

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

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In the Matter of)
)
Notice of Inquiry Concerning a Review of the)
Equal Access and Nondiscrimination)
Obligations Applicable to Local Exchange)
Carriers)
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)
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)

CC Docket No. 02-39

NOTICE OF INQUIRY

Adopted: February 19, 2002

Released: February 28, 2002

Comment Date: [60 days after publication in the Federal Register]
Reply Comment Date: [90 days after publication in the Federal Register]

By the Commission:

I. INTRODUCTION

1. This Notice of Inquiry (NOI) examines the continued importance of the equal access and nondiscrimination obligations of section 251(g) of the Communications Act of 1934, as amended (the Act). In this NOI, the Commission seeks to develop a baseline record regarding the current state of equal access and nondiscrimination requirements. As such, we seek comment on the existing equal access and nondiscrimination obligations of Bell Operating Companies (BOCs), both with and without section 271 authority. We also seek comment on the equal access and nondiscrimination obligations of incumbent independent local exchange carriers (LECs) and competitive LECs. Then, we ask commenters what the equal access and nondiscrimination requirements of all these carriers should be, considering the many legal and marketplace changes that have transpired since the earlier requirements were adopted.

2. The Commission intends to conduct this inquiry in light of several goals. First, we seek to facilitate an environment that will be conducive to competition, deregulation and innovation. As carriers enter new markets, certainty about their equal access and nondiscrimination obligations will enable them to pursue innovative new services and marketing arrangements with greater confidence that they are complying with the law. Likewise, carriers that are freed from unnecessary regulation are more likely to compete and innovate more aggressively. Second, we seek to establish a modern equal access and nondiscrimination regulatory regime that will benefit consumers. As the number of carriers and services increases,

it is important that consumers have the information necessary to make informed decisions about their telecommunications purchases. We also seek to balance regulatory costs against these benefits. Finally, we seek to harmonize the requirements of similarly-situated carriers as much as possible.

II. BACKGROUND

3. By adopting the Telecommunications Act of 1996 (1996 Act), Congress sought to lay the foundation for pro-competitive, deregulatory telecommunications policies that facilitate investment in and deployment of advanced services to all Americans.¹ Mindful that competition would not develop in all markets immediately, Congress left in place certain safeguards. Section 251(g) is one such provision.² That statutory provision preserves the equal access and nondiscrimination requirements that were established for LECs “under any court order, consent decree, or regulation, order, or policy of the Commission” prior to passage of the 1996 Act.³ Notably, section 251(g) imports the obligations of the Modification of Final Judgment (MFJ), the consent decree that settled the Department of Justice’s antitrust suit against AT&T and required divestiture of the BOCs, as well as Commission equal access requirements.⁴ The MFJ, and the court cases that interpreted it, contain equal access and nondiscrimination obligations that apply to BOCs today, but reflect concerns that existed at a time when they were the monopoly providers of local services and were prohibited from offering interexchange services.

4. Section 251(g) grants the Commission authority to prescribe regulations superseding pre-existing equal access and nondiscrimination obligations. Accordingly, in this proceeding, we examine equal access and nondiscrimination requirements that were imposed on LECs prior to passage of the 1996 Act. In so doing, we intend to consider or evaluate the broad context and

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 *et seq.*

² Section 251(g) provides:

On and after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment. During the period beginning on such date of enactment and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

47 U.S.C. § 251(g).

³ *Id.*

⁴ See *United States v. American Tel. and Tel.*, 552 F. Supp. 131 (D.D.C. 1982), *aff’d sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

purposes of the 1996 Act to determine which, if any, equal access and nondiscrimination requirements should carry over to the present, and which should not.

5. The Commission has not undertaken a comprehensive review of section 251(g), but several of the Commission's orders have touched or relied on section 251(g). We briefly summarize some of these orders. The Commission addressed section 251(g) in the *First Local Competition Order*, where it noted that "the primary purpose of section 251(g) is to preserve the right of interexchange carriers to order and receive exchange access services if such carriers elect not to obtain exchange access through their own facilities or by means of unbundled elements purchased from an incumbent."⁵ The Commission also touched on section 251(g) in the *Second Local Competition Order*, in which it held that section 251(g) preserves the equal access obligations that the BOCs and GTE had in their consent decrees, "but does not exempt them or other LECs from the toll dialing parity requirements" of section 251(b)(3).⁶ In addition, the Commission has affirmed that section 251(g) rests exclusive authority to modify LATA boundaries with the Commission, and that such authority is an essential component of the Commission's authority to enforce the equal access and interconnection restrictions established under the AT&T Consent Decree.⁷

6. Section 251(g) was also discussed in the *Non-Accounting Safeguards Order*, which implemented the non-accounting safeguards of sections 271 and 272. In that order, the Commission acknowledged the role that "[c]ontinuing enforcement of the MFJ equal access requirements and pre-existing Commission-prescribed interconnection requirements, pursuant to section 251(g)" plays in safeguarding against BOC discrimination in favor of the affiliates of their merger partners.⁸ And, in response to concerns about the marketing practices of BOCs that provide interLATA services through separate section 272 affiliates, the Commission concluded that section 251(g) requires that BOCs "continue to inform new local exchange customers of their right to select the interLATA carrier of their choice and take the customer's order for the interLATA carrier the customer selects. . . . Specifically, the BOCs must provide any customer who orders new local exchange service with the names and, if requested, the telephone numbers

⁵ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499, 15682, para. 362 (1996) (*First Local Competition Order*) (subsequent history omitted).

⁶ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19410, para. 29 (1996) (*Second Local Competition Order*), vacated in part sub nom. *California v. FCC*, 124 F.3d 934, 942 (8th Cir. 1997), rev'd in part sub nom. *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

⁷ *Application for Review and Petition for Reconsideration or Clarification of Declaratory Ruling Regarding US West Petitions to Consolidate LATAs in Minnesota and Arizona*, Memorandum Opinion and Order, 14 FCC Rcd 14392 (1999); *aff'g Petition for Declaratory Ruling Regarding US West Petitions to Consolidate LATAs in Minnesota and Arizona*, Order, 12 FCC Rcd 4738, 4748, para. 19 (Com. Car. Bur. 1997).

⁸ *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 21939, para. 70 (1996) (*Non-Accounting Safeguards Order*) (subsequent history omitted).

of all of the carriers offering interexchange services in its service area.”⁹ This obligation applies to the BOCs before they obtain section 271 authority in a state, but it continues to apply after a BOC begins to provide interLATA services pursuant to section 271. “[A] BOC may market its affiliate’s interLATA services to inbound callers, provided that the BOC also informs such customers of their right to select the interLATA carrier of their choice.”¹⁰

7. The Commission applied this precedent to BellSouth’s proposed script for inbound telemarketing in the *BellSouth South Carolina 271 Order*.¹¹ Because “section 272(g) confers upon BOCs authority to market and sell services of their long distance affiliates,” the Commission held that “a BOC, during an inbound telephone call, should be allowed to recommend its own long distance affiliate, as long as it contemporaneously states that other carriers also provide long distance service and offers to read a list of all available interexchange carriers in random order.”¹² Indeed, the D.C. Circuit affirmed this general approach to joint marketing of an affiliate’s interexchange services.¹³

8. Section 251(g) was central to a complaint that AT&T filed against Bell Atlantic.¹⁴ AT&T alleged that Bell Atlantic marketed the interLATA services of its section 272 affiliate during incoming calls from its existing local exchange customers in violation of section 251(g). Specifically, AT&T took issue with Bell Atlantic’s practice of marketing its affiliate’s interLATA services during incoming calls from customers requesting an additional line, without informing those customers that they had a choice of interexchange providers or offering to read customers a list of carriers that provide interexchange service in the customers’ area.¹⁵ The

⁹ *Id.* at 22046, para. 292 (footnotes omitted).

¹⁰ *Id.* at 22047, para. 292 (footnote omitted).

¹¹ *Application of BellSouth Corp., et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina*, Memorandum Opinion and Order, 13 FCC Rcd 539, 667-72, paras. 231-39 (1997) (*BellSouth South Carolina Section 271 Order*), *aff’d sub nom. BellSouth Corp. v. FCC*, 162 F.3d 678 (D.C. Cir. 1998). The Commission found the following proposed script to conform to section 251(g):

You have many companies to choose from to provide your long distance service. I can read from a list the companies available for selection, however, I’d like to recommend BellSouth Long Distance.

BellSouth South Carolina Section 271 Order, 13 FCC Rcd at 669, para. 233 (footnote omitted).

¹² *BellSouth South Carolina Section 271 Order*, 13 FCC Rcd at 670, para. 237, 671-72, para. 239. The Commission retreated somewhat from an earlier determination that Ameritech’s proposed inbound telemarketing script violated section 251(g). *See id.* at 671, para. 238 (discussing *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, 12 FCC Rcd 20543, 20737-38, paras. 375-76 (1997)).

¹³ *See AT&T Corp. v. FCC*, 220 F.3d 607, 632 (D.C. Cir. 2000).

¹⁴ *AT&T Corp. v. New York Tel. Co.*, Memorandum Opinion and Order, 15 FCC Rcd 19997 (2000).

¹⁵ *See id.* at 19998, para. 4.

Commission found that Bell Atlantic was not required to do either pursuant to section 251(g). Rather, the Commission found that those obligations only apply to inbound calls seeking “new service.”¹⁶

9. Finally, the Commission most recently interpreted section 251(g) in the recent *ISP-Bound Traffic Order on Remand*, where the Commission discussed the relationship between sections 251(g) and 251(b)(5). The Commission found that section 251(g) maintains the “receipt of compensation” requirements that apply to “information access” services, and thus, the Commission concluded, excepts those services from the requirement of section 251(b)(5) that “carriers establish reciprocal compensation arrangements for the transport and termination of telecommunications.”¹⁷ That is, the Commission found that Congress, through section 251(g), “limited the reach of section 251(b)(5) to exclude ISP-bound traffic.”¹⁸ The Commission concluded that section 251(g) preserves the existing compensation regime for that traffic and the Commission’s authority to change that regime.¹⁹ In reaching these findings, the Commission determined that the term “information access” in section 251(g) incorporates the MFJ definition of that term.²⁰

III. REQUEST FOR COMMENT

10. Before seeking input on specific legal and policy issues, the Commission seeks comment on the question of how it should go about changing or eliminating any existing equal access and nondiscrimination requirements, should it decide to do so. Specifically, section 251(g) states that all pre-1996 Act requirements continue to apply “until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission.”²¹ Congress expected that “[w]hen the Commission promulgates its new regulations, . . . the Commission will explicitly identify those parts of the interim restrictions and obligations that it is superseding so

¹⁶ *Id.* at 19999, para. 6. The Commission adopted the Decree Court’s definition of “new service” as “receiv[ing] service from the BOC for the first time, or mov[ing] to another location within the BOC’s in-region territory.” *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22046, para. 292 (citing *United States v. Western Elec. Co.*, 578 F. Supp. 668, 676-77 (D.D.C. 1983)).

¹⁷ 47 U.S.C. § 251(b)(5), (g).

¹⁸ *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9154, para. 3 (2001) (*ISP-Bound Traffic Order on Remand*) (footnote omitted).

¹⁹ *See id.*

²⁰ The MFJ defined the term as “the provision of specialized exchange telecommunications services . . . in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services.” *Id.* at 9171, para. 44 (quoting *United States v. AT&T*, 552 F. Supp. at 196, 229). The Commission interpreted this definition “to include all access traffic that was routed by a LEC ‘to or from’ providers of information services, of which ISPs are a subset.” *Id.*

²¹ 47 U.S.C. § 251(g).

that there is no confusion as to what restrictions and obligations remain in effect.”²² We ask parties to comment on this requirement. For example, should the Commission adopt new rules to replace the existing section 251(g) requirements or is it enough for the Commission to state in an order that such requirements are no longer necessary in the wake of the 1996 Act? Alternatively, should the Commission forbear from such requirements to the extent they meet the standards of section 10?²³

A. Changing Market Conditions

11. We seek comment on what equal access and nondiscrimination requirements were carried through from the MFJ, and to which carriers these requirements apply. We note that the MFJ’s equal access and nondiscrimination obligations were originally imposed to respond to the concern that the BOCs would provide inferior interconnection to AT&T’s competitors than to AT&T. In an era when there are no longer any dominant interexchange providers, we seek comment on the extent that these requirements are relevant today. We further seek comment on whether the goals underlying section 251(g) can be achieved through any other means, including reliance on other provisions of section 251 and the requirements that the Commission has imposed pursuant to those provisions. We further ask how sections 201 and 202, and the Commission’s orders interpreting those sections, affect the need for separate equal access and nondiscrimination requirements in light of current marketplace conditions including the state of competition in the local market and BOC entry into the long distance market.

B. Bell Operating Companies

12. In this part, we seek comment on the existing equal access and nondiscrimination requirements of BOCs, which include the line of cases stemming from the MFJ. Commenters should discuss the differences between the obligations of BOCs that have not yet obtained section 271 authority and those that have and are providing interLATA telecommunication services that originate in one and terminate in another Local Access and Transport Area through a separate affiliate. We also ask for information on what the regulatory costs to these carriers are under the current equal access and nondiscrimination requirements.

13. In addition to seeking a complete record on current obligations, we seek comment on what the BOCs’ equal access and nondiscrimination obligations should be. As noted above, section 251(g) maintains obligations that were created when the BOCs were the monopoly providers of local services and were prohibited from offering interexchange services. Since that time, the local service market has become more competitive; this can be seen most readily in, for instance, New York and Texas, states where the Commission has found that the BOC has met the competitive checklist of section 271.²⁴ We therefore seek comment as to whether changes in

²² S. Conf. Rep. 104-230, at 123 (1996).

²³ See 47 U.S.C. § 160.

²⁴ See *Local Telephone Competition: Status as of June 30, 2001*, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission (Feb. 2002), at Table 6. Competing LECs serve 23 percent of all (continued....)

equal access and nondiscrimination requirements are now needed for BOCs and what changes are appropriate.

14. In particular, we seek comment on whether BOCs should be required to provide information regarding all available interexchange providers to all customers seeking service, not just customers seeking “new service” as previously defined. Customers seeking “new service” are customers receiving service from the particular BOC for the first time or moving to another location with the BOC’s area.²⁵ Also, we ask commenters to provide input on whether concerns regarding equal access for a customer’s second line differ from concerns regarding its first line. Likewise, we request comment on equal access obligations with respect to additional lines, such as multiple lines for small businesses.

15. We also seek comment on what type of marketing agreements between BOCs and other carriers are permissible under section 251(g). In the *Qwest Teaming Order*, the Commission “seriously question[ed]” whether section 251(g) would permit the marketing arrangements between U S WEST, Ameritech and Qwest at issue,²⁶ but the Commission held in the *1-800-54NYNEX Order* that the record on the arrangement in that case did not support a finding that the service violated section 251(g).²⁷ We seek to broaden the record on this issue and ask for comment on the factual circumstances under which marketing agreements should be permitted. We ask commenters to pay particular attention to marketing agreements involving BOCs with section 271 authority, as those carriers have different incentives vis-à-vis interexchange carriers than BOCs without section 271 authority.

16. We seek comment on the relationship between sections 272 and 251(g) and the sphere of marketing activities that BOCs with section 271 authority may pursue. Section 272(c) provides that a BOC “may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the

(Continued from previous page) _____

end user lines in New York -- the largest percentage of any state. New York is the first state where a BOC obtained section 271 authorization. See *Application by Bell Atlantic New York for Authorization under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3953 (1999), *aff’d sub nom. AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000). Competing LECs serve 14 percent of all end user lines in Texas, which is where the second section 271 authorization was granted. See *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region InterLATA Services in Texas*, Memorandum Opinion and Order, 15 FCC Rcd 18354 (2000).

²⁵ See *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22046, para. 292 (citing *United States v. Western Elec. Co.*, 578 F. Supp. at 676-77).

²⁶ *AT&T Corp. v. Ameritech Corp.*, Memorandum Opinion and Order, 13 FCC Rcd 21438, 21482, para. 63 (1998), *aff’d sub nom. U S WEST Communications, Inc. v. FCC*, 177 F.3d 1057 (D.C. Cir. 1999), *cert. denied*, 528 U.S. 1188 (2000).

²⁷ *AT&T Corp. v. NYNEX Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 16087 (2001).

establishment of standards.”²⁸ Section 272(g)(3) states that “[t]he joint marketing and sale of services permitted under this subsection shall not be considered to violate the nondiscrimination provisions of subsection (c).”²⁹ We ask commenters to expand on these provisions and their relationship to section 251(g). Should BOCs be permitted to conduct outbound marketing to try to convince their current local customers to presubscribe to the interexchange services of their interLATA affiliates? We also seek comment on whether the BOC should be permitted to stress the merits of its interLATA affiliate in billing inserts. Furthermore, we ask parties to comment on whether the BOC should be permitted to offer discounts on local service in return for signing up with its interexchange affiliate. Should the Commission compile a list of permissible marketing activities in order to promote regulatory certainty?

17. As stated earlier, one goal of this proceeding is to harmonize regulatory obligations and benefits with regard to similarly-situated market participants. We seek comment on whether BOCs with section 271 authority are similarly situated to incumbent independent LECs, which are also permitted to provide interLATA services. In particular, we seek comment on whether BOCs that provide interLATA services through a separate section 272 affiliate are similarly situated to incumbent independent LECs that provide interLATA services through a separate affiliate. Should the equal access and nondiscrimination obligations of these LECs be identical? Or are there differences between BOCs with section 271 authority and incumbent independent LECs that justify differences in their equal access and nondiscrimination obligations? To what extent do the statute and legislative history guide our decision whether to treat independent LECs and BOCs equally? We draw commenters’ attention to our recent notice asking whether the separate affiliate requirement for some incumbent independent LECs remains necessary generally.³⁰

18. Likewise, we seek comment on the equal access and nondiscrimination obligations that should apply to BOCs that provide interLATA services on an integrated basis, rather than through a section 272 affiliate. BOCs could provide interLATA services on an integrated basis because section 272 has sunset³¹ or because they have obtained forbearance from section 272.³² Should those BOCs have the same obligations as other LECs that provide interLATA services on an integrated basis, such as incumbent independent LECs that provide interLATA services using resale?³³

²⁸ 47 U.S.C. § 272(c).

²⁹ *Id.* § 272(g)(3).

³⁰ *2000 Biennial Regulatory Review; Separate Affiliate Requirements of Section 64.1903 of the Commission’s Rules*, Notice of Proposed Rulemaking, 16 FCC Rcd 17270 (2001) (*Incumbent Independent LEC NPRM*).

³¹ *See* 47 U.S.C. § 272(f)(1).

³² *See id.* § 160; *see also In the Matters of Bell Operating Companies*, Memorandum Opinion and Order, 13 FCC Rcd 2627 (1998).

³³ *Cf. Incumbent Independent LEC NPRM*.

C. Incumbent Independent Local Exchange Carriers

19. Section 251(g) also imports equal access and nondiscrimination requirements that existed for incumbent independent LECs prior to the 1996 Act. We seek comment on what, if any, “consent order, consent decree, or regulation, order, or policy of the Commission” applies to incumbent independent LECs.³⁴ We also ask for information on what the regulatory costs to these carriers are under the current equal access and nondiscrimination requirements. We seek comment on whether those requirements should continue to apply to incumbent independent LECs in view of the new competitive paradigm contemplated by the 1996 Act. We also ask parties to comment on the extent to which we can harmonize the obligations of incumbent independent LECs that provide interLATA services through a separate affiliate with the obligations of other LECs that provide interLATA services through a separate affiliate. Likewise, we ask parties to address the extent to which we can harmonize the obligations of incumbent independent LECs that provide interLATA services on an integrated basis with the obligations of other LECs that provide interLATA services on an integrated basis.

D. Competitive Local Exchange Carriers

20. We seek comment on the existing equal access and nondiscrimination obligations that apply to competitive LECs. What Commission orders or other law impose equal access and nondiscrimination requirements on non-incumbent LECs today, and what are the regulatory costs to these carriers of those requirements? What, if any, should the equal access and nondiscrimination obligations of competitive LECs be? We note that there is no prohibition on these carriers providing interLATA services, and providing such services on an integrated basis. Can we harmonize the obligations of competitive LECs with the obligations of other LECs that provide interLATA services on an integrated basis?

IV. PROCEDURAL MATTERS

21. Pursuant to sections 1.415, 1.419, and 1.430 of the Commission’s rules, 47 C.F.R. §§ 1.415, 1.419, 1.430, interested parties may file comments within 60 days after publication in the Federal Register, and reply comments within 90 days after publication in the Federal Register. All filings should refer to CC Docket No. 02-39. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS) or by filing paper copies.³⁵ 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 Service mailing address, and the applicable docket number, which in this instance is CC Docket No. 02-39. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to

³⁴ 47 U.S.C. § 251(g).

³⁵ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

<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.

22. Parties that choose to file by paper must file an original and four copies of each. Parties are hereby notified that effective December 18, 2001, the Commission’s contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at a new location in downtown Washington, DC. The address is 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location will be 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

23. This facility is the only location where hand-delivered or messenger-delivered paper filings for the Commission’s Secretary will be accepted. Accordingly, the Commission will no longer accept these filings at 9300 East Hampton Drive, Capitol Heights, MD 20743. In addition, this is a reminder that, effective October 18, 2001, the Commission discontinued receiving hand-delivered or messenger-delivered filings for the Secretary at its headquarters location at 445 12th Street, SW, Washington, DC 20554.

24. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service (USPS) Express Mail and Priority Mail), must be addressed to 9300 East Hampton Drive, Capitol Heights, MD 20743. This location will be open 8:00 a.m. to 5:30 p.m. The USPS first-class mail, Express Mail, and Priority Mail should continue to be addressed to the Commission’s headquarters at 445 12th Street, SW, Washington, DC 20554. The USPS mail addressed to the Commission’s headquarters actually goes to our Capitol Heights facility for screening prior to delivery at the Commission.

If you are sending this type of document or using this delivery method...	It should be addressed for delivery to...
Hand-delivered or messenger-delivered paper filings for the Commission’s Secretary	236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002 (8:00 to 7:00 p.m.)
Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail)	9300 East Hampton Drive, Capitol Heights, MD 20743 (8:00 a.m. to 5:30 p.m.)
United States Postal Service first-class mail, Express Mail, and Priority Mail	445 12 th Street, SW Washington, DC 20554

25. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission’s duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

26. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules.³⁶ We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage that parties track the organization set forth in this NOI to facilitate our internal review process.

27. Pursuant to 47 C.F.R. § 1.200(a), which permits the Commission to adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires, we announce that this proceeding will be governed by "permit-but-disclose" *ex parte* procedures that are applicable to non-restricted proceedings under 47 C.F.R. § 1.1206. Designating this proceeding as "permit-but-disclose" will provide an opportunity for all interested parties to receive notice of the various technical, legal, and policy issues raised in *ex parte* presentations made to the Commission in the course of this proceeding. This will allow interested parties to file responses or rebuttals to proposals made on the record in this proceeding. Accordingly, we find that it is in the public interest to designate this proceeding as "permit-but-disclose."

28. Parties making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in Section 1.206(b) as well. Interested parties are to file any written *ex parte* presentations in this proceeding, in accordance with the procedure listed above, with the Commission Acting Secretary, William F. Caton, and serve with copies: (1) Janice Myles, Policy and Program Planning Division, Common Carrier Bureau, 445 12th Street, S.W., Room 5-C327, Washington, D.C. 20554; and (2) the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554.

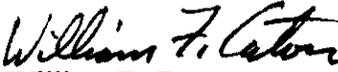
29. Alternative formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 voice, (202) 418-7365 TTY, or <bmillin@fcc.gov>. This NOI can also be downloaded in Microsoft Word and ASCII formats at <<http://www.fcc.gov/ccb/cpd>>.

³⁶ See 47 C.F.R. § 1.49.

V. ORDERING CLAUSE

30. Accordingly, IT IS ORDERED that this NOTICE OF INQUIRY IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary