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

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In the Matter of)
)
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)

CC Docket No. 99-295

ORDER ON RECONSIDERATION

Adopted: May 17, 2001

Released: May 21, 2001

By the Commission:

I. INTRODUCTION

1. On December 22, 1999, the Commission granted Bell Atlantic's petition, pursuant to section 271 of the Communications Act of 1934, as amended (the Act), seeking approval to offer in-region, interLATA long distance service in the state of New York.¹ On January 21, 2000, CloseCall America, Inc. (CloseCall) filed a petition for reconsideration of the Commission's decision.² For the reasons discussed below, we deny CloseCall's reconsideration petition.

II. DISCUSSION

2. Price Squeeze. CloseCall asserts that Bell Atlantic violates our rules by pricing resold products and services at such high rates that it creates a "price squeeze."³ CloseCall asserts that: (1) although the *Bell Atlantic New York Order* describes the price squeeze issue, it does not respond to or consider CloseCall's specific comments on this issue;⁴ (2) the Commission's "bare mention" of its price squeeze concerns in the *Bell Atlantic New York Order*

¹ *In re 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*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953 (1999) (*Bell Atlantic New York Order*), affirmed, *American Tel. & Tel. v. FCC*, 200 F.3d 607 (D.C. Cir. 2000) (*AT&T v. FCC*). Bell Atlantic is now known as Verizon.

² CloseCall America, Inc. Petition for Reconsideration (filed Jan. 21, 2000) (CloseCall Reconsideration Petition). CloseCall filed comments in Bell Atlantic's section 271 proceeding, asserting that Bell Atlantic failed to meet the resale requirements of the 14-point competitive checklist of section 271 of the Act. Comments of CloseCall America, Inc., CC Docket No. 99-295 (Oct. 19, 1999) (CloseCall Comments).

³ CloseCall Reconsideration Petition at 2-3.

⁴ *Id.* at 3.

does not qualify as the independent consideration required under a section 271 analysis;⁵ and (3) the Commission incorrectly relied on the New York Public Service Commission's (PSC's) conclusion that Bell Atlantic's resale prices meet our requirements, as it is "inconceivable" that Bell Atlantic's pricing complies "with the most basic cost recovery requirements."⁶ Bell Atlantic denies these allegations.⁷

3. We considered each of CloseCall's assertions regarding an alleged price squeeze in New York in the context of Bell Atlantic's 271 application. CloseCall is incorrect that we did not respond to, or consider, its allegation of a price squeeze in the Bell Atlantic section 271 application.⁸ In its original comments, CloseCall asserted that the difference between Bell Atlantic's wholesale and retail rates was so narrow that it precluded a profit and hindered competition,⁹ and that one of Bell Atlantic's regional toll plans was priced below its wholesale switched access service.¹⁰ After examining this allegation in the section 271 proceeding, we concluded that Bell Atlantic's resale discount met the Commission's avoided cost standard.¹¹ As we stated in the *Bell Atlantic New York Order*, Bell Atlantic is not required to guarantee a minimum profit margin to resellers. Under the pricing standards of the Act, prices for access services that are not offered at retail are irrelevant to a determination of compliance with the resale requirements of the section 271 checklist.¹² We concluded, therefore, that Bell Atlantic met its requirements to provide nondiscriminatory access to resold products and services, and to apply the correct avoided cost discount.¹³ Additionally, CloseCall's mere assertion that it is "inconceivable" that Bell Atlantic's pricing complies "with the most basic cost recovery requirements" is insufficient to demonstrate that we erred in our earlier conclusion. We therefore find that CloseCall's assertions are without merit.

4. Limitations on Resold Services. CloseCall asserts that Bell Atlantic violates the resale checklist item by "unlawfully limiting the services available to resellers."¹⁴ CloseCall contends that Bell Atlantic limits the services that can be obtained at wholesale prices and extends

5 *Id.* at 4.

6 *Id.* at 5.

7 Bell Atlantic Opposition to Petition for Reconsideration at 3 (March 27, 2000) (Bell Atlantic Opposition).

8 CloseCall Reconsideration Petition at 3.

9 CloseCall Comments at 5.

10 *Id.*

11 *Bell Atlantic New York Order*, 15 FCC Rcd at 4144, paras. 382-3.

12 *See* 47 U.S.C. 271(c)(2)(B)(xiv); *see also* 47 U.S.C. 251(c)(4); 47 U.S.C. 252(d)(3).

13 *Id.*

14 CloseCall Reconsideration Petition at 5.

its wholesale rates only to bundled packages of retail toll services and to switched access.¹⁵ Bell Atlantic responds that it is not required to create new retail offerings solely for resellers.¹⁶

5. In its petition, CloseCall reasserts the same arguments that were considered in the *Bell Atlantic New York Order*. There, we found that Bell Atlantic offered its retail product offerings to resellers at wholesale rates pursuant to the checklist.¹⁷ In response to CloseCall's original allegations, we noted that Bell Atlantic "may not limit the vertical products that it makes available to competitive LECs."¹⁸ We found that Bell Atlantic did not do so, however, because it offers resellers bundled retail intraLATA toll services at wholesale rates, as well as unbundled switching that includes "the basic switching function."¹⁹ We find that CloseCall's argument was considered in the context of the section 271 application, and its reconsideration argument is without merit.

6. Failure to Reflect Differences in Underlying Retail Costs. CloseCall reiterates its earlier assertion that Bell Atlantic impermissibly applies a uniform avoided cost discount to all of its resold services.²⁰ CloseCall contends that Bell Atlantic should be required to offer wholesale discounts that reflect the specific avoided costs for individually resold services.²¹ Bell Atlantic responds that the Commission has approved the use of a uniform wholesale discount for a Bell Operation Company's avoided costs.²²

7. In its petition, CloseCall repeats the argument it raised in the context of the *Bell Atlantic New York Order*, where it was properly considered and rejected.²³ In the *Bell Atlantic*

15 CloseCall Reply at 3.

16 Bell Atlantic Opposition at 5, citing *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, CC Docket No. 96-98, 11 FCC Rcd 15499 at 15934, para. 872 (1996) (*Local Competition First Report and Order*).

17 *Bell Atlantic New York Order*, 15 FCC Rcd at 4150, para. 396.

18 *Id.* at 4150, para. 397.

19 *Id.*

20 CloseCall Reply at 4.

21 *Id.* at 5.

22 Bell Atlantic Opposition at 6-7, citing *Local Competition First Report and Order*, 11 FCC Rcd at 15957-8, paras. 915-16.

23 CloseCall Comments at 6. We note that the Court of Appeals for the District of Columbia recently issued a decision overturning the Commission's determination, in conjunction with the Ameritech-SBC merger, that the merged company could avoid the resale obligation of section 251(c)(4) for the sale of advanced services if it provided those services through a subsidiary. *Association of Communications Enterprises v. Federal Communications Commission*, 2001 WL 20519 (D.C. Cir. Jan. 9, 2001). At the time Bell Atlantic filed its 271 application for New York, it was obligated to comply with the Commission's rules regarding the provision of advanced services through affiliates, and the Commission held that it met this obligation. *Bell Atlantic New York Order*, 15 FCC Rcd at 4143, para. 381.

New York Order, we found that CloseCall provided no evidence that the New York PSC failed to adhere to statutory requirements in setting the avoided cost discount for wholesale rates.²⁴ Furthermore, as we stated in *Local Competition First Report and Order*, “a uniform rate [for avoided costs] is simple to apply, and avoids the need to allocate avoided costs among services.”²⁵ Although we observed that avoided costs may, in fact, vary among services, we neither prohibited nor required the use of a single, uniform discount rate for all of an incumbent Local Exchange Carrier’s (LEC’s) services.²⁶ Thus, as we found in the *Bell Atlantic New York Order*, Bell Atlantic is not required to implement multiple avoided cost discounts.²⁷ CloseCall’s allegation that a uniform avoided cost discount causes Bell Atlantic to fail the checklist item is unfounded.

8. **Standard of Review.** CloseCall asserts that the Commission improperly and “uncritically” accepted the conclusions of the New York PSC that Bell Atlantic met the resale requirements of section 271.²⁸ CloseCall asserts that the Commission may only give weight to state regulators’ views on section 271 compliance when such views are supported by a detailed inquiry, which the New York PSC did not do.²⁹ Bell Atlantic responds that the Act specifically assigns the task of setting wholesale rates for resale to the states, and that the Act not only permits, but requires, a deferential review of such rates by the Commission.³⁰

9. As the United States Court of Appeals for the District of Columbia stated, “[t]he Commission does not conduct a de novo review of state pricing determinations in section 271 proceedings.”³¹ In the *Bell Atlantic New York Order*, we stated that we would defer to a state commission’s findings of fact regarding pricing issues. This standard of review was upheld on appeal.³² Our review of the record in Bell Atlantic’s 271 application led us to conclude that the New York PSC had thoroughly investigated Bell Atlantic’s resale rates and practices and had set rates, including the avoided cost discount, in accordance with the Act and our rules.³³ CloseCall presents no evidence that the Commission improperly relied on the conclusions of the New York Commission or that we applied an incorrect standard of review. We find that its reconsideration

24 *Bell Atlantic New York Order*, 15 FCC Rcd at 4145, para. 383.

25 *Local Competition First Report and Order*, 11 FCC Rcd at 15957-58, para. 916.

26 *Id.*

27 *Bell Atlantic New York Order*, 15 FCC Rcd at 4145, para. 383.

28 Reply of CloseCall America, Inc. (filed Feb. 14, 2000) (CloseCall Reply).

29 CloseCall Reply at 1-2, 8.

30 Bell Atlantic Opposition at 8.

31 *AT&T v. FCC* at 615.

32 *AT&T v. FCC*, 200 F.3d at 616.

33 *Bell Atlantic New York Order*, 15 FCC Rcd at 4145, para. 383.

assertions are unfounded.

III. ORDERING CLAUSE

10. ACCORDINGLY, IT IS ORDERED, pursuant to section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the petition for partial reconsideration filed by CloseCall America, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary