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December 18, 1996

EX PARTE

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

Re: CC Docket No. 96-149

Dear Mr. Caton:

Today, on behalf of Bell Atlantic, Ed Shakin and I met with Dan Gonzalez, Legal Advisor to Commissioner Chong and Tony Deal a Intern in Commissioner Chong's Office, to discuss the above captioned docket. A copy of the hand-out used in the meeting is attached.

Please enter this letter into the record as appropriate.

Sincerely,



Attachment

cc: D. Gonzalez
T. Deal

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DOCKET 96-149 ISSUES

- **Section 272(e)(4) authorizes BOCs to provide in-region interLATA facilities and services to their long distance affiliate so long as the same service and facilities are offered to non-affiliated carriers.**
 - Competition and customers are harmed when regulators impose artificial controls that raise a new competitors' costs. Allowing BOCs to provide network services and facilities will take advantage of economies of scope and keep costs low.
 - Customers will also benefit from allowing BOCs to make efficient use of any available existing capacity.
- **Section 271(e)(1) forbids the big three interexchange carriers from advertising or otherwise jointly marketing long distance service in combination with LEC resold local service.**
 - Debasement of this rule would thwart the will of Congress and allow the largest incumbents the ability to leverage below cost resold local service into an unfair marketing advantage.
 - Once a BOC receives authorization to provide in region long distance service, all competitors are allowed to market jointly.
- **Section 272(g)(2) gives a BOC the right to market and sell the long distance services of its affiliate.**
 - BOCs may exercise this right without need for third party intermediaries, and may do so on inbound and outbound calls.
 - Customers benefit from one-stop shopping alternatives, and competition benefits because all carriers will have ability to jointly market multiple services.
- **There is no need for regulations that would prevent a long distance affiliate of a BOC from purchasing administrative services from an affiliated service organization that also provides services to the BOC**
 - Section 272(b)(1) "operate independently" requirement is informed by the specific rules that follow. It cannot be an invitation for a wholesale importation of new rules that appear nowhere else in the Act.
 - Section 272(b)(3) merely requires no sharing of officers, directors and employees. The provision says nothing about the purchase of administrative services from a common affiliated source.

- **WHEN A 272 AFFILIATE ACTS AS A RESELLER OF LOCAL SERVICE, IT IS NOT AN ILEC**

A long distance affiliate that resells the local service of its affiliated incumbent local exchange carrier (“ILEC”) does not thereby itself become an ILEC. A contrary rule would be inconsistent with section 251 of the Act and would make no policy sense.

ILECs are defined in section 251(h) of the Act. They are specifically limited to those LECs that were both providing local service in a particular area and were a member of the exchange carrier association carrier at the time of enactment. The only additions are any successors or assigns of the narrowly defined pool of ILECs.

The act of reselling the local service of an affiliated ILEC does nothing to transform a section 272 long distance affiliate into a successor or assign of an ILEC. A successor “takes the place that another has left, and sustains the like part or character.”¹ Similarly, an assignor must be “divested of all control over the thing assigned.”² In other words, in order to qualify, the local operating company must cease to perform its role as a LEC, and the successor or assign must take its place. The exact opposite is true in the case of a long distance affiliate reselling an ILEC’s service. By definition, the ILEC must still be acting as the ILEC. The affiliate’s purchase for resale is no different than a competitor buying the same service on the same basis. Such a rule also makes no policy sense. Imposing ILEC status on the long distance affiliate means that the local service offered at a discount by the true ILEC would have to be offered at further discount by the 272 affiliate. This arrangement serves no policy goal and would only serve to

¹ *Safer v. Perper*, 569 F.2d 87, 95 (D.C. Cir. 1977) (citing *Wawak Co. v. Kaiser*, 90 F.2d 694, 697 (7th Cir. 1937).

² *Miller v. Wells Fargo Bank International Corp.*, 540 F.2d 548, 558 (2d Cir. 1976).

prevent the 272 affiliate from acting as a reseller in the first place. The end result would be a limitation on the choices offered to consumers with no offsetting benefit to competition.

ESP EXEMPTION ISSUES

- **The Commission should address the problem of ESP costs and charges as part of its upcoming access reform NPRM.**
- **As part of its review, the Commission should deal with the problem of network congestion. Even if technological solutions are developed, under the current system, ESPs have no economic incentive to migrate to alternative technologies.**
- **Allowing LECs to charge a usage-based rate sends the correct economic signal for efficient use of the network.**
- **Eliminating the exemption removes hidden subsidies that have no remaining legitimate policy basis.**