



PUBLIC NOTICE

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

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

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**SECTION 272 SUNSETS FOR SBC IN THE STATES OF KANSAS AND OKLAHOMA
BY OPERATION OF LAW ON JANUARY 22, 2004
PURSUANT TO SECTION 272(f)(1)**

WC Docket No. 02-112

The provisions of section 272 (other than section 272(e)) of the Communications Act of 1934, as amended (the Act), applicable to Bell Operating Company (BOC) provision of in-region, interLATA telecommunications services sunset for SBC's operations in Kansas and Oklahoma by operation of law as provided in section 272(f)(1), effective January 22, 2004.

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

The Commission granted SBC section 271 authorization for the provision of in-region, interLATA services in the states of Kansas and Oklahoma in an order released on January 22, 2001.¹ Pursuant to section 272(f)(1), section 272 (other than section 272(e)) sunsets by operation of law for SBC in the states of Kansas and Oklahoma, effective January 22, 2004.²

¹ *Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237 (2001), *aff'd in part, remanded in part sub nom. Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001).

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

For further information, please contact Jon Minkoff, Competition Policy Division, Wireline Competition Bureau, at (202) 418-1580.

Action by the Commission on January 14, 2004: Chairman Powell and Commissioner Abernathy; Commissioner Martin concurring and issuing a statement; and Commissioners Copps and Adelstein dissenting and issuing a joint statement.

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**CONCURRING STATEMENT OF
COMMISSIONER KEVIN J. MARTIN**

Re: Public Notice, Section 272 Sunsets For SBC in the States of Kansas and Oklahoma By Operation of Law on January 22, 2004 Pursuant To Section 272(f)(1) (WC Docket No. 02-112)

Today, the Commission—in a public notice—declares that the statutory requirement that BOCs provide in-region, interLATA telecommunications services through a separate corporate affiliate will sunset for SBC’s operations in Kansas and Oklahoma by operation of law.¹

In the past, I expressed my concerns regarding the Commission’s decision to summarily allow the section 272 requirements to sunset through a public notice rather than a Commission order responding to questions raised on the record.²

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

¹ 47 USC § 272.

² See Concurring Statement of Commissioner Kevin J. Martin, *Section 272 Sunsets for Verizon in New York State By Operation of Law on December 23, 2002 Pursuant to Section 272(f)(1)*; *In the Matter of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Public Notice, FCC 02-335 (rel. Dec. 23, 2002); See Concurring Statement of Commissioner Kevin J. Martin, *Section 272 Sunsets for SBC in the State of Texas By Operation of Law on June 30, 2003 Pursuant to Section 272(f)(1)*, WC Docket No. 02-112, Public Notice, FCC 03-155 (rel. Jun. 30, 2003).

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

Re: *Public Notice, Section 272 Sunsets For SBC in the States of Kansas and Oklahoma By Operation of Law on January 22, 2004 Pursuant To Section 272(f)(1)* (WC Docket No. 02-112)

Today the Commission releases a Public Notice announcing sunset of the Section 272 separate affiliate requirement for SBC in Kansas and Oklahoma. Yet no analysis or review of the market in either state accompanies this decision. Because we believe the Commission has a duty to do more than offer such a bare Public Notice, we cannot support this action.

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

The Commission, however, does nothing here to determine whether there is a continuing need for these safeguards in either Kansas or Oklahoma. This is unfortunate. The Commission pursued the same misguided course in Public Notices announcing sunset of the New York and Texas separate affiliates. Just as we were troubled by these earlier failures to analyze the continuing need for Section 272 safeguards, we are troubled here.¹ As before, we are left wondering how the Commission can justify sunset while it leaves unresolved the development of alternative safeguards in its performance measurements docket. Similarly, we are left wondering how the Commission moves forward today while leaving incomplete its proposed rulemaking concerning carrier classification following Section 272 sunset. In light of these outstanding questions and the short shrift this Public Notice gives to our statutory responsibilities, we choose to dissent from today's decision.

¹ See Dissenting Statement of Commissioner Jonathan S. Adelstein and Michael J. Copps, *Section 272 Sunsets for Verizon in New York State by Operation of Law on December 23, 2002 Pursuant to Section 272(f)(1)*, WC Docket No. 02-112, Public Notice, FCC 02-335 (rel. Dec. 23, 2002); Dissenting Statement of Commissioner Jonathan S. Adelstein and Michael J. Copps, *Section 272 Sunsets for SBC in the State of Texas by Operation of Law on June 30, 2003 Pursuant to Section 272(f)(1)*, WC Docket No. 02-112, Public Notice, FCC 03-155 (rel. Jun. 30, 2003).