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Dee May  
Director  
Federal Regulatory

DOCKET FILE COPY ORIGINAL

March 27, 2000

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Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

MAR 27 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: CC Docket No. 99-295: In the Matter of Application of Bell Atlantic Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in New York

Dear Ms. Salas,

CloseCall America filed its Petition for Reconsideration of the Commission's decision in the above docketed proceeding on January 21, 2000. In the absence of a public notice regarding the petition and after informally confirming with the staff that the Section 271 Proceeding was not a rulemaking proceeding governed by 47 CFR § 429, Bell Atlantic proceeded under 47 CFR § 1.106, which governs petitions for reconsideration in non-rulemaking proceedings. Under Section 1.106, oppositions to petitions for reconsideration must be filed within 10 days after the petition is filed, and replies are due 7 days thereafter. Accordingly, Bell Atlantic filed its Opposition to CloseCall of America's Petition on February 3 and CloseCall of America filed their Reply on February 14.<sup>1</sup>

On March 2 the Commission issued a Public Notice (pursuant to 47 CFR Section 1.429(e)) announcing that Oppositions to the original Petition were to be filed within 15 days of the date of the public notice of the petition appearing in the Federal Register and Replies 10 days thereafter. The Public Notice appeared in the Federal Register on March 10. A "corrected" Public Notice was issued on March 16, this time pursuant to 47 CFR Section 1.106. The dates for Opposition and Replies remained the same as those established by the Federal Register publication—March 27 for Oppositions and April 6 for Replies.

Although Bell Atlantic has already filed its Opposition on February 3rd, it is now refileing its original Opposition. I have attached that filing to this letter.

Please feel free to contact me if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Dee May".

cc: M. Carey  
E. Einhorn

<sup>1</sup> The 10 day filing period was extended by 3 days in accordance with 47 C.F.R. § 1.4(h) because CloseCall's Petition was served by regular mail.

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

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MAR 27 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Application by New York Telephone	)	CC Docket No. 99-295
Company (d/b/a Bell Atlantic-New York), Bell	)	
Atlantic Communications, Inc., NYNEX Long	)	
Distance Company, and Bell Atlantic Global	)	
Networks, Inc. for Authorization to Provide In-	)	
Region, InterLATA Services in New York	)	

OPPOSITION OF BELL ATLANTIC-NEW YORK<sup>1</sup>  
TO  
PETITION FOR RECONSIDERATION

I. Introduction and Summary

The reconsideration petition filed by CloseCall America must be rejected. As this Commission expressly found, Bell Atlantic has complied fully with its obligation to make its retail services available for resale, and CloseCall's claims merely rehash arguments that were correctly rejected by this Commission.

Bell Atlantic's Section 271 Application for New York included overwhelming evidence that it had satisfied each item on the 14-point Checklist including the requirement to make its retail services available for resale. The New York Public Service Commission ("New York PSC") verified unequivocally that Bell Atlantic "has met the requirements of § 271 of the Telecommunications Act of 1996" and that it "makes

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<sup>1</sup> The Bell Atlantic companies ("Bell Atlantic") are 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.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

telecommunications services available for resale in accordance with §§251(c)(4) and 252(d)(3) of the 1996 Act."<sup>2</sup> And this Commission concluded that "Bell Atlantic demonstrates that it makes telecommunications services available for resale in accordance with sections 251(c)(4) and 252(d)(3) and thus, satisfies the requirements of checklist item 14."<sup>3</sup>

CloseCall now asks the Commission to ignore a mountain of evidence to the contrary and its earlier analysis to find that Bell Atlantic is not meeting its Section 271 resale obligations. But CloseCall provides no basis for the Commission to do so because its claims are both legally and factually flawed.

First, as this Commission expressly found, Bell Atlantic is providing its retail telecommunications services for resale at wholesale discounts that satisfy the Act's "avoided cost" standard. CloseCall's claim that resellers of Bell Atlantic's toll services are somehow subject to a price squeeze is wrong because resellers need not, as CloseCall claims, purchase a more expensive switched access service from Bell Atlantic to enable them to compete with Bell Atlantic's retail toll service. Instead, resellers can compete with Bell Atlantic's retail toll service by simply purchasing that same service at a wholesale discount.

Second, as the Commission also found, Bell Atlantic is meeting the Act's obligations by making all of its existing retail telecommunications services available for

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<sup>2</sup> See *Evaluation of New York Public Service Commission*, CC Docket No. 99-295 (October 19, 1999) at 150.

<sup>3</sup> See *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, CC Docket No. 99-295 (rel. December 22, 1999) ("*271 Order*") at ¶ 381.

resale in compliance with the Act. CloseCall nonetheless wants Bell Atlantic to create new retail services solely to make them available for resale, but the Act contains no such requirement.

Third, and again as this Commission previously found, Bell Atlantic's resale discounts were set by the New York PSC, comply with the Commission's resale pricing regulations, and apply across the board to Bell Atlantic's retail telecommunications services. CloseCall wants Bell Atlantic to set resale discounts on a service by service basis, but neither the Act nor the Commission imposes such a requirement.

Accordingly, the Commission should not reconsider its decision granting Bell Atlantic's Section 271 application for New York.

II. Bell Atlantic's Resale Rates Are Consistent With the Commission's Rules and Do Not Subject Resellers To A Price Squeeze.

As this Commission previously found, Bell Atlantic provides for resale, at wholesale rates, all of the telecommunications services that Bell Atlantic provides at retail to subscribers that are not telecommunications carriers. *See 271 Order* at ¶ 381. The wholesale discounts established by the New York PSC are 19.1 percent for lines with Bell Atlantic's Operator Services and Directory Assistance; and 21.7 percent for lines without these features. *See 95-C-0657, 94-C-0095 & 91-C-1174, Opinion No. 96-30, NYPS, Opinion and Order Determining Wholesale Discount Rate, November 27, 1996 (Bell Atlantic 271 Application, App. G, Tab 7).*

CloseCall claims Bell Atlantic's resale rates are anti-competitive because they create a price squeeze on resellers thereby making it impossible for them to earn a profit.<sup>4</sup> CloseCall argues that Bell Atlantic's prices for "individual components" of certain retail

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<sup>4</sup> *See CloseCall Petition For Reconsideration* at 2.

services are higher than the prices for Bell Atlantic's "finished" retail services themselves. In particular, CloseCall claims that Bell Atlantic's rates for switched access, which it claims is a "component" of Bell Atlantic's retail toll service, is higher than the rate Bell Atlantic charges for the "finished" retail toll service itself. Apparently, CloseCall's price squeeze argument is that resellers must, to compete with Bell Atlantic's retail services, purchase a collection of individual component services which are each costlier than Bell Atlantic's "finished" retail services. This argument is completely unfounded.

First, there is no price squeeze for Bell Atlantic's toll service or for any other Bell Atlantic retail service. A carrier that wishes to resell Bell Atlantic's retail toll service will pay Bell Atlantic's retail toll rate LESS the "avoided cost" discount of approximately 20 percent. In this way, resellers can compete with Bell Atlantic for toll customers by purchasing the *same* retail product offered by Bell Atlantic at a discounted rate. In other words, resellers do not need to purchase a "component" service such as access service in order to provide a service offering comparable to or to compete with Bell Atlantic's retail toll service. Because resellers can purchase the same services that Bell Atlantic is providing at retail for a discounted rate, resellers need not rely on more expensive "component" services to compete with Bell Atlantic's retail offerings. Consequently, there is no price squeeze here.

Second, by claiming that Bell Atlantic's prices "make it impossible for a reseller to . . . earn a profit," CloseCall has misconstrued the statutory requirements for developing the "avoided cost" wholesale discount. Section 252(d)(3) of the Act requires states to determine wholesale rates by excluding from the retail rate any costs the incumbent carrier will avoid by providing its product on a wholesale basis. This avoided cost discount is not designed to guarantee that CloseCall or any other reseller will make a

profit. They can do so only to the extent that they can perform the marketing and other functions that are included in the avoided cost discount more efficiently than the incumbent.

III. Bell Atlantic Is Not Required To Create New Retail Offerings For Resellers To Satisfy Its 271 Resale Obligations.

As the Commission found, Bell Atlantic satisfies its checklist obligation by making available for resale all of the telecommunications services it offers at retail to subscribers that are not telecommunications carriers. *See 271 Order* at ¶ 381. CloseCall wants Bell Atlantic to do more. It wants Bell Atlantic to develop and offer new retail telecommunications services at CloseCall's request solely to make them available for resale. The Act, however, contains no such requirement.

Section 251(c)(4) requires an incumbent carrier to make available at wholesale rates only the *existing* services that it offers at retail. Bell Atlantic has complied with this statutory requirement by making all of its currently tariffed retail services individually available to resellers at a wholesale discount.<sup>5</sup> While the Act requires incumbent carriers to make available at resale its existing retail services, it does not require an incumbent carrier to "make a wholesale offering of any service that [it] does not offer to retail customers." *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499 (1996) ("*Local Competition Order*") at ¶872. Nor does it require an incumbent carrier to create *new* retail offerings for the sole purpose of satisfying resellers' requests. Therefore, to the extent that

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<sup>5</sup> *See* BA NY Tariff P.S.C. No. 915 at § 3.2 ("The Services that are offered under this tariff ("Resold Services") are ... separately offered by the Telephone Company...." and "Any and all restructuring of Resold Services...or other modifications or alterations of any Resold [retail] Service will be made available for purchase under this tariff to the same extent as existing Resold Services.")

CloseCall wants to purchase, at a wholesale discount, vertical services that Bell Atlantic does not offer as a separately tariffed retail service, it is not entitled to do so under the Act. The Commission itself has made this clear by stating “[t]he 1996 Act merely requires that any retail services offered to customers be made available for resale.” *Id.* at ¶877. Consequently, Bell Atlantic is not required to develop retail services just to accommodate CloseCall's desire to purchase such services at a wholesale discount.

The Commission's determination in the *First BellSouth Louisiana Order* that contract service arrangements are subject to a wholesale discount does not change this conclusion. There, the Commission held resellers have a right to purchase, at a wholesale discount, existing, retail contract service arrangements, which typically consist of high volume packages of *existing retail services*. See *Application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-region, InterLATA Services in Louisiana*, 13 FCC Rcd. 6245, 6284-6288 (1998). But CloseCall does not want to resell Bell Atlantic's existing retail contract service arrangements nor does it want to create new service packages from Bell Atlantic's existing retail services. Rather, it wants to create service packages from telecommunications services that Bell Atlantic does not offer at retail today. Again, Bell Atlantic has no obligation to create those retail services for CloseCall.

IV. The Uniform Wholesale Discounts Set By The New York Public Service Commission Comply With The Act and The Commission's Requirements.

CloseCall's final argument is that Bell Atlantic's resale rates are improperly based on a uniform discount. This argument too must be rejected because the Commission has

already found the use of a uniform wholesale discount to be permissible and compatible with the Commission's own rules.

Reduced to its fundamentals, CloseCall's complaint with Bell Atlantic's wholesale rates is that the New York PSC set only two "avoided cost" discount rates that apply across the board to Bell Atlantic's retail telecommunications services. However, the Commission has explicitly found that states are allowed to set a single uniform discount rate, when determining an incumbent carrier's avoided costs. *See Local Competition Order*, 11 FCC Rcd. 15499 at ¶ 915-16. The Commission has also recognized the appeal of using a uniform discount by indicating that a uniform rate was simple to apply because it avoided the need to allocate avoided costs among various different services. *Id.*

Therefore, the New York PSC's setting of uniform discount rates is entirely appropriate. In fact, given the Commission's acknowledgement that a uniform discount is permissible, virtually every state commission in Bell Atlantic's footprint has adopted that approach. Nor does the Commission's determination in the *BellSouth South Carolina Order* regarding contract service arrangements require the use of different discounts for individual retail services. There, the Commission found only that the discount applied to contract service arrangements could differ from the uniform discount for other retail services because contract service arrangements are individually negotiated. However, rather than require states to determine *different* discounts for each contract service arrangement on a case-by-case basis, the Commission found that, *if* states decided to apply a different discount to contract service arrangements, it would "be feasible, and sufficiently accurate, to calculate a *single* discount rate that would apply to *all* CSAs" collectively. *See Application of BellSouth Corporation, BellSouth*

*Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in South Carolina* 13 FCC Rcd. 539, 661 (1998) (emphasis added).

But the Commission did *not* require states to adopt different discounts for contract service arrangements or suggest that a uniform discount for all retail services is unlawful.

In addition to its other complaints, CloseCall also challenges the Commission's reliance on the New York Public Service Commission's approval of Bell Atlantic's wholesale rates. This challenge is again off base.

CloseCall appears to believe that, in evaluating a 271 application, the Commission will re-examine state-approved wholesale rates *de novo*. The Act expressly assigns the task of setting wholesale rates for resale under section 251(c)(4) to the states. *See* 47 U.S.C. § 252(d)(3). Therefore, the Act not only permits, but requires, a deferential review of wholesale rates by the Commission. The record reflects that the NY PSC properly applied the statutory requirements of Section 252(d)(3) to arrive at the correct wholesale rates.<sup>6</sup> Pursuant to section 252(e)(6) of the Act, if CloseCall or any other party sought to challenge the NY PSC's decision regarding these rates, the appropriate venue lay in the federal courts. CloseCall's request for the Commission to disregard the NY PSC's wholesale rates is all the more unwarranted because, as the Commission noted in its *271 Order*, CloseCall provides "no evidence that the New York Commission failed to adhere to the statutory requirements in setting the wholesale rates...." *See 271 Order* at ¶383. Accordingly, the Commission should not reconsider its

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<sup>6</sup> *See* Cases 95-C-0657 *et al.*, *supra*, Opinion No. 96-30 (issued November 27, 1996), Bell Atlantic 271 Application, Appdx. G, Vol. 1, Tab 7, *rehearing denied* by Order Denying Petition for Rehearing (issued February 18, 1997), Bell Atlantic Application Appdx. G, Vol. 1, Tab 8. Temporary resale rates had been previously set in Opinion No. 96-18 (issued July 18, 1996), Bell Atlantic Application, Appdx. G, Vol. 1, Tab 5.

previous decision that Bell Atlantic is making telecommunications services available for resale in accordance with sections 251(c)(4) and 252(d)(3).

V. Conclusion

For all these reasons, the Commission should deny CloseCall's Petition for Reconsideration and confirm its ruling that Bell Atlantic has complied with the 271 Checklist.

Respectfully submitted,

By: Donna M. Epps /s.e.m.

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Of Counsel

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Attorney for the Bell Atlantic  
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February 3, 2000



**The FCC Acknowledges Receipt of Comments From ...**  
**Bell Atlantic**  
**...and Thank You for Your Comments**

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