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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

BellSouth Petition for Forbearance from
Application of Section 272 of the
Communications Act of 1934, as amended;
to Previously Authorized Services

CC Docket No. 96-149

REPLY COMMENTS OF BELL ATLANTIC¹

None of the parties opposing BellSouth's petition offer a legitimate basis to deny its request to forbear from applying section 272's separate affiliate requirement to any interLATA link used by a Bell company to provide E911 service. The two parties that do object offer arguments that do not withstand scrutiny and ignore the practical need to offer E911 on an integrated basis. As a result, the Commission should quickly adopt an order forbearing from applying section 272 to any carrier's E911 service as proposed in Bell Atlantic's comments. This relief is critical to preserve the ability of those carriers to provide an effective E911 service.

MCI argues that because section 272 includes nondiscrimination mandates between a separated long distance affiliate and the telephone operating company, it cannot be waived.²

Underlying MCI's ipse dixit is an assumption that any regulation under review for forbearance

¹ This filing is on behalf of Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc., and Bell Atlantic Communications, Inc.

² Opposition of MCI Telecommunications Corp. (filed Mar. 6, 1997) at 5 ("it is inconceivable that there would ever be a situation in which enforcement of a nondiscrimination requirement" -- no matter how burdensome -- "would not be 'necessary to ensure that' a BOC's practices 'are not unjustly or unreasonably discriminatory.'").

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should be addressed in a vacuum, without reference to other existing regulatory safeguards. This is nonsense. For example, in the case of E911, so long as the service continues to be offered by the local carrier, nondiscriminatory access is a condition of long distance entry.³ Applying the section 272 regulations adds nothing, and can only make the offering of this vital service more difficult.⁴

AT&T is only slightly more restrained than MCI. AT&T argues that the Commission can never forbear from applying section 272's separate affiliate requirement.⁵ AT&T bases this supposed prohibition on the statute's limit on the Commission's ability to forbear from enforcing sections 251(c) or 271 until those sections are fully implemented.⁶ AT&T argues that because section 271 requires a carrier to comply with section 272, then the limit on the Commission's ability to forbear from enforcing section 271 necessarily limits its ability to forbear from enforcing section 272 as well. The problem with AT&T's argument is that the Act does not say what AT&T suggests. The limitation on the Commission's forbearance authority is itself limited only to two specific named sections of the Act (sections 251(c) and 271). Indeed, other than those specified sections, the Commission's forbearance authority requirement, by its own terms,

³ 47 U.S.C. § 271 (c)(2)(B)(vii)(I).

⁴ *See* Bell Atlantic Comments at 2-4.

⁵ Comments of AT&T Corp. at 3, n.6 (filed Mar. 6, 1997). AT&T also argues that any grant of BellSouth's petition should be limited and still impose section 272's accounting and nondiscrimination requirements. But these requirements are premised on the concept of a separate affiliate and make no sense where, as here, the separate affiliate requirement is unnecessary. Indeed, as previously noted, nondiscriminatory access for E911 is already mandated under a specific provision of section 271.

⁶ *See* 47 U.S.C. § 160(d).

applies to “*any* provision” of the Act.⁷ And, as the courts have made clear, “any” means “any;” it does not mean “some.”⁸

Moreover, AT&T’s argument that the limitation on the Commission’s forbearance authority applies to other provisions referred to in section 271 is inconsistent with the Act for another reason. Among the other provisions referred to in section 271 is section 251(c). Yet the provisions that limits the Commission’s forbearance authority specifically cites section 251(c) -- which would be unnecessary under AT&T’s theory -- but does not cite section 272. This further confirms that when Congress meant to limit the Commission’s forbearance authority, it expressly said so.⁹

Finally, all of this makes sense given that both of the named sections deal with the opening of the local network.¹⁰ While the Commission cannot waive the requirement that the local market must be opened, subsequent safeguards can be waived -- including section 272.

⁷ 47 U.S.C. § 160(a) (*emphasis added*).

⁸ “The word ‘any’ is generally used in the sense of ‘all’ or ‘every’ and its meaning is most comprehensive.” *Fleck v. KDI Sylvan Pools, Inc.*, 981 F.2d 107, 115 (3d Cir. 1992), quoting *McCormick v. Columbia Conveyer Co.*, 564 A.2d 907, 910 (Pa. Sup. Ct. 1989); *Leach v. Phila. Sav. Fd. Soc.*, 340 A.2d 491, 493 (Pa. Sup. Ct. 1975). *Accord, Shea v. Vialpando*, 416 U.S. 251, 260 (1974) (the use of “any” demonstrates that Congress intended there to be “no limitation” on the relevant class); *Harrison v. PPG Industries*, 446 U.S. 578, 588-89 (1980) (the addition of the word “any” created “expansive language” that was not subject to a limiting construction).

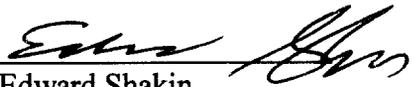
⁹ A well recognized maxim of statutory construction -- *expressio unius est exclusio alterius* -- is based on the notion that “there is an inference that all omissions should be understood as exclusions”(2A Sutherland’s Statutory Construction § 47.22 (5th ed. 1992)).

¹⁰ Indeed, the prohibition expires once the named provisions are “fully implemented.” 47 U.S.C. § 160(d). While such a limitation is logical for a one-time event like the opening of the local market, it makes no sense in the context of the ongoing nondiscrimination requirements of section 272.

Conclusion

The Commission should forbear from requiring any carrier to provide an E911 service through a separate affiliate under section 272.

Respectfully submitted,


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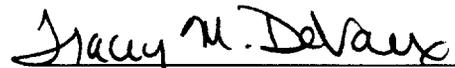
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March 17, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of March, 1997 a copy of the foregoing "Reply
Comments of Bell Atlantic" was served by hand on the parties on the attached list.


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