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December 11, 1998

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MR. CHAUFFIN

The Honorable Debra A. Renner
Acting Secretary
New York Public Service Commission
Three Empire State Plaza Agency Building #3
19th Floor
Albany, New York 12223

New York State Public Service Commission
Case 98-C-1079 -- Proceeding on Motion of
the Commission to Investigate New York
Telephone Company's Proposal to
Discontinue Offering Information Services

Dear Acting Secretary Renner:

Enclosed please find 25 copies of the initial testimony submitted on behalf of Larry Weiss Associates, Inc., National Telephone Enterprises, Inc., Dynatech Communications, Inc., Theema Systems Limited, Ltd., Oliver Oziel, ETV, Inc., Marenick, Inc., Jay Thomas and Automated People Connection. The individuals submitting prefiled testimony are: Richard Cohen, an information provider, Lawrence Weiss, an information provider, Walter Boxer, an information provider, David Eisenstadt, an economist, Michael Marenick, an information provider, Elwin Macomber, an expert in voice telecommunications, Jay Thomas, an information provider, and Oliver Oziel an information provider.

Portions of the testimony of Michael Marenick are confidential and are being filed in a redacted manner pursuant to the order of Judge Epstein.

Very truly yours,

Norma B. Levy

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enc.

cc: Hon. Rafael A. Epstein
All Parties

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to :
Investigate New York Telephone Company's : Case 98-C-1079
Proposal to Discontinue Offering Information :
Services :
:

PREFILED TESTIMONY SUBMITTED ON BEHALF OF
CERTAIN IINS INFORMATION PROVIDERS

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Inc., Dynatech Communications,
Inc., Theema Systems Limited,
Ltd., Oliver Oziel, ETV, Inc.,
Marenick, Inc., Jay Thomas and
Automated People Connection.

DATED: December 11, 1998

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to : Case 98-C-1079
Investigate New York Telephone Company's :
Proposal to Discontinue Offering Information :
Services :
:

Prefiled Testimony of RICHARD COHEN

Q. Please state your name and position?

A. RICHARD COHEN. I am President of National Telephone Enterprises, Inc. ("National Telephone"), the largest provider of InfoFone interactive telephone information services. I have been a businessman for more than 20 years.

Q. Do you have any procedural comments or concerns?

A. I am concerned that there is substantial information that I am not privileged to, primarily because of BA-NY's refusal to answer our information requests. If any motions to compel are granted in whole or in part, I hereby request permission to submit additional testimony or to modify existing testimony based on subsequently obtained information.

Q. What is the purpose of this testimony?

A. I submit this testimony in opposition to the application of New York Telephone Company, d/b/a Bell

1
2 Atlantic - New York ("BA-NY") for the right to terminate its
3 New York InfoFone services, including all New York telephone
4 information services operated by National Telephone, and in
5 support of National Telephone's position that BA-NY should
6 be required to provide accurate call counts and remove
7 contribution from its IINS and Circuit 9 tariffs.
8

9
10 Q. What would be the result to your industry if BA-NY
11 terminated this service?

12 A. If BA-NY is permitted to terminate this service, 50
13 million callers in New York State, most in the New York
14 metropolitan area, will be deprived of interactive telephone
15 information services they have used for more than a decade
16 and passive information services they have used for more
17 than a quarter of a century. In addition, hundreds of
18 employees will lose their livelihoods, including, in
19 addition to employees of information providers, employees of
20 ancillary industries which provide services to information
21 providers (i.e. accounting, advertising and repair
22 services). In addition, about a hundred providers will lose
23 their respective businesses, which for many are their sole
24 source of income.

25
26 Q. In your opinion, why is BA-NY seeking to terminate this
27 service?
28

1
2
3 A. There are several reasons which I believe account for
4 BA-NY's decision to terminate this service. First,
5 termination of this service, which will force InfoFone
6 information providers out of business, will enable an
7 unregulated Bell Atlantic subsidiary, in the future and at
8 its election, to provide its own information services,
9 unfettered by competition, capturing for itself the monopoly
10 profits that these services would earn. In this regard, I
11 am aware that, in connection with a direct presentation to
12 the Commission in Cases 93-C-0451 and 91-C-1249, BA-NY
13 advised the Commission on February 12, 1996, that it
14 intended to provide information services in competition with
15 976 MAS, saying:

16 Thus, without disclosing proprietary plans
17 which may from time to time be developed and
18 changed, it is safe to assume that in one form or
19 another NYNEX will offer services that compete
20 with the IP's 976 messages.

21 A copy of the pertinent portion of this submission is
22 annexed as Exh. A.

23 Second, I believe that BA-NY seeks to terminate
24 this service so it can evade regulation of this service and
25 enable itself to recover monopoly profits in billing and
26 collection from any information providers who might manage
27 to survive the termination.

28 The proposed termination is also, I believe, a
spiteful attempt to destroy this valuable service due to
adverse economic consequences suffered as a result of BA-

1
2 NY's own past inadequacies in providing services to certain
3 information providers, including its prior "gross
4 negligence" and "willful misconduct" finding in connection
5 with this service in the 93-C-0451 proceeding, recently
6 affirmed by Judge Ceresia of the Supreme Court, County of
7 Albany. A copy of a portion of that decision and order is
8 annexed as Exh. B.
9

10 Q. What are BA-NY's explanations for terminating this
11 service and what is your opinion of this rationale?
12

13 I fail to believe that the reason for discontinuing the
14 service is merely that call volume is declining. Fifty
15 million calls per year--135,000 per day-- is not small and
16 the revenues from this service are substantial. Based on my
17 observations, approximately 20 other states, serviced by
18 companies such as Ameritech, Pacific Bell, Bell South, Bell
19 of Pennsylvania, Bell Atlantic and U.S. West, do not have a
20 combined call volume equal to BA-NY's, yet continue to
21 provide these services. If declining call volume were truly
22 a concern, why haven't these carriers also sought to
23 discontinue this service.

24 BA-NY's claim that termination reflects a new
25 "vision," with BA-NY providing only state-of-the-art
26 services appears equally farfetched. BA-NY documents do not
27 emphasize this issue as of major concern at all.
28

1
2
3 The fact that BA-NY has done virtually nothing to
4 promote this service and increase call volumes during the
5 five years that National Telephone has been a subscriber
6 supports my suspicions that BA-NY may be seeking to
7 undermine this service (See BA-NY answer to IP-BA-NY-34.)
8 Although local exchange carriers in other states have taken
9 steps to encourage calls to these information services in
10 their states, such as inserting promotional materials in
11 monthly statements, BA-NY has not done so in recent times,
12 not even for clearly beneficial information services as time
13 and weather.

14 As for BA-NY's Ericsson Switch claims, as shown in the
15 accompanying testimony of Elwin Macomber, there is no clear
16 evidence that the switch will fail at year 2000. Even if
17 there were, any possible failure could possibly be
18 prevented, in a virtually costless manner by turning the
19 switch back. At a minimum, the service could be moved to
20 the SESS switch as proposed in BA-NY's contingency plan.

21 For the reasons discussed below and in the attached
22 testimony of Lawrence Weiss, Walter Boxer, Elwin Macomber,
23 Jay Thomas, Michael Marenick, and Oliver Oziel, BA-NY's
24 desire to sacrifice the interests of 50 million callers to
25 its demands for greater profits is contrary to the public
26 interest and, I am advised, applicable antitrust laws. BA-
27 NY's application should therefore be denied and BA-NY should
28 be directed to continue to provide all InfoFone services,

1
2 including 976 MAS services, IINS services, Group Bridging
3 Services and Circuit 9 services at non-contributory rates in
4 a manner which assures call count accuracy.
5

6 Q. Describe BA-NY's information services and when they
7 began?
8

9 A. BA-NY began offering telephone information services to
10 callers more than twenty-five years ago, in the early
11 1970's. See August 20, 1998 Order ("PSC August 20 Order")
12 Suspending Proposed Tariffs and Instituting Case 98-C-1079;
13 see also BA-NY's October 6, 1998 Presentation in Support of
14 Tariff Filing ("BA-NY August 6 Presentation"), at P.1.

15 BA-NY's InfoFone service provides call origination,
16 call transport, call processing and call billing and
17 collection services for 191 telephone information
18 subscribers within New York State, including subscribers in
19 the New York metropolitan area, Buffalo, Albany, Binghamton
20 and Syracuse. See BA-NY August 6 Presentation, at P.4; PSC
21 August 20 Order.

22 Q. How are BA-NY's InfoFone services provided?
23

24 A. New York metropolitan area InfoFone services are
25 provided through a single Ericsson AXE-10 IMAS switch. BA-
26 NY August 6 Presentation, at P.5. Upstate services in the
27 Albany, Buffalo, Binghamton and Syracuse LATAs are routed
28 through the BA-NY network to an office or tandem switch for

1
2 completion to the IPs. BA-NY August 6 Presentation, at P.5.
3 Id.

4 BA-NY's 976 Downstate Dedicated Mass Announcement
5 Services provides a 57 second, one-way (i.e., non-
6 interactive) information service to callers in the New York
7 metropolitan area LATA for a fixed per call charge of 40
8 cents. It has the largest call volume of any InfoFone
9 service and is, according to BA-NY, the most well known of
10 the services. BA-NY August 6 Presentation, at P.3-4.
11

12 Q. Does BA-NY offer any other InfoFone services?

13 A. BA-NY introduced three other InfoFone services in the
14 late 1980's and early 1990's: Group Bridging Service
15 ("GBS"), Interactive Information Network Service ("IINS"),
16 and Circuit 9. BA-NY August 6 Presentation. 1/
17

18 Q. What is IINS?

19 A. BA-NY's IINS service offers interactive pay-per-call
20 services over 540 line in the New York metropolitan,
21 Buffalo, Albany, Binghamton and Syracuse LATAs. BA-NY
22 August 6 Presentation, at P.4. IINS 970 interactive
23 services are reserved for adult programming and available
24

25 1/ There are no local pay-per-call services offered in
26 the United States other than through local exchange
27 carriers. There can be no pay-per-call service without the
28 approval of regulatory Commissions through local exchange
carriers. Otherwise, any number could be a pay-per-call
number and the consumer problems would be substantial.

1
2 only in the New York metropolitan area. BA-NY August 6
3 Presentation, at P.4. 540 and 970 fees charged the calling
4 customer are determined by the IP. Interactive services in
5 BA-NY's upstate LATAs are provided on the 540 Exchange.
6 BA-NY August Presentation, at P.3-4.
7

8 Q. What is GBS?

9 A. GBS "chat line" services, which are provided on the 550
10 exchange, allow callers to join an ongoing group
11 conversation, charging callers at one of three fixed rates
12 per minute. (15 cents, 20 cents or 25 cents).
13

14 Q. What is Circuit 9?

15 A. Circuit 9, the only InfoFone service offered statewide,
16 is an interactive call information service provided with
17 trunk side features. One of many features is that the
18 billed telephone number can be provided to the information
19 provider. BA-NY August 6 Presentation, at P.5.
20

21 Q. What services are provided by Information Providers?

22 A. Information providers ("IPs") for these services
23 provide live or recorded (passive and interactive) programs
24 on various subjects including without limitation weather,
25 lottery results, sports scores, horoscopes, dating
26 personals, employment services, and adult entertainment.
27 BA-NY August 6 Presentation.
28

1
2
3 Q. What were the call volumes for BA-NY's InfoFone
4 services in 1997?

5 A. In 1997, BA-NY's InfoFone services succeeded in
6 attracting nearly 50 million New York callers (48,278,895),
7 or more than 135,000 per day. BA-NY October 6 Presentation,
8 at Appendix A. Of these, about 16% of the callers were to
9 IINS and GBS services, with the remainder to 976 MAS, but
10 revenues for the two types of services are split 50:50, BA-
11 NY August 6 Presentation, Id.

12 Contrary to BA-NY's assertion, GBS and IINS revenues
13 are not declining. IINS revenues to BA-NY for the years
14 1993-1997 varied little, although revenues in 1997 were
15 slightly higher than in 1993. 2/ BA-NY October 6
16 Presentation, Id. GBS revenues for 1997 were higher than in
17 any of the prior five years. Although 976 revenues to BA-NY
18 have decreased, 976 revenues are less than 50% of total BA-
19 NY revenues.

20 Q. What are BA-NY's costs for providing this service?
21

22
23 2/ Specifically revenues for the five year period from
24 1993-1997 for IINS and GBS were as follows:

	<u>IINS</u>	<u>GBS</u>
25 1993	\$4,408,000	\$4,644,000
1994	4,020,000	4,319,000
26 1995	4,116,000	4,340,000
1996	4,664,000	4,492,000
27 1997	4,579,000	4,913,000

28 See BA-NY October 6 Presentation, Appendix A.

1
2
3 A. Commission Order 97-7 dated May 29, 1997 in Case No.
4 93-C-0451 held that 12 cents of NYT's 20 cent per call
5 revenue from 976 MAS was for contribution. The Order was
6 recently affirmed following appeal, a copy of which is
7 annexed as Exh. B. The Commission also found that BA-NY's
8 cost of providing 976 MAS service, plus a reasonable rate of
9 return was 4 cents for call origination and transport, 2
10 cents for call processing and 2 cents for billing and
11 collection. Id. The PSC reduced BA-NY's 976 MAS revenue 2
12 cents per call, increased 976 MAS IP revenues 2 cents per
13 call, and directed a proceeding to decide the fate of the
14 remaining 10 cent contribution per 976 call. Id.

15 Although no determination has yet been made as to the
16 amount of per call contribution BA-NY receives from
17 interactive service providers, in view of the technical
18 similarity of IINS and GBS services provided by BA-NY to
19 those that are provided to 976 MAS, the costs of billing and
20 collection, and of call origination and transport for the
21 first minute are the same. BA-NY does not perform call
22 processing for IINS or for GBS.

23
24 Q. When did National Telephone start providing InfoFone
25 services and what is the nature of its services?

26 A. In September 1991, National Telephone subscribed to its
27 first pay-per-call telephone information service, starting a
28 low-priced voice personals service in Philadelphia in which

1
2 men and women could place a voice description of themselves
3 on my interactive service and respond by telephone to a
4 voice personal that someone else placed.
5

6 **Q. Has National Telephone been successful and has it**
7 **expanded its service to other areas?**

8 **A.** The service was successful and, over the next several
9 years, National Telephone expanded the service to 20 cities,
10 one market at a time, opening voice personal and other
11 services. National Telephone has generally entered each
12 market by acquiring an existing competitor with a relatively
13 small volume. National Telephone prices the service in each
14 city as low as possible, generally underpricing some or all
15 the competition. Today, despite about 50 competitors in the
16 New York metropolitan area who offer IINS dating services,
17 National Telephone is one of the largest, receiving a
18 substantial volume of calls each year.
19

20 **Q. Where does National Telephone provide its services?**

21 **A.** National Telephone provides most of its voice personal
22 services through the following local exchange carriers:
23

24 Bell Atlantic: New York, Buffalo, Albany,
25 Philadelphia, Pittsburgh, Washington D.C.,
26 Boston, Rhode Island, and Holyoke,
27 Mass.,
28

1
2 Ameritech: Chicago, Detroit, Gary, Indianapolis,
3 Milwaukee, Cleveland and Columbus,
4 Pacific Bell: Los Angeles,
5 U.S. West: Phoenix and Salt Lake
6 Bell South: Miami, Orlando, Jacksonville, New
7 Orleans, Atlanta. With applications pending
8 in Alabama and Tennessee.
9

10 With the exception of Rhode Island, these services are
11 offered only in major cities or metropolitan areas. For
12 each of these services, call origination, call transport,
13 call processing, and call billing and collection has been,
14 and continues to be, provided exclusively by local exchange
15 carriers. There is no area in which local pay-per-call
16 telephone services are provided by a competing local
17 exchange carrier ("CLEC").
18

19 Q. What are POTS line information services and what is the
20 difference between pay-per-call telephone information
21 services and credit card services?

22 A. There is another type of information service known as a
23 POTS line. The subscriber uses its regular telephone to
24 provide information services, generally through the caller's
25 use of a credit card. Pay-per-call telephone information
26 services differ from credit card services in that customers
27 who choose pay-per-call services generally prefer not to
28 transmit credit card information over the telephone, are

1
2 more likely to be making an impulse purchase, are more
3 likely not to own a credit card or to be blocked from their
4 ability to use their credit cards, and are more likely to be
5 minority or less affluent individuals.
6

7
8 **Q. Does National Telephone offer credit card services?**

9 **A. National Telephone does offer credit card services;**
10 however, this volume only represents about 10% of its
11 business. National Telephone has experimented by making
12 credit card services less expensive than pay-per-call
13 services in order to determine if we can increase credit
14 card traffic and decrease pay-per-call traffic. However, it
15 did not work, as the price was irrelevant. Ninety percent
16 of the time, people continue to use pay-per-call over credit
17 cards.
18

19 **Q. What are the geographic markets for National Telephone**
20 **services?**

21 **A. The services that National Telephone provides are local**
22 in nature. To create a successful information program, an
23 information provider must promote the service through
24 advertising and marketing, which is local. Without adequate
25 promotion, even a good service will fail.
26

27 **Q. Has National Telephone offered both "900" service and**
28 **pay-per-call services in the same area?**

1
2
3 A. National Telephone has tried its InfoFone type services
4 in local markets using "900" numbers. However, the services
5 were not successful, generating only 10% of the calls that
6 local pay-per-call generates.

7 Nationwide advertising for "900" services is
8 prohibitively expensive given the geographically local
9 nature of the target audience. Even if nationwide
10 advertising were not prohibitive, it would be wasteful.
11 National Telephone's voice personal information services are
12 local in nature, not nationwide. It is not likely that a
13 New York man would be seeking to date a Los Angeles woman.
14 The local nature of this service permits National Telephone
15 to advertise in local media (TV, radio and print) in a cost
16 efficient and effective manner.

17 National Telephone projects total advertising expense
18 of approximately \$4 million nationwide in 1998, including
19 \$500,000 in New York state, most of which is used to promote
20 services offered in the New York metropolitan area.

21
22 Q. When did National Telephone first start providing
23 information programming in New York?

24 A. National Telephone subscribed to its first New York
25 InfoFone telephone information program in 1993. Today,
26 National Telephone has about one hundred New York InfoFone
27
28

1
2
3 lines. 3/ While I have never made a caller study, based
4 on the voice personals placed with my programs, it appears
5 that callers to National Telephone's service in New York and
6 elsewhere are primarily single men and women ranging from 25
7 - 40.

8
9 Q. How are National Telephone's services priced and how
10 does National Telephone's pricing compare to its
11 competitors?

12 A. National Telephone charges low prices for its services
13 relative to its competitors, 4/ permitting National
14 Telephone to attract a high volume of customers and maximize
15 the availability of these services to callers.

16 In most of the above referenced markets, including New
17 York, National Telephone charges its voice personal callers
18 55 cents for the first minute and 35 cents for each
19 additional minute. 5/ With the exception of National
20 Telephone's first year of service, these charges have not
21 changed.

22
23 3/ In addition to its 540/970 voice personal
24 services, National Telephone also offers 550 group bridging
chat services and 970 virtual chat services in New York.

25 4/ For example, National Telephone charges 35 cents
26 per minute for its IINS virtual chat services. This is even
lower than the cost of 976 MAS.

27 5/ In the others, the prices charged are 65 cents for
28 the first minute and 45 cents for each additional minute.

1
2
3 Within BA-NY's jurisdiction, National Telephone charges
4 higher prices (\$.45) in Buffalo and Albany where it faces
5 relatively fewer InfoFone competitors to its IINS dating
6 service. National Telephone also charges higher prices
7 there because of the much lower call volume in the smaller
8 cities due to the limited population.

9 There are cities outside New York served by other local
10 exchange carriers, such as Chicago, Milwaukee, and
11 Cleveland, where National Telephone charges 45 cents for
12 each additional minute because local exchange carrier
13 charges are higher. In Los Angeles, local exchange carrier
14 charges are so much higher that National Telephone has to
15 charge 69 for the first minute and 39 cents for each
16 additional minute.

17
18 **Q. What would occur if National Telephone raised its rates**
19 **compared to other IPs?**

20 **A. If National Telephone were to unilaterally raise prices**
21 **for its services, virtually all of the customers it would**
22 **lose would switch to other IINS providers offering similar**
23 **services. In the New York metropolitan area, such a switch**
24 **would be to one of the 50 or so other InfoFone telephone**
25 **dating services in the market. Virtually no customers would**
26 **be lost to "900" services, POTS information services or**
27 **other dating services. No customers would be lost to radio,**
28 **television or the Internet.**

1
2
3 Q. What was the reaction of National Telephone's
4 competitors when it entered the New York market?

5 A. National Telephone's IINS competitors were not pleased
6 when National Telephone entered new geographic markets with
7 its low prices, including New York. National Telephone
8 would similarly prefer a market without competition.
9 Indeed, the value of having a market free from competition
10 is so great that National Telephone would pay as much as \$25
11 million for such a monopoly if it were offered. If awarded
12 this monopoly, National Telephone would slowly raise prices
13 to determine a level of comfort where further price rates
14 threatened to reduce volume significantly. With that
15 monopoly, National Telephone could substantially raise
16 prices (at least double or more) because it would lack
17 competition from other IINS information providers. 6/ In
18 reality, the marketing is highly competitive and National
19 Telephone does not have the pricing flexibility of a
20 monopolist.

21
22 Q. What public services do IPs provide customers?
23

24 6/ National Telephone does not consider "900"
25 services or POTS information services as competitors that
26 would affect its prices. Nor are the Internet, Cable TV,
radio, newspapers, or other sources of competition to the
InfoFone services.

27 The only competition is from other InfoFone
28 information providers.

1
2
3 A. National Telephone and the other information service
4 providers, including the providers of mass announcement
5 services and the interactive and group bridging services,
6 provide an important public service to the residents in New
7 York. The mass announcement services provide low cost
8 information (i.e. weather, lottery, sports results,
9 horoscopes and time information services). The interactive
10 services provide similar services as well as additional
11 services offering interactive guidance and companionship.
12 Men and women in urban areas need to find ways to safely
13 meet and have fun, especially in view of AIDS. The InfoFone
14 programs, including National Telephone's and other voice
15 personal programs, chat lines, psychic lines and others
16 lines offer such a service. Compared to other forms of
17 meeting, such as clubs or bars, the services that National
18 Telephone offers are substantially less costly. In effect,
19 business and social welfare have found a happy marriage.

20 Enclosed as Exh. D is a wedding invitation and
21 accompanying testament National Telephone recently received
22 from a couple who met through one of its voice personal
23 programs. I have deleted their names to protect their
24 privacy. This is one of many such expressions of gratitude
25 for its services that National Telephone has received over
26 the years. If BA-NY is permitted to terminate its services
27 to National Telephone, it will deprive millions of New
28 Yorkers of the benefits of these inexpensive services.

1
2 Q. What would be the result of BA-NY's termination of this
3 service on National Telephone's business?

4 A. BA-NY's termination of this service would effectively
5 destroy National Telephone's business in New York, and this
6 New York business constitutes a significant part of National
7 Telephone's business. National Telephone's largest business
8 and greatest investment is in New York, where it has more
9 information programs and more lines than anywhere else in
10 the country. National Telephone's call volume is by far the
11 highest in the New York metropolitan area than in the other
12 areas in which it operates, double that in its next largest
13 area, Chicago.
14

15 Q. How do BA-NY's rates compare to other local exchange
16 carriers?

17 A. Although BA-NY complains that its rates are too low and
18 that it earns an insufficient return on its services, in my
19 experience, BA-NY's rates are well above those that National
20 Telephone pays in other states where local exchange
21 carriers' call volumes for comparable services are much
22 lower. Many other local exchange carriers, such as
23 Pennsylvania Bell and Bell South, charge substantially less
24 for services virtually identical to those provided by BA-NY
25 even though their call volume is approximately 10-15% of BA-
26 NY's call volume. National Telephone and other IPs might be
27
28

1
2 willing to pay BA-NY more for the service in lieu of having
3 it terminated.
4

5 Q. Are there any other viable alternatives available to
6 BA-NY's InfoFone information services?
7

8 A. No. National Telephone and the other New York IPs have
9 no viable alternatives to BA-NY's InfoFone information
10 services. To provide its information services, a telephone
11 information provider must be able to obtain call origination
12 and transport, call processing, and call billing and
13 collecting services at a reasonable price. No entity has
14 the ability to provide these services in New York other than
15 BA-NY.
16

17 Q. Do "900" Services offer a viable alternative?
18

19 A. "900" services, which are provided by AT&T, MCI, and
20 Sprint, and others offer nationwide (not local) pay-per-call
21 services to information providers." 900" services do not
22 provide a viable alternative to BA-NY's InfoFone services
23 for the information provider or the caller for the following
24 reasons.
25

26 Q. Are "900" services portable?
27

28 A. "900" numbers are not portable. To use these services,
an IP would have to terminate its existing number and forego
some, if not all, the good will built up over many years

1
2 attached to its telephone number, making "900" services an
3 unacceptable alternative.
4

5 Q. Are "900" services more expensive than BA-NY's InfoFone
6 Services for the 976 MAS service?
7

8 A. Another reason that "900" services are unacceptable is
9 that costs to information providers for "900" services are
10 substantially higher than those for InfoFone services. BA-
11 NY InfoFone charges are: (i) for 976 mass announcement
12 service -- 18 cents per call; (ii) for IINS interactive
13 services (540 and 970) -- 26 cents the first minute, 7 cents
14 each additional minute, and an additional 12% of the IPs
15 charges for the call minus BA-NY's per minute charge; and
16 (iii) for Group Bridging Service (550) -- 10 cents per
17 minute. In addition there are monthly line charges of \$18
18 per month.

19 AT&T charges New York metropolitan area IPs who do not
20 have T-1s 44 cents per minute plus 15 percent for billing
21 and collecting. See Weiss Aff., P.15. Accordingly, 976
22 mass announcement service providers would pay 50 cents per
23 one minute "900" call, 2 1/2 times what it now pays BA-NY,
24 seven times what it could pay if contribution were removed
25 and BA-NY charged only eight cents per call for the
26
27
28

1
2 service, 7/ and ten cents per call more than it now
3 charges its customers.
4

5 Q. Are "900" services more expensive than BA-NY's IINS and
6 Group Bridging services?
7

8 A. Increased charges to IINS and Group Bridging
9 information providers are even greater since the average
10 call length for such services is approximately 20 minutes.
11 If an information provider without T-1's subscribes to
12 AT&T's "900" service at 44 cents per call plus 15% of total
13 caller charges, and charges callers \$1.00 per minute, AT&T's
14 average "900" per call cost to the provider would be \$11.80,
15 or more than five times the \$2.20 cost for IINS 8/. It
16 also results in a significant increase for Group Bridging
17 callers, even assuming the maximum group bridging charge of
18

19 7/ If contribution were removed from 976 services,
20 the 976 providers would pay 42 cents more for "900" services
21 than for BA-NY's 976 MAS charge of 8 cents.

22 8/ For a 20 minute call to IINS at \$1.00 per minute,
23 InfoFone information providers pay BA-NY 26 cents for the
24 first minute plus seven cents for each additional minute (26
25 cents + 19 x 7 cents), plus 12 percent of the charges to the
26 caller minus BA-NY's per minute charge which totals for a
27 per call cost to the IINS information provider of about
28 \$2.20. There is also an \$18 per month line charge.

For that same call to a "900" service, a small
information provider without T-1s would pay the "900"
carrier 44 cents per minute for each minute (44 cents x 20),
plus 15 percent of the charge to the caller, for a per call
cost to the information provider of \$11.80 (44 cents x 20 +
.15 x 20 = \$11.80), nearly 7 times the IINS cost. AT&T also
charges \$500 for the first line and \$125 per month.

1
2 25 cents per minute, or \$5.00 for a 20 minute call 9/,
3 more than double.
4

5 Q. What other charges are associated with 900 services?

6 A. Line charges for "900" services are substantially
7 greater. For example, AT&T's charges are \$1,000 for the
8 initial line set-up and \$125 per number per month. See
9 Weiss Aff., P.15. For all information providers, these
10 charges are onerous.
11

12 Q. What is the effect of AT&T's prices on changes to
13 customers?

14 A. Because of National Telephone's telephone volume,
15 National Telephone is able to receive "900" services for
16 about 22 cents per minute plus 8 percent for billing and
17 collecting. 10/ Nonetheless, the costs of "900"
18 services even for National Telephone are substantially
19

20
21 9/ The AT&T charge is as calculated in the footnote
22 above.

23 For the InfoFone Group Bridging Service (550).
24 The providers' maximum charge for this service is 25 cents
25 per minute, or \$5.00 per 20 minute call. (25 cents x 20
26 minutes, or \$2.00). This is less than one half the cost of
27 "900" services.
28

10/ National Telephone, because of its size and status,
is charged significantly lower rates than most other IPs and
has a lower cost structure. Nonetheless, "900" rates are so
high that even National Telephone does poorly on all its
"900" service.

1
2 higher than for IINS, when chargebacks are taken into
3 consideration.
4

5 Q. Are there any additional costs associated with "900"
6 service to IPs?

7 A. In addition to increased per call charges, "900"
8 information providers also experience substantial increased
9 costs in the form of chargebacks. Chargebacks occur when a
10 caller contacts the phone company and denies responsibility
11 for the call. The information provider receives no revenue
12 for the call, but is still required to pay the carrier for
13 the call.

14 Chargebacks for "900" services are substantially --
15 indeed, prohibitively -- greater than chargebacks for
16 InfoFone services and other pay-per-call services offered by
17 other local exchange carriers. Although chargebacks for
18 InfoFone services generally run about 9-11 percent,
19 chargebacks for "900" services are 35-40 percent on the
20 average. This is due to many factors including differences
21 in the placement of the charges on the bill, 11/ the
22

23 11/ BA-NY InfoFone charges are placed on the regular
24 BA-NY monthly telephone bill, along with other BA-NY
charges.

25 With "900" billing, the charge would appear on a
26 separate page and would say that the charge was billed on
behalf of National Telephone. This variation encourages
27 customers to dispute the charges. Moreover, because the
charges are "900" charges, not BA-NY InfoFone charges, BA-NY
28 is much more likely to forgive the charge.

1
2 fact that callers perceive that non-payment of InfoFone
3 phone charges may result in termination, and the price of
4 the calls is much higher in part because of the chargebacks.
5

6 Q. How do these additional costs of "900" service affect
7 customers?

8 A. The increased cost of "900" services to the information
9 providers from substantially higher carrier charges and
10 chargebacks forces information providers for "900" services
11 to charge substantially higher charges to the customer.
12

13 Q. What is the effect of AT&T's prices on charges to
14 consumers?

15 A. National Telephone is keenly aware of the increased
16 "900" service costs because it operates "900" lines to reach
17 customers who have no available local pay-per-call service.
18 Although National Telephone generally charges its InfoFone
19 customers, and most of its other local exchange carrier
20 customers, 35 cents per minute, it charges national "900"
21 customers 99 cents per minute to cover increased costs of
22 the "900" service.
23

24 Q. How do these increased costs affect caller volume?

25 A. These increased costs to callers result in a
26 substantial decline in "900" service call volume. Generally
27 callers use AT&T/MCI/Sprint "900" services only if they are
28

1
2 blocked from using their local pay-per-call services, or are
3 outside an area receiving local pay-per-call services.

4 It is not possible to charge the caller the same price
5 for "900" calls as for InfoFone calls because the higher
6 "900" charges to the IP and the 3 times higher chargeback
7 rate. Accordingly, to provide "900" services, all 976 MAS
8 information providers and virtually all IINS and GBS
9 providers would have to increase their prices to callers,
10 and risk lowering their call volume even further.

11
12 Q. Are there any other reasons callers prefer local pay-
13 per-call service over "900" service?

14 A. In addition, callers to pay-per-call services prefer
15 local pay-per-call services to long distance "900" services.
16 Callers to BA-NY's InfoFone service dial a seven digit local
17 number, while callers to "900" services are required to dial
18 a ten digit long distance number. Callers to pay-per-call
19 services prefer to dial a local seven digit number than a
20 ten digit long distance number.

21
22 Q. Do you have any proof to support your position?

23 A. Proof of this preference for seven digit dialing lies
24 in the history of National Telephone's voice personal
25 service in Los Angeles, an area like New York which should
26 be a highly successful pay-per-call market. There, the
27 local exchange carrier offers an unusual local service -- a
28

1
2 service in which the caller dials a ten digit "900" number,
3 rather than a local seven digit number. This special "900"
4 number only applies to the Los Angeles metropolitan area
5 LATA. The result is that the volume in Los Angeles is very
6 low -- about 1/8 the New York volume. Pay-per-call callers
7 do not want to dial a "900" service for their calls, even if
8 the service is local. 12/ 13/

9
10 Second, National's "900" services are particularly
11 inappropriate for National Telephone because its voice
12 personal business, discussed above, is local in nature,
13 while virtually all "900" service is nationwide. It is
14 impossible to offer a credible local voice personal
15 telephone business through a national "900" line.

16 Third, there is a stigma about "900" services that
17 negatively impacts call volume. There has been substantial
18 adverse publicity surrounding AT&T/MCI/Sprint "900" services
19 and many callers refuse to call that service. The same
20 stigma does not accompany calls to local telephone
21 information services, such as BA-NY's InfoFone services.

22
23
24 12/ Indeed, a three digit telephone number, such as
25 BA-NY's 411 pay-per-call telephone information service, is
26 even more valuable. National Telephone was willing to pay a
27 substantial premium to obtain such numbers from Bell South.

28
29 13/ National Telephone's charge for this service is
30 \$0.69 per minute, almost twice what National Telephone
31 charges in the New York metropolitan area.

1
2 Fourth, the major "900" carriers (AT&T and MCI) will
3 not bill for adult programs or chat lines, but require the
4 IP to use a third-party billing company, such as FTT, or
5 VRS-Integrated to bill the calls. Using a third party
6 biller results in even higher chargebacks and billing losses
7 to the IP. Sprints' costs are substantially higher even
8 than AT&T and MCI's and are further increased by Sprints'
9 refusal to do billing and collecting at all.

10
11 Q. Does National Telephone use "900" services and, if so,
12 why?

13 A. National Telephone does have "900" lines in areas with
14 no local pay-per-call services. These services are all
15 doing poorly, even though National Telephone, because of its
16 size and status, is able to get preferred rates. National
17 Telephone's "900" services were doing so poorly in San
18 Francisco and Tampa that National Telephone has terminated
19 service in those cities.

20
21 Q. Do CLEC's present a viable alternative to BA-NY?

22 A. Although BA-NY suggests that a CLEC might provide this
23 service, there is no CLEC anywhere in the country that now
24 offers such a service. Although CLECs were invited to
25 attend the Technical Conference on this issue, not a single
26 CLEC appeared.

1
2 In fact, no CLEC could provide the service for a
3 reasonable cost. Virtually all callers to this service are
4 BA-NY customers. BA-NY acknowledges that, for the service
5 to be provided, BA-NY must continue to provide call
6 origination, call transport and call billing and collection,
7 leaving little for the CLEC but call processing. (BA-NY
8 October 6 Presentation, at 15.
9

10 Q. If there were a CLEC willing to provide call
11 processing, would it be a viable alternative to InfoFone
12 providers generally and to IINS, GBS, and Circuit 9 services
13 in particular?

14 A. Even if a New York CLEC stepped forward and offered to
15 provide the call processing portion of the service, the
16 services offered by that CLEC would not be a viable
17 alternative for several reasons.

18 First, any such arrangement would provide the CLEC with
19 an unregulated monopoly over pay-per-call services. This
20 monopoly would enable the CLEC, in the long run if not at
21 first, to charge monopoly prices far in excess of a
22 reasonable price, leaving information providers with no
23 viable alternative.

24 Moreover, most of the services would continue to be
25 provided by BA-NY. Although BA-NY's charges for call
26 origination and call transport would be regulated (and
27 therefore reasonable), BA-NY's charges for billing and
28

1
2 collection would not. BA-NY currently charges about 30
3 cents for billing and collection, even though the cost of
4 providing billing and collection services is only 2 cents.
5 A copy of a BA-NY billing and collection price list is
6 annexed as Exh. D; see also Commission Order 97-7 in 93-C-
7 0451 dated May 29, 1997.

8
9 The inadequacy of the CLEC alternative is even
10 greater for IINS, GBS and Circuit 9 providers because BA-
11 NY's contracts with CLECs exclude them from the agreement.
12 In its February 12, 1996 submission to the Commission, p.9,
13 annexed as Exh. A, BA-NY advised the Commission that its
14 traffic arrangements agreement with CLEC's provides certain
15 financial incentives for CLEC's to deliver 976 traffic, but
16 no incentive to deliver IINS, GBS, and Circuit 9 traffic.
17 This discriminatory contract provision will make any CLEC
18 reluctant to carry this IINS, GBS and Circuit 9 traffic.

19
20 **Q. How would prices be affected if a CLEC were to provide**
21 **such services?**

22 A. In view of the fact that any such hypothetical CLEC
23 service will be jointly provided by two largely unregulated
24 monopolies--BA-NY (who charges 30 cents per call for billing
25 and collection even though the costs of such service is 2
26 cents per call) and the CLEC (for call transport and call
27 processing), prices for such service will likely be
28 materially higher than current prices -- certainly much

1
2 higher than the 40 cent per call 976 MAS IP charge to
3 callers. See BA-NY's rates and charges for billing and
4 collecting, annexed as Exh. E. As a result of this price
5 increase to IPs, prices to callers will rise, volume will
6 decline precipitously, and many if not most New Yorkers will
7 be deprived of the low price telephone information service
8 that they have enjoyed for more than a quarter century.
9

10
11 Q. Would transfer of this service to a CLEC put IPs at
12 risk?

13 A. Transfer of this service to a CLEC leaves the IPs in
14 substantial jeopardy. The CLEC will be collecting from BA-
15 NY substantial sums of money which belong to the IPs. If
16 the CLEC lacks integrity or a sound financial basis, the IPs
17 business is threatened.

18 There have been many companies which have offered 900
19 services which have eventually gone bankrupt or out-of-
20 business, such as Tele-Sphere, Starlink and ITA. Simply
21 because a service bureau, CLEC or telephone company is
22 adequately capitalized at the start, there is no guarantee
23 of their performance in the future.
24

25 Q. Will chargebacks increase under this alleged
26 alternative system?
27
28

1
2 A. With a CLEC serving these accounts, service will not be
3 terminated if the caller fails to pay. As a result, as with
4 "900" services, chargebacks will likely increase from 11
5 percent to 35-40 percent, resulting in a substantial out-of-
6 pocket loss for all services even if BA-NY does the billing
7 and collection. Moreover, the charge will be placed on a
8 separate bill page and will reference the name of the
9 information provider, further enhancing the likelihood of
10 chargebacks.
11

12 Q. Does the lack of portability pose a problem in
13 connection with any transfer of service to CLEC?

14 A. With transfer to a CLEC, there is no guarantee that the
15 IP's would be able to retain their telephone numbers. A CLEC
16 taking over the InfoFone service would recognize the value
17 and the goodwill that resides in an IP's number and might
18 try to keep the numbers with substantial call volumes for
19 themselves, thereby appropriating all the goodwill that the
20 current IP has created.

21 Q. Are POTS information services a viable alternative?

22 A. POTS information services also fail to provide IPs with
23 a viable alternative because of insurmountable payment
24 problems and low volumes due to lack of consumer interest in
25 using credit cards. There are three possible sources of
26 payment for such services: third-party advertisements,
27
28

1
2 customer credit cards, and periodic subscriptions. None
3 offer a viable alternative for the service.
4

5 Q. Can IPs operate a viable POTS line information service
6 by obtaining revenues through the sale of advertising spots
7 in the line?

8 A. National Telephone and virtually all other information
9 providers can not be paid through third-party advertising.
10 Even if willing advertisers could be found, which I doubt,
11 customers would not call a second time if faced with a
12 barrage of advertisements. In addition, the rates paid by
13 advertisers would not come close to what an IP receives from
14 InfoFone services.
15

16 Q. Can IPs operate a viable information service by
17 obtaining revenues through credit cards?

18 A. Payment by credit card would not be viable for two
19 reasons. First, smaller information providers could find it
20 difficult, if not impossible, to become a qualified credit
21 card subscriber. There are only three banks in the country
22 which offer credit card services for pay-per-call (Charter
23 Pacific, First Bank of Beverly Hills, and Humboldt Bank).
24 These banks require a strong financial statement and a
25 \$25,000 bond, which smaller information providers cannot
26 meet. Although service bureaus do provide such services for
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28

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2
3 qualified customers, they charge a substantial fee for this
4 service.

5 Second, the vast majority of pay-per-call customers
6 will not pay by credit card. When credit card payment is
7 offered as an option for National Telephone services, at
8 most ten percent of customers accept that option even when
9 special financial inducements to credit card payment are
10 offered.

11 Many InfoFone customers are lower income residents who
12 do not have such cards. These customers, which likely
13 constitute a majority of National Telephone's customers,
14 would be deprived of this service if a credit card were
15 required.

16
17 Q. Are there any additional reason credit cards are not a
18 viable alternative?

19 A. Callers who hold valid credit cards are themselves
20 reluctant to use them for pay-per-call services. These
21 services are often used by "impulse" callers who decide on
22 the spur of the moment to make the calls. The spontaneity
23 of the "impulse" is destroyed if callers have to find their
24 credit card, give the card number to the provider, and wait
25 for acceptance. In addition, many consumers do not want to
26 transmit credit card information to information provider
27 companies over the telephone for fear of credit card abuse.
28 Credit card payment would cut call volume by at least 80%-

1
2 90% and put most of the information providers out of
3 business.

4
5 **Q. Which customers use credit cards?**

6 A. The only callers who use credit cards are often those
7 who do not want the charge to appear on their telephone
8 bills, or use credit cards to keep track of spending. These
9 customers will use credit cards without regard to price, so
10 long as the price remains reasonable, and lowering the price
11 would not increase call volume.

12
13 **Q. Do you have any evidence that there is not enough**
14 **credit card business in the New York area, to sustain a**
15 **viable POTS line information service?**

16 A. Because of the lack of customer interest in credit card
17 calls, National Telephone has not even bothered to install
18 credit card equipment in New York, routing the few such
19 calls made through Philadelphia and then back to New York.
20 If there were sufficient interest, National Telephone would
21 have purchased such equipment and reduced its costs, but
22 there was not.

23
24 **Q. Can IPs provide a viable POTS line information service**
25 **by relying on caller subscriptions?**

26 A. A third possible payment source is the offering of a
27 "subscription" service which allows the caller, for a fixed
28

1
2 fee, to receive the information service for some defined
3 period of time. Most callers are unwilling to enroll in a
4 subscription service, even if there are financial incentives
5 to do so. With an impulse service such as this, callers
6 want to spontaneously pick up the phone, call, and be billed
7 for the service in their monthly telephone bills.
8

9
10 **Q. What will happen to IPs if BA-NY terminates the**
11 **InfoFone service?**

12 A. In view of the lack of any viable alternative to the
13 InfoFone service that makes economic sense, if BA-NY is
14 permitted to terminate the InfoFone service, in my opinion,
15 most of the information providers will go out of business.
16 For those few who might continue to provide these services
17 in some other way (e.g., through "900" services, credit
18 cards or subscription services), I believe their profits and
19 call volume will drop precipitously and quickly, by at least
20 60-70 percent and that charges will have to more than
21 double, which will itself cause further volume
22 declines. 14/

23
24 **Q. Is continuation of this service in the public interest?**

25 14/ If, for example, National Telephone were to seek
26 to provide voice personal services in New York through "900"
27 services, National Telephone would have to raise its price
28 to at least 75 cents per minute. As a result, the price of
a twenty minute call would increase from approximately \$7 to
\$15.

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2
3 A. Continuation of the InfoFone service is in the public
4 interest because there are no viable alternatives that would
5 provide consumers with the same universally available
6 program, ease of access, low cost, information on demand
7 characteristics of the InfoFone services currently being
8 enjoyed by 50 million callers each year. Termination of
9 this service would cause consumer harm and for that reason
10 its discontinuation is not in the public interest.

11 Q. Is BA-NY's claim that there are other sources of viable
12 information alternatives correct?

13 A. No. BA-NY's claim that other pay-per-use, POTs,
14 Internet services, cable TV, newspapers, and other sources
15 of information are viable alternatives to its InfoFone
16 service (BA-NY October 6 Presentation) is not borne out by
17 the facts.

18 As shown above, "900" services and POTS services (i.e.,
19 services provided by a provider using regular telephone; not
20 a pay-per-call line) paid for by subscription, advertising,
21 or credit card do not offer consumers the same low price,
22 safe, and reliable characteristics as pay-per-call service
23 and, for most customers, do not offer an acceptable
24 substitute. No CLEC has ever offered to provide such a
25 service but I doubt whether any such CLEC-offered service
26 could ever provide a viable alternative.
27
28

1
2 Q. Is the Internet a viable alternate to InfoFone
3 services?

4 A. BA-NY's reliance on the Internet as a viable
5 alternative is misplaced. To reach the InfoFone service, a
6 caller only needs access to a telephone, nothing more. Even
7 if the same information were provided by way of the Internet
8 (which it is not), to obtain access, a caller must have a
9 telephone line, a computer connected to the line, a computer
10 permitting access to the internet, and knowledge of how to
11 use the internet, all of which are costly and require
12 substantial technical sophistication. BA-NYs reliance on
13 the Internet underscores its willingness to sacrifice the
14 information needs of the poor and the technically
15 unsophisticated. People who want to find out the time,
16 weather, sports scores, and lottery results want to pick up
17 a phone and immediately get the answer to their question.
18 Using the Internet is not a practical alternative.

19 Certainly there are no Internet services like the pay-
20 per-call voice personal service that National Telephone
21 offers. Internet services are not instantaneous and do not
22 involve voice. There is no Internet service that permits
23 residents to submit live personal voice messages and to
24 immediately respond to personal voice messages left by
25 others.
26
27
28

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2 Q. Do telephone or radio constitute a viable alternative
3 to the InfoFone services?

4 A. Telephone and radio are not viable substitutes. Even
5 for those limited subjects for which these other media
6 provides arguably similar information, such as weather, the
7 caller must wait for air time rather than be able to receive
8 information on demand.

9
10 Q. Are there any other viable alternative sources of
11 information that offer callers the same immediate on demand
12 information service?

13 A. No. BA-NY's reliance on undefined information service
14 bureaus, business, government, cultural, community and
15 social organizations as providing viable alternatives is
16 meritless. There is no evidence that any such service
17 provides the same low cost, user friendly, information-on-
18 demand option provided by InfoFone IPs, and none provides a
19 voice personal service like National Telephone.
20

21 Q. Does the price of any of these alleged alternative
22 information services affect National Telephone's price to
23 its customers?

24 A. Prices charged by "900" services, POTS information
25 services, Internet services, cable services, newspapers, and
26 information services provided by any organization have no
27 effect on National Telephone's prices for its New York
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information services. Rather, to the extent National Telephone's prices reflect competitive conditions, they only take into account competition from the other IINS IPs.

Q. Has BA-NY articulated an adequate justification for its proposal to terminate its InfoFone services?

A. No. BA-NY seeks to terminate its InfoFone service because it no longer satisfies BA-NY's long term vision, no longer provide opportunities for revenue growth, and is offered through the Ericsson switch which, BA-NY claims, must be replaced because of "technological complications surrounding Year 2000 compliance." (BA-NY October 6 Presentation, at 11).

Q. Does BA-NY's long term vision justify termination of this service?

A. BA-NY's undefined "long term vision" affords no viable justification for terminating a service with 50 million callers annually. BA-NY is a common carrier, reaping for decades the financial benefits of a legal monopoly and the extraordinary financial benefits from the InfoFone service, recovering as contribution more than double its permitted rate of return. BA-NY failed to explain its long term vision and why continuation of this service is inconsistent with that vision. It does not take much time or many resources for BA-NY to staff and maintain the Infofone

1
2 services. 15/ In fact, Bell Atlantic provides Infophone
3 services in Pittsburgh, Philadelphia, Washington, and
4 Baltimore, with only one representative handling questions
5 and problems for all four cities.
6

7
8 **Q. Does BA-NY's desire for greater profits justify**
9 **termination?**

10 **A. BA-NY's desire for greater profits does not justify**
11 **termination of this service. BA-NY has consistently**
12 **recovered excessive revenues from this service, realizing a**
13 **level of contribution that far exceeds most, if not all, its**
14 **other services. Now that the Commission has decided to**
15 **limit contribution to that level realized from other**
16 **services, BA-NY seeks to terminate the service.**

17 BA-NY should not be permitted to terminate this service
18 merely because its profits are the same as those realized
19 from other services. BA-NY's claim that falling call
20 volumes justify termination because it will suffer a loss in
21 the future if volume continues to decline is similarly
22 misplaced.

23 There is no evidence that call volumes will continue to
24 decline. Although some information provider volumes have

25 _____
26 15/ The fact that BA-NY has had to spend time and money
27 in its unsuccessful effort to defend itself against claims
28 of gross negligence and willful misconduct or to defend a
RICO action does not offer a justifiable basis for
terminating this service.

1
2 declined, National Telephone's call volumes and revenues
3 have increased for each of the past three years, spending
4 more than \$500,000 per year in New York advertising to
5 maintain and increase that volume.

6 Moreover, although revenue from 976 MAS has fallen over
7 the past three years, revenue from IINS and GBS have in fact
8 **increased** each year and 1997 revenues were the **highest** in
9 the past five years. 16/ See BA-NY's October 6
10 Presentation, Appendix A. Since IINS and GBS account for
11 more than **half** of BA-NY's revenues, and since BA-NY
12 continues to earn excessive contribution on those services,
13 BA-NY's complaint concerning losses from these services is
14 wholly without merit. BA-NY is in fact making higher
15 profits from these IINS and GBS services, which account for
16 50 percent of its total InfoFone revenue, than at any time
17 in the past five years.

18
19 **Q. Is BA-NY responsible for the call volume issues that it**
20 **raises?**

21 **A. Further, BA-NY bears substantial responsibility for**
22 **the decline in "976" call volume and the failure of IINS to**
23

24
25 16/ Total gross revenues to BA-NY from IINS and GBS
26 for the years 1995 through 1997 were as follows:
\$9,052,000, \$9,339,000, \$8,456,000, \$9,156,000, and
\$9,492,000. BA-NY October 6 Presentation, Appendix A.

27 National Telephone's revenues were more than 10
28 percent higher in 1997 and than in 1995.

1
2 achieve its growth potential in view of its failure to
3 support this service. Although an independent market
4 research company retained by BA-NY recommended at a meeting
5 with IPs that BA-NY support this service in 1993 or 1994
6 through advertising, marketing and in various other
7 ways, 17/ BA-NY failed to provide the promised support.
8 See BA-NY answer to PPI-BA-NY-43, a copy of which is annexed
9 as Exh. F, which lists recommendations as to what BA-NY
10 would do to promote these services. To my knowledge, BA-NY
11 undertook none of those actions, except perhaps to rename
12 the service.
13

14
15 17/ As shown in the attached Presentation to Audiotex
16 information providers, annexed as Exh. G, the market
17 research company making the presentation recommended that
18 BA-NY support the service in inter alia the following ways:

- 19 1. Staff the 1-800-Infocall line with live
20 operators.
- 21 2. Educate 411 and 555-1212 directory assistance
22 operators about Infocall Services, direct
23 transfer calls to 1-800-Infocall, and
24 incentivize 411 operators.
- 25 3. NYT advertising should focus on 1-800-
26 Infocall and upscale positioning.
- 27 4. Primary BA-NY advertising should be on TV.
- 28 5. 1-800-Infocall services should be heavily
advertised in the Yellow and White Pages.
6. \$5.00 (or other value) coupons should
periodically be delivered in phone bills.
7. BA-NY should deliver pocket/wallet directory
cards in phone bills.

1
2 On the contrary, BA-NY seems determined to destroy the
3 service. In 1997, BA-NY spent only \$10,574 of its
4 \$18,000,000 in InfoFone revenues on advertising the service
5 (See Exh. C; BA-NY October 6, 1998 Presentation, Appendix
6 A), revealing a prior intent to lower call volume.

7 Moreover, there is evidence that BA-NY is systematically
8 taking steps to maximize customer blocking of these service.

9 See Jay Thomas testimony, pp. 3-4. These apparently
10 intentional efforts to suppress call volume and justify
11 termination are in line with prior BA-NY actions which
12 resulted in a finding by the Commission--recently sustained
13 by the Courts--that BA-NY had engaged in willful misconduct.

14 Even if one assumes a declining revenues for BA-NY, BA-
15 NY is protected from suffering a loss. First, BA-NY now
16 earns monopoly profits as all its services. Even if BA-NY
17 losses contributions for its 976 MAS service, absent a
18 contrary ruling by the Commission, BA-NY will continue to
19 recover monopoly profits on its IINS and GBS services, which
20 account for 50 percent of BA-NY's InfoFone income.

21 Even if the service should continue to decline in call
22 volume, regardless the reason, and the service become
23 unprofitable, BA-NY can seek a rate increase upon a showing
24 of need. A service generating 50 million calls per year and
25 more than 135,000 calls per day is hardly the type of
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2 unutilized service that would warrant, or permit,
3 termination. 18/
4

5 Q. Have alternative information sources contributed to a
6 decline in call volume?

7 A. Attempting to deflect responsibility from itself for
8 the declining call volume, BA-NY blames the presence of
9 other information alternatives for the decline, such as
10 "800" and "900" telephone information services, Internet,
11 cable television, radio and newspapers. BA-NY offers not a
12 single shred of objective evidence that these alternate
13 sources of information have created a decline in volume.
14 Since these other information sources (other than the
15 Internet) have been around for a long time, BA-NY's
16 explanation lacks credibility. National Telephone's
17 business over the last three years has increased and not
18 decreased, even though the Internet, cable TV, radio and
19 newspapers have expanded their presence.
20

21 Q. In your opinion, are the alleged Ericsson switch
22 technical concerns a valid reason for BA-NY's termination of
23 this service?
24
25

26 _____
27 18/ Advertising expenditures were slightly greater in
28 the years before 1997, with expenditures of \$140,480 in 1996
and \$ 211,103 in 1995. See Exh. C annexed hereto.

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3 A. BA-NY's final argument concerning the high cost of
4 replacing the Ericsson switch is, I believe, a contrived
5 excuse, rather than an honest explanation, resulting from
6 BA-NY's conclusion that the PSC is not likely to permit
7 termination based solely on economic considerations, but
8 might support termination if it is otherwise justified.

9
10 Q. Do you have any authority for your position that the
11 claimed Ericsson switch Year 2000 concerns were contrived?

12 A. An internal BA-NY memorandum, entitled "Bell Atlantic
13 InfoFone Services - New York and Y2K" and annexed as Exh. H,
14 reveals that BA-NY recognized it could not terminate this
15 service for financial reasons but that it might receive
16 Commission approval if that service could not be provided
17 for other reasons, such as technical reasons.

18
19 Q. Is the Ericsson Switch capable of becoming year 2000
20 compliant?

21 A. Based on recent information I have received, I believe
22 that the switch is, or may be made, year 2000 compliant. I
23 am advised that the problems with the switch occurred
24 because BA-NY failed to install the 301 and 302 upgrades to
25 the Ericsson switch. Although upgrades must be made in
26 sequence for the switch to work properly, BA-NY sought to
27 install the 304 upgrade in 1996, without installing the
28 prior upgrades.

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I am further advised that BA-NY's 1996 installation of the 304 upgrade would have succeeded if BA-NY had reconfigured some trunks and lines (which BA-NY failed and refused to do this) and that, with these and possibly one more upgrade, the switch would have been year 2000 compliant. I make this allegation despite the fact that BA-NY has generally refused to provide responsive answers to most information requests, including requests regarding the Ericsson switch.

Any potential year 2000 failure thus appears to result from BA-NY's gross negligence not from any switch imperfection.

Q. Even if BA-NY's concerns about the Ericsson switch were correct, are there any options available to BA-NY short of obtaining a new switch or migrating the service to continue to keep the Ericsson switch operational after the year 2000?

A. Even if BA-NY's claims about the Ericsson switch and its potential failure in year 2000 were correct (many or all of which are not), as shown in the accompanying testimony of Elwin Macomber, BA-NY has inexpensive options short of replacing the switch that would enable BA-NY to maintain its service.

First, BA-NY could set the clock forward on the existing Ericsson switch to determine whether there would be a year 2000 failure. This is commonly done to test

1
2 switches, like the Ericsson AXE 10 IMAS switch, which are
3 not used for accounting purposes. See Macomber Test., p. 5.
4 If there is a failure, BA-NY can immediately correct the
5 problem by returning the switch back to the current date.
6 BA-NY may be able to avoid the problem by turning back the
7 switch prior to the year 2000. BA-NY could select an
8 appropriate prior year and turn the switch back to that
9 year. Moreover, BA-NY can test if turning back the switch
10 will work at this time, well before the year 2000. See,
11 Macomber Aff., p. 6.

12 In sum, BA-NY's reliance in alleged year 2000 Ericsson
13 problems appears to be a red herring -- an argument created
14 by BA-NY to induce Commission approval for its exodus from
15 this service.
16

17 Q. In the event that BA-NY is required to migrate this
18 service from the Ericsson switch, is BA-NY's claim that it
19 cannot continue to provide the broadcast function accurate?

20 A. As an alternative, to testing or adjusting the Ericsson
21 switch, BA-NY concedes it can migrate all InfoFone services
22 to the 5ESS at West 18th Street at a cost well below that
23 necessary to replace the Ericsson switch. Although BA-NY
24 claims it cannot provide the broadcast feature for 976 MAS
25 after migration to the 5ESS, this is inaccurate. According
26 to Elwin Macomber, BA-NY can connect various types of
27 relatively inexpensive equipment, such as IVRs, to perform a
28

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2 broadcast function with the 5ESS. See Macomber Test., pp.
3 3-5. Mr. Macomber cannot presently assess the cost of such
4 broadcast service because BA-NY has refused to answer
5 information requests directed to those issues. However,
6 based on sheer speculation as to peak load volume, he
7 estimates the cost at less than \$1 million, perhaps
8 considerably less. See Exh. to Macomber Test. In addition,
9 some IPs' may be willing to increase their rate for a period
10 of five years in order to pay the costs of this equipment.
11

12 Q. Are you aware of any additional evidence which supports
13 your position that BA-NY assertions about the switch are
14 untrue?
15

16 A. That BA-NY's assertions about the Ericsson switch are a
17 red herring is confirmed by the fact that BA-NY proposes to
18 terminate InfoFone services in areas of the State outside
19 the New York metropolitan area where the Ericsson switch is
20 not used, such as Buffalo, Albany, Syracuse and Binghamton.

21 Moreover, BA-NY failed to disclose in its October 6,
22 1998 presentation the true reason for the termination.
23 However, an internal BA-NY memorandum, annexed as Exh. G,
24 reveals that BA-NY is terminating the service in whole or in
25 part because certain 976 information providers who have
26 obtained a Commission determination in Case No. 93-C-0451,
27 recently affirmed on appeal, that BA-NY was grossly
28 negligent and engaged in willful misconduct in providing

1
2 this service, and have filed a pending RICO action against
3 BA-NY. See Exh. H, pp. 2, 7-8.

4 Moreover, a 1996 BA-NY submission to the Commission,
5 annexed as Exh. A, reveals that BA-NY was providing, or
6 intended to provide, telephone information services that
7 would directly compete against the 976 MAS service which it
8 now seeks to destroy, by terminating the service and, if
9 required to continue the service, insist on eliminating the
10 broadcast function following migration.

11
12 **Q. Are any CLECs interested in providing InfoFone**
13 **services?**

14 A. National Telephone is unaware of any CLEC who has
15 provided pay-per-call information services. BA-NY has
16 failed to identify any CLEC who has offered to provide the
17 service.

18
19 **Q. What problems would be encountered if the IPs were**
20 **required to migrate to "900" services?**

21 A. Although BA-NY asserts that the InfoFone service could
22 be offered through AT&T's "900" service, as discussed above,
23 there is no number portability with AT&T's "900" service and
24 there could be no seamless migration to AT&T. Each InfoFone
25 IP would have to obtain a new "900" number, terminate its
26 old business, and forfeit some or all the goodwill created
27 in existing telephone numbers.
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3 Additionally, as discussed above, in view of the
4 nationwide character of AT&T's "900" service, its higher
5 prices, and higher chargebacks and the "stigma" that
6 accompanies that service, AT&T's "900" service is not a
7 viable alternative for National Telephone. If it were,
8 National Telephone and the other IPs might have operated
9 their business through AT&T's "900" service from the outset.

10
11 **Q. Is it possible to insure a seamless transition to 900**
12 **services?**

13 **A.** A seamless transition to a "900" number is not possible
14 without number portability. Since there is no portability
15 between BA-NY's InfoFone services and any of the "900"
16 services, there can be no seamless transition to this
17 service.

18 In view of the absence of any "CLEC" willing to provide
19 this service, there can be no transition, let alone a
20 seamless one. Even if a CLEC were willing to provide the
21 service, whether the transition would be seamless depends
22 upon number portability, the financial strength and ethics
23 of the CLEC, its technical ability to provide the service,
24 the price it would charge, the price BA-NY would charge for
25 its portion of the service, BA-NY's willingness to continue
26 to provide billing and collecting, and the technical
27 precision of the cut-over.
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3 BA-NY does not appear willing to take the steps
4 necessary to assure the IPs a seamless transition to the
5 same IP number, as discussed above. Moreover, for reasons
6 discussed above, it is unlikely that the transition would be
7 seamless. Even if there were number portability and the
8 cut-over were well performed technically, outstanding issues
9 of the character and ethical make-up of the CLEC and its
10 financial soundness effect whether the transition is
11 seamless.

12 Finally, a steep price increase will destroy this
13 service as quickly and efficiently as a technically
14 incompetent operator, and BA-NY's prices for billing and
15 collection would cause the CLEC to pay BA-NY nearly as much
16 as 976 MAS and many IINS IPs now charge their callers. A
17 transition that would charge high prices, requiring IPs to
18 pass on those charges to customers and lose call volume as a
19 result, is not seamless.

20 Q. Do BA-NY's billing and collection policies confirm its
21 intent to destroy this service?

22 A. BA-NY's billing and collection policies, which it
23 discussed in its October 6 Presentation in the context of a
24 hypothetical migration of the InfoFone service to an IXC or
25 CLEC, are inadequate. BA-NY offers no guarantee on how long
26 it will continue to provide such services, and in any event,
27 its charges are gravely over priced (1500 percent in excess
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2 of its cost). . . Moreover, BA-NY cannot provide billing and
3 collection services for calls made by customers serviced by
4 other CLECs. Nor would BA-NY guarantee a price for this
5 service for a long period of time.

6
7 Moreover, BA-NY's prices for billing and
8 collection reflect an extraordinary level of monopoly
9 profit. Although BA-NY's costs are only 2 cents per call,
10 BA-NY charges 30 cents per call for their services (See Exh.
11 E), an increase of 1500 per cent. By terminating this
12 service, BA-NY has evaded a regulatory limitation on price,
13 not only maximizing its profits from any information
14 providers able to survive the termination, but forcing them
15 to raise their prices to consumers, causing severe declines
16 in their volume and creating a price umbrella that permits
17 BA-NY to charge higher prices for the information services
18 that it decides to offer.

19
20 **Q. Are there any other problems with BA-NY's billing and**
21 **collection agreements?**

22 **A.** BA-NY's billing and collection contracts with
23 interexchange carriers, by their terms, permit BA-NY to
24 refuse to bill and collect for certain services based on
25 information content. BA-NY's reservation of their right to
26 bill and collect for particular information providers is
27 particularly troubling and, we submit, prevents a "seamless"
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2 transition, undermining any assurances that BA-NY may have
3 provided.
4

5 Q. Are there any other entities that could perform billing
6 and collection services under reasonable terms and prices?
7

8 A. BA-NY failed to identify any other entities that could
9 provide billing and collection services, or to advise of the
10 terms and conditions of those services. To my knowledge,
11 there are no such entities that provide billing and
12 collection services that are reliable and that charge a
13 reasonable fee.

14 On the contrary, all billing and collection services of
15 which I am aware charge exorbitant rates and their
16 collection rates are very low. Even if BA-NY provided
17 billing and collection, the prices would be prohibitive, as
18 discussed above.

19 Q. What costs are associated with a third party billing
20 and collection agency?
21

22 A. A billing and collection agency would submit the call
23 to BA-NY who would charge at least 30 cents for that
24 service. That 30 cent charge, when added to the third party
25 billing and collection agency's expenses and profits, would
26 necessarily result in charges to IPs for this service will
27 be in excess of the 40 cent 976 MAS charge to its customers,
28 and perhaps as much as \$1.00.

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Q. What would happen to customers now using the services if BA-NY terminated this service?

A. In the event that BA-NY were permitted to terminate this service, it would soon disappear and 50 million callers would have lost their ability to obtain the low priced, reliable, information on demand service they have obtained the benefit of for a quarter of a century.

Even if some callers began using "900" services, credit card services, or subscription services as a substitute, the number that would do so for more than six months is in my opinion quite small -- no more than 20 percent.

As a result, tens of millions of InfoFone callers will be deprived of a service they had relied on and used for years. In view of this untapped demand, it is possible -- indeed probable -- that a BA-NY subsidiary would involve itself in the provision of these services.

Q. Is BA-NY an actual or potential competitor in the business of providing telephone information services?

A. BA-NY and its predecessors have over the years been providing information programming for these services. It was New York Telephone Company that originated the time and weather services many, many years ago and continued to operate those services until a decade ago when Judge Greene forced a divestiture of these services in United States v. AT&T, 552 F. Supp. 131 (D.D.C 1982).

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2
3 To this day, BA-NY still owns InfoFone time and weather
4 programs. Although precluded from operating these services
5 by Judge Greene's decree, BA-NY auctions these services off
6 each year. Although I do not know the amount that BA-NY
7 receives from these services, in recent years BA-NY has
8 demanded a minimum bid of \$500,000 for its weather program
9 and \$150,000 to \$200,000 for its time program. See Weiss
10 Test. p. 23.

11 Although BA-NY has refused to provide information to
12 the IPs on the information programming services that it
13 previously provided or that it now provides, I am advised
14 that New York Telephone Company, following divestiture,
15 tried to provide telephone information services of its own
16 through its NYNEX Information Resources Corp. ("NIRC")
17 subsidiary, such as its "Consumer Tips" service. Attached
18 as Exh. I is a copy of BA-NY's "Consumer Tips" advertising
19 materials, which describe to consumers the information
20 services that it provides, including sports, lottery,
21 entertainment, business report, news, weather, and other
22 telephone information services.

23 Although BA-NY claims that it terminated those
24 services in 1997 (See BA-NY response to PPI-BA-NY-36,
25 annexed as Exh. E), it is possible--indeed likely--that BA-
26 NY terminated its services in order to avoid antitrust
27 arguments prohibiting the termination of InfoFone competitor
28 by a monopolist, and that further discovery will prove this

1
2 point, and that, following termination, BA-NY will return
3 to, or substantially increase its presence in, the New York
4 information services market. (If in fact it is no longer
5 competing in this market).

6 Bell Atlantic Mobile, a BA-NY subsidiary or
7 affiliate, currently provides many pay-per-call information
8 services to callers including traffic reports and Bloomberg
9 financial news reports.

10
11 Q. Once the InfoFone services are terminated, would there
12 be any barriers for BA-NY's re-entry into the market?

13 A. Once InfoFone services are terminated and the
14 information providers, left with unsatisfactory, non viable
15 telephone information alternatives, close their business, an
16 unregulated BA-NY subsidiary could reenter the information
17 services market and provide the same type of services
18 previously provided, except without effective competition.

19 If this were to occur, as I believe it will, an
20 unregulated BA-NY information subsidiary will, I am advised,
21 be able to earn monopoly profits on pay-per-call information
22 programs using local seven digit dialing devoid of
23 competition. See Eisenstadt Test.

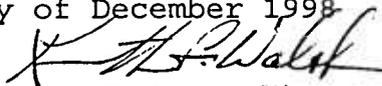
24 Q. What is your conclusion in view of the foregoing?
25
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A. BA-NY's application to withdraw its InfoFone services tariff and terminate all InfoFone services should be denied, BA-NY should be required to comply with the terms of its InfoFone tariff, including its tariff for the 976 mass announcement service, contribution should be removed from all InfoFone services, and BA-NY should be required to assure call count accuracy for this service.



Richard Cohen

Sworn to before me this
11th day of December 1998



KENNETH G. WALSH
Notary Public, State of New York
No. 02 WA-5011216
Qualified in Queens County
Commission Expires 04/12/99

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NEW YORK STATE
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to : Case 98-C-1079
Investigate New York Telephone Company's :
Proposal to Discontinue Offering Information :
Services :
:

Prefiled Testimony of Lawrence Weiss

- Q. Please state your name, address and current occupation?
- A. Lawrence Weiss. I am a New York resident and President of Larry Weiss Associates, Inc., a provider of 540 information services and an audiotex service bureau. Larry Weiss Associates and its predecessors, affiliates and other companies previously owned by me, are respectfully referred to herein as "LWA". I submit this testimony in opposition to BA-NY's application for leave to withdraw all its InfoFone tariffs and terminate this service.
- Q. Briefly describe your background?
- A. I was involved in the broadcasting, advertising, and electronics businesses during the period 1969 to 1988, working as a broadcaster, advertising company President, and senior executive for a major electronics retailer.
- Q. How did you become interested in the telecommunication field?

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2 A. Throughout my life, I have been interested in electronics,
3 telecommunications, computers and related "gadgets" and, in the
4 early 1980's, began experimenting with the technology of
5 combining voice recordings with computer memory. In 1984, I
6 created what I believe was the first interactive audiotex
7 bulletin board for singles. It operated through a POTS line,
8 with monthly subscriptions paid by credit card. Subscribers
9 could record a notice about themselves or send a message to
10 another subscriber who previously recorded an ad. The next year,
11 1985, I created a similar service for the gay community.

12
13 Q. Were there any drawbacks with the LWA POTS line business?

14 A. This LWA POTS line business was quite small, receiving only
15 a few hundred calls per month. The potential market for this
16 service was limited by the subscription credit card format. Few
17 potential customers will subscribe to such a service on a monthly
18 basis or pay for such calls by credit card. Further, the credit
19 card nature of the service resulted in unacceptably high
20 chargebacks, great difficulties in billing because banks wanted
21 credit card imprints, and high premium costs to LWA for bank
22 credit card services, reducing LWA profits substantially.

23
24 Q. How did you become an InfoFone information provider?

25 A. When BA-NY announced the creation of its IINS service in or
26 about 1988, I foresaw an opportunity to create a different
27 singles bulletin board business billed directly to callers

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2 through BA-NY's monthly billing statements. I terminated my
3 existing programs and became an IINS information provider,
4 forfeiting my existing POTS lines and the goodwill they had
5 accrued, and created two 540 IINS dating bulletin board services
6 in the New York metropolitan area LATA, one for heterosexuals and
7 the other for the gay community.

8 Based on my belief that, when operated as a pay-per-call
9 InfoFone service through BA-NY, a singles bulletin board business
10 had significant potential to grow and expand, I left my
11 advertising business and at all times since 1988 I have
12 exclusively engaged in providing telephone information services
13 and providing relating services, including the operation of a
14 service bureau which assists others in providing these services.
15

16 Q. Was LWA's switch from a POTS line to IINS successful?

17 A. My belief proved correct. Upon the creation of LWA's IINS
18 singles bulletin boards, call volume quickly increased to several
19 thousand calls per week. Both services are still in service,
20 although call volumes are lower due in whole or in part to the
21 tremendous competition from other providers who have since
22 entered the IINS market and to my decision not to institute a
23 summer advertising program or take other steps to promote the
24 programs due to BA-NY's announcement last summer that it intended
25 to terminate the service. I believe there are now more than 50
26 InfoFone telephone information providers providing such services
27 in the New York metropolitan area LATA.
28

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2 Q. Has LWA expanded its InfoFone service since 1988?

3 A. In or about 1992, LWA started a new information service in
4 Rhode Island offering time and weather information and soon
5 instituted that IINS program in New York. LWA's time and weather
6 service offers local weather information, extended weather
7 information and, where applicable, marine weather information. I
8 am not aware of any other local time and weather telephone
9 information service that provides callers with an extended five
10 day forecast and marine weather information.

11 Additionally, beginning in or about 1989, LWA began to
12 expand its singles bulletin board programs and later its time and
13 weather programs into other New York and New England regions in
14 which Bell Atlantic North and its predecessors provided InfoFone
15 services. Currently, LWA offers a gay bulletin board program in
16 the Boston LATA and time and weather programs in the Buffalo,
17 Syracuse, Binghamton, Albany, Poughkeepsie, Boston, Holyoke,
18 Maine and Rhode Island LATAs. LWA offers no telephone
19 information services in any part of the country other than the
20 areas served by Bell Atlantic North.

21
22 Q. Upon learning of BA-NY's decision to terminate the New York
23 InfoFone services, did LWA scale back any of its plans for
24 growth?

25 A. LWA had plans to set up two 976 numbers the summer of 1998,
26 but those plans were placed on hold when BA-NY announced its
27 intention to terminate its InfoFone service. LWA also advised
28

1
2 perspective service bureau clients of BA-NY's intention to
3 terminate the service, resulting in a loss of new service bureau
4 business. (See below pages 8-9)
5

6 Q. How do BA-NY's prices compare to those charged by other
7 local exchange carriers in areas where LWA offers its services?

8 A. BA-NY's InfoFone charges are significantly higher than Bell
9 Atlantic's charges for services in New England. Although BA-NY
10 charges LWA for its New York metropolitan area InfoFone service
11 26 cents for the first minute, 7 cents for each additional
12 minute, and 12 percent of the IPs per call charge to the caller,
13 Bell Atlantic's other New England services (in Boston, Holyoke,
14 Maine and Rhode Island) all charge substantially less. For
15 example, in Boston, Bell Atlantic charges 20 cents for the first
16 minute and 6 cents for each additional minute with no additional
17 percentage per call charge. Although LWA charges a lower per
18 call price in Boston (75 cents per minute) than in New York (95
19 cents for the first minute) for its time and weather lines, LWA's
20 gross margins are higher in Boston than in New York.

21 Q. Is price the only consideration which affects call volume?

22 A. LWA offers what it believes to be high quality, low priced
23 services to its customers. Although effective advertising
24 affects call volume, so does price; lowering the price can result
25 in increased volume. LWA competes with National Telephone
26 Enterprises, Inc. and many other providers of telephone
27 information services singles bulletin boards.
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Q. Do LWA's services serve the public interest?

A. All LWA services serve the public interest. New York residents have a vital interest in weather forecasts and LWA offers extended five day forecasts and marine forecasts not available anywhere else on an immediate demand basis unless the caller has a weather radio. LWA's marine forecasts are virtually essential for sailors and fishermen deciding whether to go to sea at a particular time.

Q. How does LWA's dating bulletin board serve the public interest?

A. LWA's dating bulletin board serves the public interest, offering residents an opportunity to reach out, meet and talk with someone safely and anonymously by telephone, in a risk free manner. Among other things, our gay bulletin board service offers men and women struggling with identity issues an opportunity to reach out to the community for connection and support.

Q. Can you identify other information services which serve the public interest?

A. Other InfoFone information services, often unavailable anywhere else in any other form, similarly operate in the public interest. For example, one of the subscribers to the LWA service bureau offers a Russian language maritime employment service providing information that, to my knowledge, cannot be obtained

1
2 any place else. Another former subscriber (now deceased) was a
3 well known investment adviser who offered his unique and valuable
4 expertise to busy investors, in a convenient easy access call.
5 Still another provides information concerning other types of
6 employment opportunities.

7 The InfoFone time, weather, lottery and sports lines fulfill
8 a need of New York residents to receive immediate, minute-by-
9 minute updates on these events and opportunities.

10
11 Q. What will be the result to LWA, if BA-NY terminates its
12 Infofone service?

13 A. In the event that BA-NY terminates its InfoFone service, LWA
14 (and I believe the vast majority of the other InfoFone
15 information providers) will be forced out of business, resulting
16 in a loss of equity in the business slowly acquired over many
17 years without compensation for that equity loss, and its tens of
18 thousands of loyal customers will be deprived of information
19 services they have been relying on for nearly a decade. As shown
20 below, LWA cannot earn sufficient revenue to support this
21 business through POTS lines, "900" services, or in any other
22 manner.
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3 Q. Has the threat of termination by BA-NY effected LWA's
4 service?

5 A. The threat of termination is already affecting LWA's
6 services. Advertising in newspapers and in broadcast media has
7 been essential to the maintenance and growth of LWA's business
8 and LWA has consistently engaged in a careful program of planned
9 advertising, advertising at certain times and in certain ways to
10 build call volume, and at other times when volume is high,
11 reducing or eliminating its advertising. Recently, through late
12 1997 and early 1998, as part of a pre-planned media strategy, LWA
13 placed its advertising placement on hold. This past summer, LWA
14 had intended to relaunch substantial advertising placement in the
15 New York metropolitan area for its singles bulletin boards.
16 However, with BA-NY's announcement, these plans have been
17 deferred indefinitely pending a revaluation of this proceeding
18 and a determination as to whether BA-NY's InfoFone service will
19 continue. There is no benefit from creating a new customer base
20 through advertising if LWA will soon be forced out of business.
21 The result of this reduction in advertising has been a steady
22 decline in call volume for its singles services. Additionally,
23 LWA has in good conscience, had to turn away over a dozen
24 prospective new IP clients who wanted to retain the services of
25 its service bureau. These prospective IPs were not aware of BA-
26 NYs intentions (BA had not informed them) and they were prepared
27 to invest considerable money and time in their new ventures not
28 knowing they might be shut down within the year. Upon my

1
2 informing them of BA-NY's proposed plans, some IPs decided to
3 proceed, but most elected not to proceed, resulting in lost
4 business for LWA.¹
5

6 Q. What would become of LWA if BA-NY is successful in
7 terminating its InfoFone services?

8 A. If BA-NY succeeded in terminating its InfoFone services, LWA
9 would be forced to go out of business because there are no viable
10 alternatives for providing this service, for the reasons
11 discussed below.
12

13 Q. Is BA-NY correct when it says that InfoFone services can be
14 provided by a CLEC?

15 A. Although BA-NY asserts that InfoFone services could be
16 provided by a CLEC, I am unaware of any CLEC who is willing to
17 provide such services.
18

19 Q. What would be entailed for a CLEC to provide service similar
20 to BA-NY's?
21
22

23 ¹ While LWA has acted responsibly in this matter during
24 this termination inquiry, BA-NY has not apparently acted
25 with reasonable restraint and candor. Although LWA's
26 service bureau is now turning away new potential information
27 providers in view of the possible termination, BA-NY has not
28 done the same. Rather BA-NY is continuing to take orders
and collect money from new applicants without advising them
that BA-NY intends to terminate this service.

1
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3 A. To provide this service, a CLEC would have to acquire and
4 maintain sufficient switching equipment, lines and trunks to
5 handle large call bursts generated by the InfoFone services. The
6 legendary high peak load for the service² and the consequent low
7 utilization rates for most lines leaves the equipment under-
8 utilized except at times of peak load (e.g., during occasional
9 lottery drawings and sporting events, etc.). More important, a
10 CLEC would have to arrange a billing and collection agreement
11 with BA-NY to provide these services in a manner similar to the
12 way they are currently provided; and an interconnection agreement
13 with BA-NY to facilitate transport of the calls. A CLEC would
14 also have to make arrangements with a third party financial
15 institution for safe management of the IP's money collected from
16 BA-NY by the CLEC for the benefit of IPs.

17
18 Q. Did you make any independent inquiry to see if there are any
19 alternatives if BA-NY terminates its service?

20 A. Following BA-NY's announcement of its termination, I sought
21 to determine whether a CLEC could service this business. Even if
22 a CLEC were willing to design and build the network, build or
23 renovate a building to house the network, identify and obtain a
24 site for the facility, and obtain financing for the project, all

25
26
27 ² Despite several IP information requests directed to
28 this issue, BA-NY has refused to provide any information to
IPs concerning peak load call count for any period of time.

1
2 quite expensive, BA-NY's own policies and procedures provide
3 insuperable barriers to provision of these services by a CLEC.

4 Although BA-NY offers billing and collection services to
5 interexchange ("IXC") carriers, I am advised by BA-NY that, as a
6 matter of policy, it will not provide billing and collection
7 services to CLECs, has never done so, and is not set up to do so.
8 Without BA-NY billing and collection, no such service can be
9 provided since only BA-NY has access to information regarding the
10 origination of such calls that would permit billing and
11 collection. BA-NY's billing and collection is also essential in
12 order to enable the calls to appear on BA-NY's monthly phone
13 bills, as they are today.
14

15 Q. If BA-NY's billing and collection services were available
16 to CLEC's would BA-NY pricing structure permit them to provide
17 economical services?

18 A. Even if BA-NY were willing to change its policies and
19 provide billing and collection services to CLEC's, BA-NY's price
20 structure would make it impossible for the CLEC to provide
21 economically viable services. I am advised that BA-NY charges
22 about 30 cents per call to IXC's and 3rd party billers for
23 billing and collection even though BA-NY's costs for this
24 service, according to recent findings of the Commission in 93-C-
25 0451, are two cents per call. See Exh. E. Aside from the
26 unconscionable BA-NY profit from this unregulated service (1500
27 percent per call), the high price that the CLEC would have to
28

1
2 charge to recover BA-NY's charges, its fixed and variable costs,
3 and a reasonable profit would destroy the InfoFone service.
4

5 Q. Based on current pricing structure what would occur if BA-NY
6 were permitted to discontinue its service and CLEC's allowed to
7 operate under the current pricing structure?

8 A. A CLEC would have to pay BA-NY at least 34 cents at current
9 rates for a one minute call. After adding the CLEC's own costs
10 and profit margins, the CLEC would likely have to charge the
11 InfoFone IPs at least 60 cents per call for the first minute.
12 This exceeds current charges to all callers to 976 services,
13 forcing 976 MAS information providers out of business or
14 requiring them to steeply increase their prices. Such a price
15 could also exceed interactive IPs first minute charge to callers
16 for all 550 services and for many IINS services. When other IP
17 costs are added to such substantial charges included, such as the
18 substantial advertising costs that this service requires,
19 virtually no IP will be able to remain in business.
20

21 Q. Are there any other reservations that LWA has concerning
22 operation under CLECs?

23 A. LWA opposes the use of a third-party CLEC for several other
24 reasons. First, IPs have no assurance that their existing
25 telephone numbers will be seamlessly transitioned through this
26 hypothetical CLEC. According to the information imparted to IPs
27 at the July 11, 1998 meeting, BA-NY intended to return all
28

1
2 InfoFone numbers to the North American Numbering Plan, an
3 independent agency with no obligation to insure that information
4 providers maintain their numbers at all, let alone seamlessly.
5 Even if the North American Numbering Plan reassigned the numbers
6 to a CLEC, the information providers have no assurances that they
7 would receive them from the CLEC.

8 Preservation of existing telephone numbers is essential to
9 each and every information provider because of the goodwill that
10 attaches to those numbers. High volume services with substantial
11 goodwill, which were generally developed over many years at
12 substantial cost, are known to callers by their telephone
13 numbers, not their corporate or trade names. The transfer of
14 those numbers to any party other than the present holder would
15 transfer the goodwill of a business to that third-party without
16 compensating the information provider.

17 Neither BA-NY nor the Commission can guarantee that all
18 InfoFone telephone numbers are allocated to the CLEC and that the
19 CLEC will allocate them, seamlessly, to the existing holders. A
20 return of telephone numbers of this magnitude (if at all) to the
21 North American Numbering Plan never occurred before; there is no
22 precedent for what would occur or how it would occur. This
23 places each and every information provider in jeopardy in any
24 transition to a CLEC.

25 In addition, any CLEC who provides this service in place of
26 BA-NY would be a largely unregulated monopolist. As a
27 monopolist, with no competition and limited regulatory oversight,
28

1
2 that CLEC would have every incentive to charge maximum -- i.e.,
3 monopoly -- prices. LWA could not accept a transfer of this
4 service to a supplier of monopoly services with inadequate
5 constraints on the prices it can charge or the terms and
6 conditions it can offer.

7 A CLEC's charges would be unacceptably high for the reasons
8 discussed above. Currently, LWA charges 95 cents per minute for
9 its time and weather service. If a CLEC charged 60 cents per
10 minute, LWA could not cover those costs and remain in business
11 due to the high costs of advertising and other costs of business.

12
13 Q. Has LWA had any experience with CLECs or other non-Bell
14 Atlantic services that would raise doubts regarding the ability
15 of CLEC to provide this service?

16 A. LWA opposes using a CLEC because of its prior unsatisfactory
17 experiences with other carrier services in the past. Several
18 years ago, LWA formed a service bureau and set up a co-located
19 facility with MCI, a largely unregulated provider of pay-per-call
20 services, at MCI's point of presence in East Meadow, New York,
21 with 30 T-1's. The experience was a nightmare.

22 MCI regularly changed the rules and the rates, it would take
23 six months for MCI to approve and install a new line, and MCI was
24 highly unreliable. Ultimately, LWA terminated its relationship
25 with MCI, losing a large sum of money as a result.

26 LWA also previously obtained several lines from Telesphere,
27 an IXC "900" carrier who offered pay-per-call services, including
28

1
2 billing and collection. Soon after LWA enrolled in that service,
3 Telesphere terminated its business and filed for bankruptcy,
4 without distributing to the IPs the IP money they had recovered
5 from callers. Although LWA lost money as a result of the
6 bankruptcy, as a recent subscriber, its losses were modest as
7 compared with the other long-term information provider
8 subscribers, many of whom lost everything.
9

10 Q. Are "900" services a viable alternative in your opinion?

11 A. No. Transfer of this service to an interexchange carrier
12 ("IXC") is unacceptable for several reasons. First, an
13 interexchange carrier would require that LWA obtain ten digit
14 "900" numbers, and forfeit its existing seven digit number,
15 including the goodwill in its telephone number and therefore in
16 its business -- goodwill that it has taken years to accrue.
17

18 Q. How do rates for "900" services compare with rates for BA-
19 NY's InfoFone service?

20 A. "900" rates are substantially higher than IINS rates,
21 reflecting long distance charges between callers that may only be
22 blocks apart. AT&T charges customers 32 cents per minute and ten
23 percent for billing and collection if they have T-1s. If the
24 customer has no T-1s, like LWA and the vast majority of the
25 information providers, AT&T charges 44 cents per minute plus 15
26 percent of customer charges for billing and collection. In
27
28

1
2 addition, AT&T charges a \$1,000 installation fee and \$75 per
3 month per telephone number.

4 With InfoFone charges of 26 cents for the first minute, 7
5 cents for each additional minutes, and 12 percent for billing and
6 collecting, depending on the length of the call, AT&T per call
7 charges can be as much as seven times higher than BA-NY's charges
8 and its installation and monthly line charges are ten times
9 higher.

10 LWA could not continue its service if it had to pay AT&T
11 rates. Even if LWA quadrupled charges to customers to cover the
12 increased costs, LWA could not survive because it would lose at
13 least 90 percent of its business and still could not cover its
14 costs due to declining volumes, let alone make a profit.

15
16 Q. Do "900" services differ in other respects from BA-NY's
17 InfoFone services?

18 A. LWA offers its services locally and can only market them
19 locally. Dating bulletin boards and time and weather services
20 are by their nature local. Since "900" services are all
21 nationwide and LWA cannot advertise nationwide, by subscribing to
22 "900" services, LWA would be paying for services it will never
23 use.

24
25 Q. Are there any other disadvantages to "900" services in your
26 opinion?
27
28

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3 A. The perceived adverse image of "900" services in the market
4 makes them undesirable. "900" services conjure up images of
5 scams and sleaze in the minds of many consumers. A reputable
6 service like LWA does not want to be associated with that
7 stereotype.

8 Consumers believe that "900" services, with their ten digit
9 dialing numbers, are a high cost, long distance service. Many
10 will not call for that reason, without even obtaining rates for
11 the service.

12 Q. Do POTS lines offer an acceptable alternative to LWA?

13 A. No. LWA would never revert to providing its time and
14 weather or its singles bulletin board services through a POTS
15 line because it would require changing its telephone number,
16 resulting in a forfeiture of the goodwill its lines have built up
17 over the past decade.

18 Also, the demand for a credit card business is insufficient
19 to make it a viable business. These calls are "impulse" calls;
20 callers make them because they are convenient. Many callers have
21 no credit cards, but do have access to telephones. Even for
22 those callers that do have credit cards, credit cards are
23 generally inconvenient and therefore unacceptable, requiring as
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2 they do retrieving the credit card, dialing the credit card
3 number, and waiting for approval.³

4 Further, many potential callers are unwilling to use credit
5 cards for safety concerns. To use a credit card POTS line, a
6 customer must be able to trust that the credit card information
7 that it provides will not be abused by the information provider.
8 Many cautious New Yorkers who would trust a well-known airline or
9 department store with their credit card number would never trust
10 information providers, who are known only by their telephone
11 number and have little or no trade name recognition.

12
13 Q. What would the result be if LWA were required to use a POTS
14 line?

15 A. If LWA services became a POTS credit card service, its
16 dating bulletin board service would decline to by 90 percent
17 (i.e. to 10 percent) of its current volume and its weather
18 service would decline to 5 percent.

19
20 Q. Are there any other viable alternatives to BA-NY's InfoFone
21 service?
22
23
24

25 ³ The fact that callers do not like dialing extra numbers,
26 including credit card numbers, is evidenced by BA-NY's 411
27 directory assistance where many callers, after receiving a
28 telephone number from directory assistance, choose to have BA-NY
connect the call directly for an extra 35 cents, rather than
dialing it themselves.

1
2 A. There are no viable alternatives other than InfoFone for
3 providing pay-per-call telephone information services to New York
4 callers.
5

6 Q. What features of the InfoFone services do your customers
7 find most appealing?
8

9 A. These Info-Fone services provide callers unwilling to wait
10 with immediate, readily accessible information. The information
11 is particularly desirable to many customers who obtain weather,
12 lottery, sports information, employment opportunities, and stock
13 reports on demand, with no waiting, for a low fee. The
14 importance of impulse calling is shown by the fact that all
15 households have telephone books, yet many people dial BA-NY's 411
16 information service, at 35 cents per call, rather than opening
17 their telephone book and obtain a number without cost.
18

19 Q. Are radio and television adequate alternatives to your
20 services?
21

22 A. Radio and television are not substitutes because the
23 customer must wait for the program with the desired information
24 to air. Many services, like LWA's voice personal service, cannot
25 be provided by radio or television. The Internet is no
26 substitute because many New Yorkers have no access to the
27 Internet and many of the InfoFone services, such as the voice
28 bulletin board service, cannot be provided by Internet.
Moreover, obtaining information on the Internet is a much slower

1
2 process, since it takes time to boot up a computer, load
3 software, dial in, log on, and find a web page. Newspapers and
4 magazines are not substitutes, providing new information only
5 once per each 24 hours at most.

6 I am unaware of any viable substitute for these programs
7 that offers the low cost, availability on demand, universal
8 access that this service offers to New Yorkers.
9

10 **Q. Are call volumes declining?**

11 **A.** BA-NY's October 6, 1998 Presentation states that one BA-NY
12 reason for terminating this service is declining call volumes.
13 IPs express no opinion on whether 976 MAS call volumes are
14 declining. But LWA does contest BA-NY's claim that IINS and GBS
15 call volumes are necessarily declining.

16 The IINS and GBS call volume figures contained in BA-NY's
17 October 6, 1998 Presentation at best reflect a slight decline in
18 IINS call volume. However, I challenge the accuracy of the
19 numbers in BA-NY's October 6, 1998 presentation. Call count
20 figures generated by LWA equipment invariably reveal that monthly
21 BA-NY's call counts are often low by as much as 11 percent.

22 Moreover, LWA's time and weather call volumes are not
23 declining, even though LWA is withholding advertising of those
24 services pending the outcome of this termination proceeding.
25

26 **Q. Has LWA ever complained of inaccurate BA-NY's call counts?**

27 **A.** From time to time, LWA has complained to BA-NY about these
28

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2
3 discrepancies. Whenever BA-NY sent an engineer to review these
4 complaints and those engineers observed a discrepancy, LWA would
5 never be able to locate the engineer after the review and BA-NY
6 never pursued the engineer's findings.

7 Q. Can LWA accurately test BA-NY's claim regarding call volume?

8 A. LWA has no ability to test the accuracy of BA-NY's claims
9 regarding call volume or its belief that IINS call counts
10 understate call volumes because BA-NY has systematically declined
11 to provide IPs with any information in response to information
12 requests regarding this issue in this proceeding.

13
14 Q. Does LWA have any evidence to dispute BA-NY's call count
15 accuracy?

16 A. In 93-C-0451, issues of call count accuracy were addressed
17 for 976 MAS. I am advised that the Commission found substantial
18 inaccuracy for 976 call counts and that many of the call counts
19 were manually adjusted. I am also advised that, when IINS
20 information providers requested that Judge Robinson permit them
21 to participate in the 93-C-0451 proceeding, Judge Robinson
22 rejected that request on November 20, 1995 and IINS was excluded
23 from that proceeding. Accordingly, IINS, GBS and Circuit 9 have
24 had no opportunity to test the accuracy of BA-NY's claims
25 regarding call counts for their services.
26
27
28

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2
3 Q. Does LWA have any evidence that BA-NY competes with
4 information provider[s]?

5 A. Although BA-NY has refused to answer information requests
6 describing information services that it, or any of its affiliates
7 or subsidiaries, now provides or previously provided that compete
8 with information services provided by InfoFone subscribers, BA-NY
9 has previously represented its intention to provide such
10 competing services.

11 In a 1996 submission to the New York State Public Service
12 Commission, BA-NY confirmed that it had provided such information
13 programming in the past and that it would continue such services
14 in the future, saying:

15 Thus, without disclosing proprietary plans which
16 may from time to time be developed and changed, it is
17 safe to assume that in one form or another NYNEX will
18 offer services that compete with the IP's 976 messages.
19 This may occur directly or through various other types
20 of offerings such as video information that would be
21 cross elastic with IP messages. NYNEX may choose to
22 enter such businesses directly, or through various
23 equity interests, joint ventures, partnerships or other
24 alliances."

25 See Exh. A. Although BA-NY denied in answers to discovery
26 requests in this proceeding that it intended to provide InfoFone
27 services, it did not deny an intent to provide other information
28 services.

29 Despite BA-NY's persistent refusal to provide substantive
30 answers to information requests concerning its past and present
31 information programming, BA-NY currently owns several pay-per-
32 call information services. For example BA-NY currently provides

1
2 pay-per-call directory assistance service. This service provides
3 callers to 411 with telephone numbers, addresses and zip codes
4 for listed telephone numbers at a cost of 35 cents per call.

5 This BA-NY pay-per-call information service is no different
6 than any information service provided by the InfoFone information
7 providers, except that it involves three digit dialing rather
8 than seven digit dialing is required. Moreover, BA-NY has
9 announced an intention to expand this pay-per-call service
10 nationwide.

11
12 Q. Do you compete with BA-NY in providing information services?

13 A. BA-NY is my competitor at this time in providing time and
14 weather services. BA-NY began offering pay-per-call time and
15 weather services at least a quarter century ago under the 936-
16 1616 and 936-1212 numbers. It continued with that service until
17 in or about the early 1980's, when it was permitted to maintain
18 ownership of the service, but required to spin off day-to-day
19 operation of the service.

20 Following that, BA-NY held an annual auction for the
21 privilege of operating its time and weather services. Based on
22 invitations LWA received to bid, it is my best recollection that
23 BA-NY recently placed a minimum bid of \$500,000 on its weather
24 number and \$150,000-\$200,000 on its time number. Information
25 concerning bids received and the amount that the winning bidder
26 paid to BA-NY for this service are presently unknown.
27
28

1
2 Q. Does any other affiliate of BA-NY offer information
3 services?

4 A. Although BA-NY failed to answer information requests
5 regarding this, Bell Atlantic-Mobile also offers a competing pay-
6 per-call telephone traffic information line for a cost of 50
7 cents per call, a Bloomberg financial news report, and many other
8 pay-per-call information services.
9

10 Q. How do BA-NY charges compare with other local exchange
11 carriers?

12 A. BA-NY's charges for its InfoFone service are far higher than
13 those charged by Bell Atlantic local exchange carriers serving
14 other areas. While BA-NY charges 540 information providers 26
15 cents for the first minute, 7 cents for each additional minute,
16 and twelve percent of all revenues received, Bell Atlantic's
17 local exchange carrier in Boston only charges 20 cents for the
18 first minute and six cents for each additional minute, with no
19 percentage per call charge.
20

21 The Commission has made a finding that the per call cost for
22 call origination and transport is 4 cents, 2 cents for call
23 processing, and 2 cents for call billing and collection. See
24 Commission 97-7 Decision and Order in Case No. 93-C-0451. These
25 same rates should apply to IINS and GBS since the services are in
26 material respects similar.

27 BA-NY's current IINS charges (26 cents for the first minute,
28 7 cents for each additional minute and 12% of the customers total

1
2 call costs) afford BA-NY substantial per call excess contribution
3 (i.e., monopoly profits of \$2.96 for a 20 minute call at 65 cents
4 per minute and \$3.90 for a 20 minute call billed at \$1.00 per
5 minute).

6
7 Q. What has been the effect on you of BA-NY's announced
8 termination?

9 A. BA-NY's announced termination has had a substantial adverse
10 effect on me personally. I signed a contract on a new house just
11 one week before the termination was announced. Because of the
12 dire economic threat posed by the termination, and the extreme
13 anxiety it creates, I have become physically ill, suffering from
14 a number of ailments, and have had to put off my planned wedding.
15 While I cannot presume to speak for all information providers, I
16 believe that many others are suffering in much the same way.
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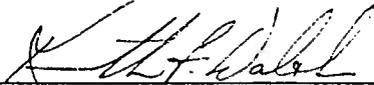
CONCLUSION

In view of the foregoing, BA-NY should not be permitted to withdraw any of its InfoFone services and tariffs, contribution should be removed from the IINS, GBS and Circuit 9 services, and BA-NY should be required to insure call count accuracy.



Lawrence Weiss

Sworn to before me this
11th day of December, 1998



Notary Public

KENNETH G. WALSH
Notary Public, State of New York
No. 02 WA-5011216
Qualified in Queens County
Commission Expires 04/12/99



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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to : Case 98-C-1079
Investigate New York Telephone Company's :
Proposal to Discontinue Offering Information :
Services :
:

Prefiled Testimony of Walter Boxer

Q. Please state your name and residence.

A. WALTER BOXER. I am a New York resident.

Q. Please identify the companies you represent?

A. I am the sole shareholder in Dynatech Communications, Inc. ("Dynatech") and Infotel, Inc. ("InfoTel"), both New York telephone information providers. I have been a businessman for nearly twenty years.

Q. Describe your background as an information provider?

A. I have been involved in providing telephone information services in the New York metropolitan area since December 1986. I have also been involved in industry trade associations for many years, serving as past President of the Association of Information Providers of New York, a trade association consisting of 30 - 40 information provider members.

Q. Why are you submitting this testimony?

1
2 A. I submit this testimony in opposition to the
3 application of New York Telephone Company d/b/a Bell
4 Atlantic - New York ("BA-NY") for the right to terminate all
5 its New York State InfoFone service, including all New York
6 telephone information services provided by Dynatech and
7 Infotel. If BA-NY is permitted to terminate this service,
8 Dynatech and Infotel's business will be destroyed, its
9 employees will all be terminated, and its customers will be
10 deprived of this service.

11
12 Q. When did you become a subscriber of BA-NY's InfoFone
13 telephone information service?

14 A. In early 1982, I read about BA-NY's InfoFone telephone
15 information service, became interested in it, and
16 immediately applied for a line. I was advised at that time
17 that BA-NY had a waiting list of about five years for this
18 service.

19 Four to five years later, following an apparent
20 expansion in the number of available channels from 22 to 44,
21 I obtained a single mass announcement program from BA-NY.
22

23 Q. When were Dynatech and Infotel formed?

24 A. In or about April 1988, BA-NY commenced its IINS
25 interactive service. At or about that time, I formed two
26 wholly owned New York corporations, Dynatech and Infotel,
27 and obtained one IINS telephone number for each corporation,
28

1
2 each number having numerous lines. Since then, Dynatech and
3 Infotel have grown significantly in both number of lines and
4 call volume. Today, Dynatech operates 45 information
5 programs and Infotel operates 17 with seven employees.
6

7
8 Q. What telephone information services do Dynatech and
9 Infotel offer?

10 A. Infotel, Inc. offers 540 psychic services in English
11 and Spanish using BA-NY's InfoFone service. Dynatech
12 primarily operates adult programming, in English and
13 Spanish, but also in Russian, and primarily using BA-NY's
14 970 service. 1/

15
16 Q. Please describe the background of the callers to
17 services offered by Infotel and Dynatech and the reasons
18 they call your service.

19 A. Many callers to these programs are Spanish speaking
20 recent immigrants. Many, including Spanish speaking
21 immigrant callers who call the adult 970 lines, are truly
22 seeking advice or just someone to speak to. Subjects
23 discussed on these calls, including subjects discussed on
24 the 970 lines, often involve family, culture, social
25

26
27 1/ About 50% of Dynatech callers are English speaking
28 and 50% are Spanish speaking. All Dynatech employees are
bi-lingual.

1
2 services, friendship, loneliness, and other issues wholly
3 unrelated to adult entertainment.
4

5 Q. How are your companies services advertised?

6 A. Infotel and Dynatech both advertise their services,
7 spending substantial sums on advertising each year.
8 Dynatech and Infotel are among the largest advertisers in El
9 Diario, the largest Spanish speaking language newspaper in
10 New York, and in other alternate and local minority
11 Manhattan newspapers, such as the Amsterdam News and the
12 Manhattan Spirit.
13

14 Q. Does Dynatech offer services in other languages?

15 A. Dynatech also offers Russian language adult programs
16 and formerly offered Chinese language (Mandarin and
17 Cantonese) programs that were advertised in local Russian
18 and Chinese newspapers. The Chinese program was terminated
19 because call counts provided by BA-NY were 50% below the
20 actual call count, as registered by Dynatech's own call
21 receiving equipment (which has always proved
22 accurate). 2/ After months of unsuccessfully attempting
23 to induce BA-NY to correct the deficiencies in its local
24 call count mechanism (the calls were mostly from Chinatown
25 and Flushing), Dynatech was forced to cancel the service;
26

27 2/ Dynatech uses an IVR to count every call to each of
28 its information programs.

1
2 recovery of revenues on only 50% of the calls was inadequate
3 to support the service.
4

5 Q. What would be the effect of termination of this
6 service?

7 A. If BA-NY terminates this service, Dynatech and Infotel
8 will terminate their business, all employees will be
9 terminated, and thousands of New York customers will be
10 deprived of desired services.
11

12 Q. Are there any competing local exchange carriers
13 ("CLECs") who have offered to provide similar service?

14 A. To my knowledge, there are no competing local exchange
15 carriers ("CLECs") able and willing to provide this service.
16 Even if there were, I would be reluctant to obtain services
17 from them in view of my past experience in using a carrier
18 other than BA-NY to provide these services.
19

20 Q. What past experiences would make you reluctant to
21 subscribe to a service offered by a CLEC?

22 A. In or about January 1991, Infotel obtained a "900" line
23 from Telesphere, an interexchange carrier ("IXC"). After
24 leasing equipment to provide this service, spending
25 substantial sums to operate this service, and spending
26 amounts on advertising to create a customer base for these
27 services, Telesphere, began appropriating revenues belonging
28

1
2 to information providers for their own use rather than
3 passing them on to the information providers as required.
4 In or about September 1991, Telesphere terminated its
5 business and filed for bankruptcy, owing me and many other
6 InfoFone providers very large sums of money, rendering our
7 advertising useless, and leaving us with stranded equipment.

8 I am therefore keenly aware of the devastating
9 consequences to my business of an unreliable carrier. It is
10 my understanding that New York CLEC's are generally small
11 start up operators competing against the BA-NY monopoly. A
12 regular customer would be briefly inconvenienced if a CLEC
13 went out of business, but could immediately move to another
14 carrier, such as BA-NY. But an InfoFone IP's business would
15 be destroyed since there would be no other carriers offering
16 the service and no place to transfer the business on an
17 immediate basis.

18 Moreover, I am aware of the service problems associated
19 with the use of IXCs and CLECs. In 1997, my companies
20 subscribed to local service provided by Worldcom. After
21 being assured that Worldcom's services were identical to
22 those offered by BA-NY, I learned that, on the contrary,
23 Worldcom would not permit me to access BA-NY's InfoFone
24 services through their lines. Further, when service
25 problems arose, Worldcom and BA-NY each found the other was
26 to blame and refused to fix the problem. The problem was
27 only resolved when I switched back to BA-NY.
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Q. Are there any restrictive features to BA-NY's billing and collection agreement that you know of?

A. BA-NY's billing and collection agreement also permits BA-NY to preclude a carrier using BA-NY's billing and collection services from publishing a marketing message for information services provided by information service customers on the monthly customer bill if that message refers to or implies any direct competition with an information service provided by BA-NY. See Exhibit C to BA-NY's IXC billing and collection agreement annexed as Exh. K. This provision could prevent information providers from advertising many services which compete with BA-NY.

Q. Has BA-NY ever provided, or is BA-NY now providing, information services that compete with the services offered by its InfoFone carriers.

A. It is my understanding that BA-NY began to provide telephone time and weather services nearly a quarter century ago as a monopoly service. Following divestiture and the AT&T consent decree, BA-NY was permitted to continue to run that service, but was required to auction the right to operate the service to independent third parties.

Since then, BA-NY has engaged in periodic auctions of the right to operate BA-NY's time and weather services and continues to realize financial benefits from its ownership of those services. Accordingly, all other time

1
2 and weather services compete with BA-NY's time and weather
3 service.

4 Moreover, BA-NY has previously operated other
5 information services business. Several years ago, I was an
6 advertiser in a BA-NY affiliate's information service known
7 as Consumer Tips. This BA-NY information service permitted
8 callers to press telephone touch tone buttons to obtain
9 various information services provided by BA-NY such as time,
10 weather, lottery, sports, horoscopes, etc. See Exh. I.
11 Advertisers would pay New York Telephone a monthly fee for
12 the right to advertise their services on New York
13 Telephone's "Consumer Tips" Hotline. It is my best
14 recollection that many advertisers, including my companies
15 and some other information providers, paid New York
16 Telephone about \$100 per month to advertise their services
17 in connection with BA-NY's "Consumer Tips" and that BA-NY
18 promoted its own telephone information services in this way.
19 My companies stopped advertising their services in
20 connection with BA-NY's Consumer Tips information services
21 in or about August 1997. I do not know whether BA-NY
22 continues to offer this service.

23
24 **Q. What information services does BA-NY currently offer?**

25 **A.** Currently BA-NY offers a pay-per-call telephone
26 information service under the 411 exchange (35 cents per
27 call, with an additional 35 cent charge for automatic
28

1
2 connection). BA-NY may also offer other information
3 services not presently known to me. 3/

4 BA-NY's past and present involvement in the
5 provision of information services could deprive information
6 providers of the right to require BA-NY to include valuable
7 marketing inserts in BA-NY's bill to customers.
8

9
10 Q. Do "900" Information Services provide a viable
11 alternative to the InfoFone information providers?

12 A. Carriage by an interexchange "900" carrier which
13 suffers from the same inadequacies as carriage by a CLEC and
14 has many other inadequacies. First, a change to a "900"
15 service would result in the IPs' loss of their seven digit
16 telephone numbers. To subscribe to a "900" service, the
17 information providers must obtain a ten digit "900"
18 telephone number. An InfoFone telephone information
19 providers seven digit number is vital to the provider
20 because all the IP's goodwill is vested in its telephone
21 numbers. This goodwill would be destroyed if BA-NY IPs had
22 to operate a "900" service through a different telephone
23 number.

24 Second, 900 carriers only offer nationwide
25 service. All Infotel customers and more than 90% of

26 3/ It is impossible to know what telephone information
27 services BA-NY operates, including what pay-per-call
28 services it operates, in view of BA-NY's persistent refusal
to respond to IPs discovery requests on this issue.

1
2 Dynatech customers are in the downstate New York
3 metropolitan area LATA. Although Dynatech has five AT&T
4 "900" lines, these lines are for old services with small
5 call volumes that Dynatech maintains only because of their
6 goodwill; they are advertised only in the New York
7 metropolitan area even though Dynatech pays for nationwide
8 transmission of these services, and account for only 5-10%
9 of Dynatech's customers.

10 Since the IINS service began in 1988, other than
11 my disastrous experience with Telesphere, I have had limited
12 experience with "900" services, and those services have
13 generally been unsatisfactory, especially in the last
14 several years, because (i) the per call costs are much too
15 high; 4/ (ii) many customers will not call a "900"
16 service due to poor reputation or their unwillingness to
17 dial a ten-digit long distance number, (iii) Dynatech only
18 provides a local service, not a nationwide service, and only
19 advertises locally, rendering AT&T's national coverage
20 superfluous and costly and (iv) AT&T and MCI, the major
21 "900" carriers, will not permit adult entertainment programs
22 to be provided on their "900" networks.

23 _____
24 4/ AT&T costs are 32 cents per minute, 10% for billing
25 and collection, and \$500 per month for the first 900 number
26 and \$125 for each additional number plus line charges which
27 for me total \$800 per month. In contrast, IINS charges are
28 26 cents for the first minute, only 7 cents for each
additional minute and 12% for billing and collection with no
additional charge for the first InfoFone number and total
per lines charges of about \$18 per month.

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Q. Do POTS line services provide a viable alternative?

A. A POTS lines information service paid for by credit cards would also not be viable. A substantial number of callers to my companies' lines are Spanish speaking immigrants and other minorities. My research has indicated that few of these callers have credit cards. If Infotel and Dynatech switched to a POTS line paid by credit cards, most of my companies' callers would be deprived of the benefit of these modest cost services which provide them with someone who speaks their native language. Accordingly, a POTS line would not be suitable for them and they would be deprived of these services. A similar practical barrier would keep these customers from having access to computer internet services at all.

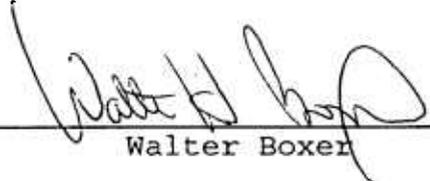
Q. Are BA-NY's call counts accurate?

A. I described above the call count problems experienced with BA-NY's call counts for Dynatech's Chinese language service, which were off by 50%. However, I believe that all BA-NY's call counts generally undercount calls by approximately 10% per month. I have repeatedly complained to BA-NY about call count inaccuracy, but they have failed to take steps to correct the inaccuracy.

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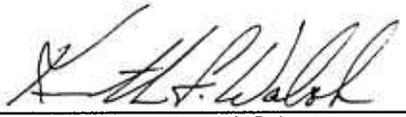
Conclusion

In view of the foregoing and as otherwise set forth in the testimony of Richard Cohen, Larry Weiss, Oliver Oziel and Michael Marenick, BA-NY's request to withdraw its InfoFone tariffs should be denied and, BA-NY should compensate all IPs for inaccurate call counts, rectify all call count irregularities, and remove contribution from the InfoFone service, including the interactive (540 and 970), group bridging (550), and Circuit 9 services.



Walter Boxer

Sworn to before me this
11th day of December, 1998



Notary Public

KENNETH G. WALSH
Notary Public, State of New York
No. 02 WA-5011216
Qualified in Queens County
Commission Expires 04/12/99



BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NEW YORK

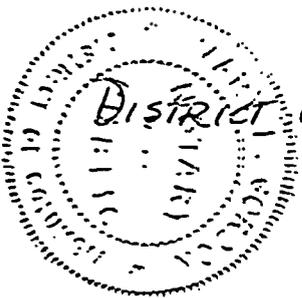
IN THE MATTER OF NEW YORK TELEPHONE)
COMPANY'S PROPOSAL TO DISCONTINUE) Case No. 98-C-1079
OFFERING INFORMATION SERVICES)

AFFIDAVIT OF DAVID M. EISENSTADT, Ph.D.

STATE OF NEW YORK)
COUNTY OF)

David M. Eisenstadt, Ph.D., of lawful age, being first duly sworn deposes and states:

1. My name is David M. Eisenstadt. I am a Principal at Microeconomic Consulting and Research Associates, an antitrust economics consulting firm located in Washington, D.C.
2. Attached hereto and made a part hereof for all purposes is my Direct Testimony.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.



David M. Eisenstadt
(Name)

Subscribed and sworn to this 11th day of December, 1998

M. L. Gordon
Notary Public

My Commission Expires: My Commission Expires October 31, 1999

DIRECT TESTIMONY OF DAVID M. EISENSTADT, Ph.D

1

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS**3 **A.** My name is David M. Eisenstadt. My business address is MicRA, Suite 900, 1155
4 Connecticut Avenue, N.W., Washington, D.C. 20036.

5

6 **Q. WHAT IS YOUR PROFESSION AND BACKGROUND?**7 **A.** I am an economist and Principal at MicRA, a Washington, D.C. based economics
8 consulting and research firm specializing in antitrust and regulatory matters. I hold a
9 Ph.D. in Economics from the University of Illinois. All MicRA principles are former U.S.
10 Department of Justice, Antitrust Division employees. I was employed at the DOJ from
11 1979 - 1984 as a Senior Economist. I have been a private economic consultant since
12 1984. While at the DOJ, I was assigned to matters in the computer, defense, food
13 products, and health care industries. In 1984, I joined the telecommunications
14 economics consulting firm of Cornell, Pelcovits, and Brenner as a senior economist where
15 I worked on a variety of antitrust matters including telecommunications antitrust litigation
16 involving AT&T and local exchange carriers. In 1986, I joined several of my present
17 partners at ICF Consulting Associates. In 1991 we broke off from ICF and formed
18 MicRA. My curriculum vitae is attached as an Exhibit to this affidavit.

19

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-2-

1 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

2 A. In November 1998, I was contacted by counsel for the coalition of information
3 providers (IPs) who use Bell-Atlantic New York's (BA-NY's) InfoFone services. I was
4 asked to address the following economic issues: (1) whether the services that IPs purchase
5 from BA-NY are an essential input and facility, (2) whether services provided by IPs who
6 use BA-NY's InfoFone services are likely to comprise one or more relevant product
7 markets for antitrust purposes, and (3) whether the customers of these IPs are likely to
8 pay higher prices if BA-NY terminates InfoFone services in the State of New York.

9

10 Q. WOULD YOU PLEASE SUMMARIZE YOUR TESTIMONY?

11 A. BA-NY's InfoFone services are an essential input and facility into the production of pay-
12 per-call information services to consumers.¹ InfoFone services represent the current, low-
13 cost technology for providing certain pay-per-call information services provided in the
14 New York City area, Buffalo, Albany, and other NY LATAs. Alternative technologies
15 presently or hypothetically available to IPs are more expensive and, if used, would
16 significantly increase IPs' costs of transport, processing, and billing and collection.

17

18 It is also the case that IPs who purchase BA-NY's InfoFone services compete most
19 closely with IPs who also purchase InfoFone lines and provide similar services to their
20 customers, and that termination of BA-NY's InfoFone services would result in significant

¹These services are an essential facility because, among other things, BA-NY is either an actual competitor or potential entrant into the provision of telephone information services.

-3-

1 price increases to their customers. The termination of InfoFone services would eliminate
2 the benefits these customers derive from their present ability to choose among different
3 IPs who offer services with this technology. Put another way, in the terminology of an
4 antitrust economist, the services these IPs provide are likely to constitute one or more
5 relevant product markets.
6

7 **Q. IN FORMING THIS OPINION, WHAT INFORMATION DID YOU RELY**
8 **UPON?**

9 **A.** I have relied on the following: the written testimony of IP providers who are interested
10 parties to this proceeding, extended telephone interviews with IPs, BA-NY's presentation
11 in support of its tariff filing in this matter, market definition principles, my experience as an
12 antitrust economist, and economic logic.
13

14 **Q: WHAT INFORMATION SERVICES DOES BA-NY MAKE AVAILABLE TO IPs?**

15 **A:** Since 1988, BA-NY has provided four types of pay-per-call services through its
16 InfoFone services provided in New York State: (1) Downstate 976 Mass Announcement
17 Services (MAS), (2) Interactive Information Network Services (IINS), (3) Group
18 Bridging Services (GBS), and (4) Circuit 9. 976 MAS, IINS, and GBS services all permit
19 seven digit dialing. Downstate, all four InfoFone services are provided by BA-NY
20 through a single Ericsson AXE-10 switch.
21
22

-4-

1 Q: WHAT IS THE DIFFERENCE BETWEEN 976 MAS, IINS, GBS, AND CIRCUIT
2 9 SERVICES?

3 A: 976 MAS services are mass announcement services using the 976 exchange. Callers
4 receive an approximate one minute pre-recorded announcement such as weather, time,
5 sports information, lottery information, etc. The use of an IMAS switch permits
6 thousands of callers to simultaneously listen to the message. Each 976-XXXX line is
7 dedicated to a particular service. In New York City, 976-1212 is the seven digit number
8 for "weather." Over fifty end user services are currently provided using 976 MAS. BA-
9 NY auctions 976-1212 (weather) and 976-1616 (time) every year.

10
11 IINS phone calls permit both normal conversation and, more typically, caller interaction
12 with recorded programs. Callers use their touch tone pad to select recorded information,
13 browse recorded messages, leave and receive messages, make inquiries, etc. Some IINS
14 IPs offer sophisticated interactive programs with many options and features such as
15 personal classified advertising bulletin boards. The services offered may include multiple
16 browsing categories, automatic voice mail, or even one-on-one chat options. Less
17 sophisticated programs provide fewer selections. IPs offer multiple services ranging from
18 weather, foreign language programming, horoscope, sports, dating, and adult content.
19 IINS can also be used to provide passive programming whereby the caller listens without
20 participating in the path or direction of the call.

21

22

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1 GBS is used for party conversations or chat lines among two or more participants using
2 the 550 exchange.²

3
4 For all InfoFone services, BA-NY provides the IPs with call origination, call transport, call
5 processing, and billing and collection services. The IP's charge for each call appears on
6 the BA-NY subscriber's monthly phone bill.

7
8 **Q: WHAT IS BA-NY'S TARIFF STRUCTURE TO IPs' FOR EACH OF THESE**
9 **SERVICES?**

10 **A.** Separate tariffs govern the pricing of each InfoFone service to IPs. In the case of 976
11 MAS, IPs pay BA-NY \$0.18 per call. For IINS, BA-NY charges IPs \$0.26 for the first
12 minute of use, \$0.07 for each additional minute, and 12 percent of the IP's total charge
13 minus the charges for minutes of actual use. Line costs are about \$30.00 per month, per
14 line, including taxes and surcharge.³ An IP who charges customers \$0.40 per minute
15 would, for example, pay BA-NY \$2.36 for a twenty minute call [$\$0.26 + 0.07 \times 19 +$
16 $(\$0.40 \times 20) - (\$0.07 \times 19 + \$0.26) \times 0.12$]. IINS IPs pay BA-NY its tariffed rates for
17 call minutes when BA-NY removes charges from a subscriber's bill (a procedure known
18 as "chargebacks").

19

²Circuit 9 allows statewide calling using 10 digit dialing. Only a few providers of Circuit 9 services operate in the state and the IPs who offer these services are not part of the coalition.

³Since thousands of calls are typically placed per month on the same line, and calls typically average about 20 minutes, the per-minute cost of the line charge is trivial.

-6-

1 For GBS, BA-NY's approved tariff is \$0.10 per minute. Monthly GBS per line charges
2 are \$18 per line.

3
4 All InfoFone tariffs include (in the basic rate) an element for BA-NY's costs and
5 contribution for billing and collection. In a prior proceeding, the New York Public
6 Service Commission determined that the incremental cost to BA-NY of billing and
7 collection was \$0.02 for each 976 MAS call.

8
9 **Q: HOW DO IPs SET PRICES TO THEIR CUSTOMERS?**

10 **A:** For 976 MAS, BA-NY sets the price; for other services, the IP can determine end user
11 charges. For 976 MAS services, IPs are permitted by tariff to charge customers \$0.40 per
12 call. IINS IPs determine their own customer pricing. For example, an IINS IP who
13 charges \$0.40 per minute bills the customer \$8 for a twenty minute call (\$0.40x20).⁴ IINS
14 IPs whose billing structure can exceed \$3.50 per call must provide a warning ("kill")
15 message within the first twenty seconds of the call to the caller.⁵ There are three
16 permitted GBS end user tariffs; however, most IPs who offer this service charge \$0.20 per
17 minute of use.

⁴Forty cents per minute is roughly the "going rate" for some IINS dating services in the New York Metro LATA.

⁵The kill message must convey the price for the call, the identity of the phone line, and instructions that the caller won't be charged if they hang up at that juncture. The announcement must be completed within ten seconds and the caller has twenty seconds to hang up. If the caller elects to hang up the IP is charged \$0.10 for the call.

-7-

1 Q: DO ALTERNATE TECHNOLOGIES PRESENTLY EXIST FOR PROVIDING
2 PAY-PER-CALL SERVICES?

3 A: Yes, but they are either more costly for the IPs and/or are inferior in terms of service
4 quality or other attributes from the perspective of the IPs' pay-per-call customers.

5
6 Q: WHAT ALTERNATE PAY-PER-CALL TECHNOLOGIES COULD PRESENTLY
7 BE UTILIZED BY IPs?

8 A: There are two alternate technologies that IPs could utilize to offer pay-per-call services.
9 The first is 900 dialing; the second is POTS in conjunction with credit card billing. For a
10 variety of reasons, IPs indicated they preferred 900 service to credit card billing and use of
11 POTS.

12
13 From the perspective of the IPs, 900 service is a considerably more expensive technology
14 than BA-NY's InfoFone services. For small IPs who comprise the majority of providers,
15 the incremental, per-minute cost of transport, billing and collection is about four times
16 greater when 900 lines are used, and more than double the cost for the largest IPs.

17
18 For very large IPs, 900 transport costs can average rates as low as \$0.22 per minute.
19 Billing and collection costs are assessed separately, and typically average about 8-10
20 percent of the IP's charge for the call. Additionally, chargebacks are higher when 900
21 carriers perform billing and collection. One IP indicated that chargebacks for 900 service
22 average 35-40 percent compared to about 10 percent when BA-NY bills subscribers for

-8-

1 IINS calls. Hence, when 900 calling is used, chargebacks are about 250 percent higher.

2
3 For the smaller IPs, who comprise the vast majority of IINS providers, and who do not
4 possess digital (T-1) lines, AT&T 900 rates are \$0.44 per minute and 15 percent for
5 billing and collection.⁶

6
7 To appreciate the magnitude of the cost difference between 900 service and the cost of
8 an IINS line, the transport, and billing and collection cost to an IP of an additional IINS
9 minute purchased from BA-NY is about \$0.12 if the IP charges customers \$0.40 per
10 minute.⁷ This expense includes billing and collection and expected chargebacks. For the
11 largest IPs, the incremental transport, billing and collection cost of a minute of 900 service
12 is \$0.34, including the higher chargebacks, if the IP continues to charge \$0.40 per minute.⁸
13 Hence, when the largest IPs use 900 service, rather than IINS lines, their transport, billing
14 and collection costs per minute increase by nearly 200 percent.

⁶The 15 percent charge for billing and collection is based on the entire amount of the IP's charge.

⁷The incremental cost per minute equals \$0.07 per minute, plus the IP's charge per minute minus the cost for a minute of use multiplied by 12 percent. For an IP who charges customers \$0.40 a minute, an incremental IINS minute costs the IP about \$0.11 ($(\$0.07 + 0.12 \times (\$0.40 - \$0.07))$). Chargebacks, which average 10 percent, add approximately another \$0.01 to the IP's per-minute cost.

⁸The incremental cost per minute is \$0.22 plus ten percent of the IP's charge per minute, plus chargebacks which equal 35 percent of the cost for minutes of use ($\$0.22 + \$0.04 + \$0.08$).

-9-

1 For the smaller IPs who purchase 900 lines at \$0.44 per minute, the magnitude of the
2 disparity is even larger and amounts to a more than 400 percent increase. Including
3 chargebacks, the incremental cost of a minute of 900 service for these IPs is about \$0.65 if
4 the IP charges \$0.40 per minute.⁹

5
6 Compared to current IINS rates, use of 900 service would increase transport, and billing
7 and collection costs for most IINS IPs by over fifty cents a minute and roughly a quarter
8 per minute for the largest IPs. Neither small nor very large IPs could remain in business
9 and maintain charges at \$0.40 per minute. Instead, prices to customers would increase
10 significantly if 900 service is used in lieu of IINS. One large IP estimated that if it
11 maintained its current call volume, its prices would double if IINS lines were replaced with
12 900 service. For the smaller IPs, initial price increases would be substantially more.

13
14 The other available technology is credit card billing used in conjunction with POTS
15 service. Card billing is impractical for short, mass announcement services like time and
16 weather. IPs would incur significant start up costs marketing and advertising numbers for
17 POTS service. And, discussed below, there are significant reasons why customers prefer
18 not to use credit cards as a method of payment.

⁹The incremental cost per minute is \$0.44, plus fifteen percent multiplied by the IP's charge per minute, plus chargebacks which equal 35 percent of the cost of minutes of use (\$0.44 + \$0.06 + \$0.15). Obviously, no IP would attempt to charge \$0.40 per minute when transport charges alone are four cents higher. Because the incremental cost of a minute is partly determined by an IP's customer charges, the example is offered to provide an apples-to-apples comparison of IPs' costs using IINS vs. 900 service.

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1 Q: DO OTHER POSSIBLE TECHNOLOGIES EXIST?

2 A: BA-NY claims that competing local exchange carriers (CLECs) could hypothetically
3 provide information services. Because there are no current CLEC proposals for me to
4 evaluate, I am unable to compute the transport, billing and collection costs that IPs would
5 incur. However, one IP has estimated that a CLEC would have to charge approximately
6 \$0.60 for the first minute of use, more than double what BA-NY charges IINS IPs.¹⁰
7 Moreover, there are serious questions regarding whether CLECs would or could provide
8 the service. No CLEC has expressed interest in offering any InfoFone service that BA-
9 NY now offers. CLECs have neither approached IPs, nor come forward at any of the
10 meetings hosted by BA-NY and offered to assume provision of any InfoFone service. For
11 mass announcement services, it is questionable whether CLECs have the switch capacity
12 to handle the call bursts associated with peak demand. A CLEC must also arrange for
13 billing and collection. For the call charge to appear on a BA-NY subscriber's bill, the
14 CLEC would have to provide call detail to BA-NY. One IP has determined, however,
15 that BA-NY's billing and collection department will not provide billing and collection to a
16 CLEC.

17
18 Even if these technical and institutional constraints could be eliminated, some IP costs
19 would almost certainly increase. IPs will have to spend additional sums in the transition
20 process. For example, there is no guarantee that IPs would keep their current seven digit
21 numbers. BA-NY proposes to return all numbers based on the 540, 550, 970, and 976

¹⁰The BA-NY charge for the first minute of use to IINS IPs is \$0.26.

-11-

1 exchanges to the North American Numbering Plan. There are no assurances that the same
2 seven digit numbers will be assigned to the IPs who presently operate them. The numbers
3 are, however, a valuable asset to the IPs. In some cases, the four digit dialing suffix spells
4 a "vanity" word that callers associate with the specific service. In others cases, they have
5 simply memorized the IP's number. IPs will incur significant marketing expenses if these
6 numbers are reassigned.

7
8 **Q: ARE INFORMATION SERVICES THAT RELY ON ALTERNATIVE**
9 **TECHNOLOGIES GOOD SUBSTITUTES FOR THOSE PROVIDED VIA BA-**
10 **NY'S INFOFONE SERVICES FROM THE PERSPECTIVE OF END USERS?**

11 **A:** No. Alternative services are either more expensive, and/or do not offer the same
12 attributes as pay-per-call services using BA-NY's InfoFone services.

13
14 900 dialing is not a good substitute for pay-per-call services using InfoFone. First and
15 foremost, 900 service is more expensive. Typical per minute customer charges for 900
16 dating services are two-to-three times more than customer charges on IINS date lines.
17 Second, 900 services require 10 digit dialing compared to only 7 digit dialing for IINS
18 services. The need for 10 digit dialing reduces demand and call volume. Also, there is a
19 stigma attached to using 900 prefixes, and this suppresses the demand for non-adult
20 content services on these lines.

21
22 Credit card billing via POTS lines is even less preferred by IPs and their customers for

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1 several reasons. First, usage of IINS such as dating services, lottery results, sports lines,
2 weather information, and adult programming is typically an impulse purchase and not
3 conducive to credit card billing. One IP which offers an IINS weather line indicated it
4 would discontinue this service rather than offer it through credit card billing and POTS.
5 Second, many customers are reluctant to provide credit card information over the
6 telephone. Third, for some services, the caller demographics of credit card users are
7 probably different from the demographic characteristics of callers who use IINS lines. For
8 these services, credit card users are likely to be older and more affluent, while pay-per-call
9 customers are more likely to be minorities, some of whom may lack active credit cards.
10 One IP indicated that given the lower transport costs associated with POTS service, IPs
11 would be foolish to purchase IINS lines if credit card billing in conjunction with POTS
12 was truly a good alternative. The same provider indicated that in Pennsylvania, where it
13 offers a service that is significantly less expensive if payment is made using credit card, the
14 vast majority of callers refuse to use this form of billing.

15
16 IPs who offer both services (credit card billing on POTS lines and pay-per-call services
17 using IINS) indicated that the volume of calls on IINS lines dwarfs the volume of credit
18 card calls using POTS lines, even though the generic service (e.g., dating) is the same.

19
20 Many services provided through the Internet are inferior to pay-per-call technologies.
21 Only a fraction of households have Internet service. Second, InfoFone services, like mass
22 announcements for weather cannot practically be offered on the Internet. Third, for IINS

-13-

1 services such as dating, the Internet is an imperfect substitute because voice
2 communication is, at present, largely unavailable. That BA-NY's IINS call revenues have
3 remained relatively stable over the past several years, while Internet traffic has significantly
4 grown, suggests that the growth of the Internet has had limited effect on the overall
5 demand for IINS pay-per-call services.¹¹
6

7 **Q: WOULD END USER SERVICES PROVIDED THROUGH IINS CONSTITUTE A**
8 **SEPARATE ANTITRUST PRODUCT MARKET?**

9 **A:** Yes. The 1992 Joint Department of Justice and Federal Trade Commission Merger
10 Guidelines (Merger Guidelines) elaborate the paradigm used to define relevant markets.
11 Generally speaking, the relevant market contains the smallest group of competitors who
12 would have to merge, or price in a coordinated fashion, to raise price profitably 5 - 10
13 percent, for a non-transitory period of time.¹² This group of firms is termed a
14 "hypothetical" monopolist. The determination of whether a hypothetical monopolist of a
15 service could profitably raise prices above current or competitive levels is now a widely
16 accepted methodology for determining relevant market boundaries by antitrust
17 economists.
18

19 The available evidence indicates that at least several services provided by IINS IPs are

¹¹BA-NY "PRESENTATION IN SUPPORT OF TARIFF FILING," October 6, 1998.

¹²U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines, April 1992.

-14-

1 likely to be relevant markets under the Merger Guidelines. The testimony of IPs who
2 offer dating and adult content services indicates that competition between them, rather
3 than competition between IINS IPs and other types of information providers acts as the
4 principal constraint on prices they charge to their customers. Accordingly, if these IPs
5 incur a collective input price increase which amounts to a doubling to quadrupling of their
6 costs for transport, billing and collection, the rates they charge to customers will increase
7 significantly.

8
9 **Q: WHAT TYPES OF EVIDENCE DOES AN ANTITRUST ECONOMIST USE TO**
10 **DETERMINE WHETHER A GROUP OF SERVICES CONSTITUTES A**
11 **RELEVANT PRODUCT MARKET?**

12 **A:** Several types of evidence are examined. First, the actual pricing practices of IINS IPs
13 reveal whether other forms of information services are good substitutes. IINS IPs stated
14 their prices are determined by BA-NY's tariffs, as well as the extent of competition from
15 other IINS IPs.

16
17 A second piece of evidence is the closeness of competition among IINS IPs. Closeness of
18 competition is measured using a statistic known as the diversion ratio. The diversion ratio
19 measures the fraction of lost sales siphoned by different competitors when a firm or group
20 of firms unilaterally raise price. IINS IPs indicated that the vast majority of any lost sales
21 volume associated with a unilateral price increase goes to other IINS IPs who offer the
22 same service. This makes IINS IPs closer competitors to each other than to other types of

-15-

1 information providers. The high diversion ratio between them also indicates that a
2 hypothetical merger among all IINS IPs who offer the same service would result in
3 significant price increases.

4
5 A third piece of evidence comes from IPs' predictions of their prices if each was granted a
6 monopoly over the particular IINS service they offer. The amount by which a
7 hypothetical monopolist of IINS services would raise end user prices varies by the type of
8 end user service. In the case of dating services, one IP indicated that it could profitably
9 raise the price of a call from \$0.35 up to approximately \$0.55 per minute, a more than 50
10 percent price increase. Another believed that price increases of 30 - 50 percent would be
11 profitable. Even at these higher rates, dating services using IINS would still be
12 significantly less than the cheapest 900 rates in New York State.

13
14 A hypothetical monopolist of an IINS weather line would have less discretion, although
15 prices could still be profitably raised by a small amount.

16
17 **Q: IN YOUR OPINION WOULD THE ELIMINATION OF INFOFONE SERVICES**
18 **RESULT IN SIGNIFICANT PRICE INCREASES TO CONSUMERS WHO NOW**
19 **PURCHASE IINS?**

20 **A:** Yes, the next best current alternate technology to IINS is 900 service. If all IINS IPs
21 migrate to 900 technology, they will incur a common input price increase that will be
22 passed through to customers. If the long run supply curve facing IPs is horizontal, prices

-16-

1 will increase by the full amount of the cost increase. Consistent with this, one IP
2 predicted that prices would double if IINS IPs migrated to 900 service.

3
4
5 **Q: WHAT IS THE CONSUMER HARM THAT WOULD BE ASSOCIATED WITH**
6 **THIS PRICE INCREASE?**

7 **A:** The higher prices would choke off demand for these services. Many present users of these
8 services will find them too expensive and drop out of the market. From an equity point of
9 view, I would not be surprised if those that discontinued purchasing were the least affluent
10 callers who are least able to afford more expensive, alternative services.

11
12 **Q: WHAT IS BA-NY'S INCENTIVE TO TERMINATE INFOFONE SERVICES?**

13 **A:** I am informed by counsel that BA-NY has refused to provide information that is relevant
14 to this issue. BA-NY did offer its own telephone information services at one time. One
15 1996 BA-NY document indicates the company may offer future services competitive to
16 976 MAS and IINS.¹³ Therefore, BA-NY could have an anticompetitive motive for
17 terminating INFOFONE services.

18
19
20

¹³Direct Presentation of New York Telephone Pursuant to February 12, 1996 submission
by Amy D. Kanengiser, Case No. 930451.

-17-

1 Q: WHAT WOULD HAPPEN IF BA-NY TERMINATED INFOFONE SERVICES,
2 CURRENT IPs EXITED, AND BA-NY RE-ENTERED THE TELEPHONE
3 INFORMATION SERVICES MARKET?

4 A: In the worst case, if BA-NY (1) provided services similar to those now offered by IINS
5 and/or MAS IPs, (2) utilized a technology which had a similar cost structure to InfoFone
6 services, and (3) did not allow prospective IPs equal access, it would gain a downstream
7 monopoly on certain pay-per-call information services.

8
9 Q: WHAT ARE THE POSSIBLE CONSEQUENCES IF INFOFONE IS
10 TERMINATED AND BA-NY'S RATES FOR BILLING AND COLLECTION ARE
11 UNREGULATED BY THE NY PSC?

12 A: IPs believe that it is feasible for only BA-NY to perform billing and collection, even if
13 INFOFONE is terminated. Because BA-NY has a virtual monopoly on local phone
14 service in New York, and virtually all calls originate on BA-NY lines, it is the only entity
15 that can practically provide originating call detail to any billing service (including its own).
16 Elsewhere, the PSC has determined that billing and collection are unregulated services,
17 including the prices that BA-NY could charge to provide this call detail to a third party.
18 Currently, BA-NY billing and collection rates are included in its tariffs to IPs and
19 therefore are regulated. If INFOFONE is terminated, billing and collection provided by
20 BA-NY would be an unregulated service.

21
22 There is a potential danger that BA-NY would monopoly leverage -- use its monopoly

-18-

1 position in local phone service to gain a monopoly in an ancillary market, such as call
2 billing and collection. A possible motive for this is to evade regulation on tariffed services
3 through unregulated services such as billing.

November 1998

CURRICULUM VITAE**DAVID M. EISENSTADT**

Principal
Microeconomic Consulting and Research Associates, Inc.
1155 Connecticut Avenue, N.W.
Suite 900
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202/467-2500

Education

- 1979 Ph.D., Economics, University of Illinois (Urbana-Champaign)
- 1975 M.S., Economics, University of Illinois (Urbana-Champaign)
- 1973 B.S., Economics, University of Maryland

Experience

Dr. Eisenstadt joined Microeconomic Research and Consulting Associates, Inc. as a founder and Principal in 1991. His experience includes antitrust work in the health care, telecommunications, soft drink, toy, and energy industries, as well as the computation of damages in private antitrust and other litigation.

Prior to joining MICRA, Dr. Eisenstadt was a Senior Vice President of ICF Consulting Associates. From 1984-1986, Dr. Eisenstadt was a Senior Economist at the consulting firm of Cornell, Pelcovits & Brenner Economists Inc., an economic consulting firm specializing in telecommunications economics. While there, he worked on a variety of matters including telecommunications antitrust litigation. Prior to that, he was a Senior Economist at the U.S. Department of Justice, Antitrust Division in Washington, D.C. where he was assigned to a variety of matters including the IBM case, investigation of the 1979 domestic gasoline shortage, and defense and health care industry mergers or ancillary restraints.

As a private consultant, Dr. Eisenstadt has been retained to provide economic advice and competitive analysis in many types of commercial activities including mergers, instances of alleged monopolization, price fixing, exclusive contracts, most favored nations agreements, boycotts, and economic damages. Dr. Eisenstadt's testimony experience and a partial list of the different types of matters he has worked on is listed below.

DAVID M. EISENSTADT
Page 2

Testimony

- Deposition testimony in Marshall v. Planz et. al.
- Deposition testimony in Snyder v. Ohio Bell.
- Trial testimony in Hylton v. St. Vincent Hospital.
- Affidavit testimony in Cypress Recreation Center Ltd. v. Pepsi-Cola Bottling Company et al.
- Deposition testimony and expert report in Howerton, et al. v. Grace Hospital, et al.
- Deposition and affidavit testimony in Advanced Health-Care Services, Inc. v. Giles Memorial Hospital, et al.
- Deposition and trial testimony in The Care Group v. Creef et al.
- Affidavit testimony in J. Michael Becker, D.C., et al. v. Blue Shield of Southwestern Virginia, et al.
- Deposition and affidavit testimony in EGH Inc., doing business as Eastmoreland Hospital v. Blue Cross and Blue Shield of Oregon, et al.
- Trial and deposition testimony in the matter of U.S. Healthcare, Inc., et al. v. Healthsource, Inc., et al.
- Deposition and expert report in the matter of Bellavia v. Hackensack, et al.
- Affidavit and supplemental affidavit testimony in Williamson v. Sacred Heart Hospital, et al.
- Expert report in the matter of Wei v. Bodner, et al.
- Trial testimony in King v. U.S.A.

DAVID M. EISENSTADT

Page 3

- Deposition and trial testimony in HTI Health Services, Inc. v. Quorum Health Group, Inc., et al.
- Deposition and trial testimony in Federal Trade Commission v. Butterworth Health Corporation, et al.
- Deposition testimony in Parikh v. Franklin Medical Center
- Deposition testimony in Independence Blue Cross v. Pennsylvania Insurance Department
- Deposition testimony in Ertag, et al. v. Naples Community Hospital
- Deposition, trial, and affidavit testimony in Albani, et al. v. Southern Arizona Anesthesia Services.
- Deposition testimony in Major v. U.S.
- Affidavit testimony in NBA v. BCBS of Alabama.
- Trial, deposition, and affidavit testimony in U.S. v. Carilion Health System, et al.
- Affidavit testimony in U.S. v. Beverly Enterprises, Civil Action No. 84-70-1-MAC.
- Affidavit testimony in M&M v. Pleasant Valley Hospital, Civil Action No. A

Additional Matters

- Consulting economist to numerous hospitals and hospital systems.
- Preparation of a report that analyzed the effect of a Federal Home Loan Bank Board Rule governing direct investments of FSLIC insured Savings and Loans.
- Damages analysis in MCI v. AT&T
- Preparation of an analysis that explained the relationship between concentration and profitability in the elevator industry.

DAVID M. EISENSTADT

Page 4

- Preparation of a report that assessed the competitive benefits of continued regulation of Williams Pipeline
- Analysis of the merger between General Electric and CGR,

Teaching Experience

- Graduate Teaching Assistant in Microeconomics and Business Statistics at the University of Illinois, Urbana-Champaign.
- Assistant Professor, Department of Economics at the University of Missouri. Courses taught included Antitrust Economics, Industrial Organization, Intermediate Microeconomics, Medical Economics and Intermediate Econometrics.

Publications and Presentations

- Eisenstadt, D., "Hospital Competition and Costs: The *Carilion* Case (1989)," *The Antitrust Revolution: The Role of Economics, 2nd Edition*, John Kwoka and Lawrence J. White, Editors, 1994.
- Eisenstadt, D., "Product Market Definition in Health Antitrust Cases: Concept and Application," Speech before the National Health Lawyers Association, February 1994.
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DAVID M. EISENSTADT

Page 5

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- Schwartz, M. and D. Eisenstadt, "Vertical Restraints," *Economic Policy Office Working Paper #82-8*, December 1982.
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- Arnould, R. and D. Eisenstadt, "The Effects of Provider-Controlled Blue Shield Plans: Regulatory Options," *A New Approach to the Economics of Health Care*, Mancur Olson, ed., American Enterprise Institute, 1981.
- Eisenstadt, D. and T. Kennedy, "Control and Behavior of Non-Profit Firms: The Case of Blue Shield," *Southern Economic Journal*, July 1981.

Awards and Affiliations

- Outstanding Performance Rating, U.S. Department of Justice, 1983, 1984
Special Achievement Award, U.S. Department of Justice, 1980

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to : Case 98-C-1079
Investigate New York Telephone Company's :
Proposal to Discontinue Offering Information :
Services :

Pre-File Testimony of Elwin Macomber

Q. State your name, address, and occupation.

A. ELWIN MACOMBER. I reside in New Hampshire and am the owner of Macomber Communications and Computer Technology ("MCCT"), a New Hampshire proprietorship.

Q. Describe the history of MCCT and identify the services that it provides?

A. MCCT began operation in 1992 with no employees other than myself; today it has eighteen employees with installations in over 51 countries. MCCT is engaged in distributing and installing switching products, such as ACDs, and in the manufacturing of interactive voice response units ("IVRs").

Q. Describe your background and your experience in the area of audiotex and teleconferencing.

A. I attended Norwich University majoring in Physics with a minor in Chemistry. I have been involved in the technical side of audiotex and teleconferencing services since in or about 1987.

1
2
3 Before forming my own company, MCCT, in 1992, I was a
4 software engineer for Multi-Link for teleconferencing, dialogic
5 and other products. I also worked for Talking Systems, a company
6 that distributed IVRs and ITT-3100 PBX systems.

7 I have installed conference bridge switches, IVRs and
8 other teleconferencing equipment, including New Bridge 3600
9 bandwidth managers, in over 70 telephone company central offices,
10 including Sprint and MCI. I am experienced in the installation
11 of a variety of switches such as switches made by NEC, Siemens,
12 AT&T, and Northern, and in the manufacturing of teleconferencing
13 products such as a Multi-Link Conference Bridge. I am certified
14 in the installation and maintenance of the 3100 switch, the
15 Millennium switch, the New Bridge 3600 band-width manager, and
16 the New Bridge 3624 channel ban

17
18 Q. Are you familiar with telephone pay-per-call services
19 generally and with New York Telephone Company d/b/a Bell Atlantic
20 New York ("BA-NY") InfoFone services in particular.

21 A. In 1987, I was one of the first field engineers to install
22 550 group bridging equipment for New York Telephone Company's
23 InfoFone service. Since then, I have worked with many of the BA-
24 NY InfoFone information providers in connection with the design
25 and installation of equipment necessary to provide InfoFone
26 information services.
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Q. Are you familiar with BA-NY's claims that, if it is required to migrate its InfoFone services from the Ericsson switch to another switch, such as BA-NY's 5ESS switch located at its West 18th Street facility in Manhattan, it will no longer be able to provide broadcast services to its 976 mass announcement information provider subscribers.

A. I have reviewed BA-NY's October 6, 1998 Presentation to the Commission and have also reviewed BA-NY's answers to information requests from PPI and from IPs in which BA-NY makes that claim. I also recognize that BA-NY has refused to answer most of the information requests directed to it regarding this matter.

Q. In your opinion, is it possible for BA-NY to provide a broadcast function for the 976 mass announcement service after migration of the InfoFone service from the Ericsson switch and, if so, how?

A. Yes. Although there may be more than one way in which this can be accomplished, I know that such a broadcast function can be provided in the following way at a relatively modest cost.

BA-NY can provide the service by using IVR/VRU equipment connected to, e.g., BA-NY's 5ESS switch at West 18th Street. The IVR/VRU system would allow for voice storage and playback of each information provider's specific message according to the number dialed. The connection between the IVR/VRU and the 5ESS switch would be made through multiple T-1

1
2 simultaneous calls at peak call handling time to show how this
3 would work.

4 To handle that peak volume, 45 T-1 connections would be
5 needed to connect the 5ESS switch to the IVR/VRU system. Each
6 information provider would be assigned a list of DNIS numbers
7 that would correspond to its existing 976 telephone numbers. The
8 5ESS switch would process the call and present the call to the
9 IVR/VRU via a T-1 connection. The 5ESS would send the DNIS to
10 the IVR/VRU in order to set up and play the appropriate message
11 to the caller.

12 Updating the message for each information provider
13 would be done remotely via a voice connection with an ID number
14 and password protection. A common RAID system would insure that
15 a common database and voice resource was kept between the
16 multiple IVR systems. Redundant hot swap -48 VDC power supplies,
17 hard drives and network mirrored systems would insure twenty four
18 hours a day, seven days a week, 365 days a year operation.

19 I have put together a tentative quote for a system
20 based on an assumption that there would be no more than 1080
21 simultaneous calls at any given time. A copy of that quote is
22 annexed as Exhibit L. If BA-NY would provide information
23 regarding peak hours, I would provide a more precise estimate of
24 costs.

25
26 Q. Are you familiar with BA-NY's claim that the Ericsson switch
27 is not year 2000 complaint.
28

1
2 regarding peak hours, I would provide a more precise estimate of
3 costs.

4
5 Q. Are you familiar with BA-NY's claim that the Ericsson switch
6 is not year 2000 complaint.

7 A. Yes. In a letter from Mr. Charlie Stroud to Mr. George
8 Korsanos dated May 29, 1998 which is annexed hereto as Exhibit
9 I, Mr. Stroud discusses certain problems that "could" occur.
10 However, he offers no evidence that would prove that any of these
11 potential problems would in fact occur in the transition of the
12 Ericsson switch to the year 2000.

13
14 Q. Do you know whether there is such a year 2000 problem with
15 the Ericsson IMAS switch and, if not, is there any way to
16 determine whether there is such a problem?

17 A. If Ericsson cannot say with certainty whether there is a
18 problem, I certainly cannot. However, it is possible to
19 determine at this time whether there is such a problem.

20 A controlled test could, and should, be run at this
21 time by setting the clock forward to the year 2000 to measure the
22 effects of the year 2000 on the switch. This can be done because
23 the switch is not used for accounting purposes. By setting the
24 switch ahead to year 2000 at this time, we can prove or disprove
25 whether there will be year 2000 problems. If problems arise, the
26 switch can immediately be turned back to the present.

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Q. If there are year 2000 problems, potential or actual, is there any possible solution to these problems short of migrating from the Ericsson switch to another switch before the year 2000 arrives.

A. An inexpensive solution to the year 2000 problem would be to set the Ericsson switch clock back to a prior year in the twentieth century which matches the year 2000. This should be a seamless transition that would avoid any year 2000 problems that might otherwise exist. A test in which the clock were turned back could be run at this time to determine whether year 2000 concerns can be addressed in this manner.


Elwin Macomber

Sworn to before me this
10 day of December, 1998


Notary Public

LYNN R. COLLETTE, Notary Public
My Commission Expires March 19, 2002



STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to : Case 98-C-1079
Investigate New York Telephone Company's :
Proposal to Discontinue Offering Information :
Services :
:

Q. Please state your name and residence.

A. MICHAEL MARENICK. I am a resident of New Jersey.

Q. Please state the reason why you are submitting this testimony.

A. I am the sole shareholder in Marenick, Inc. ("Marenick"), an InfoFone telephone information provider ("IP") for the past 10 years. New York Telephone Company d/b/a Bell Atlantic - New York ("BA-NY" seeks to terminate its services to all InfoFone information providers, including Marenick. I submit this testimony in opposition to the application of BA-NY for the right to terminate its New York InfoFone service, including all New York telephone information service provided by Marenick.

- Q. What are the consequences to Marenick, if BA-NY terminates this service?
- A. If BA-NY terminates this service, Marenick will be forced to shut down its business and Marenick's numerous customers will be deprived of its service.

Q. Do 900 services offer a viable alternative to Marenick?

A. "900" services do not offer a viable alternative. The reasons for this, inter alia, are that "900" services are substantially higher priced, they are nationwide while Marenick's business is local, and Marenick's telephone number will be forfeited, and much or all of its goodwill lost, in any transfer to a "900" service. Moreover, many reputable businesses seeking zip code information would be unwilling to obtain this information by calling "900" numbers in view of the unsavory reputation of that service.

Q. Do you know of any competing local exchange carrier ("CLEC") or service bureau willing to provide this InfoFone service.

A. I know of no CLEC or service bureau that has offered to provide the InfoFone service.

Q. Has Marenick made recent expenditures to improve its service?

A. This past summer, Marenick invested a substantial sum in order to provide a more efficient service in the New York Metropolitan area. At no time prior to this expenditure did BA-NY advise Marenick or any of the other InfoFone IPs that it intended to discontinue the InfoFone service.

Q. Has Marenick experience any discrepancies with BA-NY's call counts?

A. Over the past few years, Marenick has experienced call count problems with BA-NY. These inaccurate counts have been as high as 20% of Marenick's call volume. When I complained of these problems, BA-NY representatives advised me that their machines went down but the problems were never rectified.

Conclusion

Based upon the foregoing and as set forth in testimony, BA-NY's request to withdraw its InfoFone tariffs should be denied, and BA-NY should be directed to compensate all IPs for inaccurate call counts, fix the call count irregularities, and file a tariff removing contribution from all the InfoFone services, including the InfoFone service to Marenick and the other 540 subscribers.


Michael Marenick

Sworn to before me this
9th day of December, 1998.


Notary Public

SARA F. MILLER
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES MAY 2, 2000

THOMAS

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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Proceeding on Motion of the Commission to : Case 98-C-1079
Investigate New York Telephone Company's :
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:

Prefiled Testimony of Jay Thomas

Q. Please state your name and residence.

A. Jay Thomas, a New York resident.

Q. Please identify your title and company name.

A. I am the Chairman of New Capital Resources, Inc. ("New Capital").

Q. How long have you been with New Capital?

A. I began New Capital three years ago. Prior to that, I was a Partner in Morrisania Development Company ("Morrisania").

Q. What business is New Capital engaged in?

A. New Capital operates several "540" lines which provide callers with information on business and employment opportunities. Recently, we have established a service providing callers with information on educational grants and funding for higher education.

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Q. How did you learn of IINS service?

A. When Morrisania first started, we provided our customers with an information booklet on employment opportunities through the mail. However that method of delivering our services was ineffective to both our customers seeking employment and employers seeking to fill vacancies.

Then I became aware of someone advertising apartments via "540" lines. I realized that this would be the perfect vehicle for our services.

Thereafter, we applied for and received designated lines on the IINS system. Immediately, we began using the "540" lines exclusively and abandoned distributing our information booklets through by the postal service.

Q. How did you market and advertise your services?

A. New Capital and Morrisania advertise their programming on cable TV and in major local newspapers including: Village Voice; New York Times; New York Daily News and Newsday. The target audience for our services are semi-skilled wage earners of cross cultural backgrounds in the age group of 18-50.

Q. What is your advertising budget?

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A. Presently our advertising budget comprises approximately one-third of our total revenue. In the past few years, this has grown from 20% of our revenue to its present level of one-third.

Q. Has your services experienced any reduction in call volume?

A. Yes, call volume has fallen as BA-NY has withdrawn advertising support for these services. In the past, BA-NY has supported "540" services with ad space in its annual Yellow Pages. This is no longer done and information providers like New Capital have experienced a reduction in call volume as a result.

Q. Has BA-NY taken any additional action which has caused call volume to have fallen?

A. One of the most troubling aspects of BA-NY behavior recently is that when new customers establish an account with BA-NY, their representatives ask if the customers would like a block on their phone for services like "900" services, usually free of charge. They fail to disclose to the customer that this block will preclude them from accessing any other informational providers over the IINS system. Over six months ago, I requested that a block be removed from my home telephone. To date, this block is

1
2 still in place; occasionally the block is not on, but
3 it always seems to be re-activated. This precludes me
4 from calling into my own services.
5

6 Q. Has your services resulted in employment for any of
7 your customers?

8 A. We have had numerous callers find employment through
9 our services. Actually, New Capital posts its own job
10 openings on its service. This has resulted in several
11 telemarketers finding employment with us through our
12 service.
13

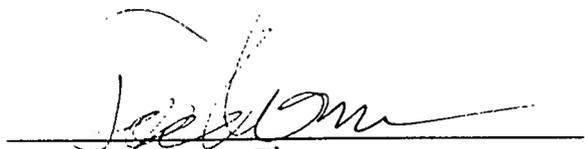
14 Q. How many employees does New Capital have?

15 A. It varies, we usually have at least four or five
16 regular employees, down from 8 12 some years ago.
17

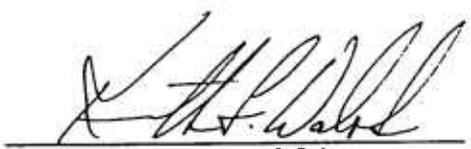
18 Q. What would happen to New Capital if BA-NY is successful
19 in terminating its INNS service?

20 A. New Capital Resources, Inc. would quickly go out of
21 business, creating at least four or five potential new
22 customers who would need our service, along with
23 countless other unemployed people in the metropolitan
24 area. Unfortunately, this valuable service would not
25 be available to them if BA-NY is successful.
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Jay Thomas

Sworn to before me this
10th day of December, 1998


Notary Public

KENNETH G. WALSH
Notary Public, State of New York
No. 02 WA-5011216
Qualified in Queens County
Commission Expires 04/12/99



STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to : Case 98-C-1079
Investigate New York Telephone Company's :
Proposal to Discontinue Offering Information :
Services :

Prefiled Testimony of Jay Thomas

Q. Please state your name and residence.

A. Jay Thomas, a New York resident.

Q. Please identify your title and company name.

A. I am the Chairman of New Capital Resources, Inc. ("New Capital").

Q. How long have you been with New Capital?

A. I began New Capital three years ago. Prior to that, I was a Partner in Morrisania Development Company ("Morrisania").

Q. What business is New Capital engaged in?

A. New Capital operates several "540" lines which provide callers with information on business and employment opportunities. Recently, we have established a service providing callers with information on educational grants and funding for higher education.

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Q. How did you learn of IINS service?

A. When Morrisania first started, we provided our customers with an information booklet on employment opportunities through the mail. However that method of delivering our services was ineffective to both our customers seeking employment and employers seeking to fill vacancies.

Then I became aware of someone advertising apartments via "540" lines. I realized that this would be the perfect vehicle for our services.

Thereafter, we applied for and received designated lines on the IINS system. Immediately, we began using the "540" lines exclusively and abandoned distributing our information booklets through by the postal service.

Q. How did you market and advertise your services?

A. New Capital and Morrisania advertise their programming on cable TV and in major local newspapers including: Village Voice; New York Times; New York Daily News and Newsday. The target audience for our services are semi-skilled wage earners of cross cultural backgrounds in the age group of 18-50.

Q. What is your advertising budget?

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A. Presently our advertising budget comprises approximately one-third of our total revenue. In the past few years, this has grown from 20% of our revenue to its present level of one-third.

Q. Has your services experienced any reduction in call volume?

A. Yes, call volume has fallen as BA-NY has withdrawn advertising support for these services. In the past, BA-NY has supported "540" services with ad space in its annual Yellow Pages. This is no longer done and information providers like New Capital have experienced a reduction in call volume as a result.

Q. Has BA-NY taken any additional action which has caused call volume to have fallen?

A. One of the most troubling aspects of BA-NY behavior recently is that when new customers establish an account with BA-NY, their representatives ask if the customers would like a block on their phone for services like "900" services, usually free of charge. They fail to disclose to the customer that this block will preclude them from accessing any other informational providers over the IINS system. Over six months ago, I requested that a block be removed from my home telephone. To date, this block is

1
2 still in place; occasionally the block is not on, but
3 it always seems to be re-activated. This precludes me
4 from calling into my own services.
5

6 Q. Has your services resulted in employment for any of
7 your customers?

8 A. We have had numerous callers find employment through
9 our services. Actually, New Capital posts its own job
10 openings on its service. This has resulted in several
11 telemarketers finding employment with us through our
12 service.
13

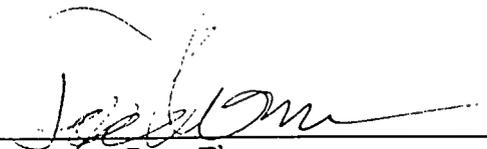
14 Q. How many employees does New Capital have?

15 A. It varies, we usually have at least four or five
16 regular employees, down from 8 12 some years ago.
17

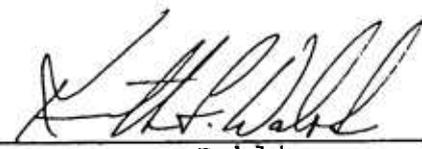
18 Q. What would happen to New Capital if BA-NY is successful
19 in terminating its INNS service?

20 A. New Capital Resources, Inc. would quickly go out of
21 business, creating at least four or five potential new
22 customers who would need our service, along with
23 countless other unemployed people in the metropolitan
24 area. Unfortunately, this valuable service would not
25 be available to them if BA-NY is successful.
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Jay Thomas

Sworn to before me this
10th day of December, 1998


Notary Public

KENNETH G. WALSH
Notary Public, State of New York
No. 02 WA-5011216
Qualified in Queens County
Commission Expires 04/12/99



Oziel

1
2 STATE OF NEW YORK
3 PUBLIC SERVICE COMMISSION
4

5 Proceeding on Motion of the Commission to :
6 Investigate New York Telephone Company's : Case 98-C-1079
7 Proposal to Discontinue Offering Information :
8 Services :
9

10 Q. Please state your name and residence?
11

12 A. Oliver Oziel, and resident of New York.
13

14 Q. State your present occupation?
15

16 A. I am a information provider subscribing to New York
17 Telephone Company d/b/a Bell Atlantic - New York's ("BA-NY")
18 540 IINS interactive InfoFone telephone service.
19

20 Q. What is the purpose of your testimony?
21

22 A. I submit this testimony in opposition to BA-NY's
23 application to withdraw its InfoFone tariffs, including its
24 InfoFone 540 tariff.
25

26 Q. How did you become interested in IINS services?
27

28 A. Until recently, I was a real estate broker who became
interested in the "900" service, which was the only
telephone information service that I knew of. I spoke with
a service bureau in or about January 1997 who told me about
problems with the "900" services. In connection with my

1
2 consideration, I learned about such problems as the high
3 costs of the "900" service, the need for national
4 advertising for that service, and the benefits of BA-NY's
5 low cost IINS service.
6

7 Q. When did you become an information provider?

8 A. I received an IINS application in February
9 1998 and, shortly thereafter, subscribed to one 540 number
10 with four lines, borrowed money for advertising, space and
11 equipment, and started in business, providing an information
12 line on job opportunities.
13

14 Q. Was your service well received; and if so, what steps
15 did you take for future growths?

16 A. My service started doing well and, before BA-NY
17 announced the termination of its InfoFone in the summer of
18 1998, I gave notice to my employer that I was quitting. It
19 was my intention to devote all my time to developing this
20 telephone information program business. In furtherance of
21 that, shortly after, I subscribed to a second IINS 540 line
22 which would provide job opportunities to callers.
23

24 Q. Generally, what has been your experience with BA-NY?

25 A. I was impressed with the efficiency of BA-NY's
26 employees and service; everyone I spoke with was helpful.
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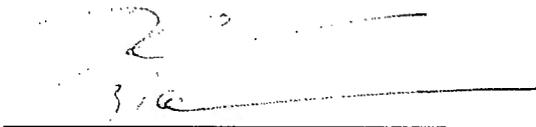
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Q. If this service is not terminated, what future plans do you have for IINS service?

A. I am pleased with the programs that I have and am ready to launch 3-4 other programs as soon as I know the programs will not be terminated. I will not start any new programs until I know that BA-NY can continue to provide its InfoFone service.

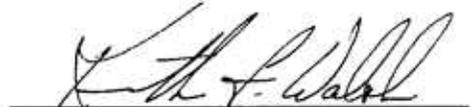
CONCLUSION

In view of the foregoing, I request that the Commission deny BA-NY's application to terminate its InfoFone service and tariffs.



Oliver Oziel

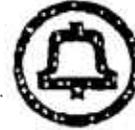
Sworn to before me this
10th day of December, 1998



Notary Public

KENNETH G. WALSH
Notary Public, State of New York
No. 02 WA-5011216
Qualified in Queens County
Commission Expires 04/12/99





New York Telephone

A NYNEX Company

1095 Avenue of the Americas
New York, New York 10036
Phone (212) 395-2469

Amy D. Kenengiser
Attorney
Legal Department

February 12, 1996

EXPRESS MAIL OR HAND DELIVERY

Honorable Frank S. Robinson
Administrative Law Judge
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Cases 93-C-0451 and 91-C-1249: Direct Presentation of New York Telephone Company

Dear Judge Robinson:

Pursuant to the Procedural Ruling Issued November 28, 1995, New York Telephone Company ("NYT") herein submits its direct presentation. In its direct presentation, NYT addresses the following issues:

Issue 1. Call Counts: NYT submits evidence concerning the recent call count test, its results, and the conclusions to be drawn.

Issue 3. Number Portability: Whether, assuming its technical feasibility, number portability should be permitted for 976 numbers.

Issue 4. Inter-company compensation: The arrangement that will apply in the case of a competing local exchange carrier handling a 976 call.

Issue 10. Number reservation procedure.

Issue 11. Procedures to be followed with respect to NYT's receipt of proprietary information from 976 providers.

Issue 12. Competition from NYNEX: NYT's plans and/or its intentions to offer services, either directly or through affiliates, that would tend to compete against 976 providers.

NYT will provide responsive presentations to those remaining issues not addressed in our direct presentation. Additionally, our responsive presentations will address matters raised by the other parties in their direct presentations.

Respectfully submitted,



Amy D. Kanengiser

Attachment

cc: Honorable John C. Crary (5 copies)
All parties

: =

The PSC took a leadership role in the number portability process when it directed a trial of service provider number portability in September, 1995.¹³ The trial is underway to examine the interconnection and operational issues associated with a database type of solution for service provider number portability. Recently, the Commission endorsed Location Routing Number as a long term solution for service provider number portability.¹⁴

The long term solution for number portability will require all local exchange service providers to deploy the necessary software modifications and common channel signaling in each of their respective central office switches. Interexchange carriers will also have to modify their switches and signaling in a similar fashion. The deployment of a number portability database and the associated operations support systems also need to be developed and implemented. Once all these modifications and network upgrades are deployed, long term number portability should become an operational reality.

At this juncture, NYT believes that the implementation of a long term number portability solution should enable 976 IPs to be served by other local exchange service providers. However, the ability of 976 IPs to be served by more

¹³ See Case 94-C-0095, Order Authorizing Trials of Service Provider Number Portability in Manhattan and Rochester (Issued September 25, 1995). This trial will not involve actual customers.

¹⁴ See 94-C-0095, January 4, 1996 Memorandum to the Commission from the Communications Division, Approved and So Ordered (Issued January 23, 1996).

than one local exchange carrier raises a host of market and public policy issues which, at this stage, NYT can only partially anticipate. For example, in New York State, 976 service is defined by NYT's tariff as a fixed length, fixed charged service. It has existed as a broadcast service for over twenty years. When 976 IPs can be served by competing local exchange carriers, will these other local exchange service providers maintain 976 as a broadcast service? Will their rates be comparable or different than NYT's tariffed charges? Will all 976 calls continue to be fixed length with fixed charges? Perhaps most critically, each new local exchange carrier that would be a candidate for 976 number portability would have to install a switch comparable to or at least compatible with the existing IMAS technology. To date, there is no indication of such commitments.

If uniformity or at least compatibility among all local exchange carriers offering 976 service is not required, customer confusion is sure to follow, and the integrity of 976 service as a low price, broadcast service could be lost. Moreover, 976 providers are just one set of customers to be considered in the development and deployment of a long term number portability solution. Accordingly, number portability for 976 service should be considered only in connection with the full deployment of long term number portability for all local exchange service providers. Addressing the issue in this proceeding at this time, with only NYT and not the other local exchange service providers, is unlikely to produce a coherent result that can be implemented.

ISSUE 4:
Intercompany Compensation

The parties were asked to address the arrangement that will apply in the case of a competitive local exchange carrier ("CLEC") handling a 976 call. That arrangement exists today. Since June 30, 1994, NYT has had in place an intercompany compensation arrangement to compensate a CLEC which delivers 976 calls to the NYT network.

Initially, intercompany compensation for 976 calls was the subject of interim agreements between NYT and each of three CLECs.¹⁵ Each of the three CLECs operating in the metroLATA approached NYT and requested interconnection agreements for the exchange of local and intraLATA toll traffic. These requests resulted in negotiations between NYT and the CLECs. The intercompany compensation negotiations included compensation for 976 calls. These interim agreements were superseded by the Commission Order wherein NYT was directed to file a tariff for these arrangements. NYT filed its PSC Tariff No. 914 effective October 20, 1995.¹⁶

¹⁵ These three CLECs -- Teleport Communications Group, Metropolitan Fiber Systems, and Cablevision Lightpath -- are the only three CLECs operating in the metroLATA today.

¹⁶ The rates effective in this tariff are temporary pursuant to Commission Order. See Case 94-C-0095, Order Instituting Framework for Directory Listings, Carrier Interconnection and Intercarrier Compensation (Issued September 27, 1995).

The intercompany compensation rate for the termination of intraLATA local exchange traffic is tariffed at approximately \$0.01 per minute of terminating access.¹⁷ The originating carrier bills its customer for the call at its established rate and pays the terminating carrier a local exchange access rate of approximately \$0.01 per minute. This reciprocal compensation arrangement between local exchange carriers is designed to compensate each carrier for the use of its facilities in the process of terminating a competing local exchange carrier's call.

However, the parties negotiated and the tariff contains a different arrangement for 976 traffic originating on a CLEC's network and terminating on NYT's network. NYT agreed to waive the terminating access charge of approximately \$0.01 per minute as negotiated for other types of calls and agreed that it would pay the CLEC \$0.02 for each 976 call. NYT agreed to this innovative approach for the termination of 976 traffic as an incentive for local exchange carriers to deliver 976 traffic to our network.

The 914 tariff reads in pertinent part:¹⁸

When the CLEC delivers calls to telephone numbers with the NXX designation of 976 or 394, the CLEC shall bill and collect the applicable rate set forth in the P.S.C. No. 900 tariff from its end users, retaining \$0.02

¹⁷ The tariffed day rate is \$.0098 per access minute. The tariffed evening rate is \$.0073 and the night rate \$.0029. One CLEC operates under an alternative compensation arrangement that is a flat monthly charge, which is also provided under the 914 Tariff.

¹⁸ See 914 Tariff, 1st Revised Page 37.

per call and remitting the remainder to the Telephone Company, unless the CLEC obtains tariff approval from the NYPSC specifically permitting the CLEC to charge its end users a rate different than the rate set forth in the P.S.C. No. 900 Tariff for these services.

The applicable rate in the NYT's 900 tariff for each 976 call is \$0.40. Under the 914 tariff, each CLEC is to remit to NYT \$0.38 for each 976 call it delivers to NYT. Out of this \$0.38, the respective IP is to receive \$0.20 per call.

In addition to the tariffed \$0.02 per call for delivering 976 calls to NYT's network, each CLEC will receive an additional \$0.0115 per billing record provided to NYT. When combined with the waiver by NYT of the terminating access charge of approximately \$0.01 per minute, a CLEC recognizes approximately \$0.04 per 976 call terminated on NYT's network.¹⁹

ISSUE 10:
Number Reservation Procedure

From time to time, IPs request the reservation of a particular 976 number significantly in advance of the time they wish to initiate service. As with 976 and other telephone numbers, customers -- including IPs -- may request specific numbers for their ease of dialing or their mnemonic value.

To satisfy requests for specific customer-requested telephone numbers, NYT provides Gold Number Service which it offers pursuant to tariff. See

¹⁹ The CLEC only provides originating access and billing and collection to its customers.

Attachment 3. This tariff governs the availability, terms, conditions, and the rates for this service. NYT proposes that this tariff afford the means by which 976 IPs reserve 976 numbers. It is already the vehicle by which all IPs -- other than 976 IPs -- reserve specific telephone numbers.

ISSUE 11:
Receipt of IP Proprietary Information

From the record of the November 20, 1995 conference, it is not altogether clear what new or special concerns the IPs may have with respect to the handling of what they may wish to define as their "proprietary information." First, NYT already is governed by the applicable CPNI rules and, to the extent they are germane, the Commission's Privacy Principles. We know of no supportable allegations where those strictures have been compromised with respect to any of the IPs. Second, except for the CPNI NYT obtains through its provision of 976 service (for example, individual IP program call count data), NYT does not want and will refuse to accept any information which an IP claims to be proprietary. We have seen no showing why our receipt of such information is necessary to our role in providing tariffed services. Moreover, given the contentious history of our relationship with some of the IPs, we see no reason to create opportunities for more conflict.

ISSUE 12:
Competition from NYNEX/NYT

Throughout this proceeding, the IPs have asked repeated questions about NYNEX' intentions to enter other businesses that are directly competitive or at

least arguably cross elastic with IP provision of 976 messages. There is no need to pursue these issues here. Any quick scan of the public media will reveal the momentous changes going on in the telecommunications, entertainment, and information services industries. Legislative reform and regulatory changes have opened up immense new market opportunities. Consistent with all of our obligations as a common carrier and in strict compliance with all applicable laws, rules, and regulations, NYNEX intends to be a full participant in these opportunities.

Thus, without disclosing proprietary plans which may from time to time be developed and changed, it is safe to assume that in one form or another NYNEX will offer services that compete with the IP's 976 messages. This may occur directly or through various other types of offerings such as video information that would be cross elastic with IP messages. NYNEX may choose to enter such businesses directly, or through various equity interests, joint ventures, partnerships or other alliances.

None of this, however, should have any bearing on this proceeding. The circumstance where one entity is, at the same time, a supplier, customer, and competitor to another is seen all across the telecommunications arena and laws, rules, and regulations are already in place to ensure full and fair competitive opportunities.

In the area of information services, rules prescribe an open network architecture (ONA) plan and provide accounting rules to avoid any opportunity for cross-subsidy. Network disclosure rules prevent carrier affiliates from having a

headstart in accommodating carrier network changes and regulations governing Customer Proprietary Network Information (CPNI) safeguard market data. In addition, service levels on provisioning and maintenance are reported to ensure equal treatment.

To the extent competition may be affected by the activities of NYT, all service offerings are governed by tariff and regulatory law and rules provide for full public notice and comment opportunities. Under NYT's Performance Regulation Plan ("PRP"), all NYT new services must satisfy a minimum price level that requires NYT to impute certain tariff rates when the new service includes a bottleneck element.²⁰ The PRP also provides that the Commission may suspend a new service tariff "if there is a reasonable potential for anticompetitive effect and a finding that implementation of the new service as filed would result in significant financial or irreparable harm to competitors."²¹ Accordingly, the Commission has adequate safeguards already in place to prevent alleged anticompetitive actions by NYT.

Because of the plethora of FCC and PSC rules and the cost of compliance and reporting, it may be fair to say that any further NYNEX and NYT entries into competitive markets are disadvantaged, not favored. In any event, given the attention this issue has received from regulators and the full panoply of existing

²⁰ See PRP § IV(H)(4).

²¹ See PRP § IV(H)(6).

and developing safeguards, no additional requirements are presented with respect to 976 IP offerings.

LOAD BOX TEST

Month (1994)	IMAS Call Volumes	AMA Call Volumes	Difference
October	641,532	641,438	94
November	641,645	641,573	72
December	619,990	619,892	98
Total	1,903,167	1,902,903	264

NYT will provide responsive presentations to those remaining issues not addressed in our direct presentation. Additionally, our responsive presentations will address matters raised by the other parties in their direct presentations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Amy D. Kanengiser", with a long, sweeping horizontal stroke extending to the right.

Amy D. Kanengiser

Attachment

cc: Honorable John C. Crary (5 copies)

All parties



SUPREME COURT
COUNTY OF ALBANY

STATE OF NEW YORK

In the Matter of

NEW YORK TELEPHONE COMPANY,
Petitioner,

For a Judgment Pursuant to
Article 78 of the Civil
Practice Law and Rules

Index: 5655-97
RJI: 0197-ST8129

-against-

PUBLIC SERVICE COMMISSION OF
THE STATE OF NEW YORK, PHONE
PROGRAMS, INC., ACCURATE INFO LTD.,
STATISTICAL PHONE PHILLY,
8484 ASSOCIATES, 3232 ASSOCIATES,
ERIC SINGLETON D/B/A "PHONE SERVICE",
ANTHONY COLANGELO, BLACK RADIO
NETWORK, INC., and NEWS TRANSMISSION
SERVICE, INC.,

Respondents,

In the Matter of

BLACK RADIO NETWORK, INC. and
NEWS TRANSMISSION SERVICES, INC.,
Petitioners,

Index: 5949-97
RJI: 0197-ST8167

-against-

PUBLIC SERVICE COMMISSION OF
THE STATE OF NEW YORK and
NEW YORK TELEPHONE COMPANY,
Respondents.

(Second Action)

In the Matter of
ARTHUR EVANS, pro se, and
ARTHUR EVANS, AS A MEMBER OF THE
AD HOC COMMITTEE OF INDEPENDENT
INFORMATION PROVIDERS and ARTHUR EVANS,
AS REPRESENTATIVE OF THE AD HOC
COMMITTEE OF INDEPENDENT INFORMATION
PROVIDERS, pursuant to Section 2.1,
Chapter I, of the Rules of the Public
Service Commission, and the AD HOC
COMMITTEE OF INDEPENDENT INFORMATION
PROVIDERS,

Petitioners,

Index: 6019-97
RJI: 0197-ST8179

-against-

PUBLIC SERVICE COMMISSION OF THE
STATE OF NEW YORK and
NYNEX CORPORATION, NEW YORK TELEPHONE
COMPANY, also known as Bell Atlantic,
Respondents.

Supreme Court Albany County Article 78 Term
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding

Appearances: Davis, Polk & Wardwell, Esqs.
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New York, New York 10025

DECISION/ORDER

George B. Ceresia, Jr., Justice:

At issue in these three combined CPLR Article 78 proceedings is a May 29, 1997 determination of the Public Service Commission ("PSC") concerning New York Telephone's ("NY Tel") Mass Announcement Services ("MAS"), a service utilized by many different Information Providers ("IP's") to offer to the public recorded information messages accessed by calling the specific "976" number assigned to the IP (see, PSC Opn. No. 97-7). The "976" recorded messages of approximately one minute's duration offer information regarding weather, time, financial news, horoscopes, lottery results, sports and entertainment, inter alia. Calls to "976" exchanges incur a fixed charge (.40¢ at the time of the determination), and the per-call revenues are collected by NY Tel and divided equally between NY Tel and the IP called, pursuant to the governing tariff filed with the PSC. NY Tel is required to provide billing and collection services to the

IP's for "976" calls, and to tabulate call volumes or counts for each IP. These numbers provide the basis for NY Tel's tariff-based obligation to pay the IP's for each completed call billed and collected.

From 1984 to 1990, NY Tel used a system called Autrax or Audiochron to tabulate the "976" call volumes for purposes of paying the IP's. The Autrax System experienced call counting errors on a regular basis, requiring NY Tel employees to manually "adjust" the call counts. In 1990, NY Tel transferred or "cut-over" the "976" calls to the Ericsson Switch to tabulate "976" calls. The cutover was attended by a variety of problems. For clarification, the original system is referred to as the pre-cutover Autrax System, and the replacement system is called the Ericsson post-cutover system.

After the cutover to the Ericsson Switch, various IP's complained to the PSC that the new switch was not completing or counting all calls with the result that their call counts dropped significantly from their pre-cutover call counts, causing them to lose revenues and business. They sought compensation from NY Tel in amounts which ranged up to \$15.6 million for these claimed losses. The IP's also raised many other complaints concerning "976" service, including dissatisfaction with compensation levels and allocation of revenues, system reliability and shortcomings, and inaccuracies in call counting. The IP's suggested alternatives to enable them to offer their services more competitively in view of emerging competition from other types of

information providers. Many of the IPs' concerns were addressed by NY Tel or by prior PSC proceedings, but many more remained to be resolved.

By Order Instituting Proceeding (May 29, 1993), the PSC commenced an omnibus proceeding to address in a single consolidated proceeding all issues not already resolved relating to "976" MAS Service including rates, charges, rules and regulations. Interested members of the industry were invited to participate, and were encouraged to develop alternative approaches and mutually acceptable resolutions of the issues. By Opinion and Order Concerning MAS, the PSC approved in part a Joint Proposal filed by NY Tel and 12 IP's to resolve many of the issues in contention (see, PSC Opn. No. 94-14-Opinion and Order Concerning MAS [6-1-94], on reconsideration, modified in part by PSC Opn. 95-10 [8-2-95]). Pursuant to the Administrative Law Judge's subsequent Procedural Ruling, MAS-related issues not resolved by the approved Joint Proposal were to be addressed in Phase II of these proceedings. Extensive hearings and motion practice were conducted during 1996 in Phase II resulting in a record of over 5000 pages and 175 exhibits. During the hearings, as the evidence and testimony developed, the scope of the inquiry expanded considerably from the harm the IP's claimed due to NY Tel's misconduct related to the cutover to the Ericsson Switch and NY Tel's liability therefor, to include NY Tel's recently revealed conduct in manually adjusting the erroneous pre-cutover Autrax call counts and concealment of these adjustments, and the

IPs' entitlement to compensation for Autrax call counting problems.

The Administrative Law Judge issued a comprehensive recommended Decision ("RD") of 189 pages on January 17, 1997. As pertinent to this special proceeding and detailed infra, the Administrative Law Judge found that NY Tel had been grossly negligent and had engaged in willful misconduct in connection with the September 1990 installation and cutover to the new Ericsson Switch used to provide "976" service to the IP's. The mishandling of the cutover caused the IP's to lose a large volume of calls and, consequently, customers. While recognizing that the PSC has no authority to award conventional negligence damages and that NY Tel's liability to the IP's under the governing tariff is limited in a court action to gross negligence/willful misconduct, the Administrative Law Judge recommended that IP's be awarded "refunds" from NY Tel totaling \$25.2 million, which took into consideration the harm suffered by the IP's due to NY Tel's defective service. The Administrative Law Judge determined that the Ericsson Switch was not a suitable vehicle for counting "976" calls and set forth a new call counting procedure for NY Tel to follow until the switch was properly replaced.

The Administrative Law Judge rejected all claims by two IP's (Black Radio News ["BRN"] and Ad Hoc Committee of Independent Information Providers ["Ad Hoc"--an IP trade group]) for compensation based upon the pre-cutover Autrax call count errors and manual adjustments of those counts, finding they had not

demonstrated entitlement to be compensated further based upon unadjusted Autrax raw call count date. The Administrative Law Judge then made a variety of recommendations for prospective changes in the manner in which "976" service is provided to the IP's. These included requiring that NY Tel unbundle the various cost elements of "976" service, and requiring that NY Tel establish the charge for each of these elements on a cost basis without any "contribution" or subsidy factor. In the past, NY Tel had retained as a "contribution" or subsidy increment from the "976" per-call revenues, causing "976" providers to subsidize basic local service. Increased competition from alternate information providers such as NYNEX Information Resource Company ("NIRC") which did not provide any such contribution required leveling the playing field and eliminating the contribution element altogether from "976" pricing and revenue allocation.

The Administrative Law Judge also recommended that the voluntary call blocking options available to customers be modified so that customers could separately block more controversial, adult entertainment services without also requiring that they block the "976" information services as they were forced to do under the existing blocking options. Additionally, the Administrative Law Judge recommended modification of existing protocols for involuntarily blocking

¹Unbundling merely means separating "976" service into its component parts and allowing competitors to provide these services to the IP's, e.g. billing and collecting, call processing, advertising, accounting, bill formatting.

calls invoked when customers fail to pay their telephone bills in full -- to the extent that the protocols lump "976" calls in a billing category with all other non-NY Tel pay-per-call services. Under the existing protocol, "976" service may be blocked for a customers who fail to pay in full their bill for calls other than "976" service. Exceptions were taken to that Recommended Decision.

The PSC essentially adopted the findings and recommendations of the Administrative Law Judge with a few exceptions, as relevant herein (see, PSC Opn. No. 97-7 [5-29-97]). The PSC agreed with the Administrative Law Judge's finding concerning NY Tel's conduct both before and after the cutover, and with the conclusion that NY Tel committed gross negligence and engaged in deliberate misconduct in connection with the 1990 transfer of "976" service to the Ericsson Switch (id. at 8-9, n. 1, 15). However, the PSC concluded that the proposed "refund" remedy constituted an improper award of damages the agency lacked the authority to make because the only charges NY Tel collected was for completed "976" calls and not for any impaired service (id.²). The PSC agreed with the proposed prospective changes to "976" service, including unbundling and elimination of the contribution factor, but disagreed with the proposals to amend the voluntary call blocking options or the billing category protocols which result in involuntary blocking for payment

²Citing Case 28804.NY Tel (Autotas Service): PSC Opn. No. 86-3(2-28-86), PSC Opn. No. 86-3 (A)(5-6-86) and PSC Opn. No. 86-3(B)(8-28-87).

deficiencies (PSC Opn. No. 97-7, at pp. 12-13). The PSC directed NY Tel to implement its alternate proposal to improve the Ericsson Switch call counts as specified in its exceptions (id. at 14, 15 [§3]). On reconsideration, the PSC clarified its ruling regarding voluntary blocking and specified that it was adhering to its January 1996 determination that a fifth blocking option be prospectively offered.

NY Tel and several IP's thereafter instituted three separate article 78 proceedings challenging various aspects of the PSC's May 29, 1997 determination. These proceedings were consolidated by Order of October 24, 1997.

This single Opinion and Order will resolve all issues raised in these consolidated special proceedings.

I. The PSC's Gross Negligence/
Willful Misconduct Declaration

NY Tel's first cause of action alleges that the PSC's declaration that it was guilty of "gross negligence" and "willful misconduct" in connection with the Ericsson Switch cutover is in excess of the PSC's statutorily conferred jurisdiction, because this finding is relevant only to the issue of damages, i.e. NY Tel's liability to the IP's, which the PSC lacks the power to award. Thus, NY Tel contends the PSC lacks the authority to make a declaratory finding relevant solely to the issue of damages under the applicable tariff. The PSC refutes this contention

arguing that it has jurisdiction to make findings of fact on liability provisions in the tariffs it approves and supervises when such findings are made in connection with its statutory authority to regulate rates, terms and utility services.

Likewise, the IP's argue that the PSC finding on liability falls within its authorized powers to investigate complaints, assure safe and adequate service, oversee telephone utilities' conduct and operations, impose penalties and take corrective action, and issue related findings.

The court's initial analysis must focus on the context in which the gross negligence/willful misconduct issue was raised before the PSC and in which that finding was made by the Administrative Law Judge and PSC, and its relevance, if any, to issues other than damages. The PSC instituted this omnibus proceeding to address myriad complaints filed by IP's. These complaints generally related to dissatisfaction with compensation levels, alleged system shortcomings and inaccuracies in call counting. The PSC in its Order Instituting Proceedings directed the convening of interested members of the MAS industry "to consider the rates, charges, rules and regulations affecting the [MAS] portion of the information provisioning industry in New York Telephone's service territory". In the proceedings Phase I, NY Tel and 12 IP's negotiated a Joint Proposal resolving some points of contention, which was approved (see, PSC Opinion 94-

14'). Meanwhile, Phase II was commenced for consideration of MAS-related issues not covered by the Joint Proposal. Voluminous discovery, extensive hearings and motion practice ensued. The Administrative Law Judge issued a procedural ruling outlining the issues remaining for administrative resolution, and they included NY Tel's "liability, if any, to "976" providers due to its handling of the cutover to the Ericsson Switch", as well as the accuracy of past and current call counts. NY Tel's liability for damages arising from its errors, omissions, interruptions or delays in providing services to subscribers (IP's) was, of course, limited under the applicable tariff to "gross negligence" and "willful misconduct", aside from certain specified interruption allowances. In the Recommended Decision on Phase II, the Administrative Law Judge indicated that the "main issue" of Phase II was whether NY Tel has an "obligation to compensate" the IP's for call account errors after the cutover to the Ericsson Switch. The IP's raised three basic areas of misconduct: (1) ~~inaccuracy and deception by NY Tel in the pre-~~ cutover Autrax call counts; (2) NY Tel's gross negligence and misconduct in handling the Ericsson Switch cutover and cover-up, for which the IP's sought monetary compensation and (3) litigation abuses and fraudulent conduct by NY Tel in front of

⁴The petition for reconsideration was denied with clarifications (see, PSC Opinion 95-10 [8-2-95]).

⁵Only BRN and the Ad Hoc IP's put forth a claim for pre cutover call account errors, discussed infra.

the PSC. The Administrative Law Judge then reviewed the parties' claims and the hearing record regarding the pre and post cutover call account inaccuracies, NY Tel's related conduct, and its impact on the IP's. The parties agreed that under the governing tariff the threshold for NY Tel's liability is gross negligence and willful misconduct, but NY Tel maintained that any claim for damages must be brought in court as the PSC could not award damages. The IP's asserted that the PSC could, under the tariff, direct NY Tel to compensate them for their financial loss due to NY Tel's gross negligence or willful misconduct in failing to competently provide service under the tariff.

After reviewing the extensive record and the parties' contentions regarding the availability and propriety of any tariff-based remedy from the PSC, the Administrative Law Judge issued findings that NY Tel had been "guilty of gross negligence and willful misconduct", summarized as follows:

The company's long-term deception of both IP's and the Commission concerning its unauthorized Autrax call count adjustments was willful misconduct. The company was seriously negligent in pushing ahead with the Ericsson cutover in one gulp, rather than phasing it in, which would have enabled it to deal more efficaciously with the problems and avert serious harm to IP's. The unexpected troubles that did attend the cutover show that the company's planning for it was inadequate. Likewise inadequate was the company's handling of the troubles when they arose, further evidencing insufficient preparation. These basic elements of the cutover picture, taken together, constituted gross negligence. Furthermore, the company engaged in willful misconduct in striving to cover up its negligence and to defeat efforts to call it to account. This extended to willful misconduct in the company's litigation of this proceeding. I also conclude that the IP's were in fact harmed by the

improper, deceitful and grossly negligent way in which New York Telephone provided service to them.(emphasis added).

Thereafter, the Administrative Law Judge made detailed findings on the "main issue", and addressed itself to the AuTrax call counts, the cutover and current call count accuracy, concluding the Ericsson Switch "is not a suitable vehicle for counting 976 calls for purposes of payments to IP's". The Administrative Law Judge imposed upon NY Tel the obligation to adopt the IP-proposed alternative or to propose one itself, and to notify the IP's each time that mechanically derived call counts are unavailable or corrupted and to set forth the details of any adjustments made. This burden was imposed by the Administrative Law Judge on NY Tel in light of the record in these proceedings demonstrating its "long pattern of deceptive behavior*** with respect to IP call counts", indicating this burden could be removed if NY Tel timely replaced the Ericsson Switch with one which more accurately counts 976 calls. The Administrative Law Judge ultimately determined to order "refunds" to the IP's, an "equitable remedy", recognizing the PSC could not award conventional negligence damages. The Administrative Law Judge then addressed the remaining issues.

The PSC agreed with and adopted the findings and conclusions of gross negligence and willful misconduct concerning NY Tel's conduct in connection with the cutover to the Ericsson Switch, finding the Administrative Law Judge's outline of the evidence of

NY Tel's gross negligence/willful misconduct "with only very limited exceptions" accurately reflected what happened, both before and after the cutover, and fairly assigns responsibility for the post-cutover operating problems suffered by the IP's" (PSC Opinion No. 97-7). Nonetheless, the PSC concluded that the proposed "refunds" to IP's amounted to an improper award of damages (id. at 9-10). As relevant to this special proceeding, the PSC agreed with several recommendations for prospective changes to "976" service and approved NY Tel's proposed alternative to the Ericsson Switch (id. at pp 12-14 and 15 §3).

The issue raised by NY Tel which befalls this court in this special proceeding is whether the PSC declaration of gross negligence/willful misconduct is in excess of that agency's jurisdiction and power. This raises two issues: whether the declaration relates solely to the issue of NY Tel's liability to the IP's's under the tariff for harm suffered from the call count errors and, if so, whether the PSC has the authority to issue a declaration on tariff-based liability (i.e. finding NY Tel was grossly negligent and engaged in willful misconduct) even though the PSC is not authorized to award monetary damages which the IP's must pursue in a court action. The second issue appears to be a novel one in this State as the parties have not cited (and the court has not discovered) any case in which a court has spoken to the PSC's jurisdiction to issue such a declaration. To clarify, the parties concede the PSC's lack of power to award monetary damages or even refunds in this case.

The PSC, it is well established, possesses only those powers expressly delegated to it by the Legislature, or incidental to its expressed powers, together with those required by necessary implication to enable it to fulfill its statutory mandate (Matter of Niagara Mohawk, 69 NY2d 365, 368-9). Aside from its mandate to assure just and reasonable rates and adequate service (Public Service Law §91), the PSC also has general supervisory power over telephone lines and corporations within its jurisdiction (PSL §94) and has broad investigative and oversight authority to do so (PSL §§95-98). In determining whether the PSC has acted outside the scope of its legislatively conferred power, the courts of this State have engaged in "a realistic appraisal of the particular situation to determine whether the administrative action reasonably promotes or transgresses the pronounced legislative judgment" (Matter Consolidated Edison v. PSC, 47 NY2d 94, 102; Matter of Niagara Mohawk, supra, at 372).

As this court reads the PSC Opinion 97-7 and the Administrative Law Judge's Recommended Decision, the findings of NY Tel's gross negligence and willful misconduct do not relate solely to the issue of NY Tel's liability for damages to the IP's. A "realistic appraisal" of PSC's declaration is that it was properly made in the context of its power to review and investigate complaints regarding a regulated utility's service, conduct and tariff-based charges, as well as its general oversight and regulation of this telephone "976" service sub-industry. The declaration is inseparable from numerous

prospective and remedial measures related to "976" service which the PSC adopted, not the least of which are (1) foremost, the determination that the Ericsson Switch is not viable and requires switching to an alternative counting system and notification to IP's of each system failure until then (PSC Opn. NO. 97-7 at 12-14, 15 at §3); and (2) by way of example, the unbundling and unfair competition declarations (id. at 12-13, 15 at §4).

Further, the declaration explicitly concerns the responsibility for post-cutover operating problems suffered by the IP's" (emphasis added) (id. at p. 10, note 10). The findings resolved the IP complaints levied against NY Tel at which the hearings were directed and channeled the agency's oversight and prospective regulation of this entire "976" service industry (see, SAPA §204). It was also relevant to the issue of NY Tel's credibility.

Thus, the court concludes that the PSC's gross negligence/willful misconduct declaration challenged by NY Tel (PSC Opn. No. 97-7 at p. 15 §1) does not, in fact, relate solely to NY Tel's liability to the IP's for damages due to the cutover problems and call count inaccuracies or coverup. Accordingly, the request to annul that declaration as in excess of the PSC's jurisdiction and authority is denied and NY Tel's first cause of action is dismissed.

Having concluded that the PSC has authority to issue the declaration -- and in fact issued the declaration -- on an issue other than NY Tel's liability for damages, this court has no

then proceeded to detail NY Tel's inadequate planning for the cutover, the mistakes made in executing the cutover, NY Tel's failure to respond adequately to the service problems or to notify the IP's; and NY Tel's disregard for the consequences of its handling of the cutover. NY Tel did not possess "any concern" for the consequences of its conduct and engaged in willful misconduct in endeavoring to cover up the problems and avoid responsibility.

Read as a whole, the Administrative Law Judge's decision properly employed the governing legal standard for gross negligence/willful misconduct, i.e. "conduct that evinces a reckless disregard for the rights of others or 'smacks' of intentional wrongdoing" (Colnaghi, USA Ltd. v. Jewelers Prot. Servs., Ltd., 81 NY2d 821, 823-824; Sommer v. Federal Sign Corp., 79 NY2d 540, 554-555). The PSC's finding did not improperly rest on a mere series of mistakes by NY Tel or on its simple negligence (cf. AT & T v. City of NY, 83 F3d 549, 556 [2d Cir. 1996]), and did not focus on the harm to the IP's, although this was considered. While the Administrative Law Judge found that NY Tel had engaged in "some" planning and corrective action -- although wholly inadequate and with "disregard for the consequences of its errors"-- this did not compel a finding that NY Tel engaged in "slight care" or "slight diligence" (see, Food Pageant v. Consolidated Edison, 54 NY2d 167, 172).

The Administrative Law Judge noted the unique problems and potential for harm inherent in the "976" service industry was not

tantamount to imposing a "heightened standard of care" on NY Tel, but rather must be read in the context of the evaluation of the adequacy of NY Tel's planning and the reasonableness of its response. Finally, the court has no difficulty in concluding, upon a review of the pertinent portions of the hearing record and the Administrative Law Judge's detailed and extensive factual findings as adopted by the PSC, that the finding of gross negligence/willful misconduct had an ample factual basis, is supported by the record and should be confirmed.

II. Elimination of Contribution from NY Tel's "976" Service Charges to IP's

Historically, the tariff-based pricing structure for "976" calls included a "contribution" component, i.e. a charge above costs and profit to help subsidize NY Tel's basic local telephone service. Thus, a portion of the fixed per-call price paid by the caller for each "976" call to an IP's recorded message (40 cents at the time of the proceeding) was a "contribution" to basic local telephone service unrelated to the cost of the "976" call or to a rate of return to the IP's (currently 20 cents per call) or to NY Tel. NY Tel's second cause of action claims that it did not have notice or an opportunity to be heard prior to the PSC's direction to NY Tel that contribution be eliminated from the tariff rates for "976" service, and that the PSC's determination on this issue was arbitrary and capricious and without record

RECORD

<u>IP-BA-NY-34</u>	For each year since 1988, specify total BA-NY expenditures for advertising for any or all InfoFone services. Annex all documents relevant to this request for information.
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RESPONSE:

BA-NY objects to this interrogatory on the grounds that it is argumentative, neither relevant nor reasonably calculated to seek information likely to lead to the discovery of admissible evidence, and is not "tailored to the particular proceedings and commensurate with the importance of the issues to which they relate" 16 N.Y.C.R.R. § 5.8(a). BA-NY also objects on the grounds that this interrogatory is overly broad and burdensome. BA-NY further objects to this interrogatory on the grounds that it is not required to develop information or prepare a study.

Notwithstanding these objections, the following are the expenditures on advertising for InfoFone services between 1995-1997:

1995 - \$211,103
1996 - \$140,480
1997 - \$10,574

BA-NY does not have a record of its advertising expenditures for InfoFone services from earlier years. The company will supplement this response to the extent that any further information is located.



EXHIBIT E
RATES AND CHARGES

New York

NYT's rates and charges for Billing and Collection Services are as follows:

- (1) Price per Bill \$.01
- (2) Price per Message Billed \$.30 for each message
- (3) Manual Adjustment Charge \$10.00
- (4) Marketing Message \$.045
- (5) Pay-Per-Call Advisory Message \$.03
- (6) Minimum Charges:

<u>Annual Minimum</u>	<u>Monthly Minimum</u>
\$55,994.40	\$4,666.20
- (7) Start Up Fee \$25,000

Each of these charges are explained in further detail below.

A. Application of Rates to Intrastate and Interstate Services

Provided that interstate messages comprise at least 75% of Client's message volume, the rates and charges set forth above will be used to determine the total amount due for both Intrastate and Interstate Billing and Collection Services. The intrastate portion of this total will be determined by applying the rates and charges contained in the applicable NYT tariff(s) to the intrastate bill and message volumes. The interstate portion is the remainder after subtracting the intrastate portion from the total. If the number of interstate messages is less than 75% of Client's message volume, then the above rates and charges (excluding the Minimum Charges) shall only apply to Interstate Billing and Collection Services and Intrastate Billing and Collection Services shall be provided to Client in accordance with the rates and charges set forth in the applicable NYT tariff(s), unless otherwise agreed to by NYT.

B. Adjustments to Rates and Charges

In the event that, during the term of this Agreement, the costs assigned to Billing and Collection Services under Part 69 of the Federal Communication Commission's Rules are changed as a result of: (1) a change in the FCC's accounting, separations or access charge rules; (2) a change in federal, state or local tax laws; or (3) any order or change in a rule or regulation of any Court or federal, state, or local governmental agency having jurisdiction, and the increase or decrease is more than \$500,000, determined cumulatively on an annual basis for both NYT and New England Telephone and Telegraph Company combined (the "NYNEX Telephone Companies" or "NTCs"), a surcharge or surcredit may be applied by NYT to the rates set forth herein. The surcharge or surcredit which may be applied to Client: (1) shall not exceed Client's proportionate share among customers of NYT's Billing and Collection Services of the

¹ For purposes of this Agreement, intrastate messages are messages associated with Client End User Customers.

assigned costs; and (2) will be effective with the date that Client would cease to pay for reassigned costs under the procedure in effect prior to the reassignment of costs (e.g., the date on which the NYNEX Telephone Companies would no longer be permitted to charge such costs under access). In any event the NYNEX Telephone Companies shall be permitted to recover Client's proportionate share of costs reassigned to the billing and collection category from the date such costs are reassigned to the billing and collection category. If it is later determined that such costs should not have been billed to Client because those costs have been recovered elsewhere, Client shall be entitled to a credit plus interest. Interest shall be calculated by using the prime rate, as reported in the *Wall Street Journal* the first business day of January and July of every year, plus two percentage points. Such credit shall be reflected on the next billing and collection charges bill issued after it is determined that Client is entitled to a credit. NYT shall notify Client, in writing, of the effective date of any proposed surcharge or surcredit and, upon request, provide Client with the calculations used to determine the surcharge or surcredit which shall be auditable under the provisions of Section 12 of the Agreement.

In the event NYT imposes a surcharge upon Client, Client shall have the right to terminate this Agreement, without penalty, provided Client notifies NYT in writing within ninety (90) days from the date of NYT's written notification to Client of the surcharge. If Client elects to terminate, said termination shall become effective no later than six (6) months from the date of NYT's written notification or such longer period as designated by Client and Client shall be responsible for payment of the surcharge if such increase becomes effective prior to termination of service. In the event that the longer period designated by Client extends beyond the term of this Agreement, NYT agrees to continue providing Billing and Collection Services to Client for such period under the same terms and conditions and rates and charges, including the surcharge. NYT agrees to cooperate fully with Client in the planning and implementation of any transition from NYT to Client billing as a result of Client election to terminate this Agreement under this paragraph. If Client does not elect to terminate as provided herein, then the surcharge shall become effective in accordance with the above provisions.

C. Client Right to Renegotiate

If, at any time during the term of this Agreement, NYT offers interLATA telecommunication services beyond those which on the effective date it is able to offer in any local exchange serving area in which NYT provides local exchange service, and Client is unable to meet its Minimum Charges obligations substantially due to those new interLATA services, Client shall have the right to renegotiate those obligations for any affected year.

If, at any time during the term of this Agreement, Client is otherwise unable to meet its Minimum Charges obligations due to NYT acts or omissions, Client shall have the right to renegotiate those obligations for any affected year.

D. Price per Bill

For the purpose of applying this charge, a bill will consist of all pages bearing the same company logo. If NYT agrees to bill some of Client's charges under an additional Carrier Identification Code, then Client will pay the rates and charges for those bills issued under the additional Carrier Identification Code. The provision of Billing and

Collection Services for Client's additional Carrier Identification Code shall begin on such date as is mutually agreed to by the Parties in writing and may be cancelled by Client at any time without penalty.

E. Price per Message

The per message charge of \$.30 applies to each message billed.

F. Manual Adjustment Charge

Client will pay NYT \$10.00 for each Client initiated paper IC/LEC Memo processed by NYT for rebilling of Client charges in accordance with Section 8(B).

G. Marketing Message

When utilized, Client shall pay NYT \$.045 per Marketing Message per Bill. There will be no charge for messages required by regulatory or legal authorities.

H. Pay-Per-Call Advisory Message

When Pay-Per-Call messages are billed, the FCC/FTC required advisory statement will be displayed on the Client bill page within the Pay-Per-Call Services section. Client shall pay NYT \$.03 per advisory statement.

I. Minimum Charges

Client shall pay NYT a guaranteed Minimum charge in accordance with the rate schedule listed above. The amounts billed by NYT for Billing and Collection Service will be applied towards the Minimum Charges. The amount billed to Client each month will be determined using the terms and formula outlined below. Client will be responsible for the Minimum Charges beginning at the time of the Effective Date. In the event NYT agrees to provide Billing and Collection Services to Client under an additional CIC(ABEC)/ACNA an additional Minimum charge in an amount equal to the monthly minimum charge stated above will apply. The Client will be responsible for this amount only during the length of time that NYT provides Billing and Collection for Client.

Defined Terms

1. Monthly Minimums - The Monthly Minimum charges set forth above.
2. Cumulative Minimums - Sum of the Monthly Minimum charges from the beginning of contract up to and including the current month's Monthly Minimum charge.
3. Monthly Actuals - Billing and Collection charges calculated by applying the above per bill and per message charges to the current month's bill and message volumes.
4. Cumulative Actuals - Sum of the Monthly Actuals from the beginning of the contract up to and including the current month's Monthly Actual.
5. Cumulative Billed Amounts - The sum of the Billed Amounts from the beginning of the contract up to and including the current month's Billed Amount.

6. Billed Amount - The amount billed by NYT to Client in a given month for Billing and Collection Services.

Formula

The Billed Amount in each month shall be the greater of (1) Cumulative Actuals less the previous month's Cumulative Billed Amount, or (2) Cumulative Minimums less the previous month's Cumulative Billed Amount. The following example demonstrates the application of the above formula.

Example

<u>Month</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>
Minimums (1)	10	10	10	10	10	10
Cumulative Minimums (2)	10	20	30	40	50	60
Actual (3)	5	8	12	18	5	15
Cumulative Actuals (4)	5	13	25	43	48	63
Cumulative Billed (5)	10	20	30	43	50	63
Billed (6)	10	10	10	13	7	13

In the event NYT provides Billing and Collection Services to Client under an additional CIC(ABEC)/ACNA, the Billed Amount will be determined separately for those bills issued under each CIC(ABEC)/ACNA. The amounts billed by NYT for Bill Message Service will not be included in the application of the above formula used to determine Client's Billed Amount in each month.

J. Start Up Fee

Client shall pay NYT a \$25,000 start up fee which covers the cost of activities needed to initiate Billing and Collection Services to new customers. Such activities include but are not limited to: testing; tape/transmission set-up; programming costs; digitization of Client's logo; formatting of Client specific end user bill page, set-up of NYNEX reports provided to Client and methods/procedures implementation. This is a one time non-refundable charge payable immediately upon Client's signing of the Agreement.

K. Postage Escalator

In the event that, during the term of this Agreement, the U.S. Postal Service increases the rate for one ounce first class zip sort postage, Client shall pay NYT one third of such increase on a per bill basis. NYT shall notify Client in writing of the effective date of any postage increase.

This day I will marry...

*We invite you to be with us
as we begin our new life together
on Saturday, the twelfth of July
Nineteen hundred and ninety-seven
at three-thirty o'clock in the afternoon
Greater Gethsemane Missionary Baptist Church
902 Dr. Martin Luther King Jr. Street
Indianapolis, Indiana 46202*

*If you are unable to attend,
we ask your presence
in thought and prayer*

*Lorraine Ann Burts
and
Stanley Fields*

my friend

*We look forward to celebrating with you.
Please reply by June 20, 1997*

Name _____

Number of persons _____

Wishing Well Wedding

6-23-97

Dear Mr. President:

My name is Lori, and I'm
write you this letter to say Thank you.

Thanking you for a very special
reason. On November 9, 1996 I call
this number 637-meet and it change
my life. I met someone very special on
this line, you can say it was love at
first sight, because a month later
he propose marriage to me on Dec 21, 1996.

Everything has been wonderful, the
wedding is set for July 12, 1997, so
I'm sending you a invitation and
to say God Bless you for giving all
the women in Indianapolis an opportunity
to find a very special man of there liking,
to spend the rest of there lives with (if it works out
forever.

Sincerely

Lori Burt

317-592-9134



Case: 98-C-1079

PPI

Date of Request: October 12, 1998

<u>PPI-BA-NY-36</u>	With respect to the observations about programming offered by NIRC (<u>see</u> p.8 and p.8 n.10) provide the precise date of the discontinuation of this service in 1997, and set forth in detail all reasons for such discontinuation. Attach hereto copies of all documents relating to the response.
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RESPONSE:

BA-NY objects to this interrogatory on the grounds that it requests information neither relevant nor material to this proceeding, and not within the knowledge of BA-NY. Moreover, any information related to NIRC's business plans would be confidential and proprietary. Notwithstanding these objections, the dates that NIRC discontinued this service are as follows:

Dutchess County	11/30/97
Bronx	3/31/97
Washington Heights	3/31/97
Harlem	3/31/97

SECRET

New York Telephone
Audiotex Services
Quantitative Assessment

Presented to NYT
Information Providers
January 4, 1994

Case 98-C-1079
PPI-BA-NY- 43
Attachment

Prepared by:
TRG-Market Research
Wallace & Washburn Inc.

Recommendations

DIRECTORY ASSISTANCE:

- Institute FREE 1-800-INFOCALL directory assistance for all services.
- Man the 1-800-INFOCALL line with live operators. Where multiple similar services are offered, the numbers provided would be rotated.
- INFOCALL operators, in addition to providing phone numbers, should give additional information on call costs and length on request.
- Educate 411 & 555-1212 operators about INFOCALL. Provide direct transfer to 1-800-INFOCALL. Incentivise 411 operators with "mystery caller" promotion.

Recommendations

ADVERTISING:

- NYT advertising should focus on 1-800-INFOCALL and upscale positioning.
- Where possible, the variety of services should be exposed. Make service soundbites available on co-op.
- Primary advertising by NYT should be on TV.
- 1-800-INFOCALL should be heavily advertised in the Yellow and White Pages.
- IP advertising (including co-op) should focus on their specific services, with advertising placed in newspapers or other vehicles where they feel placement can reach their specific prospect audience best.



New York Telephone
Audiotex Services

Recommendations

PROMOTION:

- \$5.00 (or other value) coupons should periodically be delivered in phone bills.
- Coupon should be part of a Flyer that lists all the available services, including their phone numbers.
- Flyer should communicate the upscale positioning.
- Flyer should also promote the FREE 1-800-INFOCALL directory assistance.
- Pocket/wallet Directory Card delivered in phone bills.
- Flat monthly fee for unlimited info calls (if feasible) may also be promoted in bill stuffers.

Recommendations

NEW SERVICES:

- A variety of travel and entertainment related services show promise.
- Some of these services may offer the opportunity to be sponsored (i.e.: travel directions courtesy of the AAA), or generate "inclusion fees" for the IP. Calls should not include actual advertisements.
- Services for small but dedicated "niches" can be profitable (i.e.: drum & bugle corps winners).

Recommendations

PRICING:

- 976 pricing should be raised to the 40¢-49¢ range.
- Pay phone pricing should equal or exceed home rates.
- Proceeds should be shared between IP's and NYT, and used primarily for advertising and promotion.
- Co-op advertising programs should be designed to encourage IP's to promote their own specific services.
- Telephone calling card charges for INFOCALL should be allowed.



10-21-1998 17:47 2155673081
APR 22 '98 17:11 FR BELL ATLANTIC

2123950709 TO BOB KEIM

P.02/27 P.01/34



Bell Atlantic

InfoFone[®] Services - New York & Y2k

Impact & Alternatives Analysis

Case 98-C-1079
PPI-BA-NY- 51
Attachment



EXECUTIVE SUMMARY

Prologue

This document is intended as a tool for the Business Marketing organization to evaluate projected revenues and costs over a five year planning period associated with the three primary services provided by the New York IMAS Ericsson switch. These services are Mass Announcement Service (976), Interactive Information Network Service (IINS) and Group Bridging Service (GBS). Costs include estimates to provide a replacement for the existing switch to be Year 2000 compliant. Multiple configurations were considered. Costs included are for planning purposes only and are not intended as docket quality documentation.

Bell Atlantic provides similar services elsewhere in the region. Each jurisdiction has unique service, cost and network considerations. However, due to the urgency of the Year 2000 issue in New York, Business Marketing has focused its initial assessment there. Other jurisdictions will be evaluated in future analyses to determine the overall viability in each jurisdiction.

Estimated revenues, configurations and associated costs are outlined below. Risks must be considered regarding the viability of the product, outside the fully distributed service costs assessment. Due to the unique nature of this service, the New York PSC has played a key role in the requirements placed upon Bell Atlantic. PSC orders and litigation are highlighted on pages 7 and 8. From a financial perspective, the most significant of these issues are the four RICO lawsuits currently pending, where damages with interest and legal fees could possibly be as high as \$100M. While a decision to exit the product would not eliminate the current orders or legal proceedings, it is reasonable to assume that continuance of the product would require Bell Atlantic to implement future PSC orders and the threat of litigation would continue to exist.

Despite the costs associated with the provisioning of a new switch, and our internal acknowledgment of financial risks associated with the product, Bell Atlantic must anticipate that the New York PSC is likely to be unsympathetic to cost issues and may advise Bell Atlantic to recover its costs elsewhere. In several recent orders, Bell Atlantic was advised to recover costs through the exogenous cost study process. It is critical that a decision to exit must be accompanied by a legal/regulatory strategy which is not service cost based. Similarly, while this document satisfies the internal requirement to assess the overall viability of the product line, it is not suitable for withstanding an extensive evaluation by the PSC for cost study purposes.

Background

The Year 2000 is rapidly approaching. It has already had a significant impact on every industry in the world, especially every computer - based or related transaction system. The IMAS Ericsson switch in Brooklyn will be no exception. This switch has not been upgraded for several years. Bellcore has verified that the existing release and two subsequent releases cannot handle the new millennium, leaving no doubt that the Ericsson and the services which depend upon it are in great jeopardy.

*R. E.
Vander...*



Efforts have been undertaken to evaluate the various solutions to this problem. Ericsson has verified that they will not be able to upgrade the existing switch to "make it current", and that the only alternative would be to replace the switch. This document discusses each of the potential solution scenarios and projected costs and also provides background information regarding the product, pricing, placement and previous promotion. The scenarios include:

- a. Replacing the switch and migrating all of the existing InfoFone services onto it.
- b. Replacing the switch with a smaller version of the Ericsson for 976 only, and migrating the balance of the InfoFone services to a DMS100 or 5ESS.
- c. Withdrawal of 976 as a product offering and migrating the balance of the services to a DMS100 or 5ESS.
- d. Outsourcing the switch, (which would entail extensive labor relations issues and is not considered a viable solution).

Revenue and Costs

Revenues and estimated costs of the options above are as follows:

Option	5 Year Revenue	Estimated Costs ¹
a. Entire switch replacement	\$62.6M	\$66.2M
b. Replacement with smaller Ericsson for 976 and migration of other services to DMS or 5ESS	\$62.6M	\$61.6M
c. Withdrawal of 976 service and migration of other services to DMS or 5ESS	\$41.3M	\$32.8M

All solutions have associated risks. Indeed, the continuance of this product line itself is accompanied by existing exposures and litigation which are not expected to abate, and may in fact, increase as we move forward. The current state of the product includes:

- 1. Implementation in 1998 of PSC Orders providing for:
 - a. New blocking option and associated password protection
 - b. IINS and GBS detailed billing
- 2. Potential requirement to eliminate contribution for 976
- 3. Potential requirement to allow IPs to provide billing and collection themselves
- 4. Potential requirement to drop our rates (eliminate contribution), in association with compliance filing of 1997

¹ Source: Service Cost Estimates. Costs do not include cut over to a new switch or costs to exit.



- 5. Ring No Answer litigation pending
- 6. RICO lawsuits pending with damages, interest and legal fees which could be as high as \$100M.

Recommendation

This is a declining market with intense competition from interexchange carriers, and soon competing local exchange carriers. Although the forecasted revenue and costs are as depicted above, the actual risks to the corporation for continuing the product line may far exceed any potential benefit. Risks are discussed in detail throughout this document and particularly in the section identified as Risk Factors.

Based upon the projected costs, risks, and inability to increase prices, the Business Marketing recommendation is to exit the product line. It is further recommended that Legal and Regulatory develop a plan to facilitate the withdrawal of the 976, IINS and GBS services in New York.



SITUATION ANALYSIS

Market Factors

The InfoFone® Services - New York product line services both a wholesale and a retail market. On the wholesale level, Bell Atlantic sells transport, billing and collection services to Information Providers who provide passive and interactive programs on various subjects, including, but not limited to: weather, lottery results, sports scores, what's happening on Wall Street, and Horoscopes. On the retail level, these programs are called by residence and business customers.

Competitive, Regulatory & Customer Use Factors

Call volumes have dropped significantly in recent years although the product line remains profitable. Of the 8.6 million potential subscribers in the New York Metro LATA, only 400,000 currently call 976 programs, the product line's most inexpensive information service. The decline in revenue is attributable to a number of factors including competition from inter-exchange carrier 900 services, our own selective blocking service, and a host of less expensive (or free) alternative sources of information, such as: cable television, radio, newspapers, yellow pages, online services, and the Internet.

In 1997, the PSC issued Opinion and Order 97.7 which included a requirement to eliminate contribution from the rate charged to IPs for 976 service and unbundle the associated cost elements. We subsequently filed an Article 78 challenging this component of the Order. The matter has not yet been resolved. Should the courts find in favor of the PSC, the \$0.02 per call we now retain as profit over our cost per call for this product will be lost.

The marketplace is experiencing a proliferation of alternative sources of information. These sources range from print media (such as newspapers and magazines) targeting highly specific and niche markets to online services that cater to the not-so-traditional home market. Those that bridge the home and business markets are finding tremendous success. These include services such as CompuServe, America Online, and Prodigy, as well as Internet service providers. Customers are demonstrating a keen interest in fast unlimited information within easy reach.

Co-Dependencies

As one might expect, revenues and call volumes have plummeted downward. One of the key obstacles to increasing usage and revenues is selective blocking service, which currently has 2.4 million subscribers in New York.

Overall, the proliferation of ways and means for accessing information, and the social trend toward instant gratification, combined with stringent requirements placed on us by the PSC in structuring blocking options, have pushed InfoFone® Services products out of the lives of our customers. This trend is unrelenting.



Migration/Alternative Products

There are no alternative offerings by Bell Atlantic to migrate these existing customers to. There is no migration path internally for the information programs, and as many of the existing IINS & GBS IPs have 900 type programs with AT&T today, it's expected that they will continue to migrate their own offerings to that platform, away from Bell Atlantic. AT&T offers nationwide access to their programs, for not much more than the IPs are paying us today for New York-only access.

Strategic, Technological, & Economic Factors

- The IMAS switch which is the switch dedicated for processing InfoFone Services calls is not Year 2000 compliant. The purchase of a replacement switch, along with associated costs will cost approximately \$11 million.
- Demand for the product line is decreasing 20% - 25% year over year, and has been since 1993.
- Legal and Regulatory issues including litigation have diminished the derived margin for the product line.
- Correlations are made by the public between Bell Atlantic pay-per-call and 900 services. This has resulted in mis-perceptions about the products and pricing, particularly with respect to 976.
- Blocking⁹ Option 4 lumps 976 (Bell Atlantic-New York's most affordable pay-per-call product) in with pricey pay-per-call services. This option currently holds the majority of subscribers to selective blocking service in New York: 1.98 million. Blocking Option 5 (which blocks everything in LATA 132 but 976) was created and approved by the PSC in January of this year. The IPs have fought long and hard for some relief with respect to blocking and have blamed Bell Atlantic for not providing customers with a blocking option that enabled them to access 976 while blocking other more expensive pay-per-call services, saying that if such an option existed, their business would not have declined at the rate it has. Option 5, whose creation was ordered by the commission as a counter to our request to modify Option 4 to eliminate 976 from it's group, currently has 351 subscribers. Since it's inception, consumers have continued to express a preference for "blanket" blocking, Option 4, with it's subscribers growing by 3114 during the time of availability of the new Option 5, disproving the IP argument.
- Consumers are increasingly desiring to keep on top of what's happening in "real time", and are becoming more accustomed to accessing data electronically, particularly via online services and the Internet.

⁹ Blocking is a service offered by Bell Atlantic which enables customers to prevent calls from being made from their phones to numbers beginning with specific area codes or exchanges. There are 5 configurations for blocking service.



- Consumers have demonstrated their willingness to pay for online information, and more frequently now have ready access to the Internet from their desktops at work, further reducing their need for the pay-per-call services offered by telephone.

Risk Factors

There are several existing issues related to the product line which may continue to have a significant drain on internal resources. The expense/revenues below are 'order of magnitude'. They are:

RICO Suits: There are 4 such suits that have brought against the company by the IPs. Although it is hoped that these suits will be dismissed, damages with interest could possibly run as high as \$100 million.

PSC Orders Recently we have been hit hard by PSC Orders prohibiting us from recovering our costs for the implementation of their Orders. This includes the implementation of Blocking Option 5 and the associated Password Protection (approximate cost \$1 million), the IINS & GBS Reports project (approximate cost estimate \$750k), the Order 97.7 related to 976.

Order 97.7 - Contribution

This Order required us to eliminate contribution from our rate to the IPs. We have filed an Article 78 challenging the PSC's authority here and hope to prevail. If we don't, however, our rate to the IP will drop to \$0.18 per call, with the end user rate remaining the same.

Order 97.7 - Billing & Collection

This Order required us to "unbundle" the rate elements associated with 976 into 3 components: call origination & transport, call processing, and billing & collection. In briefs filed subsequent to our compliance filing this past August, the IPs have argued that we intentionally failed to comply with the Order by not making a billing & collection an option that they could do themselves. This issue is still being argued with the Commission. If they prevail, implementation of such an offering has been estimated at \$1 million to implement and will significantly increase our exposure with respect to deliverables for the IPs. It will also increase the demands on customer support personnel.

RNOA

The "Ring-No Answer" issue was raised during the 93C-0451 proceeding and relates to a difference of timing at end office switches versus the Ericsson for measurement of completed calls. The IPs had battled our desire to migrate to automated/AMA vendor payments then argued their entitlement to payment for all "RNOA's" because for a time, the end offices were billing customers for calls that lasted less than 2 seconds while the Ericsson timing was set to 2 seconds. A detailed analysis and call behavior study were undertaken. It was learned that callers to 976 programs typically remain on the line



longer than 2 seconds, even though casual dialing patterns may be far less. In fact only .01% of 976 callers during the study period hung up in less than 2 seconds following connect with the 976 number they had dialed. The IPs have requested that the Commission order us to pay them for all RNOA's during the period in question, plus interest (approximate cost: \$1 million), possibly more depending on interest rate and simple or compounded interest calculation). The matter is currently residing with the Consumer Services Division.

8.27.97 Filing The cost study associated with the compliance filing of last summer has been heavily challenged by the IPs. They have requested that the commission order us to drop our rate to them to \$0.07 per call (versus the \$0.20 today). Our state regulatory team has advised that this matter may soon evolve into a full blown rate case.

LNP Local Number Portability which is provided for in the new Ericsson switch will enable the IPs to migrate their programs to CLEC's. This was part of what was requested by them during the 93C-0451 proceeding. We could spend the money for the switch and lose the programs it was purchased to manage.

Legal Support Currently there are 2 external law firms providing support to Bell Atlantic. This type and the extent of support are costly to Bell Atlantic, resulting in eroded/eliminated financial benefit to the corporation for facilitating these services.

Sourcing Factors

The Ericsson platform provides a functionality unique in the country; that of broadcast technology. It is also the only Ericsson switch remaining at Bell Atlantic/North. Other vendors have been informally approached and have indicated less than lack-luster interest in such an undertaking, because there are no other customers for such an offering. It would require them to develop software which doesn't exist for them today, and require them to pass those costs directly on to us, making their end pricing simultaneously non-competitive, and very expensive.

It's expected that continued support of the switch and associated upgrades over time will continue to drive the cost of maintaining the switch beyond the value of the services it is facilitating.



OBJECTIVES/ALTERNATIVES

- Purchase & install a replacement switch for the existing Ericsson in place today.

Issues/Risks:

- The latest version of the switch hardware and software facilitates local number portability. We could spend the estimated \$11 million on the new switch and lose some or most of our customers to local exchange carriers.
- The demand for the services is continuing to decline. A replacement switch will not result in increased demand for the product line.
- The IPs have challenged our rate filing associated with PSC Opinion & Order 97.7. They have challenged the costs and structure of our rates. State Regulatory has advised that this could evolve into a full-blown rate case proceeding before the Commission. The rates they are challenging are based on 3 rate elements: call origination & transport, call processing, and billing & collection. These rates also reflect no contribution, as required by the Order. Our Article 78 proceeding has not yet been resolved, so we may or may not prevail in the retention of margin in the rate, further diminishing the value of the product to us.
- Incentive regulation may prevent us from recovering the cost of the new investment from subscribers. Currently, the rates charged and revenues/losses derived per call are:

product:	976	IINS (540 & 970)*		GBS (550)	
	per call	initial min	each add'l min	initial min	each add'l min
our cost	\$0.18	\$0.14	\$0.12	\$0.14	\$0.12
our IP rate	\$0.20	\$0.26	\$0.07	\$0.20	\$0.05
end user rate	\$0.40	SSP**	SSP	\$0.30	\$0.11
IP rate vs cost	\$0.02	\$0.12	-\$0.05	\$0.06	-\$0.07
avg call dur	57 sec	540: 2 min, 970: 10 min		7 min	
• our IP rate for these calls includes a 12% surcharge for the difference between their per-call revenue and our initial & additional minute charges. ** SSP is Subscriber Selected Pricing. This product provides for the IP to set their own per-minute rate.					

- Our newly incurred investment will raise the above noted costs by approximately 10%.



- The PSC proceeding tied to the replacement of the Audichron Switch to the Ericsson resulted in findings by the administrative law judge of willful misconduct and gross negligence. Undertaking the replacement of this switch could easily result in a replay of history. These legal proceedings are not only costly, but result in bad press about Bell Atlantic in the country's leading newspapers including The New York Times and the Wall Street Journal, as well as local newspapers such as The Daily News and New York Post.
- This path creates no new business opportunity for Bell Atlantic, increases its costs, and does not reduce litigation exposure.
- **Replace the Ericsson with a honed down version, just for 976, and migrate 540, 970, & 550 services to a 5ESS or DMS100**

Issues/Risks:

- This will cost us more than an entirely new Ericsson for all the products since existing switches through which IINS & GBS services would be handled would need to have capacity increases. The current estimate is: \$12.8 million.
- The issues that we'd have with entirely replacing the Ericsson for all the services apply here as well.
- **Exit 976 and migrate 540, 970 & 550 to a 5ESS or DMS100**

Issues/Risks:

- The PSC would have to buy in on this. As the 976 IPs are particularly vocal with the PSC, they may be resistant to going along with a "partial amputation" of the product line. The IPs will still have access to them because of their other locally offered services (IINS & GBS).
- There is no existing direct replacement for the revenue associated with the product line.
- Our opportunities to reduce costs (customer service, product line management, I.S., legal, & regulatory) is minimized by exiting only one of the products due to the nature of the services.
- **Out Source the switch - possibly to the IPs themselves.**
- Labor Relations issues would be significant, and in light of the other issues, this would probably not be a worthwhile undertaking.



- Withdraw the product line from the market place³.

Issues/Risks:

- Intervention is likely.
- The revenue stream will cease to exist, with not another product line readily in place to backfill the revenue lost.

³ Pac Tel withdrew their pay-per-call services and prevailed in court.



THE PRODUCTS

Mass Announcement Service (MAS/976) is a broadcast service whereby customers call a local number beginning with the exchange 976 to hear a 57 second message. Once the message is played, the caller is automatically disconnected. The caller is charged a flat rate of \$0.40 for each call. Program content is the responsibility of the information provider and runs the gamut, including, but not limited to: weather, time, lottery results, and sports scores.

Of all of the products and services tied to the Infofone brand name, 976 generates the greatest amount of revenue, and as such is the cornerstone product for the Infofone Services product line.

MAS is deployed on the Ericsson switch in Brooklyn, which has the unique ability for broadcast messaging. 976 calls are routed through the Ericsson, regardless of origination, then forwarded to the 56th Street switch in Manhattan (acting as a tandem to the Ericsson), then routed according to the appropriate service bureau where the recorded announcement resides. These transfers are transparent to the caller who hears the message on the number they called almost instantaneously. MAS is distinguished by its ability to complete thousands of calls per program simultaneously over 3 voice grade circuits.

MAS IPs purchase transport, call processing, billing & collection services, out of the 900 Tariff, as one bundled rate element. The end user sees charges for calls made to 976 as one lump charge, stating the number of calls made, in the local portion of their bill.

The revenue from each call is shared equally by Bell Atlantic and the IP. These revenues are based on call count volumes recorded by each end office, and CABS reports for the interexchange carrier component.

Infofone Services are unique to the Bell Atlantic line of product offerings. They depend on motivated, creative external information providers to establish programs which create strong and recurring interest in the public, so that they will call, and call often. Of the 8.6 million potential subscribers to MAS within the New York Metropolitan LATA, approximately 400,000 call 976 programs.

Infofone competes with the inter-exchange carrier 900 number services. Competition from a myriad of sources is becoming more prevalent. There is also fierce competition among information providers. This drives higher advertising expenditures for the IPs as they must advertise more often and more effectively to maintain their call volume levels. There are currently 25 MAS IPS and 58 active programs.

Interactive Information Network Service (IINS/540 & 970) callers can use the buttons on their touch-tone phones to respond to selections offered by the various programs, e.g., signs of the zodiac for horoscopes, or different cities for weather reports. The caller can also reach a live person, if the IP provides one, for services like medical advice, home repair tips, and more.

These numbers begin with 540 and 970 exchanges. The 970 numbers are reserved for adult programming and are available in the New York Metropolitan LATA only. Calls can run for any length of time. The IP sets the price for the service. Callers in the area where the program is provided can reach it by dialing seven digits.



IINS is an intra LATA service offering; no inter LATA traffic can be carried. Since the IPS often want their programs to be available to all consumers in the tri-state area, this limitation provides national 900 number carriers with a significant advantage.

Calls and revenue from IINS programs have leveled off. Negative publicity discouraged people from calling 900 numbers and, unfortunately IINS programs. IINS is in the mature stage of its product life cycle. There are currently 155 IINS IPS and 1159 active programs.

Group Bridging Service (GBS/550) is like a conference call, in that a number of callers within a geographic area can talk to each other at the same time. Common Group Bridging Service programs include date and teen lines. A live monitor must check each Group Bridging program periodically to ensure the service is being used properly.

Numbers begin with the 550 exchange. Calls can run for any length of time. Charges vary depending on the length of the call. Callers in the area where the program is provided can reach it by dialing seven digits.

There are currently 9 GBS IPS and 77 active programs.

Most of the InfoFone Services IPS offer more than one of the different types of services to their end users. That is to say, most of the 976 IPS also provide IINS programming, and many of the IINS IPS also provide group bridging programs.

Circuit 9 is a product which has been "grand fathered". It currently has 2 remaining customers. The forecast for this product for 1998 is \$94,000.



PRICING

The overall MAS pricing strategy is to maintain the current retail and wholesale prices. The aforementioned PSC Order, and the outcome of the Article 78, however, may effect this. Incentive regulation would constrain our ability to raise rates to recover the new investment costs.

In 1994, the retail price for 976 calls was raised from \$0.36 to \$0.40 from non-coin phones, \$0.25 to \$0.40 from coin phones. We reinforce with the public through our advertising that 976 services are flat rate. 976 programs are still the lowest priced of any pay-per-call service. When one calls, there are programs on subjects of national interest as well as New York specific information.

Prior to 1994, the company retained \$0.24 of the \$0.36 charged for a non-coin 976 call, and \$0.13 of the \$0.25 charged for each coin 976 call. Each 976 call made today from a coin or non-coin phone results in \$0.20 of revenue for Bell Atlantic and \$0.20 for the IP. Here is a comparison of 2 of Bell Atlantic's pay-per-call products versus industry 900 number services:

Wholesale Competitive Pricing Comparisons					
	976	540	MCI - 900*	AT&T - 900*	
Establish Service	\$787	\$125	\$2000	\$2200	
Recurring Charge	\$85.80	\$21.38	\$150	\$500/initial \$125/ongoing	
Per Minute	\$0.20	\$0.26/1st min \$0.07/add'l min	\$0.29	\$0.32	
Billing & Collection	included	12% end user revenue	10% end user revenue	10% end user revenue	

Pricing is the primary edge that IINS has over the competition. The demand curve for IINS is downward sloping. If price is lowered, total revenue would decrease. Demand is inelastic. Many factors effect elasticity: 1) availability of a substitute, 2) the importance of an item in the customer's budget, 3) the urgency of the customer's need and its relation to other needs.

In addressing price, it is important to recognize that there are 3 IINS pricing elements to be managed. The first is the initial charge for each line. The second is the monthly charge for transport, billing & collection. The third element is the price for usage.

For transport, and full billing & collection, Bell Atlantic charges \$0.26 for the first minute of each call, \$0.07 for each additional minute, and 12% of the difference between what Bell Atlantic charges the IP and what the IP charges the end user. IPS can choose any price to charge callers (the retail segment).

* Does not include the cost of access links



If an IP wants to charge callers \$1 a minute, a 3 minute call would cost the caller \$3. Bell Atlantic would charge the IP \$0.71, calculated as follows:

1. $\$3.00 - (\$0.26 + \$0.07 + \$0.07) = \$2.60$
2. $\$2.60 \times 12\% = \0.31
3. $\$0.31 + \$0.26 + \$0.07 + \$0.07 = \$0.71$

The pricing for Group Bridging Service is more straightforward. A 3 minute call would cost the caller \$0.52. This call would result in a charge to the IP of \$0.30, calculated as follows:
 $\$0.20 (1^{\text{st}} \text{ min}) + \$0.05 (2^{\text{nd}} \text{ min}) + \$0.05 (3^{\text{rd}} \text{ min}) = \0.30



Promotion

There are no promotional activities planned for InfoFone Services in 1998. In 1997, the only promotional activity was a highlighted directory listing campaign carried over from 1996. Promotion of MAS during over the past several years has included:

1. Promotion for the entire family of 976 programs occurred in various formats. This included 2 articles in the Extra brochure which is mailed with the phone bill to our residence and business customers every month, the free sampling platform, the 976 program guide, the White Pages, as well as newspaper ads. The 976 Program Guide was also made available in the lobby of 1095 Avenue of the Americas, and mailed to every (then NYNEX) employee, both management and non-management at their work locations throughout the New York Metro LATA.
2. During 1995 we produced and aired cooperative advertising campaign television commercials which were program-specific for subjects shown in market research to be of high interest to consumers: weather and lottery. We also aired these same commercials on the internal "NYNEX TV" to get our own employees more familiar with 976.
3. We conducted a targeted mailing to established 976 users who call us, but infrequently. Their 976 usage patterns were tracked for 3 months. This mailing did not facilitate the behavior modification hoped for; increased calls to 976 programs by a majority of the targeted group.

Market research has shown that branding our product is very important, so throughout all of our promotional activities we sought to familiarize consumers and IPs alike with the InfoFone product name. Furthermore, neither users nor non-users of MAS programs knew how to find the specific 976 telephone numbers they should call to get the desired information. Our 1.800.InfoFone number and telemarketing was used to help customers overcome these hurdles. There will be more on the telemarketing team in the Placement section of this plan.

The objectives of these efforts was to inform wholesale customers that there is opportunity for success in New York for an entrepreneur with unique, innovative offerings, and that NYNEX was the company to partner with. We wanted our retail customers to know how to get access to the easy, fast, accurate information they needed right then.

With respect to IINS, the media mix planned for 1996 for the retail market was a combination of television supported by print and direct mail targeted appropriately. To establish internal and external awareness of the product, we planned accelerated participation in the following events: local and national trade shows, marketing events, state fairs, internal awareness sessions, and staffed lobby exhibitions. Due to lack of funding, these plans were not actualized.



Placement

InfoFone Services - New York, and Mass Announcement Service in particular are highly specialized services which require subject matter expertise in the technology, marketplace, and our target market. In addition, this role demands continual direct contact with our wholesale established and prospective customers, and, from time to time, our retail customers as well. The MAS-specific characteristics have a universe of importance to the product line. For these reasons, MAS is not placed with Systems Marketing which more typically deals with large business customers and non-usage-driven products, preventing them from being positioned to manage the unique set of demands associated with this product line.

We established an 800 number (1.800.442.TALK) for use by prospective IPs to make inquiries. This number has been incorporated into all of our industry-focused literature. When dialed, it forwards the caller to the dedicated customer service center, managed by Artie Zanfini. The service representatives who receive the calls qualify the callers. If it's a retail customer who has called, they are qualified regarding the program categories of interest or information required and if necessary, are then sent a 976 Program Guide, or redirected as needed.

For wholesale customers, the distribution channels for MAS are our marketing support team (customer service center/BMO) and Service Bureaus. Both sell MAS to Information Providers and provide ongoing support to them as they endeavor to develop new applications or encounter service-related difficulties.

Service Bureaus provide space, equipment, even program development to IPS. In the past, they helped us to close sales with new, inexperienced IPs, as well as those located outside of metropolitan New York. There have been no new IPs for this product line, however, for 2 years.

Retail placement rests with the telemarketing team at the BMO who responds to retail customers using the 1.800.442.TALK number, and the IPs themselves. This team assists callers in locating the numbers of specific programs they are seeking. The IPs use various means for getting the word out about their 976 programs.

There is one central office (CO) in each New York LATA that is equipped to offer IINS. The 540 exchange is used for IINS programs of general interest, and is available throughout New York State, while the 970 exchange, used for IINS "adult" programming is available only in the New York Metro LATA. Calls from anywhere within the LATA are handled by the serving CO for that LATA.

As with MAS, prospective IINS IPs are served by the service representatives within Artie Zanfini's organization via the 1.800.442.TALK line, as well as industry service bureaus. These groups answer basic questions, mail out promotional literature, then address the qualified leads. Prospective IPs are provided with individualized counseling on what to consider before entering the market and specifics on how to get started.



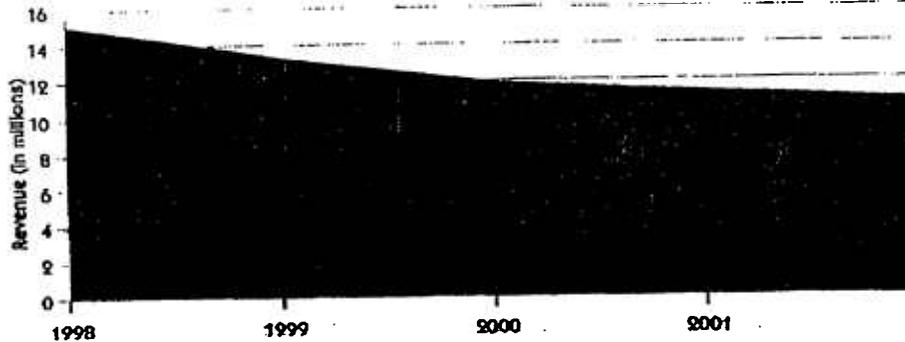
As the IINS IPs have a unique service order, provisioning, and billing requirements, the BMO team mentioned earlier is dedicated to serving these InfoFone customers. This group processes applications, reviews scripts, evaluates credit worthiness, ensures compliance with the IINS tariff, enters prices into the billing system, sends out program statements, and responds to IP questions regarding monthly bills and remittances.



InfoFone Services - New York
Five Year Forecast - Revenues

	1998	1999	2000	2001	2002	5 Yr Total	5 Yr Growth
Mass Announcement Service	\$6,506,000	\$4,880,000	\$3,661,000	\$3,295,000	\$2,965,000	\$21,307,000	
year over year growth		-24.992%	-24.980%	-9.997%	-10.015%		-54.427%
Interactive Information Network Service	\$4,133,000	\$3,943,000	\$3,753,000	\$3,581,000	\$3,431,000	\$18,841,000	
year over year growth		-4.597%	-4.819%	-4.583%	-4.189%		-16.905%
Group Bridging Service	\$4,509,000	\$4,565,000	\$4,502,000	\$4,493,000	\$4,490,000	\$22,499,000	
year over year growth		-0.089%	-0.067%	-0.200%	-0.067%		-0.421%
Total	\$15,148,000	\$13,388,000	\$11,916,000	\$11,369,000	\$10,886,000	\$62,647,000	
overall year over year growth		-12.015%	-10.594%	-4.590%	-4.248%		-28.136%

InfoFone Services - New York
Five Year Forecast - Revenues



Privileged and Confidential. Prepared in Contemplation of Litigation

10-21-1998 17:57 2155673081
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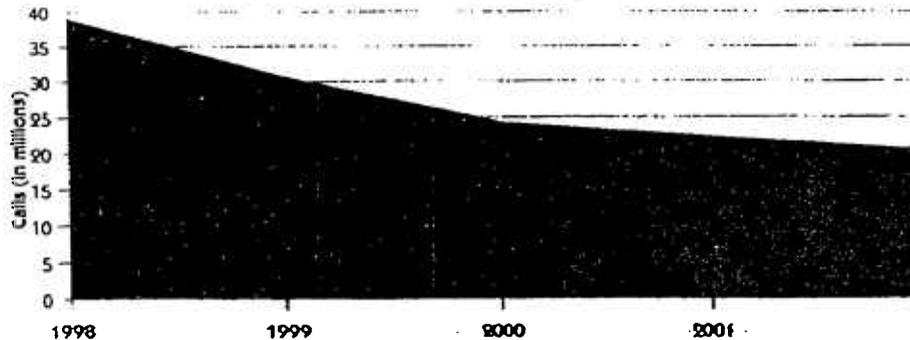
P. 21/27 P. 20/34



InfoFone Services - New York
Five Year Forecast - Calls

	1998	1999	2000	2001	2002	5 Yr Total	5 Yr Growth
Mass Announcement Service year over year growth	32,529,000	24,396,000 -25.002%	18,297,000 -25.000%	16,468,000 -9.996%	14,821,000 -10.001%	106,511,000	-54.438%
Interactive Information Network Service year over year growth	3,500,000	3,300,000 -5.714%	3,200,000 -3.030%	3,053,344 -4.583%	2,925,446 -4.189%	15,978,790	-16.416%
Group Bridging Service year over year growth	3,000,000	2,900,000 -3.333%	2,800,000 -3.448%	2,794,402 -0.200%	2,792,537 -0.067%	14,286,939	-6.915%
Total overall year over year growth	39,029,000	30,596,000 -21.607%	24,297,000 -20.588%	22,315,746 -8.154%	20,538,983 -7.962%	136,776,729	-47.375%

InfoFone Services - New York
Five Year Forecast - Calls



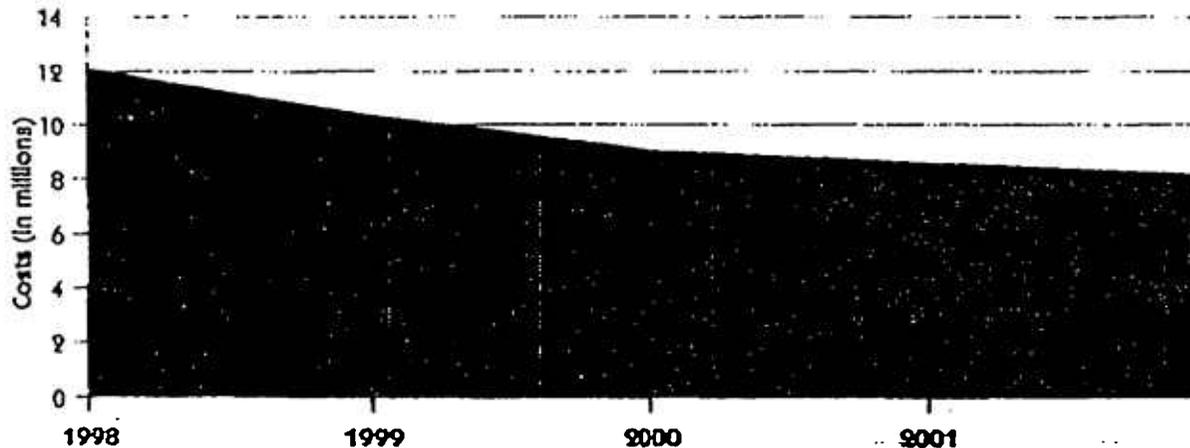
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InfoFone Services - New York
Five Year Forecast - Current Costs

	Costs	1998	1999	2000	2001	2002	5 Yr Total	Total
Mass Announcement Service		\$2,529,000	\$2,396,000	\$18,297,000	\$16,468,000	\$14,821,000	\$106,511,000	
costs	0.181357	\$5,899,362	\$4,424,385	\$3,318,289	\$2,986,587	\$2,687,892	\$19,316,515	\$19,316,515
Interactive Information Network Service		\$3,500,000	\$3,300,000	\$3,200,000	\$3,053,344	\$2,925,446	\$15,978,790	
costs - 1st minute	0.140166	\$490,581	\$462,548	\$448,531	\$427,975	\$410,048	\$2,239,683	
costs - additional minutes	0.117146	\$2,870,077	\$2,706,073	\$2,624,070	\$2,503,809	\$2,398,930	\$13,102,960	\$15,342,643
total		\$3,360,658	\$3,168,620	\$3,072,602	\$2,931,784	\$2,808,978	\$15,342,643	
Group Bridging Service		\$3,000,000	\$2,900,000	\$2,800,000	\$2,794,402	\$2,792,537	\$14,286,939	
costs - 1st minute	0.140166	\$420,498	\$406,481	\$392,465	\$391,680	\$391,419	\$2,002,543	
costs - additional minutes	0.117146	\$2,460,066	\$2,378,064	\$2,296,062	\$2,291,472	\$2,289,941	\$11,715,604	\$13,718,148
total		\$2,880,564	\$2,784,545	\$2,688,526	\$2,683,152	\$2,681,360	\$13,718,148	
Total		\$9,029,000	\$8,596,000	\$84,297,000	\$82,315,746	\$80,538,983	\$136,776,729	
		\$12,140,584	\$10,377,551	\$9,079,417	\$8,601,523	\$8,178,231	\$48,377,306	\$48,377,306

InfoFone Services - New York
Five Year Forecast - Current Costs



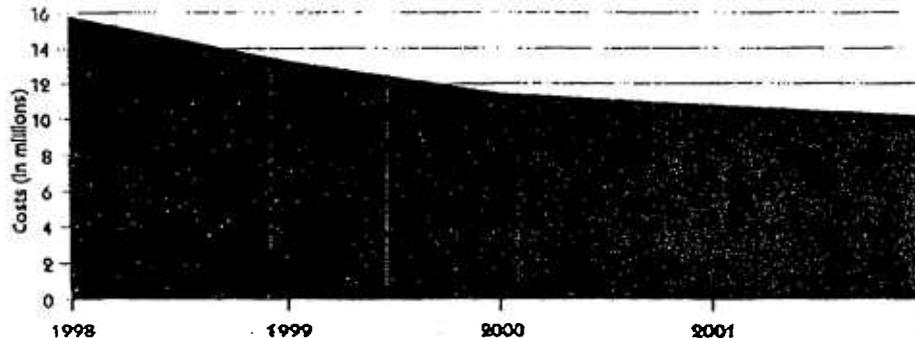


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InfoFone Services - New York
Five Year Forecast - Costs - Scenario 2 - New Smaller Ericsson & Migrate IINS & GBS
 (service cost estimates)

	Costs	1998	1999	2000	2001	2002	5 Yr Total	Total
Mass Announcement Service		\$2,589,000	\$4,396,000	\$8,297,000	\$6,468,000	\$4,821,000	\$26,511,000	
costs	.27	\$8,782,830	\$6,586,980	\$4,940,190	\$4,446,360	\$4,001,670	\$28,757,970	\$28,757,970
Interactive Information Network Service		3,500,000	3,300,000	3,200,000	3,053,344	2,925,446	15,978,790	
costs - 1st minute	.17	\$595,000	\$561,000	\$544,000	\$519,068	\$497,386	\$2,716,394	
costs - additional minutes	.14	\$3,430,000	\$3,234,000	\$3,136,000	\$2,998,277	\$2,866,937	\$15,659,214	\$18,375,609
total		\$4,025,000	\$3,795,000	\$3,680,000	\$3,511,346	\$3,364,263	\$18,375,609	
Group Bridging Service		3,000,000	2,900,000	2,800,000	2,794,402	2,792,537	14,286,939	
costs - 1st minute	.17	\$510,000	\$493,000	\$476,000	\$475,048	\$474,731	\$2,428,780	
costs - additional minutes	.14	\$2,520,000	\$2,436,000	\$2,352,000	\$2,347,298	\$2,345,731	\$12,001,029	\$14,429,809
total		\$3,030,000	\$2,929,000	\$2,828,000	\$2,822,347	\$2,820,468	\$14,429,809	
Total		\$9,029,000	\$8,596,000	\$8,297,000	\$8,315,746	\$8,538,983	\$46,177,729	
		\$15,837,830	\$13,310,920	\$11,448,190	\$10,780,052	\$10,186,295	\$61,563,387	\$61,563,387

InfoFone Services - New York
Five Year Forecast - Costs - Scenario 2



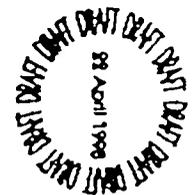
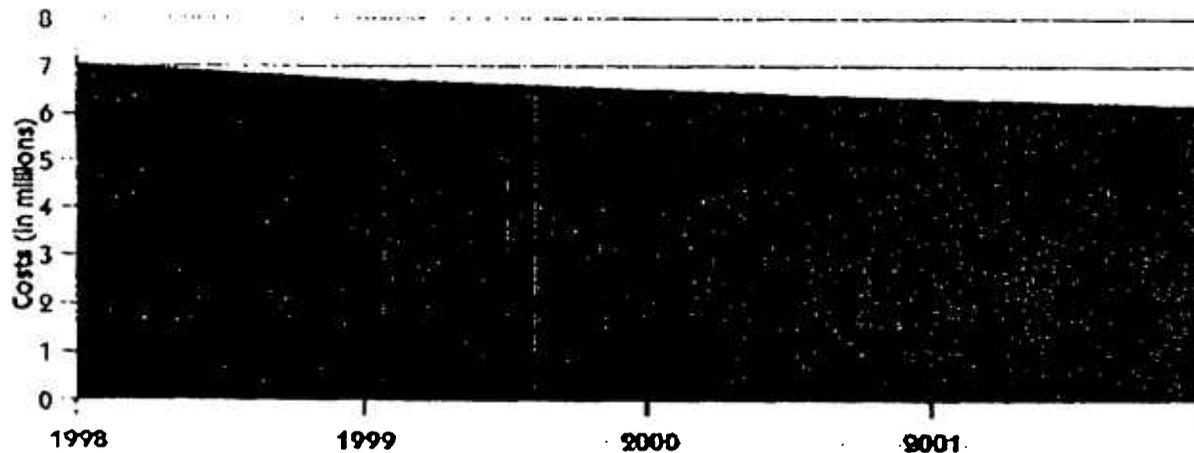


InfoFone Services - New York

Five Year Forecast - Costs - Scenario 3 - Exit 976 & Migrate IBNS & GBS
(service cost estimates)

	Costs	1998	1999	2000	2001	2002	5 Yr Total	Total
Mass Announcement Service		32,529,000	24,396,000	18,297,000	16,468,000	14,821,000	106,511,000	
costs	.00	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Interactive Information Network Service		3,500,000	3,300,000	3,200,000	3,053,344	2,925,446	15,978,790	
costs - 1st minute	.17	\$595,000	\$561,000	\$544,000	\$519,068	\$497,326	\$2,716,394	
costs - additional minutes	.14	\$3,430,000	\$3,234,000	\$3,136,000	\$2,992,277	\$2,866,937	\$15,659,214	\$18,375,609
total		\$4,025,000	\$3,795,000	\$3,680,000	\$3,511,346	\$3,364,263	\$18,375,609	
Group Bridging Service		3,000,000	2,900,000	2,800,000	2,794,402	2,792,537	14,286,939	
costs - 1st minute	.17	\$510,000	\$493,000	\$476,000	\$475,048	\$474,731	\$2,428,780	
costs - additional minutes	.14	\$2,520,000	\$2,436,000	\$2,352,000	\$2,347,298	\$2,345,731	\$12,001,029	\$14,429,809
total		\$3,030,000	\$2,929,000	\$2,828,000	\$2,822,347	\$2,820,462	\$14,429,809	
Total		6,500,000	6,200,000	6,000,000	5,847,746	5,717,983	30,965,729	
		\$7,055,000	\$6,724,000	\$6,500,000	\$6,333,692	\$6,184,725	\$32,805,417	\$32,805,417

InfoFone Services - New York
Five Year Forecast - Costs - Scenario 3

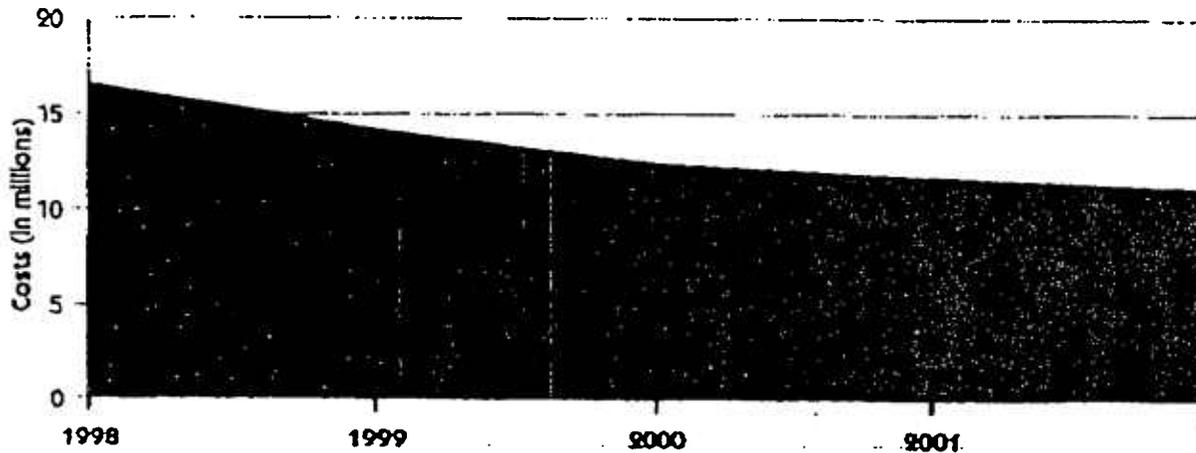




InfoFone Services - New York
 Five Year Forecast - Costs - Scenario 1 - New Ericsson
 (service cost estimates)

	Costs	1998	1999	2000	2001	2002	5 Yr Total	Total
Mass Announcement Service		32,529,000	24,396,000	18,297,000	16,468,000	14,821,000	106,511,000	
costs	.25	\$8,132,250	\$6,099,000	\$4,574,250	\$4,117,000	\$3,705,250	\$26,627,750	\$26,627,750
Interactive Information Network Service		3,500,000	3,300,000	3,200,000	3,053,344	2,925,446	15,978,790	
costs - 1st minute	.20	\$700,000	\$660,000	\$640,000	\$610,669	\$585,089	\$3,195,758	
costs - additional minutes	.17	\$4,165,000	\$3,927,000	\$3,808,000	\$3,633,479	\$3,481,281	\$19,014,760	\$22,210,519
total		\$4,865,000	\$4,587,000	\$4,448,000	\$4,244,148	\$4,066,370	\$22,210,519	
Group Bridging Service		3,000,000	2,900,000	2,800,000	2,794,402	2,792,537	14,286,939	
costs - 1st minute	.20	\$600,000	\$580,000	\$560,000	\$558,880	\$558,507	\$2,857,388	
costs - additional minutes	.17	\$3,060,000	\$2,958,000	\$2,856,000	\$2,850,291	\$2,848,387	\$14,572,678	\$17,430,066
total		\$3,660,000	\$3,538,000	\$3,416,000	\$3,409,171	\$3,406,895	\$17,430,066	
Total		39,029,000	30,596,000	24,297,000	22,315,746	20,530,983	136,776,729	
		\$16,657,250	\$14,224,000	\$12,438,250	\$11,770,319	\$11,178,515	\$66,268,334	\$66,268,334

InfoFone Services - New York
 Five Year Forecast - Costs - Scenario 1 - New Ericsson

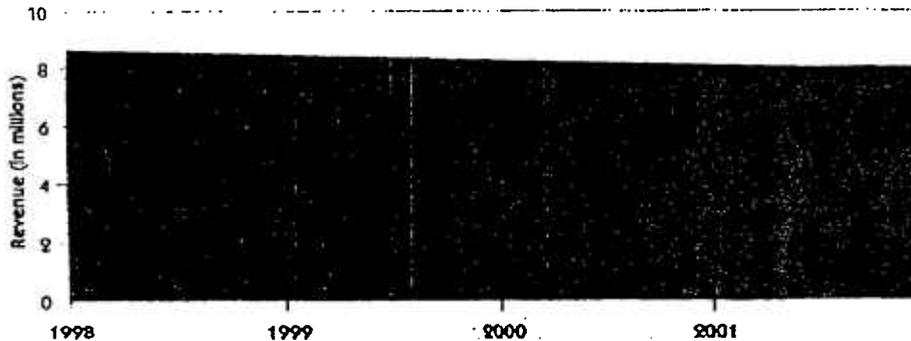




InfoFone Services - New York
Five Year Forecast - Scenario 3 - Revenues

	1998	1999	2000	2001	2002	5 Yr Total	5 Yr Growth
Mass Announcement Service	\$0	\$0	\$0	\$0	\$0	\$0	
year over year growth							
Interactive Information Network Service	\$4,133,000	\$3,943,000	\$3,753,000	\$3,581,000	\$3,431,000	\$18,841,000	
year over year growth		-4.597%	-4.819%	-4.583%	-4.189%		-16.985%
Group Bridging Service	\$4,509,000	\$4,505,000	\$4,502,000	\$4,493,000	\$4,490,000	\$22,499,000	
year over year growth		-0.069%	-0.067%	-0.200%	-0.067%		-0.481%
Total	\$8,642,000	\$8,448,000	\$8,255,000	\$8,074,000	\$7,921,000	\$41,340,000	
overall year over year growth		-2.245%	-2.285%	-2.193%	-1.895%		-8.343%

InfoFone Services - New York
Five Year Forecast - Scenario 3 - Revenues



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Front Of Book

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- Sports *SPORTS BARS*
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- Lotteries
- Business Reports
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- Novellas (Soap Operas)
- Horoscopes
- Attractions
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- Local Events
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NYNEX Consumer Tips Call Sequence



Consumer

Consumer Dials Access Phone # to Enter System

Consumer Is Greeted
By NYNEX Consumer Tip Identifier
And Is Prompted to Enter Tip Code

Consumer Hears *Intro* Message (10 Seconds)
Consumer Listens to The *Generic Tip* Message (20-30 Seconds)
Consumer Listens To *Extro* Message (10 Seconds)
Consumer Has The Option To *Direct Connect* To Advertiser

5-7 Intro

10-12 sec.

included

30-60
if push
#

Advertiser



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5180

Checking Credentials

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Methods of Payment

*See NYNEX Consumer Tips index for calling details

7232

Tratamiento Centralizado

7233

Chequeando Calificaciones

7234

Metodos de Pago

7235

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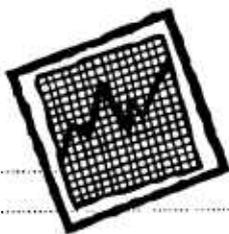
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English

Attractions

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- 2909 Brendan Byrne Arena
- 2910 Ellis Island
- 2911 Giants Stadium
- 2912 Hispanic Society Museum
- 2913 Madison Square Garden
- 2914 Museo Del Barrio
- 2915 Nassau Coliseum
- 2916 Radio City Music Hall
- 2917 Shea Stadium
- 2918 The Bronx Zoo
- 2919 The Statue Of Liberty
- 2920 United Nations Headquarters
- 2921 World Trade Center
- 2922 Yankee Stadium
- 2943 Schomberg Center for Research in Black Culture
- 2944 Studio Museum of Harlem
- 2945 Morris Jumel Mansion
- 2946 Arron Davis Center at City College
- 2947 Riverbank State Park



Business News

- 2209 Foreign Business Report
- 2210 Bond Market Update
- 2211 Business News Headlines
- 2214 Precious Metals Report
- 2216 NYSE Report and Dow Jones Averages
- 2217 AMEX Trading Report
- 2218 NASDAQ Trading Report
- 2219 Stock Market Highlights

Entertainment

- 2102 Movie Reviews
- 2103 Video Guide
- 2104 Adult Contemporary Singles
- 2105 Book Reviews
- 2106 Top 10 Singles
- 2107 Top 10 Country Singles
- 2108 Top 10 Pop Albums
- 2953 Top 10 Rap Singles
- 2109 Entertainment News
- 2141 Top 10 Urban Singles
- 2150 Today Is Your Birthday
- 2267 Prime Time TV Picks
- 2268 Cable TV Movies & Programs

Horoscopes

- 2152 Aquarius
- 2153 Pisces
- 2154 Aries
- 2155 Taurus
- 2156 Gemini
- 2157 Cancer
- 2158 Leo
- 2159 Virgo
- 2160 Libra
- 2161 Scorpio
- 2162 Sagittarius
- 2163 Capricorn



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Atracciones

- 2923 American Museum Of Natural History
- 2924 Brendan Byrne Arena
- 2925 Ellis Island
- 2926 Giants Stadium
- 2927 Hispanic Society Museum
- 2928 Madison Square Garden
- 2929 Museo Del Barrio
- 2930 Nassau Coliseum
- 2931 Radio City Music Hall
- 2932 Shea Stadium
- 2933 The Bronx Zoo
- 2934 The Statue Of Liberty
- 2935 United Nations Headquarters
- 2936 World Trade Center
- 2937 Yankee Stadium
- 2948 Schomberg Center for Research in Black Culture
- 2949 Studio Museum of Harlem
- 2950 Morris Jumel Mansion
- 2951 Arron Davis Center at City College
- 2952 Riverbank State Park

Entretenimiento

- 2868 Noticias del Mundo del Entretenimiento
- 2869 LP's Latinos del "Top 10"
- 2870 Canciones Latinas del "Top 10"

Horóscopos

- 2856 Acuario
- 2857 Piscis
- 2858 Aries
- 2859 Tauro
- 2860 Géminis
- 2861 Cáncer
- 2862 Leo
- 2863 Virgo
- 2864 Libra
- 2865 Escorpión
- 2866 Sagitario
- 2867 Capricornio

Negocios/ Noticias Financieras

- 2840 AMEX Reporte de Canje
- 2841 Actualización del Mercado de Bonos
- 2842 Titulares de Noticias de Negocios
- 2843 Reporte de Negocios Extranjeros
- 2844 NASDAQ Reporte de Canje
- 2845 NYSE Reporte/ Promedio de Dow Jones
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- 2847 Detalles de la Bolsa de Valores



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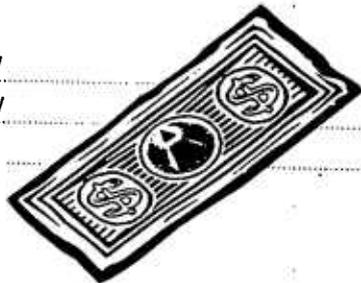
- 2110 Art Line
- 2111 Comedy Line
- 2112 Concert Line
- 2115 Senior Events
- 2116 Special Events
- 2117 Theatre Line
- 2118 Children's Events

Social Services

- 2894 Aid To Dependent Children
- 2895 Day Care Facilities
- 2896 Medicare
- 2897 Social Security
- 2898 Supplemental Security Income
- 2899 Unemployment Benefits
- 2900 YMCA

Lottery

- 2668 New Jersey Lottery
- 2848 Connecticut Lottery
- 2849 New York Lottery

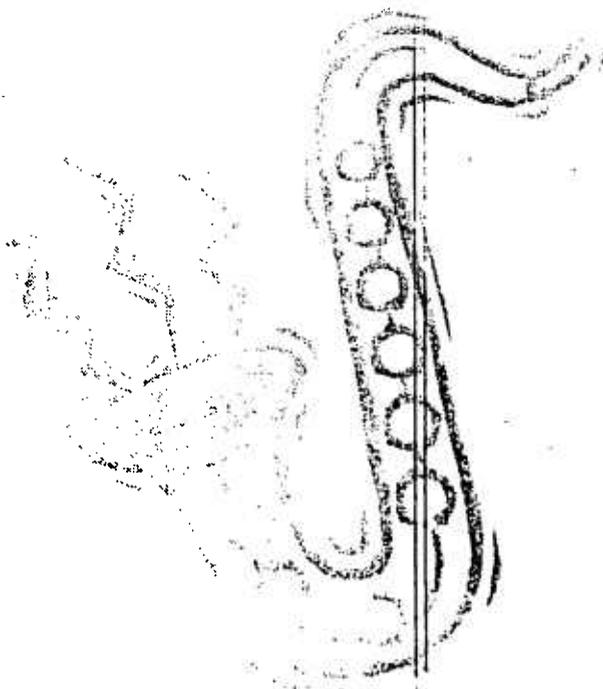


World News

- 2938 World News Report

Soap Operas

- 2250 All My Children
- 2251 Another World
- 2252 As The World Turns
- 2253 The Bold and the Beautiful
- 2255 Days Of Our Lives
- 2258 General Hospital
- 2259 Guiding Light
- 2262 Loving
- 2263 One Life To Live
- 2266 The Young and the Restless



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- 2871 Clubs/ Bailes
- 2872 Línea de Comedia
- 2873 Conciertos/ Actuaciones en Vivo
- 2874 Festivales
- 2875 Acontecimientos Locales para Niños
- 2876 Acontecimientos Locales Especiales
- 2877 Deportes Locales
- 2878 Películas y Teatro en Español

Servicios Sociales

- 2901 Ayuda para Niños Dependientes
- 2902 Facilidades Diurnas para el Cuidado de Niños
- 2903 Medicare
- 2904 Seguridad Social
- 2905 Ingreso Suplementario
- 2906 Beneficios de Desempleo
- 2907 YMCA

Lotería

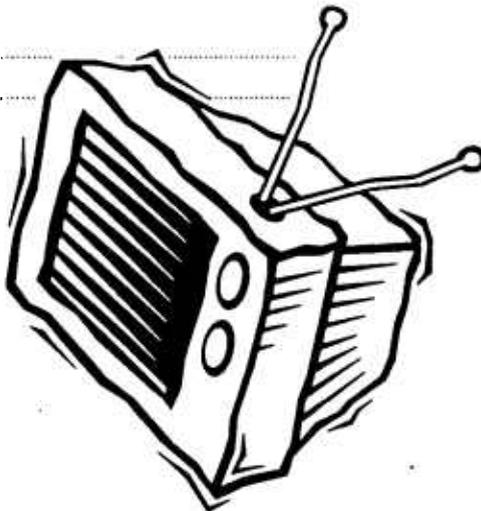
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- 2851 Lotería de New Jersey
- 2852 Lotería de New York

Noticias Mundiales

- 2939 Noticias de la Republica Dominicana
- 2940 Noticias de Puerto Rico
- 2941 Noticias de Latino América
- 2942 Reporte de Noticias Mundiales

Televelas

- 2853 Telemundo
- 2854 Univisión



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English

Sports

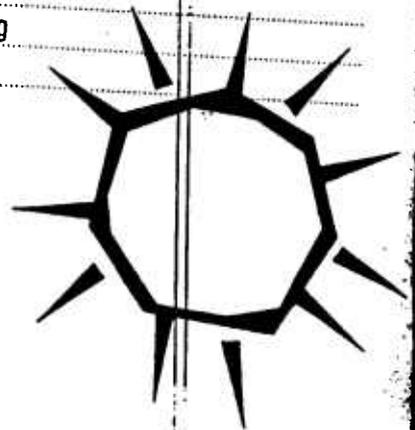
- 2051 Mets
- 2053 Yankees
- 2055 Nets
- 2057 Knicks
- 2059 Giants
- 2061 Jets
- 2063 Devils
- 2065 Islanders
- 2067 Rangers
- 2201 Sports Scoreboard
- 2222 Sports Report
- 2224 NFL Report
- 2225 NBA Report
- 2226 NHL Report
- 2229 AL & NL Baseball Report

Sports — Extra

- 2049 Steelers
- 2069 Orioles
- 2071 Redskins
- 2081 Miami Dolphins
- 2083 Tampa Bay Buccaneers
- 2086 Florida Marlins
- 2087 Orlando Magic
- 2089 Miami Heat
- 2232 Jacksonville Jaguars
- 2701 Phillies
- 2703 Eagles
- 2705 76 ers
- 2737 Bulletts
- 2749 Pirates
- 2807 Red Sox
- 2808 Celtics
- 2809 Patriots

Weather

- 2400 Local
- 2403 Atlanta
- 2405 Baltimore
- 2406 Boston
- 2407 Chicago
- 2408 Cincinnati
- 2409 Cleveland
- 2410 Dallas
- 2411 Denver
- 2412 Detroit
- 2415 Houston
- 2417 Kansas City
- 2419 Los Angeles
- 2421 Miami
- 2422 Milwaukee
- 2423 Minneapolis / St. Paul
- 2426 New York
- 2427 Orlando
- 2429 Philadelphia
- 2430 Phoenix
- 2431 Pittsburgh
- 2434 St. Louis
- 2436 San Diego
- 2437 San Francisco
- 2438 Seattle
- 2439 Tampa / St. Petersburg
- 2440 Washington, D.C.



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Reporte de Deportes

- 2879 Reporte de AL/NL de Béisbol
- 2880 Reportes de La República Dominicana
- 2881 Giants
- 2882 Jets
- 2883 Knicks
- 2884 Mets
- 2885 Deportes de México
- 2886 Reporte del NBA
- 2887 Nets
- 2888 Reporte del NFL
- 2889 Deportes de Puerto Rico
- 2890 Deportes de Latino América
- 2891 Reporte de Deportes Nacionales
- 2892 Resultados
- 2893 Yankees



Deportes — Extra

- 2780 Acereros
- 2781 Orioles
- 2782 Pielas Rojas
- 2783 Delfines de Miami
- 2784 Bucaneros de Tampa Bay
- 2785 Marlins de Florida
- 2786 Orlando Magic
- 2787 Miami Heat
- 2793 Jaguares de Jacksonville
- 2788 Phillies
- 2789 Eagles
- 2790 76 ers
- 2791 Balas
- 2792 Pirates
- 2794 Medias Rojas
- 2795 Celtas
- 2796 Patriotas

Pronósticos del Tiempo

- 2810 Atlanta
- 2811 Baltimore
- 2812 Boston
- 2813 Chicago
- 2814 Cincinnati
- 2815 Cleveland
- 2816 Dallas
- 2817 Denver
- 2818 Detroit
- 2819 Houston
- 2820 Kansas City
- 2821 Local
- 2822 Los Angeles
- 2823 Ciudad de Mexico
- 2824 Miami
- 2825 Milwaukee
- 2826 Minneapolis / St. Paul
- 2827 New York
- 2828 Orlando
- 2829 Philadelphia
- 2830 Phoenix
- 2831 Pittsburgh
- 2832 San Diego
- 2833 San Francisco
- 2834 San Juan
- 2835 Santo Domingo
- 2836 Seattle
- 2837 St. Louis
- 2838 Tampa / St. Petersburg
- 2839 Washington, D.C.

NYNEX CONSUMER ADVANTAGE

Dial (718) 716-2288 on your touch-tone phone and enter the four digit code of your selected topic.

CUSTOMER CALLING SERVICES

◆ CALL WAITING

No Monthly charge. Airtime rates apply

ACTIVATE: After hearing beep that indicates incoming call:
1. Press CLEAR
2. Press SEND (to put first party on hold & connect to incoming call)
3. Press SEND to alternate calls.
TERMINATE: Press END - or just don't answer.

◆ CALL FORWARDING

No monthly charge, Airtime rates apply for the entire duration of call. (long distance or toll applicable depending where the calls are being forwarded to)

ACTIVATE:
1. Press Clear
2. Press *72+destination telephone # (include area code if needed)
3. Press SEND (listen for pin prompt)+ PIN
4. Press SEND (listen for confirmation tone) + END.

Note: If phone is authenticated, then it is not necessary to do Step 3 shown above.

TERMINATE: Clear - *73 + SEND (listen for confirmation tone + PIN (PIN not needed if phone is authenticated) - END

◆ 3-PARTY CONFERENCING

No monthly charge, Airtime rates apply for duration of both calls. (long distance or toll applicable depending where the third party call terminates)

While on *outgoing call*: press CLEAR. Dial third party number. Press SEND to put first call on hold. After third party answers Press SEND to connect to all parties. If user wishes to disconnect the third party, press SEND.

While on *incoming call*, press CLEAR. Dial third party number. Press SEND, PIN code, press SEND again. After third party answers, press SEND key to connect all parties. If user wishes to disconnect the third party, press SEND.

◆ NO ANSWER TRANSFER

No monthly charge, Airtime rates apply for the duration of both calls.

ACTIVATE: Clear + *71 + telephone # + SEND + PIN + SEND + END.

TERMINATE: Clear + *73 + SEND + PIN + SEND + END

INFORMATION SERVICES

- *LIST/5478 (Free) Directory of services
- *JAM/526 (A/T rates apply) To receive traffic information
- *TIP/847 (Free) To report traffic problems
- *UAL/825 (A/T rates apply) United Airlines Flight Reservations
- *CG/24 (Free) Coast Guard Emergency
- *FIND/3463 (A/T rates apply) To receive driving directions
- *DWI/394 (Free) Report a suspected drunk driver
- *86 (A/T rates apply) Mobilemail retrieval
- *711 (Free) Roamer information
- *88 (Free) WCBS News tip line - report news
- *1130 (Free) Bloomberg Financial Market News

- 911 (Free) Emergency Calls
- 611 (Free) BANM Customer Service
- *411 (A/T rates + Toll Charge) Directory Assistance
- 411 (A/T + \$.75) InfoAssist
- *18 (Free) To activate FMR
- *19 (Free) To deactivate FMR
- *78 (Free) To activate MobileReach
- *780 (Free) To deactivate
- *67 (Free) To block an individual call from the Caller ID service--Per Call Blocking
- *82 (Free) To unblock an individual call from the Caller ID service

RECYCLED

May 29, 1998

EUS/XRF-98:484

George Korsanos
Bell Atlantic
240 E. 38th. Street
14th Floor
New York, NY 10016

Dear George,

This letter is in response to your request for information regarding the nature of potential Year 2000 (Y2K) problems that Bell Atlantic could experience in the IMAS platform.

As previously discussed, the IMAS is operating with an obsolete load (AS-61) that was not tested for Y2K issues. The following lists potential areas of failure with Ericsson's most recent non-Y2K compliant AS's. It should be understood that AS-61 could have additional undefined areas of concern.

Operational problems could occur in non-Y2K compliant application systems during the date shift from December 31, 1999, to January 1, 2000 (Y2K problems). An AXE office could experience one or more of the following types of in-service problems.

Traffic Handling –

There does not appear to be any Y2K problem that would directly affect call set-up, connection, switching, and termination. However, a side effect of a Y2K problem could cause an exchange restart, possibly resulting in temporary (less than 2 minute) service interruption. An example of this would be a Y2K error in scheduled periodic maintenance tasks, resulting in a large number of maintenance tasks being initiated at the same time. If a sufficiently large number of maintenance tasks were so triggered, internal job buffers could be overflowed, resulting in a system restart.

Periodic Maintenance –

In many cases, AXE maintenance routines and tests can be ordered via exchange command to occur at a later date and time. A Y2K problem could result in the ordered test not being performed, or being performed at the wrong time. For example, scheduled routine tests of subscriber lines could all trigger at the Y2K date shift, causing an inappropriate number of tests to occur within a short period of time.

Reports and Printouts –

Y2K problems could result in either no date or the wrong date appearing on AXE exchange reports and printouts.

Feature Timers –

Some features that use date and time information in their operation may not work correctly for some period of time around the Y2K shift. For example, timers associated with call gapping may fail, causing a temporary interruption of controls on call flows and database query attempts.

Event Logging –

Y2K problems may result in incorrect dates and times appearing in stored system event and maintenance logs.

System Timers –

Internal system timers could trigger erroneously at the Y2K shift, causing scheduled feature events (e.g. time of day routing change) either not to occur or to occur at the wrong time.

Statistical Reporting –

Computation of traffic measurements, processor load, and other time-averaged statistics relating to events occurring over a time period which includes the Y2K shift may be incorrect.

Data Transcript Aging –

For some types of routing and digit analysis table updates, service problems that occur within a certain time period following activation of the new data will result in the "old" data being restored automatically. Y2K problems could affect the proper aging of these data transcript changes.

Subscriber Announcements of Date and Time –

Y2K problems could cause certain features that automatically build date and time voice announcements to do so incorrectly, resulting in a subscriber receiving incorrect date and time information in an announcement.

I/O File System –

Y2K problems could cause incorrect timing of pre-scheduled file deletions, resulting in I/O system restarts. An I/O system restart will temporarily interrupt the ability of the exchange to receive and execute operator commands.

Reload File Selection –

Y2K problems could result in the improper automatic selection of a system backup load, resulting in the exchange being reloaded with an older revision of the system rather than the most recent backup.

If you have questions, please contact me at 972-583-5579.

Sincerely,

Charlie Stroud
Technical Solutions Director

CC:

Chuck Johnson, Ericsson
Amy Johnson, Ericsson
Niclas Bratberg, Ericsson

SECRET

Case: 98-C-1079

PPI

Date of Request: October 12, 1998

PPI-BA-NY-78	Attach hereto copies of the six contracts that BA-NY has "with six clearinghouses for the New York area." (P.16).
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RESPONSE:

BA-NY objects to this interrogatory on the grounds that it seeks confidential and proprietary customer information. Notwithstanding this objection, attached is a standard contract used for the billing and collection services with clearing houses.

Case 98-C-1079
PPI-BA-NY- 78
Attachment

AGREEMENT FOR
BILLING AND COLLECTION SERVICES
BETWEEN
NEW YORK TELEPHONE COMPANY
AND

TABLE OF CONTENTS

	<u>Page</u>
Section 1. Certain Defined Terms	1
Section 2. General Service Description	2
Section 3. Types of Rated Messages Billed	4
Section 4. Late Payment Charge	5
Section 5. Settlements and Purchase of Accepted Rated Messages (A) Adjustments (B) Payment of Amount Due Client	5
Section 6. Assignment of Rated Messages	9
Section 7. Application of Taxes and Tax-Associated Rate Elements (A) Billing of Taxes and Tax-Associated Rate Elements (B) Filing of Tax Returns (C) Indemnity (D) Indemnity Procedures (E) General Tax Audit Requirements	9
Section 8. Customer Service Procedures (A) Referral Process (B) Adjustment Process (C) Recourse of Disputed Charges	13
Section 9. Collection Services	14
Section 10. Payment Procedures for Billing and Collection Services	15
Section 11. Deposits	16
Section 12. Audits (A) Notice and Scope (B) Frequency (C) Expenses (D) Handling of Materials (E) Requests for Examination	16
Section 13. Claims (A) Notification of Disputed Amounts (B) Payment of Disputed Amount (C) Settlement of Claims (D) Claims Limitation (E) Retention of Supporting Data Concerning Claimed Amount	17
Section 14. Limitation of Liability	18

TABLE OF CONTENTS (continued)

	<u>Page</u>
Section 15. Termination	19
Section 16. Indemnification	19
Section 17. Security Interest	19
Section 18. Proprietary Information	19
Section 19. Amendments and Waivers	20
Section 20. Assignment	20
Section 21. Notice and Demand	20
Section 22. Force Majeure	20
Section 23. Non-Exclusive Agreement	21
Section 24. Non-Publicity	21
Section 25. Survival	21
Section 26. Detariffing of Services	21
Section 27. Merger Clause	21
Section 28. Headings	21
Section 29. Independent Contractors	22
Section 30. Bank Errors	22
Section 31. Performance	22
Section 32. Third Party Beneficiaries	22
Section 33. Executed in Counterparts	23
Section 34. Severability	23
Section 35. Governing Law	23
Section 36. Changes in State Tariffs	23
Section 37. List of ICs and/or OSPs	23
Section 38. Use of Client Specifications	23
Section 39. Billing Modifications	23

TABLE OF CONTENTS (continued)

	<u>Page</u>
Section 40. Tariffs	24
Section 41. Data Retention	24
Section 42. Term	24
Exhibit A - Contract Information Sheet	
Exhibit B - Billing for Client Pay-Per-Call Service	
Exhibit C - Message Ready Bill Message Service	
Exhibit D - Proprietary Information	
Exhibit E - Rates and Charges	

AGREEMENT FOR BILLING AND COLLECTION SERVICES
BETWEEN
NEW YORK TELEPHONE COMPANY
AND

This Agreement is entered into between NEW YORK TELEPHONE COMPANY ("NYT"), a corporation incorporated under the laws of the State of New York with its principal place of business in New York, New York, and ENHANCED SERVICES BILLING, INC. ("Client"), a corporation incorporated under the laws of the State of Delaware with its principal place of business in San Antonio, Texas.

WHEREAS, Client is either an Interexchange Carrier (IC), or an Operator Service Provider (OSP) or is acting as a Clearing Agent for billing and collection purposes for certain ICs and/or OSPs;

WHEREAS, Client desires to purchase from NYT, and NYT desires to provide to Client, billing and collection services for Client End User Customers or, in the case of a Clearing Agent, for the end user customers of the ICs and/or the OSPs that the Client represents, who are also end user customers of NYT;

NOW, THEREFORE, in consideration of the mutual benefits accruing to each Party, the Parties hereby covenant and agree as follows:

Section 1. Certain Defined Terms

As used in this Agreement and in the attached Exhibits which form a part of this Agreement, and unless otherwise expressly indicated herein, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Access Customer Name Abbreviation (ACNA)" - A unique three character alpha identification assigned to the Client and associated with a particular Carrier Identification Code (CIC).

"Adjustment" - A billing amount related to Client End User Customer charges which is added to or subtracted from the balance due from the Client End User Customer.

"Alternate Billing Entity Code (ABEC)" - A numeric identification code used in conjunction with billing and collection services for customers who do not purchase Feature Group B or Feature Group D Access Service.

"Calling Card" - A telephone calling card issued by NYT on its own behalf or by the Client on its own behalf.

"Carrier Identification Code (CIC)" - A numeric identification code which is currently used for customers with Feature Group B or Feature Group D Access Service.

"Centralized Message Data System ('CMDS')" - A system which may be used to transfer exchange message interface ("EMI") formatted billing data between the designated recording/rating company and NYT.

"Client End User Customer" - An end user customer of NYT who makes any of the types of calls listed in Section 3 of this Agreement routed by Client acting as an IC or an OSP or, in the event the Client is acting as a Clearing Agent, those end user customers of NYT who make any of the aforementioned call types using any of the ICs or OSPs represented by the Client.

"Directory Assistance" - A telephone call where IC or OSP support services (either manual or mechanized) are provided to the end user at the end user's request in order to determine a telephone number.

"Exchange Message Interface" (EMI) - Standard record layouts for IC/LEC data exchange published by Bellcore.

"Holiday" - Includes New Year's Day, Presidents Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, and the day when Memorial Day is legally observed in the NYNEX region; and the first Tuesday after the first Monday in November (Election Day) is observed in the State of New York.

"Host Choice Company" - The local exchange carrier chosen by Client to receive Client data and to process and distribute such data to NYT via CMDS.

"International Call" - A telephone call which originates from the United States (including Alaska, Hawaii, Puerto Rico, and the Virgin Islands) and terminates in any other country, or a telephone call which originates outside the United States.

"Network Data Mover (NDM)" - A communication protocol which can be used to transfer data between the Client and NYT.

"Operator Assisted" - A telephone call where IC or OSP operator support services (either manual or mechanized) are provided to the end user at the end user's request in order to complete the call.

"Pay-Per-Call Services" - Audio information or entertainment services accessed by dialing a 900 special access code.

"Rated Message" - A message, including credits, which has been assembled and edited by Client (or the ICs and/or OSPs for which the Client is acting as agent) and to which Client (or the ICs and/or OSPs for which the Client is acting as agent) has applied its applicable rates and charges, as well as all applicable taxes as set forth in this Agreement.

"Sent Paid" - A telephone call where the charges are billed to the telephone number of the originating station.

Section 2. General Service Description

NYT shall provide Billing and Collection Services in accordance with the terms and conditions set forth in this Agreement, the Contract Information Sheet attached hereto as Exhibit A, the other exhibits attached hereto, and any applicable tariffs. Additional details regarding NYT's Billing and Collection Services are set forth in the NYNEX Billing and Collections Operations Manual.

Client or the IC/OSP for whom the Client is acting as a Clearing Agent shall cause to be recorded both domestic and international messages originating on its facilities. Client or the IC/OSP for whom the

Client is acting as a Clearing Agent shall assemble, edit and rate those messages which Client will deliver to NYT pursuant to this Agreement. Such messages shall be processed by Client's Host Choice Company and delivered as Rated Messages to NYT in EMI format, via CMDS, NDM, or magnetic tape, or any other method as may be mutually agreed upon by the Parties in writing.

Client shall not deliver to NYT any Rated Messages which Client does not own. Notwithstanding the foregoing, in those instances where the Client is acting as a Clearing Agent for other ICs and/or OSPs, such Rated Messages may not be owned by the Client but may be owned by other ICs or OSPs. However, in these instances, Client represents that it is acting as the agent for the owning IC or OSP and has full authority to act on behalf of the IC or OSP principal and sell to NYT the Rated Messages. In this event Client shall not deliver to NYT any Rated Messages for which Client does not act as an IC or OSP agent. Further, Client shall not deliver any Rated Messages which Client or ICs and OSPs represented by Client acting as a Clearing Agent have previously billed to a Client End User Customer directly. Client shall deliver domestic Rated Messages to NYT no later than 90 days, and international Rated Messages no later than 180 days, from the date that the Rated Messages were first recorded by Client or those ICs and OSPs for whom Client is acting as Clearing Agent, unless otherwise agreed to by NYT in writing.

Any transmission of Rated Messages received from Client which is determined to be unreadable (contain bad data of which no portion can be processed by NYT's billing system) will be reported to Client for recovery within one (1) business day where NDM is utilized, or no later than two (2) business days where another transmission medium is utilized by Client. NYT shall not be held liable for data transmissions received in this condition.

NYT will process through its billing system any readable Rated Message data transmission within one (1) business day of receipt of data transmission from Client. NYT will send a Confirmation Report which identifies those Rated Messages which it accepts for billing ("Accepted Rated Messages"), and a detailed listing of every message rejected within one (1) business day via NDM, or three (3) business days via another medium, from the data processing date.

NYT shall provide Client with Account Record Keeping which consists of the updating and retention of all information needed for the billing of Client End User Customers. NYT shall also provide to Client the error resolution services and processing for Accepted Rated Messages failing the Account Record Keeping processing requirements.

Client message detail determined to be lost, damaged, or destroyed as a result of NYT's tape/file processing will be recovered, if possible, by NYT. In the event the message detail can not be recovered by NYT, Client will retransmit the data to NYT, provided Client is notified within the ninety (90) day time constraint outlined in the NYNEX Billing and Collection Operations Manual. If backup cannot be provided by Client, and NYT's request occurred after the ninety (90) day period, NYT will estimate the messages and associated revenues based upon historical data and negotiate a mutually agreed upon settlement.

NYT will maintain a file of Accepted Rated Messages until such messages are included in the Client End User Customer's bill in accordance with NYT's normal billing cycle.

The Client and NYT are dependent on the other to provide accurate and timely billing information to produce a quality bill for their customers. The customer bill is in fact created by applications resident in each company. This collection of applications can be called the "Intercompany Billing System".

Each company will use their best efforts to notify the other of any changes that are to be made to any application within the "Intercompany Billing System". For major changes, notification will occur no later than three (3) months prior to the scheduled change. For all other changes except emergency changes, notification will occur at least sixty (60) days before the change is scheduled. For emergency changes, notification will occur as soon as it is known. Notification will include:

- When the change is scheduled to occur
- What area or function is being changed within the billing system
- A point of contact to secure additional information.

The Parties agree to work together to determine if the change will require inter-company systems testing and, if so, the extent and scheduling of the test plan. If testing is required, neither Party will implement the said changes until a successful test has been accomplished.

NYT shall prepare and mail bills to Client End User Customers and shall post bills as rendered to NYT's accounts receivable in accordance with NYT's procedures for its own services. An integrated bill will be rendered based on the standard bill format provided by NYT, which will contain charge elements for both NYT and Client. All charges will be considered owed to NYT and will be reflected in one total balance due. NYT reserves the right to change the standard bill format. NYT shall advise Client of any substantive changes in the standard bill format 30 days prior to the enactment of any such change.

When bill format changes will affect Client systems, NYT will not enact any such change without notification to Client in writing six months prior to implementation.

The Client corporate logo will be displayed, along with itemized Client charges, on the Client pages of the Client End User Customer bill. "Client" shall be printed on each detail page, as well as on the sub-totaled line showing total Client charges. If Client provides an additional CIC(ABEC)/ACNA within one Billing and Collection Agreement, Client will have the option to have a separate logo. If NYT provides Billing and Collection Services under a separate CIC(ABEC)/ACNA, the bill for each CIC(ABEC)/ACNA will be displayed and subtotaled separately.

NYT will provide Client with Collection Services in accordance with the provisions of Section 9 hereof.

Section 3. Types of Rated Messages Billed

For Client End User Customers, NYT shall provide to Client Billing and Collection Services for the following types of Rated Messages:

- (a) Sent Paid;
- (b) Operator Assisted;
- (c) Calling Card;
- (d) Directory Assistance;
- (e) International; and
- (f) Pay-Per-Call Services

NYT shall not be obligated to provide Billing and Collection Services for any of the foregoing call types until such time as Client provides to NYT an acceptable test tape for the type of call to be billed, and has paid all applicable program development fees, if any.

NYT shall not be obligated to provide Billing and Collection Services for other ancillary charges associated with such calls, including but not limited to service fees, charges for merchandise, catalogs,

political or charitable contributions, or other services or products, unless Client receives written authorization from NYT.

NYT shall not be obligated to provide Billing and Collection Services for other call types unless Client receives written authorization from NYT. NYT reserves the right to not bill for calls which are prohibited by applicable regulations, laws or tariffs, or which contain matter which, in the sole discretion of NYT, implicitly or explicitly invites, describes, stimulates, excites, arouses, or otherwise refers to sexual conduct, or sexual innuendo. NYT also reserves the right at any time to reject or refuse to bill for any calls if and when directed to do so by a regulatory authority or if the billing of such calls would, in the sole discretion of NYT, adversely impact the image and reputation of NYT. Additional terms and conditions applicable to Pay-Per-Call Services are set forth in Exhibit B. The standards NYT applies in deciding whether to bill pursuant to this Section shall be applied to all Clients for whom NYT provides Billing and Collection Services.

NYT reserves the right to immediately suspend the provisioning of all Billing and Collection Services if Client submits unauthorized call types/services for billing or if Client's business practices adversely impact the image and reputation of NYT. Upon suspension, NYT will notify Client in writing of the reason(s) for said suspension. NYT shall have the right to terminate this Agreement after thirty (30) days of such notification if during that period Client does not cure the problem.

NYT will not bill for calls made to or from an end user who has been blocked from making such calls. These blocks may be, but are not limited to the following: NYT initiated block of long distance, customer initiated blocks, or suspension for non-payment.

Upon written request from Client, NYT will consider providing Billing and Collection Services for new telecommunications services, not contemplated herein.

Section 4. Late Payment Charge

Client or the ICs/OSPs for whom the Client is acting as Clearing Agent shall notify Client End User Customers that amounts payable to NYT may be subject to a late payment charge on all outstanding amounts which remain unpaid at the time the next NYT bill is rendered, or at such other time of imposition as may be determined by NYT. Inclusion of such notice in Client's tariffs or the tariffs of the ICs/OSPs for whom the Client is acting as a Clearing Agent will constitute adequate notice under this Section. Any such late payment charges paid by Client End User Customers are the property of NYT. Client shall indemnify and hold harmless NYT from and against any loss, cost, claim, liability, damage and expense (including reasonable attorney's fees) relating to or arising out of Client's failure or the failure of the ICs/OSPs for whom the Client is acting as a Clearing Agent to include and maintain such notice of late payment charges in its tariffs.

Section 5. Settlements and Purchase of Accepted Rated Messages

NYT shall purchase Accepted Rated Messages from Client. The Amount Due Client shall equal the dollar amount of the Accepted Rated Messages ("Face Amount of the Accepted Rated Messages") on a per transmission basis, subject to the adjustments set forth below.

For each transmission received from Client, NYT shall provide a Settlement Report providing the information necessary for calculating the Amount Due Client. In the event that NYT agrees to provide Billing and Collection Services to Client under an additional CIC(ABEC)/ACNA, a separate

Settlement Report will be provided for each transmission of Accepted Rated Messages submitted under each additional CIC(ABEC)/ACNA.

(A) Adjustments

The following adjustments shall be used to determine the Amount Due Client. These adjustments will be identified on the Settlement Reports provided to Client.

(1) Factored Uncollectible Adjustment

NYT shall deduct from the Amount Due Client an amount (the "Factored Uncollectible Amount") to compensate for the anticipated revenue loss due to the failure of Client End User Customers to pay NYT. NYT shall determine the Factored Uncollectible Amount by multiplying the amount of the Accepted Rated Messages by Client's Uncollectible Factor. The Client Uncollectible Factor shall be determined as set forth in Section 5(A)(3). Once a month, additions will be made to the Factored Uncollectible Amount by applying the Client's Uncollectible Factor to the tax amount included in the monthly adjustments set forth below in Section 5(A)(2)(d).

(2) Monthly Adjustments

Once a month, a Monthly Settlement Report will be produced showing the following monthly adjustments:

- (a) An amount for "Post Billing Adjustments". Post Billing Adjustments are amounts NYT removes from Client End User Customer balances, pursuant to Sections 8(B) and (C) of this Agreement.
- (b) An amount for "Unbillables". Unbillables are amounts which NYT is unable to bill or credit to Client End User Customers.
- (c) An amount for any billing errors that may have been made by Client or NYT.
- (d) An amount for billed taxes and for adjusted taxes. Taxes are computed by NYT and billed to Client End User Customers.
- (e) An amount for billed surcharge amounts. Surcharges are only billed to Client End User Customers as a result of the Client issuing a formal request to NYT to bill such surcharges.

(3) Uncollectible Factor Determination

NYT shall determine an Uncollectible Factor for Client in the following manner:

- (i) Based upon its records for a three (3) month period, NYT shall determine the amount billed, including taxes, by NYT to Client End User Customers which, after standard collection efforts, are accounted for as realized uncollectibles (the "Realized Uncollectible Amount"). The Realized Uncollectible Amount shall be adjusted for "Net Recoveries" received by NYT during the said three (3) month period. Net Recoveries are payments received from End User Customers for

billed revenues that have been previously declared as realized uncollectible, minus any Outside Collection Agency Expenses.

- (ii) To derive the Uncollectible Factor, the Realized Uncollectible Amount shall be divided by the revenues from the three (3) month period in which the Realized Uncollectible Amount was originally billed to the end user. These revenues will include the face amount of the Accepted Rated Messages plus billed taxes and plus or minus those monthly adjustments stated in Section 5(A)(2).

Example of deriving Uncollectible Factor:

Realized Uncollectible Amount for April - June 1995
Accepted Billed Revenue for July - September 1994

= Realized Uncollectible Factor (Calculated in July 1995)

- (iii) The Uncollectible Factor, once determined, shall be used for the ensuing three (3) month period, at which time a new Uncollectible Factor shall be computed and used for the succeeding three (3) month period.
- (iv) In the event that NYT has not provided Billing and Collections Services to Client for a particular CIC(ABEC)/ACNA during the three month period prior to execution of this agreement, NYT shall apply an initial Uncollectible Factor of 12%. The initial Uncollectible Factor will remain in effect until the Client's first quarterly true-up is calculated. Generally the first true-up is calculated thirteen (13) months after the initial acceptance of Client's messages by NYT.
- (v) NYT reserves the right to immediately raise the Uncollectible Factor in its sole and absolute discretion. In the event that NYT increases the Uncollectible Factor to twenty percent (20%) or more, Client may terminate this Agreement ninety (90) days after the date that written notice of such termination is given to NYT.

(4) EMI Credit Adjustments

Client-initiated EMI Credit Adjustments will appear on the Settlement Report as a reduction to the Amount Due Client. The EMI Credit adjustments will equal the face amount of accepted EMI credit messages remitted by Client.

(5) Quarterly True-Up Adjustment

In order to account for the difference between the Factored Uncollectible Amount and the Realized Uncollectible Amount for each three (3) month period, NYT shall make a true-up adjustment as follows (the "True-Up Adjustment"):

If the Factored Uncollectible Amount for any three (3) month period exceeds the Realized Uncollectible Amount for that same period, NYT shall add the difference to the Amount Due Client. If the Factored Uncollectible Amount for any three (3) month period is less than the Realized Uncollectible Amount for that same period, NYT shall subtract the difference from the Amount Due Client.

After each true-up period as described above, the True-Up Adjustment, either reducing or increasing the Amount Due Client, will be made in the month following the month that said True-Up Adjustment is calculated.

If NYT ceases to render billing and collection services to Client for any reason, NYT shall continue to conduct quarterly true-ups until Client's realized uncollectibles are zero. Each true-up adjustment after said cessation shall either reduce or increase the Amount Due Client.

- (a) If the Amount Due Client results in a debit (positive) NYT shall pay to Client the amount by adding 55 days to the Settlement Report Bill Date and using the payment criteria described in Section 5(B)(1).
- (b) If the Amount Due Client results in a credit (negative) Client shall pay to NYT the amount by the payment date indicated on the Settlement Report. The payment date is derived by adding 55 days to the Settlement Report Bill Date and using the payment criteria described in Section 5(B)(1).

(B) Payment of Amount Due Client

- (1) Except as provided below, NYT shall pay to Client the Amount Due Client, computed in accordance with Section 5(A), no later than fifty-five (55) days from the date the Accepted Rated Messages are accepted by NYT (the "NYT Payment Date") pursuant to Section 2 of this Agreement. Upon written request from Client, NYT may advance the payment of the Amount Due Client up to thirty (30) days from the date the Accepted Rated Messages are accepted by NYT. In return, NYT shall charge Client the prime rate, as reported in the *Wall Street Journal* the first business day of January and July of every year, plus two (2) percentage points, or the maximum interest rate allowed by law, whichever is lower, for the number of days advanced times the Amount Due Client (the "Discount"). NYT shall pay Client the Amount Due Client, less the Discount. It is contemplated that payments made hereunder may not include any applicable True-Up Adjustment, which shall be made at the appropriate subsequent date.

In the event NYT determines, in its sole and absolute discretion, that Client may be unable to perform its financial obligations under this Agreement, NYT may withhold payment of the Amount Due Client until such time as Client provides assurance to NYT that it will be able to perform such financial obligations.

NYT shall have the right to net against Amount Due Client those Billing and Collection amounts for which NYT has not received payment from Client within forty-five (45) calendar days of the Payment Date, and for which Client has not disputed said charges as set forth in Section 13.

Payment will result in immediately available funds on the NYT Payment Date. If the NYT Payment Date falls on a Sunday or on a Holiday which is observed on a Monday, the NYT Payment Date shall be the first non-Holiday day following such Sunday or Holiday. If the NYT Payment Date falls on a Saturday or on a Holiday which is observed on Tuesday, Wednesday, Thursday or Friday, the NYT Payment Date shall be the last non-Holiday day preceding such Saturday or Holiday.

- (2) If Client does not receive any portion of the Amount Due Client by the NYT Payment Date, or if any portion of the Amount Due Client is received by Client in funds which are not immediately available to Client, then NYT shall pay to Client a late payment charge. The late payment charge shall be the portion of the Amount Due Client not received by the NYT Payment Date times a late factor. The late factor shall be the lesser of:
- (a) the highest interest rate (in decimal value) as of the NYT Payment Date which may be levied by law for commercial transactions in the State of New York, with interest compounded daily for the number of days from the NYT Payment Date to and including the date that NYT actually makes the payment to Client; or
 - (b) the prime rate, as reported in the *Wall Street Journal* the first business day of January and July of every year, plus two (2) percentage points. This rate shall be converted to simple interest by dividing by 365 days and shall then be applied for the number of days from the NYT Payment Date to and including the date that NYT actually makes the payment to Client.

Any late payment charge shall be included with a subsequent NYT payment to Client at a date to be mutually agreed upon.

Section 6. Assignment of Rated Messages

Client represents and warrants to NYT that each and every Rated Message which it shall deliver to NYT under this Agreement is either owned by Client or that Client is authorized to deliver such Rated Messages to NYT acting in its capacity as agent for the principal IC or OSP. Further, Client represents and warrants that to the best of its knowledge the IC and/or OSP for whom it is acting as agent owns the Rated Messages delivered to the Client. Notwithstanding the foregoing, Client represents and warrants that each Rated Message delivered to NYT shall be delivered free and clear of any and all liens or claims by any third party, and that at the time of delivery of such Rated Message to NYT, such Rated Message has not been assigned, pledged, transferred, sold, exchanged, or otherwise conveyed or encumbered. Upon the request of NYT, Client shall provide reasonable written assurance to NYT of the foregoing. Any such conveyance or encumbrance shall be null and void.

Section 7. Application of Taxes and Tax-Associated Rate Elements

(A) Billing of Taxes and Tax-Associated Rate Elements

- (1) NYT agrees on behalf of Client to charge certain taxes as hereinafter provided. Regardless of whether taxes are computed by NYT or Client or those ICs and/or OSPs for whom Client is acting as Clearing Agent, Client is solely responsible for the determination of the appropriate federal, state and local taxes and tax-associated rate elements, including sales taxes, federal excise taxes and other taxes imposed on Client End User Customers ("End User Taxes").

With respect to End User Taxes, NYT shall compute the federal excise taxes and state and local sales and excise taxes applicable in the State of New York to Client's services. NYT will compute and apply state and/or local sales and excise taxes for the states within the NYT region appropriate to the state in which the End User account is billed. Client shall compute

and apply state and/or local sales and excise taxes for intrastate messages which both originate and terminate outside the state in which the message is billed. For example, a message originating in Maine, terminating in Maine and billed in New York State should contain the Maine state sales tax in the message detail sent by Client to NYT. Messages provided to NYT by Client for billing shall not include a calculation of federal, state or local taxes for any state within the NYT region except as described above for intrastate messages. Client shall provide sufficient information to NYT to enable NYT to compute and charge the applicable End User Taxes described in this subsection. At the request of Client and in accordance with the procedures outlined in the NYNEX Billing and Collection Operations Manual, NYT will compute and apply gross receipts and other surcharges to Client End User Customer bills.

With respect to the federal excise tax, Client hereby directs NYT (i) to treat as exempt from the federal excise tax those Client End User Customers who have furnished NYT federal excise tax exemption certificates in connection with their purchase of service from NYT; and (ii) to compute and charge the applicable federal excise tax to non-exempt Client End User Customers.

Client hereby further directs NYT (i) to treat as exempt from the applicable state and local sales and excise taxes those Client End User Customers who have furnished NYT sales tax exemption certificates in connection with their purchases of service from NYT; and (ii) to compute and charge the applicable state and local sales and excise taxes to non-exempt Client End User Customers. NYT shall not treat a Client End User Customer as exempt from federal excise tax or state and local sales and excise taxes for any periods prior to the actual receipt by NYT of an exemption certificate.

For any new services offered by Client, in accordance with the procedures outlined in the NYNEX Billing and Collection Operations Manual, Client shall advise NYT in writing regarding the application of the state and local sales and excise taxes, federal excise tax, and any other End User Taxes and any gross receipts surcharges. Client shall advise NYT whenever any change in state or federal law requires a change in the computation or application of End User Taxes to Client's services, provided however that, when a change in federal or state law requires a rate change in the computation of federal excise tax, or state or local sales or excise taxes, NYT (i) will provide written notification to Client and (ii) will apply the same rate change it has applied with respect to its own services in the computation of taxes to Client's services unless Client advises NYT not to do so in writing within ten (10) business days from receipt of notification from NYT. Client hereby releases NYT from any and all liability arising out of NYT's computation of rate increases as described herein and NYT's compliance with Client's instructions and directions regarding the imposition, computation, and collection of federal, state and local taxes and surcharges imposed on Client End User Customers, including but not limited to Client's direction that NYT treat as exempt from the federal excise tax and/or state and local sales and excise taxes those Client End User Customers who have furnished NYT federal excise tax and/or state and local sales and excise tax exemption certificates in connection with their purchase of service from NYT.

- (2) NYT shall, at the time it pays the Amount Due Client as provided for in Section 5(B) hereof, pay over to Client all gross receipts surcharges and all sales taxes, federal excise taxes and other taxes imposed on Client End User Customers, which NYT has billed to Client End User Customers on behalf of Client.

(B) Filing of Tax Returns

Client shall file all returns for all federal, state and local taxes, including sales taxes, federal excise taxes and other taxes imposed on Client End User Customers, or with respect to Client services and shall pay or remit to the respective taxing authorities all such taxes. NYT shall not be entitled to retain any statutory fee or share of End User Taxes to which the Party collecting such taxes is entitled under applicable law.

(C) Indemnity

- (1) Client agrees to indemnify and hold NYT harmless from and against any liability or loss resulting from any federal taxes, state or local gross receipts taxes, and any other state or local taxes, including sales taxes, federal excise taxes and other taxes imposed on Client End User Customers, and including penalty, interest, additions to tax, surcharges or other charges or expenses including reasonable attorney's fees, payable or incurred by NYT, as a result of:
 - (a) the willful or gross negligent failure of Client to pay any federal, state or local taxes, including sales taxes, federal excise taxes and other taxes imposed on Client End User Customers, or file any return or other information as required by law or this Agreement; or
 - (b) NYT's compliance with this Agreement, or any determination by, direction by, or advice of Client, or NYT's correct use of information provided by Client in performing any tax-related service hereunder; or
 - (c) any tax audit, investigation, or assessment by any governmental unit or agency with respect to Client services billed by NYT in accordance with this Agreement. In this regard, if any federal, state or local jurisdiction determines that any tax, including but not limited to State Gross Earnings Tax, State Gross Income Tax, City Utility Tax, and also including sales taxes, federal excise taxes and other taxes imposed on Client End User Customers (including interest, penalties and surcharges thereon) are due from NYT on amounts collected by NYT and remitted to Client in the form of NYT's purchase of accounts receivable or Accepted Rated Messages pursuant to this Agreement, Client agrees to be liable for and indemnify NYT against any such taxes, including any interest, penalties and surcharges. The indemnity payable hereunder shall be payable in all events and without regard to any determination that NYT is the Party obligated to collect and remit such tax or other taxes or file the tax returns.
 - (d) Notwithstanding the above, such indemnity is conditioned upon NYT providing Client with the notice required in Section 7(D)(2). Such indemnity shall be provided to NYT on an after-tax basis taking into account (i) the tax consequences to NYT of the receipt of the indemnification payment, and (ii) any tax benefit actually realized by NYT with respect to the liability or loss which gave rise to the indemnification payment.
- (2) NYT agrees to indemnify and hold harmless Client from and against any liability or loss resulting from any penalties, interest, additions to tax, surcharges or other charges or expenses incurred by Client as a result of:
 - (a) the willful or gross negligent failure of NYT to compute and charge taxes in accordance with Section 7(A) of the Agreement; or

- (b) the willful or gross negligent failure of NYT to provide the tax information included in the Settlement Reports provided for under Section 5(A)(2) of the Agreement. Such indemnity shall be provided to Client on an after-tax basis taking into account (i) the tax consequences to Client of the receipt of the indemnification payment, and (ii) any tax benefit actually realized by Client with respect to the liability or loss which gave rise to the indemnification payment.

(D) Indemnity Procedures

- (1) In the event NYT becomes aware that any taxing jurisdiction is auditing the Agreement or the services and activities performed pursuant thereto, NYT shall so notify Client as soon as practicable and periodically advise Client of the status of such audit.
- (2) In the event that any taxing jurisdiction asserts against NYT any claim for which indemnity by Client may be required under paragraph 7(C)(1) of this Section, NYT shall so notify Client in writing as soon as practicable. If Client disagrees with said Claim, Client shall, within ten (10) days after receipt of written notice of such Claim by NYT, direct NYT in writing to protest, appeal or contest the asserted Claim; provided, however, in the event NYT is required under the law of the taxing jurisdiction to pay all or any portion of the asserted Claim prior to protesting, appealing or contesting said Claim, including interest and penalties thereon, Client shall pay said amount to NYT prior to NYT's filing of said protest, appeal or contest. In the event NYT refuses to protest, appeal or contest any Claim after direction by Client to do so, Client shall not indemnify NYT for said Claim, and NYT shall be responsible for all amounts due pursuant to the Claim, including interest and penalties thereon and all other related costs. NYT shall keep Client advised of the status of any such proceeding, and shall solicit Client's views on matters of litigation strategy, including the selection of counsel. Notwithstanding the foregoing, however, NYT shall retain control over the progress and disposition of any such protest, appeal, contest, litigation and proceeding, including the selection of counsel, and shall pursue same with due diligence and good faith. In any event, NYT shall obtain Client's written consent prior to settling any Claim.
- (3) In the event NYT pays all or any portion of the Claim, and/or incurs costs incident to contesting such Claim, NYT shall, from time to time, bill Client for all or any portion of such payments, including interest, penalties and attorney fees. Client shall pay the entire amount billed in immediately available funds within thirty (30) days of the date such bill was rendered by NYT.

(E) General Tax Audit Requirements

- (1) If a governmental authority conducting an audit of Client seeks access to tax records in the possession of NYT,
- (a) NYT shall promptly notify Client; and
- (b) to the extent permitted by law, NYT shall cooperate in any effort by Client to object to the production of such records and/or seek protective arrangements with respect to such records.
- (2) When any governmental authority conducts an audit of NYT with respect to taxes for which Client might be required to reimburse NYT,

- (a) NYT shall promptly notify Client of any audit matters that arise which might affect Client; and
 - (b) NYT shall seek Client's advice in dealing with audit matters that might affect Client and shall keep Client fully informed as to the status of such matters, however, NYT will retain control of the audit.
- (3) Each Party shall bear its own expenses with respect to any audit.

Section 8. Customer Service Procedures

(A) Referral Process

- (1) When a Client End User Customer requests direct contact with Client, NYT shall refer that customer to an 800 number, which Client shall provide and maintain. If requested by the Client End User Customer, NYT may also furnish such Client End User Customer with the information provided in Section 2 of Exhibit A.
- (2) Client shall notify NYT of any changes with respect to the 800 number or to Client's address as provided above at least thirty (30) days prior to the effective date of any such change.
- (3) To facilitate communications between Client and NYT Customer Service personnel, Client shall, at Client's cost and expense, provide NYT with an 800 telephone number.

(B) Adjustment Process

NYT will adjust Client charges on a Client End User Customer bill at the direction of the Client. Where Client determines that an Adjustment to a Client End User Customer's bill is warranted, the following process shall apply.

- (1) Client shall promptly notify NYT of any Adjustment to a Client End User Customer bill. Client shall transmit such Adjustments to NYT via the IC/LEC memo for a Manual Adjustment or via a rated message in EMI format for a Mechanized Credit Adjustment, as specified in the NYNEX Billing and Collections Operations Manual. NYT reserves the right to return to Client any IC/LEC Memo submitted by Client to NYT, which is illegible, requires clarification, contains errors or for other reasons which prohibit NYT from processing such Memo. In situations where return of an IC/LEC Memo will adversely affect the Client End User Customer, oral communication may be used by Client and/or NYT in order to provide a prompt resolution. NYT agrees to use its best efforts to include all Adjustments received from Client in accordance with NYT's normal bill cycle.
- (2) Client agrees not to submit for rebilling to NYT those charges associated with any adjustment made pursuant to Section 8(B)(1) above except that Client may submit such Accepted Rated Messages for rebilling provided that Client has obtained the consent of the Client End User Customer to accept and pay for the rebilled amount, and Client so notifies NYT in writing of such consent prior to any resubmission to NYT. This notice to NYT shall include the date of the contact and the name and telephone number of the consenting Party. In the event the Client End User Customer still refuses to pay the rebilled amount, NYT may adjust the charge off the Client End User Customer bill and recourse the disputed charge to Client in accordance with the recourse procedure set forth in Section 8(C) below.

(C) Recourse of Disputed Charges

NYT shall recourse disputed charges under the following circumstances:

- (1) For those unpaid charges for which NYT cannot deny service by law, regulation, ruling, or direction of any governmental authority, only after available collection and treatment opportunities have been exhausted; or for those instances where NYT determines not to deny local service due to unusual facts and circumstances, including but not limited to regulatory or political reasons, governmental agency or sensitive/highly visible Client End User Customer.
- (2) For cases where a Client End User Customer dispute regarding Client charges has not been resolved between the Client End User Customer and Client and the Client End User Customer subsequently contacts NYT; or a Client End User Customer refuses to contact Client.

NYT may recourse these disputed amounts and shall notify the Client End User Customer verbally that (1) the disputed amount will be removed from the bill, (2) Client has not forgiven the charge, and (3) Client may independently pursue collection remedies. NYT will notify Client that a recourse adjustment has been processed.

Notwithstanding any of the foregoing provisions, prior to any recourse, appropriate levels of NYT's management shall review and approve recourse of charges to Client in accordance with existing NYT authorization levels and the provisions of this Section.

- (3) At the time when an account is written off as final uncollectible bad debt, all charges to be written off that are associated with Client Pay-Per-Call Services billed by NYT shall be recoured to Client. Recoured Pay-Per-Call Service charges shall be excluded from the allocation of uncollectible bad debts.

Section 9. Collection Services

NYT shall render bills to Client End User Customers and apply payments and adjustments to the aggregate amount due NYT on the NYT bill. NYT shall not apply Client End User Customer payments to specific portions of the NYT bill as may be directed by any such Client End User Customer (*e.g.*, a direction that the entire amount paid be allocated to the local exchange service portion of the bill), except where mandated by regulatory authorities. Partial payments shall be apportioned in accordance with NYT's existing procedures.

NYT shall provide collection services pursuant to this Agreement in a manner consistent with the procedures applied by NYT on its own behalf and in accordance with applicable regulatory requirements, including but not limited to notification and customer billing requirements. NYT will pursue collections as single amounts due to NYT unless prohibited by regulatory requirements.

Collection services include, but are not limited to, the preparation and mailing of account status notices to Client End User Customers with outstanding balance due amounts. NYT shall provide Client with a copy of its collection procedures that are in effect as of the date of this Agreement. Any significant changes to the NYT collection procedures shall be communicated to Client at least three (3) months prior to implementation except as otherwise directed by regulatory agencies.

In cases where treatment and collection action fails to produce payment of outstanding amounts, NYT may provide denial of local service, restricting Client End User Customer access to the network, or a portion of the network, dependent upon regulatory requirements or network limitations.

In those instances where a Client End User Customer's service is terminated, NYT will render a final bill to the Client End User Customer for total charges due and pursue collection of the final charges. Payments received after the final bill has been rendered, but before write-off by NYT, will be applied in the same manner as payments received prior to the final bill. After exhaustion of collection efforts, NYT will determine the exact unpaid Client balances and write the amount off NYT's corporate books.

These amounts will become the Realized Uncollectible Amounts, as defined in Section 5. The decision to refer these uncollectible amounts to an outside collection agency will be made in accordance with NYT's collection procedures. Any net amounts collected after corporate write-off will be applied to NYT, Client, and any other billing and collection Client in proportion to their Realized Uncollectible Amount in the month payments are received.

Section 10. Payment Procedures for Billing and Collection Services

NYT will bill Client for its Billing and Collection Services on a monthly basis. The billing and collection billing schedule will be provided to Client by NYT. Client will be notified by NYT at least sixty (60) days prior to a billing schedule change. In the event that NYT agrees to provide Billing and Collection Services to Client under an additional CIC(ABEC)/ACNA, a separate bill will be rendered for each CIC(ABEC)/ACNA.

In order to calculate Client's monthly payment, NYT will apply the rates and charges detailed in Exhibit E to Client's monthly message and bill volumes. Client shall pay the stated rates and charges by the same date of the following month as the billing date so designated on the bill sent by NYT to Client (the "Client Payment Date") unless the bill is received by Client less than twenty (20) days prior to that date, in which event the Client Payment Date shall be no less than twenty (20) days after Client's receipt of the bill. Any payment to NYT from Client must be accompanied by an indication of the NYT invoice number being paid.

Payment to NYT by Client must result in immediately available funds on the Client Payment Date. If the Client Payment Date falls on a Sunday or on a Holiday which is observed on a Monday, the Client Payment Date shall be the first non - Holiday day following such Sunday or Holiday. If the Client Payment Date falls on a Saturday or on a Holiday which is observed on a Tuesday, Wednesday, Thursday or Friday, the Client Payment Date shall be the last non - Holiday day preceding such Saturday or Holiday.

If any portion of the payment due from Client for Billing and Collection Services is not received by the Client Payment Date or if any portion of the payment is received by NYT in funds which are not immediately available to NYT, then a late payment charge shall be due NYT. The late payment charge shall be the portion of the payment due to NYT for Billing and Collection Services not received by the Client Payment Date times a late factor. The late factor shall be the lesser of:

- (a) the highest interest rate (in decimal value), as of the Client Payment Date which may be levied under the applicable law for commercial transactions within the State of New York, with interest compounded daily for the number of days from the Client Payment Date to and including the date that Client actually makes the payment to NYT; or

- (b) the prime rate, as reported in the *Wall Street Journal* the first business day of January and July of every year, plus two (2) percentage points. This rate shall be converted to simple interest by dividing by 365 days and shall then be applied for the number of days from the Client Payment Date to and including the date that Client actually makes the payment to NYT.

Any late payment charge shall be included with the next Client payment due to NYT.

Section 11. Deposits

In the event Client has not established credit with NYT or does not pay the billing and collection charges on time, NYT shall have the right to require a deposit from Client to guarantee payment. The deposit will not exceed the actual or estimated charges for providing Billing and Collection Service to Client for a three month period. Upon termination of service, NYT will hold the deposit for one year to off-set any future adjustments and refund the remaining credit balance upon completion of the one year period. At NYT's option, the deposit may be refunded or credited to Client's account prior to termination of service if the Client has promptly paid all billing and collection charges for a period of one year.

Client will receive interest on the deposit at the rate set forth in Section 10(a) or (b) above, whichever is lower. The rate will be compounded daily from the date the deposit is received to and including the date the deposit is credited to Client's account or is refunded by NYT.

Section 12. Audits

(A) Notice and Scope

- (1) Upon forty-five (45) days prior written notice by Client to NYT (or such shorter period as the Parties may mutually agree upon), Client or its authorized representative shall have the right to commence an Audit (as defined in subsection (E)(3) below) during normal business hours of such source documents, systems, records and procedures which, under recognized accounting practices, contain information bearing upon (i) the amounts being billed to Client End User Customers by NYT as part of its provision of Billing and Collection Services, and (ii) the charges to Client therefor, and the charges to Client for other services provided by NYT pursuant to this Agreement. An "Audit" shall, for purposes of this Section, constitute a reasonable inquiry on more than one issue or specific topic related to Billing and Collection Services.
- (2) The written notice of Audit shall identify the date upon which it is to commence, the location, the Client representatives that will conduct the Audit, the subject matter of the Audit, and the materials to be reviewed.
- (3) The written notice of Audit shall be directed to NYT's representatives at the address set forth in Section 3 of Exhibit A hereof, or to such other address as NYT may from time to time stipulate.
- (4) NYT may, within thirty (30) days of receipt of Client's notice of Audit, postpone commencement for a period not to exceed fifteen (15) days, which shall be set forth in writing by NYT. NYT shall also indicate the new date for commencement of an Audit.

- (5) Client's auditors will present a preliminary oral report of their findings to NYT prior to their departure. Client will provide a confirming letter, within forty-five (45) days of making its oral report, setting forth the results of the Audit. If the Audit shows an error, NYT or Client, as appropriate, shall promptly correct such errors or file claims, as appropriate. Client shall not be entitled to commence another Audit on the same subject prior to submission of the letter confirming conclusion of the Audit, and in accordance with subsection (B) below.

(B) Frequency

Client may request one (1) Audit in any twelve (12) month period during the term of this Agreement.

(C) Expenses

Each Party shall bear its own expenses in connection with the Audit. Special data extractions required by Client or its representatives to conduct an Audit will be paid for by Client. For purposes of this subsection, a "special data extraction" shall mean programming, clerical, and computer time required to create an output record (from existing data files) that cannot normally be created from software programs that are currently resident on the production program library. NYT will provide Client with a working area for the Audit. Any other reasonable assistance requested by Client, such as programming, computer time, clerical assistance, telephones and copying, will, if possible, be provided by NYT at Client's cost and expense.

(D) Handling of Materials

All documents and materials of NYT reviewed by Client in the course of an Audit shall be deemed proprietary, and their use by Client shall be governed by Section 18 of this Agreement.

(E) Requests for Examination

- (1) In addition to Audits, Client may request, an Examination (as defined in subsection (2), below). NYT will make reasonable efforts to accommodate requests for an Examination and to cooperate in the conduct of an Examination. Client may request one (1) "Examination" per contract year.
- (2) An "Examination" shall, for purposes of this subsection, constitute a reasonable inquiry on a single issue or a specific topic related to Billing and Collection Services for a stated reason.
- (3) Client shall have the right to request an Examination after the expiration of this Agreement. Said Examination shall be limited to the following topics: payments from NYT to Client; NYT's charges for Billing and Collection Services; and any additional billing and collection reporting provided by NYT to Client after the expiration of the Agreement.

Section 13. Claims

(A) Notification of Disputed Amounts

If either Party disputes any portion of the amount due the other Party (as defined in Sections 5 and 10), the disputing Party shall notify the other Party in writing of the nature and basis of the dispute. Client may file a substantiated claim with NYT for billing and collection charges or for revenue not

remitted. NYT may file a substantiated claim with Client for billing and collection charges or for revenue remitted to Client. The Party receiving the claim shall provide a written response to the claim, and use its best efforts to resolve the claim within forty-five (45) days from receipt of the claim.

(B) Payment of Disputed Amount

If the dispute is not resolved by the Payment Date, the disputing Party shall pay the undisputed portion of the amount due in accordance with the settlement terms defined in Sections 5 and 10 and advise the other Party in writing of its reasons for not paying the disputed amount. If the dispute arises after the amount due has been paid, the disputing Party shall file its claim in writing within the time period set forth in subsection (D) below.

(C) Settlement of Claims

If the claim, in whole or in part, ultimately is resolved in favor of the disputing Party and the disputing Party has paid the full amount due the other Party, the Disputing Party shall be entitled to payment, with interest as specified below, from the other Party. If the claim, in whole or in part, ultimately is resolved against the disputing Party, and the disputing Party has not paid the full amount due the other Party, then the other Party shall be entitled to payment, with interest as specified below, from the Disputing Party. Interest on the claim settlement amount shall be calculated using the Payment Date as set forth in Sections 5 and 10.

Any payments due to a Party as a result of a claim resolution shall be remitted, with interest as defined above, no later than thirty-one (31) calendar days following acceptance of the resolution.

(D) Claims Limitation

Any claim asserted by a Party under Section 13(A) shall be brought to the attention of the other Party in writing as soon as possible upon discovery thereof. Failure of the claiming Party to assert in writing to the other Party any such claim within two (2) years from the date on which the cause of the claim occurred shall be deemed a waiver of the right to assert that claim in any judicial or administrative proceeding and furthermore shall bar recovery under this Agreement.

(E) Retention of Supporting Data Concerning Claimed Amount

Both Parties shall retain such detailed information as may reasonably be required for resolution of the claim amount during the pendency of the claim.

Section 14. Limitation of Liability

Except as otherwise provided for in this Agreement, neither Party shall be liable to the other for any loss, cost, claim, injury, liability, or expense, including reasonable attorneys' fees, relating to or arising out of any ordinary negligent act or omission by a Party. In no event shall either Party be liable to the other for any indirect, special, incidental or consequential damages, including, but not limited to, loss of profits, income or revenue.

Section 15. Termination

In the event of a default under or breach of any material term or condition of this Agreement, the non-defaulting Party shall have the right to terminate this Agreement if the default or breach is not cured within thirty (30) days of the date that written notice of such default or breach is given by the non-Defaulting Party to the Defaulting Party. Either Party shall also have an immediate right to terminate this Agreement in the event of the other Party's bankruptcy, liquidation, insolvency or receivership.

Section 16. Indemnification

Except as otherwise provided in this Agreement, each Party (the "Indemnifying Party") will indemnify and hold harmless the other Party ("Indemnified Party") from and against any loss, cost, claim, liability, damage and expense (including reasonable attorney's fees) to third parties, relating to or arising out of the negligence, negligent omission or misconduct by the Indemnifying Party, its employees, agents, or contractors in the performance of this Agreement. In addition, the Indemnifying Party will, to the extent of its negligence, negligent omission or misconduct, defend any action or suit brought by a third party against the Indemnified Party for any loss, cost, claim, liability, damage or expense relating to or arising out of negligence, negligent omission or misconduct by the Indemnifying Party, its employees, agents, or contractors, in the performance of this Agreement. The Indemnified Party will notify the Indemnifying Party promptly in writing of any written claims, lawsuits, or demands by third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section, and, if requested by the Indemnifying Party, will tender the defense of such claim, lawsuit or demand. The Parties will cooperate in every reasonable manner with the defense or settlement of such claim, demand, or lawsuit. The Indemnifying Party will not be liable under this paragraph for settlements by the Indemnified Party of any claim, demand, or lawsuit unless the Indemnifying Party has approved the settlement in advance or unless the defense of the claim, demand, or lawsuit has been tendered to the Indemnifying Party in writing and the Indemnifying Party has failed promptly to undertake the defense.

Section 17. Security Interest

To secure any and all payment obligations to NYT, including without limitation, the obligations set forth in sections 5, 10 and 16 of this Agreement, and in the event that this Agreement is characterized contrary to the Parties' intent, as a financing arrangement rather than a purchase of Accepted Rated Messages, including the associated accounts receivable, Client (on behalf of itself and, to the extent that Client is acting as a Clearing Agent for other ICs and/or OSPs, on behalf of such ICs and/or OSPs) hereby grants to NYT a security interest in all right, title and interest of Client (and each in IC and/or OSP on behalf of whom it is acting) in and to all "accounts", as such term is defined in Section 9-106 of the U.C.C., now owned or hereafter acquired by Client (and each IC and/or OSP on behalf of whom it is acting) now has or hereafter acquires any rights, and the proceeds thereof.

Section 18. Proprietary Information

- (A) Attached to this Agreement as Exhibit D and incorporated herein by reference is the Parties' agreement with respect to proprietary information.
- (B) Neither Party waives any rights it may have to assert before any regulatory or judicial forum, with jurisdiction over the subject matter, that a proposed or actual use of proprietary information is unlawful or in violation of this Agreement. For purposes of such claims, both Parties submit to the personal jurisdiction of the federal and state courts of New York and

service by mail of any summons and/or complaint at the addresses provided in Section 3 of Exhibit A shall be deemed sufficient service of process upon the served Party. Should either Party choose to assert a claim that a proposed use of proprietary information is unlawful or in violation of this Agreement in a judicial forum, the Party asserting such a claim further agrees that such claim shall be brought only in the state or federal courts of New York and that Party shall not commence any judicial proceedings outside New York even though personal jurisdiction over the other Party may be proper in other jurisdictions.

Section 19. Amendments and Waivers

In addition to the provisions of Exhibit E which specify procedures by which charges for services under this Agreement may be changed, no amendment or waiver of any provisions of this Agreement, and no consent to any default under this Agreement, shall be effective unless the same shall be in writing and signed by a duly authorized representative on behalf of the Party against whom such amendment, waiver or consent is claimed except as otherwise provided in Exhibit E. In addition, no course of dealing or failure of any Party to enforce strictly any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition.

Section 20. Assignment

Any assignment by either Party to any non-affiliated entity of any right, obligation or duty, in whole or in part, or of any other interest hereunder, without the written consent of the other Party shall be void. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. Notwithstanding the foregoing, upon written notice, Client shall have the right to assign to a third party payments due to Client from NYT under this Agreement.

Section 21. Notice and Demand

Except as otherwise provided under this Agreement, any notices, demands, or requests made by either Party to the other Party shall be in writing and shall be deemed to have been duly given on the date of transmission if sent by facsimile transmission with telephone confirmation of receipt, on the day following mailing if delivered by overnight courier service, delivered in person or deposited, postage prepaid, in the United States mail via Certified Mail, return receipt requested, and addressed as indicated in Section 3 of Exhibit A.

If personal delivery is selected as the method of giving notice under this Section, a receipt of such delivery shall be obtained. The address to which such notices, demands, requests, elections, or other communications may be given by either Party may be changed by written notice given by such Party to the other Party pursuant to this Section.

Section 22. Force Majeure

Neither Party shall be held liable for any delay or failure in performance of any part of this Agreement to the extent that such failure or delay is caused by Acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities, or acts or omissions of transportation common carriers or

other causes beyond the control of the Party. If any force majeure condition occurs, the Party delayed or unable to perform shall give immediate notice to the other Party. During the pendency of the force majeure, the duties of the Parties under this Agreement affected by the force majeure condition shall be abated and shall resume without liability thereafter.

Section 23. Non-Exclusive Agreement

This Agreement is non-exclusive. NYT reserves the right to extend to others the services provided for herein.

Section 24. Non-Publicity

Both NYT and Client agree that neither will use the other's name in connection with promotional, advertising or other marketing material associated with this Agreement without the written permission of the other. The Parties acknowledge that this Agreement contains commercially confidential information which may be considered proprietary by either or both Parties, and agree to limit distribution of the Agreement to those individuals in their respective organizations with a need to know the contents of the Agreement. Neither Party shall disclose any of the terms or conditions of this Agreement to any third party which is not affiliated with either Party hereto, except as may be required by law, regulation or order of any court or governmental agency, or pursuant to Exhibit D.

Section 25. Survival

Provisions contained in this Agreement that by their sense and context are intended to survive the performance, termination or cancellation of this Agreement hereof by any Party hereto will so survive.

Section 26. Detariffing of Services

NYT shall provide Billing and Collection Services pursuant to the terms and conditions of this Agreement and any applicable tariffs. At such time as detariffing of NYT's Billing and Collection Services may take place in any jurisdiction in which NYT provides Billing and Collection Services, the Parties agree that for such jurisdiction NYT shall provide Billing and Collection Services to Client under the terms and conditions of this Agreement.

Section 27. Merger Clause

This Agreement and all exhibits attached hereto constitute the entire Agreement and understanding between the Parties and supersedes all prior understandings, oral or written agreements, representations, statements, negotiations, proposals and undertakings with respect to the subject matter hereof.

Section 28. Headings

The headings in this Agreement are for convenience and shall not be construed to define or limit any of the terms herein or affect the meanings or interpretation of this Agreement.

Section 29. Independent Contractors

Each Party shall perform its obligations hereunder as an independent contractor and not as the agent, employee or servant of the other Party. Neither Party nor any person employed by such Party shall be deemed the employee, agent or servant of the other Party or entitled to any benefits available under the plans for such other Party's employees.

Each Party has and hereby retains the right to exercise full control of and supervision over its own performance of the obligations under this Agreement and retains full control over the employment, direction, compensation, and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes, and all other regulations governing such matters. Each Party will be responsible for its own acts and those of its own subordinates, employees, agents, and subcontractors during the performance of that Party's obligations hereunder.

Section 30. Bank Errors

Any late payment resulting from bank error will not be subject to the late payment charge, provided the sending Party (Party making payment) can verify that it was not at fault. Rather, the discrepancy will be resolved by the banks involved. It is the responsibility of the sending Party to notify the banks involved and coordinate resolution of the discrepancy. The sending Party will not be relieved of its payment responsibilities because of such bank errors.

Section 31. Performance

Subject to regulatory requirements, NYT shall maintain a performance level with respect to the Billing and Collecting services provided hereunder which is consistent with NYT's own performance level in billing and collecting its own charges.

NYT and Client shall cooperate with and assist each other in promptly identifying and correcting problems arising out of NYT's provision of billing services to Client under this Agreement.

The Parties recognize that, despite the best efforts of both Parties, from time to time errors will occur in the billing and collection process. In such cases, the Parties agree to fully cooperate in joint efforts including exchange of data to minimize Client End User Customer billing disruptions as soon as possible. Each Party will bear its own costs incurred in connection with the above recovery activities. However, if either Party judges this procedure requires either Party over time to bear a disproportionate share of the costs, the Parties will mutually agree to an equitable sharing of costs.

Section 32. Third Party Beneficiaries

This Agreement shall not provide any person not a party to this Agreement with any remedy, claim, liability, reimbursement, cause of action, or other right in excess of those existing without reference to this Agreement.

Section 33. Executed in Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same document.

Section 34. Severability

If any provision of this Agreement shall for any reason be held invalid, unenforceable or void in any respect under the laws of the jurisdiction governing the entire Agreement, the remainder of the Agreement shall not be affected thereby and shall continue in full force and effect.

Section 35. Governing Law

This Agreement shall be governed by the laws of the State of New York.

Section 36. Changes in State Tariffs

In the event that, during the term of this Agreement, any state regulatory commission significantly changes any material term or condition under which NYT performs billing, then either Party shall have the right to terminate this Agreement upon thirty (30) days written notice.

Section 37. List of ICs and/or OSPs

In the event that Client is acting as a Clearing Agent for other ICs and/or OSPs, upon demand, Client will provide NYT with the names of those ICs and/or OSPs it represents for billing and collection service with respect to this Agreement.

Section 38. Use of Client Specifications

It is understood and agreed between the Parties that any specifications provided to NYT by Client for use by NYT in connection with NYT's provision of Billing and Collection Services to Client shall be treated as Client Proprietary Information, shall not be made available to third parties, and shall be implemented by NYT only as expressly directed by Client, unless agreed to in writing by Client or as otherwise permitted under Exhibit D of this Agreement. Unless otherwise agreed to by the Parties, only those specifications which have been marked to indicate they are proprietary to Client shall be subject to this provision. Notwithstanding any provisions to the contrary within this Agreement, NYT reserves the right to use programs and systems developed from the Client specifications to provide services to others, unless the Parties agree otherwise.

Section 39. Billing Modifications

Client shall have the right to submit requests for modifications of NYT's Billing and Collection Services in accordance with the procedures outlined in the NYNEX Billing and Collection Operations Manual.

Section 40. Tariffs

In the event that during the term of this Agreement, NYT is required to provide any of the services in this Agreement under federal or state tariff, the terms and conditions of this Agreement shall control unless a conflict exists. Should a conflict exist, the terms and conditions of the tariff shall supersede.

Section 41. Data Retention

Client shall retain a copy of all transmissions or tapes sent to NYT for a minimum of ninety (90) days from the date the transmission or tape is received by NYT.

Section 42. Term

The term for the provision of Message Ready Billing and Collection Service shall be for a period of one year from the effective date. The effective date shall be the earliest of: three (3) months from the signing of the Agreement; or forty-five (45) days after the first successful processing of a test tape; or upon receipt of the first accepted live tape from Client.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

NEW YORK TELEPHONE AND TELEGRAPH COMPANY

EXHIBIT A
CONTRACT INFORMATION SHEET

Section 1. Client Information:

Company Name:
Principal Place of Business:

Doing Business As:
State of Incorporation:

Section 2. End User Contact

Name:
Title:
Address:

Phone:
Business Hours:

Section 3. Notice and Demand

	CLIENT		NYNEX
Name:		Name:	
Title:		Title:	
Address:		Address:	
Phone:		Phone:	
Fax Number:		Fax Number:	

Section 4. Rates and Charges CIC 078 Additional CIC

	NET	NYT	NET	NYT
\$.96 per bill	_____	_____	_____	_____
\$.01 per msg.*	_____	_____	_____	_____
\$.30 per msg	<u> X </u>	<u> X </u>	_____	_____
\$.01 per bill	_____	_____	_____	_____

Section 5. Start-up Fees

	NET	NYT
\$25,000 for each region	<u> N/A </u>	<u> N/A </u>

* The \$.01 per message charge applies only to those messages in excess of an average of 10 messages per bill.

EXHIBIT BBILLING FOR CLIENT PAY-PER-CALL SERVICES

1. Subject to the terms and conditions of this Exhibit and the Agreement for Billing and Collection Services ("Agreement") of which this Exhibit forms a part, NYT will provide Billing and Collection Services for Client's Pay-Per-Call Services or for the Pay-Per-Call Services of the ICs and/or OSPs represented by the Client acting as a Clearing Agent.
2. NYT requires that Pay-Per-Call Services message detail be in a format that clearly identifies such charges to the Client End User Customers. This identification should be in a form easily recognizable by end user customers, e.g., Sportsphone, Horoscope, etc.
3. As required by FCC/FTC rules, all Pay-Per-Call Services charges will appear in a separate section of the bill page, entitled "Pay-Per-Call Services".
4. Client shall not attempt to rebill those charges for Pay-Per-Call Services messages that are recoured for the first-time by NYT.
5. NYT reserves the right to immediately suspend the provisioning of all Billing and Collection Services if NYT in its sole discretion determines that billing and collection for Client's Pay-Per-Call Services (or the Pay-Per-Call Services of the ICs and/or OSPs represented by the Client acting as a Clearing Agent) adversely impacts the reputation of NYT or its public image. Upon suspension, NYT will notify Client in writing of the reason(s) for said suspension. NYT shall have the right to terminate this Agreement after thirty (30) days of such notification if during that period Client does not cure the problem. Notwithstanding anything to the contrary herein, NYT shall have no right to terminate its provision of Billing and Collection Services for Client if such termination is prohibited by any legislative or regulatory rule, action, statute or order.
6. Except as provided elsewhere in this Exhibit, NYT will provide Billing and Collection Services for Client's Pay-Per-Call Services (or the Pay-Per-Call Services of ICs and/or OSPs represented by the Client acting as a Clearing Agent) in a manner which is consistent with the guidelines and procedures under which NYT bills and collects its own charges for like or similar type calls. In addition to contractual, tariff and legal requirements, pay-per-call audiotex services are subject to the NYNEX Billing and Collections Guidelines.
7. Client further agrees that as a condition of NYT rendering billing services for Pay-Per-Call Services associated with group access bridging services (GABS) (i.e., any service which allows telephone users, for a fee, to call a publicized number to join an ongoing casual group conversation), Client will perform, or will require entities acting on its behalf to perform, the following:
 - (a) With respect to GABS services offered to teens, a monitor will orally announce that five minutes have elapsed since the inception of the call and will make an oral announcement at five minute intervals thereafter.
 - (b) As to all other GABS, an audible tone will be employed at ten minute intervals after the inception of the call.
 - (c) In connection with GABS teen lines, Client will certify that moderators on its lines have been trained in facilitating group conversations and in recognizing and dealing with serious problems which often affect teenagers.

- (d) In connection with all advertising for GABS, each advertisement for each such service will clearly indicate the price for that service, both audibly and visually where applicable, including the charge for a nine minute call and each additional minute thereafter; and for all its advertising aimed at audiences under 18 years of age will follow the more stringent Federal Communications Commission standards and National Network Guidelines governing advertising to audiences under 12 years of age.
 - (e) An introductory message will be included on all lines that describe the type of GABS service, restates the cost for a nine minute call and each additional minute thereafter, and explains the time tone procedures where applicable.
 - (f) The audio announcements for GABS advertisement broadcast during time spots considered to be within time frames that contain programming directed to children under twelve (12) years of age must be presented in language that can be understood by children and must advise children to obtain parental consent before calling.
 - (g) Whenever technically feasible, Client will block access to its lines from any NYT customer line upon the written request of the customer.
8. NYT requires that all Pay-Per-Call services be provided on the 900 service access code.
9. In the event of a conflict between any term and condition set forth in the Agreement and in this Exhibit, the terms of this Exhibit shall control, only to the extent of the actual conflict.

EXHIBIT C
MESSAGE READY BILL MESSAGE SERVICE

Subject to the terms and conditions of this Exhibit C and the Agreement for Billing and Collection Services (the "Agreement") of which this Exhibit forms a part, NYT shall provide Message Ready Bill Message Service ("MR Bill Message Service") to Client.

1. General Service Description:

MR Bill Message Service consists of NYT's printing of Client developed Marketing Messages on the Client bill. Client may request that these messages be printed in the Spanish language. Such messages will contain informational or promotional announcements about Client services or about Client sponsored services of third parties. Client may change its messages on a monthly billing cycle basis, beginning on the first day of each calendar month and ending on the last day of the month. The Marketing Message will appear on the first Client page of the NYT bill.

2. Number of Messages:

NYT will print one (1) Marketing Message per bill.

3. Format:

Each Marketing Message may contain up to eight (8) lines of text with a maximum of 75 characters (including spacing and punctuation) per line. Client may request bolding and underlining of text.

4. Transmission:

Client shall have the right to send up to six (6) different Marketing Messages per month. For each month that Client purchases MR Bill Message Service, NYT shall upon request by Client, target messages so that only some Client customers receive them. NYT agrees that it will provide targeting, as requested, by:

- a. Client Presubscribed customers versus casual users
- b. State
- c. Class of service
- d. NPA/NXX
- e. Billing Telephone Number ("BTN")
(BTNs that are to be targeted will be provided by Client by tape.)
- f. Toll usage level
- g. Call type (e.g., operator assisted)

With the exception of BTN, NYT will provide combinations of up to any three selection criteria at no additional cost to Client. NYT agrees to review requests for additional targeting, and if acceptable, provide to Client, on a Time and Cost basis.

assigned costs, and (2) will be effective with the date that Client would cease to pay for reassigned costs under the procedure in effect prior to the reassignment of costs (e.g., the date on which the NYNEX Telephone Companies would no longer be permitted to charge such costs under access). In any event the NYNEX Telephone Companies shall be permitted to recover Client's proportionate share of costs reassigned to the billing and collection category from the date such costs are reassigned to the billing and collection category. If it is later determined that such costs should not have been billed to Client because those costs have been recovered elsewhere, Client shall be entitled to a credit plus interest. Interest shall be calculated by using the prime rate, as reported in the *Wall Street Journal* the first business day of January and July of every year, plus two percentage points. Such credit shall be reflected on the next billing and collection charges bill issued after it is determined that Client is entitled to a credit. NYT shall notify Client, in writing, of the effective date of any proposed surcharge or surcredit and, upon request, provide Client with the calculations used to determine the surcharge or surcredit which shall be auditable under the provisions of Section 12 of the Agreement.

In the event NYT imposes a surcharge upon Client, Client shall have the right to terminate this Agreement, without penalty, provided Client notifies NYT in writing within ninety (90) days from the date of NYT's written notification to Client of the surcharge. If Client elects to terminate, said termination shall become effective no later than six (6) months from the date of NYT's written notification or such longer period as designated by Client and Client shall be responsible for payment of the surcharge if such increase becomes effective prior to termination of service. In the event that the longer period designated by Client extends beyond the term of this Agreement, NYT agrees to continue providing Billing and Collection Services to Client for such period under the same terms and conditions and rates and charges, including the surcharge. NYT agrees to cooperate fully with Client in the planning and implementation of any transition from NYT to Client billing as a result of Client election to terminate this Agreement under this paragraph. If Client does not elect to terminate as provided herein, then the surcharge shall become effective in accordance with the above provisions.

C. Client Right to Renegotiate

If, at any time during the term of this Agreement, NYT offers interLATA telecommunication services beyond those which on the effective date it is able to offer in any local exchange serving area in which NYT provides local exchange service, and Client is unable to meet its Minimum Charges obligations substantially due to those new interLATA services, Client shall have the right to renegotiate those obligations for any affected year.

If, at any time during the term of this Agreement, Client is otherwise unable to meet its Minimum Charges obligations due to NYT acts or omissions, Client shall have the right to renegotiate those obligations for any affected year.

D. Price per Bill

For the purpose of applying this charge, a bill will consist of all pages bearing the same company logo. If NYT agrees to bill some of Client's charges under an additional Carrier Identification Code, then Client will pay the rates and charges for those bills issued under the additional Carrier Identification Code. The provision of Billing and

Collection Services for Client's additional Carrier Identification Code shall begin on such date as is mutually agreed to by the Parties in writing and may be cancelled by Client at any time without penalty.

E. Price per Message

The per message charge of \$.30 applies to each message billed.

F. Manual Adjustment Charge

Client will pay NYT \$10.00 for each Client initiated paper IC/LEC Memo processed by NYT for rebilling of Client charges in accordance with Section 8(B).

G. Marketing Message

When utilized, Client shall pay NYT \$.045 per Marketing Message per Bill. There will be no charge for messages required by regulatory or legal authorities.

H. Pay-Per-Call Advisory Message

When Pay-Per-Call messages are billed, the FCC/FTC required advisory statement will be displayed on the Client bill page within the Pay-Per-Call Services section. Client shall pay NYT \$.03 per advisory statement.

I. Minimum Charges

Client shall pay NYT a guaranteed Minimum charge in accordance with the rate schedule listed above. The amounts billed by NYT for Billing and Collection Service will be applied towards the Minimum Charges. The amount billed to Client each month will be determined using the terms and formula outlined below. Client will be responsible for the Minimum Charges beginning at the time of the Effective Date. In the event NYT agrees to provide Billing and Collection Services to Client under an additional CIC(ABEC)/ACNA an additional Minimum charge in an amount equal to the monthly minimum charge stated above will apply. The Client will be responsible for this amount only during the length of time that NYT provides Billing and Collection for Client.

Defined Terms

1. Monthly Minimums - The Monthly Minimum charges set forth above.
2. Cumulative Minimums - Sum of the Monthly Minimum charges from the beginning of contract up to and including the current month's Monthly Minimum charge.
3. Monthly Actuals - Billing and Collection charges calculated by applying the above per bill and per message charges to the current month's bill and message volumes.
4. Cumulative Actuals - Sum of the Monthly Actuals from the beginning of the contract up to and including the current month's Monthly Actual.
5. Cumulative Billed Amount - The sum of the Billed Amounts from the beginning of the contract up to and including the current month's Billed Amount.

6. Billed Amount - The amount billed by NYT to Client in a given month for Billing and Collection Services.

Formula

The Billed Amount in each month shall be the greater of (1) Cumulative Actuals less the previous month's Cumulative Billed Amount, or (2) Cumulative Minimums less the previous month's Cumulative Billed Amount. The following example demonstrates the application of the above formula.

Example

<u>Month</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>
Minimums (1)	10	10	10	10	10	10
Cumulative Minimums (2)	10	20	30	40	50	60
Actual (3)	5	8	12	18	5	15
Cumulative Actuals (4)	5	13	25	43	48	63
Cumulative Billed (5)	10	20	30	43	50	63
Billed (6)	10	10	10	13	7	13

In the event NYT provides Billing and Collection Services to Client under an additional CIC(ABEC)/ACNA, the Billed Amount will be determined separately for those bills issued under each CIC(ABEC)/ACNA. The amounts billed by NYT for Bill Message Service will not be included in the application of the above formula used to determine Client's Billed Amount in each month.

J. Start Up Fee

Client shall pay NYT a \$25,000 start up fee which covers the cost of activities needed to initiate Billing and Collection Services to new customers. Such activities include but are not limited to: testing; tape/transmission set-up; programming costs; digitization of Client's logo; formatting of Client specific end user bill page, set-up of NYNEX reports provided to Client and methods/procedures implementation. This is a one time non-refundable charge payable immediately upon Client's signing of the Agreement.

K. Postage Escalator

In the event that, during the term of this Agreement, the U.S. Postal Service increases the rate for one ounce first class zip sort postage, Client shall pay NYT one third of such increase on a per bill basis. NYT shall notify Client in writing of the effective date of any postage increase.

EXHIBIT A
CONTRACT INFORMATION SHEET

Section 1. Client Information:

Company Name:
Principal Place of Business:

Doing Business As:
State of Incorporation:

Section 2. End User Contact

Name:
Title:
Address:

Phone:
Business Hours:

Section 3. Notice and Demand

	CLIENT		NYNEX
Name:		Name:	
Title:		Title:	
Address:		Address:	
Phone:		Phone:	
Fax Number:		Fax Number:	

Section 4. Rates and Charges CIC 078 Additional CIC N/A

	NET	NYT	NET	NYT
\$.96 per bill	_____	_____	_____	_____
\$.01 per msg.*	_____	_____	_____	_____
\$.30 per msg	<u> X </u>	<u> X </u>	_____	_____
\$.01 per bill	_____	_____	_____	_____

Section 5. Start-up Fees

	NET	NYT
\$25,000 for each region	<u> N/A </u>	<u> N/A </u>

* The \$.01 per message charge applies only to those messages in excess of an average of 10 messages per bill.

NOTICE OF CONTRACT AMENDMENT

Bell Atlantic hereby amends its Billing and Collection Services Agreements (the "Agreements") to include the following provisions:

1. If an end user complains to Bell Atlantic that he has been "crammed" (i.e., he has been billed by Bell Atlantic for Miscellaneous Services that he did not order), Bell Atlantic will adjust the disputed charge off the end user's bill and recourse the amount of the disputed charge to Customer. Customer shall not resubmit any such charges to Bell Atlantic for rebilling. Customer also shall not submit any new or additional recurring or nonrecurring charges associated with the Miscellaneous Services disputed by the end user.
2. This amendment shall take effect as of July 4, 1998 for all of the Agreements between Bell Atlantic and Customer.
3. In the event of any conflicts between the terms of this Amendment and the Agreements, the terms of this Amendment shall govern.
4. In all other respects, the Agreements shall remain in full force and effect.

Dated: May 4, 1998

5. Review Process:

Client shall submit its proposed Marketing Messages to NYT at least forty-five (45) calendar days in advance of the first day of the month during which Client wants the messages to appear. (Fifty-five (55) calendar days in the case of the first Client Marketing Message submitted by Client under this Agreement. Within five (5) calendar days of receipt of the messages, NYT shall notify Client whether the messages have been approved. If any messages are not approved, Client must correct the Marketing Message and resubmit same to NYT within five (5) days. NYT shall review the resubmitted message and notify Client whether the messages have been approved within five (5) calendar days thereafter. NYT will not include on the Customer's bill any messages that have not been approved by NYT at thirty (30) days before the beginning of the month during which the Marketing Message is scheduled to appear.

When regulatory or legal orders require implementation in advance of the above stated time frames, NYT will extend its best efforts to meet the regulatory or legally ordered implementation date.

NYT shall supply Client with a print image copy of the Marketing Message not less than three (3) business days prior to sending Customer bills with the Marketing Message.

6. Message Criteria:

All Marketing Messages must comply with the following criteria:

- The messages must be consistent with generally accepted industry standards, such as truth in advertising, and standards with regard to content and customer awareness.
- The message cannot be used to compare Client's services, directly or indirectly to those of other service providers.
- If the message contains rates, the rates shall have been approved or otherwise permitted to become effective by the appropriate regulatory commission(s).
- The content of the message may only address telecommunications services provided by Client.
- The content of the message shall not refer to or imply any direct competition with a service provided by NYT.
- The content of the message can address a generic promotional or informational need of the customer.
- The content of the message shall not involve any message which is obscene, indecent, or which might otherwise be regarded as generally repugnant.
- Where the message requests or requires action by the Client End User Customer, the message must contain a telephone number that the customer can utilize for further information regarding the content of the message.

The following are examples of acceptable and unacceptable phrases for a message:

ACCEPTABLE

Great telephone service
 Low prices
 XX has reduced rates
 XX has a fiber optic network

UNACCEPTABLE

Greatest telephone service
 Lowest prices
 XX has the lowest rates
 XX has the best fiber optic network

NYT reserves the right to refuse to print any message which NYT, in its sole discretion, determines is not in compliance with the above criteria or which could adversely affect the public image and reputation of NYT. NYT also reserves the right to discontinue MR Bill Message Service if NYT is ordered to do so by any court or governmental agency having jurisdiction, if Client fails to comply with the above message criteria, or if NYT, in its sole discretion, determines that continued provision of the service could adversely affect the public image or reputation of NYT.

7. Liability:

In the event that NYT fails to print a Client Marketing Message, NYT's total liability to Client shall be limited to a refund of the amount, if any, actually paid by Client to NYT for printing such message. In the event NYT prints a Client Marketing Message inaccurately and the inaccuracies as printed materially distort and misrepresent the original message, Client shall be entitled to the above refund, or at Client's option: 1) NYT will use its best efforts to print a corrected Marketing Message for inclusion in the next bill cycle, and in no event later than the following bill cycle, at no charge to Client; or 2) NYT will reimburse Client, pursuant to the procedures set forth in Section 13, for reasonable expenses for mailing, e.g. postage and paper, incurred in a customer contact program, as agreed to by NYT and Client. Except as provided above, NYT shall not otherwise be liable to Client for any loss, cost, claim, injury, liability, or expense, including reasonable attorneys' fees, relating to or arising out of the provision of MR Bill Message Service by NYT related to the specific incident, nor shall NYT indemnify Client for any claims brought against Client by any third party, relating to or arising out of the provision of MR Bill Message Service by NYT to Client.

8. Conflicts:

The provision of MR Bill Message Service as set forth in this Exhibit C is subject to all the terms and conditions set forth in the Agreement. In the event of a conflict between any term and condition set forth in the Agreement and in this Exhibit, the terms of this Exhibit shall control, only to the extent of the actual conflict.

EXHIBIT D
PROPRIETARY INFORMATION

I. General

This is Exhibit D to the Agreement between NYT and Client for the provision of Billing and Collection Services. It is recognized by the Parties that, in connection with the Billing and Collection Services to be provided hereunder, NYT and Client will have in their possession and control, or provide to the other Party, information in the form of data, reports, computer programs, and other documentation which is proprietary to NYT, to Client, to both, to others, and/or which is considered confidential with respect to Client End User Customers (hereinafter designated, "Proprietary Information"). The Parties agree that all such data provided to the other Party shall be treated as Proprietary and held in confidence by the Receiving Party, pursuant to the terms of this Agreement.

II. Handling of Proprietary Information

Except for information not subject to the terms and conditions herein because of its prior disclosure or permitted or consented disclosure as described below, Proprietary Information of one Party ("Disclosing Party") that is possessed by the other Party ("Receiving Party") shall be treated in accordance with the following terms and conditions:

- A. The Receiving Party shall put in place and strictly enforce (using all of its prerogatives, including dismissal of employees or termination of contracts with its agents or contractors) procedures to ensure that its employees, contractors or agents are aware of and fulfill the obligation under this Exhibit to hold the Disclosing Party's Proprietary Information in confidence.
- B. Proprietary Information described previously shall be held in confidence by the Receiving Party and its employees, contractors or agents, shall be treated with the same degree of care as the Receiving Party would treat its own Proprietary Information, and shall not be disclosed to third persons (but may be disclosed to agents who have a need for it), shall be used for the purposes stated herein, and may be used or disclosed for other purposes only upon such terms and conditions as may be mutually agreed upon by the Parties in writing.
- C. Each Party acknowledges that a Party's Proprietary Information may be commingled with Proprietary Information of another Party, and accordingly, the Parties shall, to the extent practicable, use good faith efforts to ensure that such Proprietary Information shall be masked or rendered mechanically inaccessible to the other Party. However, there may be instances in which efforts to mask or screen such Proprietary Information are impracticable, or in which disclosure is inadvertent. In such instances, the Receiving Party will neither use nor disclose the Proprietary Information, except as required to fulfill its obligations under the Agreement and shall put in place procedures as described above.
- D. Each Party agrees to give notice to the other Party of any demand to disclose or provide Proprietary Information of said other Party to other persons under lawful process prior to disclosing or furnishing such Proprietary Information. The Receiving Party agrees to cooperate, if the Disclosing Party deems it necessary to seek protective arrangements.
- E. Either Party may disclose or provide Proprietary Information of the other Party to implement, effect and enforce either Party's tariffs, to comply with the terms and

provisions of the Modification of Final Judgment, or to meet the requirements of a court, regulatory body or government agency having jurisdiction over either Party. The Receiving Party will notify the Disclosing Party so as to give the Disclosing Party a reasonable opportunity to object to such disclosure. The Disclosing Party may not unreasonably withhold approval of protective arrangements provided by any such court, regulatory body or government agency. Nothing in this Exhibit requires either Party to support or not support the position of any person or entity on the issue of whether any particular Proprietary Information is proprietary under applicable law or this Exhibit.

III. Information Not Subject To Handling Restrictions

Information shall not be deemed confidential or proprietary, and the Receiving Party shall have no obligation to prevent disclosure of such information, if such information:

- (a) was previously known to the Receiving Party free of any obligation to keep confidential, or
- (b) is provided to other parties by the Disclosing Party without restriction, or
- (c) is or becomes publicly available by other than unauthorized disclosure, or
- (d) is independently developed, produced or generated by the Receiving Party, or
- (e) is approved for release by written authorization of the Disclosing Party.

IV. Applicability of Statutes, Decisions and Rules

A Party's ability to disclose Proprietary Information or use disclosed Proprietary Information is subject to all applicable statutes, decisions, and regulatory rules concerning the disclosure and use of such Proprietary Information which, by their express terms, mandate a different handling of such Proprietary Information.

EXHIBIT E
RATES AND CHARGES

NYT's rates and charges for Billing and Collection Services are as follows:

- | | | |
|-----------------------------------|-------------------------|------------------------|
| (1) Price per Bill | \$.01 | |
| (2) Price per Message Billed | \$.30 for each message | |
| (3) Manual Adjustment Charge | \$10.00 | |
| (4) Marketing Message | \$.045 | |
| (5) Pay-Per-Call Advisory Message | \$.03 | |
| (6) Minimum Charges: | <u>Annual Minimum</u> | <u>Monthly Minimum</u> |
| | \$55,994.40 | \$4,666.20 |
| (7) Start Up Fee | \$25,000 | |

Each of these charges are explained in further detail below.

A. Application of Rates to Intrastate and Interstate Services

Provided that interstate messages comprise at least 75% of Client's message volume, the rates and charges set forth above will be used to determine the total amount due for both Intrastate and Interstate Billing and Collection Services. The intrastate portion of this total will be determined by applying the rates and charges contained in the applicable NYT tariff(s) to the intrastate bill and message volumes.¹ The interstate portion is the remainder after subtracting the intrastate portion from the total. If the number of interstate messages is less than 75% of Client's message volume, then the above rates and charges (excluding the Minimum Charges) shall only apply to Interstate Billing and Collection Services and Intrastate Billing and Collection Services shall be provided to Client in accordance with the rates and charges set forth in the applicable NYT tariff(s), unless otherwise agreed to by NYT.

B. Adjustments to Rates and Charges

In the event that, during the term of this Agreement, the costs assigned to Billing and Collection Services under Part 69 of the Federal Communication Commission's Rules are changed as a result of: (1) a change in the FCC's accounting, separations or access charge rules; (2) a change in federal, state or local tax laws; or (3) any order or change in a rule or regulation of any Court or federal, state, or local governmental agency having jurisdiction, and the increase or decrease is more than \$500,000, determined cumulatively on an annual basis for both NYT and New England Telephone and Telegraph Company combined (the "NYNEX Telephone Companies" or "NTCs"), a surcharge or surcredit may be applied by NYT to the rates set forth herein. The surcharge or surcredit which may be applied to Client: (1) shall not exceed Client's proportionate share among customers of NYT's Billing and Collection Services of the

¹ For purposes of this Agreement, intrastate messages are messages associated with Client End User Customer telephone calls both originating and terminating within New York State.





MCCT



Best Power



PEX
VOICE COMMUNICATIONS

Norma Levy

December 8, 1998

Config: 9 120-line IVR systems, 45 T-1s In, two mirrored RAID systems.

Quantity	Description	Unit Price	Total
9	120 line IVR	\$ 96,500.00	\$868,500.00

PentiumII/333 MHZ CPU, 256 MB RAM. Two serial/one parallel, 20 slot rackmount enclosure, Redundant Auto sensing Power supplies, heavy duty cooling, Two 9 GB disk drives DPT mirrored with SCSI interface, 1 D240SC-T-1, 2 480SC-T-1 Cards, 1.44 MB 3.5" FDD, 14" color monitor, SVGA, 101-key enhanced keyboard, 12 GB tape drive, 16-bit ethernet card/SMC, 28.8 modem, CD ROM drive.

Software: SCO Unix, SCO networking, OmniVox voice applications generator software includes the menu interface, call scripting and voice messaging commands featuring call transfer and out dialing, conditional branching arithmetic and string operations, personal identification number (PIN) generation and verification, "C" hook facilities, "C" language API tools, integrated dBase compatible management tool, script builder document tool, Voice recording with variable rate encoding, voice file editor, customer name and address (CAN) capture, and playback system management utilities, call count reporting, CDR records, dialed number identification service (DNIS) if available, automatic number identification (ANI) if available, and remote update and maintenance. Voice Mail Application includes personal distribution list, priority levels on messages, message forwarding, password, message archive, number message announcement, volume and speed control, private messages, One Week training at MCCT, telephone, record interface, headset, D41ESC Card, MicroLite Backup, Tune Up, CPU Hardware Watchdog, The Titan I IVR Platform.

Warranty: 1-year warranty from date of purchase.



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APEX
VOICE COMMUNICATIONS

QTY	Description	Unit Price	Total
2	133 GB RAID systems	\$32,500.00	\$65,000.00
1	Installation	\$8000.00	\$8000.00
3	19" Rack Mount enclosures	\$4500.00	\$13,500.00

Documentation: MCCT Unix Recovery Guide, MCCT Integration Guide, All Scripts/Flow Charts of MCCT Programs installed into your unit, Unix operating guide, Apex OmniVox Manual, Voice Scripts.

Total:	\$955,000.00
Port Discounts:	-\$194,400.00
Total:	\$760,600.00

Terms and Conditions:

- 1.) Payment terms TBD.
- 2.) 1 Year warranty from date of purchase
- 3.) This quote does includes installation and shipping charges.
- 4.) Delivery 6 weeks ARO.

Sincerely yours,

Elwin Macomber
MCCT
Tel #: 603-524-2214