

**PUBLIC UTILITIES COMMISSION**

IN RE: COMPLAINT AND REQUEST FOR EMERGENCY RELIEF OF CTC COMMUNICATIONS CORPORATION : DOCKET NO. 2829

**REPORT AND ORDER**

On March 20, 1998, CTC Communications Corporation ("CTC") filed with the Rhode Island Public Utilities Commission ("Commission") a Complaint and Request for Emergency Relief against New England Telegraph and Telephone Company d/b/a Bell Atlantic-Rhode Island ("Bell Atlantic"). The Complaint alleged a breach of the resale agreement between the parties, violation of the federal Telecommunications Act of 1996 ("the Act"), and violation of Rhode Island state law.

**A. Background**

In late 1997, the Commission granted CTC authority to operate as a competitive local exchange carrier within Rhode Island. On December 1, 1997, pursuant to the provisions of Sections 251 and 252 of the Act, CTC and Bell Atlantic entered into a Resale Service Agreement allowing CTC to resell Bell Atlantic local exchange service. Upon execution of the Resale Service Agreement, CTC began assuming the accounts of Bell Atlantic end-users, including those with tariffed contract services. Bell Atlantic did not assess any termination penalties, either to the end-users or to CTC, in connection with these assumptions. Thereafter, CTC was bound to all of the tariff-based terms and conditions that accompanied the assumed contracts, including the pricing and the remaining term of the contracts. Moreover, there was no resale discount offered on these contracts; CTC paid the retail contract rate that the end-user had previously been paying Bell Atlantic. Finally, CTC's orders were processed by Bell Atlantic through existing wholesale systems, as provided by the Resale Service Agreement.

On or about January 21, 1998, Bell Atlantic stopped processing any further orders where CTC was assuming Bell Atlantic's customer contracts. Bell Atlantic put CTC on notice that assumption of an existing Bell Atlantic contract was tantamount to termination of the contract. Accordingly, Bell Atlantic intended to terminate the contract and assess a termination fee before processing a CTC order. CTC's complaint alleges that Bell Atlantic's refusal to process resale orders submitted by CTC for the assignment of accounts of existing Bell Atlantic customers, unless the customer pays a termination fee to Bell Atlantic, violates both the Act and Rhode Island's state law, and constitutes a breach of the parties' Resale Service Agreement. CTC requested that the Commission order Bell Atlantic to cease and desist from imposing customer termination penalties and to return to the status quo ante January 21, 1998 in the methods, procedures and operations for processing resale orders under the Resale Service Agreement, including processing resale orders through wholesale channels.

At open meeting on October 20, 1998, the Commission exercised jurisdiction over the instant matter, and ordered a pre-hearing conference to set a procedural schedule. At the November 4, 1998, pre-hearing conference, all parties were represented and agreed to forego a formal hearing process, and instead set forth a schedule whereby prefiled testimony and legal briefs would be submitted to the Commission for decision.

In adherence to the pre-hearing agreements, CTC and Bell Atlantic filed testimony setting forth their respective positions. In addition, the Division filed a position statement regarding the issue.

**Testimony**

*1. Bell Atlantic*

For Bell Atlantic, Theresa L. O'Brien, Director of Regulatory Affairs, identified the various types of retail service Bell Atlantic provides in Rhode Island which have time of year and/or volume discounts and associated termination penalty clauses. She further identified Bell Atlantic transfer of service tariffs, noting that these tariffs either prohibit the transfer of service to another customer or require Bell Atlantic's written consent thereto.

Kevin M. Byrnes, Director of Customer Business Services for Bell Atlantic Network Services, testified that allowing assignment without termination penalties is not in the interest of Rhode Island consumers. He stated that Bell Atlantic would not be made "whole", despite CTC paying the full retail value of the assigned contract, because upon assignment of an end-user contract to CTC, Bell Atlantic no longer has a relationship with the end-user and therefore is less likely to successfully market additional services to that customer. He further claimed that this allows CTC a "free ride" from Bell Atlantic's market investment, and that competition will be harmed if termination penalties cannot be levied since Bell Atlantic would be compelled to incorporate this new regulatory risk of loss of customer control to a reseller during the life of the contract into the design and pricing of its retail contracts. He concluded that the refusal to allow assumption of contracts is not anti-competitive because: (1) the policy only affects customers with termination liability contracts; (2) CTC may market services to non-Bell Atlantic customers; (3) contracts with termination liability will eventually expire; and (4) customers who enter into contracts with termination liability are sophisticated and understand the nature of the commitment.

Dr. Kenneth Gordon, Senior Vice President of National Economic Research Associates, testified on behalf of Bell Atlantic that there is competition for the various services at issue. He noted that termination fees are frequently encountered in competitive markets, citing examples where these termination penalties are common. Dr. Gordon opined that long-term contracts facilitate the goals of selling additional services during the life of the contract and increasing the likelihood of customer retention. Those benefits must be factored in when looking at the overall value of a contract, since telecommunication providers derive value from sales of additional services to existing customers. He claimed that, by its actions, CTC supports this position because it elected to pay full retail rates on assumed contracts in order to assert control over the customer relationship.

Dr. Gordon alleged that competition would be harmed if termination penalties are not enforced, because Bell Atlantic would be less inclined in the future to offer innovative service contract arrangements. He further argued that not allowing termination penalties would create an artificial acceleration of Bell Atlantic competitive losses that would never occur in an unregulated competitive market. He concluded that CTC would be able to compete effectively, even with the assessment of termination penalties, because of existing substantial sales opportunities.

Dr. Gordon also offered rebuttal of certain portions of Mr. Mahan's testimony on behalf of CTC. In particular, Dr. Gordon stated that when CTC assumes an end-user contract from Bell Atlantic, a new relationship is formed, and the future as well as the current value of the customer to Bell Atlantic is foregone.

Peter Karoczkai, Vice President of Marketing and Product Management for Bell Atlantic Telecom Industry Services, described Bell Atlantic's current policy of assessing termination penalties when a reseller, such as CTC, assumes a contract. He stated that NYNEX (before the merger with Bell Atlantic) allowed resale without termination fees. He added that this policy created customer confusion regarding who was actually providing service; termination penalties place the customer on notice that there is no longer a direct business relationship with Bell Atlantic. Mr. Karoczkai also stated that the Bell Atlantic policy of terminating retail contracts and executing wholesale contracts has the positive effect of keeping distinct the Bell Atlantic wholesale and retail channels. He concluded that the Bell Atlantic policy of assessing termination penalties is more likely to facilitate resale because it reduces customer confusion and allows each competitor to compete vigorously, without competition-dampening effects.

Mr. Karoczkai also offered rebuttal to certain portions of CTC's testimony. In his opinion, CTC's situation is not a true assignment because CTC is not "standing in the shoes" of the end-user. He contended that CTC would not accept a true assignment of retail service arrangements, because CTC still desires to deal with Bell Atlantic through wholesale channels.

Mr. Karoczkai also challenged CTC's assertion that Bell Atlantic had a "long-standing" policy of allowing assignments to resellers. He stated that this policy began in the early months of 1997 and ended in January 1998. He claimed Bell Atlantic received no "windfall" from assessing termination penalties, even if the immediate revenue stream remained intact, because of the loss of its direct relationship with the customer and the future revenue potential it represents.

Mr. Karoczkai distinguished "termination" from assignment, and stated that Bell Atlantic's Transfer of Service tariffs become relevant if CTC's assignment theory is accepted. He added that his testimony before the New Hampshire Public Utilities Commission ("NHPUC") was mischaracterized by CTC, and that an assignment is a termination of service and termination penalties should apply.

Mr. Karoczkai concluded by discussing the NHPUC and New York Public Service Commission ("NYPSC") rulings in favor of CTC. He stressed that the NHPUC found Bell Atlantic could limit the right of assumption of contracts prospectively and that the Transfer of Service tariff provisions would apply prospectively. He noted that the factual record before the NYPSC differed from the instant case.

Jack H. White, Assistant General Counsel for Bell Atlantic Network Services, Inc., testified that CTC could not have commenced its resale activities in Rhode Island without understanding that Bell Atlantic would not agree to assign its retail business contracts to CTC and waive end-user termination fees. He recounted meetings and conversations with CTC representatives during which he claims to have made Bell Atlantic's policy regarding termination penalties clear to CTC. However, he acknowledged "advising CTC that it was very likely that a number of custom contracts were being assigned to resellers, and that it was even possible that Bell Atlantic was not collecting termination payments from the end-user customer in these instances". Mr. White also indicated that, to the best of his knowledge, there were no negotiations regarding the issues of assignment and termination penalties in connection with the execution of the Resale Service Agreement.

In Mr. White's opinion, the terms of the Service Resale Agreement obligate Bell Atlantic neither to assign its end-user contracts to CTC, nor to waive applicable termination penalties. He stated that § 6.3.1.1(B) of the Agreement (authorization to assume an account) has nothing to do with the assignment of contracts, but merely requires CTC to notify Bell Atlantic that it has "taken over" or "assumed" responsibility for an end-user account, and that it must be certain it has obtained proper authorization to do so. He referenced § 6.4.2.1 of the Agreement, claiming that "final bill" language supports the position that a termination is taking place. He observed that both § 6.3.3.3(A)(1)(a) and § 6.3.3.3 use the terms "assume" and "transfer" in a manner inconsistent with CTC's interpretation. He concluded that CTC's assumption at the full retail rate is inconsistent with the Resale Service Agreements requirement that a wholesale discount be applied to any services resold by CTC thereunder.

## 2. CTC

Testifying on behalf of CTC, Mr. David E. Mahan, Vice President of Marketing and Strategic Planning for CTC, requested that the Commission order Bell Atlantic to treat CTC as it had done prior to January 21, 1998. Under that regime, CTC could assume tariffed customer contracts without imposition of termination fees, and would not be subject to various other changes by Bell Atlantic in policies, procedures, and practices for the processing of such orders. He added that any change in Bell Atlantic policy regarding tariffed contract services should, at the very least, have been submitted to the Commission for prior review given the impact of such change on

customer choice and resale of retail services in Rhode Island.

Mr. Mahan explained that termination fees were not levied by Bell Atlantic before January 21, 1998, and then described the policy change. He alleged that Bell Atlantic's assessment of termination penalties generates windfall profits for Bell Atlantic, since it is still recovering the full retail rate but is no longer servicing the customer and incurring the costs of billing, customer service, and bad debt. He noted for example, that for the town of South Kingstown, which has a Centrex contract with Bell Atlantic, to switch to resold service, Bell Atlantic would impose a termination penalty of over \$61,000. He stated that termination penalties of this magnitude would effectively preclude customers from switching to a reseller, thereby effectively locking customers into Bell Atlantic.

Mr. Mahan delineated a series of rulings against Bell Atlantic from other jurisdictions, as well as Bell Atlantic's continued restrictions on resale operations through changing policies and procedures instituted in response to these adverse rulings.

He argued that Bell Atlantic is being made "whole" when existing Bell Atlantic contracts are being assumed by CTC. He observed that Bell Atlantic has no inherent "ownership" right to customers under its contracts. In Mr. Mahan's view, Bell Atlantic's imposition of early termination penalties to recover loss of its customer relationship is tantamount to saying Bell Atlantic is guaranteed a revenue stream beyond the finite terms of the contract.

Mr. Mahan testified that CTC was always given the impression from Bell Atlantic that CTC could assume a customer contract without triggering early termination penalties. He provided substantiating evidence of this understanding in the form of meeting notes and a portion of a legal brief written by Bell Atlantic's attorney.

In rebuttal, Mr. Mahan took issue with Mr. White's version of pre-Resale Service Agreement meetings, recalling that Bell Atlantic stated that CTC could assume the accounts of an end-user without termination fees being assessed. Mr. Mahan said that it was always CTC's understanding that the words in the Resale Agreement, "assume an existing Bell Atlantic end-user account" were intended to cover the circumstances of end-user contract assumption, including contracted services.

Mr. Mahan also challenged the argument that CTC would be better off financially if it paid a customer's contract termination charge and took over the service at the wholesale discount, as well as the assertion that terminating retail contracts and executing wholesale contracts had the positive effect of keeping distinct the Bell Atlantic wholesale and retail channels.

Finally, Mr. Mahan rebutted as irrelevant Mr. Byrnes' claim that CTC was a "free rider" on Bell Atlantic's marketing efforts, and stated that only a very low percentage of contracts are even ripe for renewal or switching given their "evergreen" nature.

Leonard R. Glass, an attorney for CTC, testified regarding discussions leading to the signing of the Resale Service Agreement, refuting Mr. White's recollection of events. He stated that at no time, at any meeting, did any representative from Bell Atlantic give an indication that the then-existing policy of permitting assignment without termination penalties had changed. Mr. Glass concluded that Bell Atlantic's present policy of refusing to allow the assignment of Bell Atlantic customer contracts absent termination fees, constitutes an attempt by Bell Atlantic to limit competition in complete disregard of applicable federal and state statutes.

Paul Wieners, Director of Operations at CTC, testified that changes instituted since January 21, 1998 in Bell Atlantic's practices and procedures for processing CTC's customer orders have severely limited CTC's ability to offer resold services under the Resale Services Agreement. He enumerated the ways that processing CTC customer orders through Bell Atlantic's retail, as opposed to wholesale systems is unworkable in a resale environment, concluding that Bell

Atlantic's change of policies and procedures "strike at the heart of a reseller's ability to service customers and compete.

Mark Bouvier, Regional Manager of CTC's account management team in Rhode Island, gave a first hand account of how Bell Atlantic's policy change regarding the imposition of customer termination penalties on assigned contracts has created customer confusion and frustration, and has ultimately prevented customers from choosing CTC. He claimed that customers, ready to sign with CTC, have been forced to remain with Bell Atlantic against their will. Mr. Bouvier concluded that Bell Atlantic's customer termination penalties have frustrated customer choice and meaningful resale competition in Rhode Island in contravention of the Act.

Dr. William H. Lehr, Ph.D., provided rebuttal testimony on behalf of CTC. He stated that termination penalties harm Rhode Island consumers both directly (customers are unable to switch from Bell Atlantic because of the onerous termination penalties) and indirectly (termination penalties are inconsistent with a smooth functioning competitive market). Dr. Lehr further explained that termination penalties are especially inappropriate in a resale context because Bell Atlantic remains "whole", and that Bell Atlantic, as the dominant incumbent local exchange carrier ("ILEC"), has clear incentive to protect and extend its market power.

Additionally, Dr. Lehr disagreed with Dr. Gordon's assertion that markets for commercial telephone services are already effectively competitive. He noted that Bell Atlantic is still the dominant provider of telephone service in Rhode Island, and that as of May 31, 1998, Bell Atlantic had resold just .18% of its retail lines. He stated that if markets were *already* competitive, competition would force prices to approximate costs, and would preclude firms from successfully using termination fees to distort or extract surplus profits.

Dr. Lehr contested Dr. Gordon's assertion that long-term contracts are not anti-competitive because there are many customers who are not covered by long-term contracts. Moreover, in a resale environment, it is not up to Bell Atlantic to determine the markets in which competitors may compete.

Dr. Lehr also distinguished Bell Atlantic's example of termination penalties in the cellular phone context. He explained that if a customer terminates its contract early with a cellular phone company, the company no longer receives a revenue stream for the remainder of the contract period, and the termination penalty is necessary to recover the phone costs specific to that contract.

Dr. Lehr rejected Bell Atlantic's imposition of termination penalties to recover marketing costs. Guaranteeing Bell Atlantic recovery of all of its expenses is inconsistent with competition. He added that assignment of a contract to CTC does not eliminate Bell Atlantic's opportunity to compete for customer revenue from follow up sales or complementary services.

Addressing Bell Atlantic's argument that termination penalties are needed to alleviate customer confusion, he responded that there are clearly less expensive ways for Bell Atlantic to communicate with its customers.

Dr. Lehr also refuted Bell Atlantic's position that termination penalties are justified to compensate Bell Atlantic for the loss of follow up sales or the sale of complementary services. He testified that Bell Atlantic does not have an *a priori* right to capture this market, and that if Bell Atlantic were systematically pricing contract services below the economic costs of providing those services, Bell Atlantic would have to rely on the complementary revenue and follow up sales generated by these contract services to recover its costs and remain competitive.

Dr. Lehr stated that termination penalties limit choice by raising customer switching costs and deterring competition. Furthermore, long-term contracts will continue to provide Bell Atlantic with a useful mechanism to offer flexible payment schemes and still guarantee full recovery of

contract costs because of CTC's commitment to pay the revenue due under the original contract.

Charlotte F. TerKeurst, a telecommunications consultant and Vice President of Competitive Strategies Group, Ltd., provided rebuttal testimony on behalf of CTC echoing other CTC witnesses that the assignment of an end-user's contract to CTC does not result in service termination. The telecommunications service remains intact and is not terminated, disconnected, or discontinued in any way. The only modifications made are changes to the billing telephone number to reflect that CTC is the new customer of record. In a resale setting, where the reseller assumes the entire price, term, and other obligations of the customer's contract, there is no stranded investment or other sunk costs that would justify termination penalties.

Ms. TerKeurst then addressed the Transfer of Service provision in Bell Atlantic's tariffs. She stated that this provision is clearly limited to the situation when one retail end-user vacates the premises and a new retail tenant wants the existing service to be continued, and that this tariff language can only be interpreted in the context of pre-1996 Act conditions, since the tariff provision became effective on June 9, 1995. As further evidence of the limited applicability of these tariffs, Ms. TerKeurst pointed out that Bell Atlantic allowed assignment of retail contracts to resellers until early 1998, implying Bell Atlantic interpreted its tariffs in a manner inconsistent with its current interpretation.

Ms. TerKeurst concluded that allowing assignment without termination penalties could only benefit customers by affording them the ability to choose among a broader range of services from competing providers, with expected lower prices and higher service quality. Bell Atlantic's present policy acts as an entry barrier to and harms competition because resellers have to overcome the financial consequences of unreasonable termination penalties before they can capture customers with existing service arrangements.

### 3. The Division of Public Utilities and Carriers

The Division outlined its position in December 23, 1998 correspondence to the Commission after review of the direct and rebuttal testimony filed by CTC and Bell Atlantic. The Division concluded that Bell Atlantic's practice of charging termination fees upon assignment is an unreasonable condition and limitation on the resale of telecommunications services, in violation of the Act. In particular, it was the Division's position that the practice violates Section 251(c)(4)(b) (which provides that an ILEC has a duty not to impose unreasonable or discriminatory conditions or limitations on the resale of such telecommunications services) and Section 251(b)(1) (which provides that each local exchange carrier has the duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunication services).

The Division rejected Bell Atlantic's claim of not being made "whole" upon assignment, as well as the notion that a non-competitive market is better for Bell Atlantic and the customer. The Division noted that the policy behind the Act is for the local exchange to be competitive, and that any argument from Bell Atlantic which does not serve this policy is irrelevant. Moreover, the Division contended that termination fees are not a substitute for the inability to market additional services.

The Division further noted that charging termination fees is a change in policy in contravention of Bell Atlantic's representation that the NYNEX/Bell Atlantic merger would not result in any operational charges which would affect ratepayers.

The Division specifically addressed four issues in which Bell Atlantic claims the right to treat an assignment as a termination:

Bell Atlantic argued that when an end-user attempts to transfer a Bell Atlantic contract to a reseller, the retail service is being terminated. In response, the Division noted that

there is no provision in the contract stating that an assignment constitutes a termination (thereby triggering termination fees). The Division concluded that Bell Atlantic changed its position in order to forestall resellers from taking assignment of the contracts and retain Bell Atlantic's competitive advantage.

Bell Atlantic argued that its "transfer of service" provisions prohibit the substitution of one customer for another, and that an assignment constitutes a substitution. The Division countered that this was meant to address the case where an end-user is substituted for another end-user (not a reseller), to protect against concerns in the credit, class of service, and volume arenas. In any case, the Division contended that, even if the "transfer of service" provisions were construed as Bell Atlantic proposed, they are anti-competitive and in violation of the Act.

In response to Bell Atlantic's argument that it is not made "whole" upon assignment because the opportunity to market additional services to the customer is lost, the Division pointed out that under an assignment, Bell Atlantic receives everything it would without the assignment, except a built-in competitive advantage. This is just the type of advantage the Act was designed to remove.

Finally, in response to Bell Atlantic's assertion that the imposition of termination fees are necessary to minimize customer confusion, the Division responded that minimizing customer confusion is not an excuse for engaging in anti-competitive practices; there are a number of less onerous informational means to achieve this goal.

The Division concluded by stating that as there are no anti-assignment clauses in the Customer Specific Pricing Contracts, such contracts are freely assignable. The Division added that, although not at issue in this case, even express restrictions on assignment may be unreasonable or discriminatory under the Act.

### C. Commission Findings

Having considered the testimony, exhibits, and arguments in this docket, as well as correspondence received from Bell Atlantic customers, the Commission finds the arguments advanced by CTC and the Division to be persuasive. Despite the often complex, and sometimes conflicting, evidence presented, this result rests upon some very basic principles.

In 1996, the Act was passed to introduce competition into the local telephone market. The Act created ways to facilitate this competition. For instance, Sections 251 and 252 of the Act require ILECs such as Bell Atlantic to execute interconnection agreements with other telecommunications carriers to allow access to the ILEC's infrastructure. This access is facilitated by either purchasing network elements to create a service or by buying the furnished service for resale to consumers. The Act protects and fosters "true competition" by not allowing the ILEC to use its market power to stymie competition. Specifically, Section 251(b) of the Act states that the ILEC has the duty "not to prohibit and not to impose unreasonable or discriminatory conditions or limitations" on the resale of its telecommunication services. Likewise, Section 251(c)(4) of the Act prohibits an ILEC from imposing "unreasonable or discriminatory conditions or limitations on the resale of such telecommunications service".

New market entrants may choose to execute a Resale Service Agreement with Bell Atlantic. This means of market entry is likewise subject to the Act's competitive protections. The Resale Service Agreement sets forth the process by which the Act and its pro-competitive mandate will be implemented as between Bell Atlantic and the new entrant.

We find that Bell Atlantic's practice of charging termination penalties upon assignment of a contract to CTC is unreasonable and discriminatory, in violation of Section 251(b) and 251(c)(4) of the Act. This practice is in direct contravention of the Resale Service Agreement executed between

the parties and has the effect of forestalling competition mandated by the Act.

The FCC, in its local competition order, concluded that resale restrictions are presumptively unreasonable:

Recognizing that incumbent ILECs possess market power, Congress prohibited unreasonable restrictions and conditions on resale. Given the possibility that restrictions and conditions may have anti-competitive results, we conclude that it is consistent with the pro-competitive goals of the 1996 Act to presume resale restrictions and conditions to be unreasonable and therefore in violation of Section 251 (c)(4).

The burden to justify a resale restriction falls squarely on Bell Atlantic. We find that Bell Atlantic has not met this burden.

This Commission spoke to this issue in Docket No. 2518, stating that restrictions are not justified upon business services to be sold at resale by Bell Atlantic.

This case presents just the type of restriction prohibited by the Act and addressed by our prior decision. Bell Atlantic's change in policy has insulated a major portion of the Rhode Island market from competition (i.e., all Bell Atlantic customers under existing contracts) and represents an unreasonable restriction on resale. As Mr. Bouvier testified, there are customers of Bell Atlantic unable to switch to CTC solely due to the economic burden of having to pay termination penalties. We note how onerous these penalties can be, and that Bell Atlantic recovers windfall revenue if these penalties are assessed.

We are also concerned with the anti-competitive implications of a number of other actions recently taken by Bell Atlantic vis-à-vis CTC, including the discontinuance of wholesale discounts on non-contract usage, the introduction of carrier-to-carrier termination fees, the discontinuance of processing CTC's orders through wholesale channels, and the introduction of various assignment of service forms. We find credible Mr. Wieners' testimony that Bell Atlantic's policy change to processing CTC's resale orders through retail, instead of wholesale channels, is effectively forestalling the development of competition.

In addition, we are convinced that CTC's assumption of an end-user contract keeps Bell Atlantic "whole", because Bell Atlantic continues to receive revenues at full retail rates over the life of the contract, while avoiding the retail costs associated with servicing and billing the customer. Bell Atlantic's claim that it is foreclosed from marketing additional services to end-users just because a contract has been assumed is specious.

Further, we reject Bell Atlantic's argument that the "transfer of service" provisions apply to assumption of a contract by a reseller. Those provisions clearly contemplate the situation in which one end-user attempts to stand in the shoes of another, and are inapposite in the resale context.

We are not impressed with Bell Atlantic's arguments regarding the need for termination penalties. In particular, we take issue with Bell Atlantic's assertion that termination penalties are needed to educate consumers. We agree with the Division that there are numerous ways to educate and inform consumers short of assessing economically burdensome penalties.

Our finding is consistent with recent rulings of the NHPUC and the NYPSC based upon similar sets of facts.

Finally, we find it highly inappropriate that Bell Atlantic altered its policy regarding assessment of termination penalties without prior Commission approval, especially in the absence of any change

in circumstances to justify the modification.

Bell Atlantic's actions in violation of the Act also constitute a violation of the Resale Service Agreement. There is much evidence surrounding the events that led to the signing of the Agreement, and interpretation of the clauses within the Agreement. We find CTC's version of events credible, including CTC's justified reliance on representations made by Bell Atlantic to CTC prior to and during Resale Service Agreement negotiations, and conclude that Bell Atlantic has not acted in good faith under the terms of the Agreement.

The assessment of termination penalties, also prohibited under the Act, is likewise a violation of the Resale Service Agreement. The Agreement is designed to implement the Act's pro-competitive policy. The clauses in the Agreement must be read in the context of furthering these competitive goals. Accordingly, this Commission finds § 6.3.1.1(b) of the Agreement controlling, as clearly contemplating CTC assuming an existing end-user account for service as a reseller. Any Bell Atlantic argument to the contrary is inconsistent with Bell Atlantic representations made to CTC, the policy behind the Act, and its implementation.

Since we have found Bell Atlantic in violation of the Act and the Resale Service Agreement executed pursuant to the Act, we do not deem it necessary to rule on CTC's complaint regarding violation of state law. We note that Rhode Island law does not preclude the assignment of contracts, in the absence of an anti-assignment provision. However, this Commission takes very seriously any discriminatory action towards customers, and will not hesitate to act if such practices continue.

Finally, we stress that this ruling applies to the CTC contract and any other contracts, executed prior to the date of this order, which contain the same, or substantially identical, language. It does not apply to anti-assignment clauses that may be inserted in future contracts. Although the Commission has refused to permit any such clauses to take effect prospectively, the issue is squarely presented in Docket No. 2676 and will be resolved in those proceedings.

Accordingly, it is

(15920) ORDERED:

1. Bell Atlantic shall resume its relationship with CTC and any affected end-users, as that relationship existed prior to January 21, 1998 under the Resale Service Agreement. This includes, without limitation, waiver and repayment of termination fees on end-user contracts assumed by CTC, allowing the wholesale discount on non-contract usage, processing CTC orders through wholesale channels, no imposition of carrier-to-carrier termination fees, and no requirement that CTC execute assignment of service agreement forms.

Anti-assignment clauses in existing or newly executed Bell Atlantic contracts are declared void *ab initio*, pending the outcome of this Commission's Notice of Inquiry in Docket No. 2676 regarding this specific matter.

3. Bell Atlantic shall act in accordance with all other findings and instructions contained within this Report and Order.

EFFECTIVE AT PROVIDENCE, RHODE ISLAND PURSUANT TO AN OPEN MEETING DECISION ON JANUARY 12, 1999. WRITTEN ORDER ISSUED JULY 21, 1999.

**PUBLIC UTILITIES COMMISSION**

James J. Malachowski, Chairman

Kate F. Racine, Commissioner

Brenda K. Gaynor, Commissioner