

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
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)
Policy and Rules Concerning the Interstate,)
Interexchange Marketplace)
)
Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)
)
1998 Biennial Regulatory Review -- Review)
of Customer Premises Equipment and)
Enhanced Services Unbundling Rules in the)
Interexchange, Exchange Access and Local)
Exchange Markets.)

CC Docket No. 96-61

CC Docket No. 98-183

REPLY COMMENTS OF BELL ATLANTIC

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REPLY COMMENTS OF BELL ATLANTIC¹

I. Introduction and Summary

The comments confirm that consumers and vendors of enhanced services and CPE will benefit if all carriers are permitted to provide discounted packages of services and equipment. By contrast, certain parties are looking for an artificial market advantage by seeking relief for themselves, but denying it to their competitors. The Commission should side with the consuming public and promote competition by dismissing the misguided claims of those seeking to use this proceeding as an anticompetitive weapon.

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are 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.; New York Telephone Company; and New England Telephone and Telegraph Company.

II. Discounted Packaging of Telecommunications Services, Enhanced Services, and CPE Meets Customer Needs and Expectations.

Most of the parties, especially customers of telecommunications services, confirm that the current bundling restrictions are a "regulatory dinosaur." *See American Petroleum Institute ("API") at 3.* Allowing all carriers to offer discounted packages of telecommunications services, CPE and enhanced services will provide customers with economic efficiencies and convenience that are unavailable today. It will enable consumers to choose from a variety of packages at a range of prices and select the set of services and products that meet their needs and their willingness to pay. Competitors will be able to differentiate their offerings through creative package and pricing options. This will add to the customers' competitive choices as well as saving them money.

In addition, customers have no interest in understanding the fine regulatory distinctions that the current rules perpetuate and that have no meaning in the marketplace. They see the different rules for "basic" and "enhanced" services, or for telecommunications services and related CPE, merely as inconveniences that give them no benefit. Moreover, as the record shows, rapid advances in technology make any such distinctions meaningless. *See API at 10.*

III. Eliminating the Restrictions for All Carriers Will Benefit the Public, Carriers, and CPE and Enhanced Service Vendors, Without Causing Competitive Harm.

A few commenters oppose eliminating the unbundling rule just for incumbent local exchange carriers. They base their arguments on the incumbents' alleged market power in local telecommunications. As the Commission itself has recognized, however, this addresses the wrong question. Under its own prior orders, the only relevant

issue is the level of competition in the service or product that is being bundled with the local telecommunications service.

The reason is very simple. The present rule inhibits competition. So long as all competitors have access to a sufficient supply of the non-telecommunications products to enable them to assemble packages that meet customer needs, it is irrelevant what degree of dominance any one telecommunications carrier may have. For this reason, the 1992 order that removed the cellular unbundling requirement turned on whether the cellular CPE market was competitive, even though the Commission found that cellular telecommunications services were not at that time fully competitive.

Cellular Bundling Order, 7 FCC Rcd 4028, ¶ 11 (1992). Similarly, when the Commission allowed incumbent local exchange carriers to package local telephone service with video services at a discounted price, it rejected arguments that such relief would be anticompetitive because of the incumbents' alleged market power for telephone services. *Open Video Systems*, 11 FCC Rcd 18223, ¶ 248 (1996).

Even more recently, the Commission allowed incumbent wireline local exchange carriers to offer discounted packages of local telephone service and resold wireless services. It found a sufficient supply of competing wireless services to enable all exchange carriers to offer their own packages. *CMRS Safeguards Order*, 12 FCC Rcd 15668, ¶¶ 89-90 (1997). The competitiveness of the local wireline market was not a consideration.

The Commission should likewise find here that allowing all local and long distance carriers to offer discounted packages of telecommunications services, CPE, and enhanced services will best serve the needs of the public and help promote competition.

Because the services and products being packaged with the telecommunications service are fully competitive, *see* Bell Atlantic at 7-10, the Commission can find that incumbents and new entrants alike will have an equal opportunity to develop diverse packages to meet customers' needs.

As in the earlier cases, the Commission should also give customers the option they request of taking telecommunications services separately, without being forced to take CPE or enhanced services. *See* API at 11. It should also meet customer requests to preclude carriers from installing proprietary interfaces that will work only with bundled CPE and enhanced services that use those interfaces. *See id.* at 12.

Bell Atlantic is committed to fully meeting those needs. Bell Atlantic's network is open. All interfaces are publicly disclosed on its Internet website well in advance of deployment. And Bell Atlantic will continue to offer all of its telecommunications services on a standalone basis.

Only the two largest interexchange carriers, AT&T and MCI WorldCom ("MCI"), which have only minimal network disclosure obligations, want the right to restrict customer choice by requiring customers who purchase their telecommunications services also to purchase enhanced services and CPE. *See* AT&T at 13-14, MCI at 36-37. And AT&T wants the right to install proprietary interfaces along with its bundled equipment. All this would allow AT&T, with nearly 50% of the long distance market, to bundle its services with those of the country's largest cable monopolist, TCI, that it is acquiring, and force customers who want cable service also to take AT&T's telecommunications service, CPE, voice messaging, and Internet access. By requiring

carriers to offer their telecommunications services separately, the Commission will prevent this result and give customers the flexibility they want.

Allowing incumbent local exchange carriers to package their telecommunications services with CPE and enhanced services will cause no harm to CPE and enhanced service providers, as a few commenters claim. *See, e.g.*, Team Centrex, CEMA, and the Internet Service Providers Consortium.² Under the network disclosure requirements of the Act and the Commission's rules, CPE and enhanced service vendors will have the information they need to ensure that their customers will be able to interconnect their equipment and services effectively to the local telecommunications network. As a result, they will be able to sell their products either directly to the public (including through the Internet), through retail outlets, or through service providers – both incumbents and new entrants – and accurately advertise that they are fully compatible with the local telecommunications network. The result, as was the case with cellular since 1992, will be an increase in the supply and diversity of packaged offerings. This will benefit consumers, because they will have a growing array of competitive choices. It will benefit the CPE and enhanced service vendors, because it will open new sales outlets and likely increase overall demand for their services and products. And it will benefit competing carriers that choose to package their service with CPE and enhanced services, because creative discounted packaging will give them another avenue by which to differentiate their products in the competitive marketplace.

² By contrast, Next Level, a CPE manufacturer, urges the Commission to allow incumbent exchange carriers to bundle advanced telecommunications services and CPE in order to compete against video and cable modem services.

Nor is there any justification for continuing to subject the Bell companies' long distance affiliates to the unbundling rule if they resell local services, as MCI argues. MCI at 16-17. MCI claims that the Bell companies' local dominance in some way would rub off on the affiliate and allow anticompetitive practices. But the Commission has already rejected this argument and found that section 272 long distance affiliates should be treated as any other nondominant carrier:

[i]n the *Non-Accounting Safeguards Order* and *Accounting Safeguards Order*, we adopted regulations to constrain the BOCs' ability to use their market power in local exchange and exchange access services to engage in anticompetitive conduct in competitive markets. We therefore reject AT&T and MCI's contention that a BOC's ability to engage in such conduct would provide a legitimate basis for classifying its affiliate as dominant in the provision of in-region, interstate, domestic, interLATA services.³

MCI has provided no reason for the Commission to revisit that conclusion.

IV. Claims That Bell Atlantic Has Violated the Unbundling Rule are Unfounded.

In none of the areas in which the Commission has lifted the bundling restrictions has there been any valid complaint of anticompetitive conduct, and there is no reason to assume that granting relief here will lead to any such conduct. Two parties, however, raise unfounded claims that Bell Atlantic and other incumbent carriers are already violating the unbundling rules.

First, the Commercial Internet eXchange Association ("CIX") asserts that Bell Atlantic is giving customers a discount on ADSL modems to ADSL service

³ *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 12 FCC Rcd 15756, ¶ 91 (1997).

customers. CIX at 8-9. CIX is wrong. The advertising that CIX attaches as purported documentation for its claim specifies that the reduced-priced modem is available to subscribers of Bell Atlantic.net's enhanced DSL-compatible Internet access service and further states that "[p]urchase of InfoSpeed DSL is not required."⁴ No Commission rule or order prohibits discounted packaging of CPE with an enhanced service, both of which are unregulated and are not subject to title II common carrier requirements.

Second, Network Plus, Inc. contends that the Commission's rules require Bell Atlantic to offer its enhanced voice mail service on a stand-alone basis to customers of other local exchange carriers. Network Plus cites no Commission order or rule that imposes such a common carrier obligation on provision of unregulated voice mail services, because the Commission's rules specify just the opposite – that enhanced services "are not regulated under title II of the Act." 47 C.F.R. § 64.702(a). Instead, the Commission requires that facilities-based carriers make available to other enhanced service providers the same telecommunications services, at the same tariffed rates, terms, and conditions, as they use to provide their own enhanced services.⁵

Similarly under the 1996 Act, Bell Atlantic's resale obligations are limited to telecommunications services and do not include voice messaging, which is an

⁴ InfoSpeed DSL is Bell Atlantic's trade name for its ADSL telecommunications service. The advertising CIX attaches also shows that the manufacturer of the modems was at the time conducting its own cash-back special, not funded by Bell Atlantic, to promote its products.

⁵ See Notice at n.15, citing *Computer Inquiry II*, 77 F.C.C.2d 384, ¶ 231 (1980); *Competition in the Interstate Interexchange Marketplace*, 10 FCC Rcd 4562, ¶ 40 (1995); *IDCMA Petition for Declaratory Ruling and AT&T Petition for Declaratory Ruling*, 10 FCC Rcd 13717, ¶ 13 (1995).

information service. See 47 U.S.C. § 251(c)(4). Just as it cites no Commission authority, Network Plus can cite no statutory provision that requires Bell Atlantic to offer information services for resale, because none exists.⁶

Nor is there any policy reason whatever for imposing a common carrier requirement on voice messaging, as Network Plus (at 5-7) appears to want. Voice messaging is a fully competitive service. Besides hundreds of manufacturers and suppliers of CPE-based voice messaging systems, and a number of other national voice messaging providers, at least ten competing local exchange carriers in Bell Atlantic's region offer their own voice messaging services to their local exchange customers, and no Bell company has more than three percent of the overall voice messaging market.⁷ As these figures show, "the ILECs are not the only source of VMS, nor could one plausibly argue that they have a 'bottleneck' position in the offering of VMS." Declaration of Robert W. Crandall in RCN Complaint Proceeding at ¶11 (filed Nov. 13, 1998). Accordingly, even if the Commission had the authority to order Bell Atlantic to offer its voice messaging service for resale as a common carrier service, which it does not, there is no policy reason for it to do so.

⁶ Bell Atlantic has extensively briefed this issue in two other Commission proceedings, *RCN Telecom Services of Connecticut, Inc. v. Bell Atlantic-Delaware, Inc.*, File No. E-98-22 ("RCN Complaint Proceeding"), Bell Atlantic Brief (filed Nov. 13, 1998); and *Telecommunications Resellers Association, Petition for Declaratory Ruling*, CCB/CPD 98-16, Comments of Bell Atlantic (filed May 12, 1998).

⁷ See *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, CC Docket Nos. 95-20 and 98-10, Comments of Bell Atlantic on Further Notice at 6-7 (filed Mar. 27, 1998).

Finally, Network Plus (at 6) asserts that Bell Atlantic's tariffed "capability to automatically transfer callers to enhanced services such as voice mail for call answering" will function only with Bell Atlantic's voice messaging service. Network Plus is again wrong. It appears that Network Plus is referring to Call Forwarding - Busy Line/Don't Answer (also called Fixed Call Forwarding), a local service that transfers an incoming call to any telephone number the customer has specified, including another voice messaging service, when the line is busy or not answered after a designated number of rings. Such call forwarding services are offered completely independently of Bell Atlantic's voice messaging.⁸ A customer that orders the service need only specify the telephone number of another vendor's voice messaging platform (or any other telephone number), and the service will forward incoming calls to that number.⁹

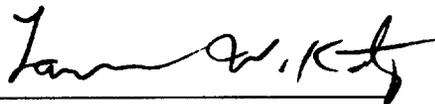
⁸ If a customer orders Bell Atlantic's voice messaging service, Bell Atlantic will offer to arrange for call forwarding to be installed on the customer's line. Another voice messaging provider has the same ability to arrange for call forwarding on behalf of its own customers.

⁹ Call Forwarding was being offered even before it was identified as a Complementary Network Service in Bell Atlantic's 1988 Comparably Efficient Interconnection Plan for voice messaging. Therefore, customers have had the ability to have calls forwarded to the telephone number of their choice, including another voice messaging provider, for more than a decade.

V. Conclusion

The parties have provided no valid justification for retaining the unbundling requirement for any carrier. The Commission should, therefore, allow all carriers to provide discounted packages of telecommunications services, CPE, and enhanced services.

Respectfully Submitted,



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December 23, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of December, 1998, a copy of the foregoing "Comments of Bell Atlantic" was sent by first class mail, postage prepaid, to the parties on the attached list.



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