

November 8, 1999

Ex Parte - VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 - 12th Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 99-295 -- Application by New York Telephone Company (d/b/a Bell Atlantic-New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc., for Authorization To Provide In-Region, InterLATA Services in New York

Dear Ms. Salas:

The Coalition to Ensure Responsible Billing (“CERB”),¹ by undersigned counsel submits the following information in response to requests by Common Carrier Bureau Policy Staff in relation to the Application by Bell Atlantic - New York for Authorization to Provide In-Region, InterLATA Services in New York (“Bell Atlantic Application”). Because this submission responds to direct questions raised by Commission staff, it is not subject to the 20 page ex parte limit outlined in the Public Notice (DA-99-2014) issued by the Commission on September 29, 1999.

Commission staff has requested background on how, if at all, Bell Atlantic may favor its own affiliate in the provision of billing and collections services. Staff also requested feedback on the role of the Section 272(b)(5) disclosure requirements in preventing such discrimination. This letter demonstrates the need for a clear explication of Section 272 requirements with regard to billing and collections as a prerequisite to meaningful 272(b)(5) disclosures. The absence of such requirements would leave room for a variety of discriminatory practices by Bell Atlantic, including but not limited to, discrimination in inquiry processing systems, automatic refund policies, bill blocking programs and approval of new billing.

¹ The Coalition to Ensure Responsible Billing (“CERB”) comprises billing clearinghouses that process more than 90 percent of all billing submitted to local telephone companies by third parties. These billing clearinghouses perform billing and collection functions for competitive providers of basic and enhanced telecommunications services.

First, as to the disclosure provisions required under Section 272(b)(5), CERB reiterates that Bell Atlantic must fully disclose all billing and collections transactions with its affiliates. After meeting with Commission staff, CERB examined existing Bell Atlantic 272(b)(5) disclosures to determine whether Bell Atlantic's current disclosure practices – if extended to billing and collections pursuant to Section 271 approval – would be adequate. The answer is no. CERB sampled the Bell Atlantic Communications, Inc. Technical Services Agreement for New York² (“New York Agreement”) and submits that if billing and collections agreements are posted with the same lack of detail, they will be inadequate to ensure that competing service providers receive the same treatment as Bell Atlantic's affiliate. Bell Atlantic is required to post on the Internet the rates, terms and conditions of any affiliate transaction.³ With regard to the New York Agreement, however, Bell Atlantic states on its web page that “services will be performed at times and in accordance with specifications agreed upon by the parties.”⁴ The specifications, however, are not listed. Although the web site lists the services to be rendered, CERB was unable to locate further rates, terms, and conditions. The web site also lists, with little or no context, “Production of a combined bill invoice for Bell Atlantic customers, and the capability to produce a separate BACI and NLD bill invoice for designated end user customers.” It is unclear what this means. If Bell Atlantic interprets its Section 272 obligation to post billing and collections agreements in such a way as to require the same paltry level of detail, the requirement will be rendered useless.

Furthermore, while disclosure requirements are a critical safeguard, they are meaningless without a clear understanding of what must be disclosed. To that end, the Commission must spell out the types of transactions and policies that must apply equally to Bell Atlantic's affiliate and to competitive providers. The Commission should require any Bell Atlantic billing and collections policy to apply on a non-discriminatory basis. This includes any moratorium, blocking service, refund policy, customer service policy, complaint threshold, consumer protection measure, or other rate, term or condition.

To demonstrate the mischief that may be created in the absence of specific Section 272 requirements, consider what happens when Bell Atlantic local customer service representatives receive and count customer inquiries for the purposes of determining whether services are being slammed or crammed on the bill. When a Bell Atlantic customer calls with an inquiry, the Bell Atlantic representative is afforded the opportunity to straighten out any misunderstanding, to

² www.callbell.com/regreqs2

³ Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, Report and Order, CC Docket No. 96-150, ¶¶ 122, 137 (rel. Dec. 24, 1996) (“Accounting Safeguards Order”).

⁴ www.callbell.com/regreqs2/detail.cfm?ContractID=65

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convince the consumer that the service is legitimate, and finally to count the phone call as an inquiry rather than as a complaint. Conversely, when a customer of a competitive provider calls Bell Atlantic (rather than the service provider) the Bell Atlantic representative has the incentive to count the phone call as a complaint without inquiring as to the nature of the call. Furthermore, the Bell Atlantic representative may give an automatic credit (*see* Bell Atlantic advertisement touting this service to consumers -- Attachment A) to any consumer who makes any type of call regarding a competitive service. This practice disadvantages competitors in two ways. Competitors lose money when Bell Atlantic gives automatic refunds, and Bell Atlantic uses competitors' artificially high complaint levels to justify terminating billing for competitive service providers. Clearly, the actions of the Bell Atlantic representative play a large role in determining if and how an inquiry will be counted by Bell Atlantic against a competitive service provider.

The above scenario occurs when consumers, for whatever reason, contact Bell Atlantic instead of the service provider with a question about a competitive service, even though the inquiry number for the service provider is on the bill. Bell Atlantic may, in addition, achieve a competitive advantage through the provision of its "inquiry service," whereby competitive service providers can contract for Bell Atlantic to answer calls from consumers who have questions about ancillary services on their local telephone bills. Few competitive service providers order this service because it is prohibitively expensive and it puts Bell Atlantic in the position of arbiter of consumer inquiries for a direct competitor. It also may allow Bell Atlantic to improperly refer "dissatisfied" customers to its own affiliate. Despite the conflict of interest that makes Bell Atlantic inquiry service unattractive to competitors, it is likely that Bell Atlantic's IXC affiliate will use this service in order to be able to control or "fix" customer complaints against the affiliate. Such a role is inherently discriminatory. One way to prevent this very real opportunity to discriminate is to forbid Bell Atlantic from providing this type of customer inquiry service to such affiliates.

Another method Bell Atlantic uses to discriminate against competitors is to apply a given policy to competitors but not to itself. For example, on July 22, 1998, Bell Atlantic announced that it would offer consumers an opportunity to "block" ancillary charges from being billed on their local telephone bills. Bell Atlantic, however, exempted its own services from the blocking program. Thus, consumers could protect themselves from having unwanted charges placed on their bills by competitive providers, but not from Bell Atlantic. Furthermore, consumers who decided to purchase a service from a competitive provider would have to endure the additional step of having the block removed, while consumers who chose to purchase a Bell Atlantic product would be able to order the product in one step. (*See* Bell Atlantic press release detailing the fact that Bell Atlantic is exempting itself from the blocking program – Attachment B.)

Finally, Bell Atlantic's willingness to disadvantage its competitors is also demonstrated by its slow processing times for new billing. When a billing clearinghouse prepares to initiate billing for a new service provider or for a new service from an existing provider, the

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clearinghouse must submit background documentation to Bell Atlantic to seek approval for the new billing. Bell Atlantic can seriously harm a competitive provider by failing to process and approve the new billing in a timely manner. With respect to certain services, it takes Bell Atlantic up to two months to grant approval. This delay alone disadvantages Bell Atlantic's competitors. Even worse, Bell Atlantic could, upon gaining Section 271 authority, delay approvals for its competitors while quickly approving any new services or programs by its affiliate. The Commission should ensure that Bell Atlantic approves competitors' applications on the same time frame as its affiliate's applications.

Finally, staff requested a copy of materials that were compiled by CERB member FTT. These materials (Attachment C) detail anti-competitive practices of many LECs with regard to billing and collections for third parties, and provide some reference as to the types of discriminatory behaviors the Commission should circumscribe. Also attached is a Bell Atlantic letter to Chairman Kennard explaining that cramming complaints are down by eighty-two percent (82%) (Attachment D). The letter explains Bell Atlantic's automatic refund policy and its bill blocking program. The combination of a steep decline in cramming complaints and an increase in unreasonable conditions for access to the Bell Atlantic bill demonstrate that Bell Atlantic is using anti-cramming efforts as a subterfuge to disadvantage market competitors. Upon entry into the long distance market, Bell Atlantic's incentive and ability to use such tactics would increase. The Commission should ensure that if Bell Atlantic is granted Section 271 relief, the parameters of the Section 272 requirements are sufficiently clear to prevent such anti-competitive behavior.

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If you would like further information, or have any questions, please feel free to contact me.

Sincerely,

Kristine DeBry, Esq.
Gary D. Slaiman, Esq.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Telephone: (202) 424-7500
Facsimile: (202) 424-7645

Counsel for the Coalition to Ensure
Responsible Billing

Attachments

cc: CeCi Stephens
Tony Dale
Daniel Shiman
Eric Einhorn
John Stanley
ITS, Inc.