

right to intervene and conduct discovery in every Commission proceeding. Specifically, OCC noted that "the Commission rules as currently written fail to extend the procedural due process rights to proceeding other than those where a hearing is held."¹ In squarely rejecting OCC's request the Commission concluded that

"if OCC's proposal were adopted, any interested person would have the right to intervene, conduct discovery, and present evidence in any Commission case. The Commission does not believe that such rights exist. In addition, OCC's proposed definition would eliminate the Commission's discretion to conduct its proceedings in a manner it deems appropriate and would unduly delay the outcome of many cases."²

This Commission determination clearly stands for the proposition that a party does not gain full rights of discovery simply by filing an intervention in a proceeding. Additionally, the Commission has held that "the full discovery process [is] normally reserved for cases where a hearing is required."³

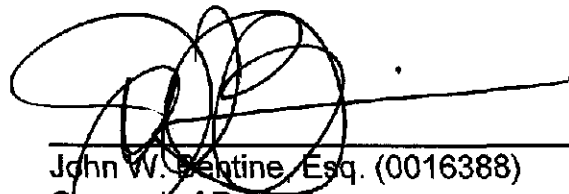
NOPEC has not established a right to intervene in IGS' certification docket, and a determination has not yet been made on NOPEC's request for hearing. For these reasons and the reasons already stated in IGS' Memorandum Contra OCC's Motion to Compel, NOPEC's Motion to Compel should be denied. Further, the Commission should issue an order determining that discovery may not be had until a determination is made on NOPEC's and IGS' outstanding motions.

¹ Case No. 06-685-AU-ORD, OCC Initial Comments (June, 26, 2006) at 2-3.

² Id., Finding and Order (Dec. 6, 2006) at 3-4.

³ *In the Matter of the Implementation of the Federal Communication Commission's Triennial Review Regarding Local Circuit Switching in the Mass Market*, Case No. 03-2040-TP-COI, Entry on Rehearing (Oct. 28, 2003) at 4.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John W. Bentine", is written over a horizontal line.

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Memorandum Contra NOPEC's Motion to Compel* was served upon the following persons listed below by electronic mail and regular U.S. Mail, postage prepaid, this 14th day of October, 2010.

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