, and other programming services are considered ''incidental'' interLATA services under the Act. Section 272(a)(2)(B)(i) exempts such incidental interLATA services from the section 272 separate affiliate requirement. Moreover, as Ameritech and SBC recognize, it defies logic to suggest that transmission component that itself is expressly exempt from the separate affiliate requirements would render the video programming component (which is neither intraLATA nor interLATA) subject to these same requirements. There is no indication that Congress intended section 271(h) to cancel out the exemption for audio, video and other programming services in this manner.

31. In reaching this conclusion, we need not determine whether programming services are, in some instances, ''information services,'' as defined by section 3(20) of the Communications Act. Even if a video programming service were found to be an ''information service,'' it would not be considered ''interLATA'' (and, thus, subject to the separate affiliate requirement of section 272(a)(2)(C)) if it is bundled with an incidental interLATA transmission component that is exempt from section 272(a)(2)(C), for the reasons set forth. Furthermore, there is no question that a BOC would be permitted to offer a video programming service directly to the public that is not bundled with an interLATA transmission component. Finally, we reject Time Warner's contention that BOCs may provide the video programming component of an open video service only through a section 272 separate affiliate. As we have explained previously, ''Congress expressly directed that Title II requirements not be applied to the 'establishment and operation of an open video system.' ''

2. Teaming Arrangements

32. Section 271(g)(2) states that a BOC ''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).'' The Commission concluded that ''section 272(g) is silent with respect to the question of whether a BOC may align [or 'team'] itself with an unaffiliated entity to provide interLATA services prior until the BOC receives section 271 authorization * * * to the extent that BOCs align themselves with non-affiliates, they must do so on a nondiscriminatory basis.''

33. We clarify, on our own motion, that the language concerning so-called teaming arrangements contained in the *Non-Accounting Safeguards Order* was not intended as an affirmative sanction of all teaming arrangements between a BOC and an unaffiliated entity. In particular, that language did not address the issue of whether, by entering into a business arrangement that involves the marketing of an unaffiliated entity's long distance services, a BOC may be providing interLATA service in violation of section 271(a). That question was addressed in the *Qwest Order,* where the Commission concluded that, although certain marketing arrangements are permissible under the Act, business arrangements between a BOC and an unaffiliated long distance carrier may, nevertheless, violate section 271(a) if the BOC's involvement in the long distance market enables it to obtain competitive advantages, thereby reducing its incentive to cooperate in opening its local market to competition. *See In the Matter of AT&T Corporation et al.,* File Nos. E–98–41, -42 and -43, Memorandum Opinion and Order.

3. Effect On Other Commission Proceedings

34. Cox petitions us to reconcile the *Non-Accounting Safeguards Order,* which found that existing safeguards for BOC provision of incidental interLATA services are sufficient to protect telephone exchange ratepayers and competition in telecommunications markets, with the *CMRS Safeguards Notice* and the *Video Cost Allocation Notice,* which seek comment on what additional safeguards, if any, are necessary to protect ratepayers and competition. Since Cox filed its petition, we released the *CMRS Safeguards Order,* 62 FR 63864 (December 3, 1997). We concluded in that order that all incumbent LECs (except rural telephone companies) must provide in-region broadband CMRS, including cellular services, through a CMRS affiliate, subject to the accounting and affiliate transactions rules in parts 32 and 64 of our rules. Cox's concerns with regard to the *CMRS Safeguards* proceeding, therefore, are now moot. Furthermore, any concerns that Cox has with regard to the Video Cost Allocation proceeding are more properly addressed in that proceeding.

IV. Regulatory Flexibility Act

35. In the *Non-Accounting Safeguards Order,* the Commission concluded and certified that the rules adopted in that Order would not, under the Regulatory Flexibility Act of 1980, as amended (RFA), have ''a significant economic impact on a substantial number of small entities.'' The rules then adopted pertained only to BOCs, which, because of their size, do not qualify as small entities. We received no petitions for reconsideration of that Final Regulatory Flexibility Certification. In this present *Third Order on Reconsideration,* the Commission promulgates no additional final rules, and our action does not affect that previous final certification.

V. Ordering Clauses

36. Accordingly, it is ordered that, pursuant to sections 1–4, 201–205, 214, 251, 252, 271, 272, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 214, 251, 252, 271, 272, 303(r), the Third Order on Reconsideration in CC Docket No. 96–149 is adopted.

37. It is further ordered that the Petitions for Reconsideration filed by AT&T, MCI, TCG, Cox, ACTS, US WEST and Time Warner are denied, as described herein.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–29550 Filed 11–10–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AF24

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) published a document in the September 28, 1999, **Federal Register** prescribing the hunting seasons, hours, areas, and daily bag and possession limits for general waterfowl seasons and those early seasons for which States previously deferred selection. This document corrects errors in season dates and other pertinent information for the States of California, Kansas, Mississippi, New Mexico, and Washington.

DATES: This rule is effective on October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, (703) 358–1714.

SUPPLEMENTARY INFORMATION: In the September 28, 1999, **Federal Register** (64 FR 52398), we published a final rule prescribing hunting seasons, hours, areas, and daily bag and possession limits for general waterfowl seasons, certain other migratory bird seasons, and those early seasons for which States previously deferred selection. The rule contained errors in the entries for California, Kansas, Mississippi, New Mexico, and Washington, which are discussed briefly below and corrected by this notice.

We received public comment on the proposed rules for the seasons and limits contemplated herein. We addressed these comments in the August 27, 1999, (64 FR 47072) and September 27, 1999, (64 FR 52124) **Federal Register**. The corrections are typographical in nature and involve no change in substance in the contents of the prior proposed and final rules.

§ 20.104 [Corrected]

1. On page 52400 under the heading Pacific Flyway, ''New Mexico'' is corrected to read ''New Mexico (16).''

§ 20.105 [Corrected]

1. On page 52408 under the heading Mississippi, subheading Geese, the subheading ''White-fronted and Brant'' is corrected to read ''White-fronted''; the subheading ''Brant'' is inserted above the subheading Light Geese; and season dates of ''Nov. 23–Jan. 31'' are inserted for Brant.

2. On page 52412, footnote (4) is corrected to read, ''In Kansas, exceptions to the dark goose season are as follows: Season dates in the Marais des Cygnes Valley (Unit 1), and the Southeast (Unit 2) Dark Goose Management Units are December 18, 1999 through February 6, 2000. Season dates in the Flint Hills (Unit 3) Dark Goose Management Unit are December 4, 1999 through February 6, 2000. Shooting hours in the Marais des Cygnes Valley Unit shall be one-half hour before sunrise to 1:00 p.m. Shooting hours in all other Units shall be one-half hour before sunrise to sunset.''

3. On page 52414 under the heading Washington, subheading Geese, subheading Western Management Area 1, subheading Light Geese, the season dates of ''Oct. 9–Jan 16'' are corrected to read ''Oct. 9–Jan. 2.''

§ 20.109 [Corrected]

1. On page 52419 the heading ''Mississippi'' is inserted above the heading Missouri; under the heading Mississippi, the subheadings ''Mourning doves'' and ''Ducks, mergansers, and coots'' are inserted; and season dates of ''Nov. 29–Dec. 17 & Jan. 9–Feb. 5'' are inserted for Mourning doves and ''Jan. 31–Mar. 10'' are inserted for Ducks, mergansers, and coots.

2. On page 52421 under the heading California, subheading White-fronted Geese, subheading Northeastern Zone, the season dates of ''Jan. 17–Jan. 22'' are corrected to read ''Nov. 22–Jan. 22.''

3. On page 52421 under the heading California, subheading Light Geese, subheading Northeastern Zone, the season dates of ''Jan. 17–Jan. 23'' are corrected to read ''Jan. 17–Jan. 22.''

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