

BEFORE THE
Federal Communications Commission

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WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

_____)
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 99-2990

To: The Commission

REPLY TO BELL ATLANTIC'S OPPOSITION

Excell Agent Services, L.L.C. ("Excell"), by its attorneys, hereby submits this reply to Bell Atlantic's Opposition to Excell's Application for Review in this matter. The Bell Atlantic Opposition implies that Excell cannot raise the issues it raised in its Application for Review because those issues should have been raised in the US WEST National Directory Assistance proceeding in CC Docket No. 97-172.¹ Bell Atlantic seeks to avoid the valid arguments in Excell's Application for Review largely on procedural grounds instead of defending itself with facts that demonstrate that Bell Atlantic does not discriminate against unaffiliated entities in its provision of directory listings.²

¹ Opposition of Bell Atlantic to Excell's Application for Review in CC Docket No. 97-172 (filed Feb. 7, 2000) ("Bell Atlantic Opposition").

² For example, Bell Atlantic baldly asserts that it has not modeled its pricing behavior on US WEST's, yet fails to offer a single fact regarding the actual rates, terms and conditions Bell Atlantic imputes to itself compared to those imposed on independent providers. See Bell Atlantic Opposition, at 2.

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The Commission can always reverse a Bureau order.³ If Excell had filed a Petition for Reconsideration, perhaps Bell Atlantic's procedural argument would be correct because the Common Carrier Bureau (the "Bureau") may have been compelled to follow established precedent when it applied the Commission decision in the US WEST Order to Bell Atlantic.⁴ But for an application for review of an action taken pursuant to delegated authority, the full Commission can and should reverse the US WEST Order, or at least, based on the facts brought to light by Excell herein, reverse the Bureau's decision to apply that precedent to Bell Atlantic. Excell was authorized to submit its Application for Review under Section 1.115 of the Commission's rules because the Bureau's decision "[involved] application of a precedent or policy which should be overturned or revised."⁵

Bell Atlantic (New York and New Jersey) is the party with which Excell is concerned in the instant proceeding and the facts regarding Bell Atlantic are different than the facts surrounding the US WEST proceeding. Bell Atlantic's forbearance petition filing on October 22, 2000 triggered the opportunity for the Bureau to review Bell Atlantic's case separate and apart from its decision in the US WEST Order. Excell filed its Application for Review of the Bureau's

³ "Actions taken under delegated authority are subject to review by the Commission, on its own motion or on an application for review filed by the person aggrieved by the action." 47 C.F.R. § 0.5 (1999).

⁴ See Petition of US WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance, Petition of US WEST Communications, Inc. for Forbearance; The Use of N11 Codes and Other Abbreviated Dialing Arrangements, Memorandum Opinion and Order, 14 FCC Rcd 16252 (1999) ("US WEST Order"). Excell submits that the Bureau failed to justify its grant of forbearance for both US WEST and Bell Atlantic, but because this proceeding is limited to the review of Bell Atlantic's practices, Excell will limit its discussion to Bell Atlantic's practices.

⁵ See 47 C.F.R. § 1.115(b)(2)(iii).

Bell Atlantic Order to bring this matter before the full Commission so that it can review the decision of Bureau.⁶ Excell urges the Commission to examine and review the Bureau's application of the forbearance statute to the facts of this case. If only one criterion of the forbearance statute is not met, then the Commission may not forbear from applying the requirements in Section 272.

The first criterion requires the FCC to determine that:

enforcement of [Section 272] is not necessary to ensure that the charges, practices, classifications or regulations by, for or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

By the time Bell Atlantic filed its forbearance petition, Bell Atlantic already had ample opportunity to review and implement the non-discrimination conditions established in the US WEST Order but has yet to adopt non-discriminatory practices. In the Bell Atlantic Opposition, Bell Atlantic continues to insist that it would not require Excell to purchase a minimum number of listings.⁷ To the extent Bell Atlantic needs its memory refreshed, Excell will gladly provide Bell Atlantic, upon request, with a copy of the "Directory Assistance License Agreement" sent to Excell by Bell Atlantic which clearly would require Excell to purchase a minimum number of listings. Bell Atlantic does not impose a minimum listing requirement on itself rendering such conduct discriminatory on its face (even if, as Bell Atlantic states, the contract "is exactly the

⁶ Petition of Bell Atlantic for Forbearance From Section 272 Requirements in Connection With National Directory Assistance Services, Memorandum Opinion and Order, CC Docket. No. 97-172 (Dec. 22, 1999)("Bell Atlantic Order").

⁷ Bell Atlantic Opposition, at 3.

same as Bell Atlantic offers to any customer”).⁸

If the standard established in the Bell Atlantic Order is to be properly applied, then Bell Atlantic is required to “make available to unaffiliated entities all of the directory listing information that it uses to provide regionwide directory assistance service at the same rates, terms, and conditions it imputes to itself.”⁹ Bell Atlantic’s minimum requirements should adequately demonstrate to the Commission that the imputation requirements do not effect any change in Bell Atlantic’s discriminatory treatment of other entities. Moreover, Bell Atlantic cannot possibly impose all of the rates, terms and conditions it imposes on other entities on itself if it has existing contracts that include terms it cannot impose on itself (such as the minimum listings requirement).

Excell urges the Commission to review the decision in the Bell Atlantic Order and re-evaluate whether the decision achieves the results intended by Section 272 and intended by the Bureau when it first adopted the non-discrimination requirements: “to ensure that competition in the market for nonlocal directory assistance will not be eroded over time.”¹⁰ Absent Commission re-evaluation of the Bell Atlantic Order and either reversal of the Bureau’s decision or revision of the requirements set forth therein, fair and open competition in the market for nonlocal directory assistance in Bell Atlantic’s operating territory will not become a reality.

Therefore, Excell urges the Commission to review the decision of the Common Carrier Bureau in this proceeding and find that the forbearance criteria have not been satisfied.

⁸ Id.

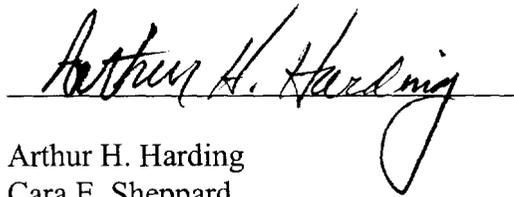
⁹ Bell Atlantic Order, para. 15 (emphasis added).

¹⁰ See US WEST Order, para 36; see also Bell Atlantic Order, para. 15 n.42.

Moreover, enough time has passed for the Commission to recognize that it is nearly impossible for the RBOCs to implement the non-discrimination requirements established in the US WEST and Bell Atlantic Orders and that these requirements have had no impact on the discriminatory practices of these RBOCs. Thus, the non-discrimination requirements do not serve to adequately protect and preserve competition in the market for nonlocal directory assistance. As such, the FCC should not forbear from applying Section 272 to Bell Atlantic's provision of nonlocal directory assistance until adequate non-discrimination measures are taken or until Bell Atlantic ceases its discrimination against other carriers and independent DA providers in its provision of directory listings.

Respectfully submitted,

EXCELL AGENT SERVICES, L.L.C.

A handwritten signature in cursive script, reading "Arthur H. Harding", is written over a horizontal line.

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February 17, 2000

CERTIFICATE OF SERVICE

I, G. Ann Woodbury, hereby certify that a copy of the foregoing Reply to Bell Atlantic's Opposition in CC Docket No. 97-172, In the Matter of Petition of Bell Atlantic for Forbearance from Section 272 Requirements in Connection With National Directory Assistance Services (rel. Dec. 22, 1999) was served this 17th day of February, 2000, via hand delivery, and first-class mail upon the following:

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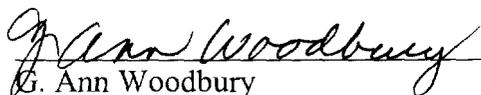
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