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March 19, 1998

**VIA OVERNIGHT DELIVERY**

John C. Crary, Secretary  
New York Public Service Commission  
Agency Building 3  
Three Empire State Plaza  
Albany, New York 12223

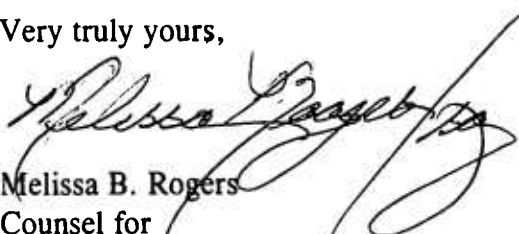
Re: Complaint of CTC Communications Corp.

Dear Mr. Crary:

Enclosed for filing are an original and five (5) copies of the Complaint of CTC Communications Corp. Against New York Telephone Company for Violations of the Communications Act of 1934, as amended, Section 91 of the Public Service Law, and Resale Tariff No. 915 and Request for Emergency Relief.

Please date-stamp the enclosed extra copy of this filing and return it in the self-addressed, postage paid envelope provided. If you have any questions regarding this filing, please do not hesitate to contact me.

Very truly yours,



Melissa B. Rogers  
Counsel for  
CTC Communications Corp.

Enclosure

MBR/sg

1998 MAR 20 AM 11:43  
RECEIVED  
PUBLIC SERVICE  
COMMISSION  
ALBANY, NY

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**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

<b>Complaint and Request for Emergency Relief of</b>	<b>)</b>	
<b>CTC Communications Corp. against New York</b>	<b>)</b>	
<b>Telephone Company d/b/a Bell Atlantic - New York</b>	<b>)</b>	
<b>for Violation of Sections 251(c)(4) and 252 of</b>	<b>)</b>	<b>Case 98-C-_____</b>
<b>the Communications Act of 1934, as amended,</b>	<b>)</b>	
<b>Violation of N.Y. Pub. Serv. Law § 91 and</b>	<b>)</b>	
<b>Violation of Resale Tariff P.S.C. No. 915</b>	<b>)</b>	

**COMPLAINT AND REQUEST FOR EMERGENCY RELIEF OF  
CTC COMMUNICATIONS CORP.**

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<b>Violation of N.Y. Pub. Serv. Law § 91 and</b>	)	
<b>Violation of Resale Tariff P.S.C. No. 915</b>	)	

**COMPLAINT AND REQUEST FOR EMERGENCY RELIEF  
OF CTC COMMUNICATIONS CORP.**

CTC Communications Corp. ("CTC"), through its undersigned counsel, hereby files this complaint against New York Telephone Company d/b/a Bell Atlantic - New York ("BA-NY") for violation of Sections 251(c)(4) and 252 of the Communications Act of 1934 as amended, and violation of N.Y. Pub. Serv. Law § 91, and violation of Resale Tariff No. 915.

**INTRODUCTION**

1. CTC is a competitive local exchange carrier ("CLEC") reselling BA-NY's service in New York pursuant to BA-NY's Resale Tariff PSC No. 915. CTC currently has 100 New York customers enrolled for resold services with 80 of those customers in service. Affidavit of David Mahan, ¶ 2, attached hereto as Exhibit A. BA-NY has suddenly and unilaterally reversed its longstanding policy allowing CTC and other resellers to assume the service agreements of enduser customers. This reversal in policy is a violation of BA-NY's P.S.C. No. 915 Resale Service tariff, Sections 251 and 252 of the 1996 Act and Section 91 of the Public Service Law. BA-NY's rejection of these orders forces CTC's customers either to remain with BA-NY or to pay significant termination fees.

2. Although CTC believes that it is entitled to wholesale discounts on the resold services under assumed contracts pursuant to Section 251(c)(4)(A), it is willing to assume those contracts and step into the shoes of the existing customers at retail rates. Mahan Aff., ¶ 10. In effect, CTC will pay retail rates for services that it otherwise is entitled to obtain at wholesale discounts. BA-NY's refusal to allow assumption of the contracts underscores BA-NY's anticompetitive motives. BA-NY's refusal to allow CTC to assume existing customer contracts *at any price* is anticompetitive and discriminatory. *Id.* BA-NY's conduct imperils CTC's business and reputation in New York and constitutes an effective barrier to entry in the local resale market.

3. To preserve CTC's business and reputation pending the outcome of this action, CTC requests that Commission issue an immediate injunction against BA-NY's anti-competitive tactics. In the alternative, CTC requests expedited treatment of this Complaint.

#### JURISDICTION

4. The Commission has jurisdiction and authority to grant the relief requested pursuant to Public Service Law Sections 94 and 96, N.Y. Pub. Serv. Law §§ 94, 96 (McKinney 1997), and 47 U.S.C. Section 251(c)(4).

#### BACKGROUND

5. CTC operated as the nation's largest independent sales agent for the Regional Bell Operating Companies ("RBOCs"), including BA-NY, for over 16 years. The Telecommunications Act of 1996 presented CTC with the opportunity to utilize its experience and expertise in the telecommunications industry by entering the resale market. Accordingly, CTC commenced resale operations in New York in January 1998, reselling Bell Atlantic's service pursuant to P.S.C. No. 915 Resale Services Tariff. Mahan Aff., ¶ 7.

6. Pursuant to the Resale Tariff, CTC is entitled to assume existing service contracts between BA-NY and end user customers.

7. CTC submitted customer orders for resold services to BA-NY. Beginning on or about January 21, 1998, BA-NY unilaterally froze customer orders that included BA-NY service agreements by reversing a long-standing policy allowing the assumption of service agreements by CTC and other resellers. A number of these customers are being serviced by CTC under long-term contracts that CTC assumed before the BA-NY policy change. Mahan Aff., ¶ 3.

8. In an internal e-mail dated January 18, 1998, Bell Atlantic stated that BA-NY's policy is that retail customers may not assign retail contracts to resellers . . . a reseller may not become the customer of a retail contract - resellers cannot 'take over' the retail contracts of retail customers and pay the retail rates. If a retail customer wants to convert its retail service to service provided by a reseller, the retail customer must terminate the retail contract and pay any associated termination charges. This policy applies to all services that we offer at retail - Centrex - VMS - anything, tariffed or not.

*See, Electronic Mail of January 18, 1998 Re: Reseller Issues*, copy attached hereto as Exhibit B.

9. In the same e-mail, Bell Atlantic acknowledges, "[t]his changes the policy previously in effect in the former NYNEX region, which permitted assignment of retail contracts to resellers. Such assignment is no longer permitted." *Id.*

10. BA-NY's policy forces customers to pay exorbitant termination fees or if they chose to do business with a reseller or avoid those fees by remaining with BA-NY as their service provider.

11. This sudden change in policy and practice took CTC by surprise because the new policy directly contradicted representations made by Bell Atlantic to CTC in meetings prior to CTC

beginning resale operations in New York. Additionally, Bell Atlantic did not notify anyone affected by this change in policy, including CLECs and regulatory bodies. Bell Atlantic, including BA-NY, simply stopped processing any conversion orders for customers with Bell Atlantic contracts.

12. In two meetings in the fall of 1997, on September 10, 1997 and October 3, 1997, the issue of assumption of contracts was explicitly discussed by the parties. At both those meetings, Bell Atlantic stated that CTC would be permitted to assume customer contracts. Mahan Aff., ¶¶ 4-6. During a meeting on October 3, 1997, where the issues was discussed extensively, Georgene Horton, a Bell Atlantic representative, assured CTC that Bell Atlantic would permit customer contracts to be assumed by CTC without penalty to the customers. *Id.*, ¶ 5 and Exhibit 1 thereto.

13. In addition, Bell Atlantic continued processing CTC's orders for converting customers and their contracts with Bell Atlantic to CTC until January 21, 1998. Mahan Aff., ¶ 8.

14. Moreover, Bell Atlantic already had permitted CTC to assume customer contracts without penalty to the customer. Affidavit of Jordan B. Michael ("Michael Affidavit") ¶ 3, a copy of the Michael affidavit is attached hereto as Exhibit C.

15. On January 22, 1998, CTC requested that Bell Atlantic clarify its new policy. *See Letter of January 22, 1998 from Rodger Young to Jack White*, attached hereto as Exhibit D. On February 5, 1998, Bell Atlantic responded to CTC's request claiming that although a customer

is certainly free to choose to migrate to a competition . . . Bell Atlantic must view that migration as a termination of the customer's existing contract or service arrangement. Depending upon the terms of the contract or tariff governing that service arrangement, the customer's actions may trigger termination liability.

*See Letter of February 5, 1998 from Jack White to Rodger Young*, attached hereto as Exhibit E.

16. BA-NY's new imposition of termination penalties on customers is an unreasonable restriction on resale and constitutes a barrier to entry.

BA-NY'S ACTIONS VIOLATE SECTION 251(c)(4)(B)  
OF THE TELECOMMUNICATIONS ACT OF 1996,  
SECTION 91 OF THE NEW YORK PUBLIC SERVICE LAW  
AND BA-NY's RESALE TARIFF

VIOLATION OF THE 1996 ACT

17. BA-NY's refusal to permit CTC to assume customers without penalty violates BA-NY's obligations under the Resale Tariff and violates Section 251(c)(4) of the 1996 Act and Section 91 of the Public Service Law.

18. Section 251(c)(4) prohibits BA-NY from imposing "unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service . . . ." 47 U.S.C. 251(c)(4)(B). In the FCC's Local Competition Order, the Commission ruled that resale restrictions are presumptively unreasonable and interpreted Section 251(c)(4) as including contract services and customer-specific services. *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, FCC 96-325, First Report and Order, released Aug. 8, 1996 ("Local Competition Order"), ¶¶ 939, 948, *aff'd in part and vacated in part*, *Iowa Utilities Board v. FCC*, 120 F.2d 753 (8th Cir. 1997), petitions for cert. pending, *AT&T Corp. v. Iowa Utilities Board*, No. 97-827 et al. Although the Local Competition Order does not specifically address the issue of termination penalties under contracts, the FCC clearly expected CLECs to be able to resell contract services without incurring penalties that would make such resale economically impractical.

[T]he ability of incumbent LECs to impose resale restrictions and conditions is likely to be evidence of market power and may reflect an

attempt by incumbent LECs to preserve their market position . . . Given the probability that restrictions and conditions may have anticompetitive results, we conclude that it is consistent with the procompetitive goals of the 1996 Act to presume resale restrictions to be unreasonable and therefore in violation of section 251(c)(4).

Local Competition Order, ¶ 939.

19. Imposition of termination fees on consumers coupled with the prohibition on resellers assuming existing contracts is just such an unreasonable and illegal restriction on resale. The FCC itself has recognized this possibility. In *In the Matter of Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Service in South Carolina*, the FCC held that BellSouth failed to meet the competitive checklist pursuant to Section 271 because BellSouth refused to offer customer-specific contract services arrangements ("CSAs") for resale at wholesale discounts. Although the FCC did not resolve the issue of termination penalties associated with CSAs because the record before it was not adequately developed on that issue, the FCC recognized that "depending on the nature of these fees, their imposition creates additional costs for a CSA customer that seeks service from a reseller, *they may have the effect of insulating portions of the market from competition through resale.*" *Id.*, ¶ 222 (emphasis added); *See also Freedom Ring, L.L.C. Petition Requesting Incumbent LECs Provide Customers with a Fresh Look Opportunity*, N.H.P.U.C., DR 96-420, Order 22,798 (Dec. 8, 1997)(New Hampshire PUC ordered fresh look opportunity to certain Bell Atlantic customers with long term contracts containing termination penalties.) A copy of the Order is attached hereto as Exhibit F.

20. Although the amount of the termination fee depends upon the product type and the time remaining on the contract, termination fees can be onerous. Mahan Aff., ¶ 9. Many customers



are unwilling to pay BA-NY's termination fees. CTC estimates that over 60% of CTC's targeted business market has at least one contract with BA-NY that is subject to termination fees. *Id.* BA-NY's new policy restrains CTC from competing effectively with BA-NY for those customers.

VIOLATION OF SECTION 91 OF NEW YORK PUBLIC SERVICE LAW

21. Section 91 of the New York Public Service law prohibits BA-NY from imposing unjust and unreasonable charges on resale. N.Y. Pub. Serv. Law § 91 (McKinney 1997). BA-NY's imposition of customer termination liabilities on customers when resellers such as CTC wish to assume these customer contracts is unjust, unreasonable and discriminatory.

22. BA-NY's refusal to allow assumption of its customer contracts not only violates federal and state law, it directly contradicts statements made by Bell Atlantic to the New Hampshire Public Utility Commission in the *Freedom Ring* petition. In a brief filed by Bell Atlantic on August 28, 1997, Bell Atlantic stated,

[t]he Telecommunications Act of 1996 affords a competitive provide the opportunity under § 251(c)(4) to resell service to an existing NYNEX customer, while still maintaining termination liability that the customer previously negotiated with NYNEX. The resale opportunity is provided through two alternatives. *The first is to allow a competitive provider to assume the special contract or tariff payment-plan agreement of a NYNEX retail end user, so long as the provider, through resale, assumes all terms and conditions of the agreement, including its length. Accordingly, no early termination of the agreement arises and no penalty is paid.*

NYNEX Brief, p. 60, excerpts of NYNEX brief attached hereto as Exhibit G. Thus, Bell Atlantic's new policy directly contradicts statements made by it less than a year ago in a vain attempt to avoid a fresh look opportunity for customers with certain long-term contracts with Bell Atlantic in New Hampshire.

23. CLECs, like CTC, are not the only victims of BA-NY's anti-competitive scheme. New York customers are deprived of the opportunity to choose competitive services from new market entrants at competitive rates.

VIOLATION OF RESALE TARIFF P.S.C. NO. 915

24. BA-NY's refusal to permit assumption of existing contracts also violates its Resale Tariff, which permits resellers to resell certain BA-NY services.

25. BA-NY can have no motivation for refusing to deal with CTC other than an effort to derail competition. Mahan Aff. ¶ 10. BA-NY's termination penalties were intended to compensate it for stranded costs and lost revenues when a service under contract is disconnected. However, when a customer switches from BA-NY to CTC, BA-NY is not disconnecting, rearranging, or making any physical change whatsoever in the facilities used to provide service to the customer, and will continue to receive revenue from CTC for the duration of the contract. *Id.* Collection of termination fees results in a windfall for BA-NY. Because CTC is willing to pay retail rates, BA-NY suffers no adverse economic effect from permitting CTC to assume the contracts. In fact, BA-NY realizes greater profits since CTC assumes the costs of billing, bad debt and customer service previously borne by Bell Atlantic. *Id.* Thus, the only purpose served by BA-NY's refusal to allow assignment of contracts is to insulate that portion of the business market from competition and preclude CTC from pursuing those customers.

REQUESTED RELIEF

WHEREFORE, CTC respectfully requests that the Commission enter an order enjoining BANY from imposing termination fees on consumers when CTC assumes existing customer contracts, and providing such other and further relief as the Commission deems necessary.

Respectfully submitted,

*Warren A. Fitch/mbv*

Warren Anthony Fitch

Melissa B. Rogers

Swidler & Berlin, Chartered

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**STATE OF NEW YORK  
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<b>the Communications Act of 1934, as amended,</b>	)	
<b>Violation of N.Y. Pub. Serv. Law § 91 and</b>	)	
<b>Violation of Resale Tariff P.S.C. No. 915</b>	)	

**AFFIDAVIT OF DAVID E. MAHAN  
IN SUPPORT OF  
COMPLAINT AND REQUEST FOR EMERGENCY RELIEF  
OF CTC COMMUNICATIONS CORP.**

I, David E. Mahan, state and depose as follows:

1. I am the Vice-President of Marketing and Strategic Planning for CTC Communications Corporation ("CTC"), 360 Second Avenue, Waltham, Massachusetts.

2. CTC is a competitive local exchange carrier ("CLEC") operating in New York. CTC specializes in reselling to business customers. It currently has 100 customers signed up for resold services in New York, with 80 of those customers in service.

3. In the fall of 1997, CTC began negotiating with Bell Atlantic for resale agreements in the New England states. A Resale Agreement was not necessary in New York since CTC would resell Bell Atlantic service in New York under BA-NY's P.S.C. No. 915 Resale Tariff. At that time, it was Bell Atlantic's policy to allow customers to move from Bell Atlantic's service to a competitive service without incurring termination penalties. However, upon assumption of such a contract, CTC would be obligated to pay the retail rate for services assumed even though it would otherwise be entitled to take the services at a wholesale discount pursuant to Section 251(c)(4)(A). Although CTC believes that it is entitled to wholesale discounts on assumed contracts, it is willing

to pay the retail prices as a means of competing with Bell Atlantic for a segment of the market that otherwise would be unavailable to CTC. In fact, for a number of customers whose service initiated before BA-NY's change of practice, that is exactly the basis upon which CTC had provided service.

4. I was present during a meeting in late September, 1997, when the issue of assumption of end-user contracts was discussed. At that meeting, Bell Atlantic representatives, including Mirijana Kocho, Peter Kraoczka and Georgene Horton assured CTC that it would be permitted to assume end-user contracts without penalty, but would not be allowed to have wholesale discounts on the services provided under those contracts.

5. On October 3, 1997, during another meeting with Bell Atlantic Representatives, John Ferris and Georgene Horton, Ms. Horton reiterated that CTC would be permitted to assume end-user customer contracts. Both Mr. Ferris and Ms. Horton explained that CTC would not be permitted to have wholesale discounts initially. However, the contracts contain re-negotiation provisions. Therefore, CTC would have the opportunity to re-negotiate for wholesale rates at some point in the future. The discussion of this issue was extensive. I took notes of the October 3, 1997 meeting. A true and accurate copy of my notes is attached hereto as Exhibit 1. My notes indicated that Bell Atlantic stated:

[a]ny customer that has a term contract with Bell Atlantic can be converted, however the price is not discounted . . . CTC would be billed at the contracted rates previously being billed to the customer . . . Additionally, the criteria specified in the Bell Atlantic retail tariff . . . for renegotiating the contract based on adds and recasting would apply. Any contract that is renegotiated would include a discount for all contracted services. Basically, if the contract can be renegotiated based on Bell Atlantic retail tariff criteria, discounts apply to everything.

*Id.*, p. 4.

6. CTC also posed a number of questions to Georgene Horton prior to the meeting that she addressed at the meeting. Many of those questions dealt with the mechanics for assuming customer contracts. *Id.*, pp. 8-9. Again, Ms. Horton reassured CTC that assumption was permitted.

7. In January 1998, CTC commenced resale operations in New York. BA-NY's P.S.C. No. 915 Resale Tariff allows CTC to purchase for resale service offered by BA-NY to end users with certain stated exceptions. The resale service tariff includes provision for CTC to assume the account of existing Bell Atlantic end users.

8. During January 1998, Bell Atlantic processed conversion orders from CTC for customers with Bell Atlantic contracts. On or about January 21, 1998, Bell Atlantic stopped processing these customers orders, in all states including New York, thus precluding 12 New York customers from converting to CTC. Bell Atlantic claims that it stopped processing orders in accord with an internal policy change. Bell Atlantic now will not permit CLECs to convert customers with BA-NY contracts without the customers incurring substantial termination penalties.

9. Bell Atlantic's refusal to permit assumption of end-user contracts by CTC makes it nearly impossible for CTC to compete with BA-NY for certain business customers. Termination penalties can be onerous based on the product type and the time remaining on the contract. Many customers are unwilling to pay these termination charges and thus remain with BA-NY instead of switching to CTC's service. Over sixty percent of CTC's targeted business market has at least one contract with Bell Atlantic that is subject to termination penalties. By imposing these penalties on customers, BA-NY effectively is insulating that portion of the business market from competition.

10. Bell Atlantic's refusal to permit assumption of contracts clearly is anti-competitive. Bell Atlantic has no economic incentive to prohibit that assumption. Termination penalties were

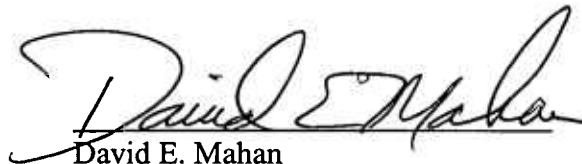


intended to compensate Bell Atlantic for stranded costs and lost revenues when a service under contract is disconnected. However, when a customer switches from Bell Atlantic to CTC, Bell Atlantic is not disconnecting, rearranging, or making any physical change whatsoever in the facilities used to provide service to the customer and will continue to receive revenue from CTC for the duration of the contract. Moreover, because CTC is willing to pay retail rates for the assumed services, Bell Atlantic suffers no adverse economic effect, and in fact realizes greater profits, since CTC assumes the cost of billing, bad debt and customer service previously borne by Bell Atlantic.

In other words, CTC assumes all the Bell Atlantic avoided costs that comprise the wholesale discount percent in New York.


I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: 3/10/98



David E. Mahan  
Vice-President of Marketing and Strategic Planning  
CTC Communications Corp.

Subscribed and sworn to before me this 10 day of March, 1998

  
Notary Public

MY COMMISSION EXPIRES  
OCTOBER 22, 2004





2

## Highlights of 10/3/97 Meeting with Bell Atlantic Wholesale

In attendance:      Georgene Horton                      Steve Milton  
                         John Ferris                              Mike Donnellan  
                         Artie Zanfini (by phone)              Dave Mahan

Resellers are not called resellers. They are Telecommunications Carriers (TCs).

Our account manager will be John Ferris (works for Georgene). John is in Boston.

Our systems contact will be Sean Sullivan. Sean is in Boston.

Our operations contact will be Artie Zanfini Director of Resale Operations who is located in New York. Artie runs the two Bell Atlantic wholesale operations service centers at 185 Franklin Street in Boston and 140 West Street in Manhattan. CTC will be assigned specific individuals in each of these centers to work with us based on our volume of activity. These centers provide account inquiry, billing inquiry, order processing and 24x7 repair support. There are formal escalation procedures.

Forecasting of volume and services is important for Bell Atlantic to ensure adequate resources to meet our needs. The recommended forecast data is a two year forecast by month, by state and by SBU which includes, the number of lines and customers to be converted and the number of simple and complex new services to be installed.

CTC must be assigned a NECA (NC) and Exchange Carrier (EC) code. These are a function of state certification and will be CTC's identifier in the Bell Atlantic wholesale data bases. John Ferris will help us establish these codes. Unclear if Bell Atlantic, Bellcore or someone else assigns them.

An interconnection agreement is required for states without approved tariffs. The NYNEX interconnection agreement would take about three weeks to negotiate and there were many different versions. Bell Atlantic is putting in place a more standard agreement which will be ready mid October. Perception is a "take it or leave it" type agreement. Interconnection agreements must be approved by state regulator and the approval intervals vary. Maine is the longest - 90 days. Generally, you must be certified in the state before you can file your interconnect

agreement. However, Georgene indicated that once you were certified in the state and you had filed the interconnection agreement, you could start selling while the interconnect agreement was in the approval process.

CTC must write a letter to Jack Goldberg (immediately) stating that we want to start negotiating agreements under the Telecommunications Act of 1996 for the following states (each state we want to do business in listed). This letter should also indicate that CTC would like to MFN (Most Favored Nation) certain agreements as well as state that it is CTC's intent to resell Bell Atlantic services rather than purchase network elements. These two provisions will help speed the process. CC the letter to Georgene. This letter will trigger the start of the interconnection agreement process.

The provisioning interval for converting an existing customer is 48 hours. Conversion is a BTN record change only and therefore the mix of services (simple and complex) or the number of locations that the customer has does not impact the 48 hour conversion interval. All customers will be converted in 48 hours, CTC will be the customer of record for those BTNs and billing will start to flow to CTC.

There are virtually no capacity constraints on converting customers (as is) with the same services that they have prior to conversion. Artie Zanfini stated that 20,000 lines a month was no problem at all. He asked how many customers comprised the 20,000 lines and we stated probably about 1000. No problem. We asked how about 5000 customers -- no problem. How about 30 - 40,000 lines -- no problem, just a records change, 48 hour conversion. The problem comes when conversion is coupled with new service and therefore the new service intervals apply.

The provisioning intervals for new services, and additions to existing services are the same as the intervals we now have on the retail side.

The wholesale group will provide LSO/FPO pricing for applicable CTC customer proposals. This pricing will include a discount from the price provided to Bell Atlantic retail for the identical proposal. CTC's price would be the same as any other reseller for the identical proposal. The discounts on LSO/FPO special pricing projects will vary based on the actual avoided Bell Atlantic costs for that specific project.

New York and Connecticut have Tariffs in place. Remaining (NYNEX) states are in process. All Bell Atlantic states have tariffs in place except the District of Columbia. Discount rates proposed and approved are attached. Bell Atlantic state tariffs are low ranging from 15.05% to 19.8 %.

The wholesale discounts are applied as follows. Bell Atlantic retail products, services and calling plans tariffed under the 900 state tariff umbrella (local) are offered under wholesale tariff. Any discounts offered for term and volume consideration in the Bell Atlantic retail tariff are offered on the wholesale side. The state approved discount is then applied to establish the wholesale price. Additional benefits included in retail tariffs such as Business Link loyalty discounts and rebates are applicable and would be paid to CTC (customer of record). There are no "over and above" discounts offered for volume or term commitments.

The only state where local toll and intra lata toll are allowed to be aggregated is New York. All other states are on a BTN by BTN basis.

The only state where voice mail is offered by Bell Atlantic wholesale is New York. Bell Atlantic voice mail tariffs are filed under a category of an enhanced and competitive service and is therefore not required to be offered through wholesale tariff. The New York PSC ordered Bell Atlantic to include voice mail in wholesale tariffs, the other states have not. This is very problematic for resellers since (1) if you convert a customer with voice mail the voice mail is automatically disconnected, and (2) you therefore must make pre conversion arrangements for a non Bell Atlantic voice mail service and coordinate the installation, at or prior to, converting the customer to resale.

Bell Atlantic FCC tariffed products do not fall under the 900 local service tariff series and are not offered by wholesale. An order to convert a customer who has FCC tariffed based services would have that portion of the order rejected. FCC services can be provided by the reseller by ordering them through Bell Atlantic retail, having the CTC be the customer and then CTC would rebill the end user. There would be no discount associated with providing these FCC circuits through Bell Atlantic retail. Alternately, Bell Atlantic wholesale will provision a point to point T1 between a customer and a POP under the normal intrastate T1 900 Tariff series. This wholesale provided T1 would be discounted off the retail tariff.

There is no discount for contracted services. Any customer that has a term and price contract with Bell Atlantic can be converted, however the contracted price is not discounted. This applies to both tariffed based contracts and LSO/FPO special pricing contracts. CTC would be billed at the contracted rates previously being billed to the customer. These must be looked at carefully and on an individual case by case basis. For example, in the case of a customer under contract for a reduced Centrex line charge, the line charge would not be discounted but all usage and other services would be discounted. Additionally, the criteria specified in the Bell Atlantic retail tariff (not the Agency Agreement) for renegotiating the contract based on adds and recasting would apply. Any contract that is renegotiated would include a discount for all contracted services. Basically, if the contract can be renegotiated based on the Bell Atlantic retail tariff criteria, discounts apply to everything. The economics of contract termination charges versus discounts versus recast, etc. must be evaluated and modeled to optimize CTC's financial planning.

Contract terms, termination liability, and contract renegotiation criteria vary on a state to state and retail tariff to retail tariff basis, even for the same product. The wholesale account team could not emphasize enough that it is critical for resellers to have a regulatory person who can look at retail tariff contract provisions and FCC tariff alternatives on a state by state and tariff by tariff basis to develop the most desirable discount strategy for each customer currently under contract with Bell Atlantic retail.

#### **Action Plan**

John Ferris will spend the day with CTC next Wednesday to further discuss requirements and details, establish a GANT chart type project schedule to support a January 1, 1998 implementation date and fire up the accelerated systems implementation plan.

Dave Mahan will write the letter to Goldberg

**Answers to Questions sent to Georgene for Discussion at the 10/3/97 Meeting**

**Planning and Forecasting**

What planning process is in place to ensure adequate resources to handle resellers order volumes and product mix ?

Account manager coordination and joint planning coupled with reseller forecasting

What are the forecasting responsibilities of the reseller ? of BA wholesale ?

Reseller - Demand forecasts on a month to month basis (see meeting highlights)

BA - ensure adequate resources based on aggregate reseller forecasts

What is the order processing capability of Bell Atlantic wholesale on a daily, weekly, monthly basis ? Is this capability impacted by the type of orders ex. simple versus complex ?

No straight conversion capacity limitations - orders complete in 48 hours  
New service intervals same as on retail side - complex and simple orders flow differently

(More detail in meeting highlights)

How are simple and complex orders defined and are there lists of each ?

Lists of simple and complex attached

How do simple orders flow and what are the intervals for existing service conversion ?

Record change only, same flow, 48 hour conversion

(More detail in meeting highlights)

How do complex orders flow and what are the intervals for existing service conversion ?

Record change only, same flow, 48 hour conversion

(More detail in meeting highlights)



How do simple and complex orders flow for new services and what are the intervals ?

New service intervals same as on retail side - complex and simple orders flow differently

(More detail in meeting highlights)

What are the arrangements and services available for operator services, 911, hearing impaired, etc. ?

DA and "0" operator are available from Bell Atlantic.

Resellers can chose a non BA operator services provider and increase their discounts

911 is provided by BA under either operator services scenario for resellers  
CLECs that have their own local switch (dial tone) must make accommodations for 911

### Wholesale Tariffs and Retail Discounts

What is the status of the wholesale tariffs and discounts in each state ?

New York and Connecticut have approved wholesale tariffs. All other (NYNEX) states have tariffs pending

All Bell Atlantic states have approved wholesale tariffs except Washington DC which is pending

Discount rates by state are attached

In states where the tariffs have yet to be approved, is the interconnection agreement the vehicle to establish the discounts ?

Yes

Are there product/service groupings with differing discounts ? ex. access, usage, features, etc.

No - discounts are standard and are applied to retail tariff rates in each state  
(More detail in meeting highlights)

What are the usage product lines and what discounts are applied to each of them ?  
ex. Business Link, Netsaver ?

The same percent discount by state applies to all products including usage  
Any retail tariffed discounts for usage products such as Business Link are applicable and then the wholesale discount is applied.

(More detail in meeting highlights)

Is there a list of products and services by state ?

Yes - they are those products and services comprising BA's retail tariffs

Wholesale does have product lists by state for reseller billing

Resellers are encouraged to obtain state retail tariffs and maintain their own inventories

Are there Bell Atlantic Retail products under state tariffs that are not offered in that state under wholesale tariff ? If not, are they available under another arrangement ?

All Bell Atlantic retail products filed under the 900 series (local) tariff umbrella in each state are also offered under the wholesale tariff for that state

FCC tariffed products are not offered under wholesale tariff

Enhanced/competitive services are not offered under wholesale tariff

(More detail in meeting highlights)

Are Bell Atlantic FCC tariffed products available through wholesale tariffs ? If not, are they available under another arrangement ?

No - FCC tariffed services are not filed under the 900 (local) tariff umbrella and are therefore not available through wholesale.

(More detail in meeting highlights)

What are the discounts over and above the tariffed rates available for volume and/or term commitments - what form do these take and what are the discount levels ?

There are no discounts over and above the wholesale discount for each state  
(More detail in meeting highlights)

If Bell Atlantic Retail changes their retail tariff price, how does that effect the wholesale price for the same service - how are wholesale customers notified ?

The discount would be applied to the new retail tariff price (up or down)

Updated pricing sheet and change in wholesale billing

Resellers are encouraged to monitor state retail tariff activity and maintain their own price lists

If Bell Atlantic Retail adds a new product is it matched with a wholesale tariff - how are wholesale customers notified ?

Yes - for all retail products under the 900 (local) tariff umbrella

Updated pricing sheet and change in wholesale billing

Resellers are encouraged to monitor state retail tariff activity and maintain their own product and price lists

Are special promotions or off tariff pricing "specials" offered by BA wholesale ?  
No

Is there be flexibility in margins/discounts for competitive bid situations ?

Special LSO and FPO pricing is applicable

No flexibility other than LSO/FPO

(More detail in meeting highlights)

### Customers with Existing Bell Atlantic/NYNEX Contracts

What is the process associated with a reseller taking over a customer under contract for a service or services ? Who do resellers work with in this regard ?

Reseller assumes the contract term and liability

Resellers work with wholesale account management

(More detail in meeting highlights)

What are the resellers options and liabilities ? Ex Buy Out, pay termination liability, assume the contract and its term ?

All apply

(More detail in meeting highlights)

When a reseller intends to assume an existing customer contract, who do they deal with - BA retail ? BA wholesale ?

Resellers work with wholesale account management

(More detail in meeting highlights)

How are reseller assumed contracts managed and what form do they take ? ex. all lines/numbers aggregated ? separate individual contracts ?

Separate, individual contracts by BTN

(More detail in meeting highlights)

Are there standard service contracts between Bell Atlantic and resellers with term and condition provisions ?

Yes - for both assumed contracts, renegotiated contracts and new contracts.  
Basically the same terms and conditions as the retail tariff contracts

What discounts are associated with products and services that are currently under tariffed based contract between the customer and Bell Atlantic retail ? ex. a term agreement that is part of the tariff - Centrex Plus ?

There are no discounts for contracted services. The reseller is billed for the price stated in the contract

There are options

(More detail in meeting highlights)

What discounts are associated with products and services that are currently under a FPO/LSO special pricing contract between the customer and Bell Atlantic ? ex. a 200 line, 5 year FPO centrex contract or a 5 year LSO Frame Relay contract ?

There are no discounts for contracted services. The reseller is billed for the price stated in the contract

There are options

(More detail in meeting highlights)

What discounts are associated with products and services that are currently under Bell Atlantic FCC tariffed FPO/LSO special pricing contracts ? ex. T1 service

FCC tariffed services are not filed under the 900 (local) tariff umbrella and are therefore not available through wholesale.

(More detail in meeting highlights)

## Operations

What are the intervals for cutting over existing customers ? Do these intervals vary based on the type of products and services the customer has from Bell Atlantic ? How are varying intervals for the same customer managed ?

The interval for converting an existing customer is 48 hours

The types of services the customer has does not impact this interval

There is no variation in interval based on the customers product mix.

(More detail in meeting highlights)

Do intervals and the conversion work required vary for simple and complex products ? What are the definitions for simple and complex ?

There is no variation in interval based on the customers product mix

Lists of simple and complex products are attached

(More detail in meeting highlights)

What are the non recurring and recurring charges associated with placing orders to convert an existing customer to wholesale ?

The same service order charges that are applicable for retail less the state wholesale discount

What are the non recurring and recurring charges associated with adding new services to an existing wholesale customer ?

The same service order charges that are applicable for retail less the state wholesale discount

Are there charges associated with gathering customer information in a pre sales environment ?

Yes - wholesale charges for CSRs, etc.

What interactions take place between BA wholesale and a reseller in the process of acquiring a customer and what recurring and non recurring charges are involved ? ex. pre sale information, proposal, estimated cost/ pricing, customer information, order processing, ongoing post conversion activity.

Customer acquisition is a reseller function - BA wholesale is not involved  
BA wholesale will process all orders and provide LSO/FPO pricing proposals as required

BA SBU operations provides cut over and installation

Post sale and post conversion activity is a reseller function

Are there optional services or data that resellers can offer customers, ex. local call detail. What are these optional services and what are the prices ?

Daily usage call records appear to be the only optional service available

The price for daily usage call records vary by state ex. New York is \$.008 per call record plus a processing fee

How does Bell Atlantic wholesale handle 7x24 service coverage, service escalation ?

CTC would deal directly with the normal Bell Atlantic repair bureau which is a 7x24 operation

BA wholesale provides 24x7 repair service support for repair problems if required

BA repair (both the normal and wholesale groups) will not deal with resellers end user customers and will turn their calls back

BA wholesale has a formal escalation procedure by function and name

Will a customer who is converting to wholesale have to change telephone numbers and/or circuit IDs ? - What number portability is available now and later ?

In the resale environment there is full number portability since BA wholesale assigns the existing BTNs to the reseller

The telephone number stays with the customer when converted to resale

The telephone number stays with the customer when the customer converts from one reseller to another reseller

In the CLEC environment were a customer is moved to a CLEC local switch, number portability is provided today through remote call forwarding. In the future, full number portability will be provided via data base look up in the same manner it is provided for 800 service.

Do customers call CTC exclusively for all Bell Atlantic issues ?

Yes

Is CTC Bell Atlantic's customer of record for all services ?

Yes

How are long distance and local PIC changes processed and confirmed ?

PIC changes are implemented by CTC orders placed through the wholesale ordering system

BA wholesale will not accept a PIC change from anyone but CTC for LD and intra lata toll

If BA wholesale receives an LOA and order to convert a customer from one reseller to another reseller, the customer is converted. Following conversion, BA wholesale then notifies the original reseller that they have lost the customer and billing for those BTNs will stop as of the conversion date. What this means is that CTC's customers cannot be "slammed" in

regard to LD and toll PICs but if a CTC customer signs an LOA with another reseller, they are gone.

What pre sale, installation and cut over support is provided by the BA wholesale group ? What organization (s) ?

No support other than LSO/FPO pricing and order processing

What kind of product training is available from Bell Atlantic wholesale ?

Product training is available by Bell Atlantic wholesale for a price

Training and prices are attached

What kind of procedures training will be available for CTC systems and customer service personnel ?

Systems and process training is available by Bell Atlantic wholesale for a price

Training and prices are attached



## **Non-Complex Services Description & Daily Breakdown:**

Non-Complex product and service training provides detailed training on 41 products and services. The products and services are presented in 26 modules covering the description, implementation, features, limitations and applications. On all applicable products and services, students are allowed to practice entering orders on the GUI (Graphical User Interface). One day of training is spent at the NYNEX Technology Center for a formal presentation and "hands-on" experience of these products. The course length is 8 business days and there is no prerequisite.

### **NYNEX Reseller Training/ Non-Complex**

#### **DAY 1**

Phonesmart®  
Custom Calling Services

- Call Waiting
- Call Forwarding & Call Forwarding II
- Speed Calling 8 & 30
- Three-Way Calling

Call Ability<sup>SM</sup>  
Call Answering

#### **DAY 2**

800 ValuFlex®  
VoiceDialing<sup>SM</sup>  
Remote Lines  
RingMate®  
Gold Number®  
Centrex Plus  
NRBS

#### **DAY 3**

Technology  
Education  
Center

#### **DAY 4**

ISDN

#### **DAY 5**

Connecting New  
Service  
IMB/IMR & CSR  
Listings & Directories

### **NYNEX Reseller Training/ Non-Complex**

#### **DAY 6**

IntraLATA Presubscription  
Termination Of Service  
Outside Moves/ Inside Moves  
Change Party/Change Telephone

#### **DAY 7**

Arranging Appointments  
Adding and Removing Lines  
Modifications and Cancellations  
Temporary Suspension and Restoral of Service  
Calling Plans

- Optional Calling Plan
- EconoPath®
- Regional Calling Plan

Business Link

#### **DAY 8**

PIC/PLIC  
Virtual WATS  
BNS/Blocking





## **Complex Services Description & Daily Breakdown:**

Complex products training provides detailed training on 9 products. The modules cover implementation, description, limitations and applications. Where applicable, students are provided training on the GUI (Graphical User Interface) to enter complex orders. One day of training is spent at the NYNEX Technology Center where students receive a formal presentation and "hands-on" training of all the complex products. The course length is 5 business days and students are encouraged to familiarize themselves with the Non-Complex products prior to registering for this course.

### **NYNEX Reseller Training/ Complex**

<b>DAY 1</b>	<b>DAY 2</b>	<b>DAY 3</b>	<b>DAY 4</b>	<b>DAY 5</b>
<b>IntelliPath®</b>	<b>Centrex Plus/Centrex III</b>	<b>Technology Education Center</b>	<b>ISDN / Basic and Primary</b>	<b>PBX Trunks / FlexPath® / DID</b>
<ul style="list-style-type: none"><li>• Features</li><li>• Feature Interaction</li><li>• Benefits</li><li>• Applications</li><li>• Implementation</li><li>• Contracts</li></ul>	<ul style="list-style-type: none"><li>• Features</li><li>• Feature Interaction</li><li>• Benefits</li><li>• Applications</li><li>• Implementation</li><li>• Contracts</li></ul>		<ul style="list-style-type: none"><li>• Features</li><li>• Feature Interaction</li><li>• Applications</li><li>• Implementation</li></ul>	<ul style="list-style-type: none"><li>• Features</li><li>• Conditions</li><li>• Applications</li><li>• Implementation</li></ul>
	<b>Mileage</b> <ul style="list-style-type: none"><li>• Mileage Schedule</li><li>• Interoffice Mileage</li><li>• Calculating Mileage</li><li>• Mileage Applications</li><li>• Private Lines</li><li>• Off Premises Extensions (PBX)</li><li>• Alarm Circuits</li><li>• Answering Services</li><li>• Foreign Exchange Service</li></ul>		<b>Frame Relay</b> <ul style="list-style-type: none"><li>• Applications</li><li>• Implementation</li></ul>	



## **RETAS Course Description & Daily Breakdown:**

RETAS (REpair Trouble Administration System) is designed to assist the Reseller when troubles occur on the End User's telephone line. This two day course instructs the student how to process line testing, preparing and modifying a trouble ticket, obtaining a status for an open trouble ticket, closing an open trouble ticket, and obtaining a trouble history. The student will also be instructed to recognize, use, and decipher the appropriate codes. The course length is 2 business days and students are encouraged to familiarize themselves Features (i.e. Custom Calling, Phonesmart), Wire Maintenance Plans, Voice Message Service/Call Answering, LPIC/PIC, 1MB/1MR, 1FB/1FR, and ISDN prior to registering for this course.

### **NYNEX Reseller Training/ RETAS**

#### **DAY 1**

Help Numbers  
Appendices  
GUI Overview  
Trouble Ticket Test  
Trouble Overview  
Trouble Ticket Create  
Billable Services  
Trouble Ticket Status

#### **DAY 2**

Review Of Day 1  
Trouble Ticket Modify  
Trouble Ticket Close-Out  
Trouble Ticket History  
Automatic Feature Update  
Override Handle Code



## **Customized Course Description:**

NYNEX Resale training will develop and deliver "customized" products, services and Repair maintenance training based on individual Resellers specific training requirements. Customized training can cover any product or combination of products that are available for resale. Customized training can be provided at Reseller locations or at the NYNEX training site. Costs for customized training will be developed and quoted upon request.



## **Tuition Costs:**

### **Training At**

<b>NYNEX Location*</b>	<b>Fees</b>
Non-Complex (8 days)	\$2,000.00
Complex (5 days)	\$1,250.00
RETAS (2 days)	\$500.00
Daily	\$350.00

\* Discounts: 3-5 students 10%, 6-10 students 15%,  
11 or more 20%

<b>Reseller's Location**</b>	<b>Fees</b>
Customized training daily	\$2,500.00
Standard training daily	\$2,000.00

\*\* Delivery only, maximum class size is fifteen. Fee excludes the traveling expenses of NYNEX trainer.

### **Other Training**

<b>Course</b>	<b>Fees</b>
Train the trainer	\$1,000.00
Certification	\$500.00
Remedial Training	\$500.00
Sandbox	\$150.00 per student per access





To: Battles Team, Caporelli's Team, Magee's Team  
Cc:  
From: John Drotter/USTeleCenters  
Date: 01/19/98 05:17:03 PM  
Subject: Re: Reseller Issues-Big News

Our current policy regarding retail contracts, in writing.....

To: John Cosgriff  
Cc: JOSEPH P. MCMENAMY @ BELL-ATL, Mary Jane Home, Robin Berger, Kathleen Hume, Louis Bousquet, Joyce Kelleher, Brian Barry  
From: Martin Silverman  
Date: 01-18-98 09:28:22 PM  
Subject: Re: Reseller Issues

Our policy, revised recently to match the policy followed in BA South, is that retail customers may not assign retail contracts to resellers. In other words, a reseller may not become the customer of a retail contract - resellers cannot "take over" the retail contracts of retail customers and pay the retail rates. If a retail customer wants to convert its retail service to service provided by a reseller, the retail customer must terminate the retail contract and pay any associated termination charges. The reseller then may obtain wholesale service from our wholesale channel and resell it to the former retail customer.

This policy applies to all services that we offer at retail - Centrex - VMS - anything, tariffed or not, as long as we offer it on a retail basis.

This changes the policy previously in effect in the former NYNEX region, which permitted assignment of retail contracts to resellers. Such assignment is no longer permitted. All current business practices should be modified to conform to the new policy.

To: Martin Silverman@NYNEX  
Cc:  
From: John Cosgriff  
Date: 01/18/98 02:46:48 PM  
Subject: Re: Reseller Issues

Please contact me to discuss the policy regarding assumption of contracts by resellers.

To: John Cosgriff  
Cc:  
From: Mary Jane Home  
Date: 01/15/98 08:27:20 AM  
Subject: Re: Reseller Issues

Hi! I am pestering you once again for the information regarding resellers and assuming contracts. Below I received yet another interesting question regarding contracts for voice mail which run with the Centrex contracts. Can you provide me with the latest information regarding these issues? Thank you!

To: Robin Berger  
Cc: Kathleen Hume  
From: Louis Bousquet  
Date: 01-12-98 12:38:58 PM







**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

**Complaint and Request for Emergency Relief of  
CTC Communications Corp. against New York  
Telegraph and Telephone Company d/b/a  
Bell Atlantic-New York for Violation of  
Sections 251(c)(4) and 252 of the Communications  
Act of 1934, as amended, Violation of N.Y.  
Pub. Serv. Law Sec. 91**

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**Case 98-C-\_\_\_\_\_**

**AFFIDAVIT OF JORDAN B. MICHAEL  
IN SUPPORT OF  
COMPLAINT AND REQUEST FOR EMERGENCY RELIEF  
OF CTC COMMUNICATIONS CORP.**

I, Jordan B. Michael, state and depose as follows:

1. I am the Director of Regulatory Affairs for CTC Communications Corporation ("CTC"), 360 Second Avenue, Waltham, Massachusetts. I am making this affidavit in support of CTC's Complaint and Request for Emergency Relief.

2. On February 4, 1998, I spoke with John Messenger, an attorney in the Wholesale Division of Bell Atlantic ("BA") to obtain clarification regarding Bell Atlantic's policy with respect to the assumption by Competitive Local Exchange Carriers ("CLECs") of end user customer term agreements.

3. Mr. Messenger confirmed that resellers, such as CTC, historically have been allowed to assume the obligations of an end user customer with the intent of allowing resold services to that end user customer without penalties or fees to that customer.

4. Mr. Messenger stated that when a reseller, such as CTC, assumes a term agreement, that reseller "stands in the shoes" of the retail customer, and, as such, the reseller would be treated as a retail customer and wholesale rates would not apply.

5. Mr. Messenger also stated that if an end user customer under a term agreement wants to terminate service and utilize the service of a reseller for the remainder of the term agreement, that customer is considered to be like any other customer that terminates service from Bell Atlantic. The end user customer that elects resold service would face a termination penalty fee. Bell Atlantic would then be willing to provide the reseller the wholesale discount.

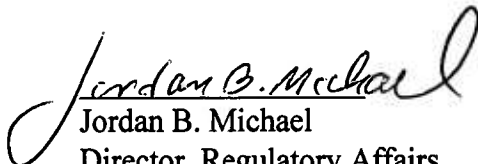
6. I suggested to Mr. Messenger that the Bell Atlantic policy concerning resold service may not involve the same situation as a customer that terminates from the Bell Atlantic network altogether because Bell Atlantic would continue to receive payment for services through the reseller. In other words, the end user customer remains on the Bell Atlantic network through the services of the reseller and pays the reseller for services emanating from Bell Atlantic. The reseller, in turn, pays Bell Atlantic for those resold services. Therefore, Bell Atlantic may not experience any loss in income when a customer moves from Bell Atlantic to a reseller. In response to my suggestion, Mr. Messenger reiterated his statement of Bell Atlantic's policy.

7. Bell Atlantic-New York ("BA-NY") enjoys the same arrangement, in that end users who have switched to a reseller remain on the BA-NY network and the reseller ultimately pays BA-NY for resold services emanating from BA-NY. BA-NY may not experience any loss in income when a customer moves from BA-NY to a reseller.


8. On February 4, 1998, I sent an e-mail to CTC managers and officers regarding my conversation with Mr. Messenger and his explanation of Bell Atlantic's policy. A true and accurate copy of that e-mail is attached hereto and incorporated herein as Exhibit 1.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: 3/11/98

  
Jordan B. Michael  
Director, Regulatory Affairs  
CTC Communications Corporation

Subscribed and sworn to before me this 11 day of March, 1998



Notary Public

MY COMMISSION EXPIRES  
OCTOBER 22, 2004







Jordan Michael  
02/04/98 04:01 PM

To: Tom Fabbriatore/ctcnet@ctcnet, Mike Donnellan/ctcnet, David Mahan/ctcnet, Steve Milton/ctcnet  
cc: Robert Fabbriatore/ctcnet@ctcnet  
Subject: Contract Issue

I spoke with John Messenger of Bell Atlantic today. John had worked in the retail division, and he now is in the wholesale division. His understanding of the contracts issue is that:

1. When CTC assumes a term agreement from an end user, CTC stand in the shoes of the retail customer, and as such CTC is treated as a retail customer and wholesale rates would not apply.
2. If a customer under a service agreement wants service from a different carrier, then the customer in effect is terminating his agreement with Bell Atlantic and would be subject to termination or penalty fees. Then of course the customer can elect CTC and CTC can provide re-sale service at a wholesale rate to the customer.
3. In both cases, the result is that CTC provides re-sold services to former BA customers. In case 1 CTC does not get the wholesale rate (which is a barrier to CTC), but in case 2 CTC does get the wholesale rate but the customer must pay a termination fee (which is a barrier to the customer).
4. Of course the ultimate barrier to both the customer and CTC is that BA will not process these orders at all.

John and I did agreed that sitting down to discuss this situation on an informal basis may not resolve the difference in perspectives between CTC and Bell Atlantic.

So the petition route to the Department of Telecommunications and Energy seems appropriate.

If I am missing something on these issue please let me know.







**YOUNG & ASSOCIATES, P.C.**  
ATTORNEYS AND COUNSELORS  
SUITE 308 WESTVIEW OFFICE CENTER  
28200 AMERICAN DRIVE  
SOUTHFIELD, MICHIGAN 48034

ROGER D. YOUNG

(tel) 353-8820  
fax (tel) 353-8550  
E-MAIL youngpa@aol.com

January 22, 1998

**VIA FACSIMILE AND U.S. MAIL**

Jack H. White, Esq.  
Bell Atlantic Network Services, Inc.  
1320 North Courthouse Road, 8th Floor  
Arlington, VA 22201

RE: CTC Communications Corp. v. Bell Atlantic Corporation  
Civil Action No.: 97 CV 395 PH

Dear Jack:

Yesterday, I was advised by CTC that Bell Atlantic's Retail Division is giving some thought to unilaterally prohibiting any term agreement customer from permitting CTC to assume its account and thereby service that account. In other words, the Retail Division has decreed that retail term agreements may not be assigned to resellers. Under the current arrangement, CTC is designated by the customer as its representative and is authorized to assume the account, whereupon CTC commences to purchase services at retail from Bell Atlantic and resell at retail to the customer/end user. This longstanding policy of permitting such reseller conversions, of course, is precisely what was explained to CTC and committed to for the future by the Wholesale Division at the meeting we both attended last year with the Wholesale Division, i.e., Georgene Horton, et al. This was pivotal to CTC's decision to transition to reseller.

It is not clear, at this juncture, that this rumored change in policy represents the official position of Bell Atlantic. However, if it is being considered, I would like to point out that this action is grossly arbitrary and discriminatory against CTC. It seems clear that it is designed for the express purpose of crippling CTC's orderly and effective transition to a reseller. Far more importantly, this action by the Retail Division, if implemented, violates the terms and conditions of the Telecommunications Act of 1996; the express terms and conditions of the Reseller Agreements that exist between the parties; most of the filed tariffs, which permit assignment; the terms of the contracts with the end users; and corporate policies enunciated in speeches and other documents authored by Bell Atlantic Chairman Ray Smith.

Virtually all of the Reseller Agreements are identical in terms. For example, in the Agreement for the State of Maine, it specifically provides in Section 6.3 of Attachment A the terms and conditions of ordering of service. These provisions expressly contemplate the reseller (CTC) assuming the account of an existing Bell Atlantic end user and on the end user's existing

Jack H. White, Esq.  
January 22, 1998  
Page 2

premises. See Section 6.3.1.1. Additionally, the Reseller Agreement specifically addresses the reseller "placing an order under which it will assume an account of an existing telephone company end user customer" and requires only that the reseller obtain appropriate authorization from the end user.

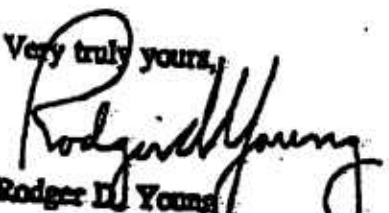
The Agreements also have the broad definition of the resale arrangement as follows: "The company will offer telecommunication services it provides at retail to end users in the state of Maine for resale by the customer in accordance with the attached terms and conditions". Also see section 6.5.1.2(A). This comports with the provisions of the Telecommunications Act of 1996, which are well known to both of us, viz., Section 251 et. seq.

Additionally, the vast majority of the actual tariffs provide for assignment of these services. Moreover, the Service Agreements with the end users do not prohibit assignment to a reseller or even mention it. Such an assignment cannot reasonably be construed as a discontinuance of service, since Bell Atlantic continues to receive all payments due under the contract from the reseller. Indeed, Bell Atlantic's security is enhanced under that arrangement.

We are not desirous of burdening the U.S. District Court in Maine with an emergency motion for injunctive relief. I urge you to investigate this issue and contact me for the purpose of resolving it.

Thank you for your consideration.

Very truly yours,

  
Rodger D. Young

RDY:ks

cc: Jotham D. Pierce, Jr., Esq. (via facsimile and U.S. mail)  
Michael A. Nelson, Esq. (via facsimile and U.S. mail)  
Leonard Glass, Esq. (via facsimile and U.S. mail)





Bell Atlantic Network Services, Inc.  
1320 North Court House Road, 8<sup>th</sup> Floor  
Arlington, Virginia 22201  
(703) 974-1368  
Fax: (703) 974-0744  
E-mail: Jack.H.White@BellAtlantic.com

Jack H. White  
General Attorney - Retail Services



February 5, 1998

Rodger D. Young, Esq.  
Young & Associates, P.C.  
26200 American Drive, Suite 305  
Southfield, MI 48034

VIA FAX

Dear Rodger:

I am writing in response to your letter of January 22, 1998, inquiring about Bell Atlantic's policies and practices relating to assignment of business contracts to resellers and other competitors. Frankly, I was somewhat nonplussed by your letter, since our "policy" regarding assignment has been made clear to CTC since our earliest meetings last fall and throughout our settlement discussions. As I explained then, Bell Atlantic is not required by any law or regulation to permit assignment of our contracts to competitors. A customer is certainly free to choose to migrate to a competitor, e.g., a reseller, but Bell Atlantic must view that migration as a termination of the customer's existing contract or service arrangement. Depending upon the terms of the contract or tariff governing that service arrangement, the customer's actions may trigger termination liability. As you know, I re-emphasized this point in our last settlement offer, which was made to CTC days before it elected to bring the Maine action and commence its resale activities.

As I explained during our settlement discussions last fall and again during our brief face-to-face meeting outside Judge Wood's courtroom last week, actual practices pertaining to assignments have varied around the Bell Atlantic region for a variety of reasons. But CTC in any event should not confuse temporary practices with "policy" on this issue. As I have cautioned over the past months, I expect our practices over time to conform to the foregoing view of our legal and regulatory obligations.

Sincerely,

A handwritten signature in dark ink, appearing to read "JH White".  
Jack H. White, Jr.





DR 96-420

## FREEDOM RING, L.L.C.

Petition Requesting that Incumbent LECs Provide Customers  
with a Fresh Look Opportunity

Order Granting Fresh Look Opportunity for Certain Bell  
Atlantic Customers

ORDER NO. 22,798

December 8, 1997

## I. PROCEDURAL HISTORY

Freedom Ring, L.L.C. (Freedom Ring) filed, on November 13, 1996, a Petition Requesting a Fresh Look Opportunity with the New Hampshire Public Utilities Commission (Commission). Freedom Ring made this filing as a supplemental request in Docket No. DE 96-165, the proceeding in which the Commission granted Freedom Ring authority to operate as a Competitive Local Exchange Carrier (CLEC). The Commission severed the petition from DE 96-165 and assigned it to this docket.

On April 1, 1997, by Order No. 22,539 (Order), the Commission granted intervenor status to MCI Telecommunications Corporation (MCI), New England Telephone and Telegraph Company, now d/b/a Bell Atlantic (Bell Atlantic), and Bretton Woods Telephone Company. The Order also approved a procedural schedule which allowed for submission of Briefs after a period of discovery.

After discovery exchanges, Freedom Ring filed an Opening Brief on July 30, 1997. Bell Atlantic and the Staff of the Commission (Staff) filed Briefs on August 28, 1997. MCI and the Office of the Consumer Advocate filed comments on August 28, 1997. Freedom Ring filed a Reply Brief on September 12, 1997.

## II. POSITIONS OF THE PARTIES AND STAFF

## A. Freedom Ring

## 1. Fresh Look Description

Freedom Ring requests the Commission grant certain incumbent local exchange carrier (ILEC) customers, those with long term local service contracts having more than one year of the contract's term remaining, a one year window of opportunity to determine if they wish to terminate the contract, without penalty, in order to take advantage of a competitive alternative. Freedom Ring argues that a full year window of opportunity is necessary in order to insure that more than one competitor is



available to customers. Freedom Ring requests that the one year period commence on the date the first interconnection agreement is operational in a particular ILEC's service area. Although Freedom Ring's request for this relief is based upon allegations pertaining to Bell Atlantic, it is not limited to Bell Atlantic contracts.

## **2 Federal Mandate for Competition**

Freedom Ring contends that an opportunity to benefit from competition is mandated by both the New Hampshire legislature and the federal Telecommunications Act of 1996 (1996 Act). Failure to grant these Bell Atlantic customers an opportunity to opt out of their long-term contracts will deny New Hampshire residents and businesses the opportunity to benefit from competition, i.e. to have choice among telecommunications providers. Freedom Ring argues that such a failure would perpetuate a monopoly, contrary to Congress' intent.

## **3. Bell Atlantic Special Contracts Thwart Competition**

In support of its request, Freedom Ring argues that Bell Atlantic has removed a substantial portion of the telecommunications market from local competition via tariffed payment plans and special contracts entered into in a monopoly environment. Freedom Ring identifies the following tariffed Bell Atlantic services with terms of greater than one year: Customized Netsaver Plan, Superpath 1.544 Mbps Digital Service, Digipath Digital Service II, Network Reconfiguration Service, Frame Relay Service, Nova Centrex Service, Centrex I, Centrex II, and Custom Centrex (collectively, Superseded Analog Centrex Services); and Intellipath Digital Centrex Service. Bell Atlantic provides Centrex to 811 customers; according to Freedom Ring the vast majority of the customers (94%) are bound to seven year contracts required by the Bell Atlantic Centrex tariff. In addition to the long-term tariffed services which, Freedom Ring argues, effectively lock up the market, Bell Atlantic provides telecommunications services via 24 long-term special contracts, approved pursuant to RSA 378:18, which have in excess of one year to run, two-thirds of which are for Centrex service.

## **4. Centrex is not Competitive**

Centrex service is not currently competitive, according to Freedom Ring; Centrex is essentially a monopoly local service. Centrex is different from Private Branch Exchange (PBX) and, therefore, is not a competitive substitute for it. In fact, Freedom Ring points out, Bell Atlantic extols the difference in advertisements for Centrex. PBX is equipment, not a service, and no CLEC currently has switching capability to provide Centrex service; PBX requires up-front capital investment and future investment for equipment upgrades. Freedom Ring provides two

recent decisions by other state commissions which reject the argument that PBX is the functional equivalent of Centrex and that Centrex is competitive. Memorandum Opinion, Findings and Order, In the Matter of the Tariff Filing of US West Communications Inc. For Authority to Remove its Centrex Plus Service to the Obsolete Section of the Exchange Service Price Schedule and Discontinuing the Offering to New Customers, Docket No. 70000-TT-96-279, at 17 (Wyo P.S.C., September 6, 1996) and Order Denying Petition, In the Matter of the Request of US West Communications Inc. To Grandparent CENTRON Services with Future Discontinuance of CENTRON, CENTREX, and Group Use Exchange Services, Docket No. P-421/EM-96-471, at 11 (Minn. P.U.C. February 20, 1997).

Freedom Ring argues that the Commission's approval of Centrex special contracts does not mean that Centrex is fully competitive with PBX. Freedom Ring asserts that such special contracts were necessary because they allowed Bell Atlantic to offer services to customers who, due to their size, needed arrangements that differed from the Centrex tariff. Freedom Ring further argues that the Commission's approval of protective treatment of Centrex special contracts does not constitute recognition of Centrex as competitive but, rather, a recognition that future customers for Bell Atlantic Centrex service would use the information as negotiating leverage against Bell Atlantic.

5. Resale will not Open Centrex to Competition

Resale of Bell Atlantic Centrex is not a reasonable competitive opportunity to acquire access to the Centrex market, according to Freedom Ring. Paying the contract line rate for the remaining term of years, even while receiving a wholesale discount on non-contract usage associated with the lines pursuant to Bell Atlantic's Statement of Generally Available Terms and Conditions (SGAT), will not attract customers. As an additional reason for declining resale as a method of opening the Centrex market to competition, Freedom Ring refers to Bell Atlantic's failure to accurately and timely complete customer conversions and billing for CLECs in New York. Freedom Ring points out that the ensuing inconvenience and aggravation was attributed by customers to the CLECs, not the ILEC. Freedom Ring asserts that the likely harm to its reputation outweighs the modest profits available from pure resale of Centrex. Furthermore, Freedom Ring asserts, resale to a customer who has chosen to assume the heavy cost of Bell Atlantic's termination penalties is unlikely. The termination penalties are purely punitive, Freedom Ring claims, aimed at protecting Bell Atlantic's monopoly position; they are not based on costs. In support, Freedom Ring points out that Bell Atlantic seeks the identical termination penalties

regardless of whether capital investment has been made. The termination penalty cannot represent actual capital investment in one scenario and payment for services rendered in the other. These heavy termination charges should be viewed as an impediment to competition.

6. The Commission has Authority to Grant Fresh Look

The Commission's authority to order a Fresh Look for existing contracts stems from RSA 378:7, according to Freedom Ring, by allowing the Commission to review utility rates at any time to ensure protection of the public interest. Passage of the 1996 Act has fundamentally changed the public interest, making those contracts approved prior to passage of the 1996 Act open to the Commission's RSA 378:7 authority. Freedom Ring draws an analogy to Commission Order No. 18,753 (July 10, 1987) in Docket DR 86-236, which approved Bell Atlantic's Nova Centrex Tariff. In that order the Commission determined that the new (lower) rates for Nova Centrex were for essentially the same service formerly called Custom Centrex. Therefore, rejecting the view that previously approved contracts were immune from Commission authority, the Commission held that Custom Centrex customers would be permitted to switch to the new rates.

In addition to statutory authority, Freedom Ring argues that the so-called Mobile-Sierra doctrine permits a regulatory agency to set aside a contractually based tariff, even after it is filed by the contracting parties and approved as reasonable, if the agency finds that the rate is contrary to the public interest. Freedom Ring asserts that, because Centrex is closed to competition as a result of the contracts, the contracts are against the public interest and the Commission has authority to order Fresh Look under the Mobile-Sierra doctrine. In fact, Freedom Ring argues, the Commission's failure to grant Fresh Look would violate Section 253(a) of the 1996 Act.

Granting Fresh Look would not violate either the federal or the New Hampshire Constitutions, precisely because of the strong public interest articulated in the 1996 Act. Fresh Look does not violate the Contract Clause because public utilities' contracts are made subject to states' constitutional police power authority to modify the contracts in the public interest, argues Freedom Ring, citing *Midland Realty Company v. Kansas City Power & Light Company*, 300 U.S. 109 (1937). Furthermore, Fresh Look does not violate the Takings Clause of the 5th Amendment, Freedom Ring contends, because Fresh Look will not jeopardize the financial integrity of Bell Atlantic, as is necessary to create the functional equivalent of a taking. *Duquesne Light Company v. Barash*, 488 U.S. 299 (1989).

B. Bell Atlantic

Bell Atlantic opposes Freedom Ring's petition for Fresh Look. Bell Atlantic argues that the Fresh Look opportunity requested by Freedom Ring is an unconstitutional taking of property, it fails to provide Bell Atlantic with termination penalties, and its scope goes far beyond the New Hampshire legislative intent of RSA 378:22. Bell Atlantic also argues that Centrex is a competitive service for which Fresh Look is inappropriate, and that the Commission is prohibited from imposing a Fresh Look by the federal and state Contract Clauses.

1. Fresh Look is Unfair to Bell Atlantic and Latecomer Competitors

Bell Atlantic opposes the Fresh Look opportunity proposed by Freedom Ring because it does not provide for payment of termination charges to Bell Atlantic. In opening the access market to competition via a fresh look opportunity, Bell Atlantic points out, the FCC provided for payment of termination charges equal to the difference between the amount the customer had already paid under its contract and the amount that would have been paid for the service during that period under tariff rates, plus interest at the prime rate. Expanded Interconnection Docket, 8 FCC Rcd 7341, 1993 WL 336570 (FCC). The Florida Public Service Commission and the Illinois Commerce Corporation did the same when ordering a fresh look period.

Pointing out that the New Hampshire legislature issued a clearer, more urgent, mandate promoting competition in the electric industry than the mandate issued regarding competition in local telecommunications markets, Bell Atlantic argues that, in order to be consistent, the Commission's continued approval of long-term special contracts for electricity requires the Commission's continued approval of long-term telecommunications contracts.

Freedom Ring's request constitutes an unconstitutional taking of private property, violating both the federal and New Hampshire Constitutions by removing contractual expectations. In particular, Bell Atlantic avers that it made substantial capital investment in New Hampshire. Without provision for recovery of those investment costs, Part 1, Article 12 of the New Hampshire Constitution and the 5th Amendment of the U.S. Constitution are violated, according to Bell Atlantic.

Bell Atlantic asserts that Fresh Look would be anti-competitive and discriminatory to later entrants into a market where Fresh Look was once permitted. Fresh Look would constitute a specially regulated opportunity for the benefit of a single provider, irrespective of competitive forces.

2. Centrex is Competitive

Bell Atlantic also argues that disruption of contractual relations is not warranted in this case because competitive alternatives were available at the time the Centrex contracts were executed. In support of its contention, Bell Atlantic cites language used by the Commission in numerous orders approving special contracts. For instance, by Order No. 22,190 in Df: 86-124, issued June 11, 1996, the Commission approved a special contract with the State of New Hampshire for Centrex and toll, based in part on allowing Bell Atlantic to respond to competitive pressures, "specifically the availability of competitive substitutes for Centrex in the form of private branch exchanges (PBX)". In addition, Bell Atlantic cites to the Commission's grant of protective treatment to Bell Atlantic Centrex special contracts pursuant to Re NET, 80 NHPUC 437 (1995). Concluding that Centrex is competitive, Bell Atlantic argues that the state's fundamental preference for free enterprise embodied in Part 2, Article 83 of the New Hampshire Constitution should result in the least disruption possible for services under contract.

Bell Atlantic also claims that the customers who entered into long-term Centrex contracts knew, or should have known at the time, that emerging competition could make their contracts less desirable. Therefore, no relief is necessary. The relief offered by Fresh Look, according to Bell Atlantic, should only be available to benefit newly competitive markets in which customers did not have foreknowledge of competition. Fresh Look is inappropriate for contracts duly negotiated by customers with knowledge of and access to meaningful alternatives.

3. Resale opportunities open the Centrex market

Bell Atlantic contends that long-term contracts do not lock up the Centrex market. Section 251(c)(4) permits competitors to resell service to an existing Bell Atlantic

customer by either assuming the customer's contract, in which case no termination charges would be triggered, or by convincing the customer to pay termination charges before beginning the reselling process. Bell Atlantic points out that the competitor would obtain a wholesale discount when purchasing Centrex for resale.

4. The Commission has no authority to grant Fresh Look. Bell Atlantic argues that the authority granted to the Commission to modify rates, RSA 378:7, does not extend to the modification of the terms of existing contracts once the contracts are approved. The authority granted in RSA 378:7, Bell Atlantic argues, applies to tariffed rates and is limited to situations in which the rates are found to be unjust, unreasonable, or in violation of law, none of which has been demonstrated by Freedom Ring. Because of the limited authority granted by RSA 378:18, Bell Atlantic contends special contracts cannot be modified by the Commission. No statutory authority exists for the Commission to modify a special contract before approving or rejecting the contract; therefore, no statutory authority exists for the Commission to modify a special contract after approving it. While recognizing the Mobile-Sierra doctrine, Bell Atlantic contends that the doctrine strictly limits agencies' power to rewrite contracts to situations where the contract is found to be against the public interest.

Buttressing its argument that the Commission does not have authority to order Fresh Look, Bell Atlantic argues that granting Fresh Look will violate the Contract Clause of the United States Constitution, Article I, §10, and the equivalent clause in the New Hampshire Constitution which prohibits retrospective lawmaking.

Bell Atlantic asserts that the alteration of existing Centrex contracts would be the same as the alteration of contracts considered in *Allied Structural Steel Company v. Spannaus*, 438 U.S. 234 (1978). In *Allied*, the Court rejected a "severe, permanent and immediate" change to annual funding requirements to the company's pension funds. The Court found the change would affect the company's continued vitality and that no demonstration was made by the moving party that the change was necessary to meet an important general social problem. Bell Atlantic contends that it will suffer a similarly severe impairment by being deprived recovery of investment and expenses undertaken.

Bell Atlantic further argues that Freedom Ring has not demonstrated an important general social problem requiring exercise of the state's police power under that exception to the Contract Clause. Freedom Ring's purpose is not genuinely public, Bell Atlantic states; it merely serves a private interest. If it were genuinely public, Bell Atlantic argues, the Commission must still deny Freedom Ring's request because it is unnecessarily harsh, as discussed in 3 above.

C. Staff

1. Evolution to Competition

Arguing that providing telecommunications customers a Fresh Look at long-term local contracts would be in the best interest of New Hampshire by permitting attainment of the opportunity for competitive choice mandated by the 1996 Act, the Staff asserts that the Commission has authority to grant Fresh Look but supports a different version than that proposed by Freedom Ring. Staff presents a historical perspective of the telecommunications industry, in which the monopoly environment which served well for more than half a century has evolved through court and legislative action to a pro-competition environment. Staff points to the New Hampshire legislature's passage of RSA 374:22-g in 1995, granting the Commission authority to approve competitive provision of telecommunications services within Bell Atlantic's franchise territory. The 1996 Act went further, according to Staff, mandating an end to monopoly structure in the industry in order to provide opportunity for accelerated private sector deployment of advanced technologies.

2. Competition is Insufficient to Preclude Fresh Look  
additional arguments, Staff agrees with Freedom Ring's analysis that the level of competition faced by Bell Atlantic's Centrex service is not enough to preclude Fresh Look.

Without advancing

3. The Commission has Authority to Grant Fresh Look

The Commission has authority to grant Fresh Look even without express statutory authority under RSA 378:7. Staff argues, citing 64 Am Jur 2d, Public Utilities, because of the nature of public utilities as agencies of the state. The state, through a public commission, has ongoing implied or express authority to modify contracts made by public utilities in the interest of the public welfare. The Commission, therefore, has valid authority to disapprove existing contracts of regulated entities, just as the New York Public Service Commission did in *National Fuel Gas Distribution Corporation v. Public Service Commission*, 197 App. Div 2d 357, 487 NYS 2d 150 (1985).

Staff argues first that granting a Fresh Look opportunity does not violate the Constitution's Contract Clause because Fresh Look is not a substantial impairment of contractual rights; Bell Atlantic's customer's contract is not affected by the Commission's action and Bell Atlantic itself, as a regulated entity, has no reasonable expectation of using contracts entered into in the monopoly environment, to fend off competition.

Even if Fresh Look did amount to a substantial impairment of contract, Staff argues that the Commission has authority to act under the widely recognized police power exception to the Contract Clause. Staff notes the similar conclusion reached by the Public Utilities Commission of Ohio (PUCO) order denying rehearing of *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, Case No. 95-845-TP-COI (November 1996). In that case the PUCO found that "adoption of this fresh look opportunity which applies to only a subset of ILEC contracts for a limited period of time the first time a new entrant enters the local exchange market is a valid exercise of the state's police power which has been delegated to the Commission." Using the police power to grant Fresh Look is appropriate, Staff contends, because fostering competition in telecommunications is a significant and legitimate state purpose, geared toward remedying a broad general social or economic problem, as required by case law interpreting the police power exception to the Contract Clause.

The PUCO articulated the legitimate state purpose in granting Fresh Look in its July 1997 order approving Fresh Look Notification: that of spurring the development of a competitive market in Ohio, providing an incentive for new entrants to invest in a market which would otherwise be very difficult to enter given that the ILECs hold 100% of the market share and many of the most lucrative customers are locked into long-term contracts, and giving end-users the opportunity to take advantage of



competitive choices at the very beginning of competition--a cornerstone of the 1996 Act. Staff argues that the same public purpose exists in New Hampshire and authorizes the Commission to act.

To demonstrate the validity of the public benefit obtained from some form of Fresh Look, Staff presents economic arguments to show that New Hampshire will not achieve the goals of the 1996 Act. Staff also argues that economic theory validates the legitimacy of the public purpose exercise of the police power exception to grant Fresh Look. In addition, Fresh Look will permit New Hampshire an opportunity to experience the benefits of competitive parity, enabling rival firms to apply enough pressure on each other to prevent collusion and to allocate resources efficiently, thereby causing prices to reflect costs, according to Staff.

#### 4. Staff's Proposal for Fresh Look

Staff proposes a narrow Fresh Look opportunity, mirroring that approved by the PUCO, limited to contracts with more than two years remaining in the term and to a period of 180 days after verification that the first interconnection arrangement is operational in the ILEC's service territory. In order to implement a Fresh Look opportunity, a customer would be required to pay Bell Atlantic termination charges amounting to the difference between the amount already paid as a result of the long-term contract and the amount the customer would have had to pay in a contract entered into for the term actually used, plus interest on the difference, at the prime rate.

### III. COMMISSION ANALYSIS

The mandate for local exchange competition, which the New Hampshire Legislature presaged in July 1995 and the Telecommunications Act of 1996 pronounced in February 1996, have required that we reconsider and reform the telecommunications industry consistent with those decisions. In the instant docket, we are called upon to examine whether customers under long-term contracts with Bell Atlantic should be given an opportunity to re-examine those contracts in a competitive environment.

Long-term contracts entered into when a monopoly is in place can have the effect of locking up a market for an extended period of time and in some cases can prevent consumers from obtaining the benefits of a competitive local exchange environment. In the instant proceeding, we find that the Centrex market is not and will not be fully competitive for many years as the result of numerous long-term contracts executed in a monopoly environment.

We are persuaded by the facts put forth in data responses from Bell Atlantic attached to Freedom Ring's Opening

Brief, and the arguments made by Freedom Ring, that PBX is not the functional equivalent of Centrex. We recognize that in a number of orders approving special contracts we have stated that PBX is a "competitive substitute" for Centrex. We remain convinced that although PBX can substitute for Centrex in certain circumstances, nonetheless, it is not a perfect substitute. Likewise, we granted protection of Bell Atlantic Centrex special contract information for several reasons, including the availability of PBX and Bell Atlantic's need to prevent future customers from obtaining a bargaining advantage. However, our decisions to protect certain special contract information do not constitute a holding that Centrex service faces full competition. In fact, we have yet to hold that any local telecommunications service is fully competitive. Moreover, the existence of numerous long-term contracts significantly impairs the development of a fully competitive market.

With regard to Freedom Ring's argument that Bell Atlantic locked customers into long-term arrangements in anticipation of competition, we find that Bell Atlantic's intent in making long-term contracts is irrelevant to our deliberations. Our decision is intended to provide an opportunity for competition to flourish, not to punish Bell Atlantic for past actions which may have anti-competitive consequences in the present. We can remedy this situation by ordering a limited Fresh Look opportunity, crafted to ensure that when and if a customer decides to accept the opportunity, Bell Atlantic is not deprived of the reasonably anticipated benefit of its bargain.

We believe we have authority to order such a limited Fresh Look opportunity, as convincingly argued in the Briefs filed by Freedom Ring and Staff. Our authority stems from RSA 378:7, our general legislative grant of ratemaking authority. Such ratemaking authority extends beyond the time a contract is signed and approved, as has been determined by courts and commissions applying the Mobile-Sierra doctrine. As we stated in our order in *Town of Derry*, 77 NHPUC 4 (1992), the Mobile-Sierra doctrine provides that a contractually based tariff which has been filed by the contracting parties and approved by a regulatory agency, may be set aside if the agency later finds that the rate is contrary to the public interest. The Mobile-Sierra doctrine, which emerged from the holdings in two cases involving gas utilities which sought to increase unilaterally the rates in fixed-rate contracts already on file with the Federal Power Commission, constructed a "public interest" standard by which a reviewing body can determine whether a party to a contract can be relieved of its obligation. The Mobile-Sierra doctrine has been said to

represent(s) the U. S. Supreme Court's attempt to strike a balance between private contractual rights and an agency's regulatory power to modify contracts when necessary to protect the public interest.

Northeast Utilities Service Company v. Federal Energy Regulatory Commission, 55 F.3d 686, Util. L. Rep. p. 14,041 (1st Cir. (1995) (Northeast II). Discussing the public interest standard on Mobile-Sierra, the Court explained that the doctrine was formulated in the context of a low-rate case. According to the Court in Northeast II, the Federal Power Commission's sole concern was

whether the rate is so low as to adversely affect the public interest -- as where it might impair the financial ability of the public utility to continue its service, cast upon other consumers an unduly discriminatory, excessive burden, or be

Northeast II at p. 691. However, that definition "was not and could not be an across-the-board definition of what constitutes the public interest in other types of cases." Northeast II at p. 692. The Northeast II Court thus rejected a restrictive interpretation of the Mobile-Sierra doctrine, one which would limit the public interest to a "law of the case" application, i.e., only to low-rate cases. Instead, the court found that the Mobile-Sierra doctrine allows FERC to modify the terms of a private contract when the interests of third parties are threatened. The Northeast II Court referred approvingly to a discussion of the sweep of the Mobile-Sierra doctrine in Mississippi Indus. v. FERC, 808 F.2d 1525 (D.C. Cir.), cert. denied 484 U.S. 985 (1987). There, the Court concluded that "contracts remain fully subject to the paramount power of the Commission to modify them when necessary in the public interest." Id. at 1553.

We are satisfied that the Mobile-Sierra doctrine applies to this case and that, according due weight to the certainty of the contracting process, the public interest would be harmed by the continuation of these long-term contracts if a party to any of the contracts wishes to take advantage of a competitive telecommunications opportunity.

We find that exercise of our authority by granting Fresh Look will not violate the Contract Clause of either the federal or the state constitutions. Given our finding that the Centrex market is not fully competitive, we are not convinced by Bell Atlantic's arguments that a substantial impairment of contract has occurred. As in Energy Reserves Group, Inc. v.

Kansas Power & Light Co., 459 U.S. 400 (1983), where the Court found no substantial impairment of contract, Bell Atlantic operates in a heavily regulated industry where expectations are subject to state restriction. Nor are we convinced that the Contract Clause prohibits exercise of the police power exception to the Contract Clause in order to meet the important national purpose of the 1996 Act. The 1996 Act is critical to our analysis. Contrary to the situation in the electric industry, the telecommunications industry is subject to a Congressionally imposed mandate. Accordingly, even without express authority under RSA 378:7, we have authority to grant a Fresh Look, under the police power exception, to advance the important public policy expressed in the 1996 Act to advance competition.

The police power exception dictates that "the Contract Clause prohibition of any state law impairing the obligations of contracts must be accommodated to the State's inherent police power to safeguard the vital interests of its people." *Id.* at 410. The police power exception allows impairment of contracts when the state has a significant and legitimate public purpose and where the adjustment of parties' rights and responsibilities is appropriate to the public purpose and based upon reasonable conditions. *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978). This exception was relied upon by the PUCO, which stated when denying rehearing on the issue:

...(A)option of this fresh look opportunity which applies to only a subset of ILEC contracts for a limited period of time the first time a new entrant enters the local exchange market is a valid exercise of the state's police power which has been delegated to the Commission.

In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues, Case No. 95-845-TP-COI, Entry on Rehearing, November 7, 1996.

The limited Fresh Look opportunity we will grant is the one recommended by Staff and based upon the Fresh Look granted by PUC(). The opportunity applies only to those long-term contracts with more than two years remaining at the date the Commission verifies the first interconnection arrangement is operational within a specified geographic market, for Bell Atlantic local exchange services which were not, at the time they were entered into, subject to effective competition. The two years remaining in the term of a long-term contract shall be exclusive of

automatic or optional renewal terms which may be part of the contract. Long-term contracts containing local termination liability which is not severable from non-local services are included in the Fresh Look opportunity. IntraLATA toll contracts are excluded from the Fresh Look opportunity because the toll market is open to competition and has been for some time.

We emphasize that the Fresh Look opportunity is limited to those Bell Atlantic customers actually attempting to take advantage of a competitive alternative. While a Bell Atlantic customer may eventually renegotiate its contract with Bell Atlantic, our approval of a Fresh Look does not permit a customer to open negotiations unless it first has obtained a bona fide competitive alternative offer.

The Fresh Look opportunity will last for 180 days. We believe this provides adequate time for a customer who is a signatory to a long-term contract to complete an evaluation of the pluses and minuses of taking advantage of Fresh Look and to decide whether to take service from a competitor. The customer must balance whatever positive attributes a competitor offers in terms of rates and services against the costs, discussed below, of terminating its contract with Bell Atlantic.

We reject Freedom Ring's argument that a full year window of Fresh Look opportunity is necessary. Similarly we reject Bell Atlantic's argument that no window of opportunity should be granted in order to preclude discrimination against latecomers to New Hampshire. Granting a reasonable period of time for customers to understand and act upon a Fresh Look opportunity will provide relief from an anti-competitive situation in a manner appropriately and narrowly crafted so as not to offend constitutional principles. Although Fresh Look itself will not insure a fully competitive local market, we believe it is another necessary step to facilitate the development of a fully competitive local market. We will not presume to define the time within which that will be accomplished; nor will we shrink from fostering an environment within which it can be accomplished. Providing a 180 day Fresh Look opportunity may motivate competitors to intensify efforts to operate in New Hampshire sooner.

The 180 day Fresh Look opportunity will begin on the date that the Commission verifies, by separate order, that a competitor is operational within a given geographic area, identified to the Commission by NXX prefixes. We adopt the standard propounded by the PUCO for an "operational" competitor. An operational competitor has the following attributes: (1) certification as a CLEC, (2) an approved final price schedule on file with the Commission, (3) an executed, approved

interconnection agreement or the ability to purchase out of another CLEC's schedule for providing basic local exchange services, and (4) completion by the new entrant of its first commercial call.

We wish to make clear that the fact that a carrier is operational for purposes of qualifying for Fresh Look does not necessarily mean that Bell Atlantic has met the conditions set forth in Section 271(c) of the 1996 Act. Fresh Look and the so-called competitive checklist are independent determinations with different requirements that must be satisfied by Bell Atlantic.

The Fresh Look opportunity is triggered only when all of the criteria listed have occurred. We will direct Staff to develop an appropriate notification form by which a competitor will notify the Commission of its operational status for verification. Staff shall verify that a competitor is operational expeditiously. We will also order Bell Atlantic to identify and file with the Commission the name and address of a contact person to whom all Fresh Look inquiries should be addressed.

At the time the first Fresh Look opportunity opens, Bell Atlantic must notify all its contract customers throughout New Hampshire via a Commission approved bill insert. The bill insert shall contain the requirements by which a contract qualifies for the Fresh Look opportunity, as well as the fact that termination charges, different than those contained in the contract, will apply. In addition, because the Commission has an interest in seeing that competition develops to the maximum extent, in order to advise customers when a Fresh Look opportunity arises, we will issue press releases to media outlets and post information concerning Fresh Look on our Website. Competitors marketing to long-term contract customers shall disclose fully the termination formula outlined below. Finally, from the date of this order until we verify that a competitor is operational within a given geographic area, we will require Bell Atlantic to notify customers with whom it negotiates a contract for local exchange services that the Fresh Look opportunity will be available.

A customer choosing to terminate its long-term contract with Bell Atlantic will be subject to termination charges in an amount equal to the price the customer would have paid for service if the customer had taken a term offering for the length of time the contract has actually run, minus the amount the customer has actually paid. Taking for example a customer whose five year long-term contract has already been in effect for three years, the contracting parties shall establish the price that would have been charged for the service based upon a hypothetical

three year contract. Bell Atlantic would then subtract the amount the customer had already paid and compute interest on the difference. The goal is to put Bell Atlantic in the position it would have been had it entered into the shorter contract. We direct staff to meet with any interested parties and to propose by January 15, 1998 a specific methodology to accomplish this calculation.

If, as a result of these negotiations, the customer remains with Bell Atlantic under a newly negotiated special contract, it must be submitted to the Commission for approval pursuant to RSA 378:18-b. Further, as in Ohio, the Commission will oversee the termination charge process and review disputes if so requested.

Based upon the foregoing, it is hereby

**ORDERED**, that the limited Fresh Look Opportunity described herein is **GRANTED**; and it is

**FURTHER ORDERED**, that Bell Atlantic shall provide the Commission the name, address, and telephone number of the person or persons to whom Fresh Look inquiries should be directed; and it is

**FURTHER ORDERED**, that Staff shall develop an appropriate notification form for use by a competitor seeking to open a particular market to Fresh Look; and it is

**FURTHER ORDERED**, that Staff and any other party propose by January 15, 1998 a methodology for calculating termination charges.

By order of the Public Utilities Commission of New Hampshire this eighth day of December, 1997.

Douglas L. Patch  
Chairman

Susan S. Geiger  
Commissioner

Attested by:

Thomas B. Getz  
Executive Director and Secretary

DR 96-420  
FREEDOM RING, L.L.C.  
DISSENTING OPINION OF COMMISSIONER ELLSWORTH

I respectfully dissent. While I agree that the Mobile-Sierra doctrine applies, I come to a different result when

balancing the competing interests of the sanctity of private contract versus the public interest of encouraging competition. The customers of these special contracts and long-term contracts pursuant to tariff requirements knew or should have known that competition in the telecommunications industry was imminent. They presumably weighed the risks of entering into long-term contracts against the benefit of immediate lower rates. I do not agree that these same parties should now be given an opportunity to revoke the contract merely because competition now provides an alternate provider of the service and an opportunity to get a better deal. Our society's traditional emphasis on the stability of contracts weighs more heavily with me than does the current momentum to compel competitive entry as soon as possible. The harm which the majority protects by approving Fresh Look, seems to me to be less injurious to the public interest than the damage inflicted on stability of contract.

Therefore, in my opinion, only parties to contracts signed after the date this order issues should be given a Fresh Look opportunity; parties who signed contracts prior to that date should not be given a Fresh Look opportunity. By this means, Bell Atlantic would know that any party entering into a long-term contract will be given an opportunity to withdraw from that contract at the time the Fresh Look opportunity begins.

I also cannot join my colleagues in the treatment of newly negotiated Bell contracts. By this order, a customer who terminates a Bell contract in favor of a competitive one will not be required to bring that contract before the Commission for approval, but a customer who terminates a Bell contract for the express purpose of renegotiating with Bell Atlantic must obtain our approval.

The playing field will not be level. Contracts will be treated differently depending on the provider of service. My remedy in the spirit of competition would be to allow all contracts, no matter who provides them, to become effective without PUC review. However, my reading of RSA 378:18-b persuades me that all contracts with any ILECs or CLECs must be treated the same, and must receive that review. I would so order.



**Bruce B. Ellsworth**  
**Commissioner**

**December 8, 1997**

**Attested by:**

**Thomas B. Getz**  
**Executive Director and Secretary**

## Record of Docket Filings

DE 96-420 FREEDOM RING COMMUNICATIONS LLC  
 Opened: 12/27/96 Petition Requesting That the Commission  
 Require That Incumbent LECs Provide Their  
 Customers With a "Fresh Look" Opportunity

in  
 DR 96-420  
 from NH PUC

(concerning  
 documents  
 filed +  
 orders in  
 Fresh  
 look case)

11/18/96 To Thomas B. Getz from Eric J. Brannan, Esq., Swidler &  
 Berlin, dated November 12, 1996, enclosing Supplement to  
 Petition of Freedom Ring Communications, L.L.C.  
 Requesting That the Commission Require That Incumbent  
 LECs Provide Their Customers With a "Fresh Look"  
 Opportunity.

12/27/96 Order of Notice issued setting a prehearing conference on  
 March 18, 1997 at 10:00 a.m. at which time each party  
 will provide a preliminary summary of its position with  
 regard to the Petition and the appropriate role of the  
 Commission.

Publication Date: 1/17/97

Affidavit Due: 3/18/97

Intervenor Status: 3/13/97

Objecting to Intervenor Status: 3/18/97

02/18/97 To Thomas B. Getz from Robert J. Souza dated February 10,  
 1997 enclosing an affidavit of publication in the UNION  
 LEADER on January 10, 1997.

03/12/97 To Thomas B. Getz from Scott A. Sawyer, Esq. dated March  
 10, 1997 enclosing MCI's Motion to Intervene.

03/12/97 To Scott A. Sawyer, Esq. from Thomas B. Getz dated your  
 Motion To Intervene will be addressed at the prehearing  
 conference on March 18, 1997 at 10:00..

03/27/97 Memo from E. Barclay Jackson to the Commissioners  
 Department Heads dated March 27, 1997, enclosing a draft  
 order for your consideration.

04/01/97 Order No. 22,539 issued ORDERED, that MCI, Bretton  
 Woods, and NYNEX are granted full intervention in this  
 case; and it is FURTHER ORDERED, that the proposed  
 procedural schedule delineated is approved.

First Round of Data Requests  
 from Freedom Ring to NYNEX

March 27

Data Requests from MCI, Bretton

Woods, Staff and OCA to NYNEX	April 16
Data Responses from NYNEX to all requests	May 14
Second Round of Data Requests from Freedom Ring to NYNEX	May 28
Data Responses from NYNEX	June 18
Technical Session	July 11
Brief due from Freedom Ring	July 30
Brief due from other parties and Staff	August 28
Reply Brief from Freedom Ring (optional)	September 12
Commission Order anticipated	October 6

04/28/97 Transcript of hearing held on March 18, 1997

05/15/97 To Thomas B. Getz from Victor D. Del Vecchio, Esq. dated May 14, 1997 enclosing NYNEX's Motion for Protective Treatment.

05/15/97 To Thomas B. Getz from Victor D. Del Vecchio, Esq. dated May 14, 1997 enclosing NYNEX's Responses to Freedom Ring's First Set of Data Requests.  
CONFIDENTIAL

06/02/97 Nisi Order No. 22,615 issued, ORDERED NISI, that NYNEX's Motion for Confidential Treatment of the Responses to the Data Requests enumerated above is GRANTED; and it is FURTHER ORDERED, that Data Responses containing similar information shall be similarly treated; and it is FURTHER ORDERED, that this order is subject to the Commission's on-going rights in light of RSA 91-A, should circumstances so warrant; and it is FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, the Petitioner shall cause a copy of this Order Nisi to be published once in a statewide newspaper of general circulation, such publication to be no later than June 9, 1997 and to be documented by affidavit filed with this office on or before June 16, 1997; and it is FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their

comments or file a written request for a hearing on this matter before the Commission no later than June 23, 1997; and it is **FURTHER ORDERED**, that any party interested in responding to such comments or request for hearing shall do so no later than June 30, 1997; and it is **FURTHER ORDERED**, that this Order Nisi shall be effective July 2, 1997, unless the Commission provided otherwise in a supplemental order issued prior to the effective date.

06/12/97 To Thomas B. Getz from Morton J. Posner dated June 11, 1997 enclosing an affidavit of publication in the UNION LEADER on June 6, 1997.

07/30/97 To Thomas B. Getz from Morton J. Posner, Esq. dated July 29, 1997 enclosing on behalf of Freedom Ring Communication, L.L.C., Opening Brief.

07/31/97 To Thomas B. Getz from Morton J. Posner, Esq. dated July 30, 1997 enclosing Freedom Ring Communications, L.L.C. inadvertently included an unsigned signature page with its Brief filed today.

08/25/97 To Thomas B. Getz from Scott A. Sawyer, Esq. dated August 22, 1997 please withdraw my name a counsel for MCI and should be receiving the Entry of Appearance of Alan D. Mandl, Esq.

08/25/97 To Thomas B. Getz from Alan D. Mandl, Esq. dated August 22, 1997 please add my Entry of Appearance of Alan D. Mandl, Esq. on behalf of MCI Telecommunications Corp.

08/26/97 To Thomas B. Getz from James Monahan dated August 19, 1997 I am writing to request that my name be added to the service list.

08/27/97 To Thomas B. Getz from Richard C. Fipphen of MCI dated August 27, 1997 regarding a Petition of Freedom Ring Communications requesting that the Commission require that LECs Provide Customers with a "Fresh Look"

08/28/97 To Thomas B. Getz from Victor D. Del Vecchio dated August 28, 1997 dated August 28, 1997 enclosing NYNEX s response to the petition of Freedom Ring Communications

08/28/97 To Thomas B. Getz from James R. Anderson, Esq. Dated August 28, 1997 enclosing the Office of Consumer Advocate s Comments

08/28/97 To Thomas B. Getz from E. Barclay Jackson dated August 28, 1997 enclosing Staff s Brief.

08/28/97 To Thomas B. Getz from Victor D. Del Vecchio of NYNEX, dated August 28, 1997, enclosing NYNEX s response to the petition of Freedom Ring Communications,  
CONFIDENTIAL INFORMATION IN COMMISSION FILE

09/12/97 To Thomas B. Getz from Morton J. Posner, Esq. dated September 8, 1997 enclosing Freedom Ring Communications, L.L.C. Reply Brief.

12/08/97 Order No. 22,798 issued ORDERED, that the limited Fresh Look Opportunity described herein is GRANTED; and it is FURTHER ORDERED, that Bell Atlantic shall provide the Commission the name, address, and telephone number of the

Look inquiries should be person or persons to whom Fresh  
ORDERED, that Staff shall directed; and it is FURTHER  
form for use by a develop an appropriate notification  
particular market to Fresh competitor seeking to open a  
ORDERED, that Staff and any other Look; and it is FURTHER  
methodology for party propose by January 15, 1998 a  
calculating termination charges.

#### DISSENTING OPINION OF COMMISSIONER ELLSWORTH

01/15/98 To Thomas B. Getz from E. Barclay Jackson, Esq. dated January 15, 1998 attached is a memorandum(CONFIDENTIAL) from Thomas Lyle. Staff requests that the Commission grant a one week extension of time for Freedom Ring and Bell Atlantic to comment to the Commission on Staff's memorandum.

01/19/98 To The Parties from Thomas B. Getz dated January 19, 1998 Staff has shown good cause for extension and the extension will not will not unduly delay the proceedings. The Commission has decided to grant the request to extend until January 22, 1998 the filing deadline regarding a proposed method for calculating termination charges.

01/22/98 To Thomas B. Getz from Eric J. Branfman, Esq. Dated January 21, 1998 submitting response to Commission Staff's January 15, 1998 Memorandum.

01/22/98 To Thomas B. Getz from Victor D. Del Vecchio, Esq. dated January 22, 1998 enclosing Bell Atlantic's Comments Regarding Termination Liability.  
CONFIDENTIAL ATTACHMENTS.

01/26/98 To Thomas B. Getz from Eric J. Branfman, Esq. dated  
January 21, 1998 submitting response to Commission  
Staff a January 15, 1998 Memorandum regarding a proposal  
methodology for calculating fresh Look termination  
liability.







**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**Docket No. 96-420**

**In Re Petition of Freedom Ring Communications, L.L.C.  
Requesting that the Commission Require that Incumbent  
LRCs Provide Their Customers with a "Fresh Look" Opportunity**

**NYNEX'S RESPONSE TO THE PETITION OF FREEDOM RING**

**Victor D. Del Vecchio  
185 Franklin Street, Room 1403  
Boston, MA 02110-1585  
617-743-2323**

**Counsel for NYNEX**

**August 28, 1997**

rates, for example, the Company relied on its right under the contract terms to recover its investment over a longer period of time. If the duration of these contracts is simply wiped out by action of the Commission, without any provision made for NYNEX to recover its substantial investment costs either through enforcement of the termination fee clauses or allowances for recovery of capital investment and lost compensation, NYNEX will suffer a constitutionally impermissible taking of its property.

**VII. RESALE OF SERVICES UNDER THE TELECOMMUNICATIONS ACT PROVIDES COMPETITIVE ACCESS TO EXISTING SPECIAL CONTRACT AND PAYMENT PLAN CUSTOMERS**

The Telecommunications Act of 1996 affords a competitive provider the opportunity under § 251(c)(4) to resell service to an existing NYNEX customer, while still maintaining termination liability that the customer previously negotiated with NYNEX. The resale opportunity is provided through two alternatives. The first is to allow a competitive provider to assume the special contract or tariff payment-plan agreement of a NYNEX retail end user, so long as the provider, through resale, assumes all terms and conditions of the agreement, including its length. Accordingly, no early termination of the agreement arises and no penalty is paid.

In the case of a Centrex contract, for example, the competitive provider would pay the contract line rate for the remainder of the term but would receive a wholesale discount on the non-contract usage associated

with the lines. The amount of the discount on the non-contract usage will be determined in accordance with the standard discounts associated with the underlying services set forth in NYNEX's proposed Statement of Generally Available Terms and Conditions (SGAT) filed July 11, 1997, Resale, § 6.10.5.3.1, Discounts to Underlying Services, Docket DE 97-013.

The second resale alternative is for the retail end user to terminate the contract and pay any termination liability to NYNEX as required by contract. Concurrently, the competitive carrier would be eligible to request that NYNEX provide a resale price quote for a new contract to the relevant customer, subject to a wholesale discount. The amount of the discount would be individually determined based on the Company's avoided cost in respect to the nature and configuration of the services provided under special contract.

See NYNEX's SGAT, Resale, § 6.5.3.4, Special Contract Pricing, Docket DE 97-013.

In its Brief and Petition, Freedom Ring fails to mention its resale rights under the Telecommunications Act. Rather, Freedom Ring argues that since NYNEX has signed some customers to special contracts for Centrex service, new entrants such as Freedom Ring "are utterly unable to compete for this business today," Freedom Ring Brief at 6, and that "a new entrant would have to price Centrex service virtually below cost for a NYNEX customer to be willing to terminate its NYNEX service, incur termination liability, and sign up with the new entrant." Freedom Ring Brief at 7.

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Freedom Ring's arguments are unfounded and will result in unnecessary confusion in the marketplace.<sup>18</sup> As illustrated above, a competitive provider can resell an existing Centrex special contract and pay the contract line rate for the remainder of the term, while receiving the wholesale discount on the usage associated with the lines. In addition, the competitive provider will incur no residual charge or penalty upon its resale of the contract. See NYNEX's response to Staff data request 1-2, appended as Attachment 8.<sup>19</sup>

The resale alternatives for new entrants allow NYNEX to meet its responsibility to its ratepayers and shareholders, while also balancing the interests of competition. This will ensure that any existing payment schedules continue to provide recovery of capital investment and non-recovered expenses, specifically incurred on behalf of the cost-causing customers, that would otherwise be lost from premature termination of the contracts. Additionally, in cases where recovery of capital investment is not an issue and the Company has provided competitive services at less than tariff rates to ensure a revenue commitment from customers, termination liability provides appropriate compensation to NYNEX for services rendered,

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<sup>18</sup> Freedom Ring acknowledges as much when it observes that "Freedom Ring is sensitive to the perception that a fresh look period of any length will create some level of confusion in the marketplace." Freedom Ring Brief at 8.

<sup>19</sup> A nominal non-recurring charge associated with transfer of the Centrex system would apply to cover administrative expenses. See NHPUC No. 77, Part M, Sections 8.4.1 and 8.5.1.

given the applicable tariff rates for the lower volume of usage that the customers in fact used. In either event, such result is entirely consistent with the Legislature's directive in RSA 374:22-g(II), authorizing local exchange competition among telecommunications providers, that:

In determining the public good, the commission shall consider the interests of competition with other factors including, but not limited to, fairness; economic efficiency; universal service; carrier of last resort obligations; the incumbent utility's opportunity to realize a reasonable return on its investment; and the recovery from competitive providers of expenses incurred by the incumbent utility to benefit competitive providers, taking into account the proportionate benefit or savings, if any, derived by the incumbent as a result of incurring such expenses.

Toll, Centrex and private line services are competitive. NYNEX has committed to making its existing and future contracts for such services, among others, available for resale. See discussion above and NYNEX's response to staff data request 1-7, appended as Attachment 8. No need exists for the Commission to impose a "fresh look" in New Hampshire, tipping the balance of interests against NYNEX contrary to the spirit and letter of RSA 374:22-g(II). In light of its opportunity to compete for these customers through resale of NYNEX services, Freedom Ring's claims ring false.


VIII. CONCLUSION

For the reasons stated above, NYNEX respectfully requests that the Commission deny the Petitioner's request in its entirety, thereby respecting the contract rights of all parties and allowing competition to continue to develop naturally in the State of New Hampshire.

Respectfully submitted,

New England Telephone  
and Telegraph Company  
d/b/a NYNEX

By its Attorney,



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Boston, MA 02110-5185  
(617) 743-2323

Dated: August 28, 1997

13879

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

<b>Complaint and Request for Emergency Relief</b>	:	
<b>of CTC Communications Corp. against New</b>	:	
<b>York Telephone Company d/b/a Bell Atlantic-</b>	:	<b>Case No.</b> _____
<b>New York for Violation of Section 251(c)(4) and</b>	:	
<b>252 of the Communications Act of 1934, as amended,</b>	:	
<b>Violation of N.Y. Pub. Serv. Law § 91 and</b>	:	
<b>Violation of Resale Tariff P.S.C. No. 915</b>	:	

**MOTION AND MEMORANDUM IN SUPPORT OF  
MOTION OF CTC COMMUNICATIONS CORP.  
FOR EMERGENCY RELIEF**

Petitioner CTC Communications Corporation ("CTC") filed its Complaint simultaneously herewith and seeks relief from New York Telephone Company d/b/a Bell Atlantic-New York's ("BA-NY") newly instituted practice of charging termination penalties to customers that wish to have their service agreements assumed by CTC from BA-NY, on the ground that BA-NY's new policy is anti-competitive, discriminatory and illegal and threatens CTC's entry into the local resale market in New York. *Complaint and Request of CTC Communications, Inc. for Emergency Relief* ("Complaint").

CTC seeks emergency relief because of the threat to its continued business operations engendered by BA-NY's illegal conduct, which is destroying CTC's ability to compete in its targeted business market for resold services under contract. BA-NY's new policy affects 60% to 70% of the medium to large business market. In essence, BA-NY is carving out an exemption to its resale obligations under the 1996 Act.

**FACTUAL BACKGROUND**

CTC is a competitive local exchange carrier ("CLEC") reselling BA-NY's service in New



York pursuant to BA-NY's Resale Tariff PSC No. 915. *Complaint* ¶ 1. CTC currently has 100 New York customers enrolled for resold services with 80 of these customers in service. *Id.* Affidavit of D. Mahan attached as Exhibit A to Complaint. On or about January 21, 1998, BA-NY unilaterally froze customer orders by reversing a longstanding policy allowing customers to assign their service agreements to CTC and other resellers.<sup>1</sup> Regarding the newly instituted policy, BA-NY admits that it now does not permit assignment of an existing contract with an end-user customer. (*Electronic Mail of January 18, 1998 Re: Reseller Issues*, attached as Exhibit B to Complaint.<sup>2</sup>)

Since January 21, 1998, BA-NY has rejected 12 of CTC's customer orders because these end-user customers sought to assign their service agreement to CTC. BA-NY's rejection of these orders forces CTC's customers either to remain with BA-NY or to pay discriminatory termination

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<sup>1</sup> On three separate occasions, Bell Atlantic assured CTC that it would be permitted to assume end-user contract customers but that wholesale discounts would not apply to resold services provided by CTC. *See Mahan Aff.*, ¶¶ 4-6, & Affidavit of Jordan Michael, ¶¶ 2-3, attached as Exhibit C to Complaint. Bell Atlantic previously adhered to a policy that allowed retail customers to assign retail agreements to resellers without incurring termination fees. *See Complaint* ¶¶ 7.

<sup>2</sup> In the January 18, 1998 e-mail, BA-NY stated that its new policy:

is that retail customers may not assign retail contracts to resellers . . . a reseller may not become the customer of a retail contract - resellers cannot 'take over' the retail contracts of retail customers and pay the retail rates. If a retail customer wants to convert its retail service to service provided by a reseller, the retail customer must terminate the retail contract and pay any associated termination charges. This policy applies to all services that we offer at retail - Centrex - VMS - anything, tariffed or not.

BA-NY acknowledges that this is a change from its previous policy: "[t]his changes the policy previously in effect in the former NYNEX region, which permitted assignment of retail contracts to resellers. Such assignment is no longer permitted."

fees.

This sudden change in BA-NY's policy and practice took CTC by surprise because this new policy directly contradicts representations made by Bell Atlantic to CTC during contract negotiations for resale agreements in other New England states. In two meetings in the fall of 1997, the issue of assumption of contracts was explicitly discussed by the parties. At both those meetings, Bell Atlantic stated that CTC would be permitted to assume customer contracts. Mahan Aff. ¶¶ 4-6. During a meeting on October 3, 1997, when the issue was discussed extensively, Mahan Aff., ¶5 and Exhibit 1 thereto, Georgene Horton, a BA-NY representative, assured CTC that Bell Atlantic would still permit assignment of contracts to CTC without penalty to the customers. *Id.* In addition, BA-NY continued processing CTC's orders for transferring customers and their contracts with BA-NY to CTC on or about January 21, 1998. *Id.*, ¶ 8. On February 4, 1998, John Messenger, a Bell Atlantic attorney in the Wholesale Division of Bell Atlantic-Massachusetts, reiterated Bell Atlantic's long-standing policy of permitting assumption of end-user contracts provided that CTC would pay retail rates. Moreover, Bell Atlantic already had permitted CTC to assume customer contracts without penalty to the customers.

This about-face in Bell Atlantic's longstanding policy and practice has a severely detrimental impact on the local resale market. By imposing significant termination penalties on end-user customers who attempt to assign their contracts to CTC, BA-NY has made it difficult, if not impossible, for CTC to compete for certain segments of the business market.

Although CTC believes that it is entitled to wholesale discounts on the resold services under assigned contracts pursuant to Section 251(c)(4)(A), it is willing to assume the end-user contracts. In effect, CTC has offered to pay retail rates for services that it otherwise is entitled to obtain at

wholesale discounts. Nonetheless, BA-NY refuses to permit assignment of contracts, and has refused CTC's request to permit assignment of contracts in accord with its previous policy. *Complaint*, ¶ 15 and Exhibits thereto.

To prevent irreparable damage to CTC during the pendency of this case, CTC requests that the Commission issue an immediate injunction against BA-NY's anti-competitive tactics. In the alternative, CTC requests expedited consideration of this Complaint.

### ARGUMENT

BA-NY's precipitous refusal to allow assumption of the contracts can result only from anticompetitive motives. BA-NY's conduct imperils CTC's business operations, good will and very survival in New York and constitutes an effective barrier to entry in the local resale market. CTC is entitled to emergency relief because it is likely to prevail on the merits of its claim, because it will suffer irreparable harm if such relief is not granted, and because the public interest strongly favors entry of an injunction. *Cf. e.g., Weissman v. Kubasek*, 493 N.Y.S.2d 63 (N.Y. App. Div. 1985).

#### I. CTC IS LIKELY TO PREVAIL ON THE MERITS OF ITS CLAIM

##### A. BA-NY's CONDUCT VIOLATES SECTION 251(c)(4) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED, WHICH PROHIBITS UNREASONABLE RESTRICTIONS ON RESALE

Section 251(c)(4) prohibits BA-NY from imposing "unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service . . . ." 47 U.S.C. 251(c)(4)(B). In the FCC's Local Competition Order, the Commission ruled that resale restrictions presumptively are unreasonable and interpreted Section 251(c)(4) as including contract services and customer-specific services:

Section 251(c)(4) provides that incumbent LECs must offer for

resale at wholesale rates “any telecommunications service” that the carrier provides at retail to noncarrier subscribers. This language makes no exception for promotional or discounted offerings, *including contract and other customer-specific offerings*. We therefore conclude that no basis exists for creating a general exemption from the wholesale requirement for all promotional or discount service offerings made by incumbent LECs.

*Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, 11 FCC Rcd 15499 (1996) (“Local Competition Order”), ¶ 948, *aff’d in part and vacated in part*, *Iowa Utilities Board v. FCC*, 120 F.2d 753 (8th Cir. 1997), cert. granted sub. nom. *AT&T Corp. v. Iowa Utilities Board*, No. 97-827 et al. (1998) (emphasis added). Although the Local Competition Order does not specifically address the issue of termination penalties under contracts, the FCC clearly expected CLECs to be able to resell contract services without incurring penalties that would make such resale economically impractical.

[R]esale restrictions are not limited to those found in the resale agreement. They include conditions and limitations contained in the incumbent LEC’s underlying tariff. . . . the ability of incumbent LECs to impose resale restrictions and conditions is likely to be evidence of market power and may reflect an attempt by incumbent LECs to preserve their market position . . . Given the probability that restrictions and conditions may have anticompetitive results, we conclude that it is consistent with the procompetitive goals of the 1996 Act to presume resale restrictions to be unreasonable and therefore in violation of section 251(c)(4). This presumption should reduce unnecessary burdens on resellers seeking to enter local exchange markets, which may include small entities, by reducing the time and expense of proving affirmatively that such restrictions are unreasonable.

Local Competition Order, ¶ 939.

Imposition of termination fees on consumers coupled with the prohibition on resellers assuming existing contracts represents just such an unreasonable and illegal restriction on resale.

The FCC itself has recognized this possibility. In *Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina*, FCC 97-418 (rel. Dec. 24, 1997) the FCC held that BellSouth failed to meet the competitive checklist pursuant to Section 271 because it refused to offer customer-specific contract service arrangements ("CSAs") for resale at wholesale discounts. Although the FCC did not resolve the issue of termination penalties associated with CSAs because of the record before it, it recognized that "depending on the nature of these fees, their imposition creates additional costs for a CSA customer that seeks service from a reseller, *they may have the effect of insulating portions of the market from competition through resale.*" *Id.*, ¶ 222 (*emphasis added*). Similarly in *Application of BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, As Amended, to Provide In-Region, InterLATA Services in Louisiana*, FCC-98-17, ¶¶ 59-69 (rel. Feb. 4, 1998) (hereinafter "BellSouth 271 Application-Louisiana"), the Commission held that BellSouth's refusal to offer CSAs for resale at wholesale discounts violates Section 271(c)(2)(B)(xiv) and 251(c)(4) of the Act. The Commission opined that "refusal to offer contract service arrangements at a wholesale discount . . . may impede one of the three methods Congress developed for entry into the BOCs' monopoly market." *Id.* ¶ 68. *See also Freedom Ring, L.L.C. Petition Requesting that Incumbent LECs Provide Customers with a Fresh Look Opportunity*, N.H.P.U.C., DR 96-420, Order No. 22,798 (Dec. 8, 1997)(New Hampshire PUC ordered fresh look opportunity to certain Bell Atlantic customers with long term contracts containing termination penalties). ("Long-term contracts entered into when a monopoly is in place can have the effect of locking up a market for an extended period of time and in some cases *can prevent consumers* from obtaining the benefits of a competitive local exchange environment." (*emphasis added*)). BA-NY's

imposition of such termination penalties, likewise, insulates a portion of the market from competition in violation of Section 251(c)(4)(B).

Although the amount of a termination fee depends upon the product type and the time remaining on the contract, termination fees can be extremely onerous. Mahan Aff. ¶ 9. Many customers are unwilling or unable to pay BA-NY's termination fees. *Id.* CTC estimates that over 60% of CTC's targeted business market has at least one contract with BA-NY that is subject to termination fees, BA-NY's new policy restrains CTC from competing effectively with BA-NY for those customers. *Id.*

BA-NY can have no motivation for refusing to deal with CTC other than an effort to derail competition. BA-NY's termination penalties were intended to compensate BA-NY for stranded costs and lost revenues when a service under a contract is disconnected. However, when a customer switches from BA-NY to CTC, BA-NY is not actually disconnecting, rearranging, or making any physical change whatsoever in the facilities used to provide service to the customer, and will continue to receive revenue from CTC for the duration of the contract. Mahan Aff., ¶ 10. Because CTC is willing to pay retail rates, BA-NY suffers no adverse economic effect from permitting CTC to assume the contracts. Moreover, Bell Atlantic realizes greater profits since CTC assumes the costs of billing, bad debt and customer service previously borne by Bell Atlantic. Therefore, collection of termination fees results in a windfall for BA-NY, and the only purpose served by BA-NY's refusal to allow assignment of contracts is to insulate that portion of the business market from competition and preclude CTC from pursuing these customers.

B. BA-NY'S IMPOSITION OF TERMINATION PENALTIES ON END-USER CUSTOMERS ATTEMPTING TO SWITCH TO CTC BY ASSIGNING THEIR CONTRACTS IS ANTI-COMPETITIVE AND CONSTITUTES UNJUST AND UNREASONABLE DISCRIMINATION UNDER NEW YORK LAW

BA-NY refuses to permit CTC to assume end-user customer contracts on *any* terms, including at its full retail price. BA-NY's refusal imposes an unreasonable and discriminatory limitation on CTC's ability to resell local exchange services. Not only does BA-NY's conduct thwart CTC's ability to compete, it deprives New York consumers of the benefits of a competitive telecommunications market.

Section 91 of the New York Public Service Law prohibits BA-NY from imposing unjust, unreasonable and discriminatory conditions on the sale of its services. Moreover, the Commission strongly favors the emergence of a competitive telecommunications market.

The Commission's policy of opening New York telecommunications markets up to competition is being thwarted by BA-NY's conduct. It has not offered a single justification for its refusal to permit assignment of contracts to CTC without penalty. Indeed, it can offer none. Until January 21, 1998, it permitted such assignments. That fact alone undercuts any attempt by BA-NY to claim that economic realities force it to charge termination penalties.

The FCC rejected BellSouth's claims of economic hardship with respect to the sale of CSAs at wholesale:

because the wholesale discount is limited to avoidable costs, BellSouth should lose no more contribution from resold contract service arrangements made available to resellers at appropriate wholesale discounts than it would lose from resale of tariffed offerings at the general wholesale discount.

*BellSouth 271 Application-Louisiana*, ¶ 67.

Moreover, in August 1997, in a brief filed before the New Hampshire Public Service

Commission Bell Atlantic stated,

[t]he Telecommunications Act of 1996 affords a competitive provider the opportunity under § 251(c)(4) to resell service to an existing NYNEX customer, while still maintaining termination liability that the customer previously negotiated with NYNEX. The resale opportunity is provided through two alternatives. *The first is to allow a competitive provider to assume the special contract or tariff payment-plan agreement of a NYNEX retail end user, so long as the provider, through resale, assumes all terms and conditions of the agreement, including its length. Accordingly, no early termination of the agreement arises and no penalty is paid.*

Complaint, ¶ 22.

Unfortunately, CLECs are not the only victims of BA-NY's anti-competitive scheme. New York customers are deprived of the opportunity to choose competitive services from new market entrants at competitive rates. They are being forced to stay with BA-NY. The policy goal of achieving real competition is undermined. BA-NY's imposition of termination penalties insulates a segment of the market from competition and carves out a *de facto* exception to Section 251(c)(4). That conduct is unjust and unreasonable and therefore violates Section 91.

C. BA-NY'S CONDUCT VIOLATES RESALE TARIFF P.S.C. NO. 915

BA-NY's refusal to permit CTC to assume customers violates BA-NY's obligations under the Resale Tariff P.S.C. No. 915. Pursuant to the Resale Tariff, CTC is entitled to resell certain BA-NY services.

II. CTC IS ENTITLED TO EMERGENCY INJUNCTIVE RELIEF BECAUSE IT WILL SUFFER IRREPARABLE HARM IF NO INJUNCTION IS ENTERED

CTC's business and its reputation are being irreparably harmed every day that BA-NY refuses to process its customer orders. BA-NY, however, would suffer no harm if an injunction is entered. Thus, the "balance of harm" favors entry of an injunction.



Irreparable harm occurs when rights are not capable of vindication by a final judgment. CTC is irreparably harmed both by BA-NY's refusal to process orders and its change in policy. In the near term, BA-NY's refusal to process CTC's orders has already precluded 12 customers from switching to CTC. CTC has lost not only revenue from those customers, its reputation with those customers also has been compromised.

BA-NY's anti-competitive policy shift is having a crushing impact on CTC and other CLECs. BA-NY has erected a barrier to entry into the local resale market. Without the Commission's assistance, CTC will be unable to tear that barrier down. BA-NY's policy adversely impacts an estimated 60% of CTC's targeted business market. As it is, CTC does not even have the chance to compete for those customers. If upheld, BA-NY's policy could reduce CTC's potential market so drastically that it would be unable to survive.

BA-NY, by contrast, suffers no harm if an injunction is entered. As described in Mr. Mahan's affidavit, BA-NY actually will increase its margins by allowing CTC to assume end user contracts at retail rates because BA-NY receives the retail rates and does not incur certain service costs. Mahan Aff. ¶ 10. Moreover, in the unlikely event that CTC does not prevail on its claims, BA-NY could recover the termination penalties at a later time.

Thus, the balance of harm favors entry of emergency relief during the pendency of this action.

### III. THE PUBLIC INTEREST MANDATES ENTRY OF EMERGENCY RELIEF

The Telecommunications Act of 1996 envisioned free competition between service providers with attendant savings and efficiencies for consumers. In New York, the Commission has nurtured the emergence of a competitive telecommunications market,

[u]ltimately, we envision fully competitive local exchange markets throughout New York State. Multiple carriers will provide a full and expanding range of services to meet the needs and desires of all types of telecommunications users. Consumers will shop among local service providers to find a package of capabilities, price, and quality that best meets their individual needs. They will be able to switch easily to a different service provider if dissatisfied with their current provider or tempted by a better deal. Should such an environment develop, most, if not all, regulation of the local exchange market would be eliminated.

*Proceeding on Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market*, 1996 WL 302398, \*2 (N.Y.D.P.S.). The benefactors of such competition are the customers of New York.

In a single stroke, BA-NY is undermining a carefully crafted legislative and regulatory framework. Twelve customers who tried to switch from BA-NY to CTC have been deprived of that opportunity. Moreover, BA-NY's policy impacts every customer with a term contract with BA-NY. Based on its own experience, CTC estimates that approximately 60% of the targeted business market could be frozen into contracts with BA-NY. As the New Hampshire Commission recognized in *Freedom Ring*, "[l]ong-term contracts entered into when a monopoly is in place can have the effect of locking up a market for an extended period of time and in some cases *can prevent consumers from obtaining the benefits of a competitive local exchange environment.*"

The real victims of BA-NY's new policy are the consumers of this State. Their interests will continue to be disserved until an injunction requiring BA-NY to process CTC's orders without penalty to the customers is entered.

## CONCLUSION

For the foregoing reasons, CTC requests that the Commission enter an order prohibiting BANY from imposing termination fees on consumers when CTC assumes existing customer contracts, and providing such other and further relief as the Commission may deem necessary and just.

Respectfully submitted,

Warren A. Fitch/mb

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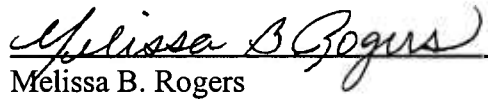
Jordan B. Michael  
Director, Regulatory Affairs  
CTC Communications Corp.  
360 Second Avenue  
Waltham, Mass. 02154

**CERTIFICATE OF SERVICE**

I, Melissa B. Rogers, hereby certify that on this 19th day of March, 1998, true and accurate copies of the foregoing **Complaint and Request for Emergency Relief of CTC Communications Corp. Against New York Telephone Company d/b/a Bell Atlantic-New York for Violation of Section 251(c)(4) and 252 of the Communications Act of 1934, as amended, Violation of N.Y. Pub. Serv. Law § 91 and Violation of Resale Tariff P.S.C. No. 915 and Motion and Memorandum in Support of Motion of CTC Communications Corp. for Emergency Relief** were served by overnight delivery to the following:

Bell Atlantic Co.  
General Counsel  
1095 Avenue of the America  
41st Floor  
New York, N.Y. 10036

Account Manager - Resale Services  
222 Bloomingdale Road, 2nd Floor  
White Plains, N.Y. 10605

  
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Melissa B. Rogers