



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET N.W. WASHINGTON, D.C. 20554

News media information 202/418-0500 Recorded listing of releases and texts 202/418-2222

DA 97-1072
May 21, 1997

**COMMENTS REQUESTED ON APPLICATION BY AMERITECH MICHIGAN
FOR AUTHORIZATION UNDER SECTION 271 OF THE COMMUNICATIONS ACT
TO PROVIDE IN-REGION, INTERLATA SERVICE IN THE STATE OF MICHIGAN
(CC DOCKET NO. 97-137)**

On May 21, 1997, Ameritech Michigan filed an application for authorization to provide in-region interLATA service in the State of Michigan, 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 the Commission's processing of that application. The Commission in a prior Public Notice adopted other 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 that earlier Public Notice is attached hereto. Also attached is a protective order adopted today, Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Michigan, Protective Order, DA 97-1073 (Common Carrier Bur. rel. May 21, 1997), that establishes the conditions under which access to confidential documents submitted in this proceeding by Ameritech Michigan or any other party will be made available.

Comments By Interested Third Parties. Comments in support of or opposition to the Ameritech Michigan application by interested third parties must be filed on or before **June 10, 1997**.

State Commission and Department of Justice Written Consultations. The Michigan Public Service Commission (Michigan Commission) must file any written consultation on or before **June 10, 1997**. Any written consultation by the Department of Justice (which, by the Act's express terms, must become part of the record) must be filed on or before **June 25, 1997**.

Replies. All participants in the proceeding -- the applicant, interested third parties, the

¹ See *Procedures for Bell Operating Company Applications Under New Section 271 of the Communications Act*, Public Notice, FCC 96-469 (rel. Dec. 6, 1996) (OMB Control No. 3060-0756).

Washington, D.C. 20554. Applications will be available for public inspection during regular business hours in the Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. The applicant must also submit a copy of the application simultaneously to (i) the Department of Justice c/o Donald J. Russell, Telecommunications Task Force, Antitrust Division, Room 8205, 555 Fourth Street, NW, Washington, D.C. 20001, (ii) the relevant State regulatory commission, and (iii) the Commission's copy contractor, ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C., 20037, tel. (202) 857-3800.

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. We expect 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. In the event that the applicant submits (in replies or ex parte filings) factual evidence that changes its application in a material respect, the Commission reserves the right to deem such submission a new application and start the 90-day review process anew. All factual assertions made by any applicant (or any commenter) must be supported by credible evidence or will not be entitled to any weight.

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 either the application itself or a supplemental statement filed within five days after the application contain 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.² 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 Brief in Support may not exceed 100 pages. There is no page limit, however, on 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;³
- (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

² See 47 C.F.R. §§ 1.49, 1.741-1.749.

³ See *id.* at § 1.49.

- 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);⁴
 - (h) an Anti-Drug Abuse Act certification as required by 47 C.F.R. § 1.2002; and
 - (i) an affidavit signed by an officer or duly authorized employee certifying that all information supplied in the application is true and accurate.⁵

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.

D. Comments By Interested Third Parties

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. 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 50 pages. The specific due date for comments will be set forth in the Initial Public Notice. 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. Supporting documentation is welcome without page limits. To file comments (or any other filing set forth below) in a section 271 proceeding, commenters need to follow the applicable procedures outlined in section A of this Public Notice.

⁴ Item (g) is obviously the core item 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).

⁵ See 47 C.F.R. § 1.743.

E. State Commission and Department of Justice Written Consultations

Many State commissions have already commenced proceedings to examine Bell company 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 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 G 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 are limited to 35 pages and 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. Reply comments may not raise new arguments that are not directly responsive to arguments other participants have raised, nor may the replies be repetitive of arguments made by that party in the application or initial comments. 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. Supporting documentation is welcome without page limits.

G. Ex Parte Rules - Non-Restricted Proceeding

Because of the broad policy issues involved, section 271 application proceedings initially will be considered non-restricted proceedings.⁶ Accordingly, *ex parte* presentations will be permitted, provided they are disclosed in conformance with Commission *ex parte* rules.⁷ 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

⁶ See *id.* at §§ 1.1200(a), 1.1206.

⁷ See *id.* at §§ 1.1202, 1.1206(a).

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.

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 we obtain through such oral *ex parte* presentations new factual information on which we may rely in our decision-making process, the party submitting the information (the Department of Justice or the relevant State commission) shall prepare a summary for inclusion in the record in accordance with Commission rules,⁸ unless such a summary is being prepared by Commission staff. We also waive any page limits for 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.⁹

This Public Notice contains new information collections subject to the Paperwork Reduction Act of 1995. Accordingly, we are presently requesting emergency approval from the Office of Management and Budget for these collections. When the Commission receives such approval, it will issue a Public Notice to that effect, after which the procedural requirements and policies contained herein will become effective.¹⁰

By the Commission.

News Media contact: Mindy J. Ginsburg (202) 418-1500.

FCC Common Carrier Bureau contact: David Ellen (202) 418-1580.

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⁸ See *id.* at § 1.1206(a).

⁹ Cf. §§ 1.1200(a)-(b); 1.1203.

¹⁰ On this last point, we note that the notice and comment and effective date provisions of the Administrative Procedure Act are not applicable to these procedural requirements and policies. See 5 U.S.C. § 553(b), (d).