

# SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR  
3000 K STREET, NW, SUITE 300  
WASHINGTON, DC 20007-5116  
TELEPHONE (202) 424-7500  
FAX (202) 424-7645  
WWW.SWIDLAW.COM

RECEIVED  
JUL 27 2000  
PUBLIC SERVICE  
COMMISSION

NEW YORK OFFICE  
THE CHRYSLER BUILDING  
405 LEXINGTON AVENUE  
NEW YORK, NY 10174  
(212) 973-0111 FAX (212) 891-9598

July 26, 2000

## VIA OVERNIGHT DELIVERY

Martin Huelsmann, Executive Director  
Public Service Commission of Kentucky  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40601

05052040-0505  
PENDING

Re: Sigma Networks Telecommunications, Inc.'s Notification of Intent to Provide Dedicated and Private Line, Facilities-Based Local Exchange in the Commonwealth of Kentucky

Dear Mr. Huelsmann:

On behalf of Sigma Networks Telecommunications, Inc. ("Sigma" or "Company"), enclosed for filing are an original and five (5) copies of this letter of intent, as well as Sigma's proposed tariff. In accordance with the Commission's Orders in Administrative Case No. 359 (dated June 12, 1996), Administrative Case No. 355 (dated September 26, 1996), and Administrative Case No. 370 (dated January 8, 1998), Sigma submits the following information:

1. Name, address, telephone number and fax number of the Company are as follows:

Sigma Networks Telecommunications, Inc.  
1290 Parkmoor Avenue  
Third Floor  
San Jose, California 95126-3449  
Telephone: (408) 271-7500  
Facsimile: (408) 271-7550

2. Sigma is a corporation organized and existing under the laws of the State of Delaware as of May 3, 2000. Sigma is a wholly owned subsidiary of Sigma Networks, Inc. A copy of Sigma's Articles of Incorporation and a copy of its Certificate of Authority to Transact Business in Kentucky are attached hereto at Exhibit A.

3. The name, address, telephone number and facsimile number of the responsible contact person for customer complaints and regulatory issues are as follows:

Philip Lin  
Sigma Networks Telecommunications, Inc.  
1290 Parkmoor Avenue  
Third Floor  
San Jose, California 95126-3449  
Telephone: (408) 271-7508  
Facsimile: (408) 271-7550

4. Sigma has not provided nor collected for telecommunications service in Kentucky prior to filing this notice of intent. Please see notarized statement attached hereto at Exhibit B.
5. Sigma does not seek to provide operator assisted services to traffic aggregators as defined in Administrative Case No. 330.
6. Sigma requests authority to provide all forms of telecommunications services throughout the State of Kentucky. Sigma does not expect to deviate from the ILEC's local service areas unless and until the Commission revises its rules on local calling scope. Sigma's services will be available on a full time basis, 24 hours a day, seven days a week.

Sigma intends to construct a facilities-based dedicated and private line, fiber optic communications infrastructure. Sigma will enable this infrastructure with the latest generation of integrated optical networking equipment that provides access, multiplexing, switching, and transport; and then sell time division multiplexed and packetized broadband private line services to carriers and service providers. Sigma may also lease its dedicated and private line fiber optic communications infrastructure to large corporate and government customers for high-bandwidth, secure voice and data networks.

Applicant believes that the advanced technical characteristics of its network will allow it to provide the high levels of reliability, security, and capacity that its target customers typically demand as well as providing a more rapid time-to-provision by leveraging the applicant's significant investment in operational support systems.

Sigma will continuously monitor and maintain a high level of control over its network on a 24-hour basis through its network operations center. Applicant's network is capable of using the highest commercially available capacity transmission (OC-192) and, therefore, can support advanced capacity-intensive data technologies such as frame relay and ATM as well as multimedia and Internet-related applications.

Martin Huelsmann  
July 26, 2000  
Page 3

Initially, Sigma will lease the fiber optic facilities of other carriers while its own facilities are being built. As the Applicant completes the build-out of its network, the Applicant may move this traffic onto its own Network.

Sigma does not currently own any facilities in the State of Kentucky, including switches, in connection with or to facilitate communication by telephone. Prior to constructing facilities in Kentucky, Sigma will provide a description of the Kentucky facilities to be constructed as soon as such plans exist.

7. A copy of Sigma's proposed tariff is attached hereto as Exhibit C. The tariff has an effective date thirty (30) days from the date of this filing, which is consistent with the regulatory requirements set forth in the Commission's Order in Administrative Case No. 359, dated June 21, 1996.
8. Sigma will comply with Commission statutes and regulations unless specific exemptions are granted pursuant to KRS 278.512. Sigma will also obtain, and shall retain for one year, electronic or written evidence that each of its customers knowingly chose it as his or her carrier.

Please date-stamp the enclosed extra copy of this filing and return it to the undersigned in the attached self-addressed, stamped envelope. Should you have any questions, please do not hesitate to contact Kelly Olson at (202) 295-8459.

Respectfully submitted,



---

Katherine Rolph  
Brian McDermott  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007-5116  
(202) 424-7500 (Tel)  
(202) 424-7645 (Fax)

Counsel for Sigma Networks Telecommunications, Inc.

Enclosures  
cc: Kelly Olson

EXHIBITS

- |           |  |
|-----------|--|
| Exhibit A | Articles of Incorporation and<br>Certificate of Authority to Transact Business in Kentucky |
| Exhibit B | Notarized Statement  |
| Exhibit C | Proposed Tariff  |

**EXHIBIT A**

**Articles of Incorporation  
and Certificate of Authority to Transact Business in Kentucky**

Office of the Secretary of State

---

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "SIGMA NETWORKS TELECOMMUNICATIONS, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE FIFTH DAY OF MAY, A.D. 2000.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE NOT BEEN ASSESSED TO DATE.



A handwritten signature in cursive script, reading "Edward J. Freel".

Edward J. Freel, Secretary of State

3222510 8300

001231018

AUTHENTICATION: 0422515

DATE: 05-05-00

Office of the Secretary of State

---

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "SIGMA NETWORKS TELECOMMUNICATIONS, INC.", FILED IN THIS OFFICE ON THE THIRD DAY OF MAY, A.D. 2000, AT 4:30 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



A handwritten signature in cursive script, reading "Edward J. Freel".

Edward J. Freel, Secretary of State

3222510 8100

001226812

AUTHENTICATION: 0422504

DATE: 05-05-00

**CERTIFICATE OF INCORPORATION**

**OF**

**SIGMA NETWORKS TELECOMMUNICATIONS, INC.**

**FIRST:** The name of the Corporation is Sigma Networks Telecommunications, Inc.

**SECOND:** The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of the Corporation's registered agent at such address is The Corporation Trust Company.

**THIRD:** The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

**FOURTH:** The total number of shares of all classes that the Corporation shall have authority to issue is 10,000 shares, par value \$0.01 per share, to be issued as shares of Common Stock.

**FIFTH:** Except as otherwise required by law or expressly provided in this Certificate of Incorporation, each share of Common Stock shall entitle the holder thereof to one (1) vote of each matter submitted to a vote of the stockholders.

**SIXTH:** The name and mailing address of the incorporator of the Corporation are as follows:

<u>Name</u>	<u>Address</u>
Melanie J. Bosman	3000 K Street, N.W. Suite 300 Washington, D.C. 20007

**SEVENTH:** In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter or repeal the By-Laws of the Corporation, subject to any specific limitation on such power provided by any By-Laws adopted by the stockholders.

**EIGHTH:** Elections of directors need not be by written ballot unless the By-Laws of the Corporation so provide.

**NINTH:** The Corporation is to have perpetual existence.



TENTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon the stockholders herein are granted subject to this reservation.

ELEVENTH: A. A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of the State of Delaware, or (iv) for any transaction from which the director derived an improper personal benefit. If the General Corporation Law of the State of Delaware is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of the State of Delaware, as so amended. Any repeal or modification of this Section A by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

B. Each person who was or is made a party or is threatened to be made a party to or is or was involved in any action, suit, or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she or a person of whom he or she is the legal representative is or was a director, officer or employee of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that except as provided in Section C of this Article Eleventh with respect to proceedings seeking to enforce rights to indemnification, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors. The right to indemnification conferred in this Section B shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that if the General Corporation Law of the State of Delaware requires, the payment of such expenses incurred by a director or officer in his or her capacity as a

director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of any undertaking by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Section B or otherwise.

C. If a claim under Section B of this Article Eleventh is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standards of conduct that make it permissible under the General Corporation Law of the State of Delaware for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the General Corporation Law of the State of Delaware, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or stockholder) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

D. The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Article Eleventh shall not be exclusive of any other right that any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, By-Law, agreement, vote of stockholders or disinterested directors or otherwise.

E. The Corporation may purchase and maintain insurance or furnish similar protection, including, but not limited to, providing a trust fund, letter of credit or self-insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expenses, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the General Corporation Law of the State of Delaware.

F. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and rights to be paid by the Corporation the expenses incurred in defending any proceeding in advance of its final disposition, to any agent of

the Corporation to the fullest extent of the provisions of this Article Eleventh with respect to the indemnification and advancement of expenses of directors, officers and employees of the Corporation.

THE UNDERSIGNED, being the incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, makes this Certificate, hereby declaring and certifying that the facts herein stated are true, and accordingly has hereunto set her hand and seal this 3rd day of May, 2000.



Melanie J. Bosman

COMMONWEALTH OF KENTUCKY  
JOHN Y. BROWN III  
SECRETARY OF STATE



0495292.00

John Y. Brown III  
Secretary of State

APPLICATION FOR CERTIFICATE OF AUTHORITY

Pursuant to the provisions of KRS Chapter 271B, 273 or 274, the undersigned hereby applies for authority to transact business in Kentucky on behalf of the corporation named below and for that purpose submits the following statements:

Received and Filed  
05/30/2000 02:06 PM

1. The corporation is  a business corporation (KRS 271B).  a nonprofit corporation (KRS 273).  
 a professional service corporation (KRS 274).

Fee Receipt: \$30.00

2. The name of the corporation is  
Sigma Networks Telecommunications, Inc.

Poraine - P101

3. The name of the corporation to be used in Kentucky is  
Sigma Networks Telecommunications, Inc.

(If "real name" is unavailable for use)

4. Delaware is the state or country under whose law the corporation is incorporated.

5. May 3, 2000 is the date of incorporation and the period of duration is Perpetual

6. The street address of the corporation's principal office is  
1290 Parkmoor Ave., 3rd Floor, San Jose, California 95126-3449

7. The street address of the corporation's registered office in Kentucky is  
c/o C T Corporation System, Kentucky Home Life Building, Louisville, Kentucky 40202  
and the name of the registered agent at that office is  
C T Corporation System

8. The names and usual business addresses of the corporation's current officers and directors are as follows:

President See attached list  
Vice President \_\_\_\_\_  
Secretary \_\_\_\_\_  
Treasurer \_\_\_\_\_  
Directors See attached list

(Attach a continuation sheet, if necessary)

9. If a professional service corporation, all the individual shareholders, not less than one half of the directors, and all of the officers other than the secretary and treasurer are licensed in one or more states or territories of the United States or District of Columbia to render a professional service described in the statement of purposes of the corporation.

10. A certificate of existence duly authenticated by the Secretary of State accompanies this application.

11. This application will be effective upon filing, unless a delayed effective date and/or time is specified: N/A  
(Delayed effective date and/or time)

Philip Lin  
Signature  
Philip Lin, Vice President  
Type or Print Name & Title  
Date: 5/16, 2000

C T CORPORATION SYSTEM consent to serve as the registered agent on behalf of the corporation  
Type or print name of registered agent

SSC-101 (7/98)

Kevin J. Callahan  
Signature of Registered Agent

(KY019 - 7/15/98) CT System

(See attached sheet for instructions)

KEVIN J. CALLAHAN  
ASSISTANT VICE PRESIDENT

**SIGMA NETWORKS TELECOMMUNICATIONS, INC.**

**OFFICER/DIRECTOR RIDER**

Directors:

Douglas Hickey                      1290 Parkmoor Avenue, 3rd Floor  
San Jose, CA 95126-3449

Reed Hundt                              1290 Parkmoor Avenue, 3rd Floor  
San Jose, CA 95126-3449

Andrew Rachleff                      1290 Parkmoor Avenue, 3rd Floor  
San Jose, CA 95126-3449

Officers:

John K. Peters                      President, Secretary,                      1290 Parkmoor Ave., 3rd Floor  
and Treasurer                              San Jose, CA 95126-3449

Sherri L. Bakos                      Vice President of Sales                      1290 Parkmoor Ave., 3rd Floor  
San Jose, CA 95126-3449

Phillip Lin                              Vice President of                              1290 Parkmoor Ave., 3rd Floor  
Business Development                      San Jose, CA 95126-3449

Patrick Sullivan                      Vice President and CIO                      1290 Parkmoor Ave., 3rd Floor  
San Jose, CA 95126-3449

Lonny J. Orona                      Vice President of                              1290 Parkmoor Ave., 3rd Floor  
Customer Support and                      San Jose, CA 95126-3449  
Network Operations

Scott Young                              Vice President of                              1290 Parkmoor Ave., 3rd Floor  
Network Development                      San Jose, CA 95126-3449

EXHIBIT B

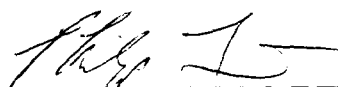
Notarized Statement

**NOTARIZED VERIFICATION**

I, Philip Lin, being duly sworn, do hereby depose and state that:

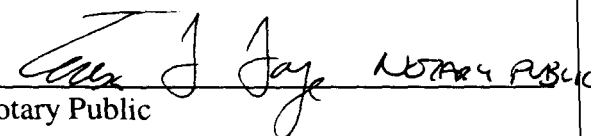
1. I am the Vice President of Business Development for Sigma Networks Telecommunications, Inc. ("Sigma") and am authorized to make this statement on Sigma's behalf.
2. Sigma has not provided nor collected for intrastate service in Kentucky prior to filing this application.

The foregoing statements are true and correct to the best of my knowledge, information and belief.



Philip Lin  
Vice President of Business Development  
Sigma Networks Telecommunications, Inc.

Subscribed and sworn to (or affirmed) before me this 25 day of July, 2000.

  
Notary Public

My Commission Expires: 1-11-02



EXHIBIT C

Proposed Tariff