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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to :
Investigate New York Telephone Company's : Case 98-C-1079
Proposal to Discontinue Offering Information :
Services :
:

**Prefiled Rebuttal Testimony
of Richard Cohen**

Q. Please state your name and the reason you are submitting this rebuttal testimony.

A. RICHARD COHEN. I submit this rebuttal testimony in response to the initial testimony submitted by BA-NY (as previously defined) and by the Staff of the New York State Public Service Commission (the "Staff").

Q. Does BA-NY's testimony offer any evidence that the InfoFone IP's have viable alternatives for obtaining call origination, transport, and billing and collection services required to provide the InfoFone service other than with the assistance of BA-NY? If not, why not?

A. No, BA-NY offers no such evidence. BA-NY merely provides descriptions of other ways in which information can technically be provided to consumers, without reference to whether the other sources of information offer the same benefits and advantages as the InfoFone service.

In particular, in its testimony, BA-NY states that consumers can now get information from a "host" of other sources including other pay-per-call services, POTS information services, the Internet, and other media. The fact that other sources of information may exist does not mean that those services constitute viable information alternatives for the information providers or their callers, and BA-NY points to no evidence that such services are viable alternatives.

Q. Does BA-NY's testimony establish that the "900" service is a viable alternatives to the InfoFone service?

A. No, on the contrary. BA-NY's testimony confirms that 900 services do not offer a reasonable alternative to InfoFone. BA-NY does not examine in any meaningful way the ways in which "900" services differ from InfoFone services 1/ -- differences examined in depth in my initial testimony and in that of Lawrence Weiss and Walter Boxer.

BA-NY's testimony does confirm, however, that the charges to information providers who subscribe to the "900" services will at least triple. Mr. Kubicki, BA-NY's industry expert, asserts that the average charges to

1/ Although Mr. Kubicki states in his initial testimony (at 10) that AT&T and MCI offer an intrastate tariffed service in New York, I am unaware that any such service exists and do not believe that it exists.

information providers for a one minute "900" interactive call (including the cost of transport, billing and collection, and service bureau fees) 2/ is 87 cents for small information providers and 60 cents for large information provider 3/ (Kubicki Test., at 17), tripling carrier charges for providers of interactive services and quadrupling the charges for providers of "900" services.

In view of these increased charges and the fact that a one year chargeback reserve is required, upon subscription to a "900" service, the 976 MAS service, which costs callers 40 cents per call and accounts for 80 percent of call volume, would be shut down over night, along with most, if not all, IINS and GBS information providers. The "900" price structure would destroy my ability to continue to provide company's interactive dating service at 35 cents per minute, and may well destroy the service entirely.

Moreover, when the 20 percent chargeback factor is added -- a figure which I believe is low for a 900 service

2/ The service bureau fees referenced in Mr. Kubicki's initial testimony appear to be on the low side. Generally service bureaus that resell carrier services are quite expensive and the service bureaus pass on their high costs to the information providers.

3/ Although Mr. Kubicki asserts that AT&T charges small information providers \$0.324 cents per minute for transport, this only applies to those few information providers who have their own T'1s. For the vast majority of information providers who do not have their own T-1s, AT&T's price is \$0.44 cents per minute for transport, a 33 per cent increase.

but which Mr. Kubicki concedes -- it appears all but certain that the entire InfoFone service will be destroyed in a brief period of time.

Mr. Kubicki also refers to third-party billers as an alternative. Although these third-party billers provide billing and collection services to the information providers, through the local exchange carrier, the economics of the industry render their services prohibitively expensive.

I recently spoke with one of the largest billing and collection companies in the country about their pricing for information providers. I was advised that the standard per call price for billing and collection was 10% of the total price to the caller, with a \$1.50 per call minimum for billing and collection. I was further advised that this high price was required because of high prices charged by local exchange carriers such as BA-NY to billing and collection agencies (approximately 50 cents to \$1 per call) and the high administrative costs due to chargebacks.

It therefore appears that BA-NY is charging billing and collection agencies 50 cents to \$1 -- even more than the 30 cents it charges IXC's -- even though its own cost of providing billing and collection services has been found to be about 2 cents per call. Moreover billing and collection companies are themselves known for the

exorbitantly high prices they charge, especially for operator assisted services.

The inevitable result of subscribing to "900" services will be substantial price increases to the consumer. In initial testimony, Ron Kubicki asserts that pricing for 900 interactive services (without an operator) averages \$1.99 to \$3.99 per minute. This is, I believe, substantially higher than average charges for a comparable IINS service. For example, my company, National Telephone Enterprises, Inc., is a large volume IINS 540 provider charging callers only 35 cents per minute (after the first minute), or one sixth the lowest "900" line charge. While National Telephone's prices may be among the lowest, they are not unique or unusual. The spread only underscores that consumers will be the ones to suffer if the InfoFone service is terminated.

These increased charges to consumers will soon result in substantial declines in call volume, the elimination of most if not all InfoFone information providers from the market, and the loss of a valuable, low priced service for all New Yorkers.

Q. BA-NY does however mention that one 900 service (900-976-2020) charges 40 cents a call for lottery results. If this is correct, how can that service charge 40 cents per

call given what you have told us about the much higher costs for 976 services?

A. I do not know whether this claim is correct. When you call the service, the recording does not give the caller the charge. Assuming arguendo that the charge for this service is 40 cents per minute, this charge to the customer is extraordinarily low for a 900 service. I have no inside information on whether the information provider is making or losing money on this service or whether such a charge is a loss leader intended for some other purpose. I do believe that the operator must be running this service at an out-of-pocket loss.

The amount of the loss may be tempered by the fact that, as I am advised, this service is being provided by the largest information provider in the country who, because of its extraordinarily volume, gets volume discounts from the carriers. In my opinion, even a large volume discount would not permit any information provider to profitably operate a "900" service at 40 cents per minute. I further believe that each and every information provider would suffer large out-of-pocket losses if they attempt to provide a 900 one-way mass announcement-type service at such rates.

Q. Does BA-NY's testimony convince you that POTS information services offer a viable alternative to your InfoFone service?

A. No, on the contrary. An examination of the evidence that BA-NY cites confirms that there are no viable POTS services. The only actual POTS service that BA-NY refers to is 777-FILM, an industry sponsored billboard of films currently playing which is advertiser sponsored and financed by advertisements.

The lottery results line (383-1300) that BA-NY references is a line run by the New York State Lottery Commission which gives the winning New York State lottery numbers. The dating and chat line numbers (516-961-DATE, 914-509-DATE, 212-812-DATE, 212-949-4500, and 516-256-8000) are all lines which, when called, refer the caller to a "900" number or demand credit card payment. One of the adult entertainment lines mentioned (212-486-9485) merely refers the caller to an InfoFone pay-per-call number. The other adult entertainment line mentioned (212-755-2234) is a free dating line for women; the companion 540 line for men is an InfoFone pay-per-call service. 4/

The fact that there are so few POTS line services, when there are hundreds and hundreds of InfoFone services, confirms the validity of my belief that POTS line services are not economically viable.

4/ Indeed, in a New York Press advertisement that BA-NY attached to its initial testimony, BA-NY included only half the advertisement -- the part advertising a free women's dating line. BA-NY deleted the other half of that same advertisement which advertised a companion 540 pay-per-call dating line for men.

Q. What is your opinion of BA-NY's reliance on the Internet and on other media as viable alternatives to the InfoFone service.

A. Although BA-NY talks generally about the Internet and other media, it does not even attempt to argue that these services are the same as InfoFone services or that the Internet is as accessible to all New Yorkers as the telephone. The fact that a growing number of people have Internet access does not make the service ubiquitous, especially to the poor or the elderly. Nor does BA-NY argue that the Internet has the same information-on-demand characteristics as telephone information services.

Q. Does BA-NY's discussion of CLEC's and service bureaus offer assurance that InfoFone information providers will be able to offer their services following BA-NY's termination? If not, why not?

A. BA-NY has also suggested that a CLEC or service bureau might implement a platform for providing InfoFone services. Although there are more than 50 interconnection agreements that have been entered into between BA-NY and a CLEC or service bureau over the last several years, to my knowledge, no CLEC, service bureau or other type of carrier has announced any intention to provide a platform for the InfoFone service or has reached agreement with BA-NY as to the terms and conditions under which BA-NY would transport,

bill and collect for calls to the CLEC's information services platform.

Furthermore, to my knowledge, no CLEC interconnection agreement permits a CLEC to assume control over any BA-NY controlled InfoFone telephone exchange and provide InfoFone services through its own platform. 5/

5/ A few recent interconnection agreements contain the terms and conditions that would apply in the event that a customer of a CLEC makes a call to one of BA-NY's InfoFone service telephone numbers.

For example, a May 28, 1998 interconnection agreement between BA-NY and MGC Communications, Inc. ("MGC") provides that, in the event that MGC originates a call for BA-NY's InfoFone service, MGC would transport, bill and collect for that InfoFone call, retaining for itself 5 cents from the caller for billing and collection services, 3 cents per minute for access to BA-NY's switching platform and, for the interactive services, an additional 3 cents per message for BA-NY's IP rating service. A copy of the relevant portions of this agreement are annexed as Exh. A.

This agreement only affects charges for CLEC originated calls for BA-NY's InfoFone service. It does not address charges for BA-NY originated calls for a CLEC's InfoFone-type service. See also April 9, 1998 agreement between BA-NY and COMAV Corporation, with relevant portions annexed as Exh. B, containing same terms and conditions.

Although the MGC agreement states that: "At such time as MGC connects information services platforms to its network, the Parties shall agree upon a comparable arrangement for BA-originated Information Services Traffic," it provides none of the terms and conditions for any such service, creating only an agreement to agree.

In an earlier (June 25, 1996) interconnection agreement between BA-NY and MFS Intelenet of New York, Inc. ("MFS"), relevant portions of which are annexed as Exh. C, the parties agreed that, when MFS delivers information services traffic to BA-NY's InfoFone service, MFS will provide billing and collection under the rates set forth in the 900 tariff for 2 cents per call, absent commission approval to the contrary.

Unless and until there is portability of the InfoFone numbers and a CLEC, service bureau, or other common carrier has the intention to, and the right to, offer such services under specified reasonable terms and conditions, no such viable alternative exists.

In my initial testimony and in the initial testimony of Lawrence Weiss and Walter Boxer, IPs discussed the reasons why a CLEC could not offer viable services to the InfoFone information providers. Those reasons remain and nothing in BA-NY's papers is to the contrary.

Although BA-NY suggests that a service bureau might be able to implement a platform for InfoFone services, using a billing and collection company, that alternative raises the same concerns as a CLEC and even more and is even less viable than a CLEC.

This is because a service bureau is an entirely unregulated entity. It files no tariffs and there are no ethical or other restrictions on who can provide those services. It would be extraordinarily unwise to trust a

This agreement similarly fails to set forth terms and conditions for an information services platform operated by MFS. Although the agreement contemplates a possible experiment with number portability, saying: "MFS may also request Direct Inward Dial Trunks pursuant to applicable tariffs. NYNEX and MFS will trial Number Portability in connection with information services traffic (e.g., 976). Until the trial is completed, interim number portability will not be available for use with Information Services traffic," to our knowledge, there has been no such study or number portability trial involving MFS or any one else.

service bureau to bill and collect information provider revenues from BA-NY when there are no guarantees of trustworthiness and no recourse if the service bureau proves to be fraudulent. 6/

Further, a service bureau is really just an extra middleman that adds no real value, but creates substantial additional costs. The service bureau merely obtains transport from a local exchange carrier and billing and collection from a third-party biller. Although the service bureau provides call processing, many if not most of the interactive IPs own their own equipment and can do their own call processing.

For being a middleman, the service bureau charges substantial fees in addition to those being charged by BA-NY and the extraordinarily high fees that are always charged by billing and collection companies who in turn have contracts with BA-NY which actually performs the billing and collection. In short, all services are still being provided by BA-NY, but numerous intermediaries, who perform no real function, get a piece of the economic pie.

The net result: consumers get the same service but the prices for the service increase three to eight times. It is impossible to justify this result.

6/ This concern is not just theoretical. For example, I am advised that the Red Cross was defrauded out of \$500,000 by an unscrupulous service bureau.

Q. Does BA-NY's promise to provide billing and collection service ensure that the InfoFone information providers will be able to offer their services following BA-NY's termination? If not, why not?

A. No. Although BA-NY's promise implies a recognition that BA-NY's billing and collection services are essential to the continuation of the InfoFone service, the fact that BA-NY has offered to continue to provide billing and collection will not ensure the survival of the service for several reasons.

First, BA-NY does not state how long it will continue to provide billing and collection services. The fact that BA-NY is now willing to continue to provide those services says nothing about whether it will always continue to provide those services. BA-NY can come back at any time and seek to withdraw its offer to provide billing and collection services. For example, BA-NY could, at any time, based on a claim asserted here, argue that the Commission lacks jurisdiction over non-basic services such as billing and collection and terminate, or seek to terminate, the service.

Second, BA-NY does not disclose in testimony its charges for billing and collection. As mentioned in my initial testimony, BA-NY currently charges interexchange carriers 30 cents per call for billing and collection for

"900" calls. At that rate, the 976 MAS service, which charges customers 40 cents per call and accounts for 80 percent of all InfoFone calls, would be out of business overnight and many IINS and GBS information providers would also soon fail.

Third, although BA-NY speaks of billing and collection as a whole, the Commission has made it clear that billing and collection is a group of services, some of which are regulated bottleneck services, others lightly regulated non-bottleneck services.

Specifically, in Opinion 90-33, Opinion and Order Concerning the Regulation of Billing and Collection Services dated December 28, 1990 in Case 89-C-191 and 90-C-165, the Commission made a determination that three aspects of billing and collection (call recording, calling number identification ("CNI" or "ANI"), and Billing Name and Address ("BNA")) were bottleneck services that would remain regulated and would be required to be furnished at tariffed rates and charges on a non-discriminatory basis or, where warranted, on an individual contract basis. (Opinion, at 3-4).

The Commission further made a determination that the remaining aspects of billing and collection -- posting charges to a bill, customer inquiries, mailing bills and collection of charges from callers -- would be available on a "lightly regulated" basis. In making this determination,

the Commission held that: "Complete deregulation of non-bottleneck B&C services does not appear legally sound under the existing law" and that the local exchange carriers will "continue to provide third-party access to B&C services on a non-discriminatory basis." Id., at 5. This Commission noted that, as to these lightly regulated aspects of billing and collection, it would have jurisdiction to prevent discrimination, preclude interference with basic and essential service, and address maximizing revenues from this business activity. Id., at 26-27.

BA-NY has not included in its testimony the prices that it would charge for any of these billing and collection related services. However, if charges to the IXC's are any indication, then BA-NY's total billing and collection charges are likely to be at least 30 cents per call, and perhaps as much as \$1, affording BA-NY a per call profit on billing and collection of at least 1500 percent and possibly much more.

If, as I believe, BA-NY is now charging and will continue to charge excessive prices for billing and collection, this will ensure that the InfoFone service is destroyed, or if not destroyed, that prices to the consumer would rise substantially, that BA-NY would recover monopoly profits on its billing and collection services, and that BA-NY could raise its price to callers for its own information

services programs, without fear of competition from lower priced InfoFone competitors.

Q. If BA-NY terminates its InfoFone service, would the IPs need to obtain the "lightly regulated" portion of the billing and collection services from BA-NY? If so why, how could they obtain such services, and what would be the cost of such services?

A. If BA-NY terminates its InfoFone service, IPs will continue to require, in addition to BA-NY's regulated bottleneck services of call origination, transport, BNA and ANI, BA-NY's unregulated or lightly regulated portion of the service of billing and collection, including posting charges to a bill, customer inquiries, stuffing and mailing envelopes, and collection of IP charges from BA-NY calling customers.

The IPs have no viable alternative for obtaining these unregulated or lightly regulated services other than through BA-NY. BA-NY provides regular monthly bills to its local exchange customers, which include charges for InfoFone and "900" pay-per-call services. When BA-NY customers pay their monthly telephone bill, their payment covers these monthly telephone information charges.

There is no viable alternative for InfoFone information providers to be paid. None of the "900" carriers do billing and collection; rather they use the

billing and collection services of the local exchange carrier, including BA-NY, for all calls to "900" lines. The reason is that there is no other way to obtain payment for these charges other than through local exchange carriers. Only local exchange carriers send monthly bills to most if not all local exchange customers, especially residential customers. Therefore, only local exchange carriers have the ability to bill and collect for most if not all calls.

Even if an independent billing and collection agent could in theory obtain caller names and addresses and submit a third-party bill to the caller, the billing and collection agent could not provide a viable service unless it had a billing and collection agreement with, e.g., BA-NY, pursuant to which BA-NY did the billing and collection for a fee, including placing the call charge on its monthly customer bill and collecting for the call.

For example, if a caller made one \$1.99 cent call to a telephone information program during the month, the billing and collection company would have to prepare and send that customer a \$1.99 bill. The cost of the bill, including the stamp, would likely be at least 50 cents. In addition, the billing and collection company would have to be paid for services rendered and BA-NY would also have to be paid for providing transport and BNA. Since billing and collection companies have a standard minimum charge of \$1.50

per call, the cost of the service already exceeds the total charge for the call.

Making matters worse, callers have never heard of the billing and collection agent and are unlikely to have heard of the name of the information provider. ^{7/} When they get a bill from an unknown billing and collection company referring to a \$1.99 charge from a call to a company they never heard of, callers -- including honest callers -- refuse to pay the bill, believing the call was sent in error. As a result, I am advised that the likelihood of payment when services are billed by an independent billing and collection agency is less than 20 percent.

It is therefore clear that if BA-NY were to refuse to provide its unregulated or lightly regulated billing and collection services, the information providers would have no viable means of billing and collecting for their services and the information provider would be out of business.

As a result, however the information provider obtains service, it must ultimately obtain billing and collection services, including regulated bottleneck billing and collectionservices and unregulated or lightly regulated billing and collection services, as follows:

^{7/} Callers to InfoFone services generally identify InfoFone services by the telephone number called, not by the name of the company providing the service. In most cases, the name of the company providing the information service is never known.

- a. If an IP were to abandon its InfoFone service and start a "900" service, its "900" carrier would use BA-NY's billing and collection services pursuant to the terms of its IXC interconnection agreement.
- b. If an IP were to obtain its InfoFone information service through a platform offered by a CLEC, its CLEC would use BA-NY's billing and collection services pursuant to the terms of its interconnection agreement with BA-NY.
- c. If an IP were to obtain its InfoFone information service through a platform offered by a service bureau, its service bureau would have an agreement with a billing and collection agency that in turn would have an agreement with BA-NY to provide billing and collection services.

In sum, even the unregulated or lightly regulated billing and collection services offered by BA-NY are essential to the ability of the InfoFone information provider to provide its services. Without BA-NY providing these services, the InfoFone information provider would be immediately forced out of business.

If BA-NY is not required to continue to provide these unregulated or lightly regulated billing and

collection services under rates that are just and reasonable, the InfoFone information providers' businesses can be destroyed as swiftly as if BA-NY failed to provide call transport. For this reason, BA-NY should be required to provide even this part of billing and collection to information providers under terms that are just and reasonable and do not permit BA-NY to earn monopoly profits.

Q. Do you dispute BA-NY's claims as to the reasons why they seek to terminate the InfoFone Service or the validity of those reasons?

A. Yes. As I stated in my initial testimony, I believe that BA-NY is seeking to terminate this service (i) because of its animus toward 976 MAS arising out of the litigation they have pursued, successfully, against BA-NY and continue to pursue, and (ii) because I believe that BA-NY's goal is to require the InfoFone information providers to pay unconscionably higher charges for BA-NY's billing and collection services, which will inevitably result in the destruction of many if not most Infofone information provider businesses and, for those that remain, substantially increased charges to the consumer, creating an elevated industry-wide price structure that would enable BA-NY to offer competing information services at monopoly prices.

BA-NY's explanations for the termination are simply not credible. Although BA-NY relies on alleged declines in the industry, 8/ it conspicuously fails to mention the fact that revenues from IINS and GBS -- which collectively account for 50 percent of BA-NY's revenues -- are increasing, not decreasing, 9/ that BA-NY continues to earn substantial contribution on those calls (at least \$5 million per year by my estimate), that the decline may be due in substantial part to the lack of BA-NY support for this service and to inaccurate BA-NY call counts, and that overall BA-NY continues to earn wildly excessive profits on this service. BA-NY's lack of candor on the economics of

8/ Although BA-NY refers to a so-called "dramatic decline in call volumes for InfoFone services" (BA-NY Marketing Panel, at 2), this mischaracterizes the industry, failing to reflect, as it does, the increase in IINS and GBS revenues.

BA-NY's reference to this so-called "dramatic decline" lies in sharp contrast to the statement of Ronald Kubicki that there is a "very active and highly competitive market in the United States for telephone information services with \$1 billion in total U.S. revenues (Kubicki Initial Test., at 3, 19). The inferior performance of BA-NY's InfoFone service may well stem from BA-NY's failure to promote and support the service.

9/ It also fails to reflect the extraordinarily adverse effect that BA-NY's announced termination has had on the industry. Once the termination was announced, many if not most information providers no doubt reduced their advertising and made other changes in their business plans to prepare for the possibility of imminent termination and the demise of their businesses. This will necessarily have a widespread adverse effect on call volumes this year.

this services confirms my suspicion that BA-NY's termination results from an ulterior motive.

Equally unconvincing is BA-NY's reliance on its alleged Ericsson AXE 10 IMAS switch year 2000 concerns. There is evidence that any year 2000 concerns that may exist are the result of BA-NY's knowingly and intentionally inadequate efforts to upgrade the Ericsson switch back in 1996 without performing intermediate upgrades or otherwise altering the trunking to make the upgrade possible. See Initial Testimony of Arthur Evans. There is substantial evidence that, even if there are legitimate year 2000 concerns, the concerns might be simply and easily remedied by turning the switch back -- a widely used solution that BA-NY refuses even to consider.

Even if a new switch were required, it appears unnecessary to order a new Ericsson AXE 10 switch which, like the current one, has the capability to handle 400 million calls per year when the service only generates 50 million calls per year. 10/ BA-NY is estimating costs

10/ By considering the purchase of a new Ericsson AXE 10 capable of handling 400 million InfoFone calls per year, BA-NY is considering a switch that is grossly overprovisioned for the use for which it is intended and therefore unduly costly.

One wonders whether BA-NY's status as a rate-of-return regulated firm creates artificial incentives to over-invest in a new switch. If so, BA-NY can evade regulation by vertically integrating downstream as a competing information provider and under-allocating the costs of this new switch to unregulated subsidiaries and over-allocating

based on the purchase of an ocean liner when a tugboat will do just fine. A smaller, less expensive, switch would be appropriate for this service.

Q. Is BA-NY's complaint that it will have to pay the costs of implementing a new fifth blocking option (BA-NY Marketing Panel, at 14) reasonable?

A. No. This fifth blocking option was ordered by the Commission to redress concerns of 976 MAS information providers that existing blocking options failed to discriminate between the lower priced mass announcement service calls and the higher priced IINS and GBS calls. Without a fifth blocking option, consumers who wanted to block IINS and GBS were required to block 976 MAS as well. The fifth blocking option was intended to provide consumers with a means of blocking IINS and GBS without simultaneously blocking 976 MAS.

It is hard to believe that it will cost \$1 million to implement a new blocking option, and BA-NY offers no support for this claim.

Q. Is there some other reason why BA-NY might be concerned about the implementation of this blocking option other than cost?

costs of the new switch to regulated services.

A. The fact that BA-NY objects to implementing this fifth blocking option that will minimize the blocking of 976 MAS calls serves to support IPs' contention that BA-NY intends to introduce a service that competes with 976 MAS. If calls to 976 MAS services are blocked willy-nilly, regardless of customer intent, any BA-NY telephone information service that competes with 976 MAS will face reduced competition, permitting BA-NY to charge higher (i.e., monopoly) prices for its services. Anything that results in fewer 976 MAS calls being blocked results in greater competition to BA-NY's own information services.

Q. Do you have any other evidence that BA-NY is attempting to destroy the InfoFone service, or at least the 976 service which it intends to compete with?

A. While I have no direct evidence, two additional facts support my position. First, in response to my recent request to begin a 976 MAS service, BA-NY denied my request, claiming that they were uncertain whether the Ericsson AXE 10 IMAS switch could accommodate additional 976 MAS traffic. This basis for denial is transparently false. The switch used to accommodate 400 million calls annually. In view of the fact that the 50 million calls that the switch now handles annually is nowhere near its capacity, BA-NY's dedication to keeping new 976 information providers from coming on line is confirmed.

We have also confirmed that Bell Atlantic is involved in at least one other jurisdiction -- the Washington, D.C. metropolitan area -- in providing telephone information services. 11/ InfoTips, a Bell Atlantic shopping tips service and InfoScene, a Bell Atlantic tourism and entertainment guide, are both telephone information services operated by Bell Atlantic in the Washington D.C. area. A copy of relevant Bell Atlantic information concerning this telephone information service is annexed as Exh. D.

Advertising yellow pages subscribers pay extra to list their services in Bell Atlantic's InfoTips and InfoScene guides. Callers access information concerning these available services through their touchtone pad. The existence of this Bell Atlantic service in Washington, D.C. confirms that Bell Atlantic retains an interest in providing information services and is currently providing them today.

Q. What is your opinion of the Staff's testimony?

11/ To date, BA-NY and Bell Atlantic continue to refuse to provide information concerning the telephone information services they have offered in the past, they now offer, or they intend to offer. IPs reserve their right to supplement their testimony in this area in the event they are able to obtain additional information, through discovery or through its own sources of inquiry.

IPs also reserve their right to supplement their testimony on other issues which BA-NY has refused to provide information on including, inter alia, the Ericsson switch.

A. While I appreciate the fact that the Staff recognized the problems with BA-NY's control over billing and collection and therefore agreed to extend regulation of this service out five years, I was disappointed that the Staff decided to recommend that BA-NY be permitted to terminate this service generally and billing and collection in particular. I was particularly disappointed in the Staff's apparent failure to take into consideration the antitrust issues raised by BA-NY's proposed termination -- a termination which I am advised would be in violation of the essential facilities doctrine and would permit BA-NY to evade regulation in the area of billing and collection and leverage its monopoly power from a regulated to unregulated market.

As stated in my initial testimony and as reaffirmed herein, I do not see any viable alternatives for this industry and submit that BA-NY's application for termination should be denied. At a minimum, the Commission should insure that it permanently continues to regulate all aspects of billing and collection, including those aspects that are lightly regulated, to insure that BA-NY continues to provide all such services at just and reasonable rates (i.e., with no monopoly profit) to all information providers on a non-discriminatory basis and to insure that BA-NY is not able to use its control over billing and collection to

advantage any Bell Atlantic information service vis-a-vis the InfoFone information providers.

Conclusion

In view of the foregoing, BA-NY's application to terminate the InfoFone service should be denied and BA-NY should be directed to continue to provide the service under existing terms and conditions except that contribution should be removed from all services. 12/

Dated: Philadelphia, Pennsylvania
December 28, 1998

Richard Cohen

12/ The Commission has determined that the 976 MAS per call cost of call origination and transport is 4 cents, the per call cost of call processing is about 2 cents and the per call cost of billing and collection is 2 cents. See Order of the Commission dated July 21, 1998 in Case No. 93-C-0451. The IPs accept these cost figures for their service. This would mean that the first minute cost for IINS should be 8 cents and each additional minute should be about 6 cents.

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**BEFORE THE
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580**

In the Matter of)	
)	FTC File No. R611016
Proposed Amendment to)	
16 C.F.R. Part 308)	
Pay-Per-Call Rule)	

Excerpts from:

**COMMENTS OF THE
BILLING REFORM TASK FORCE**

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collection services that they are “fearful of providing their names” on the record.¹⁴ In the face of this evidence, it is naive to assume that the problems with the existing billing notice disclosures can be resolved by arms-length negotiations between pay-per-call service providers and the LECs who bill end users.¹⁵

C. The Record In the FCC’s Truth-In-Billing Proceeding Demonstrates The Urgent Need For Changes In Pay-Per-Call Billing Notice Requirements.

If the Commission has any doubt about the need for the rule changes suggested by the BRTF, the record at the FCC demonstrates both the validity and seriousness of the BRTF’s concerns. One of the FCC’s proposals in the Truth-In-Billing Proceeding is to extend the disclosure requirements applicable to pay-per-call services to all services that are unrelated to basic phone service (*e.g.*, voice mail, Internet access, etc.).¹⁶ Specifically, using TDDRA as a model, the FCC has suggested segregating non-communications charges from other

14. See Electronic Commerce Association Comments in the MCI Proceeding at 6; see also Telephone Resellers Association Comments in the MCI Proceeding at 4. The lack of negotiating power with the LECs is a result of the lack of viable alternatives to LEC billing for telecommunications-related services. For example, AT&T has explained to the FCC that “[c]arriers would have few options in the event LECs begin unilaterally to alter or cancel their [billing and collection] contracts.” LEC Public Forum Transcript, Volume I at 5-6. WinStar agreed, acknowledging that LEC billing is an “absolute” requirement in the marketplace. *Id.* at 7.

15. Even if there were sufficient leverage to negotiate with the LECs, the IXCs often overlook pay-per-call billing issues because other issues take priority. Thus, the matters of greatest concern to pay-per-call service providers frequently get lost in the shuffle during IXC/LEC billing and collection negotiations.

16. 13 FCC Rcd 18176 at 18187.

charges on telephone bills and including “a prominent disclosure at the top of the page or section stating that non-payment of certain charges would not result in the termination of the customer’s local or long distance service.”¹⁷ This, of course, is the precise disclosure that is of concern to the BRTF.

There was *overwhelming* opposition to the FCC’s proposal. Why? Because telephone carriers are understandably concerned that applying the pay-per-call billing disclosure requirements to services that *they* offer would invite consumer abuse and cause unreasonably high chargebacks. For example, Bell Atlantic said that the FCC’s proposal would lead consumers to believe that they need not pay portions of their phone bills.

Bell Atlantic does not think that customers should be encouraged not to pay their bills. This would likely be the effect of requiring that bills have flashing neon lights highlighting charges that the customer has less obligation to pay. The overwhelming majority of the billions and billions of charges we bill -- both our own and those we bill for other providers -- are legitimate. Bills should not suggest that it’s OK not to pay some of the charges on them.¹⁸

Time Warner Telecom expressed similar fears:

Services which are classified as non-deniable, and therefore, not subject to local service disconnection for non-payment are legitimate services the charges for which are properly due and owing when consumers elect to purchase those services. TW Telecom is concerned that over time attaching the label ‘non-deniable’ to services on telephone invoices may indicate to consumers that those charges may be ignored without risk of disruption to their

17. *Id.* (The FCC labels such charges “non-deniable.”) Section 64.1510(a)(2)(ii) of the FCC’s rules provides that “any charges for pay-per-call services [must be displayed] in a part of the bill that is identified as not being related to local and long distance telephone charges.”

18. Comments of Bell Atlantic in the Truth-In-Billing Proceeding at 9.

telephone service. . . . Separately identifying deniable and non-deniable charges on bills may significantly reduce the collection rate for those services listed as non-deniable, thereby increasing the collection costs for those services, and ultimately the prices for those services.¹⁹

Other parties were concerned that differentiating non-communications charges from communications charges would “invite” consumers not to pay non-deniable charges,²⁰ while Ameritech said it would “lead to a significant rise in non-payment of legitimate charges and, thereby, inflate costs and the rates paid by the average honest consumer.”²¹ Sprint opposed the FCC’s proposals because they “would increase carriers’ bad debt significantly, and negatively affect carriers’ cash flow, by *encouraging unscrupulous or irresponsible consumer behavior.*”²²

Members of the BRTF have seen pay-per-call bad debt skyrocket precisely because of the “unscrupulous and irresponsible” consumer behavior that Sprint and other carriers fear. Yet, the industry’s pleas for a modest rule change to address this problem have largely been ignored. Adoption of the BRTF’s proposal will help stem the growing tide of pay-per-call chargebacks and, at the same time, address the concerns expressed by parties in the

19. Comments of Time Warner Telecom, Inc. in the Truth-In-Billing Proceeding at 14.

20. *See, e.g.*, Comments of Commonwealth Telephone Company in the Truth-In-Billing Proceeding at 4.

21. Reply Comments of Ameritech in the Truth-In-Billing Proceeding at 9.

22. Comments of Sprint in the Truth-In-Billing Proceeding at 15 (emphasis added).

FCC's Truth-In-Billing Proceeding.²³ Specifically, the BRTF's proposed amendment to Section 308.20(m) will ensure that consumers are informed that service providers have the right to pursue collection of legitimate charges and may report any failure to pay such charges to a credit reporting agency.²⁴ Once consumers are educated about the consequences of failing to pay legitimate charges, they will be less inclined to walk away from their responsibilities to pay for telephone-billed purchases.

Finally, whatever rules are ultimately adopted in this proceeding, it is critical that the Commission coordinate with the FCC to ensure that the same billing disclosures and segregation requirements apply equally to carriers and non-carriers alike for similar services. In this regard, Pilgrim Telephone has informed the FCC that at least one LEC insists that voice mail billed for *third parties* be segregated from other charges on the telephone bill pursuant to the FCC's pay-per-call segregation requirements, while the LEC's *own* voice mail service is not similarly segregated.²⁵ Pilgrim claims that LEC "billing notices are omitted entirely, or printed on the bill in such a way that the consumer is unaware that the same non-payment rights apply to the LEC offered enhanced services as apply to the

23. The BRTF has proposed rule changes to the FCC that parallel those proposed here. Copies of the BRTF's comments and reply comments in the Truth-In-Billing Proceeding are attached as Exhibit B.

24. See Exhibit A-1.

25. See Comments of Pilgrim Telephone at 18 in the Truth-In-Billing Proceeding.

competitor enhanced services.”²⁶ The BRTF urges the Commission to work with the FCC to ensure that such blatantly unfair and anti-competitive billing practices are stopped.²⁷ The 900 Number Rule must not become a means for LECs or other carriers to create an uneven playing field in the provision of telephone-billed products and services.

IV. INDUSTRY DATABASE (Proposed Section 308.20(l))

In addition to new billing disclosure requirements, an important second prong in the industry’s effort to fight chargebacks is the establishment of an industry-wide database. Such a database would consist of caller adjustments reported by billing entities (*i.e.*, telephone number, date of call, and amount of adjustment) and would be used by individual service providers to assess the risk of providing service to chronic abusers.

Two years ago, the Commission asked whether its rules affected the establishment of such a database.²⁸ The ISA responded that Section 308.20(l), formerly Section 308.7(i), which prohibits certain retaliatory actions by service providers, raised concerns that needed

26. *Id.*

27. Significantly, TDDRA does not *mandate* the billing notice disclosures adopted by the FCC or the FTC. The FCC established its billing notice requirements in response to suggestions made by certain parties. 8 FCC Rcd 6885, 6898 (August 13, 1993). The FTC explained that its billing notice disclosures emanated from TDDRA’s mandate to promulgate “requirements for billing and collection of pay-per-call services ... that are substantially similar to those prescribed under the Truth In Lending Act and the Fair Credit Billing Act.” 58 Fed. Reg. 13370, 13375 (March 10, 1993). Thus, the Commission has discretion to eliminate the billing notice requirement altogether if it finds such action to be in the public interest.

28. 62 Fed. Reg. 11750 at 11755.

November 30, 1999

VIA HAND-DELIVERY

Chairman William E. Kennard
Federal Communications Commission
445 - 12th Street, S.W.
Suite 8-B201
Washington, D.C. 20554

Dear Chairman Kennard:

U S WEST has announced that effective December 1, 1999, it will no longer permit providers of ancillary telecommunications services to bill customers through the local phone bill. As a result, tens of thousands of consumers throughout the U S WEST region, who for years have been able to pay for numerous competitive services billed on their local bill, will no longer be able to do so. U S WEST, however, will continue to bill its own ancillary services on the local phone bill. This policy flies in the face of the spirit of the 1996 Telecommunications Act which was to "provide for a pro-competitive" framework and open "telecommunications markets to competition." The undersigned competitive telecommunication service providers urge the FCC to act now to protect competition and consumer choice.

U S WEST's new policy of eliminating competitors from the local bill is grossly anti-competitive and aimed at cementing the market power U S WEST gained during years of monopoly control of the market. Implemented after years of permitting third party billing, the policy creates a distinct competitive advantage for U S WEST over other service providers: consumers simply prefer to see all of their telecommunications charges on a single bill. U S WEST recognizes that faced with the loss of this convenience, consumers will switch to U S WEST ancillary products that will remain on the local bill.

Worse still, there are no viable billing alternatives available in the marketplace. U S WEST argues that its creation of a blank envelope direct bill is a viable alternative. The truth is that it is nothing more than a sham which U S WEST refuses to use for its own services, or for services in which it has a financial interest. With no billing alternative, competing service providers will be unable to compete with U S WEST's superior access to consumers.

U S WEST's initiative will be harmful to consumers who will lose competitive alternatives for many services. U S WEST's attempts to defend this patently anti-consumer initiative as a pro-consumer, anti-cramming effort are absurd. By U S WEST's own admission, ongoing industry efforts have successfully reduced cramming. Forcing all competitors off of the local bill regardless of any history of unauthorized charges makes no sense. Further proof that U S WEST's policy is not primarily directed at reducing cramming is the fact that U S WEST is offering its direct bill alternative to all providers, without any screening at all.

The 52 undersigned competitive telecommunications service providers are outraged over U S WEST's decision. These service providers use the local bill to offer such popular and valuable consumer services as voice mail, caller ID, wireless service, paging, Internet access and other services. Deny access to the local bill, and you deny service providers the ability to compete against U S WEST. The simple fact is, without access to the local bill, service providers will not survive.

The question at issue is not whether the FCC has authority to regulate billing and collections. At issue is whether the FCC will act to protect competition and consumer choice. Allowing U S WEST to displace its competitors with impunity will set a dangerous precedent and threaten the robust competition that currently exists among the many providers who now reach their customers through the local bill. Worse, it will harm many consumers who presently enjoy the variety of valuable telecommunications services they can pay for on a single bill.

The undersigned service providers look forward to working with you on this critical consumer issue.

Sincerely yours,

Access Paging, Inc.	Communicate Technological Systems, LLC	Hellyer Communications	OG Billing Service, Inc.	Telnet.Com, LLC
Advanced Telecom Services, Inc.	Communications Television, Inc.	Innovative Calling Technologies	Olympic Telecommunications, Inc.	TPI Group
American Business Bureau, Inc.	Dana Point Marine Telephone	Integretel, Inc.	Psychic, Inc.	True America Communications
America Net	DTG	LiveOnTheNet.Com, Inc.	PlanetInter.Net	US Wireless Communications, Inc.
American Telepath	Enhanced Phone Services	Memberworks, Inc.	Private Voice, Inc.	Value Added Communications
American Wireless and Communications Corporation	Geomedia	Mercury Marketing, Inc.	QuikPage, Inc.	Vesstone Telecommunications, Inc.
America's Telenetwork	Global Communication Services	National A-1 Advertising, Inc.	RealUse.Com, LLC	Vortex Communications
Best USA, Inc.	Global Airwave Communications, Inc.	National Brands	Shared Network Services, LLP	WEB-AM, Inc.
Bridge Interactive Group	Hearing Impaired Technologies Group, Inc.	National Voice Communications, Inc.	Smart Internet	Web Valley, Inc.
Colorado River Corp.		Network 1000, Inc.	Starlink	Western Telecom
		Network Telephone Services, Inc.	Telecompute Corporation	
			Telemedia Network	