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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE OR LATE FILED

31 January 2000

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CIX and ITAA Request for Extension of the Sunset of Safeguards
Governing Bell Operating Company Provision of In-Region, InterLATA
Information Services, CC Docket No. 96-149, DA 99-2736

Dear Ms. Salas:

On Friday, January 28, 2000, the undersigned, on behalf of Covad
Communications Company (Covad) made an *ex parte* presentation to Staci Pies
of the Policy Division, Common Carrier Bureau, regarding the above-referenced
docket. Due to the lateness of the hour of the presentation, this notice is
provided on the first business day after it was made.

In the *ex parte* presentation, Covad presented its support for the petition of
the Commerical Internet eXchange Association (CIX) and Information
Technology Association of America (ITAA) asking the Commission to consider
extending the section 272(f)(2) separate subsidiary requirements for BOC
provision of interLATA information services. Specifically, Covad raised the
following points:

- (1) It is not clear from the legislative history of the 1996 Act why Congress tied
the sunset of separate subsidiary requirements for interLATA
telecommunications services to FCC approval of BOC 271 applications, while
the sunset of such requirements for interLATA information services is not so
directly tied. What is clear, however, is that Congress granted the FCC the
power to extend the sunset by rule or order. The FCC should not now permit
the interLATA information service separation requirements to sunset without

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at least inquiring into whether the purposes of section 272(f)(2) have been served. Because there is serious question as to whether the local BOC monopolies are now open to the extent Congress thought they would be four years ago, the FCC should at least inquire into whether the procompetitive goals of the Act would better be served by extending the effectiveness of section 272(f)(2).

- (2) By providing a concrete sunset date of four years, Congress must have concluded that by February 8, 2000, the justification for requiring BOCs, from February 8, 1996 through February 8, 2000, to provide interLATA information services through a separate affiliate, would no longer be present. Congress empowered the Commission in section 272(f)(2), above and beyond the Commission's forbearance authority in section 10, to extend the separate subsidiary requirements. Congress left it entirely to the FCC's judgment whether such extension is necessary. As the CIX/ITAA petition raises important questions as to the continuing necessity of section 272(f)(2) to protect against anticompetitive behavior by BOCs, the Commission has an obligation to examine the issues raised in that petition before permitting section 272(f)(2) to sunset. As such, the Commission should issue a short procedural order, pursuant to section 272(f)(2), extending the separate subsidiary requirements of that statute until such time as the Commission has concluded its consideration of the CIX/ITAA petition. After considering the record already generated in that proceeding, the Commission can fully satisfy itself, and Congress, that it has appropriately weighed the panoply of issues presented.
- (3) The Commission cannot permit section 272(f)(2) to sunset before it gives full consideration to the arguments raised in favor of extension. Permitting the statute to sunset could cause irreparable harm to both BOCs and their competitors. BOCs would be harmed if, subsequent to interLATA entry, they established integrated interLATA information service operations, and then were later required to separate those operations because of an extension of section 272(f)(2). Similarly, BOC competitors would be harmed if BOCs were prematurely permitted to offer interLATA information services on an integrated basis. In sum, it is crucial for the Commission to determine whether policy or other reasons require the extension of the section 272(f)(2) safeguards, and those safeguards must remain in place while consideration is underway.

Please contact me at the numbers below with any questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Jason Oxman', with a large, stylized flourish at the end.

Jason Oxman

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