



# PUBLIC NOTICE

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DA 01-106

January 16, 2001

**COMMENTS REQUESTED ON THE APPLICATION  
BY VERIZON NEW ENGLAND INC.  
FOR AUTHORIZATION UNDER SECTION 271 OF THE COMMUNICATIONS ACT  
TO PROVIDE IN-REGION, INTERLATA SERVICE IN  
THE STATE OF MASSACHUSETTS  
(CC DOCKET NO. 01-9)**

On January 16, 2001, Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks Inc. filed an application for authorization to provide in-region, interLATA service in the State of Massachusetts, 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 Verizon'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.<sup>1</sup> A copy of this earlier Public Notice is attached hereto. Also attached is a protective order adopted today, *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks Inc. for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, Protective Order, DA-107 (CCB rel. January 16, 2001), that establishes the conditions under which access will be made available to confidential documents submitted in this proceeding by Verizon or any other party.

*Record of Prior Proceeding.* Verizon filed a section 271 application for Massachusetts on September 22, 2000 (CC Docket No. 00-176), which it subsequently withdrew.<sup>2</sup> Verizon has requested that we permit it to incorporate its filings in CC Docket 00-176 into its new Massachusetts application filed today. We grant this request. Commenting parties that seek to have any portion of their prior filings from CC Docket 00-176 incorporated into the record of this new docket should affirmatively so state in their comments.

<sup>1</sup> 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*).

<sup>2</sup> *Application of Verizon New England Inc., et al*, Order, DA 00-2851, CC Docket No. 00-176 (CCB rel. Dec. 18, 2000) (Order terminating docket).

**Comments By Interested Third Parties.** Comments by interested third parties in support of or in opposition to Verizon's application must be filed on or before February 6, 2001. An original and 1 copy of all comments must be filed with the Commission's Secretary, Magalie Roman Salas, 445 12<sup>th</sup> Street, S.W., CY-B402, Washington, D.C. In addition, 12 copies of each comment must be delivered to Susan Pie, Common Carrier Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C224, Washington, D.C. 20554 and 1 copy to International Transcription Service (ITS), 445 12<sup>th</sup> Street, S. W., Room CY-314, Washington, D.C. 20554.

In addition to filing paper comments, parties may also file comments using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Document in Rulemaking Proceedings*, 63 Fed. Reg. 24, 121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

**State Commission and Department of Justice Written Consultations.** The Department of Telecommunications and Energy of Massachusetts (Massachusetts DTE) must file any written consultation on or before February 6, 2001. 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 February 21, 2001. Because the Massachusetts DTE and the Department of Justice are given roles by statute in a section 271 proceeding, copies of all filings, including comments and ex parte submissions, should be filed with those parties.<sup>3</sup>

**Replies.** All participants in the proceeding -- the applicant, interested third parties, the Massachusetts DTE, and the Department of Justice -- may file a reply to any comments filed by any other participant on or before February 28, 2001. An original and 1 copy of all replies must be filed with the Commission's Secretary, Magalie Roman Salas, 445 12<sup>th</sup> Street, S.W., CY-B402, Washington, D.C. In addition, 12 copies of each reply must be delivered to Susan Pie, Common Carrier Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-5-C224, Washington, D.C. 20554 and 1 copy to International Transcription Service (ITS), 445 12<sup>th</sup> Street, S.W., Room CY-314, Washington, D.C. 20554.

**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

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<sup>3</sup> Please forward copies to the attention of: (1) Cathy Carpino, Massachusetts Department of Telecommunications and Energy, One South Station, Boston, MA 02110 and (2) Josh Walls, U.S. Department of Justice, Antitrust Division, Telecommunications Task Force, 1401 H St., NW, Suite 8000, Washington, DC 20005.

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 12<sup>th</sup> 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 Susan Pié, Policy and Program Planning Division, Common Carrier Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C224.

All questions relating to access to confidential information submitted by Verizon should be directed to Jonathan Rabkin, Kellogg & Huber, (202) 326-7922.

**Availability of Information.** A wide range of information relating to Verizon's section 271 application for Massachusetts may be retrieved from the Commission's World Wide Web site at <http://www.fcc.gov>.<sup>4</sup> Moreover, Verizon has voluntarily agreed to post certain documents on the World Wide Web at its website, <http://newscenter.verizon.com/policy>. Specific information, such as comments and *ex parte* submissions, may be obtained from the Electronic Comment Filing System (ECFS), which is accessible through the Commission's website. 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 12<sup>th</sup> 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, (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.<sup>5</sup> Accordingly, *ex parte* presentations will be permitted, provided they are disclosed in conformance with the Commission's *ex parte* rules.<sup>6</sup> 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,

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<sup>4</sup> 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.

<sup>5</sup> 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).

<sup>6</sup> See 47 C.F.R. §§ 1.1202, 1.1206(b). Interested parties are to file with the Secretary of the Commission and serve Susan Pié, Policy and Programming Planning Division, Common Carrier Bureau, Federal Communications Commission, Rm. 5-C224, 445 Twelfth St., S.W., Washington, DC 20554, and ITS, Inc., 2131 20<sup>th</sup> 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. Copies should also be filed with the Department of Justice and the Massachusetts DTE, as noted above.

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 Susan Pié, Policy and Programming Planning Division, Common Carrier Bureau, Federal Communications Commission, Rm. 5-C224, 445 Twelfth St., S.W., Washington, DC 20554, with copies of any *ex parte* presentations made in this docket to any member of the Commission.

In recognition of the burden placed on all parties by the 90-day statutory timeframe, Verizon has voluntarily agreed to post (within 24 hours of filing) a copy of each *ex parte* submission it files with the Commission in this docket on the World Wide Web at its website: <http://newscenter.verizon.com/policy>. Parties filing *ex parte* submissions are requested to provide Verizon with a copy of each *ex parte* submission within 24 hours by fax, messenger, or overnight delivery.<sup>7</sup>

For purposes of this proceeding, any oral *ex parte* presentations from the Department of Justice and the Massachusetts DTE are deemed to be exempt *ex parte* presentations.<sup>8</sup> 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 Massachusetts DTE -- shall prepare a summary for inclusion in the record in accordance with Commission rules, unless such a summary is being prepared by Commission staff.<sup>9</sup> We also waive any page limits for written *ex parte* submissions by the Department of Justice or the Massachusetts DTE.<sup>10</sup>

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.<sup>11</sup>

***Ex Parte Meeting Schedule.*** The Common Carrier Bureau will be available for meetings on January 30, 2001 and February 23, 2001 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 Verizon's application. The purpose of these meetings is to give interested parties an

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<sup>7</sup> Copies of *ex parte* submissions delivered to Verizon shall be addressed to: Ann Berkowitz, 1300 I Street, Suite 400W, Washington, DC 20005. Fax (202) 336-7922, Telephone: (202) 336-7888.

<sup>8</sup> 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).

<sup>9</sup> See *id.* § 1.1206(a).

<sup>10</sup> See *id.* § 1.1200(a).

<sup>11</sup> See *id.* §§ 1.1200; 1.1203.

opportunity to inform Bureau staff of such issues prior to filing their written comments or reply comments. 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 Susan Pié, Policy and Program Planning Division, at (202) 418-1443. 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:	Jan. 30, 2001
Comments Due (includes Massachusetts DTE):	Feb. 6, 2001
U.S. Department of Justice Evaluation:	Feb. 21, 2001
Ex Parte Meetings related to Reply Comments:	Feb. 23, 2001
Reply Comments Due:	Feb. 28, 2001

By the Common Carrier Bureau.

News Media contact: Michael Balmoris -- (202) 418-1500  
Common Carrier Bureau contact: Eric Einhorn -- (202) 418-1580



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

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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.<sup>1</sup> The Common Carrier Bureau made minor changes to these procedural requirements in its *July 8, 1998 Public Notice*.<sup>2</sup> 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**

<sup>1</sup> *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).

<sup>2</sup> *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,<sup>3</sup> 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 12<sup>th</sup> 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

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<sup>3</sup> 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 12<sup>th</sup> 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 12<sup>th</sup> 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 20<sup>th</sup> 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.<sup>4</sup> 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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<sup>4</sup> 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.”<sup>5</sup> It is the petitioner who has the “burden of clarifying its position” before the agency.<sup>6</sup> 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.<sup>7</sup> 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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<sup>5</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

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

<sup>7</sup> 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;<sup>8</sup>
- (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);<sup>9</sup>
- (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.<sup>10</sup>

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**

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<sup>8</sup> See *id.* at § 1.49.

<sup>9</sup> 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).

<sup>10</sup> 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.<sup>11</sup> 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. State Commission and Department of Justice Written Consultations**

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

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<sup>11</sup> 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.<sup>12</sup> 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

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<sup>12</sup> 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,<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> Accordingly, *ex parte* presentations will be permitted, provided they are disclosed in conformance with Commission *ex parte* rules.<sup>16</sup> 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

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<sup>13</sup> 47 C.F.R. § 1.45.

<sup>14</sup> See 47 C.F.R. § 1.4(h).

<sup>15</sup> See *id.* at §§ 1.1200(a), 1.1206.

<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup>

#### **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](mailto: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: Eric Einhorn 202/418-1580

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<sup>17</sup> See *id.* at § 1.1204(a)(6).

<sup>18</sup> Cf. §§ 1.1200(a); 1.1203.