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PUBLIC NOTICE

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

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FCC MAIL SECTION
APR 12 2000

DA 00-750

April 6, 2000

COMMENTS REQUESTED ON THE APPLICATION BY SBC COMMUNICATIONS INC. FOR AUTHORIZATION UNDER SECTION 271 OF THE COMMUNICATIONS ACT TO PROVIDE IN-REGION, INTERLATA SERVICE IN THE STATE OF TEXAS (CC DOCKET NO. 00-65)

On April 5, 2000, SBC Communications Inc. and its subsidiaries, Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance (collectively, SBC) filed an application for authorization to provide in-region, interLATA service in the State of Texas, pursuant to section 271 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 271. This Public Notice establishes certain procedural requirements relating to consideration of SBC's application. The Commission in a prior Public Notice adopted general procedural requirements that apply to the processing of this and all other applications for authorization under section 271 of the Act.[1] A copy of this earlier Public Notice is attached hereto. Also attached is a protective order adopted today, *Application of SBC Communications Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, Protective Order, DA 00-784 (CCB rel. Apr. 6, 2000), that establishes the conditions under which access will be made available to confidential documents submitted in this proceeding by SBC or any other party.

Comments By Interested Third Parties. Comments by interested third parties in support of or in opposition to SBC's application must be filed on or before **April 26, 2000**. Because we are incorporating the existing record in CC Docket No. 00-4, the parties are advised not to reiterate comments previously filed because they will be duly considered. Parties are free, however, to provide additional evidence, as well as comments on any information contained in the combined record.

State Commission and Department of Justice Written Consultations. The Public Utility Commission of Texas (Texas Commission) must file any written consultation on or before **April 26, 2000**. Any written consultation by the U.S. Department of Justice, which by the Act's express terms must become part of the Commission's record, must be filed on or before **May 12, 2000**. Because the Texas Commission and the Department of Justice are given roles by

[1] *See Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA 99-1994, 1999 WL 766282 (CCB rel. Sept. 28, 1999) (*September 28, 1999 Public Notice*).

statute in a section 271 proceeding, copies of all pleadings, including comments, should be filed on those parties.[2]

Replies. All participants in the proceeding -- the applicant, interested third parties, the Texas Commission, and the Department of Justice -- may file a reply to any comments filed by any other participant on or before **May 19, 2000.**

Treatment of Confidential Information. As set forth in the *September 28, 1999 Public Notice*, submissions by parties (including the applicant, the Department of Justice, and the relevant state commission) that contain no confidential information or that do not comment on any confidential information submitted by other participants in the proceeding shall be filed in conformance with the procedures set forth in the *September 28, 1999 Public Notice*. However, to the extent a submission includes confidential information or comments on confidential information that another participant has submitted, the party must file with the Office of the Secretary: (a) one copy of only the portion(s) of the submission that contain confidential information or comment on confidential information that another participant has submitted, exclusive of the remainder of the submission; and (b) one original and two copies of the entire confidential submission in redacted form. Each of the submissions described in items (a) and (b) must be accompanied by a cover letter. The submission described in item (a) and accompanying cover letter should be stamped "Confidential—Not for Public Inspection." The original and two copies of the redacted submission described in item (b) and their accompanying cover letters should be stamped "Redacted—For Public Inspection." The cover letters accompanying both sets of submissions set forth in items (a) and (b) above should state that the party is filing a confidential portion of the submission and a redacted version of the entire submission. Other than bearing different stamps (i.e., "Confidential—Not for Public Inspection" or "Redacted—For Public Inspection"), the (a) and (b) cover letters should be identical. The submissions should be delivered in person to Magalie Roman Salas, Secretary, 445 12th Street, S.W., Room TW-B-204; or, in her absence, to William F. Caton, Deputy Secretary, at the same address. A set of each of the submissions should also be delivered to Cecilia Stephens, Policy and Program Planning Division, Common Carrier Bureau, 445 12th Street, S.W., Room 5-C230. Each redacted filing must also be submitted on a read-only CD-ROM[3] formatted in Word 97 or Excel 97 format, as applicable.

All questions relating to access to confidential information submitted by SBC should be directed to Jonathan Rabkin at Kellogg, Huber, Hansen, Todd & Evans, 1301 K Street, N.W., Suite 1000 West, Washington, DC 20005. He can be reached by phone at 202-326-7963.

Availability of Information. A wide range of information relating to SBC's section 271 application for Texas may be retrieved from the Commission's World Wide Web site at http://www.fcc.gov.[4] Specific information, such as comments and *ex parte* submissions, may be

[2] Please forward copies to the attention of: (1) Public Utility Commission of Texas, 1701 N. Congress Ave., PO Box 13326, Austin, TX 78711-3326; and (2) Jamie Heisler, U.S. Department of Justice, Antitrust Division, Telecommunications Task Force, 1401 H St., NW, Suite 8000, Washington, DC 20005.

[3] If filing on CD-ROM is not possible, applicants may file on a 3.5 inch computer diskette.

[4] The rules relating to public information and the inspection of records are set forth at sections 0.441 through 0.470 of the Commission's Rules. 47 C.F.R. §§ 0.441-0.470.

obtained from the Electronic Comment Filing System (ECFS), which is accessible through the Commission's website. Moreover, SBC has voluntarily agreed to post several documents, including its application and supporting affidavits and substantive *ex parte* submissions, on the World Wide Web at www.sbc.com/Long_Distance/Home.html.

The application will be available for public inspection during regular business hours in the Reference Information Center of the Federal Communications Commission, Room CY-A-257, 445 12th Street, S.W., Washington, DC 20554. Paper copies of the application, and the record generated in response thereto, may be obtained from the Commission's copy contractor, ITS, Inc., 1231 20th Street, N.W., Washington, DC 20036, tel. 202/857-3800.

Ex Parte Rules - Permit-but-Disclose Proceeding. Because of the broad policy issues involved, section 271 application proceedings initially are classified as permit-but-disclose proceedings.[5] Accordingly, *ex parte* presentations will be permitted, provided they are disclosed in conformance with the Commission's *ex parte* rules..[6] Because of the 90-day statutory timeframe for decision, the Commission strongly encourages parties to set forth their views comprehensively in the formal filings specified above (e.g., written consultations, oppositions, supporting comments, etc.) and not to rely on subsequent *ex parte* presentations. In any event, parties may file no more than a total of 20 pages of written *ex parte* submissions. This 20-page limit does not include: (1) written *ex parte* submissions made solely to disclose an oral *ex parte* contact; (2) written material submitted at the time of an oral presentation to Commission staff that provides a brief outline of the presentation; (3) written material filed in response to direct requests from Commission staff; or (4) written factual exhibits. *Ex parte* submissions in excess of the 20-page limit will not be considered part of the record of this proceeding. In light of the statutory deadline for decision, parties are hereby requested to provide Bureau staff with courtesy copies of any *ex parte* presentations made to any member of the Commission.

For purposes of this proceeding, any oral *ex parte* presentations from the Department of Justice and the Texas Commission are deemed to be exempt *ex parte* presentations.[7] To the extent that the Commission obtains through such oral *ex parte* presentations new factual information on which the Commission may rely in its decision-making process, the party submitting the information – either the Department of Justice or the Texas Commission -- shall prepare a summary for inclusion in the record in accordance with Commission rules, unless such a summary is being prepared by Commission staff.[8] We also waive any page limits for written *ex*

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[5] See 47 C.F.R. § 1.1206(a)(13) (added by 64 FR 68946, 68946 (1999) (effective Jan. 10, 2000)); e.g., Comments Requested on Application by Bell Atlantic for Authorization under Section 271 of the Communications Act to Provide In-region, InterLATA Service in the State of New York (CC Docket No. 99-295), Public Notice, DA 99-2014, 1999 WL 770903 (CCB rel. Sept. 29, 1999).

[6] *See* 47 C.F.R. §§ 1.1202, 1.1206(b). Interested parties are to file with the Secretary of the Commission and serve Cecilia Stephens, Policy and Programming Planning Division, Common Carrier Bureau, Federal Communications Commission, Rm. 5-C230, 445 Twelfth St., S.W., Washington, DC 20554, and ITS, Inc., 2131 20th St., N.W., Washington, DC 20036, with copies of written *ex parte* presentations in these proceedings in accordance with the Commission's *ex parte* rules.

[7] *See id.* § 1.1200(a) ("Where the public interest so requires in a particular proceeding, the Commission and its staff retain the discretion to modify the applicable *ex parte* rules by order, letter, or public notice."); *id.* § 1204(a)(6), as amended by 64 FR 68946, 68946 (1999) (effective Jan. 10, 2000).

[8] *See id.* § 1.1206(a).

parte submissions by the Department of Justice or the Texas Commission.[9]

Notwithstanding the above, the Commission may, by subsequent public notice, prohibit all presentations to its decision-making personnel regarding the application during a seven-day period preceding the anticipated release date of the Commission's order regarding the application.[10]

Ex Parte Meeting Schedule. The Common Carrier Bureau will be available for meetings on **April 19-20, 2000** and **May 15-16, 2000**, in case interested parties wish to discuss any issues that they intend to raise in comments or reply comments, as applicable, in support of or in opposition to SBC's application. The purpose of these meetings is to give interested parties an opportunity to inform Bureau staff of such issues prior to filing their written comments or reply comments.

The Bureau also intends to hold several joint *ex parte* meetings with both commenters and SBC in late May, on discrete issues raised in the record. The purpose of these meetings will be to give participants in this proceeding an opportunity to narrow and resolve any outstanding issues related to arguments that parties presented in their previous written filings. To resolve any disputed issues in a timely manner, the Bureau encourages interested parties to make joint presentations of common concerns to the extent feasible. Parties who wish to schedule meetings with the Bureau should call **Gary Remondino, Policy and Program Planning Division, at (202) 418-2298**.

Aside from the meetings listed above, *ex parte* meetings related to this proceeding will occur only at the request of Bureau staff.

Calendar

Ex Parte Meetings related to Comments: April 19-20, 2000

Comments Due (includes Texas Commission): April 26, 2000

U.S. Department of Justice Evaluation: May 12, 2000

Ex Parte Meetings related to Reply Comments: May 15-16, 2000

Reply Comments Due: May 19, 2000

By the Common Carrier Bureau.

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[9] *See id.* § 1.1200(a).

[10] *See id.* §§ 1.1200; 1.1203.

News Media contact: Michael Balmoris -- (202) 418-1500.
Common Carrier Bureau contact: Cecilia Stephens -- (202) 418-1558

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of SBC Communications, Inc.	)	
Pursuant to Section 271 of the	)	CC Docket No. 00-65
Telecommunications Act of 1996	)	
To Provide In-Region, InterLATA Services	)	
in Texas	)	

PROTECTIVE ORDER

Adopted: April 6, 2000 **Released: April 6, 2000**

By the Chief, Common Carrier Bureau:

1. Documents submitted to the Commission in the course of section 271 proceedings may represent or contain confidential or proprietary information. To ensure that documents and materials in the above-referenced proceeding considered by the applicants or other submitters to be confidential and proprietary are afforded protection, the Common Carrier Bureau hereby enters this Protective Order:

2. Non-Disclosure. Except with the prior written consent of the person originally designating a document to be stamped as a confidential document, or as hereinafter provided under this order, no stamped confidential document may be disclosed to any person.

(a) Stamped Confidential Documents. A "stamped confidential document" means any document which bears the legend (or which shall otherwise have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "CONFIDENTIAL-SUBJECTTO PROTECTIVE ORDER" to signify that it contains information believed to be subject to protection under the Commission's rules. For purposes of this order, the term "document" means all written, recorded, or graphic material, whether produced or created by a party or another person, whether produced pursuant to the Commission's rules, pursuant to subpoena, by agreement, or otherwise. Documents that quote, summarize, or contain materials entitled to protection may be accorded status as a stamped confidential document, but, to the extent feasible, shall be prepared in such a manner that the confidential information is bound separately from that not entitled to protection.

(b) Documents Submitted by the Department of Justice. Consistent with the District Court Opinion and Order filed April 11, 1996 in *United States v. Western Elec. Co.*, No. 82-0192 (D.D.C.), a document submitted by the Department of Justice that bears any confidential marking from proceedings in that case or was to be treated as confidential by agreement between the original submitting party and the Department of Justice shall be stamped as confidential upon its submission in the course of this section 271 proceeding. Regardless of whether the Department of Justice stamps such a document as confidential, however, any document that bears any confidential marking from proceedings in *United States v. Western Elec. Co.* will be deemed a "stamped confidential document" for purposes of this order. For the purposes of any document submitted by the Department of Justice in this section 271 proceeding, all references herein to the person or counsel that originally designated the document as confidential shall be deemed references to the entity, or its counsel, that originally submitted the document to the Department of Justice (if any), in addition to the Department of Justice.

3. Permissible Disclosure. Notwithstanding paragraph 2, stamped confidential documents may be disclosed subject to the provisions of subparagraphs (a) and (b), to the following persons if disclosure is reasonably necessary for such persons to render professional services in this proceeding: counsel of record for parties that may file in this proceeding, including in-house counsel who are actively engaged in the conduct of this proceeding; partners, associates, secretaries, paralegal assistants, and employees of such counsel; outside consultants or experts retained to render professional services in this proceeding, provided that they are under the supervision of the counsel of record; and in-house economists and regulatory analysts, provided that they are under the supervision of the counsel of record. Such documents may also be disclosed to relevant employees of regulatory agencies, Commission employees involved in this proceeding, and to any person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.

(a) Notwithstanding any other provision of this order, before any disclosure shall occur, any individual (other than a Commission employee) to whom confidential information is disclosed must certify in writing that he/she has read and understands this PROTECTIVE ORDER, agrees to abide by its terms, and understands that unauthorized disclosures of the stamped confidential documents are prohibited. A copy of each such certification shall be provided to the party that designated the information confidential. (*See* Attachment A for a model certification.)

(b) Before disclosing a stamped confidential document to any person who is listed in paragraph 3 (other than an attorney) and who is employed by a competitor or potential competitor of the party that so designated the document, the party seeking such disclosure shall give at least five days' advance notice in writing to the counsel who designated such information as confidential, stating the names and addresses of the person(s) to whom the disclosure will be made, identifying with particularity the documents to be disclosed, and stating the purposes of such disclosure. No such disclosure shall be made within the five-day period. If, within the five-day

period, a motion is filed objecting to the proposed disclosure, disclosure is not permissible until the Commission has denied such motion and disclosure is permitted under 47 C.F.R. § 0.459. Any such motion shall be hand-served on the party seeking such disclosure.

4. Access to Confidential Information. Any party producing confidential information pursuant to this order shall designate a Washington, D.C. location and such other locations as may be convenient at which all parties shall be permitted access to and review of requested confidential information pursuant to the other terms of this order, or pursuant to alternative arrangements agreed upon by the parties. Any such access or review may be limited to regular business hours after reasonable notice by the requesting party.

5. Confidential Information Filed in the Record. Stamped confidential documents and other confidential information may be offered in the record of this proceeding, provided that such confidential information is furnished under seal. The party submitting confidential documents shall ensure that each page bears the legend "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER."

6. Commission Treatment of Confidential Information. If confidential documents are submitted to the Commission in accordance with paragraph 5, the materials shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents. The Commission may, *sua sponte* or by petition, determine that all or part of the information claimed by the producing party to be confidential is not entitled to such treatment. *See generally* 47 C.F.R. § 0.459.

7. Use. Persons obtaining access to stamped confidential documents under this order shall use the information only in the conduct of this proceeding and any judicial proceeding arising therefrom, and shall not use such information for any other purpose, including business, governmental, commercial, or other administrative or judicial proceedings. Persons obtaining access to confidential information under the terms of this order may disclose, describe, or discuss the confidential information in any pleading filed in this proceeding, provided that such pleading is stamped confidential and filed under seal, and provided that a separate public version is filed in which all confidential information is redacted. Persons filing pleadings under seal based on confidential information provided by others shall serve such pleadings by hand or overnight delivery on the party originally requesting confidential treatment of the underlying information.

8. Subpoena by Courts or Other Agencies. If a court or another administrative agency subpoenas or orders production of stamped confidential documents which a party has obtained under terms of this order, such party shall promptly notify the party and any other person who designated the document as confidential of the pendency of such subpoena or order.

9. Client Consultation. Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients regarding the section 271 proceeding in which a confidential

document is submitted and, in the course thereof, relying generally on examination of stamped confidential documents submitted in that proceeding; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of any item so designated except pursuant to the procedures of paragraph 3 above.

10. Prohibited Copying. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited." Application for relief from this restriction against copying may be made to the Commission, with notice to counsel so designating the document.

11. Non-Termination. The provisions of this order shall not terminate at the conclusion of this proceeding.

12. Modification Permitted. Nothing in this order shall prevent any party or other person from seeking modification of this order.

13. Responsibility of Attorneys. The attorneys of record are responsible for employing reasonable measures to control, consistent with this order, duplication of, access to, and distribution of copies of stamped confidential documents. Parties shall not duplicate any stamped confidential document except working copies and for purposes of filing at the Commission under seal.

14. Return of Confidential Documents. Within two weeks after final resolution of this proceeding (which includes administrative or judicial review), parties that have received stamped confidential documents shall either return all copies of such documents in their possession to the party that submitted the documents, or destroy all such confidential documents.

15. Penalties. In addition to any other penalties or remedies authorized under the Communications Act, the Commission's rules, the common law or other source of law, any failure to abide by the terms of this order may result in dismissal of a party's pleadings, or censure, suspension, or disbarment of the attorneys involved, *see* 47 C.F.R. § 1.24, or possible referral to the relevant local bar.

16. Accordingly, IT IS ORDERED that pursuant to Sections 4(i), 4(j) and 271 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 271, the Protective Order IS ADOPTED, effective upon its release.

FEDERAL COMMUNICATIONS COMMISSION

Lawrence E. Strickling

Lawrence E. Strickling
Chief, Common Carrier Bureau

ATTACHMENT A

CC DOCKET NO. 00-

I have received a copy of the Protective Order in CC Docket No. 00-4. I have read the order and agree to comply with and be bound by the terms and conditions of this Protective Order. The signatory understands, in particular, that unauthorized disclosure, or the use of the information for competitive commercial or business purposes, will constitute a violation of this Protective Order.

SIGNATURE: _____

NAME PRINTED: _____

TITLE: _____

ADDRESS: _____

_____

REPRESENTING: _____

EMPLOYER: _____

DATE: _____

PUBLIC NOTICE

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

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DA-99-1994
Approved by OMB 3060-0756
Expires 06/30/01
Avg. burden hours per response: 250
September 28, 1999

UPDATED FILING REQUIREMENTS FOR BELL OPERATING COMPANY APPLICATIONS UNDER SECTION 271 OF THE COMMUNICATIONS ACT

On September 19, 1997, the Commission released a Public Notice that set forth the procedural requirements and policies relating to the Commission's processing of Bell Operating Company (BOC) applications for entry into the in-region, interLATA market under section 271 of the Communications Act.[1] The Common Carrier Bureau made minor changes to these procedural requirements in its *July 8, 1998 Public Notice*.[2] This Public Notice makes further minor revisions to the procedural requirements set forth in the *September 19, 1997 Public Notice* and the *July 7, 1998 Public Notice*, as indicated in bold below. In the interests of clarity and for the convenience of parties, this Public Notice also restates the procedural requirements and policies that the Commission adopted in the *September 19, 1997 Public Notice*, and thereby serves as a single, current reference for the procedural requirements and policies relating to the Commission's processing of section 271 applications.

A. Application Filing Requirements

Under section 271, the Bell Operating Companies must file applications to provide in-region, interLATA services on a state-by-state basis. By "application," the Commission means: (1) a stand-alone document entitled "Brief in Support of Application by [Bell company name] for Provision of In-Region, InterLATA Services in [state name]; and (2) any supporting documentation. The content of both parts of the application is addressed later in this Public Notice.

Under the revised procedures described in this Public Notice, applicants must file each section 271 application with the Commission as follows:

(1) **Applicants must file an original and one copy of each section 271 application with the Office of the Secretary at the Federal Communications Commission. If the applicant wants each Commissioner to receive a copy of**

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[1] *Revised Procedures for Bell Operating Company Applications Under Section 271 of the Communications Act*, FCC 97-330, Public Notice, 12 FCC Rcd 18590 (1997) (*September 19, 1997 Public Notice*). The *September 19, 1997 Public Notice* revised and superseded the procedures and policies for section 271 applications that were set forth in the Commission's *December 6, 1996 Public Notice*. *See Procedures for Bell Operating Company Applications Under New Section 271 of the Communications Act*, FCC 96-469, Public Notice, 11 FCC Rcd 19708 (1996).

[2] *Bell Operating Companies Given Option of Filing Certain Documents on CD-ROM in Section 271 Applications*, DA 98-1354, Public Notice, 13 FCC Rcd 12791 (1998) (*July 7, 1998 Public Notice*).

the section 271 application, the applicant should file an original and six copies with the Office of the Secretary. In addition, the applicant must also submit the application on a CD-ROM,[3] in read-only format as described below, to the Office of the Secretary. The original, the one (or, if applicable, six) cop(ies), and the CD-ROM in read-only format, should be sent to Magalie Roman Salas, Secretary, Office of the Secretary, Federal Communications Commission, Room TW-B-204, 445 Twelfth Street, SW, Washington, DC 20554. In addition, an applicant must submit twelve copies of the section 271 application to Janice Myles, Policy and Program Planning Division, Common Carrier Bureau, Federal Communications Commission, Room 5-C-327, 445 12th Street, S.W., Washington, DC 20554.

(2) The applicant must provide the original application, one copy for the Office of the Secretary, and one of the twelve copies for the Common Carrier Bureau, in completely paper form. Copies for the Commissioners and the eleven remaining copies for the Common Carrier Bureau may be filed in part paper and part CD-ROM in read-only format, as described in paragraph (3).

(3) An applicant is permitted to file all documents, except the following, on CD-ROM in read-only format: (a) applicant's brief in support; (b) any affidavits; (c) any exhibits referenced by and attached directly to such affidavits; (d) the statement of generally available terms (SGAT) of interconnection under section 252 and any amendments thereto; and (e) any performance data the applicant submits to demonstrate compliance with section 271. The documents referenced in items (a) through (e) must be filed in paper form. All other documents, including operations support systems (OSS) guides and manuals that a BOC provides to competitive local exchange carriers and records from state proceedings for which the BOC is filing its application that do not fall within items (a)-(e) above, may be filed on CD-ROM subject to the terms of paragraph (2) above.

(4) Submissions by parties (including the applicant, the Department of Justice, and the relevant state commission) that contain no confidential information or that do not comment on any confidential information submitted by other participants in the proceeding shall be filed in conformance with the procedures set forth above in paragraphs (1)-(3). To the extent a submission includes, however, confidential information or comments on confidential information that another participant has submitted, the party must file the following documents with the Office of the Secretary: (a) one original of only the portion(s) of the submission that contain confidential information or comments on confidential information that another participant has submitted, exclusive of the remainder of the submission; and (b) one original and two copies of the entire confidential submission in redacted form. Each of the submissions described in items (a) and (b) must be accompanied by a cover letter. The submission described in item (a) and accompanying cover letter should be stamped "Confidential—Not for Public Inspection." The original and two copies of the redacted submission described in item (b) and

[3] If filing on CD-ROM is not possible, applicants may file on a 3.5 inch computer diskette.

their accompanying cover letters should be stamped "Redacted—For Public Inspection." The cover letters accompanying both sets of submissions set forth in items (a) and (b) above should state that the party is filing a confidential portion of the submission and a redacted version of the entire submission. Other than having different stamps (i.e., "Confidential—Not for Public Inspection" or "Redacted—For Public Inspection"), the cover letters should be the same for the confidential portion of the submission and the redacted copies of the entire submission. The submissions should be delivered in person to the Office of the Secretary, 445 12th Street, S.W., Room TW-B-204, to Magalie Roman Salas, Secretary; or, in her absence, to William F. Caton, Deputy Secretary. Also, each redacted filing must be submitted on a read-only CD-ROM formatted in Word 97 or Excel 97 format, as applicable.

Applications will be available for public inspection during regular business hours in the Reference Information Center of the Federal Communications Commission, **Room CY-A-257, 445 12th Street, S.W., Washington, DC 20554**. The applicant must also submit a completely paper copy of the application simultaneously to: **(a) the Department of Justice c/o Donald J. Russell, Telecommunications Task Force, Antitrust Division, Suite 8000, 1401 H Street, N.W., Washington, DC 20530; (b) the relevant state regulatory commission; and (c) the Commission's copy contractor, ITS, Inc., 1231 20th Street, N.W., Washington, DC 20036, tel. 202/857-3800.**

The **CD-ROM in read-only format** submitted to the Commission should be formatted in **Word 97 or Excel 97, as applicable.** It should contain the Applicant's Brief in Support. If electronically available, the supporting documentation must be included on the **CD-ROM in read-only format** as well. With respect to supporting materials that are not provided on **CD-ROM in read-only format**, the applicant should include a note at the end of the electronic version of the Brief in Support specifying which materials are not contained on the disk and indicating that such materials are on file with the Commission. All filings submitted on **CD-ROM in read-only format** will be posted on the Internet for public inspection at http://www.fcc.gov. We also urge the applicant to post its electronic filings on its own Internet home page and to inform us of such posting in the Brief in Support.

B. Preliminary Matters

Section 271(d)(3) states that "[t]he Commission shall not approve the authorization requested in an application . . . unless it finds" three specified conditions to be met. The Commission expects that a section 271 application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely in making its findings thereon. An applicant may not, at any time during the pendency of its application, supplement its application by submitting new factual evidence that is not directly responsive to arguments raised by parties commenting on its application. Thus, an applicant may not submit factual evidence gathered after the applicant's initial filing. The applicant, however, may submit new factual evidence if the sole purpose of that evidence is to rebut arguments made, or facts submitted. But in no event shall such evidence post-date the filing of the relevant comments.[4] In the event that the applicant submits new or post-dated evidence in replies or *ex parte* filings, the Commission reserves the right to start the 90-day review process anew or to accord such evidence no weight in making its determination.

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[4] *See Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543, at ¶ 51 (1997).

All factual assertions made by any applicant (or any commenter) must be supported by credible evidence, or they may not be entitled to any weight. Such factual assertions, as well as expert testimony, submitted by any party must also be supported by an affidavit or verified statement of a person or persons with personal knowledge thereof.

Applicants and participants in section 271 proceedings also have an obligation to present their position in a clear and concise manner. In the section 271 proceedings conducted so far, each application – as well as some of the subsequent responsive filings – totaled several thousand pages. In addition, certain parties have included substantive arguments in affidavits or other supporting materials, rather than in their legal briefs. As a result, in some cases, we have found it burdensome and time-consuming to determine the positions of parties. Because of the shortness of the 90-day review period, we believe that it is necessary to make the section 271 review process as efficient as possible, consistent with the requirements of the statute. We therefore require applicants and commenting parties to make all substantive legal and policy arguments in a legal brief (*i.e.*, Applicant's Brief in Support, comments in opposition or support, reply comments, *ex parte* filings). The Commission retains the authority to strike, or to decline to consider, substantive arguments that appear only in affidavits or other supporting documentation. We note that the United States Court of Appeals for the District of Columbia Circuit has found that the Commission "need not sift pleadings and documents to identify" arguments that are not "stated with clarity."[5] It is the petitioner who has the "burden of clarifying its position" before the agency.[6] This duty is even more crucial in the context of section 271 proceedings, because of the limited period in which the agency has to review section 271 applications.

We recognize, however, that the question of whether an applicant has satisfied the requirements of section 271 raises numerous complex and fact-intensive issues, which may necessitate lengthy filings in support of or in opposition to an application. In order to ensure that applicants and other participants in section 271 proceedings have the ability to present their positions fully, we have increased the page limits for the Applicant's Brief in Support and third party comments and replies, and we have eliminated the page limits for applicants' replies, as noted below. In addition, we expect that applicants and other participants in section 271 proceedings will continue to use affidavits and other supporting documentation to support factual and legal assertions made in their legal briefs, to provide expert testimony in support of the positions articulated in their briefs, and to clarify detailed factual issues.

Because the statute affords us only 90 days to review the application, we encourage the applicant to meet with likely objectors in order to attempt to narrow the issues in dispute. As noted in section C of this Public Notice, we require that an applicant submit, either in the application itself or in a supplemental statement within five days after the application is filed, a signed statement that describes efforts that the applicant has made to narrow the issues in dispute and the results of those efforts.

C. Content of Applications

Applications shall conform to the Commission's general rules relating to applications.[7] As noted above, applications shall have two parts: (1) a Brief in Support of Application by [Bell company name] for Provision of In-Region, InterLATA Services in [State name]; and (2) any supporting documentation, such as records of state proceedings, interconnection agreements, affidavits, etc. The Applicant's Brief in Support may not exceed 125 pages. The table of contents, summary of argument, and list of appendices

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[5] *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

[6] *Northside Sanitary Landfill, Inc., v. Thomas*, 849 F.2d 1516, 1519 (D.C. Cir. 1988), *cert. denied*, 489 U.S. 1078 (1989).

[7] *See* 47 C.F.R. §§ 1.49, 1.741-1.749.

(items (a), (b), and (h) below) shall not be counted in determining the length of the Brief in Support. There is no page limit on supporting documentation, but, as discussed above, the applicant may not make substantive legal or policy arguments in its supporting documentation.

The Brief in Support should contain the following items:

(a) a table of contents;
(b) a concise summary of the substantive arguments presented in the Brief;[8]
(c) a statement identifying all of the agreements that the applicant has entered into pursuant to negotiations and/or arbitrations under section 252, including the dates on which the agreements were approved under section 252 and the status of any federal court challenges to the agreements pursuant to section 252(e)(6);
(d) a statement identifying how the applicant meets the requirements of section 271(c)(1), including a list of the specific agreements on which the applicant bases its application if it intends to rely on a subset of the list set forth in item (c) above;
(e) a statement summarizing the status and findings of the relevant state proceedings (if any) examining the applicant's compliance with section 271 or portions thereof;
(f) a statement describing the efforts the applicant has made to meet with likely objectors to narrow the issues in dispute and the results of those efforts (as indicated above, this statement may be filed separately from the application; but not later than five days after the filing of the application);
(g) all legal and factual arguments that the three requirements of section 271(d)(3) have been met, supported as necessary with selected excerpts from the supporting documentation (with appropriate citations);[9]
(h) a list of all appendices (including affidavits) and the location of and subjects covered by each of those appendices;
(i) the name, address, and phone number of the person who will address inquiries relating to access (subject to the terms of any applicable protective order) to any confidential information submitted by the applicant;
(j) an Anti-Drug Abuse Act certification as required by 47 C.F.R. § 1.2002; and
(k) an affidavit signed by an officer or duly authorized employee certifying that all information supplied in the application is true and accurate to the best of his or her information and belief.[10]

The name of the applicant, the date the application is filed, and the state to which it relates should appear in the upper right-hand corner of each page of the Brief in Support.

As for the supporting documentation, we require that it contain, at a minimum, the complete public record, as it exists on the date of filing, of the relevant state proceedings (if any) examining the applicant's compliance with section 271 or portions thereof. In addition, supporting documentation, including any records of interconnection agreements, affidavits, etc., shall be provided in appendices, separated by tabs and divided into volumes as appropriate. Each volume shall contain a table of contents that lists the subject of each tabbed section of that volume.

D. Comments By Interested Third Parties

[8] *See id.* at § 1.49.

[9] Item (g) is obviously the core portion of the Brief in Support, and may be quite lengthy. It may help to divide it, therefore, into three subsections, one corresponding to each of the three requirements set forth in section 271(d)(3).

[10] *See* 47 C.F.R. § 1.743.

After an application has been filed, the Common Carrier Bureau will issue a public notice (Initial Public Notice) establishing the specific due dates for the various filings set forth below. The Initial Public Notice will also establish procedures for the treatment of confidential information submitted by participants (including the application, the Department of Justice, and the relevant state commission). Simultaneously with the issuance of the Initial Public Notice, the Bureau will notify the Department of Justice and the affected state of our receipt of the application. Interested third parties will have approximately 20 days from the issuance of the Initial Public Notice to file comments in opposition or support, which may not exceed 100 pages.[11] The specific due date for comments will be set forth in the Initial Public Notice.

The Commission retains discretion to adjust the due date for comments and replies on a case-by-case basis to ensure that interested third parties have sufficient time to review and comment on each application. The Commission strongly discourages, and will take appropriate steps to prevent, an applicant from attempting to limit the time for interested third parties to review an application (*e.g.*, by filing on a Friday or the day before a national holiday).

The name of the commenter, the name of the applicant, and the state to which the application relates should appear in the upper right-hand corner of each page. Comments in support or opposition shall also include a table of contents, a concise summary of the arguments presented in the comments, and a list of all appendices and the location of and subjects covered by each of those appendices. None of these portions of the comments shall be counted in determining the length of the comments. To file comments or replies (or any other filing set forth below) in a section 271 proceeding, commenters must follow the applicable procedures outlined in section A of this Public Notice.

Commenters shall not incorporate by reference, in their comments or replies, entire documents or significant portions of documents that were filed in other proceedings, such as comments filed or arguments made in a previous section 271 proceeding. Although commenters are permitted to note arguments that were presented in earlier filings, they must provide a complete recitation in their current filing of any argument that they wish the Commission to consider.

There is no page limit on supporting documentation. As discussed in section B of this Public Notice, however, commenters must make all substantive legal and policy arguments in their comments, rather than in supporting documentation. In addition, supporting documentation, including any records of interconnection agreements, affidavits, etc., shall be provided in appendices, separated by tabs and divided into volumes as appropriate. Each volume shall contain a table of contents that lists the subject of each tabbed section of that volume.

If a commenter submits confidential information to the Commission, it shall include in a cover letter to the Commission the name, address, and phone number of the person who will address inquiries regarding access to the confidential information by other participants in the proceeding (subject to the terms of any applicable protective order).

E. <u>State Commission and Department of Justice Written Consultations</u>

Many state commissions have already commenced proceedings to examine BOC compliance with section 271 or portions thereof. In light of this fact and in light of the shortness of the 90-day period for deciding a section 271 application, we require that the relevant state commission file any written consultation not

[11] The Commission expects that parties will include all substantive arguments in their legal brief. The Commission may strike or decline to consider substantive arguments made only in affidavits or other supporting documentation.

later than approximately 20 days after the issuance of the Initial Public Notice. The specific due date for the state's written consultation will be set forth in the Initial Public Notice. The relevant state commission shall also follow the applicable procedures outlined in section A of this Public Notice.

Any written consultation by the Department of Justice (which, by the Act's express terms, must become part of the record) must be filed not later than approximately 35 days after the issuance of the Initial Public Notice. The specific due date for the Department's written consultation will be set forth in the Initial Public Notice. The Department of Justice shall also follow the applicable procedures outlined in section A of this Public Notice.

The state commission and the Department of Justice are also welcome to file a reply pursuant to section F of this Public Notice, as well as written *ex parte* submissions in accordance with section H of this Public Notice.

F. Replies

All participants in the proceeding – the applicant, interested third parties, the relevant state commission, and the Department of Justice – may file a reply to any comment made by any other participant. Such replies will be due approximately 45 days after the Initial Public Notice is issued. The specific due date for replies will be set forth in the Initial Public Notice. All replies except that of the applicant are limited to 50 pages. There is no page limit for the applicant's reply.

The name of the submitter, the name of the applicant (if different), and the state to which the application relates should appear in the upper right-hand corner of each page. Replies shall also include a table of contents, a concise summary of the arguments presented in the comments, and a list of all appendices and the location of and subjects covered by each of those appendices. None of these portions of a reply shall be counted in determining the length of the reply.

The applicant's and third parties' reply comments may not raise new arguments or include new data that are not directly responsive to arguments other participants have raised, nor may the replies merely repeat arguments made by that party in the application or initial comments. An applicant may submit new factual evidence in its reply if the sole purpose of that evidence is to rebut arguments made, or facts submitted, by commenters, provided the evidence covers only the period placed in dispute by commenters and in no event post-dates the filing of the relevant comments.[12] In addition, as discussed in section D of this Public Notice, participants are not permitted, in their replies, to incorporate by reference entire documents or significant portions of documents that were filed in other proceedings.

There is no page limit on supporting documentation. As discussed in section B of this Public Notice, however, participants submitting replies must make all substantive legal and policy arguments in their replies, rather than in affidavits or other supporting documentation. In addition, supporting documentation, including any records of interconnection agreements, affidavits, etc., shall be provided in appendices, separated by tabs and divided into volumes as appropriate. Each volume shall contain a table of contents that lists the subject of each tabbed section of that volume.

G. Motions

Because of the shortness of the 90-day period to review section 271 applications, a dispositive motion

[12] *See Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543, para. 15 (1997).

filed with the Commission in a section 271 proceeding (*e.g.*, motion to dismiss) will be treated as an early-filed pleading and will not be subject to a separate pleading cycle, unless the Commission or Bureau determines otherwise in a public notice issued after the motion is filed. The Commission generally expects, however, that such a separate pleading cycle will not be necessary. Thus, in general, dispositive motions filed before the due date for third party comments will be treated as early-filed comments; dispositive motions filed after the due date for third party comments but before the due date for replies will be treated as early-filed replies; and dispositive motions filed after the due date for replies will be treated as *ex parte* submissions. Such motions will be counted toward the applicable page limit for the submitting party, as established in this Public Notice.

Non-dispositive motions (*e.g.*, motions to strike) will be subject to the default pleading cycle in section 1.45 of the Commission's rules,[13] unless the Commission or Bureau determines otherwise in a public notice. Because of the expedited nature of section 271 proceedings, section 1.4(h) of the Commission's rules will not apply to motions filed in section 271 proceedings.[14] Thus, parties will not be allowed an extra three days (beyond the time permitted in section 1.45) to respond to non-dispositive motions and oppositions thereto, regardless of whether the filing was served on the party by mail. In lieu of that rule, however, a party submitting a non-dispositive motion must, on the day of filing, serve that motion either by hand or by facsimile on any party whose filing is the subject of the motion. In addition, parties must submit non-dispositive motions and oppositions to such motions to the Commission on a **read-only CD-ROM formatted in Word 97 or Excel 97, as applicable** (as well as in hard copy form). All filings submitted on **read-only CD-ROM** will be posted on the Internet for public inspection at http://www.fcc.gov. Such motions, oppositions, and replies will not be counted toward the submitting party's page limit.

H. Ex Parte Rules – Permit-But-Disclose Proceeding

Because of the broad policy issues involved, section 271 application proceedings initially will be considered permit-but-disclose proceedings.[15] Accordingly, *ex parte* presentations will be permitted, provided they are disclosed in conformance with Commission *ex parte* rules.[16] Because of the statutory timeframe, however, we strongly encourage parties to set forth their views comprehensively in the formal filings specified above (*e.g.*, the Brief in Support, oppositions, supporting comments, etc.) and not to rely on subsequent *ex parte* presentations. In any event, parties may not file more than a total of 20 pages of written *ex parte* submissions. This 20-page limit does not include: (1) written *ex parte* submissions made solely to disclose an oral *ex parte* contact; (2) written material submitted at the time of an oral presentation to Commission staff that provides a brief outline of the presentation; (3) written material filed in response to direct requests from Commission staff; or (4) written factual exhibits. The Commission retains the right not to consider as part of the record *ex parte* submissions in excess of the 20-page limit. **Parties should provide Bureau staff with courtesy copies of any *ex parte* presentations made to any member of the Commission.**

For purposes of these proceedings, and in light of the explicit role the Act gives to the Department of Justice and the state commissions under section 271, any oral *ex parte* presentations from the Department of Justice and the relevant state commission will be deemed to be exempt *ex parte* presentations. To the extent that the Commission obtains through such oral *ex parte* presentations new factual information on which the Commission subsequently relies in its decision-making process, the Commission will either

[13] 47 C.F.R. § 1.45.

[14] *See* 47 C.F.R. § 1.4(h).

[15] *See id.* at §§ 1.1200(a), 1.1206.

[16] *See id.* at §§ 1.1202, 1.1206(b).

request the Department of Justice or the relevant state commission to disclose or disclose itself such new factual information in the record no later than the time it releases its decision.[17] There are no page limits on written *ex parte* submissions by the Department of Justice or the relevant state commission.

Notwithstanding the above, the Commission may, by subsequent public notice, prohibit all communication with Commission personnel regarding the application during a seven-day period preceding the anticipated release date of the Commission's order regarding the application.[18]

I. FCC Notice to Individuals Required by the Privacy Act and the Paperwork Reduction Act

Pursuant to section 271 of the Communications Act of 1934, as amended, the BOCs must file applications to provide in-region interLATA services on a state-by-state basis. State regulatory commissions must file written consultations relating to the applications not later than approximately 20 days after the issuance of an Initial Public Notice establishing specific due dates for various filings. Interested third parties may file comments on the applications not later than approximately 20 days after the issuance of the Initial Public Notice. The Department of Justice must file written consultations relating to the applications not later than approximately 35 days after the issuance of the Initial Public Notice. All of the information would be used to ensure that the BOCs have complied with their obligations under the Communications Act of 1934, as amended, before being authorized to provide in-region, interLATA services pursuant to section 271. Obligation to respond is not mandatory.

The Commission has estimated that each response to this collection of information will take, on average, 250 hours. This estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how the Commission can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Washington, DC 20554, Paperwork Reduction Project (3060-0756). Your comments also will be accepted via the Internet if you send them to jboley@fcc.gov. Please DO NOT SEND COMPLETED APPLICATION FORMS TO THIS ADDRESS.

Remember – You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection unless it displays a currently valid OMB control number or if it fails to provide you with this notice. This collection has been assigned an OMB control number of 3060-0756.

This notice is required by the Privacy Act of 1974, Public Law 93-579, December 31, 1974, 5 U.S.C. § 552a(e)(3) and the Paperwork Reduction Act of 1995, Public Law 104-13, October 1, 1995, 44 U.S.C. 3507.

By the Chief, Common Carrier Bureau.

News Media contact: Michael Balmoris 202/418-1500.
FCC Common Carrier Bureau contacts: Andrea Kearney 202/418-1580.

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[17] *See id.* at § 1.1204(a)(6).
[18] *Cf.* §§ 1.1200(a); 1.1203.