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

Dated: September 29, 2003.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 03–26194 Filed 10–16–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 96–128; FCC 03–220]

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

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; withdrawal.

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

DATES: This proposed rule is withdrawn as of October 17, 2003.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in CC Docket No. 96–254, FCC 03–220, adopted September 15, 2003, and released September 16, 2003. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Memorandum Opinion and Order

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

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

3. The Commission concludes that the provisions of section 273 are sufficiently detailed as to be self-executing and sufficiently clear as to cover most circumstances. Thus, section 273 requires no further elaboration at this time. More than seven years have passed since the passage of the Act, and the Commission has granted section 271 authorization to provide in-region interLATA service in forty-two states and the District of Columbia. Our experience over this time frame persuades us, with the benefit of hindsight, that the concerns the Commission articulated in the *BOC Manufacturing NPRM* were unwarranted because the competitive harms the Commission envisioned simply have not materialized.

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

Regulatory Flexibility Act

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

Paperwork Reduction Act of 1995

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

Ordering Clauses

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

Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154(i)–(j), 157, 201–209, 218–220, 251, 271–273, and 403 that this Memorandum Opinion and Order *is adopted.*

2. The Commission has thus completed its review of the record in the above-captioned rulemaking. Accordingly, the above-captioned proceeding *is terminated.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–26108 Filed 10–16–03; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[WC Docket No. 03–173; FCC 03–224]

Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document initiates a rulemaking proceeding to examine the rules applicable to pricing of unbundled network elements (UNEs) and resold telecommunications services made available by incumbent local exchange carriers (LECs) to competitive LECs. The Federal Communications Commission (Commission) adopted the current UNE pricing regime known as the Total Element Long Run Incremental Cost (TELRIC) methodology in 1996. This Commission stated at that time that it intended to re-examine this methodology over time, and this rulemaking represents the Commission's first such re-examination of its UNE pricing rules. The Commission also adopted resale pricing rules in 1996. The U.S. Court of Appeals for the Eighth Circuit reversed the resale pricing rules in 2000. This document seeks comment on whether, and, if so, in what manner, to revise the Commission's UNE pricing rules and on whether, and, if so, in what manner, to promulgate resale pricing rules.

DATES: Comments due December 16, 2003, and reply comments due January 30, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: Steve Morris, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 03–173, adopted on September 10, 2003, and released on September 15, 2003. The full text of this document is available on the Commission's website Electronic Comment Filing System and for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. The full text of the NPRM may also be purchased from the Commission's duplicating contractor, Qualex International, Room CY–B402, 445 Twelfth Street, SW., Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or e-mail at *qualexint@aol.com.*

Background

1. This NPRM, adopted September 10, 2003 and released September 15, 2003 in WC Docket No. 03–173, FCC 03–224, initiates a proceeding to examine the Commission's UNE pricing and resale pricing rules. Currently, the Commission's TELRIC rules, 47 CFR 51.501 *et seq.*, which were promulgated in 1996, apply to the pricing of UNEs. The U.S. Supreme Court affirmed the Commission's jurisdiction to promulgate these rules in 1999 and affirmed the reasonableness of these rules in 2002. In contrast, however, because the U.S. Court of Appeals for the Eighth Circuit reversed the Commission's resale pricing rules in 2000, there currently are no resale pricing rules. Because the Commission's UNE pricing rules have not been examined in over seven years, and because the Commission does not have resale pricing rules, we conclude that it is time to examine the pricing rules for UNEs and resale.

Discussion

2. We undertake this rulemaking with the goal of modifying or clarifying the Commission's UNE and resale pricing rules to aid state commissions in more easily developing UNE pricing and resale discounts that meet the statutory standards established by Congress in section 252(d) of the Telecommunications Act of 1996 and to provide more certainty and consistency in the results of these state proceedings. *See* 47 U.S.C. 252(d). We seek to determine whether our UNE pricing methodology is working as intended and, in particular, whether it is conducive to efficient facilities investment. We also undertake this rulemaking to examine whether, and, if so, in what manner, to promulgate resale pricing rules.

3. As a preliminary matter, we reaffirm our commitment to using forward-looking costing principles to determine UNE rates. We decline to open an inquiry into alternative pricing theories, including historical cost, efficient component pricing rule, and Ramsey pricing theories. Instead, in examining UNE pricing rules, the NPRM focuses, and seeks comment, on whether clarifications or modifications should be made to the current forward-looking economic cost-based rules.

4. In the NPRM, we will examine whether the UNE pricing rules distort our intended pricing signals by understating forward-looking costs and thereby thwart the development of facilities-based competition. We will consider whether modifications to the current UNE pricing rules are necessary to both preserve their forward-looking emphasis and pro-competitive purposes, while simultaneously making the rules more transparent and theoretically sound. Specifically, we tentatively conclude that UNE prices should be based on costs more firmly rooted in the real-world attributes of the existing networks of incumbent LECs rather than the speculative attributes of a purely hypothetical network. We seek comment on this tentative conclusion.

5. We seek comment on the appropriate goals of a UNE pricing regime. Should UNE prices continue to be set in a manner that sends efficient entry and investment signals to competitors and that enables incumbent LECs to recover their forward-looking costs? We ask that parties comment on whether these remain the appropriate goals and, if not, that parties identify alternative pricing goals. We seek information on how the Commission can measure whether a pricing regime is sending appropriate entry and investment signals. We request parties comment on the value of comparisons to an incumbent LEC's historical costs? We also seek comment on potential other goals of a pricing regime, such as transparency and verifiability.

6. We seek comment on the effect of the Commission's recent decision in the *Triennial Review Order*, 68 FR 52276, September 2, 2003. In particular, the Commission adopted a new interpretation for determining whether requesting telecommunications carriers