

Original

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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AUG 25 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)
)
SBC Communications, Inc. and BellSouth)
Corporation)
)
For consent to Transfer of Control or)
Assignment of Domestic Mobile Wireless)
Interests to Alloy, LLC)

File No. 0000117778
et al.

DA- 00-1120
WT Docket No. 00-81

To: Wireless Telecommunications Bureau

CONDITIONAL OBJECTION TO MINOR AMENDMENT

Thumb Cellular Limited Partnership (TCLP), by its attorney, hereby conditionally objects to the August 16, 2000 minor amendment filed by SBC Communications, Inc., BellSouth Corporation, and Alloy LLC in the captioned proceeding. In support whereof, the following is respectfully submitted:

1) On August 16, 2000 the Commission released an *Order*, DA 00-1876, which “requested that SBC and BellSouth . . . file additional documents, some of which may contain proprietary or confidential information.” On August 16, 2000 SBC/BellSouth filed the subject minor amendment.¹

¹ SBC/BellSouth’s August 16, 2000 *Request for Confidential Treatment* states that the minor amendment is being filed “voluntarily.” The August 16 *Order* is clear that the information is being provided in response to a staff inquiry for information and the amendment was not filed on a “voluntary” basis. See 47 C.F.R. § 0.459(e) (voluntarily submitted materials are those submitted “absent any direction by the Commission”).

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The undersigned was not given an opportunity to participate in the informal discussions which lead to the August 16, 2000 *Order* nor with the August 16, 2000 filings made by SBC/BellSouth so undersigned counsel is not privy to the reasons for which the information was requested. Neither the *Order* nor the various filings by SBC/BellSouth indicates that the filings were meant to be responsive to any issue raised by TCLP in the litigation concerning the captioned application. If that is the case, TCLP has no objection.

2) However, if there was conversation between the staff and SBC/BellSouth that some of the documents currently under seal are responsive to any issue currently under litigation, or if the documents were submitted for the purpose of being responsive, due process fairness requires that the undersigned be advised as to which of the documents currently under seal is responsive to the issues being litigated, if any. Counsel should not have to sift through various contractual documents in the hopes of deciphering what others know to be the relevant material.²

3) If the undersigned is not advised as to which documents are viewed as being responsive to the issues, and if the Commission's eventual order relies upon these confidential documents for denying TCLP's requested relief, TCLP will object on the basis of, *inter alia*, unfair surprise; the unfairness of having substantive conversations without undersigned counsel's presence and without service of a summary of the conversations upon him;³ violation of the amendment service rule, 47 C.F.R. § 1.927(i), which requires service upon TCLP of the entire minor amendment material; the due process violation which exists because the protective order prevents counsel from discussing

² Advising counsel in this manner has the practical benefit of keeping him from unnecessarily reviewing the material given SBC/BellSouth's desire to maintain confidentiality, whether or not that desire is based upon legally supportable grounds.

³ TCLP has a right to know what questions are asked and what answers are being given.

relevant information with his client and would require the filing of any necessary pleading *in camera* without being able to provide a copy to the client; the procedural irregularity of adopting a protective order without first knowing whether any information requires confidentiality;⁴ the procedural irregularity of adopting a new case procedure, i.e., the protective order, for the purpose of permitting SBC/BellSouth to amend their application to avoid service of the amendment upon opposing counsel;⁵ and the procedural irregularity of providing confidentiality to documents which are not voluntarily submitted but which are filed to permit further processing of the captioned application. *See* 47 C.F.R. § 0.459(e) (voluntarily submitted materials are those submitted “absent any direction by the Commission”).

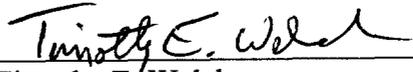
WHEREFORE, in view of the information presented herein, the conditional objection is hereby lodged.

⁴ Confidentiality is accorded where public release of the information will either “(1) to impair the Government’s ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.” *National Parks and Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). While SBC/BellSouth’s August 16, 2000 *Request for Confidential Treatment*, at 2, recites that release of the information would harm their commercial relationships, TCLP is not a competitor, and the mere recitation of competitive harm is insufficient to support a grant of confidential treatment of application related material because “mere conclusory or generalized allegations cannot support a request for nondisclosure.” *Memorandum Opinion and Order*, 15 FCC Rcd. 3289 ¶¶ 5, 8 (Comm’n 2000).

⁵ The amendment, which is more than 1” thick without the attachment of the withheld documents was filed on the same day as the release of the protective order showing an undisclosed coordination of effort between the Commission and SBC/BellSouth.

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August 25, 2000

Respectfully submitted,
THUMB CELLULAR LIMITED PARTNERSHIP



Timothy E. Welch
Its Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have this 25th day of August 2000 sent a copy of the forgoing PETITION TO DISMISS OR DENY by First-Class United States mail, postage prepaid, to the following:

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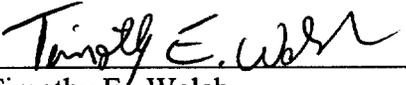
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