

PUBLIC NOTICE

Federal Communications Commission
1919 M St., N.W.
Washington, D.C. 20554

Approved by OMB
3060-0807
Expires 05/31/98
Avg. burden hours per response: 41
DA 97-2540

CORRECTED

SUPPLEMENTAL PROCEDURES FOR PETITIONS PURSUANT TO
SECTION 252(e)(5) OF THE COMMUNICATIONS ACT

Released: December 4, 1997

Section 252(e)(5) of the Communications Act of 1934, as amended (the Act), states that "[i]f a State commission fails to act to carry out its responsibility under this section (i.e. section 252] in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission." To date, we have received five petitions for preemption pursuant to this section. Our experience so far with those petitions has made clear that the parties' observance of certain procedures would help us ensure that we process any future section 252(e)(5) petitions expeditiously. This public notice sets forth those procedures.

Section 51.803 of the Commission's rules sets forth procedures governing section 252(e)(5) petitions. Section 51.803(a)(1) specifies that each party seeking preemption pursuant to section 252(e)(5) shall file its petition with the Secretary of the Commission. To ensure that Commission staff can address such petitions as quickly as possible, each party seeking preemption pursuant to section 252(e)(5) should caption its preemption petition, "Petition of [Petitioner's Name] pursuant to Section 252(e)(5) of the Communications Act." In addition, on the date of the petition's filing, the petitioner should serve a copy of the petition by hand delivery on Janice Myles, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554. Each petitioner should also send a copy to the Commission's contractor for public service records duplication, International Transcription Service, Inc. (ITS), 1231 20th Street, N.W., Washington, D.C. 20036.

Section 51.803(a)(2) of the Commission's rules requires each party seeking preemption pursuant to section 252(e)(5) to "ensure that the state commission and the other parties to the proceeding or matter for which preemption is sought are served with the petition ... on the same date that the petitioning party serves the petition on the Commission." Each section 252(e)(5) petitioner should state in its certificate of service accompanying the petition the steps it is taking to comply with this requirement (e.g., hand delivery or overnight mail).

Section 51.803(a)(3) states that the applicable state commission and the parties to the state commission proceeding that gave rise to the petition may file responses to the petition with the Secretary. These responses are due within 15 days of the petition's filing and service pursuant to section 51.803(a)(1) and (a)(2). To avoid any possible confusion regarding the due date for responses, we will issue a public notice announcing the due date shortly after receiving any section 252(e)(5) petition. Parties should serve Janice Myles by hand and ITS, as specified above.

Section 51.803(a)(1) requires that any petition seeking preemption pursuant to section 252(e)(5) shall "be supported by an affidavit" and state "with specificity the basis for the petition and any information that supports the claim that the state has failed to act, including, but not limited to, the applicable provisions of the Act and the factual circumstances supporting a finding that the state commission has failed to act." To ensure that we are able to evaluate any factual allegations in section 252(e)(5) petitions, each petitioner should append to its petition the full text of any State commission decision regarding the proceeding or other matter giving rise to the petition as well as the relevant portions of any transcripts, letters, or other documents on which the petitioner relies. Each petitioner should also provide a chronology of that proceeding or matter that lists, along with any other relevant dates, the date the petitioner requested interconnection, services, or network elements pursuant to section 251 of the Act, the dates of any requests for mediation or arbitration pursuant to section 252(a)(2) or (b)(1), and the dates of any arbitration decision in connection with the proceeding or matter. Respondents should provide material identical to that required of petitioners to the extent the relevant documents or information is not already included in the record in the proceeding.

Under the Commission's rules, section 252(e)(5) proceedings would be classified as restricted for ex parte purposes except where an order, letter, or public notice in a particular proceeding modifies that classification. See 47 C.F.R. §§ 1.1200(a), 1.1208.

Our practice has been to issue a public notice, when appropriate, reclassifying each individual section 252(e)(5) proceeding as a "permit-but-disclose" proceeding for ex parte purposes, subject to the "permit-but-disclose" requirement of section 1.1206(b) of the Commission's rules. We intend to continue this general practice to the extent consistent with the public interest and will include any reclassification decision in the public notice announcing the deadline for filing responses in an individual section 252(e)(5) proceeding.

The information collections contained herein become effective 60 days after the release of this Public Notice, following approval by Office of Management and Budget, unless another Public Notice is released stating otherwise.

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

Any interested party seeking preemption of a state commission's jurisdiction based on the state commission's failure to act shall notify the Commission as follows: (1) file with the Secretary of the Commission a detailed petition, supported by an affidavit, that states with specificity the basis for any claim that it has failed to act; and (2) serve the state commission and other parties to the proceeding on the same day that the party serves the petition on the Commission. Within 15 days of the filing of the petition, the state commission and parties to the proceeding may file a response to the petition. See 47 U.S.C. Section 51.803.

We have estimated that each response to this collection of information will take, on average, 41 hours. Our 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 we 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). We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Please DO NOT SEND COMPLETED APPLICATION FORMS TO THIS ADDRESS.

Remember -- You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0807.

This notice is required by the Privacy Act of 1974, Public Law 93-579, December 31, 1974,

5 U.S.C. Section 552a(e)(3) and the Paperwork Reduction Act of 1995, Public Law 104-13, October 1, 1995, 44 U.S.C. 3507.

For further information contact Janice Myles, Policy and Program Planning Division, Common Carrier Bureau, at (202) 418-1577.

Action by the Bureau Chief, Common Carrier Bureau.

- FCC -