FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[CC Docket No. 96–152, FCC 99–332]

Telemessaging, Electronic Publishing, and Alarm Monitoring Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition or reconsideration.

SUMMARY: This document declines to reconsider the Commission's Telemessaging and Electronic Publishing Order, declines to adopt rule pursuant to the Further Notice, and clarifies several points concerning telemessaging and electronic publishing. The intended effect is to promote the pro-competitive and deregulatory objectives of the Telecommunications Act of 1996.

EFFECTIVE DATE: March 6, 2000.

FOR FURTHER INFORMATION CONTACT: William Kehoe, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. 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 On Reconsideration adopted November 3, 1999, and released November 9, 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, SW, Room CY–A257, Washington, DC. The complete text also may be obtained through the World Wide Web, at *http://www.fcc.gov/Bureaus/CommonCarrier/Orders/fcc99–332.wp,* or may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Regulatory Flexibility Certification

No comments were submitted in response to the Commission's request for comment on its certification. In this present *Order on Reconsideration,* the Commission promulgates no additional final rules, and our action does not affect the previous analysis.

Synopsis of Order on Reconsideration

1. In this Order, we address a petition for reconsideration or clarification of the Alarm Monitoring Order, CC Docket No. 96–152, FCC 99–241, 64 FR 52464 (09/29/99), filed by Southwestern Bell Telephone Company (SBC).

2. As part of its determination regarding the scope of the term ''alarm monitoring service,'' the Commission enunciated the test it would use in assessing whether a BOC was ''engaged in the provision of'' alarm monitoring service in violation of section 275(a), which states that ''No Bell Operating Company or affiliate thereof shall engage in the provision of alarm monitoring services before the date which is 5 years after the date of enactment of the Telecommunications Act of 1996.'' 47 U.S.C. 275(a). As an initial matter, the Commission determined that the prohibition on the provision of alarm monitoring services did not ''flatly prohibit BOCs from entering into arrangements to act as sales agents on behalf of alarm monitoring services providers.'' At the same time, however, the Commission recognized that there may be instances where a BOC is not directly providing alarm monitoring service, but the interests of the BOC and an alarm monitoring service provider are so intertwined that the BOC itself may be considered to be ''engag[ed] in the provision'' of alarm monitoring service. In making this assessment, the Commission concluded that it would ''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, the Commission determined that it would take into account a variety of factors, including whether the terms and conditions of a sales agency or marketing arrangement are made available to other alarm monitoring companies on a nondiscriminatory basis and the manner in which the BOC is being compensated for its services.

3. SBC filed a petition for reconsideration or clarification of the Commission's Alarm Monitoring Order. SBC states that the Alarm Monitoring Order did not articulate how a regulatory commitment to make a sales agency or marketing arrangement available on a nondiscriminatory basis ''was germane to the 'provision' analysis.'' SBC contends that, in assessing whether a BOC is providing alarm monitoring services in violation of section 275(a), the Commission need not, and should not, consider whether the terms and conditions of a BOC's sales agency or other marketing arrangement with a particular alarm monitoring service provider are available to other alarm monitoring service providers on a nondiscriminatory basis. SBC asserts, however, that if the Commission continues to find a BOC's relationship with other alarm monitoring service providers pertinent in determining whether a BOC is ''engag[ed] in the provision'' of alarm monitoring services, it should only consider whether the arrangement with a particular provider is non-exclusive, not whether it is available on a nondiscriminatory basis. According to SBC, ''such non-exclusivity would ensure that both the BOC and the provider would remain free to do business with others,'' and thus ''not 'intertwined' with one another * * *.''

4. In the alternative, if the Commission retains nondiscrimination as a factor in its analysis, SBC argues that the Commission should clarify that nondiscrimination is not an absolute requirement for an acceptable sales agency relationship. Rather, says SBC, the Commission should expressly affirm that nondiscrimination is not an outcome-determinative factor, but rather is only one of a multitude of factors that the Commission will consider in reviewing sales agency and other marketing arrangements. In SBC's view a BOC should be free to demonstrate that based on factors other than nondiscrimination ''it has a legitimate sales agency relationship with an alarm service provider without an undue 'intertwining' of interests.''

5. The Alarm Industry Communications Committee (AICC) filed an opposition to SBC's petition, arguing that the statute's outright ban on the BOC's provision of alarm monitoring services for a period of five years require, as both a statutory and policy matter, that any sales or other marketing arrangement be made available on a nondiscriminatory basis in order to restrain adequately the BOC's incentive and ability to enter into arrangements that constitute the provision of alarm monitoring services. As for SBC's alternative request, AICC argues that SBC should be told, ''clearly and simply,'' that it cannot discriminate among alarm monitoring providers in its provision of marketing or billing and collection services. AICC asserts that there are numerous legal and policy reasons to forbid discrimination and none in its favor.

6. As the Commission stated in the Alarm Monitoring Order, we must assess on a case-by-case basis whether a BOC's interests are so intertwined with an alarm monitoring service provider that the BOC itself may be considered to be ''engag[ed] in the provision'' of alarm monitoring service in violation of section 275(a). In making such an assessment, the Commission will consider a variety of factors to inform

our ultimate determination as to whether a BOC's sales agency or other marketing arrangement causes its interests to be so intertwined with the interests of a particular alarm monitoring service provider that the BOC itself may be considered to be ''engag[ed] in the provision'' of alarm monitoring service.

7. In this Order, we clarify our rationale for taking into account whether a BOC's sales agency or other marketing arrangement is available on a non-discriminatory basis in assessing whether the BOC is engaged in the ''provision'' or alarm monitoring service We strongly disagree with SBC that the availability of sales agency or other marketing arrangements on a nondiscriminatory basis has no relevance in determining whether a BOC is engaged in the provision of alarm monitoring services. While the Commission may consider a variety of other factors as well, the presence of sales agency or other marketing arrangements with multiple alarm monitoring service providers is an indication that the BOC's interests in such arrangements are limited only to the provision of the sales agency or marketing component of the service. Alternatively, to the extent that a BOC makes a sales agency or other marketing arrangement available to any alarm monitoring service provider on the same terms and conditions, such availability is evidence that the BOC's interests are independent of, and not intertwined with, a particular alarm monitoring service provider. Therefore, in the absence of actual sales agency or other marketing arrangements with multiple alarm monitoring service providers, a commitment to make such arrangements available on a nondiscriminatory basis would be evidence—to be considered along with other factors—that a BOC's interests are independent of, and distinct from, any particular alarm monitoring service provider. Accordingly, we do not disturb our previous finding that the availability of sales agency or other marketing arrangements on a nondiscriminatory basis is relevant to whether a BOC is engaged in the provision of alarm monitoring services.

I. Ordering Clauses

8. Pursuant to sections 1–4, 201–205, 214, 275, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 214, 275, 303(r), this Order on Reconsideration in CC Docket No. 96–152 is adopted.

9. The petition for reconsideration filed by Southwestern Bell Telephone Company is denied in its entirety, as described herein.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–2363 Filed 2–2–00; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE82

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plant Yreka Phlox from Siskiyou County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status pursuant to the Endangered Species Act (Act) of 1973, as amended, for *Phlox hirsuta* (Yreka phlox). This perennial plant species is known only from two locations in Siskiyou County, California. A third location, near Etna Mills, California, has been searched, but no plants or habitats have been found since 1930. The primary threats to *P. hirsuta* include urbanization, inadequate State regulatory mechanisms, and extirpation from random events due to the small number of populations and limited range of the species. This rule implements the Federal protections and recovery provisions afforded by the Act for this plant.

DATES: Effective March 6, 2000.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Suite W2605, Sacramento, California 95825–1846.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp or Jan Knight, Sacramento Fish and Wildlife Office (see **ADDRESSES** section) (telephone 916/414–6645; facsimile 916/414–6710).

SUPPLEMENTARY INFORMATION:

Background

Phlox hirsuta (Yreka phlox) is endemic to Siskiyou County, California, where it grows on serpentine slopes in the vicinity of the City of Yreka (California Native Plant Society (CNPS) 1985). Serpentine soils are rocky mineral soils consisting mostly of ultramafic rocks (rocks with unusually large amounts of magnesium and iron); the large amount of magnesium in the soil gives it a green mottled color. Ultramafic rocks are found discontinuously throughout California, in the Sierra Nevada and in the Coast Ranges from Santa Barbara County, California, to British Columbia. Soils produced from ultramafic rocks have characteristic physical and chemical properties, such as high concentrations of magnesium, chromium, and nickel, and low concentrations of calcium, nitrogen, potassium, and phosphorus. Serpentine soils alter the pattern of vegetation and plant species composition nearly everywhere they occur. While serpentine soils are inhospitable for the growth of most plants, some plants are wholly or largely restricted to serpentine substrates (Kruckeberg 1984).

Elias Nelson (1899) described *Phlox hirsuta* based on a collection made by Edward L. Greene in 1876 near Yreka, Siskiyou County, California. Willis L. Jepson (1943) reduced the species to varietal status, treating the taxon as *Phlox stansburyi* var. *hirsuta.* Edgar Wherry (1955) in his monograph of the genus *Phlox* and most recently Patterson and Wilken (1993) recognize this taxon as *Phlox hirsuta* E. E. Nelson.

Phlox hirsuta is a perennial subshrub in the phlox family (Polemoniaceae). The species grows 5 to 15 centimeters (cm) (2 to 5.9 inches (in)) high from a stout, woody base and is hairy throughout. Narrowly lanceolate to ovate leaves with glandular margins are crowded on the stem. The leaves are 1.5 to 3 cm (0.6 to 1.2 in) long and 4 to 7 millimeters (mm) (0.2 to 0.3 in) wide. Pink to purple flowers appear from April to June. The corollas (petals) of the flowers are 12 to 15 mm (0.5 to 0.6 in) long and are smooth-margined at the apex (tip) (CNPS 1977, 1985). The 5 to 8 mm (0.2 to 0.3 in) style (female reproductive organ in a plant) is contained within the corolla tube (tube formed by the flower petals) (CNPS 1977, 1985; Pattersen and Wilken 1993). Several other phlox species may occur within the range of *P. hirsuta.* Of these, *P. speciosa* (showy phlox) has notched petals and grows to 15 to 40 cm (5.9 to 15.8 in), considerably taller than *P. hirsuta. Phlox adsurgens* (northern phlox) is also larger than *P. hirsuta* growing to 15 to 30 cm (5.9 to 11.8 in). In addition, *P. adsurgens* blooms later (from June to August) than *P. hirsuta* and is glabrous (lacking hairs and glands) rather than hairy. Prostrate (lying flat on the ground) to decumbent (mostly lying on the ground but with