



December 15, 1999

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

*Re: Bell-Atlantic-New York's §271 Application
CC Docket No. 99-295*

Dear Commissioner Furchtgott-Roth:

Thank you for meeting with us yesterday. This letter is a follow-up to our discussion of CompTel's proposal that the FCC adopt a comprehensive anti-backsliding plan as a condition to any approval of Bell Atlantic-New York's ("BA-NY") §271 application. As we explained, CompTel does not believe that BA-NY has demonstrated it has satisfied the Competitive Checklist of §271(c)(2)(B). However, we presume that, at some point over the next few months, BA-NY will be able to demonstrate its compliance with the requirements of §271. At that time, CompTel believes it would be appropriate and necessary for the Commission to establish a comprehensive remedial plan to ensure that BA-NY continues to perform its obligations under §271, even after it has received permission to provide originating interLATA service in New York.

The *comprehensive* performance assurance scheme, which CompTel advocates, would contain "bright line" standards for service levels that constitute adequate performance, escalating damages corresponding to the severity and scope of performance failures, as well as evidentiary presumptions and standards of proof. All of these features are necessary in order to qualify an anti-backsliding plan as truly "comprehensive". The principle benefit of a comprehensive post-271 performance assurance plan is that, by establishing clear standards, evidentiary presumptions, and escalating liability, the consequences of poor performance become predictable to both parties, and, therefore, the prospect of settlement without litigation becomes more likely. Thus, a *comprehensive* performance assurance scheme is likely, over time, to reduce the number of disputes which get litigated at the Commission.

Moreover, the adoption of such a post-271 anti-backsliding plan would establish the Commission as an *expedient* forum for resolving performance-related disputes. Such an obvious best-choice forum does not exist for parties in New York today. A comprehensive plan, under which parties could quickly and predictably resolve disputes, can only advance competition. The present alternatives available to CLECs include: filing complaints at the NYPSC, or at the FCC (with no clear-cut standards of proof and liability), or litigation in either state or federal court. However, all of these venues suffer the disadvantage of being either unable to provide a complete remedy, unable to provide a predictable outcome, unlikely to provide timely resolution, or some combination of all three. Moreover, the present uncertainty and/or inadequacy of these forums may even tacitly *encourage* poor performance, by providing an incentive to the incumbent to engage in predatory activity through abuse of the regulatory process. Therefore, by establishing a requisite level of satisfactory performance and a forum providing expedient resolution of performance-related disputes, the Commission can further promote and ensure future competition in New York.

Once again, Commissioner, CompTel is grateful for your time, and I remain eager to address any further questions regarding our approach to promote and ensure post-271 compliance with the Act.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Russell Frisby, Jr.", with a stylized flourish at the end.

H. Russell Frisby, Jr.
President

cc: Chairman William E. Kennard
Commissioner Susan Ness
Commissioner Michael K. Powell
Commissioner Gloria Tristani
Ms. Magalie R. Salas