

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

In the Matter of

Petition of Bell Atlantic for Forbearance from
Section 272 Requirements in Connection with
National Directory Assistance Services

CC Docket No. 97-172
DA 99-2345

OPPOSITION TO EXCELL'S APPLICATION FOR REVIEW

Excell asks the Commission to reverse the Common Carrier Bureau order which granted forbearance for Bell Atlantic's¹ national directory assistance service. The Bureau order, however, follows to the letter the Commission's September 27, 1999, order that granted identical relief to U S WEST.² Excell's petition must, therefore, be denied.

Excell faults the Bureau for "fail[ing] to explain exactly why the retention of the nondiscrimination requirements developed by the FCC under section 272(c)(1) satisfies the first criterion of forbearance."³ There was no reason for the Bureau to "explain exactly why" this is the case because the Commission had already made this determination in the *U S WEST Order*.⁴

What Excell is really saying is that the Commission was wrong in the *U S WEST Order*, that the imputation and nondiscrimination requirements do not satisfy the section 10(a)(1) requirements, and that the conditions imposed by the Commission do not satisfy paragraphs (2)

¹ New York Telephone Company and New England Telephone and Telegraph Company.

² *Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance*, 14 FCC Rcd 16252 (1999) ("*U S WEST Order*").

³ Application at 3.

⁴ *U S WEST Order* ¶¶ 37, 47.

and (3) of section 10(a).⁵ Excell cannot make that argument here. Excell did not seek reconsideration or court review of the Commission’s U S WEST decision, and the Bureau correctly followed it in reviewing Bell Atlantic’s identical request.

Excell is particularly critical of the Commission’s imputation requirement, claiming that it is insufficient to support forbearance.⁶ The Commission, however, held:

“[W]e determine that U S WEST must make available to unaffiliated entities all of the in-region directory listing information it uses to provide regionwide directory assistance service at the same rates, terms, and conditions it imputes to itself. As noted above, imposition of nondiscrimination requirements with respect to in-region telephone numbers should promote the development of a fully competitive market for nonlocal directory assistance services by ensuring that no one competitor will have an undue advantage in the nonlocal directory services market. This should stimulate the entry of new providers of nonlocal directory assistance. The introduction of additional competitors in the nonlocal directory services market will, in turn, encourage the providers of these services to compete on the basis of price and quality, which will ultimately benefit consumers. In view of this finding, we conclude that enforcement of section 272 is not necessary to protect consumers.”⁷

This decision was plainly correct, and the bureau was required to follow it in any event.

Excell says that Bell Atlantic cannot comply with the imputation requirement because “BOCs such as Bell Atlantic provide their in-region listings at different rates, terms, and conditions to different classes of entities” and goes on to talk about the pricing practices of U S WEST.⁸ Even if Bell Atlantic modeled its behavior on U S WEST’s — which it does not — the imputation requirement would still work as it could simply impute the higher cost to its own operations.

⁵ Application at 4, 8-9.

⁶ Application at 4,5-6.

⁷ *U S WEST Order* ¶ 47.

⁸ Application at 4-5.

Excell also persists in claiming that Bell Atlantic discriminates against it and “requires some DA providers to purchase a minimum number of listings in their contracts.”⁹ As we previously explained, Excell asked Bell Atlantic to provide listings for all its customers so that Excell could provide directory assistance service. The contract Bell Atlantic offered — a package containing all current listings plus updates for one year — is exactly the same as Bell Atlantic offers to any other customer. Moreover, the contracts do not contain any numerical minima, merely “Bell Atlantic’s best estimate of the total number of listings it would provide in a year, and the total price would be adjusted up or down depending on the number of listings actually provided.”¹⁰

Excell criticizes Bell Atlantic’s CAM filing because, it says, it shows that Bell Atlantic is charging Excell for services that Excell has not requested and does not need.¹¹ Bell Atlantic corrected Excell’s misunderstanding when Excell made this same claim in its comments on Bell Atlantic’s CAM revisions:

“[T]he filing itself does not in any way suggest, as the commenters appear to believe, that Bell Atlantic will charge others for the costs of capabilities which Bell Atlantic uses to provide NDA service but other providers do not need, such as use of Bell Atlantic’s operator systems and call centers. *See* Excell at 6-7. Those costs are properly allocated to Bell Atlantic’s nonregulated activities, but they are not included in the charges to others who do not use those capabilities.”¹²

Of course, even if Excell were correct — which it certainly is not — it would be grounds for rejecting Bell Atlantic’s CAM revisions as inconsistent with the forbearance conditions, not grounds for changing those conditions.

⁹ Application at 5.

¹⁰ Response of Bell Atlantic at 4-5 (Nov. 23, 1999).

¹¹ Application at 6.

Finally, Excell renews its request that the Commission decide in this proceeding how new rules that it might adopt in a separate rulemaking would apply to Bell Atlantic and for the application of those new rules “on a retroactive basis.”¹³ The Bureau correctly left those issues for that rulemaking proceeding.

For all these reasons, the Commission should reject Excell’s application.

Respectfully submitted,

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¹² Reply Comments of Bell Atlantic at 2, ASD File No. 99-46, dated December 22, 1999.

¹³ Application at 7.