

EX PARTE OR LATE FILED

Arthur Evans
266 Jericho Turnpike, Suite F
Floral Park, N.Y., 11001
December 15, 1999

Ms. Magalie Roman Salas
Secretary
United States Federal Communications Commission
445 12th Street, SW
Washington, D.C., 20554

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ex Parte-Filing RE- Petition For Rulemaking, RM-91-08

RM-9108

Dear Ms. Roman-Salas

This letter (Note #1) is sent in response to the verbal request for public comments (made at a November 30, 1999 meeting by your agency's Staff) regarding a May 19, 1997 Petition For Rulemaking filed by MCI Communications ("MCI Petition") and your agency's notice announcing such November 30th meeting, (Exhibit #1).

RELIEF REQUESTED: The purpose of this letter is to request that the policy division of your agency's common carrier bureau respond to such MCI Petition, and the new information below to initiate a formal proceeding which will consider the reregulation of billing and collection services provided to both (a); at a minimum subscribers/telephonic information broadcasters (such as myself) to New York Telephone Company (dba Bell Atlantic's ("BANY") 976 prefixed information access facilities, (regulated as electronic publishing services see note #2), and (b); users of other types of other BANY and other ILEC types of telephonic- information access type facilities. Relevant new information to be considered includes:

#1: NEW FACTS: New evidence of BANY misconduct against 976 based news providers (and other types of similarly situated telephonic broadcasters/ electronic publishers), involving the stated intent to terminate all billing and collection services

On 5/29/97 the New York State Public Service Commission's ("NYSpsc") Case 93-c-0451 finding, that New York Telephone dba Bell Atlantic ("BANY") was guilty of gross negligence and

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wilful misconduct against its 976 service subscribers, (See Exhibit #2, excerpts from NYSPSC- Case 93-c-0451 findings). Subsequently, BANY sought to retaliate against the 976 industry, for 976 lessee initiated litigation, involving such BANY negligence, (See Exhibit #3), via a BANY's 1998 proposal to disconnect the entire 976 industry.

Despite, the fact that the NYSPSC was aware of such Exhibit #3 and BANY's improper motives, (as well as the "the testimony of its own employees that 976 subscribers, could not provide their own billing and collection services), the NYSPSC in Case 98-c-1079 Orders dated July 2, June 16, and March 25 1999, has voted to allow BANY to disconnect the entire 976 industry, (as well as other BANY audiotext services), including the involved billing and collection services in the year 2004.

See Exhibit #5, in which BANY indicates that it will indeed disconnect all INFOFONE SERVICES (includes 976 services) during the year 2004. Note also that BANY's merger partner GTE, has initiated a policy of ending its provision of billing and collection services, (SEE EXHIBIT #4).

#2: NEW FACTS: Simply stated, It is not economically viable for a 976 news broadcaster /provider and other similar low priced service providers (note the flat 40 cent maximum price for BANY's 976 service) to provide their own billing and collection services. The record in NYSPSC Case 98-c-1079, included testimony that there was simply no viable alternative to BANY's provision of billing and collection services to the 976 industry. Moreover, the greater than 40 cents, per call charges of possible third party billing agent-firms, were simply too cost prohibitive to be viable.

#3: NEW FACT: Given the failure of the NYSPSC in Case 98-c-1079, to consider the BANY misconduct involved, (including intent to monopolize) as well as the applicable federal statutes cited herein, the new conclusion, is that absent federal reregulation of the involved "essential" ILEC billing and collection services, valuable low priced information services will become permanently unavailable to the masses, a result contrary to the primary intent of PL 104-104.

CONCLUSION: Without, federal reregulation of billing and collection services, provided to such telephonic information broadcasters, especially in the case of news providers utilizing the 40 cent per call (maximum-flat public price) 976 prefixed facilities offered by BANY, broadcaster-electronic publishers (such as myself) will without question undergo massive forced business closures, eliminating the class of firms comprising this news medium, (an event, without question creating the type of market entry barriers, which violate the intent of Section 257 of of PL 104-104, (SEE NOTE #2)).

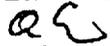
Note #1: Arthur Evans, is a sole proprietor, whose sole means of support is derived from the provision of news and information to the public via 976 prefixed- Mass Announcement, facilities, leased from BANY. Federal jurisdiction over these BANY facilities/services is derived partially under the (a): the electronic publishing, number portability, and Market Entry Barriers (section 257) provisions of Public Law 104-104, and (b): interstate public dialing access to BANY 976 services, allowed by multiple interexchange carriers.

Note #2: Subscribers to 976 prefixed type audiotext/information access facilities, have been recognized by the court as providing services falling within the definition of "electronic publishing",

See, United States vs Western Electric, two court opinions, 673 F. Supp 525, (D.D.C. 1987), and 690 F. Supp 22 (D.D.C. 1988). Also see Pub. Law 104-104, Section 274, codified at 47 U.S.C 274.

Note #3: Your agency in a policy statement issued on 4/2/99, FCC 99-53, CC-Dockety 98-94, at FCC Record 6077, reaffirmed its commitment to Section 257's goals. Similarly, your agency's commitment to diversification of ownership of broadcast facilities/spectrum based facilities is also seen at Section 309(j) of the Act, See 4/20/99 Order, at FCC Number 99-74, Docket 97-234. Also in a statement made by Chairman William Kennard, on 11/29/99 reaffirmed your agency's commitment to media diversity, SEE EXHIBIT #6.

Sincerely Yours,


Arthur Evans

CC: DARRUS WITHERS
CC: ROBERT ATKINSON
CC: LARRY STRICKLAND

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Federal Communications Commission
Washington, D.C. 20554

EXHIBIT #1

November 22, 1999

TO: Attached Service List

RE: Meeting to Discuss Billing and Collection Services

As you are aware, in 1986, the Commission detariffed the provision of billing and collection services provided by local exchange carriers (LECs) to encourage competition in the billing services market.¹ On May 19, 1997, however, MCI Telecommunications Corporation (MCI) filed a petition requesting that the Commission initiate a rulemaking proceeding to consider requiring incumbent ILECs to provide billing and collection services to interexchange carriers (IXCs) that offer interexchange services to end-users on a non-subscribed basis.² MCI and the petition's supporters, which include billing clearinghouses and information service providers, claim that the competitive billing and collection environment envisioned by the Commission in its 1986 *Detariffing Order* has yet to emerge for nonsubscribed services.

Conversely, LECs have expressed their opposition to the commencement of a rulemaking proceeding regarding billing and collection. LECs argue that not only is the petition unwarranted because the billing and collection market is competitive, but furthermore the Commission has fully addressed and resolved these issues in prior proceedings. Moreover, LECs claim that concern over the possible breach of a billing and collection contract is better addressed in a forum other than a Commission rulemaking proceeding.

In our efforts to assist the parties in resolving their issues without imposing new regulations on carriers, the Bureau has scheduled a meeting with Commission staff on November 30, 1999. The agenda for this meeting is limited. We are interested in discussing *industry sponsored solutions* to the problem of access to the local exchange carrier bill. As such, the discussion will focus upon possible technical solutions to the problem of IXCs' access to the local telephone bill. We will also discuss the issue of non-common carriers', including billing clearinghouses', ability to access the local telephone bill.

The meeting is scheduled for Tuesday, November 30, 1999 from 10:00 a.m. to 12:00 p.m. in Room 5-B516, the South Conference Room on the 5th floor of the Commission's headquarters. The Commission is located at 445 12th Street, S.W., Washington, D.C. 20554. If you are interested in attending, please contact Darius Withers, Staff Attorney, at 202/418-7259, dwithers@fcc.gov. We look forward to hearing from you.

¹ See *In the Matter of Detariffing of Billing and Collection Services*, 4 FCC Rcd 445 (1986), see also *In the Matter of Detariffing of Billing and Collection Services*, 102 FCC 2d 1150 (1986).

² See *Petition for Rulemaking of MCI Telecommunications Corporation*, RM 9108, filed May 19, 1997 (MCI Petition).

The Commission orders:

1. New York Telephone Company is found to have committed gross negligence and to have engaged in deliberate misconduct in connection with the September 1990 transfer of 976 service to the Ericsson switch.

2. The January 17, 1997 recommended decision of Administrative Law Judge Frank Robinson is adopted and made a part hereof to the extent it is consistent with the opinion and order. Exceptions to his recommended decision are granted to the extent explained above and are denied in all other respects.

EXHIBIT #2

CASE 93-C-0451,
OPINION 97-7,
MAY 29, 1997

VII. FINDINGS ON THE MAIN ISSUE

A. Introduction

I conclude, based upon the entire record, that New York Telephone Company has been guilty of gross negligence and willful misconduct.

My conclusions will be elaborated fully below, but their thrust may be summed up as follows:

The company's long-term deception of both IPs and the Commission concerning its unauthorized Autrax call count adjustments was willful misconduct.

The company was seriously negligent in pushing ahead with the Ericsson cutover in one gulp, rather than phasing it in, which would have enabled it to deal more efficaciously with the problems and avert serious harm to IPs.

The unexpected troubles that did attend the cut-over show that the company's planning for it was inadequate.

Likewise inadequate was the company's handling of the troubles when they arose, further evidencing insufficient preparation.

These basic elements of the cutover picture, taken together, constituted gross negligence.

Furthermore, the company engaged in willful misconduct in striving to cover up its negligence and to defeat efforts to call it to account. This extended to willful misconduct in the company's litigation of this proceeding.

I also conclude that the IPs were in fact harmed by the improper, deceitful and grossly negligent way in which New York Telephone provided service to them.

✓ 1/17/97

RECOMMENDED
DECISION

CASE 93-C-0451

BACKGROUND

In Opinion 97-7, the Commission found gross negligence and willful misconduct by New York Telephone in the management of daily call count information. Thereafter, the Commission accepted New York Telephone's proposal to implement an Automated Message Accounting (AMA) System, to determine the volume of calls for which information providers are paid. In a July 1, 1997 letter from New York Telephone to information providers, it was announced that the AMA System was effective and that New York Telephone would no longer provide daily call counts. Rather,

CASE 93-C-0451

OPINION DATED

9/28/97

EXHIBIT #3

DRAFT

Privileged and Confidential - Prepared for Use of Counsel
Executive Summary

Case 98-C-1079
PPI-BA-NY- 117

Attachment

Prologue

This document is intended as a tool for the Business Marketing organization to evaluate projected revenues and costs over a five year planning period associated with the three primary services provided by the New York IMAS Ericsson switch. These services are Mass Announcement Service (MAS), Interactive Information Network Service (IINS) and Group Bridging Service (GBS). Costs include estimates to provide a replacement for the existing switch to be Year 2000 compliant. Multiple configurations were considered. Costs included are for planning purposes only and are not intended as docket quality documentation.

Bell Atlantic provides similar services elsewhere in the region. Each jurisdiction has unique service, cost and network considerations. However, due to the urgency of the Year 2000 issue in New York, Business Marketing has focused its initial assessment there. Other jurisdictions will be evaluated in future analyses to determine the overall viability in each jurisdiction.

Estimated revenues, configurations and associated costs are outlined below. Risks must be considered regarding the viability of the product, outside the fully distributed service costs assessment. Due to the unique nature of this service, the New York PSC has played a key role in the requirements placed upon Bell Atlantic. PSC orders and litigation are highlighted on pages five and six. From a financial perspective, ~~the most significant of these issues are the four RICO lawsuits currently pending, where damages with interest and legal fees could be as high as \$100M.~~ While a decision to exit the product would not eliminate the current orders or legal proceedings, it is reasonable to assume that continuance of the product would require Bell Atlantic to implement future PSC orders and the threat of litigation would continue to exist.

Despite the costs associated with the provisioning of a new switch and our internal acknowledgment of financial risks associated with the product, Bell Atlantic must anticipate that the New York PSC is likely to be unsympathetic to cost issues and may advise Bell Atlantic to recover its costs elsewhere. In several recent orders, Bell Atlantic was advised to recover costs through the exogenous cost study process. It is critical that a decision to exit must be accompanied by a Legal/Regulatory strategy which is not service cost based. Similarly, while this document satisfies the internal requirement to assess the overall viability of the product line, it is not suitable for withstanding an extensive evaluation by the PSC for cost study purposes.

Background

The Year 2000 is rapidly approaching. It has already had a significant impact on every industry in the world, especially every computer-based or related transaction system. The IMAS Ericsson switch in Brooklyn will be no exception. This switch has not been upgraded for several years. Bellcore has verified that the existing release and two subsequent releases cannot handle the new millennium, leaving no doubt that the Ericsson and the services which depend upon it are in great jeopardy.

Notice: Not intended for disclosure outside Bell Atlantic

GTE Network Services
Wholesale Markets



BILLING SERVICES BULLETIN

Pay Per Call Services Eliminated In Future Contracts

Date of Bulletin: September 21, 1988

Implementation Date:

September 21, 1988

Pay Per Call Services Will No Longer Be Offered In Standard Billing and Collection Service Contracts.

Existing Contracts Will be Honored As Long As Minimum Complaint Threshold Requirements are met.

Action Required.

Benefits of Termination.

Purchase Order Number (PON) Requirements.

Pricing Impacts.

Who to call.

Distribution.

Effective immediately, GTE will no longer offer billing and collection services for pay per call messages as part of its standard billing and collection service contracts.

Existing contracts that contain Service Attachment 1 will be honored for the duration of the contract term as long as the carrier meets GTE's minimum complaint thresholds.

Pay per call services must be excluded in all future contracts.

Should significantly reduce the number of customer complaints regarding the billing of pay per call services.

There is no need to issue a PON.

None.

Questions may be directed to
(972)718 or
(972)718

GTE IC Sales - All Areas.

EXHIBIT #4

EXCERPT FROM

EVANS BA-NY #46

EXHIBIT # 5

Case: 98-C-1079

AHCIP

Date of Request: January 28, 1999

<p>EVANS-BA-NY-46:</p>	<p>Please respond to the following questions related to Bell Atlantic's plans and provide a copy of any internal documents related to the following:</p> <p>(a): Please specify Bell Atlantic's plans to provide INFOFONE services including the disposition of NNX's for the six years after Nov. 1999.</p> <p>(b): Please specify Bell Atlantic's plans to provide each component of B&C to each type of INFOFONE lessee for the six years after Nov. 1999.</p> <p>(c): Is your firm planning on providing INFOFONE services transport after the expiration of the agreement?</p> <p>(d): If the above answer is no, upon what date would your firm return such NXX's to the North American Numbering Plan?</p> <p>(e): What will you do, (or explain your options) in the event competing companies approached your firm to receive assignment the subj NNX's prior to the end of the settlement agreement's five year term?</p>
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RESPONSE:

BA-NY objects to the provision of information which would be competitively confidential and proprietary. BA-NY further objects to this interrogatory on the grounds that it is vague and ambiguous. In addition, BA-NY objects to this interrogatory on the ground that it is speculative.

Notwithstanding these objections.

(A) If the Joint Proposal is approved by the Commission, BA-NY will provide InfoFone services for five years from the Commission's approval of the Joint Proposal. After five years, BA-NY plans to discontinue InfoFone services. (BA-NY does not understand Mr. Evans' reference to a six-year period.) Pursuant to the Joint Proposal, BA-NY will use its Best Efforts to assist Current IPs (as those terms are defined in the Joint Proposal) to retain their existing numbers. See Joint Proposal ¶ 12. BA-NY has no current plans on the disposition of NXXs and will work with the Commission on any NXX assignment issues.

→ (C) No

(D) BA-NY objects to this interrogatory on the grounds that it is duplicative and repetitive. See response to Evans-BA-NY-46(A). See also Joint Proposal, ¶ 12.

(E) BA-NY objects to this interrogatory on the grounds that it is vague and ambiguous. BA-NY further objects on the grounds that it is duplicative and repetitive.

Notwithstanding these objections, BA-NY does not control the assignment of NXX codes. Assignment of NXXs is within the control of the FCC and the North American Code Administrator. At this time, BA-NY does not anticipate assigning the currently active InfoFone NXX codes to a competing company within the five-year transition period contemplated by the Joint Proposal.

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EXHIBIT # 6



Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

News media information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
Internet: <http://www.fcc.gov>
TTY: 202/418-2555

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See *MCI v. FCC*, 515 F.2d 385 (D.C. Cir. 1974).

FOR IMMEDIATE RELEASE
November 29, 1999

NEWS MEDIA CONTACT:
Linda Paris: (202) 418-0500

**Statement of FCC Chairman William E. Kennard
Regarding the NAACP Public Hearing
on Diversity in Network Television**

I applaud the NAACP for prompting a national dialogue about shattering the glass ceiling in television. For too long, women and minorities have faced barriers to working in front of and behind the camera. Our nation benefits when television better reflects the diverse market it serves.

In two weeks, the FCC will consider new EEO rules to widen the circle of opportunities in the broadcast industry. I am committed to ensuring that all Americans are aware of the enormous job possibilities in television and that they have a chance to participate.

- FCC -