

DOCKET FILE COPY ORIGINAL ORIGINAL

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

RECEIVED

MAR 23 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RM 9474

In the Matter of)
)
The Development of a National Framework to)
Detect and Deter Backsliding to Ensure)
Continued Bell Operating Company Compliance)
with Section 271 of the Communications Act)
Once In-Region InterLATA Relief is Obtained)

REPLY COMMENTS OF RCN TELECOM SERVICES, INC AND CTSI, INC..

RCN Telecom Services, Inc. ("RCN"),¹ and CTSI, Inc. ("CTSI"),² by their counsel, submit these Reply Comments in support of the above-captioned Petition for Expedited Rulemaking ("Petition") filed by Allegiance Telecom, Inc. ("Allegiance") on February 1, 1999.³ Allegiance requests that the Commission establish a national framework to detect and deter backsliding by Bell Operating Companies ("BOCs") once interLATA authority is granted pursuant to Section 271 of the Communications Act of 1934, as amended.⁴

¹ RCN, by itself and through various affiliations, is a facilities-based competitive provider of local exchange and long distance telephone services, high-speed Internet access, and traditional franchised cable and/or OVS services, primarily to residential subscribers. RCN's business plan emphasizes the residential market and is structured to offer consumers a combination of local exchange and long distance telephone service, high-speed Internet access, and traditional cable or OVS services in one convenient offering.

² CTSI is a competitive carrier that provides local telephone services in Pennsylvania and New York. CTSI is a wholly owned subsidiary of Commonwealth Telephone Enterprises, Inc., headquartered in Dallas, Pennsylvania.

³ Petition for Expedited Rulemaking filed February 1, 1999 by Allegiance Telecom, Inc., RM 5474, *Public Notice*, Report No. 2315, 1999 WL 49798 (February 5, 1999).

⁴ 47 U.S.C. Section 271.

No. of Copies rec'd 0 + 4
List A B C D E

I. THE REQUESTING RULEMAKING WOULD NOT DUPLICATE OTHER PROCEEDINGS

RCN and CTSI disagree with those commenters who contend that the requested Section 271 backsliding rulemaking is unnecessary because it would be duplicative of other rulemaking proceedings such as the *OSS*⁵ and *Advanced Services Proceedings*.⁶ These proceedings concern adoption of standards and rules that could be suitable for performance standards against which to measure Section 271 backsliding. However, RCN and CTSI submit that, even if those rulemakings result in the expeditious adoption of performance standards in some regulatory areas, at a minimum it would still be necessary to initiate a rulemaking to make any standards adopted in those proceedings specifically applicable as triggers for appropriate enforcement mechanisms such as those proposed in the Petition. Thus, it would be necessary, for example, to propose that standards concerning time intervals for provision of loops be adopted as the trigger for automatic reductions in UNE prices, if the Commission chooses to adopt automatic price reductions as a Section 271 backsliding safeguard.

Moreover, it would not be inefficient or duplicative of efforts in other proceedings to initiate the requested rulemaking. The Commission need not solicit comment on particular issues on which

⁵ Performance Measures and Reporting requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance, CC Docket No. 98-56, RM 9101, *Notice of Proposed Rulemaking*, 13 FCC Rcd 12817 (released April 17, 1998)

⁶ Deployment of Wireline Service Offering Advanced Telecommunications Capability, CC Docket No. 98-147, FCC 98-188, *Memorandum Opinion, Order and Notice of Proposed Rulemaking*, 1998 WL 458500 at ¶¶ 125, 143, 155, Separate Statement of Commissioner Michael K. Powell (released August 7, 1998).

it already has an adequate record. The Commission could tailor any notice of proposed rulemaking so that it builds upon, and does not unnecessarily duplicate, other proceedings.

RCN and CTSI are concerned in any event, that, in fact, the Commission is not making significant progress in working toward resolution of some proceedings, in particular the *OSS Proceeding*. RCN and CTSI suggest that the Commission consider whether a Section 271 backsliding proceeding may be the vehicle that can most expeditiously resolve OSS issues, rather than the other way around.

Further, other proceedings are not focusing on enforcement mechanisms. The *OSS Proceeding* expressly declined to consider enforcement issues.⁷ In the *Section 706 Proceeding*, the Commission noted the importance of enforcement in relation to any collocation and local loop rules, but did not seek comment on any specific enforcement mechanisms.⁸ Thus, at a minimum, the enforcement mechanisms proposed in the Allegiance Petition are not duplicative of other proceedings. In fact, it is the enforcement mechanisms and penalties proposed in the Allegiance Petition that may be its strongest contribution to assuring continued compliance with Section 271 standards once a BOC gains interLATA entry. RCN and CTSI submit that the enforcement mechanisms proposed in the Allegiance Petition are a sufficient justification to warrant institution

⁷ Performance Measures and Reporting requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance, CC Docket No. 98-56, RM 9101, *Notice of Proposed Rulemaking*, 13 FCC Rcd 12817 (released April 17, 1998)("We do not think that proposing model enforcement mechanisms is appropriate since our focus, at this initial stage, is on issuing guidelines for performance measures and reporting procedures.").

⁸ Deployment of Wireline Service Offering Advanced Telecommunications Capability, CC Docket No. 98-147, FCC 98-188, *Memorandum Opinion, Order and Notice of Proposed Rulemaking*, 1998 WL 458500 at ¶¶ 125, 143, 155, Separate Statement of Commissioner Michael K. Powell (released August 7, 1998).

of the requested rulemaking. As noted, if the Commission believes it would be more efficient, it could adopt performance standards in some areas in other proceedings and institute the requested rulemaking to consider enforcement mechanisms for violation of those standards, whether adopted in this proceeding or separately, as Section 271 backsliding safeguards.

II RIGHTS-OF-WAY AND INSIDE WIRING ISSUES SHOULD BE ADDRESSED IN SECTION 271 BACKSLIDING SAFEGUARDS

RCN and CTSI strongly support commenters that urge the Commission to include rights-of-way and inside wiring issues in any Section 271 backsliding regulatory program.⁹ The Commission has recognized that households in multiple dwelling units ("MDUs") constitute a very significant portion of the market for telecommunications services.¹⁰ At the same time, consumers in MDUs will be unable to receive the benefits of competition that Congress in the 1996 Act intended all Americans to enjoy if competitive local exchange carriers ("LECs") are unable to provide service to them because they do not receive adequate or reasonable access to rights-of-way and inside wiring that is necessary to serve them. In addition, it is the experience of RCN and CTSI that incumbent LECs and building owners are not always willing to provide, or cooperate in providing, reasonable and nondiscriminatory access to rights-of-way and inside wiring. Accordingly, the Commission should establish appropriate requirements to assure access to rights-of-way and inside wiring.

⁹ Winstar at 4.

¹⁰ Twenty-eight percent of households in the United States reside in MDUs. *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Manner*, Report, CC Docket No. 98-146, para. 104 (February 2, 1999).

RCN and CTSI submit that it would be appropriate to establish such requirements in the context of a regulatory program to protect against Section 271 backsliding. It is not a sufficient reason to ignore rights-of-way and inside wiring issues as part of a Section 271 compliance program because the Commission has other proceedings underway that could result in adoption of rules in these areas, as one commenter contends.¹¹ First, as noted above, the Commission can tailor any NPRM issued in response to the Allegiance Petition to assure that it does not unnecessarily duplicate other proceedings. In addition, to the extent necessary, the Commission can incorporate by reference the record in any previous proceeding so that it can effectively build on, rather than duplicate, other proceedings. Further, Congress established the Section 271 authorization process as one regulatory device to assure BOC compliance with key market opening requirements of the Act. Thus, it is appropriate for the Commission to establish rights-of-way and inside wiring requirements both as an initial Section 271 requirement and as a condition of continuing Section 271 authority, as Allegiance suggests.

RCN and CTSI urge the Commission to propose to require, as a condition of initial and continuing Section 271 authorization, that BOCs:

- make available house riser cable, horizontal distribution plant, and building entrance facilities as unbundled network elements; and
- demonstrate compliance with the Commission's requirements implementing Section 224 of the Act.

The Commission should additionally require that building owners provide access to inside wiring they own on reasonable and non-discriminatory terms as a condition of connection of such

¹¹ BellSouth at 5-6.

wiring to the public switched telephone network. While the Commission has limited authority to assert direct regulatory authority over non-carrier building owners, RCN and CTSI submit that the Commission may require non-discriminatory access to private building wiring as a condition of connection to the interstate, public switched telephone network. Thus, the Commission has already extended its regulatory authority over privately owned telephone terminal equipment and wiring as a condition of connection to the telephone network.¹² The Commission should require that BOCs, as a condition of Section 271 entry, participate in enforcement of such a requirement.

III. THE PROPOSALS IN THE PETITION SHOULD BE OFFERED FOR COMMENT

RCN and CTSI submit that the Allegiance Petition identifies important and valuable regulatory measures that could help achieve the pro-competitive goals of the Act. Verifiable national minimum standards for BOCs' provision of each of the Section 271 checklist items, including OSS, interconnection, collocation, access to rights of way and intra-building wiring, combined with monitoring and detection measures, could help assure that BOCs continue to comply with Section 271 requirements after interLATA entry. The Commission should also obtain a complete record on state efforts concerning Section 271 safeguards to date to serve as a foundation for consideration of appropriate safeguards.

The majority of commenters urge the Commission to grant the Allegiance petition and institute a rulemaking to establish Section 271 backsliding safeguards.¹³ Only a few commenters

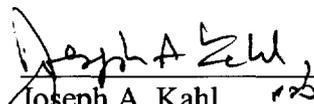
¹² See 47 C.F.R. Part 68.

¹³ Comments of Time Warner Telecom ("Time Warner") at 3; see Comments of AT&T Corp. ("AT&T") at 1, 9-10; see Comments of MCI WorldCom, Inc. ("MCI WorldCom") at i, 1; Comments of Intermedia Communications, Inc. ("Intermedia") at 2; Comments of CoreComm, Ltd. ("CoreComm") at 1, 3-4; see Comments of Hyperion Telecommunications, Inc. ("Hyperion") at 1; Comments of RCN Telecom Services, Inc. ("RCN") at 1, 4; Comments of Pac-West Telecomm, Inc. ("Pac-West") at 1-2; Comments of State Communications, Inc. ("SCI")

opposed or questioned the need for the requested rulemaking.¹⁴ Accordingly, the Commission should promptly institute the requested rulemaking.

IV. CONCLUSION

For these reasons, RCN and CTSI respectfully request that the Commission grant the Allegiance Petition.

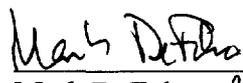


Joseph A. Kahl
Director of Regulatory Affairs
RCN Telecom Services, Inc.
105 Carnegie Center
Princeton, NJ 08540
(609) 734-3827 (phone)
(609) 734-6167



Russell M. Blau
Patrick J. Donovan
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W. Suite 300
Washington, D.C. 20007-5116
(202) 424-7500 (phone)
(202) 424-7645 (fax)

Counsel for RCN Telecom Services, Inc. and CTSI, Inc.



Mark DeFalco
Director, Regulatory Affairs
CTSI, INC.
100 CTE Drive
Dallas, PA 18612
Telephone: (570) 675-5208

Dated: March 23, 1999

275009.1

at 1-2; Comments of WinStar Communications, Inc. ("WinStar") at 1; *see* Comments of CTSI, Inc. ("CTSI") at 1; *see* Comments of MGC Communications, Inc. ("MGC") at 1.

¹⁴ Comments of Bell Atlantic at 1; Comments of BellSouth Corp. ("BellSouth") at 1; Comments of SBC Communications, Inc. ("SBC") at 1; *see* Comments of AT&T at 2; Comments of State of New York Department of Public Service ("NYDPS") at 1-2.

CERTIFICATE OF SERVICE

I hereby certify on this 23rd day of March 1999, that copies of the foregoing Reply Comments of RCN Telecom Services, Inc. and CTSI, Inc., were served via Messenger** or U.S. Mail, postage prepaid, upon the following parties:



Candise M. Pharr

VIA HAND DELIVERY

Magalie Roman Salas, Esq. (Original +4)
Secretary
Federal Communications Commission
The Portals - 445 12th Street, SW
Filing Counter TWS-A325
Washington, D.C.

Robert W. McCausland
Vice President, Regulatory & Interconnection
Allegiance Telecom, Inc.
1950 Stemmons Freeway, Suite 3026
Dallas, Texas 75207-3118

VIA HAND DELIVERY

International Transcription Service
1231 20th Street, N.W.
Washington, D.C.

VIA HAND DELIVERY

Jonathan E. Canis
Ross A. Buntrock
Kelley Drye & Warren LLP
1200 Nineteenth Street, NW - 5th Floor
Washington, D.C. 20036

VIA HAND DELIVERY

Brad E. Mutschelknaus
Michael B. Hazzard
Kelley Drye & Warren LLP
1200 Nineteenth Street, NW - 5th Floor
Washington, D.C. 20036

William B. Barfield
Jonathan Banks
1155 Peachtree Street, N.E. - Suite 1800
Atlanta, Georgia 30309-3910

VIA HAND DELIVERY

Richard H. Rubin
Mark C. Rosenblum
Stephen C. Garavito
295 North Maple Avenue - Room 325213
Basking Ridge, New Jersey 07920

Keith L. Seat
Karen T. Reidy
MCI Worldcom, Inc.
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

VIA HAND DELIVERY

Jerome L. Epstein
Jenner & Block
601 13th Street, N.W.
Washington, D.C. 20005

Lawrence G. Malone
General Counsel
New York State Department of Public Service
3 Empire State Plaza
Albany, New York 12223-1350

Hamilton E. Russell, III
General Counsel and Vice President
of Regulatory Affairs
State Communications, Inc.
200 North Main Street - Suite 303
Greenville, South Carolina 29601

Robert M. Lynch
Roger K. Toppins
Michael J. Zpevak
Lori A. Fink
William A. Brown
One Bell Plaza - 30th Floor
Dallas, Texas 75265-5521

Joseph A. Kahl
Director of Regulatory Affairs
RCN Telecom Services, Inc.
105 Carnegie Center
Princeton, New Jersey 08540

Robert Berger
Russell Merbeth
Winstar Communications, Inc.
1146 19th Street N.W.
Washington, D.C. 20036

Brian Conboy
Thomas Jones
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036

Leslie A. Vial
1320 North Court House Road - 8th Floor
Arlington, Virginia 22201

Kent F. Heyman, General Counsel
Richard E. Heatter, Associate Counsel
Marilyn Ash, Associate Counsel
MGC Communications, Inc.
3301 N. Buffalo Drive
Las Vegas, Nevada 89129

Janet S. Livengood, Esq.
Director, Regulatory Affairs
Hyperion Telecommunications, Inc.
DDI Plaza Two
500 Thomas Street - Suite 400
Bridgeville, Pennsylvania 15017

Mark DeFalco
Director, Regulatory Affairs
CTSI, Inc.
100 CTE Drive
Dallas, PA 18612