

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

In the Matter of )  
 )  
Petition of Bell Atlantic ) CC Docket No. 97-172  
for Forbearance from )  
Section 272 Requirements in Connection with )  
National Directory Assistance Services )

TO: The Commission

**COMMENTS OF INFONXX, INC.  
IN SUPPORT OF EXCELL'S APPLICATION FOR REVIEW**

InfoNXX, Inc. ("InfoNXX"), by its attorneys, submits these comments in support of Excell Agent Services, L.L.C.'s ("Excell's") *Application for Review*<sup>1</sup> of the Common Carrier Bureau's Memorandum Opinion and Order granting Bell Atlantic-North ("Bell Atlantic") forbearance from the separate subsidiary requirement of Section 272 in its provision of national directory assistance ("NDA").<sup>2</sup> In granting Bell Atlantic's forbearance request, the Bureau imposed competitive safeguards borrowed from the Commission's earlier *U S WEST NDA Forbearance Order*.<sup>3</sup> Unfortunately, these safeguards are proving illusory. The inadequacy of these safeguards is becoming increasingly apparent as Bell Atlantic-South, BellSouth, and SBC

---

<sup>1</sup> Excell Agent Services, L.L.C., *Application for Review, In re Petition of Bell Atlantic for Forbearance from Section 272 Requirements in Connection with National Directory Assistance Services*, CC Docket No. 97-172 (filed Jan. 21, 2000) ("*Excell Application*").

<sup>2</sup> Memorandum Opinion and Order, *In re 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 (released Dec. 22, 1999) ("*BA Forbearance Order*").

<sup>3</sup> 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* (continued...)

also seek forbearance to provide NDA on an integrated basis. Given the push of the Bell companies into the self-provision of NDA, InfoNXX urges the Commission to consider whether the grant of forbearance is justified given the inadequacy of the safeguards imposed. As an alternative, the Commission must ensure that any safeguards imposed actually satisfy the Communications Act requirement that the public interest be protected from anticompetitive conduct.

### **BACKGROUND**

In the *BA Forbearance Order*, the Common Carrier Bureau found that Bell Atlantic's provision of non-local directory assistance service to its in-region subscribers was an incidental interLATA service that generally must be provided by a separate affiliate.<sup>4</sup> However, the Bureau forbore from imposing the separate affiliate requirement<sup>5</sup> because it found that Section 10's three conditions for forbearance, 47 U.S.C. 160(a), were satisfied.<sup>6</sup> A critical part of the Bureau's finding that forbearance should be granted was its conclusion that imposition of Section 272's nondiscrimination safeguards would protect the public interest.<sup>7</sup> The Bureau determined that, as long as Bell Atlantic complied with the nondiscrimination requirements in Section 272(c)(1), Bell Atlantic's charges and practices would be just and reasonable and not unjustly or unreasonably discriminatory and consumers would be protected.<sup>8</sup> As the

---

*Communications, Inc. for Forbearance*, CC Docket No. 97-172, FCC 99-133 at ¶ 37 (released Sept. 27, 1999) ("*U S WEST NDA Forbearance Order*").

<sup>4</sup> *BA Forbearance Order* at ¶ 7.

<sup>5</sup> See 47 U.S.C. § 272(a)(2)(B).

<sup>6</sup> See *BA Forbearance Order* at ¶ 17.

<sup>7</sup> See *id.* at ¶ 15 (citing *U S WEST NDA Forbearance Order*).

<sup>8</sup> See *id.* at ¶¶ 15-16.

Commission stated when it first granted forbearance in the *U S WEST NDA Forbearance Order*, "retention of the nondiscrimination requirements found in section 272(c)(1) should ensure that the competitive advantages [a Bell company] 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."<sup>9</sup>

InfoNXX and other similarly situated independent directory assistance providers initially were hopeful that the Commission's assumption about competition in the DA marketplace would hold true and that they would be able to obtain in-region directory listings from the Bell companies at just and reasonable rates, terms, and conditions. However, nine months after the Commission announced its U S West forbearance decision, six months after the release of the *U S WEST NDA Forbearance Order*, and three months after the release of the *BA Forbearance Order*, InfoNXX's access to the Bells' directory listing information has not improved. The reality of the marketplace – as has been documented by InfoNXX, MCI WorldCom, and Excell<sup>10</sup> – is that the Bell companies simply are manipulating the requirement without changing the discriminatory rates that they charge independent providers.

---

<sup>9</sup> *U S WEST NDA Forbearance Order* at ¶ 36; see *BA Forbearance Order* at 16 ("[W]e note that retention of the section 272(c)(1) nondiscrimination requirements with respect to Bell Atlantic's in-region telephone numbers should promote the development of a fully competitive market for nonlocal directory assistance service by ensuring that no one competitor will have an undue advantage in the nonlocal directory assistance services market.").

<sup>10</sup> See, e.g., InfoNXX, Inc., Ex Parte Letter to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket Nos. 96-115, 96-98, 99-273, & 97-172 (Mar. 7, 2000) (submitting letters from Bell companies illustrating Bells' recalcitrance in providing nondiscriminatory access to directory listing information); MCI WorldCom, Ex Parte Letter to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 99-273 (Feb. 2, 2000) (detailing difficulty of obtaining directory assistance information from Bell companies and calling for enforcement of Section 272); Excell Agent Services, L.L.C., Ex Parte Letter to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket (continued...)

**I. The Imputation Safeguard Has Not Worked To Promote The Competition Needed To Protect The Public Interest.**

Imputation is a meaningful safeguard only if the Bells are not allowed to comply merely by performing accounting sleight-of-hand. When a Bell company actually offers a service through a Section 272 affiliate, it is assumed that it would not be economically rational for the Bell company to overcharge the affiliate for the goods, services, facilities, and information sold to the affiliate. In the theoretical world created when a Bell company offers directory assistance services *as if* it had established a Section 272 affiliate, any "charges" to the "affiliate" merely exist on paper. There is no real-world consequence to overcharging the affiliate because the entire transaction is fictional. Consequently, a Bell company can charge independent providers inflated costs for directory listings, "impute" those costs to itself by moving them from one accounting column to another, and claim to be in compliance with the requirements found in the U S WEST and Bell Atlantic forbearance orders. But this "reverse engineering" accounting gimmick cannot satisfy the Section 10 conditions for forbearance.

Moreover, when a Bell company uses an actual Section 272 affiliate, presumably it first determines the costs that it is going to charge the affiliate before applying those charges to other entities. The *BA Forbearance Order* indicates that the same principle should apply when the company uses a fictional affiliate: Bell Atlantic must make directory listing information

---

Nos. 99-273 & 97-172 (Dec. 9, 1999) (same); *see also* Letter from BellSouth to Evan Marwell, President of InfoNXX (March 15, 2000) (detailing BellSouth tariff modifications in Alabama (effective April 15, 2000); Georgia, Kentucky, and Mississippi (effective April 21, 2000); Louisiana (effective 2d quarter 2000); Florida, North Carolina, South Carolina, and Tennessee (TBD) that will change BellSouth's rate structure from royalty system to per listing fee that will explode cost structures of competitors).

available "at the same rates, terms, and conditions *it imputes to itself*."<sup>11</sup> The *Order* does not say that Bell Atlantic must impute to itself whatever rates, terms, and conditions it already has decided to charge to independent DA providers. Allowing such backward accounting subverts the intent of the *Order*. If competing DA providers are charged inflated prices for directory listing information, then those entities will not have access to Bell company databases compiled by virtue of the Bells' monopolies, and the marketplace competition that the Commission found essential to satisfy the forbearance requirements of Section 10 will be threatened.

In order to rectify subversion of Section 272(c)(1)'s requirements, the Commission should provide guidance on a presumptively acceptable rate in the absence of an actual transaction between a Bell company and its Section 272 affiliate. The starting point for determining such a rate for a Bell company to impute to itself is the rate at which it provides directory listing information to competitive local exchange carriers ("CLECs"). These CLEC rates must be made available to independent DA providers unless and until a Bell company can establish that such rates are not the appropriate ones.

InfoNXX also supports Excell's call for audit rights and other mechanisms to ensure that the imputation requirement provides a meaningful safeguard.<sup>12</sup> As Excell and InfoNXX demonstrated in their comments in the Cost Allocation Manual ("CAM") proceeding,

---

<sup>11</sup> *BA Forbearance Order* at ¶ 15 (emphasis added); see First Report and Order and Further Notice of Proposed Rulemaking, *In re Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, 11 FCC Rcd. 21905, 22000-01 (1996) (explaining nondiscrimination requirement of Section 272(c)(1)).

<sup>12</sup> See *Excell Application* at 6-8.

the CAM revision process was an empty exercise devoid of content.<sup>13</sup> The cost categories submitted by Bell Atlantic were deliberately broad to obscure and frustrate any meaningful analysis. Neither the Commission nor competitive DA providers can have any confidence that the CAM revision will yield rates that serve as a check against unbridled market power by a Bell company in a position to leverage its in-region advantage. As a result, additional safeguards, as proposed by Excell, are necessary to give the safeguards even a chance of being effective.

---

<sup>13</sup> See Comments of Excell Agent Services, L.L.C., *In re Bell Atlantic Operating Companies' Revisions to Its Cost Allocation Manual*, ASD File No. 99-46, DA 99-2465 (filed Dec. 6, 1999); Comments of InfoNXX, Inc., *In re Bell Atlantic Operating Companies' Revisions to Its Cost Allocation Manual*, ASD File No. 99-46, DA 99-2465 (filed Dec. 6, 1999).

**CONCLUSION**

Retention of Section 272's nondiscrimination safeguards while allowing a Bell company to provide NDA without using a separate affiliate is intended to counteract the effect of a Bell's dominant, monopoly position and to level the playing field for competing DA providers. However, the safeguards have not operated as the Commission envisioned in the *US WEST Forbearance Order* and the Bureau envisioned in the *BA Forbearance Order*. Excell has shown in its *Application for Review*, how without meaningful, enforceable safeguards, none of Section 10's three forbearance criteria is satisfied when a Bell company self-provides NDA.

Respectfully submitted,

**INFONXX, INC.**



Gerard J. Waldron

Mary Newcomer Williams

Russell D. Jessee\*

COVINGTON & BURLING

1201 Pennsylvania Avenue N.W.

P.O. Box 7566

Washington, D.C. 20044

(202) 662-6000 (t)

*Its Attorneys*

\*Member of the Bar of the Commonwealth of Virginia;  
Not admitted to the Bar of the District of Columbia.

April 3, 2000