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

In the Matter of	)	
	)	
AT&T Corp.,	)	
	)	File No. EB-00-MD-011
Complainant,	)	
v.	)	
	)	
New York Telephone Company, d/b/a Bell Atlantic – New York,	)	
	)	
Defendant.		

MEMORANDUM OPINION AND ORDER

Adopted: October 5, 2000 **Released:** October 6, 2000

By the Commission: Chairman Kennard and Commissioner Ness issuing separate statements

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we deny the complaint filed pursuant to sections 208 and 271(d)(6) of the Communications Act of 1934, as amended (Act),[1] by AT&T Corp. (AT&T) against New York Telephone Company, d/b/a Bell Atlantic – New York (Bell Atlantic). Pursuant to section 271(d)(3) of the Act, this Commission has previously authorized Bell Atlantic to provide interexchange services in the State of New York. In its complaint, AT&T alleges that the manner in which Bell Atlantic markets the services of its long distance affiliate, Bell Atlantic Communications, Inc. (BACI), during incoming calls from its existing local exchange customers violates section 272 of the Act.[2] For the reasons discussed below, we find that AT&T misstates Bell Atlantic's obligations pursuant to section 272, and deny AT&T's complaint.

II. BACKGROUND

2. Complainant AT&T provides interexchange (*i.e.*, long distance) telecommunications services throughout the United States. It also provides local exchange telecommunications services in the State of New York and elsewhere. Defendant Bell Atlantic is a "Bell Operating

[1] 47 U.S.C. §§ 208, 271(d)(6).

[2] 47 U.S.C. § 272.

Company" (BOC) within the meaning of section 153(4) of the Act,[3] and an "incumbent local exchange carrier" (ILEC) within the meaning of section 251(h)(1) of the Act.[4]

3. On December 22, 1999, the Commission released an order finding that Bell Atlantic had satisfied the conditions set forth in section 271, and that it therefore was permitted, through a separate affiliate complying with the requirements of section 272, to provide in-region, interexchange services in the State of New York.[5] Pursuant to section 272(g),[6] which authorizes BOCs that have been granted section 271 authority to market jointly their own services and the services of their section 272 long distance affiliate, Bell Atlantic began marketing the services of BACI on January 5, 2000.[7] This complaint relates to those joint marketing efforts in the State of New York.

4. When residential local exchange customers of Bell Atlantic call Bell Atlantic to request an additional line, Bell Atlantic generally takes the opportunity to market BACI's interexchange service. With certain exceptions not relevant here,[8] Bell Atlantic does not require that its sales representatives, in marketing BACI's services during such calls: (a) inform the customer that they have a choice of long distance carrier; or (b) offer to read a list of carriers who provide long distance service in that customer's area.[9] In addition, Bell Atlantic allows its sales representatives, on receiving these customers' verbal permission, to use information regarding the customer's presubscribed interexchange carrier (PIC) for the existing line(s) to market BACI's services for the additional and, sometimes, existing line(s).[10] Bell Atlantic does not provide its customers' PIC information to AT&T or other non-affiliated carriers in such instances.[11]

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[3] 47 U.S.C. § 153(4).

[4] 47 U.S.C. § 251(h)(1).

[5] *See In the Matter of Application by Bell Atlantic New York for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York,* 15 FCC Rcd 3953 (1999), *aff'd sub nom. AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

[6] The Act at section 272(g)(2) provides, "A [BOC] may not market or sell interLATA [i.e., interexchange] service provided by an affiliate required by this section within any of its in-region States until such company is authorized to provide interLATA services in such State under section 271(d)."

[7] Joint Statement at ¶ 3.

[8] Bell Atlantic states that, although it has "no blanket requirement" that its sales representatives inform existing customers requesting an additional line of their long distance choices and offer to read a list of carriers, its sales representatives are instructed to provide this information to certain customers "for reasons of administrative convenience." Bell Atlantic explains, "The different treatment results from internal classifications that are grounded in whether the customer has the additional line billed to the same billing account as the primary line …". Answer of Bell Atlantic – New York to AT&T Corp.'s Formal Complaint, File No. EB-00-MD-011 (filed July 24, 2000) (Answer) Ex. E (Atticks Dec'n) at ¶ 7.

[9] Answer Ex. E at ¶¶ 5-6.

[10] Answer Ex. E. at ¶ 7.

[11] *Id*. at ¶ 9 n.2 (explaining that Bell Atlantic may provide other carriers with customer PIC information to comply with other statutory requirements).

5. AT&T filed its complaint in this action on July 10, 2000. In its first claim, AT&T asserts that Bell Atlantic's marketing of BACI's services to Bell Atlantic's existing local exchange customers who telephone Bell Atlantic to request an additional line, without informing those customers that they have a choice of long distance carriers and offering to read a list of such carriers, violates section 272 of the Act.[12] In its second claim, AT&T asserts that Bell Atlantic's use of its customers' PIC information to market BACI's services during calls from such customers violates the anti-discrimination requirements of section 272(c),[13] because Bell Atlantic does not make that information available to other carriers.[14]

III. DISCUSSION

6. As discussed below, we deny both of AT&T's claims. We deny AT&T's first claim because Bell Atlantic is not required under current law to inform its existing customers telephoning to request an additional line that they have a choice of long distance carriers, or to offer to read a list of such carriers. That obligation applies only to inbound (*i.e.*, incoming) calls from customers receiving new service. We deny AT&T's second claim because section 272(c) does not require that, when BOCs use information regarding their customer's PIC to joint market their long distance affiliate's services to the customer, the BOCs must make that information available to other carriers.

A. Section 272 of the Act Does Not Require Bell Atlantic to Inform Its Existing Local Exchange Customers Who Request Additional Lines That They Have a Choice of Long Distance Carriers or to Offer to Read a List of Such Carriers.

7. Under section 272(a) and (b) of the Act, a BOC that has obtained authorization pursuant to section 271 to provide interexchange services may do so only through a separate affiliate.[15] Moreover, "[i]n its dealings with its [section 272] affiliate …, a [BOC] … may not discriminate between that company or affiliate and any other entity in the provision … of … services …".[16] According to section 272(g)(3), however, "the joint marketing and sale of services permitted under this subsection shall not be considered to violate the nondiscrimination provisions of subsection (c)."[17] The joint marketing "permitted under this subsection" occurs when a BOC "market[s] or sell[s] interLATA [i.e., interexchange] service provided by an affiliate" after the

[12] Formal Complaint of AT&T Corp., File No. EB-00-MD-011 (filed July 10, 2000) (Complaint) at ¶¶ 30-32, 34, 36.

[13] The Act at section 272(c) provides, in pertinent part, "In its dealings with its [section 272] affiliate, ... a [BOC] … may not discriminate between that company or affiliate and any other entity in the provision or procurement of … services, facilities, and information … ".

[14] Complaint at ¶¶ 33-36.

[15] 47 U.S.C. § 272(a), (b).

[16] 47 U.S.C. § 272(c).

[17] 47 U.S.C. § 272(g)(3).

BOC obtains authorization to provide such service under section 271.[18] In rejecting AT&T's challenge to the FCC's grant of section 271 authority to Bell Atlantic in New York, the United States Court of Appeals for the District of Columbia Circuit recently held that section 272(g) "exempt[s] joint marketing activities from section 272(c)(1)'s nondiscrimination requirement."[19]

8. AT&T's complaint focuses on the scope of the exemption created by section 272(g). In its first claim, AT&T asserts that the only joint marketing permitted under section 272(g), when read in conjunction with the anti-discrimination provision of section 272(c), is joint marketing that comports with the equal access obligations of section 251(g). AT&T states, "Section 272(g)(3) creates a narrow safe harbor for a quite specific subset of discriminatory marketing … . The *only* discriminatory marketing activities that Congress exempted from the nondiscrimination obligations [of section 272(c)] are those that are expressly 'permitted' by section 272(g) … . [T]he only joint marketing activities that are permitted under section 272(g) are those in which the BOC complies with the longstanding [section 251(g)] equal access requirements of, *inter alia* informing customers that they have a choice of long distance carrier…".[20]

9. For purposes of this order, we will assume, without deciding, that the only joint marketing permitted under section 272 is joint marketing that comports with section 251(g). We decline AT&T's invitation to adopt its theory of the obligations imposed by sections 272 and 251(g). Nonetheless, even under AT&T's interpretation of the interplay of those two sections, Bell Atlantic's conduct is permissible. Nevertheless, AT&T's claim fails, because AT&T misunderstands the obligations imposed by section 251(g). That section, which is part of the Telecommunications Act of 1996 (1996 Act), binds BOCs to the "same equal access … obligations" existing "under any court order, consent decree, or regulation, policy or order of the Commission" on the date immediately preceding the date of enactment of the 1996 Act until "explicitly superseded" by the Commission.[21] Thus, in order to succeed on its claim, AT&T must cite either, (a) a pre-1996 Act court order, consent decree, or Commission order requiring the BOCs to inform existing customers making inbound calls to request an additional line of their long distance choices, or (b) a Commission order issued after passage of the 1996 Act imposing such an obligation. As discussed below, AT&T cites no such precedent, and we are aware of none. Accordingly, section 251(g) can impose no such obligation.

[18] 47 U.S.C. § 272(g)(2).

[19] *AT&T Corp. v. FCC*, 220 F.3d 607, 632 (D.C. Cir. 2000).

[20] Opposition of AT&T Corp. to Bell Atlantic's Motion to Dismiss Complaint, File No. E-00-MD-011 (filed July 31, 2000) at 7.

[21] Section 251(g) provides, in pertinent part, "On and after the date of enactment of the [1996 Act], each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers … in accordance with the same equal access and non-discriminatory interconnection restrictions and obligations … that apply to such carrier on the date immediately preceding the date of enactment of the [1996 Act] under any court order, consent decree, or regulation, order or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment." 47 U.S.C. § 251(g).

10. Nevertheless, AT&T argues that section 251(g) obligates BOCs to inform customers of their long distance choices with respect to *all* inbound calls in which a service is provided to a customer that has not yet designated a long distance carrier, including customer calls requesting additional lines.[22] AT&T cites a 1983 decision of the United States District Court for the District of Columbia (Greene, J.) (Decree Court) resolving certain disputes arising from the fact that it was becoming possible to place an interexchange call through an interexchange carrier (IXC) other than AT&T merely by dialing "1+" or a four-digit access code.[23] The Decree Court was asked to clarify the BOCs' obligations where, as this "dialing parity" was achieved, customers attempted to place interexchange calls without having designated an IXC either by presubscription or use of an access code. The court held that the BOCs were authorized automatically to route such calls placed by their *existing* customers to AT&T. The court required, however, that for ninety days before and after dialing parity was achieved, the BOCs advise these customers of their long distance choices "at a minimum by way of inserts in the monthly bills."[24] Significantly, the court imposed no obligation upon the BOCs to inform existing customers of their long distance choices after expiration of the ninety-day period. The only such obligation imposed by the court was as to "a customer who receives new service," which the court defined as "(1) receiv[ing] service from the particular BOC for the first time, or (2) mov[ing] to another location within the [BOC's] area."[25]

11. Thus, the Decree Court decision does not aid AT&T. Contrary to AT&T's assertion, the decision stands for the proposition that section 251(g) does *not* require BOCs to inform customers of their long distance choices with respect to all inbound calls involving undesignated long distance traffic, and, most significantly, does *not* require BOCs to so inform customers who call to request an additional line. Section 251(g) imports obligations existing "on the date immediately preceding the date of enactment of the [1996 Act]."[26] The Decree Court imposed only a short-lived obligation to inform *existing* customers of their long distance choices, and that obligation had expired long before the 1996 Act. The only obligation to inform callers of their long distance choices in 1996 was as to customers who receive "new service." Yet the Bell Atlantic customers at issue here are not customers receiving "new service." They are existing customers, and consequently are neither receiving service from Bell Atlantic for the first time nor seeking service as the result of a move.

12. AT&T argues that the Commission's 1985 *Allocation Order* "imposed even more

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[22] Brief of AT&T Corp. on Bell Atlantic's Liability for Joint Marketing Violations, File No. EB-00-MD-011 (filed Aug. 14, 2000)(AT&T Br.) at 8, 15.

[23] AT&T Br. at 16 (citing *United States v. AT&T Corp.*, 578 F. Supp. 668 (D.D.C. 1983)). Prior to the achievement of dialing parity, customers could place interexchange calls through IXCs other than AT&T only by dialing a twelve or thirteen-digit access code. *See United States v. AT&T Corp.*, 578 F. Supp. at 670 (D.D.C. 1983)

[24] *United States v. AT&T Corp.*, 578 F. Supp. at 676.

[25] *Id*. at 677. The court ruled, "no [BOC] shall … automatically … assign to AT&T the calls of a customer who receives *new service* but fails to designate an [IXC] … . The [BOC] may instead … assist [the caller] in locating [an IXC], provided that no favoritism is shown to any particular carrier." *Id.*

[26] 47 U.S.C. § 251(g).

stringent requirements regarding a BOC's handling of undesignated long distance traffic [than the Decree Court's decisions]."[27] In the *Allocation Order*, the Commission held that BOCs should not continue to route to AT&T undesignated long distance calls made by existing customers, and ordered the BOCs, within six months of the effective date of the order, to ballot their existing customers as to their choice of long distance carrier. Like the Decree Court, however, the Commission imposed no continuing obligation to inform these customers of their long distance choices: Customers who did not respond to the ballots were to be allocated to a long distance carrier according to a prescribed formula. With respect to "new customers" only, BOCs were to respond to calls requesting service by "provid[ing] … the names and, if requested, the telephone numbers of the long distance carriers and should devise procedures to ensure that the names of these carriers are provided in random order."[28] Thus, the *Allocation Order* does not help AT&T. Like the Decree Court, the Commission imposed no obligation pertaining in 1996 to inform existing customers of their long distance choices.

13. AT&T asserts that the Decree Court also applied the obligation to inform callers of their long distance choices to customers making undesignated long distance calls using BOC calling cards, BOC payphones, and BOC wireless services. AT&T states, "these cases confirm that the Decree Court … ha[s] always recognized that the BOCs' obligations apply broadly to all situations in which the customer must 'designate' a long distance carrier …".[29] AT&T's argument misses the point. Section 251(g) imports obligations as they existed the day before enactment of the 1996 Act. Therefore, the sole issue here is whether, in 1996, BOCs were obligated to inform existing customers requesting additional lines of their long distance choices; the BOCs' obligations with respect to callers using calling cards, payphones or wireless services are simply not relevant. Moreover, AT&T misunderstands the Decree Court's decisions. Undesignated long distance calls simply were not at issue with respect to BOC calling cards.[30] The Decree Court obligated the BOCs to notify payphone premises owners, *on a one-time basis*, by January 1989, of their long distance choices. This obligation was not, therefore, imported into the 1996 Act by section 251(g). The Decree Court's ruling with respect to wireless services is irrelevant, as section 251(g) applies only to wireline services.

14. AT&T's reliance upon Commission orders released after passage of the 1996 Act is equally misplaced. AT&T argues that, in the *Non-Accounting Safeguards Order*, the Commission concluded that BOCs must inform inbound callers requesting additional lines of their

[27] AT&T Br. at 16 (citing *Investigation of Access and Divestiture Related Tariffs*, Memorandum Opinion and Order, 101 FCC2d 911at ¶¶ 33-35 (1985) (*Allocation Order*)).

[28] *In the Matter of Investigation of Access and Divestiture Related Tariffs, Allocation Plan Wavers and Tariffs*, Memorandum Opinion and Order, 101 FCC2d 935, 949 ¶ 40 (FCC 1985) (construing the *Allocation Order*).

[29] AT&T Reply Br. at 16 (citing *United States v. AT&T Corp.*, 698 F. Supp. 348 (D.D.C. 1988) (calling cards and payphones), and *United States v. AT&T Corp.*, 890 F. Supp. 1 (D.D.C. 1995) (wireless calls)).

[30] Because the Decree Court found that the BOCs had, in violation of their equal access obligations, routed all calling card calls not preceded by "0 +" to AT&T, and implied in their advertisements that the holders' long distance calls would be carried by the BOC who issued the card, it ordered the BOC's to notify cardholders, on a one-time basis, by January 1989, that long distance calls placed using the calling card might be carried by a carrier other than the holder's PIC, and that they should contact long distance carriers regarding alternative methods of charging long distance calls. *See United States v. AT&T Corp.*, 698 F. Supp. at 356 – 7.

long distance choices before joint marketing the services of their long distance affiliate.[31] Yet that order limits the BOCs' obligation to inform callers of their long distance choices to a "customer who orders *new* local exchange *service*," and expressly adopts the Decree Court's definition of "new service" as limited to "(1) receiv[ing] service from the particular BOC for the first time, or (2) mov[ing] to another location within the [BOC's] area."[32] The *BellSouth-South Carolina Order*, also cited by AT&T, refers to the *Non-Accounting Safeguards Order* with approval, notes that the order limits the obligation to inform customers of their long distance choices to customers who receive "new service" and states that "a customer orders 'new service' when the customer either receives service from the BOC for the first time, or moves to another location within the BOC's in-region territory."[33]

15. Thus, AT&T's first claim fails. Bell Atlantic is not obligated, when marketing BACI's services, to inform existing customers calling to request an additional line that they have a choice of long distance carriers and to offer to read a list of available carriers. That obligation applies only to customers who either (1) receive service from Bell Atlantic for the first time, or (2) move to another location within Bell Atlantic's area.

B. Section 272 Does Not Prohibit Bell Atlantic From Using CPNI to Market BACI's Services Without Providing That CPNI To Other Carriers.

16. In its second claim, AT&T asserts that Bell Atlantic is in violation of section 272(c) of the Act because it uses information regarding the identity of its customer's PIC to market BACI's services without making that information available to AT&T and other interested carriers. AT&T's second claim also must be denied, for Bell Atlantic has not violated section 272(c). The information at issue here is customer proprietary network information (CPNI) within the meaning of section 222,[34] and, as the Commission held in the *CPNI Order*, section 272(c)'s

[31] AT&T Br. at 14 (citing *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, First Report and Order, 11 FCC Rcd 21905, 22207 ¶ 292 (FCC 1996) (*Non-Accounting Safeguards Order*)).

[32] *Non-Accounting Safeguards Order* at ¶ 292, n. 761(citing *United States v. AT&T Corp.*, 578 F.Supp. at 676-7).

[33] *In the Matter of Application of BellSouth Corp. et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina*, Memorandum Opinion and Order, 13 FCC Rcd 539 at n. 675 (1997) , *aff'd sub nom. BellSouth Corp. v. FCC*, 162 F.3d 678 (D.C. Cir. 1998) (*BellSouth-South Carolina Order*). *Accord, In the Matter of the Application of BellSouth Corp. et al. For Provision of In-Region, InterLATA Services in Louisiana*, Memorandum Opinion and Order, 13 FCC Rcd 20599 ¶ 357 (1998). AT&T argues that in *AT&T Corp. v. Ameritech Corp.*, 13 FCC Rcd 21438 (FCC 1998), the Commission "observ[ed] that proposed BOC marketing scripts that 'endors[e] and promot[e]' and actively 'encourage use of' a particular carrier 'raise[] serious concerns' about violations of the Act's equal access and nondiscrimination requirements." AT&T Br. at 8 (quoting *AT&T Corp. v. Ameritech Corp.*, 13 FCC Rcd at ¶¶ 58-63). But the "concerns" expressed by the Commission in the *Ameritech Corp.* order were as to a BOC's marketing of a non-affiliated IXC's long distance services where the BOC had not received section 272(d)(3) approval.

[34] *See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Information and Other Customer Information*, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14,409 at ¶ 148 (1999). The parties stipulated that the PIC information at issue was (continued….)

reference to "information" does not include CPNI.[35]

17. AT&T argues that we are precluded from holding that section 272(c) "information" does not include CPNI based on the *CPNI Order* because that order was vacated by the Tenth Circuit in *U.S. West, Inc. v. FCC*.[36] We disagree. When read in context, the court's vacatur order related only to the discrete portions of the order and rules that were before the court in light of the parties' petitions for review and addressed by the court. The parties' petitions for review did not include, and the Tenth Circuit therefore neither had before it, nor addressed in its decision, the *CPNI Order*'s discussion of section 272(c).[37] Had the court intended to take the unusual step of vacating portions of the order and rules not before it, we believe it would have said so explicitly. Accordingly, we find that the court did not vacate the portion of the *CPNI Order* concluding that CPNI does not constitute "information" under section 271(c).

18. AT&T argues that, even if the *CPNI Order* was not vacated in its entirety, the Commission's interpretation of section 272(c) set forth in the *CPNI Order* is no longer valid. AT&T notes that the Tenth Circuit rejected the Commission's assertion that its construction of "approval" as used in section 222 did not violate the First Amendment because one of the "substantial state interests" recognized by Congress in enacting section 222 is the promotion of competition in the telecommunications industry.[38] AT&T argues that, in so holding, the Tenth Circuit effectively destroyed "the entire rationale" for the *CPNI Order*'s construction of section 272(c).[39] Yet the court did not hold that section 222 is wholly devoid of competitive concerns; it held only that those concerns were not a "significant consideration" for First Amendment analysis.[40] Moreover, even assuming that the Tenth Circuit's analysis applies to the issue of exchange of CPNI between competitors, the Commission's construction of section 222 as expressing pro-competitive concerns was only one of several reasons why the Commission construed section 272(c)'s reference to "information" not to include CPNI. The Commission also

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CPNI. *See* Joint Statement for Initial Status Conference, File No. E-00-MD-011 (filed July 31, 2000) at 3 ¶ 6. *See also id*. at 5 ¶ 7. The question of the use for marketing purposes of carrier proprietary information within the meaning of section 222(b) has not been pleaded and therefore is not addressed here.

[35] *See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Information and Other Customer Information*, Second Report and Order, 13 FCC Rcd 8061 (1998) (*CPNI Order*) at 81728174 – 8179 ¶¶ 158 – 169, *vacated sub nom., U.S. West, Inc. v. FCC*, 182 F.3d 1224 (10th Cir. 1999), *cert. denied*, 120 S. Ct. 2215 (2000).

[36] *U.S. West, Inc. v. FCC*, 182 F.3d 1224 (10th Cir. 1999), *cert. denied*, 120 S. Ct. 2215 (2000) (*U.S. West*).

[37] The court described petitioner's challenge to the *CPNI Order* as "First and Fifth Amendment challenges to the approval procedure [*i.e.*, "opt-in"] adopted by the FCC." *U.S. West*, 182 F.3d at 1231. The court limited its ruling accordingly. The court stated, "[T]he FCC … insufficiently justified its choice to adopt an opt-in regime. Consequently, its CPNI regulations must fall under the First Amendment." *Id.* at 1240. *See also*, *id*., at 1240 n. 15 ("We merely find fault in the FCC's inadequate consideration of the approval mechanism alternatives in light of the First Amendment").

[38] AT&T Br. at 26 (citing *U.S. West*, 182 F.3d at 1236).

[39] AT&T Br. at 26.

[40] *U.S. West*, 182 F.3d at 1236.

so concluded in order to "further the principles of customer convenience and control," and protect "customer's privacy interests."[41] Moreover, the Commission was concerned that a reading of section 272 such as that advocated by AT&T here would lead BOCs to "simply choose not to disclose their local service CPNI," which "would not serve the various customer interests envisioned under section 222."[42] These reasons are independent of the Commission's view that one of Congress's purposes in enacting section 222 was to promote competition, and AT&T has not questioned any of these rationales.

19. Accordingly, because we conclude that section 272(c)'s reference to "information" does not include CPNI, we deny AT&T's second claim. Bell Atlantic is not obligated by section 272(c) to provide its customers' CPNI to AT&T or any other carrier.

IV. ORDERING CLAUSE

20. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), 208, 271, and 272 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 208, 271 and 272, that the formal complaint filed by AT&T Corp. against New York Telephone Company, d/b/a Bell Atlantic – New York, IS DENIED WITH PREJUDICE and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

[41] *CPNI Order* at ¶ 160.

[42] *Id.* at ¶ 161.

Separate Statement of
Chairman William E. Kennard

Re: AT&T Corp. v. New York Telephone Company, d/b/a Bell Atlantic – New York

I agree with the concerns that Commissioner Ness raises regarding Verizon's marketing practices. I also agree that we need to consider local carriers' equal access and nondiscrimination obligations to take account of new competition in the marketplace as a result of the Telecommunications Act of 1996. I have asked the Bureau to present promptly a proposal in this regard to the Commission.

Separate Statement of Commissioner Susan Ness

Re: AT&T Corp. v. New York Telephone Company, d/b/a Bell Atlantic – New York

Although I support today's decision based on our rules, I am troubled by Verizon's marketing practices in New York. When customers call their local carrier to establish service on their primary line, carriers must tell those customers that they have a choice of long-distance providers. Yet, when many customers call Verizon to order additional lines, it does not inform those consumers of their right to use a long-distance carrier other than Verizon.

In passing the Telecommunications Act of 1996, Congress sought to promote competition in all telecommunications markets. Consumers will only reap the benefits of competition if they have the information to choose the provider that best meets their needs.

The contours of the equal access and nondiscrimination requirements in section 251(g) were set at a time when Bell companies, such as Verizon, were the monopoly provider of local services and were prohibited from offering long-distance services. This complaint demonstrates the need to revisit those rules in light of changes in the marketplace. As companies enter markets from which they were previously barred, we should consider the equal access and nondiscrimination obligations that make sense in this new competitive era. I urge the Commission to undertake such a proceeding.