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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
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Application by New York Telephone 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	)	CC Docket No. 99-295

REPLY OF CLOSECALL AMERICA, INC.

CloseCall America, Inc. ("CloseCall"), by its attorneys, hereby submits this reply in the above-referenced proceeding.[1] For the reasons described below and in the attachment to this reply, the Commission should grant CloseCall's Petition.

Only Bell Atlantic opposed the Petition. Bell Atlantic simply refiled its earlier opposition and did not provide any new responses to either the Petition or CloseCall's February 14 reply.[2] Each argument made in Bell Atlantic's opposition, therefore, is fully addressed in CloseCall's earlier reply. (That reply is attached as Attachment 1 and is hereby incorporated by reference.)

The February 14 reply shows that Bell Atlantic's opposition is erroneous as to both the facts and the law. In particular, Bell Atlantic is incorrect in asserting that the Commission

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[1] Application of 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*, FCC 99-404, CC Docket No. 99-295 (rel. Dec. 22, 1999) (the "Order"). On March 16, 2000, the Commission released a public notice confirming that replies to oppositions to CloseCall's petition for reconsideration (the "Petition") in this proceeding are due on this date. "Petition for Reconsideration of Action in Docketed Proceeding," *Public Notice*, Rep. No. 2392 – Correction, rel. Mar. 16, 2000.

[2] Both Bell Atlantic and CloseCall filed pleadings in accordance with Section 1.106 of the Commission's rules because they were unaware of the Commission's intention to issue a public notice setting procedural deadlines.

should uncritically accept unsupported conclusions of the New York Public Service Commission as to compliance with the requirements of Section 271. Further, the reply showed that Bell Atlantic has violated the resale requirements of checklist item 14 by creating arbitrary groupings of retail services that are available only on a bundled basis, by declaring that specific retail services must be bundled together and by refusing to offer individual retail services at wholesale rates. For instance, Bell Atlantic's "wholesale" pricing of vertical services prevents resellers from developing bundles of those services that can be differentiated from and compete effectively with Bell Atlantic's bundle of the same retail services.[3] As shown in the February 14 reply, Bell Atlantic's actions have significant detrimental effects on local telephone competition.

For these reasons and the reasons described in the February 14 reply, the Commission should reconsider its determination that Bell Atlantic may be authorized to provide in-region interLATA service in the state of New York.

Respectfully submitted,
CLOSECALL AMERICA, INC.

By: ______________________
John S. Logan
J.G. Harrington

Its Attorneys

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April 6, 2000

[3] As described in the attached reply, Bell Atlantic offers a "ValuePack" in New York that combines eleven vertical services for $17.99 a month. The retail prices for these services range from $3.00 to $7.99 a month. Even with the wholesale discount, there is no combination of even half of the services in the ValuePack bundle that could be offered at or below the retail price charged by Bell Atlantic for that bundle. This is because Bell Atlantic is setting wholesale prices based on the standalone, rather than bundled, price for each service and without regard for individual product costs.

Certificate of Service

I, Vicki Lynne Lyttle, hereby certify that on this 6th day of April, 2000, I caused copies of the foregoing Reply of CloseCall America, Inc. to be served upon the parties listed below via regular mail:

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ATTACHMENT

STAMP & RETURN

Before the
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Washington, D.C. 20554

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

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REPLY OF CLOSECALL AMERICA, INC.

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February 14, 2000

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Distance Company, and Bell Atlantic	)	
Global Networks, Inc. for	)	
Authorization to Provide In-Region,	)	
InterLATA Services in New York	)	

REPLY OF CLOSECALL AMERICA, INC.

CloseCall America, Inc. ("CloseCall"), by its attorneys, hereby submits this reply to the Opposition of Bell Atlantic – New York (the "Opposition") to CloseCall's petition for reconsideration (the "Petition") in the above-referenced proceeding.[1] As shown below, Bell Atlantic's claims are ill-founded and CloseCall's petition should be granted.

I. Introduction and Summary

Bell Atlantic's opposition is built around the assumption that the Commission should uncritically accept unsupported conclusions of the New York Public Service Commission (the "NYPSC") and Bell Atlantic's own assertions that it has met the resale requirements of Section 271. The Commission's own case law and the facts contradict those theories.

[1] Application of 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,* FCC 99-404, CC Docket No. 99-295 (rel. Dec. 22, 1999) (the "Order").

As a threshold matter, the Commission has held consistently that it will give weight to state regulators' views only when those views are supported by a detailed inquiry and that Section 271 applicants bear the burden of proving their claims.[2] The Petition demonstrated that the NYPSC did not engage in such an inquiry as to the issues raised by CloseCall and that Bell Atlantic did not meet its burden.[3]

More significantly, however, Bell Atlantic's opposition simply ignores the requirements of Sections 251 and 271. CloseCall's petition and its comments in the underlying proceeding show that Bell Atlantic has not met these statutory requirements. Bell Atlantic fails to confront these showings, relying instead on blanket claims of compliance that should carry no weight.

II. The Opposition Does Not Refute CloseCall's Showing that Bell Atlantic Failed to Meet the Resale Requirement. (Checklist Item 14)

To meet checklist item 14, Bell Atlantic must "offer *at wholesale rates any* telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers" and may not "prohibit" or "impose unreasonable or discriminatory conditions or limitations" on resale.[4] This provision does not permit Bell Atlantic to create arbitrary groupings of retail services that are made available only on a bundled basis, to declare that specific retail services must be bundled together or to refuse to offer those services at wholesale rates. Nevertheless, that is what Bell Atlantic has done in New York, with consequent effects on the ability of resellers to compete.

[2] *Id.*, ¶ 51.

[3] *See, e.g.*, Petition at 4, 8.

[4] 47 U.S.C. § 251(c)(4)(emphasis supplied).

For instance, Bell Atlantic does not make its retail intraLATA toll services available on an unbundled basis at wholesale rates, but rather forces resellers to purchase them in bundled packages or purchase switched access. For a reseller to offer intraLATA toll as a standalone service, or in a different package than Bell Atlantic's package, it must purchase switched access at rates that actually are higher than the rates Bell Atlantic charges its retail customers for intraLATA toll. This is what creates the "price squeeze" described in CloseCall's petition and violates Bell Atlantic's obligation to offer services for resale at wholesale rates.[5]

The potential for price squeezes is one of the reasons that Bell Atlantic's practice of bundling services is inconsistent with the principles underlying the resale requirement. This practice also is inconsistent with the plain language of Section 251(c)(4), which requires *"any telecommunications service* that the carrier provides at retail" to be made available "for resale *at wholesale rates*."[6] This language is quite explicit. It does not permit a carrier to create packages of telecommunications services, but requires a carrier to make all services available on an individual basis. Bell Atlantic's claim that it allows CloseCall and other resellers to purchase the packages it offers at wholesale discounts does not address this issue, and, in fact, Bell Atlantic acknowledges that, at least in some cases, it does not make its individual telecommunications services available for resale at wholesale rates.[7]

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[5] CloseCall Petition at 2-3 Even if intraLATA toll were available on an unbundled basis, Bell Atlantic's pricing of access at rates that exceed its retail rates for toll service would be *prima facie* evidence of anticompetitive behavior. *See generally id.* at 3.

[6] 47 U.S.C. § 251(c)(4) (emphasis supplied)

[7] Opposition at 5-6.

For similar reasons, Bell Atlantic's theory that CloseCall is seeking the power to force Bell Atlantic to create "new" services for resale is incorrect.[8] All that CloseCall seeks is the right to obtain the individual services in Bell Atlantic's bundles at wholesale rates that reflect the costs of those services within the bundles.[9] If the services within the bundles were made available at wholesale rates that reflected the prices imputed to each service within the bundle, then CloseCall and other resellers could offer consumers a wider choice of bundles than those made available by Bell Atlantic. CloseCall could, for instance, offer multiple bundles of existing retail optional services, or bundles of these services and second lines that Bell Atlantic chooses not to offer to New York customers today. This additional choice would benefit both consumers and competition in New York. Today, however, Bell Atlantic's practices force resellers to mimic the bundles offered by Bell Atlantic, with concomitant harm to consumer welfare. This is contrary to the intent of the 1996 Act and Section 271 to open local telecommunications markets to full competition.

The disparities between Bell Atlantic's prices for services within its bundles and for services offered individually also demonstrates why the Commission should not permit a uniform discount for all resold services. Instead, Bell companies seeking Section 271

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[8] *Id.* at 5.

[9] For instance, Bell Atlantic offers a "ValuePack" in New York that combines eleven different services, such as Caller ID and Call Waiting, for $17.99 a month. Individually, the retail prices listed for these services on Bell Atlantic's web site range from $3.00 to $7.99 a month. If CloseCall wished to create a different bundle by combining most, but not all, of the services in the ValuePack, it likely would be unable to do so at a price that would be competitive with Bell Atlantic. Even with the wholesale discount, there is no combination of even six of the eleven services in the ValuePack bundle that could be offered at or below the retail price charged by Bell Atlantic for that bundle.

authorization should be required to offer wholesale discounts that reflect the specific avoided costs for individual services. In the case of the ValuePack bundle described above, it is evident that the discounts provided for under the NYPSC's decisions could not possibly account for all of the costs avoided when Caller ID and similar optional services are resold. Indeed, if Bell Atlantic's current wholesale discounts did reflect avoided costs, the Value Pak bundle would have to cost at least twice as much as it does to recover Bell Atlantic's costs of providing the underlying services. Moreover, and as described in CloseCall's Petition, Bell Atlantic's margins for many optional services are enormous.[10] All of these considerations demonstrate that it is improper to permit a carrier to adopt a uniform discount when the avoided costs and underlying costs of providing retail services vary widely, much less to provide only a uniform discount in a bundle of telecommunications services.

The Opposition does nothing to address these concerns. Rather, Bell Atlantic misunderstands the import of the Commission's decision to permit specific discounts for contract services.[11] That decision does not permit an incumbent LEC to choose to have lower discounts for contract services and, at the same time, avoid its obligation to offer the remainder of its services at wholesale discounts that reflect avoided costs. In fact, the language quoted by Bell Atlantic permits a single discount for contract services only if the discount is "sufficiently accurate" to reflect avoided costs for all contract arrangements.[12] When there is a significant

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[10] Petition at 7-9.

[11] Opposition at 7-8.

[12] *Id.* at 7, *quoting* Application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in South Carolina, *Memorandum Opinion and Order,* 13 FCC Rcd 539, 661 (1998).

discrepancy between the true avoided costs for a service and the generalized calculation of avoided costs, as is the case for optional services such as Caller ID, it is evident that the generalized discount may not be applied.

The Commission cannot ignore the practical impact of Bell Atlantic's failure to account for the true avoided costs of specific services when setting its wholesale prices. This impact is particularly obvious when Bell Atlantic offers promotions that include free service or that waive set-up fees. These promotions are economically feasible for Bell Atlantic because the true costs of providing optional services are so low relative to the prices charged; thus, the cost to Bell Atlantic of a free month of Caller ID is measured in cents, not dollars. Under a regime of uniform discounts, such promotions are impossible for resellers because the cost of a month of a free optional service is close to the retail price of the service. Thus, resellers cannot match, let alone improve upon, the promotions offered by Bell Atlantic. In other words, the practical effect of uniform discounts is to preclude resale competition.

III. Conclusion

The consequence of Bell Atlantic's price squeezes, bundling practices and unreasonably low discounts on many services is that resale, one of the competitive models explicitly endorsed by the 1996 Act, is not a practical option in New York. Individually, each of Bell Atlantic's practices constitutes an "unreasonable or discriminatory condition[] or limitation[]" on resale and a violation of the obligation to offer every retail service to resellers at wholesale rates. Taken together, Bell Atlantic's practices represent an insuperable barrier to resale competition. For these reasons, the *Order's* conclusion that Bell Atlantic met the requirements of checklist item

14 was incorrect, and the Commission should reconsider its determination that Bell Atlantic may be authorized to provide in-region interLATA service in the state of New York.

Respectfully submitted,

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