

Federal Communications Commission
Washington, D.C.

January 10, 2000

INFONXX, INC.
c/o Mary Newcomer Williams
Covington & Burling
1201 Pennsylvania Ave. N.W.
P.O. Box 7566
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Re: Acceptance of Comments As Timely Filed in (Docket No. 97-172)

The Office of the Secretary has received your request for acceptance of your pleading in the above-referenced proceeding as timely filed due to operational problems with the Electronic Comment Filing System (ECFS). Pursuant to 47 C.F.R. Section 0.231(I), the Secretary has reviewed your request and verified your assertions. After considering arguments, the Secretary has determined that this pleading will be accepted as timely filed. If we can be of further assistance, please contact our office.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
for Magalie Roman Salas
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Petition of SBC Communications Inc. for)
Forbearance of Structural Separation Requirements)
and Request for Immediate Interim Relief)
in Relation to the Provision of Nonlocal)
Directory Assistance Services)
)
Petition of Bell Atlantic for Further)
Forbearance from Section 272 Requirements)
in Connection with National Directory)
Assistance Service)
)
BellSouth Petition for Forbearance for)
Nonlocal Directory Assistance Service)
)
TO: The Secretary)

CC Docket No. 97-172

MOTION TO ACCEPT LATE-FILED COMMENTS

INFONXX, Inc. ("INFONXX"), pursuant to Sections 0.231(i) and 1.46(b) of the Commission's Rules, respectfully submits this Motion to Accept Late-Filed Comments because it was unable to file the attached Consolidated Comments on the Petitions for Forbearance of SBC Communications, Inc., Bell Atlantic and BellSouth ("Comments") on the due date of November 29, 1999 due to problems with the server that supports the Commission's electronic comment filing system ("ECFS"). (Comments attached as Exhibit A.) The Comments were submitted in response to a *Public Notice* issued on November 17, 1999.¹ The *Public Notice* set a deadline of

¹ See *Public Notice, Pleading Cycle Established for Comments on BellSouth, SBC, and Bell Atlantic Petitions for Forbearance for National Directory Assistance*, CC Docket No. 97-172, DA 99-2556 (Nov. 17, 1999) ("*Public Notice*").

No. of Copies rec'd
List ABOVE

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November 29, 1999 for filing comments on the SBC, Bell Atlantic and BellSouth Petitions ("Petitions"). The *Public Notice* expressly stated that comments on the Petitions could be filed electronically through the Commission's ECFS. *See Public Notice*, at 1.

On November 29, between the hours of 6:45 and 8:30 p.m. (well in advance of the midnight deadline for electronic filing, but too late to file in paper), INFONXX's counsel repeatedly attempted to access the ECFS, using two different Internet browsers and several different computer terminals, in order to file INFONXX's comments electronically. All of these efforts were unsuccessful, repeatedly yielding a "Server Error" message stating that "This server has encountered an internal error which prevents it from fulfilling your request. . . ." *See Exhibit B* (representative copies of Server Error message, dated Nov. 29, 1999). INFONXX's counsel telephoned and emailed ECFS Help to inquire about the status of the ECFS server and to determine whether the server error would be corrected that evening, but received no response to either voicemail or email messages until the following day. *See Exhibit C* (copy of email submitted to ECFS Help, Nov. 29, 1999). On November 30, a member of the ECFS staff informed INFONXX's counsel that the ECFS database server was out of service all evening on November 29 and was not restored to service until early in the morning of November 30.

Accordingly, INFONXX was unable to file its Comments on the November 29 due date. However, INFONXX's counsel filed the Comments both electronically and in paper first thing in the morning on November 30. INFONXX's Comments had already appeared on the ECFS by early afternoon that same day. *See Exhibit D* (printout of ECFS records for CC Docket No. 97-172, dated Nov. 30, 1999, 2:16 PM).

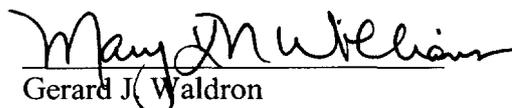
The Secretary is authorized under Section 0.231 of the Commission's Rules to grant brief extensions of time for filing comments "based on operational problems associated

with the Commission's electronic comment filing system." 47 C.F.R. § 0.231. INFONXX respectfully submits that such an extension of time, until November 30, 1999, is appropriate in the present circumstances. As described above, INFONXX was unable to file its comments on the due date set by the Commission because of operational problems with the ECFS system. Moreover, no party will be harmed by grant of a one-day extension for INFONXX to file its Comments. The amount of time that the Bell company petitioners will have to respond to INFONXX's comments will not be affected by the late filing because copies of INFONXX's Comments were mailed to SBC, Bell Atlantic and BellSouth on November 29. Moreover, the INFONXX Comments were available to the public through the ECFS by early afternoon on November 30, *before* any comments filed on November 29. *See* Exhibit D.

For the foregoing reasons, INFONXX respectfully requests that the Secretary grant a one-day extension and accept INFONXX's late-filed comments on the SBC, Bell Atlantic and BellSouth Petitions for Forbearance.

Respectfully submitted,

INFONXX, INC.



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*Member of the Bar of the Commonwealth of Virginia;
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November 30, 1999

CERTIFICATE OF SERVICE

I, Russell D. Jessee, certify that on this 30th day of November, 1999, I caused a copy of the foregoing Motion to Accept Late-Filed Comments to be served by first-class mail, postage prepaid, on the following:

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Russell D. Jessee

EXHIBIT A

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of SBC Communications Inc. for)	
Forbearance of Structural Separation Requirements)	
and Request for Immediate Interim Relief)	
in Relation to the Provision of Nonlocal)	
Directory Assistance Services)	
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Petition of Bell Atlantic for Further)	CC Docket No. 97-172
Forbearance from Section 272 Requirements)	
in Connection with National Directory)	
Assistance Service)	
)	
BellSouth Petition for Forbearance for)	
Nonlocal Directory Assistance Service)	
)	
TO: The Commission)	

**CONSOLIDATED COMMENTS OF INFONXX, INC. ON
PETITIONS FOR FORBEARANCE OF
SBC COMMUNICATIONS INC., BELL ATLANTIC, AND BELL SOUTH**

INFONXX, Inc. ("INFONXX"), by its attorneys, submits these consolidated comments in response to the *Petition of SBC Communications Inc. for Forbearance from Section 272 of the Federal Telecommunications Act of 1996* ("SBC Petition")¹ and similar forbearance petitions filed by Bell Atlantic ("*Bell Atlantic Petition*")² and BellSouth ("*BellSouth Petition*")³ (collectively, "Petitioners"). INFONXX urges the Commission (1) to affirm and impose here the

¹ *Petition of SBC Communications Inc. for Forbearance of Structural Separation Requirements and Request for Immediate Interim Relief in Relation to the Provision of Nonlocal Directory Assistance Services*, CC Docket No. 97-172 (Nov. 2, 1999) ("*SBC Petition*").

² *Petition of Bell Atlantic for Further Forbearance from Section 272 Requirements in Connection with National Directory Assistance Service*, CC Docket No. 97-172 (Nov. 5, 1999) ("*Bell Atlantic Petition*"). The *Bell Atlantic*

(continued...)

requirement that Bell operating companies afford independent DA providers nondiscriminatory access, at imputed costs, to in-region directory listing information used in the provision of nonlocal directory assistance (NDA); (2) specifically with respect to the *SBC Petition*, to reject SBC's erroneously narrow interpretation of the "unaffiliated entities" to whom nondiscriminatory access must be provided; and (3) prior to granting the requested forbearance, to require Petitioners actually to offer directory listing information at imputed rates.

BACKGROUND AND SUMMARY

On October 8, November 2, and November 5, 1999, respectively, BellSouth, SBC Communications Inc. ("SBC") and Bell Atlantic filed petitions asking the Commission to forbear from imposing the separate affiliate requirement of Section 272 of the Communications Act, as added by the Telecommunications Act of 1996, on their provision of NDA.⁴ Previously, in its *NDA Forbearance Order*, the Commission had decided not to require U S WEST to provide nonlocal, in-region directory assistance (DA) through a separate affiliate.⁵ The Commission stated that it would also forbear from imposing Section 272's requirements on the national component of U S WEST's NDA service, provided that U S WEST offered the nationwide

(continued . . .)

Petition was filed on behalf of Bell Atlantic-Delaware, Inc.; Bell-Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc. The other Bell Atlantic companies filed a similar forbearance petition on October 22, 1999.

³ *BellSouth Petition for Forbearance for Nonlocal Directory Assistance Service*, CC Docket No. 97-172 (Oct. 8, 1999) ("*BellSouth Petition*").

⁴ *BellSouth Petition*, at 12; *SBC Petition*, at 8; *Bell Atlantic Petition*, at 6.

⁵ Memorandum Opinion and Order, *In re Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of Directory Assistance, Petition of U S WEST Communications, Inc. for Forbearance*, CC Docket No. 97-172, FCC 99-133 (released Sept. 27, 1999) ("*NDA Forbearance Order*").

component as an incidental interLATA service using its own facilities.⁶ BellSouth, SBC, and Bell Atlantic now seek the same forbearance the Commission afforded U S WEST.⁷

Finding that U S WEST enjoys a monopoly position over its local exchanges and exchange access,⁸ the Commission conditioned its grant of forbearance in the *NDA Forbearance Order* to protect against exploitation of this dominant position in the market for NDA. As a condition of forbearance, the Commission required U S WEST to comply with the nondiscriminatory access requirements of Section 272(c)(1), 47 U.S.C. § 272(c)(1), which prohibits discrimination against "any other entity."⁹ To implement this requirement, the Commission ruled that U S WEST must offer its in-region directory listing information at imputed costs and that it must file modifications to its Cost Allocation Manual to reflect the Commission's decision.¹⁰ The Commission imposed these requirements to "ensure that the competitive advantages U S WEST enjoys with respect to the provision of directory assistance service throughout its region will not undermine competition in the market for nonlocal directory assistance service."¹¹

INFONXX urges the Commission, for the sound reasons set forth in the *NDA Forbearance Order*, to impose on BellSouth, SBC and Bell Atlantic the same condition requiring nondiscriminatory access for unaffiliated entities to directory assistance information at imputed costs. In implementing this important safeguard, however, the Commission should not

⁶ *Id.* ¶ 28.

⁷ *SBC Petition*, at 1; *Bell Atlantic Petition*, at 1; *BellSouth Petition*, at 1.

⁸ *NDA Forbearance Order* ¶ 35.

⁹ *Id.* ¶ 36.

¹⁰ *Id.* ¶ 37.

¹¹ *Id.* ¶ 36.

accept mere promises of Bell company compliance. After all, these companies have been providing NDA service in blatant violation of Sections 271 and 272 for close to a year.¹² To make the safeguard meaningful and effective, the Commission should condition its grant of forbearance on a requirement that each Petitioner actually offer directory listing information to unaffiliated entities at imputed cost. Mere promises or filings showing a shift of macro-level costs can give the Commission no assurance that consumers will in fact be protected by robust competition. As the recent Bell Atlantic Cost Allocation Manual (CAM) revisions demonstrate,¹³ CAM filings do not provide the Commission with an adequate basis to conclude that the prices at which directory listing information will be provided to unaffiliated entities will make competition possible. The Commission cannot ignore the inadequacy of these CAM filings. Unless directory listing information actually is offered at competitive prices, competition will not have an opportunity to take hold in the NDA market and the safeguard adopted in the *NDA Forbearance Order* would be meaningless. More significantly for this proceeding, the Commission's conclusion that forbearance can be granted under Section 10 because consumers will be protected would be in serious doubt.

DISCUSSION

I. THE COMMISSION SHOULD REQUIRE PETITIONERS TO MAKE DIRECTORY LISTING INFORMATION AVAILABLE TO ALL UNAFFILIATED ENTITIES AT IMPUTED COSTS.

The Commission correctly decided in the *NDA Forbearance Order* that a Bell company can provide NDA without a separate subsidiary, but *only if* it grants all unaffiliated

¹² See, e.g., Comments of AT&T Corp. to Petition of Bell Atlantic for Forbearance from Section 272 Requirements in Connection with National Directory Assistance Service, CC Docket No. 97-172, at 4-8 (Nov. 12, 1999).

¹³ See Revisions to Bell Atlantic Operating Companies' Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, ASD File No. 99-46 (Nov. 1, 1999) ("*Bell Atlantic CAM Revisions*").

entities access to its in-region directory listing information at imputed costs. The Commission should impose that same requirement on each of the Petitioners here. Indeed, two of the Petitioners, Bell Atlantic and BellSouth, willingly accept this requirement.¹⁴ The third, SBC, without any rational basis and contrary to the plain meaning of the *Order*, seeks to interpret the *NDA Forbearance Order* to require the provision of nondiscriminatory access "to local exchange and toll carriers only, and not to third party DA providers, which the Commission has already determined are not providers under the definition of Section 251(b)(3)."¹⁵ The Commission should reject SBC's flawed reasoning and impose the broad nondiscriminatory access requirement set forth in the *NDA Forbearance Order* on all Petitioners.

In the *NDA Forbearance Order*, the Commission specifically determined that all competing directory assistance providers must be able to compete with dominant firms on a level playing field to ensure that the dominant firm's charges, practices, classifications, and regulations are just and reasonable, and not unjustly or unreasonably discriminatory.¹⁶ Without the condition that the dominant firm provide nondiscriminatory access to the in-region directory listing information that it uses to provide NDA, the Commission feared that competition in the directory assistance market would be eroded over time.¹⁷ Nothing has changed in the directory assistance marketplace since the *NDA Forbearance Order* that would call into question the

¹⁴ See *Bell Atlantic Petition*, at 4; *BellSouth Petition*, at 8-9.

¹⁵ *SBC Petition*, at 4. Moreover, SBC does not state that it actually will comply even with its limited interpretation of the condition of providing nondiscriminatory access to its in-region directory listing information.

¹⁶ *NDA Forbearance Order* ¶ 36.

¹⁷ *Id.*

Commission's conclusion that the nondiscriminatory access condition is necessary to ensure competition.¹⁸

Moreover, the Commission clearly believed that consumers would be adequately protected only if *all* unaffiliated entities, not just carriers as SBC contends, had nondiscriminatory access to directory listing information. In considering U S WEST's petition for forbearance, the Commission was well aware of the role of independent DA providers in bringing competition to the NDA marketplace. For example, INFONXX filed a letter encouraging the Commission to ensure competition by requiring U S WEST to provide nondiscriminatory access to "all competitive DA providers (whether or not such providers are 'telecommunications carriers')." ¹⁹ The Commission cited INFONXX's letter in the *NDA Forbearance Order* when it observed that U S WEST previously had refused to provide "unaffiliated entities" with access to the directory listing information U S WEST uses to provide NDA.²⁰ Thus, in using the term "unaffiliated entities," the Commission recognized that independent DA providers are competitors of dominant firms such as U S WEST and clearly contemplated that the term "unaffiliated entities" would include independent DA providers.²¹ The Commission in no way limited the term only to telecommunications carriers under Section

¹⁸ The *NDA Forbearance Order's* broad grant of access to directory listing information is in tune with the *N11 Forbearance Order* and other actions the Commission has taken recently to promote competition in the telecommunications market. See, e.g., First Report and Order and Further Notice of Proposed Rulemaking, *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105, 12 FCC Rcd 5572 (1997); Memorandum Opinion and Order, *Bell Operating Companies Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, as amended, to Certain Activities*, CC Docket No. 96-149, 13 FCC Rcd 2627, 2664-66 (1998).

¹⁹ Letter from Gerard J. Waldron, INFONXX, to Magalie Roman Salas, Secretary, Federal Communications Commission (May 20, 1999) (INFONXX May 20, 1999 *Ex Parte*), at 3.

²⁰ *NDA Forbearance Order* ¶ 34 (citing letters from independent DA providers INFONXX and Metro One Telecommunications).

²¹ *Id.* ¶ 36.

251(b)(3). Moreover, a plain reading of "unaffiliated entities" provides no basis for limiting the term as SBC proposes. The Commission's mandate is clear: To ensure competition in the NDA market, Bell companies that wish to provide NDA service must provide nondiscriminatory access to their directory listing information to *all* unaffiliated entities that compete with them in that market, including independent DA providers.²²

II. TO ENSURE THAT ITS SAFEGUARD IS IMPLEMENTED APPROPRIATELY, THE COMMISSION SHOULD CONDITION THE GRANT OF EACH FORBEARANCE PETITION ON THE PETITIONER'S ACTUAL OFFERING OF DIRECTORY LISTING INFORMATION TO UNAFFILIATED ENTITIES AT IMPUTED COSTS.

A central premise of the *NDA Forbearance Order* is that the potential power of the Bell company to use its dominant market position to harm consumers can be countered by competition in the market for NDA. A corollary determination, equally important, is that a necessary prerequisite for such competition is a requirement that all unaffiliated entities have access to the Bell company's directory listing information at imputed costs.²³ Although INFONXX supports the Commission's imposition of this safeguard, the requirement does not advance the Commission's goal unless the Bell company actually offers such information at costs that make it economical for competing providers to access the data. If the cost to competing providers is inflated, then those entities will not be able to use the Bell company's database. As a

²² SBC also contends that the California Public Utility Commission (CPUC) prohibits SBC's affiliate Pacific Bell (PacBell) from releasing the required directory listing information without the authorization of the underlying carrier. *SBC Petition*, at 4. However, this constraint should in no way exempt SBC from complying with a condition of forbearance designed to safeguard competition. If SBC obtains directory listing information from an independent or competitive LEC in its region, it should not be able to use that information to provide NDA unless it is able to release the information in compliance with the forbearance condition. If the CPUC requires PacBell to obtain a LEC's authorization to release directory information, PacBell simply must obtain that authorization before it uses the information itself. The CPUC's requirement is not designed to stifle competition, but rather to protect the expectations of underlying carriers. Thus, SBC should not be heard to complain that the CPUC's requirement requires it to harm competition. Instead, the CPUC's requirements can be accommodated.

²³ *NDA Forbearance Petition* ¶ 36.

consequence, the Commission's safeguard would be hollow because, contrary to the specific requirements of Section 10, consumers would not be protected from unjust and unreasonable rates and practices.

Given the importance of the cost of access to directory listing information to the Commission's forbearance analysis, we think that it would be premature for the Commission to grant a forbearance petition unless the Bell company petitioner actually has offered such information at imputed costs. Mere submission of revisions to a cost allocation manual cannot give the Commission or competing directory assistance providers sufficient information to determine that directory listing information will be made available at costs that permit competition.²⁴ For example, the nonregulated NDA costs described in Bell Atlantic's CAM revisions appear to include operator terminal costs and other costs not related to the compilation and maintenance of the directory assistance database.²⁵ Because these additional costs should not be included in imputed costs for access to directory listing information, the CAM filing does little to help the Commission or competing DA providers to determine the actual price at which directory listing information will be offered.

In order to grant forbearance pursuant to Section 10, the Commission should require the Petitioners to provide concrete evidence that they are in fact complying with the Commission's directive to make directory listing information available at imputed costs. Such a requirement would not unduly burden the Petitioners. In fact, Bell Atlantic in New York has filed a tariff indicating that it can provide access to directory listing information for the entire

²⁴ See *Bell Atlantic CAM Revisions*.

²⁵ See *Bell Atlantic CAM Revisions*, Change Matrix, at 4.

State of New York at an initial price of \$83,341 and a monthly fee of \$3,866 for daily updates.²⁶ A subsequent filing sets forth a lower initial load rate and higher monthly update rates.²⁷ The parties may disagree about whether Bell Atlantic's New York rates are based on fully allocated costs or forward-looking costs, but these filings certainly show that at least one Bell company can set forth in concrete terms its cost structure for providing directory listing information.

The Bell companies' long record of noncompliance with key provisions of the Communications Act related to the provision of NDA service, which could be grounds for severe penalties or forfeitures, mandates that, at minimum, any grant of forbearance should be tied to an actual offering of directory listing information at nondiscriminatory and imputed costs. Only then can the Commission and others judge the adequacy of this requirement to protect consumers against unjust and unreasonable charges and practices.

CONCLUSION

In seeking forbearance from the requirements of Section 272, Petitioners recognize that the Commission conditioned forbearance for U S WEST on its providing unaffiliated entities with nondiscriminatory access to the in-region directory listing information it uses to provide NDA. The Commission should impose that same requirement on all of the Petitioners in the instant proceeding. In addition, the Commission should affirm that the term "unaffiliated entities" is not limited in any respect and certainly includes independent DA providers. Finally, INFONXX urges the Commission to render this safeguard meaningful and

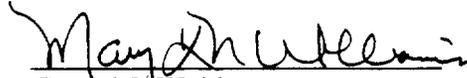
²⁶ See New York Telephone Company P.S.C. Tariff No. 900, as amended effective Jan. 19, 1999, at 1st Revised Page 50 (attached as Attachment A).

²⁷ See Panel Testimony of Bell Atlantic–New York on Costs and Rates for Directory Assistance Listings Services, N.Y.P.S.C. Case No. 98-C-1357, Exhibit Part C (July 23, 1999) (attached as Attachment B).

effective by further conditioning grant of the forbearance petitions on an actual offering of directory listing information at imputed costs.

Respectfully submitted,

INFONXX, INC.



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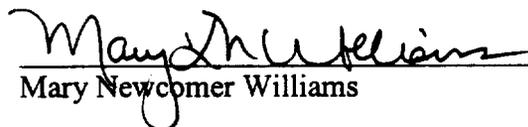
CERTIFICATE OF SERVICE

I, Mary Newcomer Williams, certify that on this 29th day of November, 1999, I caused a copy of the foregoing Consolidated Comments of INFONXX, Inc. on Petitions for Forbearance of SBC Communications, Inc., Bell Atlantic and BellSouth to be served by first-class mail, postage prepaid, on the following:

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