



Robert W. Quinn, Jr.
Director - Federal Government Affairs

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May 25, 2000

RECEIVED

MAY 25 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWB-204
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Notice of Written Ex Parte
Second Application by BellSouth Telecommunications, Inc. and BellSouth Long
Distance, Inc. for Provisioning of In-Region, interLATA Service in Louisiana
CC Docket No. 98-121

Dear Ms. Salas:

Please include a copy of the attached in the record of the referenced proceeding. Two
copies of this Notice are being filed with the Secretary of the FCC in accordance with Section
1.1206 of the Commission's rules.

Sincerely,

Robert W. Quinn Jr (rs)

Attachments

- cc: D. Attwood (w/o attachments)
- J. Goldstein (w/o attachments)
- R. Beynon (w/o attachments)
- S. Whitesell (w/o attachments)
- K. Dixon (w/o attachments)
- R. Karmarkar (w/o attachments)
- M. Seifert (w/o attachments)
- G. Reynolds (w/o attachments)

No. of Copies rec'd 0 + 1
List ABCDE



Robert W. Quinn, Jr.
Director - Federal Government Affairs

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May 24, 2000

Mr. Glenn Reynolds
Chief; Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Re: Notice of Ex Parte contact
Second Application by BellSouth Telecommunications, Inc. and
BellSouth Long Distance, Inc. for Provisioning of In-Region, interLATA
Service in Louisiana, CC Docket No. 98-121

Dear Mr. Reynolds:

Enclosed please find copies of the following information related to
aforementioned docket as well as to Bell Atlantic's non-compliance with the
provisions of Section 271 of the Telecommunications Act related to their joint
marketing activities:

- 1) Press release dated May 24, 2000;
- 2) Demand Letter from Mark C. Rosenblum of AT&T Corp.
addressed to Edward D. Young III of Bell Atlantic dated May 24,
2000;
- 3) Motion of AT&T Corp. for Expedited Decision of Pending Petition
for Reconsideration in the aforementioned docket;
- 4) Previously filed Ex Parte Letter dated April 12, 2000, filed in the
aforementioned docket.

I have provided this material in follow up to yesterday's email and my telephone conversation earlier today with Radhika Karmarkar. If you have any questions regarding this material, please contact me at the above telephone number.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. J." with a stylized flourish at the end.

cc: Dorthy Attwood
Jordan Goldstein
Rebecca Beynon
Sarah Whitesell
Kyle Dixon
R. Karmarkar
M. Seifert



News Release

For further information:

Jim McGann
202-457-3942
pager: 888-602-5490

Rochelle Cohen
202-457-3933
pager: 888-602-5489

BELL ATLANTIC LEVERAGING LOCAL PHONE DOMINANCE TO STIFLE LONG DISTANCE COMPETITION IN NEW YORK, AT&T CHARGES

Bell Atlantic marketers fail to tell phone customers about long distance choices

FOR RELEASE WEDNESDAY, MAY 24, 2000

WASHINGTON – Bell Atlantic is illegally steering local phone customers in New York to its long distance service, AT&T charged today.

In a letter served today on Bell Atlantic and a motion filed with the Federal Communications Commission, AT&T cited a survey by an independent marketing research firm indicating that nearly two-thirds of New Yorkers who called Bell Atlantic to order local service were not offered a choice of long distance providers for that line, as required by law. In more than half of the test calls, Bell Atlantic illegally endorsed its own long distance service rather than remaining neutral, the survey found.

“We have proof that Bell Atlantic’s marketing practices violate the longstanding requirement that Bell companies not steer customers to any particular long distance carrier,” said Robert M. Aquilina, senior vice president of AT&T’s consumer services unit, referring to ‘equal access’ provisions adopted in 1984, when consumers were first allowed to choose a long distance carrier.

“New Yorkers are being steered to Bell Atlantic long distance by Bell Atlantic’s local service reps,” said Aquilina. “There is not even a guise of neutrality.’ In only 5 percent of the cases do Bell Atlantic representatives even offer to read the list of long distance choices. Consumer choice has been irreparably harmed because Bell Atlantic is

leveraging its dominance in the local market and its unique position in the long distance provisioning process to stifle long distance competition.”

Aquilina said Bell Atlantic is also illegally using knowledge of a customer’s primary long distance carrier to market Bell Atlantic long distance, a practice specifically prohibited by the Telecom Act.

AT&T delivered a letter to Bell Atlantic’s deputy general counsel saying that unless the matter can be settled soon, AT&T will file a formal FCC complaint against Bell Atlantic as early as June 1.

AT&T also filed a motion requesting that the FCC act quickly on a petition the company filed 18 months ago seeking to overturn an FCC order involving BellSouth. In that ruling, the FCC said when customers call to obtain local service, a Bell company that gains Sec. 271 relief to enter the long distance market could, after advising customers that they have a choice of long distance carriers and offering to read a list of those choices, endorse its own long distance service. AT&T said this erroneous ruling directly violates Sec. 251 and Sec. 272 of the Telecom Act requiring the Bells to show no favoritism, and that Bell Atlantic is seizing upon this order to ignore its obligations to give customers a neutral choice of long distance carriers.

“We are asking the FCC to act now to restore competitive opportunities in New York and to protect New Yorkers from Bell Atlantic’s marketing practices,” said Aquilina. “As a first step, Bell Atlantic must comply with the FCC’s current interpretation of the law – which we feel is far too weak to protect long distance choice. Equally important, the gaping loophole the FCC created must be closed before any other Bell company gains long distance entry and tries to exploit it.”

#



Mark C. Rosenblum
Vice President - Law

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908 221-3539
FAX 908 221-4490
EMAIL rosenblu@att.com

May 24, 2000

BY FAX, HAND DELIVERY AND CERTIFIED MAIL,

Edward D. Young III, Esq.
Senior Vice President and
Deputy General Counsel
Bell Atlantic
1320 N. Courthouse Road, 8th Floor
Arlington, VA 22201

Re: Formal Complaint Against Bell Atlantic
before the Federal Communications Commission

Dear Ed:

This is to inform you, pursuant to 47 C.F.R. § 1.721(a)(8), that AT&T Corp. ("AT&T") intends to file a formal complaint before the Federal Communications Commission against Bell Atlantic-New York ("Bell Atlantic") alleging, and seeking to remedy, Bell Atlantic's violations of §§ 251(g), 272(c)(1), and 222 of the Communications Act by attempting improperly to channel customers that call to obtain Bell Atlantic's local services in New York to Bell Atlantic's long distance service affiliate.

Sections 251(g) and 272(c)(1) require Bell Atlantic, *inter alia*, to inform any customer that calls Bell Atlantic in circumstances relevant to the complaint that the customer may choose a long distance carrier and to offer to read the customer a random list of available carriers. Section 222 limits Bell Atlantic's use of proprietary information, including information about a customer's current long distance provider, to market services offered by Bell Atlantic or an affiliate.

The evidence AT&T has compiled demonstrates that when customers in New York make calls to Bell Atlantic to establish local service, Bell Atlantic is violating these statutory duties. Bell Atlantic is not informing many customers that they have a choice of long distance carriers and Bell Atlantic is not offering to read customers a randomly generated list of carriers. *See* attached Letter of Robert W. Quinn, Jr. to Magalie Roman

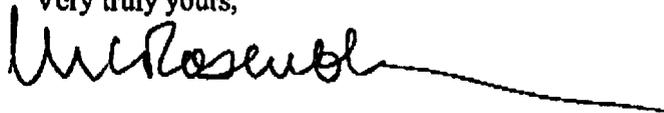
Edward D. Young III, Esq.
May 24, 2000
Page 2

Salas, filed in Docket 98-121 (Apr. 12, 2000) (attaching test call study and analysis of independent consulting firm Elrick & Lavidge). Moreover, Bell Atlantic is using its knowledge of the identity of customers' existing long distance suppliers to assist the marketing of its own long distance services. Because Bell Atlantic's conduct violates the conditions required for approval of its application to provide long distance service in New York, AT&T will ask the Commission, among other things, to suspend Bell Atlantic's authority to market long distance services in New York on any inbound telephone call until such time as Bell Atlantic develops, and the Commission approves, an appropriate marketing script and compliance plan.

To avoid unnecessary litigation of these matters, we would welcome an opportunity to resolve our concerns more promptly and less formally. To that end, AT&T invites you to respond to these allegations, and to propose possible means of addressing them. Because Bell Atlantic's ongoing violations are causing substantial harm to AT&T and to competition and consumers in New York, we ask that you respond as quickly as possible. In the event we are unable to settle this matter (or make substantial progress toward that end) by close of business on May 31, 2000, AT&T plans to file its complaint as early as June 1, 2000.

Please don't hesitate to call me or Steve Garavito (908-221-8100) if you wish to discuss this.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael Rose", with a long horizontal line extending to the right.

Attachment

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

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MAY 25 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Application of BellSouth Corporation,)
BellSouth Telecommunications, Inc., and) CC Docket No. 98-121
BellSouth Long Distance, Inc. for Provisions)
of In-Region, InterLATA Services)
In Louisiana)

**MOTION OF AT&T CORP. FOR EXPEDITED DECISION
ON PENDING PETITION FOR RECONSIDERATION**

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(908) 221-8100

Counsel for AT&T Corp.

May 24, 2000

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

In the Matter of)
)
Application of BellSouth Corporation,)
BellSouth Telecommunications, Inc., and) CC Docket No. 98-121
BellSouth Long Distance, Inc. for Provisions)
of In-Region, InterLATA Services)
In Louisiana)

**MOTION OF AT&T CORP. FOR EXPEDITED DECISION
ON PENDING PETITION FOR RECONSIDERATION**

AT&T Corp. (“AT&T”) hereby moves for expedited decision on its November 12, 1998 petition for reconsideration¹ of the Commission’s ruling that a Bell Operating Company (“BOC”) that has been granted section 271 authority may, notwithstanding its continuing obligations under 47 U.S.C. § 251(g) to provide “equal access” to all long distance carriers, expressly channel customers to its own long distance service when they call to obtain local service.² Recent evidence has conclusively confirmed that this ruling, which violates the plain terms of § 251(g), is causing immediate and irreparable harm to competition and consumers in the wake of the Commission’s decision to grant Bell Atlantic’s application for section 271 authority in New York.³

¹ Petition of AT&T Corp. for Reconsideration and/or Clarification, CC Docket 98-121 (filed Nov. 12, 1998) (“Petition”).

² See *Application of BellSouth Corp. et al. For Provision of In-Region, InterLATA Services in Louisiana*, CC Docket 98-121, ¶¶ 356-60 (Oct. 13, 1998) (“Order”).

³ See *Application by Bell Atlantic New York for Authorization To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295 (Dec. 22, 1999) appeal pending sub nom. *AT&T Corp. v. FCC*, No. 99-1538 (D.C. Cir.) (“New York Order”).

INTRODUCTION AND SUMMARY

Long distance telephone service customers have for years reaped the enormous benefits of a vigorously competitive market in which hundreds of suppliers compete for customers on an equal playing field. This can be traced in large part to longstanding equal access requirements – embodied in Commission rules, court orders and, most recently, the Communications Act itself – that have forced the BOCs and other incumbent local exchange carriers (“LECs”) to remain neutral in all matters of long distance carrier selection.

These equal access requirements are a cornerstone of telecommunications regulation. As the Commission, Congress, the Department of Justice, and the courts have all recognized, great harm to competition and consumers occurs whenever a BOC can act on incentives to use its local market power to tip the scales in favor of particular long distance carriers.⁴ It has required the constant vigilance of the Commission and others to thwart the BOCs’ myriad attempts to do just that.⁵

Strict enforcement of equal access requirements is particularly important in the context of inbound customer calls to BOCs. More than four years after the passage of the Telecommunications Act of 1996, the BOCs continue to provide local service to virtually all customers in their vast service areas. That means that today, just as in 1984 when equal access

⁴ See, e.g., 47 U.S.C. § 272(c) (imposing on all BOCs a general nondiscrimination duty with respect to any authorized interLATA affiliate); *id.* § 251(g) (providing that equal access obligations of Modified Final Judgment apply are enforceable as Commission rules until superseded by regulation); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272*, CC Docket No. 96-149, ¶ 292 (Dec. 24, 1996); *AT&T Corp. v. Ameritech Corp.*, File No. E-98-41, ¶¶ 5, 53-63 (rel. Oct. 7, 1998) (“*Qwest Order*”), *aff’d*, 177 F.3d 1057 (D.C. Cir. 1999); *United States v. Western Elec. Co.*, 698 F. Supp. 348, 368 (D.D.C. 1988) (“The requirement that equal access be provided to all interexchange carriers is one of the key components of the [MFJ]”).

⁵ See, e.g., *Qwest Order* ¶¶ 1-16.

requirements were first imposed, a customer that relocates or purchases an additional line at an existing residence almost always calls the BOC. Because a very large share of all presubscribed interexchange carrier (“PIC”) designations occur during such calls, a long line of decisions by the courts and the Commission therefore enforced a bright-line rule that when a BOC receives an incoming customer call, the BOC representative must show *no* favoritism toward *any* long distance carrier. Among other things, these “non-endorsement” precedents specifically required the BOC to notify customers that they may choose from among many long distance suppliers and to offer to read customers a randomly generated list of carriers without endorsing any carrier.⁶

In the *Order*, the Commission made a wrong turn, adopting BellSouth’s proposal that it be allowed, upon receiving long distance authority, to steer customers to BellSouth’s long distance service.⁷ Fortunately, the erroneous ruling had no immediate effect because the Commission properly denied BellSouth’s premature applications for long distance authority and no other BOC was then authorized to provide long distance service. The *Order* established a dangerous precedent, however, and AT&T sought reconsideration, demonstrating that the Commission’s ruling cannot be reconciled with the requirements of § 251(g) and would seriously

⁶ See, e.g., *United States v. Western Elec. Co.*, 578 F. Supp. 668, 677 (D.D.C. 1983) (where customer has not designated an interexchange carrier, the BOC may “refer the caller to a recorded announcement advising him of the availability of interexchange carriers, or it may otherwise assist him in locating such a carrier, *provided that no favoritism is shown to any particular carrier*”) (emphasis added); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, 101 F.C.C.2d 935, 940 (1985) (LECs must “devise procedures to ensure that the names of IXCs are provided in random order”); *Investigation of Access and Divestiture Tariffs*, CC Docket No. 83-1145, 101 F.C.C.2d 911, App. B, ¶ 7 (1985) (“The LECs must devise a method to give IXCs an equal opportunity to appear first on the Equal Access Ballot”); see also *Qwest Order* ¶¶ 54-58; Petition at 9-11 (citing additional cases).

⁷ See *Order* ¶¶ 356-58. See also *Application of BellSouth Corp. et al. To Provide In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-208, ¶¶ 236-39 (Dec. 24, 1997) (“*South Carolina Order*”).

undermine competition in any state in which a BOC was granted long distance authority. *See* Petition at 9-15.

AT&T's Petition was filed more than eighteen months ago. In any circumstances that would warrant prompt Commission action to resolve the issues raised in the Petition. Here, expedited resolution is imperative – Bell Atlantic's marketing practices in the wake of the *New York Order* starkly confirm not only that the concerns AT&T expressed in 1998 were well-founded, but that the Commission must act immediately to prevent further harm to competition and consumers.

AT&T has obtained direct proof that Bell Atlantic has seized upon the *Order* (and its affirmation in the *New York Order*) as a blanket license to ignore its equal access obligations. Shortly after Bell Atlantic been providing long distance service in New York, AT&T commissioned a review of Bell Atlantic's inbound call marketing practices. The magnitude of the discrimination revealed by the study, conducted by the independent marketing research firm Elrick & Lavidge, was shocking. Nearly *two-thirds* of the New York resident participants in the study who called Bell Atlantic to request an additional line at an existing residence were *not even told that they have a choice* of companies to provide their long distance service. Bell Atlantic offered to read a list of long distance alternatives in only 5% of the calls. In more than half of the test calls Bell Atlantic expressly endorsed its own long distance service. Indeed, in nearly half of the calls, Bell Atlantic was the *only* long distance carrier mentioned. And in a significant minority of calls, the Bell Atlantic representative even attempted to convince the caller to switch the primary line to Bell Atlantic long distance service.

In short, the level playing field that equal access requirements are designed to preserve no longer exists in New York. Bell Atlantic, which has between 85% and 90% of the local service

customers and thus receives the vast majority of the inbound customer calls, is clearly exploiting the Commission's departure from a bright-line non-endorsement rule to leverage its continuing local market power and to distort long distance competition. Consumer harm is inevitable: long distance carrier selection in New York no longer reflects informed consumer choice but the efforts of the dominant local carrier to channel customers to its own long distance service. The Commission must act now to restore competitive balance in New York, to protect New York consumers from Bell Atlantic's anticompetitive marketing practices, and to close the gaping equal access loophole sanctioned by the *Order* before any other BOC receives long distance authority.

As AT&T demonstrated in the Petition, the relief requested by the Petition is not only in the public interest, it is compelled by the statute. In this regard, the controlling legal issue remains as straightforward today as it was in 1998: Section 251(g) directs the Commission to continue to enforce all existing equal access requirements unless and until "explicitly superseded" by Commission "regulations," 47 U.S.C. § 251(g), and no regulations superseding the non-endorsement requirements have ever been adopted. The Commission should reconsider its ruling in the *Order* and reestablish the bright-line non-endorsement rule that existed before the *Order* and that Bell Atlantic's anticompetitive marketing practices prove is vital to protect competition and consumers.

ARGUMENT

In the *Order*, the Commission ruled that BellSouth marketing that expressly recommends that inbound callers purchase BellSouth long distance service does not violate §§ 251(g) or 272(c).⁸ As AT&T demonstrated in the Petition, that is clearly wrong.

Congress directed the Commission in 1996 to continue to enforce “the same equal access and nondiscriminatory interconnection restrictions and obligations” that applied under “any court order, consent decree, or regulation, order, or policy of the Commission until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission.” 47 U.S.C. § 251(g). It is undisputed that both the Bell System consent decree and existing FCC policies then required BOC representatives to advise callers of the available long distance options in a neutral manner.⁹ And it is likewise undisputed that the Commission has never promulgated regulations superseding these non-endorsement requirements. The non-endorsement requirements therefore apply, as the Commission itself recognized in its early section 271 orders.¹⁰

⁸ See *Order* ¶ 357-58; *South Carolina Order* ¶ 233 (approving marketing script where BOC would state “You have many companies to choose from to provide your long distance service. I can read from a list of the companies available for selection, however, I’d like to recommend BellSouth Long Distance”). See also *id.* ¶ 239 (BOCs may “mention [their section 272] affiliate apart from including that affiliate on a random list of available interexchange carriers,” so long as they also “offe[r] to read, in random order, the names and, if requested, the telephone numbers of all available interexchange carriers”).

⁹ See note 6, *supra*.

¹⁰ See *Application of Ameritech Michigan To Provide In-Region, InterLATA Services In Michigan*, CC Docket No. 97-137, ¶¶ 375-76 (Aug. 19, 1997) (“Mentioning only Ameritech Long Distance unless the customer affirmatively requests the names of other interexchange carriers is inconsistent on its face with our requirement that a BOC must provide the names of interexchange carriers in random order” and “would allow Ameritech Long Distance to gain an unfair advantage over other interexchange carriers”).

Further, when a BOC's marketing practices favor its own long distance affiliate, the BOC also violates the general duty of nondiscrimination that Congress enacted in § 272(c). Section 272 requires a BOC that obtains Section 271 authority to offer long distance service through an affiliate. Section 272(c) provides that a BOC "may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information." 47 U.S.C. § 272(c)(1). Under these plain terms, a BOC may not favor or recommend its own affiliate, and thereby disadvantage other carriers, when responding to inbound calls to change long distance carriers, to initiate new services, or to change existing local services.

In ruling otherwise in the *Order*, the Commission relied on § 272(g)(2), which provides that a BOC "may not market or sell interLATA service provided by an affiliate . . . until such company is authorized to provide interLATA services in such State," and § 272(g)(3), which provides that "joint marketing" permitted by § 272(g)(2) "shall not be considered to violate" the general "nondiscrimination provisions" of § 272(c). But Congress' express confirmation that it intended the general (and absolute) prohibition against *all* BOC local/long distance joint marketing to continue to apply until a BOC is granted section 271 authority in no way suggests any congressional intent to exempt BOCs with 271 authority from the *specific* equal access requirements of § 251(g).¹¹ To the contrary, as Congress made clear in § 251(g), the termination

¹¹ A BOC that has been granted section 271 authority enjoys myriad joint marketing opportunities independent of the inbound call endorsements that are prohibited by § 251(g). For example, the BOC could, like its competitors, jointly advertise its local and long distance services in the print and broadcast media or through outbound telemarketing.

of existing equal access obligations is triggered only by superseding Commission regulations, *not* by § 271 authority.¹²

The reason is obvious: continued enforcement of equal access requirements remains crucial in the early stages of emerging local competition. Although in order to grant a BOC application for § 271 authority the Commission must find that a particular state's local exchange markets are irreversibly open to competitive entry, there can be no serious debate that the BOC incumbent will continue to possess market power for a substantial period of time in light of its overwhelming market share and ownership of bottleneck facilities.¹³ The fact that a BOC has satisfied the section 271 criteria in no way means that it had lost all ability improperly to tip the scales in favor of a particular long distance carrier. Customers will continue to call the BOC by "default" for new local service and other functions. The BOC will thus enjoy the vast majority of customer contacts simply as a legacy of its historic monopoly – contacts that it could, in the absence of the full protections Congress enacted in section 251(g), use to play favorites in long distance carrier selection. And the very fact of section 271 authority greatly enhances a BOC's incentive to exercise that market power to favor one carrier in particular – itself.

That is undoubtedly why Congress determined that equal access regulations must remain in effect for *all* BOCs until the Commission determines that they are no longer necessary and

¹² There can be no argument that the § 271 adjudication that produced the *Order* itself constitutes a superseding "regulation." Although an agency ordinarily has discretion to proceed by rulemaking or adjudication, *see, e.g., SEC v. Chenery*, 332 U.S. 194, 202-03 (1947), by expressly mandating in § 251(g) that the FCC proceed by rulemaking should it consider amending the equal access requirements, Congress denied the FCC that discretion here. *See Perales v. Sullivan*, 948 F.2d 1348, 1356 (2d Cir. 1991) (statutory mandate "shall by regulation" required Secretary to promulgate regulations).

¹³ For example, the Commission did not find that AT&T was nondominant in the long distance market until more than a decade after AT&T's complete divestiture of the Bell System's local bottleneck facilities.

promulgates superseding regulations – presumably regulations that relax the equal access requirements on a state-by-state basis and only upon conclusive proof that competing carriers have won meaningful shares of the local market in the state and that customers are fully aware that they have options for local service other than the BOC incumbent. The Commission’s decision in the *Order* to relax the equal access obligations of BOCs with § 271 authority even in the absence of such superseding regulations is flatly inconsistent with the Act. *See* Petition at 9-15.

Any relaxation of equal access requirements prior to appropriately-supported superseding regulations will harm competition and consumers. The Commission’s erroneous ruling in the *Order* is particularly damaging, however, because it involves inbound call joint marketing. This “LEC-connect” channel through which most customers choose their long distance carrier is extremely important. AT&T, for example, obtains more than 50% of its PIC designations through this channel. *See* Declaration of Robert M. Aquilina ¶ 3 (“Aquilina Decl.”) (attached hereto as Appendix A). Accordingly, absent bright-line rules prohibiting BOCs from showing favoritism during such customer calls, the LEC-connect channel presents unmatched opportunities for a BOC to pick winners and losers in the otherwise competitive long distance market. *Id.* ¶¶ 6, 11.

Fortunately, in the first year after the Petition was filed no BOC could take advantage of those opportunities because the Commission properly rejected each of the premature BOC applications for § 271 authority. In December 1999, however, the Commission granted Bell Atlantic the authority to provide long distance services in New York, giving Bell Atlantic both the power and the incentive to favor itself in the PIC selection process. *See id.* ¶ 6. In the intervening months, AT&T has confirmed beyond all doubt that Bell Atlantic *is* improperly

favoring itself and that the loophole the Commission created in the *Order* by moving away from a bright-line non-endorsement rule has the very anticompetitive effects detailed in the Petition.

Shortly after Bell Atlantic began offering long distance service in New York, AT&T's PIC designations through the LEC-connect channel began to decline precipitously. *See id.* ¶ 7. AT&T commissioned the independent marketing research firm Elrick & Lavidge to conduct a study to attempt to determine the cause of the decline. *See id.* ¶¶ 8-10. Elrick & Lavidge designed a simple, but comprehensive, test call program in which 300 existing Bell Atlantic-New York local service customers would call Bell Atlantic to request an additional line.¹⁴ The test callers were instructed to express no long distance carrier preference and to respond "I'm not sure" if the Bell Atlantic representative asked for a preference. *See Elrick & Lavidge at 2.*

The test callers contemporaneously filled out detailed call sheets, which Elrick & Lavidge separately reviewed to ensure that the Bell Atlantic representative had a full opportunity to comply with the equal access requirements. *Id.* Out of an abundance of caution, Elrick & Lavidge ultimately excluded from the sample 39 calls that it determined terminated too quickly to provide meaningful results. *Id.*

Although AT&T would have predicted some improper favoritism based on its past experiences with Bell Atlantic, the extent of the anticompetitive marketing practices revealed by the Elrick & Lavidge study was truly startling. Nearly *two-thirds* of the test callers were not even told that they have a choice of companies to provide their long distance service. *Elrick & Lavidge at 3.* Bell Atlantic offered to read a list of long distance alternatives in only *five percent* of the calls. *Id.* In more than half of the test calls Bell Atlantic expressly endorsed its own long

¹⁴ The Elrick & Lavidge report was previously filed with the Commission as an ex parte. *See* Letter of Robert W. Quinn, Jr. to Magalie Roman Salas, CC Docket 98-121 (Apr. 12, 2000). For the convenience of the Commission and its staff, an additional copy of the report is included as Exhibit A to the Aquilina Declaration ("*Elrick & Lavidge*").

distance service. *Id.* at 2. Indeed, in nearly half of the calls, Bell Atlantic was the *only* long distance carrier mentioned. *Id.* And in a significant minority of calls, the Bell Atlantic representative even attempted to convince the caller to switch the primary line to Bell Atlantic long distance service. *Id.* at 5.

This evidence confirms that no further delay can be tolerated. AT&T's experience with Bell Atlantic conclusively demonstrates that the regulatory vacuum created by the joint marketing ruling in the *Order* will produce the very outcome that equal access requirements were designed to prevent: a two-tier long distance market in which the incumbent BOC enjoys unfair and insurmountable advantages over all other competitors solely as a result of its historic local monopoly. The competitive playing field is already tilting in that direction in New York, and immediate Commission action is necessary to prevent ongoing harm to competition and customers in that state. That is reason enough to act on AT&T's 18-month-old Petition.

But the stakes are much higher. Any other BOC that obtains long distance authority will just as surely exploit the loophole created in the *Order*. The Commission should immediately grant the Petition and reinstate the bright-line non-endorsement rule that has served customers well for over a decade.

CONCLUSION

For the foregoing reasons, the Commission should promptly grant the Petition's request that the Commission reconsider its joint marketing ruling in the Order and declare that no BOC may endorse its own long distance service in a customer-initiated local service call.

Respectfully submitted,

David Lawson
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Sidley & Austin
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Washington, D.C. 20006
(202) 736-8000

Mark C. Rosenblum
Stephen C. Garavito
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(908) 221-8100

Counsel for AT&T Corp.

May 24, 2000

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

In the Matter of)
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Application of BellSouth Corporation,)
BellSouth Telecommunications, Inc., and) CC Docket No. 98- 121
BellSouth Long Distance, Inc. for Provisions)
of In-Region, InterLATA Services)
In Louisiana)

DECLARATION OF ROBERT M. AQUILINA

I, Robert M. Aquilina, declare as follows:

1. I am the Senior Vice President, AT&T Consumer Services, of AT&T Corp. ("AT&T"). As such, I am responsible for AT&T's marketing of long distance services to residential customers nationwide. I am also responsible for consumer long distance customer service. In addition, I am AT&T's Vice President Eastern & Central Regions with responsibility for local service market entry and AT&T's marketing of "any distance" services in the Bell Atlantic states (from Virginia to Maine) and in Illinois, Wisconsin, Michigan, Indiana and Ohio.

2. In these roles, I have been responsible for AT&T's efforts to provide local and Long distance service to customers in New York, and I have followed closely the marketing activities of Bell Atlantic, both before and after it received authority to provide long distance service in New York.

3. Until recently, incumbent local exchange carriers ("incumbent LECs")

"ILECs") have been the only entities permitted by law to provide local service. Even today, four years after the Telecommunications Act of 1996 tilted the legal barriers to local competition, Bell Atlantic controls 85%-90% of the local access lines in the areas of New York that it serves. As a direct consequence of Bell Atlantic's enduring local monopolies, customers seeking to establish local telephone service, either initial telephone service or the addition of a new line, still virtually always call Bell Atlantic. When they call Bell Atlantic to initiate local service, customers generally also select it long distance carrier as their Primary Interchange Carrier or "PIC." Indeed, AT&T today obtains over 50 percent of its PICs via this channel,

4. It is extremely important that this "LEC-connect" channel through which most customers choose their preferred long distance carrier remain free from improper discrimination. In light of the competitive significance posed by PIC selection during the initiation of local service, both the court administering the consent decree that broke up the Bell System (the "MFJ Court") and the Federal Communications Commission ("Commission") required that incumbent LECs remain absolutely neutral during the PIC selection process. Bell Atlantic, for example, was forbidden from recommending or endorsing (or in any way favoring) any long distance carrier.

5. In 1997, however, the Commission held as part of its consideration of BellSouth's 271 application for South Carolina that - once it obtained section 271 authority - a Bell Operating Company ("BOC") could recommend its own long distance service so long as it contemporaneously advised the customer of the right to select a long distance carrier and offered to read a random list of available long distance providers. The Commission reaffirmed that ruling in its order rejecting BellSouth's second

application for 271 authority for Louisiana.

6. Fortunately, until recently, BOCs had little economic incentive to favor any particular long distance carrier because no BOC had been granted section 271 authority to provide in-region long distance service.¹ In December 1999, however, the Commission granted Bell Atlantic the authority to provide interLATA services in New York. As a result, Bell Atlantic now has both the power and the incentive to favor its long distance affiliate -- and to disfavor competing long distance providers -- during the PIC selection process,

7. AT&T's Consumer Services organization recently noticed that New York customers choosing AT&T as their PIC via the Bell Atlantic LEC-connect channel were declining precipitously. In order to understand what was causing this decline, AT&T made some test calls to Bell Atlantic's customer service centers in New York to see how they were handling PIC selection. Those test calls suggested that Bell Atlantic; was not complying with even the minimal standards from the Commission's *BellSouth South Carolina* decision,

8. AT&T accordingly retained an independent third party consumer survey organization, Elrick & Lavidge, to conduct a study of Bell Atlantic's handling of inbound calls initiating local service. Although AT&T funded the study, Elrick & Lavidge were at all times responsible for designing and conducting the study. The study report is attached hereto as Exhibit A, and it describes the methodology used during the study.

¹ This did not prevent at least two RBOCs from attempting to sidestep the requirements of 271 and to favor their long distance partner. The Commission appropriately blocked this attempt to evade the Act's requirements. See *AT&T Corp. v. Ameritech Cm-p.*, File No, E-98-41, ¶¶ 5, 53-63 (rel. Oct. 7, 1998) ("*Qwest Order*"), *aff'd*, 177 F.3d 1057 (D.C. Cir. 1999).

9. The study confirms that Bell Atlantic is treating the Commission's relaxation of core equal access requirements in the South Carolina and Louisiana II orders as a license to flout its equal access obligations and to channel customers to Bell Atlantic long distance service. For example, Bell Atlantic *failed* to tell callers that they had a choice of long distance carriers 64% of the time. In addition, Bell Atlantic did *not* offer to read a list of long distance providers on **95%** of the calls.

10. In addition to improperly steering the customer to its long distance affiliate during the PIC selection process, Bell Atlantic also attempted to have the customer change the PIC to Bell Atlantic for long distance service on their primary lines 5% of the time. It also appears that Bell Atlantic is improperly using proprietary information regarding existing customers' long distance choices to market its own long distance services during inbound calls to obtain local service. Thus, on 26% of the calls seeking to establish service on a second line, Bell Atlantic identified the caller's current long distance provider on the primary line.

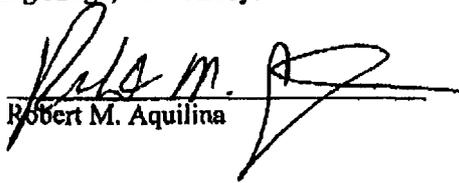
II. Such blatant discrimination and Favoritism has already resulted in a significant decline in AT&T PIC selections obtained when customers call to obtain local service. Because Bell Atlantic has been the sole provider of local service in its serving areas for more than 100 years, and because it still provides service to 85%-90% of New York residential customers in its territory, consumers call Bell Atlantic to order new service or add a second line. And, when they do so, they naturally select a long distance carrier as well. By abusing its monopoly position, Bell Atlantic can give -- and has given -- its affiliated long distance provider an undeserved competitive advantage, one which the Telecommunications Act of 1996 intended to foreclose Irreversible damage to the

otherwise highly competitive long distance marketplace in New York will occur unless the Commission acts promptly to stop this improper favoritism.

12. Bell Atlantic's actions demonstrate that BOCs will, if given the opportunity, inevitably act in their own economic interest during the PIC selection process and discriminate against other long distance providers. Accordingly, the Commission should preclude ILECs from marketing long distance service during inbound calls to obtain local service -- as it had done for many years in enforcing bright-line rules against any endorsements in this context.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Executed on May 11, 2000, at Basking Ridge, New Jersey.


Robert M. Aquilina



RECEIVED

Robert W. Quinn, Jr.
Director - Federal Government Affairs

APR 13 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Suite 1000
1120 20th St., NW
Washington, DC 20036
202 457-3851
FAX 202 457-2545

April 12, 2000

Ms. Magalië Roman Salas
Secretary
Federal Communications Commission
445 - 12th Street, SW - Room TWB-204
Washington, D.C. 20554

Re: Notice of Ex Parte meeting
Second Application by BellSouth Telecommunications, Inc. and BellSouth
Long Distance, Inc. for Provisioning of In-Region, interLATA Service in
Louisiana, CC Docket No. 98-121

Dear Ms. Roman Salas:

On Wednesday April 12, 2000, Rob Middleton, Robin Wolkoff, David Brock, and I of AT&T met with Larry Strickling, Bob Atkinson, both of the Common Carrier Bureau and Johanna Mikes and Ann Stevens, both of the Common Carrier Bureau's Policy and Program Planning Division, to discuss issues related to the foregoing proceeding. Specifically, we discussed the why the PIC selection process must be a competitively neutral process consistent with the Commission's decision in the Ameritech Michigan 271 Order. The attached document was presented and discussed during the meeting. The views expressed by AT&T at this meeting were consistent with its written comments on file at the Commission.

Two copies of this Notice are being submitted to the secretary of the FCC in accordance with Section 1.1206(a)(1) of the Commission's rules.

Sincerely,

Cw f/Robert Quinn

Attachment

cc: Larry Strickling
Bob Atkinson
Johanna Mikes
Ann Stevens
Glenn Reynolds
Mark Seifert
Tonya Rutherford
Richard Welch
Brad Berry

**BELL ATLANTIC ADDITIONAL LINE
TEST CALL STUDY**

M A R C H , 2 0 0 0



Customer Sciences

Background and Purpose

When adding another telephone line to the household, consumers must contact their local telephone company. At that time, they must also choose a long distance company for the new phone line.

The purpose of this study was to understand the procedures that Bell Atlantic employs in marketing its LD service to customers establishing service for additional phone lines in New York. When provisioning an additional line, Bell Atlantic is permitted to recommend its own LD service, but must contemporaneously:

- state that the customer has a choice of LD providers (even if the customer does not ask about LD provider options)
- offer to read a list of the available LD providers (even if the customer does not ask to hear a list of their LD company options)

Additionally Bell Atlantic is not permitted to use its privileged information regarding the customer's LD provider on their primary line, in order to encourage switching to Bell Atlantic LD service for the existing line.

Compliance with the above rules was assessed through test calls to Bell Atlantic's residential service office.

Methodology

Elrick & Lavidge, an independent marketing research firm, placed a total of 300 test calls to Bell Atlantic customer service to request additional phone lines for existing residential accounts. Each test caller lived in New York state, and had Bell Atlantic local telephone service. Both those who had AT&T and CCC LD service on their primary line were included in this study.

All calls were placed to the Bell Atlantic residential service number found in the local Bell Atlantic phone book. Calls were placed between March 8-17, 2000, and were dispersed throughout the day and evening, on weekdays and on Saturday. Callers queried Bell Atlantic representatives using a structured script that detailed the specific information that should be shared with the Bell Atlantic representative. In particular, test callers were instructed:

not to indicate which LD provider was desired for the new line (to say "Oh, I'm not sure" if the Bell Atlantic representative asked which long distance company was desired)
not to ask the Bell Atlantic rep which LD providers were available
not to specify which LD provider is being used for the existing line unless asked by the Bell Atlantic representative

Before hanging up, each caller cancelled their order by indicating that they needed to consult another household member and did not want the order placed at this time.

After close examination of the completed call sheets, Elrick & Lavidge made a decision to pull 39 of the test calls and not include them in the final set of data. This was done because it was felt that the call was terminated too quickly, and as such, did not provide Bell Atlantic with adequate opportunity to be compliant. Therefore, the results stated in this report are based on a total of 261 test calls.

Summary of Findings

Did Bell Atlantic market its LD services for the additional line being ordered?

- Bell Atlantic reps very ardently promote Bell Atlantic long distance service. Over half (55%) of the callers were informed that Bell Atlantic currently offers LD service, and were asked if they wanted Bell Atlantic long distance service for the new line. Furthermore, in roughly half (47%) of the calls, Bell Atlantic was the only company mentioned for long distance service on the new line.

Did the Bell Atlantic rep indicate that the caller had a choice of LD providers, independent of the caller's prompting?

- In two out of three (64%) test calls, callers were not told by the Bell Atlantic rep that they have a choice of companies to provide long distance service on their new line.

(See Exhibit 1)

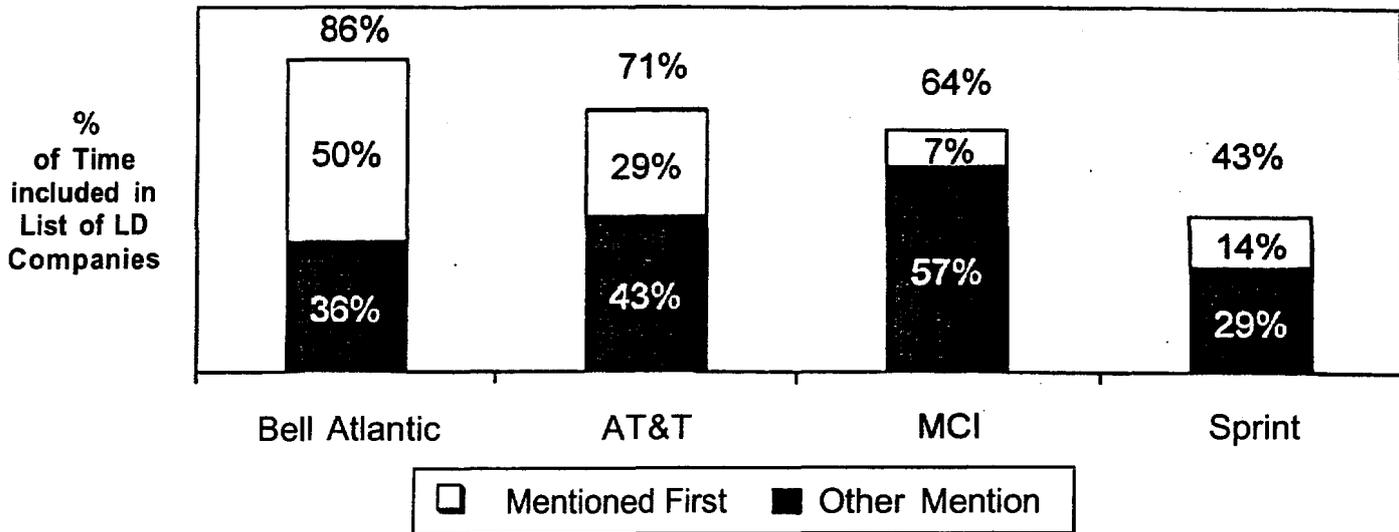
Did the Bell Atlantic rep offer to read a list of available LD providers, independent of the caller's request to hear a list?

- The Bell Atlantic representatives very rarely (5%) offer to read a list of companies available to provide long distance service on the new line.
 - Even when the Bell Atlantic representatives indicate that a choice of LD providers is available, a list of the available options is only read in 15% of the cases.

	<u>Total %</u>	<u>Total #</u>
<u>Rep indicated that there is a choice of LD companies</u>	<u>36%</u>	<u>94</u>
Rep offered to read list of companies	5%	14
Rep did not offer to read list of companies	95%	247
Rep did not indicate that there is a choice of LD companies	64%	167

(See Exhibit 1)

- When a list of LD carriers is provided, Bell Atlantic is part of that list more often than any other LD company. Bell Atlantic is included on the list 86% of the time; 50% of the time Bell Atlantic is mentioned first and only once is Bell Atlantic mentioned last. Most typically, the list includes some combination of the major LD players in addition to Bell Atlantic - AT&T, MCI, Sprint.



Did Bell Atlantic market its LD service for the caller's primary line?

- Overall, in approximately one quarter (26%) of the calls, the Bell Atlantic rep indicated knowledge of which LD company was being utilized for the caller's primary line.
- In 5% of the calls, the rep attempted to convince the caller to switch the primary phone line to Bell Atlantic for LD service. This was done fairly comparably, regardless of whether or not the rep indicated knowledge of the LD provider on the existing line.

	<u>Total %</u>	<u>Total #</u>
<u>Rep asked caller to switch primary line to Bell Atlantic LD</u>	<u>5%</u>	<u>13</u>
Rep indicated knowledge of LD PIC	3%	8
Rep did not indicate knowledge of LD PIC	2%	5

(See Exhibit 2)

- In most instances (10 out of 13), when soliciting Bell Atlantic LD service for the primary line, the rep came right out and asked "Do you want to switch your other line to Bell Atlantic also?" Other ways of trying to persuade customers to switch to Bell Atlantic for their primary line included:

"Bell Atlantic could match MCI's 10¢ per minute."

"Depending on how many long distance calls you make, it might be to your advantage to switch."

"Are you aware that another carrier had your long distance? We could take care of that for you at a flat rate – no charges unless you used long distance service."

Exhibit 1
Were Callers Informed of Their LD Provider Choices?

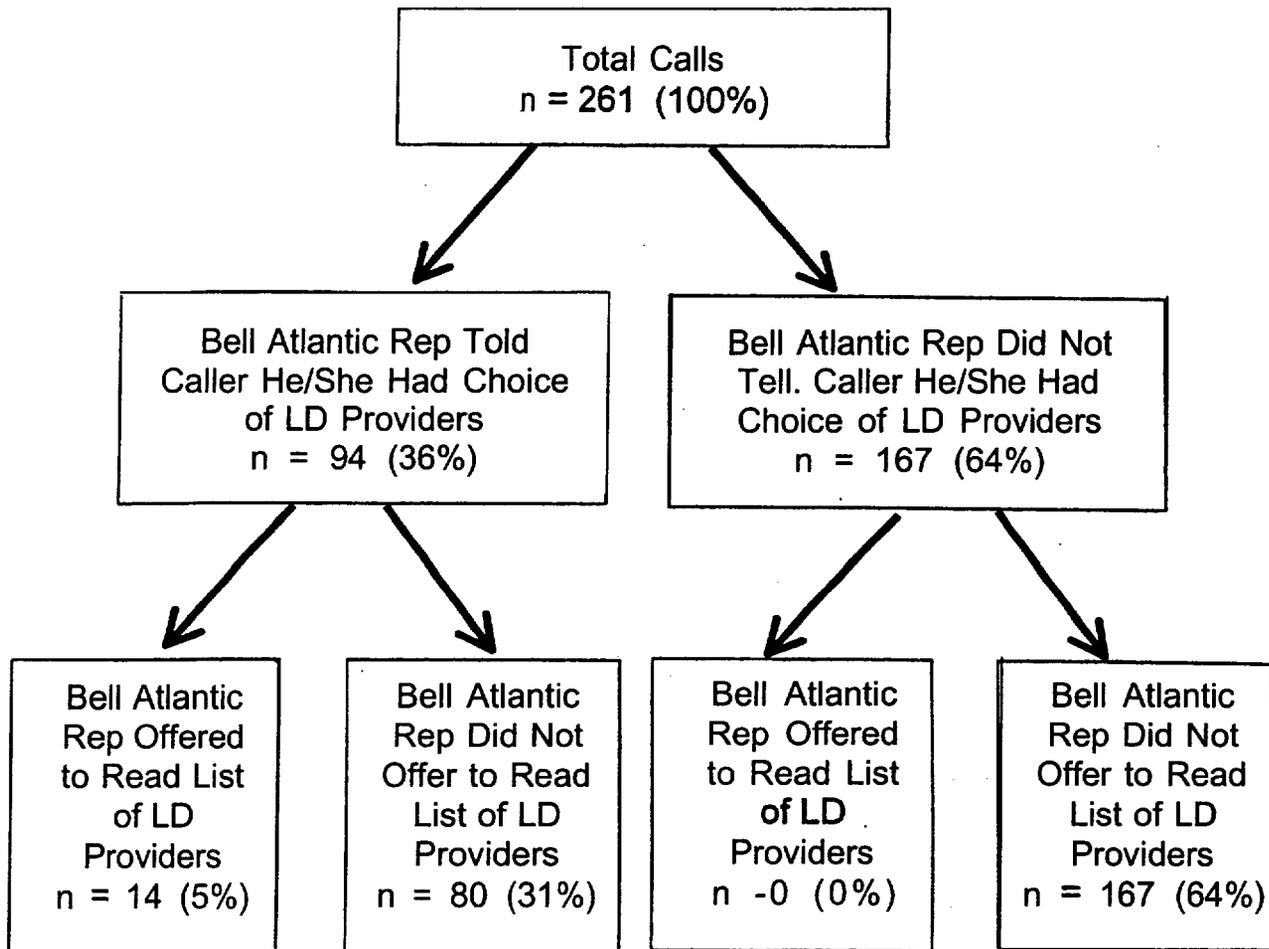
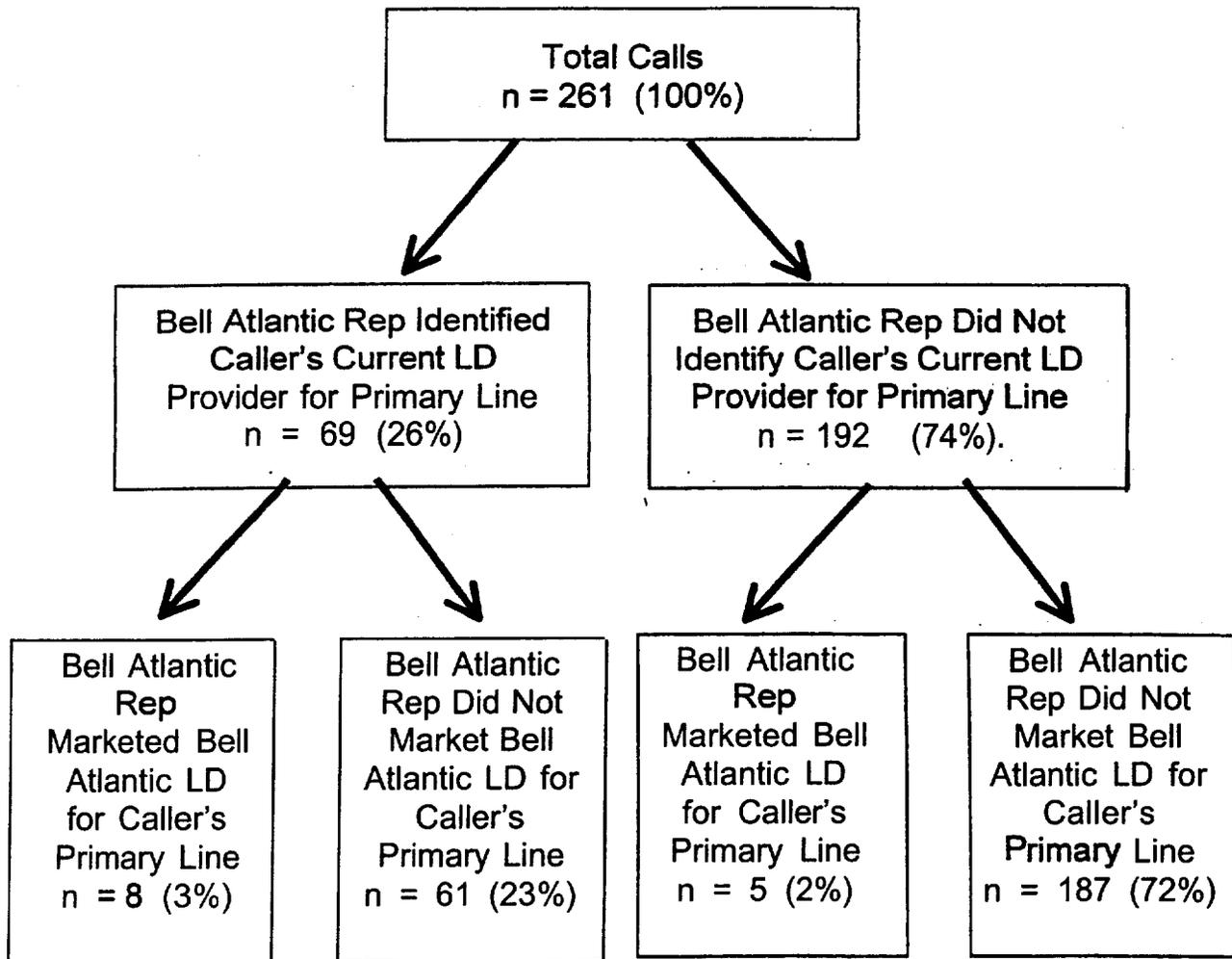


Exhibit 2
Did Bell Atlantic Utilize Knowledge of Customer LD Provider on Primary Line?



APPENDIX

AT NO TIME DURING THIS CALL ARE YOU TO ASK WHICH LONG DISTANCE COMPANIES ARE AVAILABLE FOR THE NEW LINE.

Elrick & Lavidge
Mack Centre II
One Mack Centre Drive
Paramus, NJ 07652
(201) 599-0755

Project # 15 1-07745
March 7, 2000

TEST CALL - ADDITIONAL LINE

1. **RECORD YOUR TELEPHONE NUMBER: (_ _) - _ - - - -**

2. **RECORD DATE OF CALL: 3 / / 00 RECORD TIME CALL BEGAN: ___ : ___ am/pm**
RECORD TIME CALL ENDED: ___ : ___ am/pm

3. **DIAL THE NUMBER FOR BELL ATLANTIC "RESIDENCE SERVICE" OR OTHER APPROPRIATE CATEGORY THAT IS FOUND IN YOUR LOCAL BELL ATLANTIC PHONE BOOK. RECORD THE NUMBER DIALED:**
(___) - ___ - ___

WHEN REP ANSWERS, ASK THE FOLLOWING QUESTIONS AND RECORD THE REP'S RESPONSES.

4. **RECORD REP'S NAME IF PROVIDED. (IF NOT PROVIDED - - DO NOT ASK)**

ANSWER QUESTION 6 AND 7 IF "YES" IN QUESTION 5c.

6. Which long distance company choices were you provided? (CIRCLE ALL THAT ARE MENTIONED. IF MORE THAN ONE COMPANY IS CIRCLED, PUT A "1" NEXT TO THE COMPANY MENTIONED FIRST, A "2" NEXT TO THE COMPANY MENTIONED SECOND, ETC. IF THERE ARE TOO MANY COMPANIES LISTED FOR YOU TO RECORD, PUT A "1", "2" AND "3" NEXT TO THE FIRST 3 COMPANIES AND AN "X" NEXT TO THE LAST COMPANY.)

	<u>Order of Mention</u>
Bell Atlantic.....01	_____
AT&T.....02	_____
MCI03	_____
Qwest04	_____
Sprint.....05	_____
Other (SPECIFY 1) _____06	_____
(SPECIFY 2) _____07	_____
(SPECIFY 3) _____08	_____
(SPECIFY 4) _____09	_____

7. Did you recognize any of the company names as familiar?

Yes1
 No..... .2

AS SOON AS THE DISCUSSION TURNS TO SCHEDULING A TIME FOR INSTALLATION OR REP BEGINS TO CONFIRM THE ORDER, SAY: "Thanks for the information, but I must check with my (INSERT FAMILY MEMBER) before you can put this order through."

MAKE SURE REP IS NOT PROCESSING THIS ORDER.

8. CIRCLE YOUR CURRENT LONG DISTANCE COMPANY.

AT&T 1
 MCI 2
 Sprint..... 3
 Other (SPECIFY) _____ 4