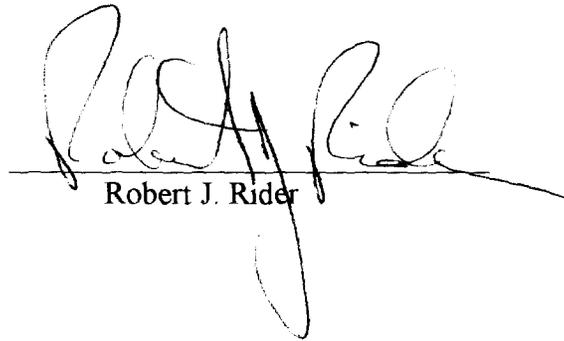


I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 25, 1995



Robert J. Rider

Nondisclosure Agreement

1. This nondisclosure and protective agreement (the "Agreement") is effective this ___ day of ___, 1995, by and between Bell Atlantic-New Jersey, Inc. and its counsel of record ("Bell Atlantic") and _____ (the party seeking access) and its counsel of record in all phases of the investigation of the competitively sensitive aspects of Bell Atlantic's tariff for commercial video dialtone service in Dover Township, New Jersey (Transmittal Nos. 741, 786), including administrative and judicial review. Materials subject to this Agreement may not be disclosed after conclusion of the tariff investigation and must be returned to Bell Atlantic.
2. Whereas, _____ (the party seeking access) has requested that Bell Atlantic provide certain vendor pricing information that was redacted in preparing the referenced transmittals, and Bell Atlantic has agreed to make such vendor pricing data available to parties to the investigation, subject to the protection of a nondisclosure agreement;
3. Whereas, the information requested by _____ (the party seeking access) constitutes competitively sensitive commercial and financial information of Bell Atlantic and its vendors;
4. Accordingly, the parties hereto and their counsel agree that the following terms and conditions shall govern the use of such information provided to _____ (the party) by Bell Atlantic in the context of this proceeding;
5. For purposes of this agreement, "competitively sensitive information" means commercial information or trade secrets, within the meaning of 5 U.S.C. § 552(b), which Bell Atlantic redacted in its May 5, 1995 filing in this proceeding;
6. Competitively sensitive information disclosed to _____ (the party) under the terms of this Agreement shall be segregated from material deemed non-competitively sensitive;
7. Competitively sensitive information may be disclosed:
 - (a) to outside counsel engaged to represent parties in this tariff proceeding, and such counsel's paralegals and clerical staff, to the extent reasonably necessary to render professional services in this proceeding, provided that such counsel is not representing, advising or otherwise assisting, directly or indirectly, providers of video delivery products or services in devising plans to compete against Bell Atlantic Corporation, its affiliates or subsidiaries, or against Broadband Technologies, Inc., a vendor to Bell Atlantic for this service; and

(b) to any non-employee of _____ (the party) requested by _____ (the party) to furnish technical or other expert services, or otherwise to prepare material, for the investigation of the tariff that is the subject of this proceeding, provided that such persons are not representing, advising or otherwise assisting, directly or indirectly, providers of video delivery products or services in devising plans to compete against Bell Atlantic Corporation, its affiliates or subsidiaries, or against Broadband Technologies, Inc., a vendor to Bell Atlantic for this service.

8. Disclosure of confidential information shall be limited to persons ("authorized recipients") who sign the Access Agreement, annexed as Attachment A, stating that they have read this Agreement and consent to be bound by its terms. Authorized recipients may make arrangements to view the confidential information at Bell Atlantic's office at 1133 20th Street, N.W., Washington, D.C., by contacting Marie Breslin at (202) 392-6990.
9. The documents and computer disks containing material which is subject to this Agreement shall be marked: "Contains designated competitively sensitive material of Bell Atlantic." In the event any additional designated material is provided to signatories pursuant to this Agreement, it shall be similarly identified in supplemental attachments.
10. Any competitively sensitive information produced, revealed or disclosed to outside counsel or outside experts or consultants by Bell Atlantic in this proceeding shall be used exclusively for purposes of participating in this proceeding, including any appeals, and shall not otherwise be used or disclosed for any other purpose. The limitation on the use or disclosure of any competitively sensitive information disclosed during this proceeding shall be construed to prohibit disclosure of the competitively sensitive information, and to prohibit making decisions, participating in any decision-making processes, or rendering advice, legal or otherwise, wherein any information or knowledge derived from such competitively sensitive information is utilized in any manner other than for purposes of this proceeding.
11. _____ (the party) may, in any pleading it files in this proceeding, reference the competitively sensitive information disclosed under this Agreement, but only if it observes the following procedures:
 - (a) Any portions of the pleading that contain competitively sensitive information are physically segregated from the remainder of the pleading;

- (b) The portions containing competitively sensitive information are plainly marked as such and delivered in sealed envelopes to William F. Caton, Secretary, Federal Communications Commission, for filing under seal, and to other recipients authorized to have access under this Nondisclosure Agreement and the Commission's rules. Information so provided shall be maintained by the Commission and all recipients in sealed envelopes or containers and a statement in the following form placed on such envelope or container:

THIS ENVELOPE IS NOT TO BE OPENED NOR THE CONTENTS THEREOF TO BE DISPLAYED OR REVEALED EXCEPT PURSUANT TO THE NONDISCLOSURE AGREEMENT AUTHORIZED IN CONNECTION WITH BELL ATLANTIC'S TARIFF TRANSMITTAL NOS. 741 AND 786;

- (c) Each page of the filing that contains competitively sensitive information subject to this Agreement is clearly marked: "Competitively sensitive pursuant to Nondisclosure Agreement entered into on _____, 1995;" and
- (d) The competitively sensitive portion of the pleading shall be served only upon the Commission and Bell Atlantic, unless the Chief of the Common Carrier Bureau directs otherwise.
12. Disclosure of materials described herein shall not be deemed a waiver by Bell Atlantic or any vendor in any other proceeding, agency or court, of any privilege or entitlement to competitively sensitive information that could be raised. _____ (the party), as a condition to viewing the competitively sensitive information subject to this Agreement, agrees:
- (a) Not to assert any such waiver;
- (b) Not to use information derived from review of any competitively sensitive materials to seek disclosure in any proceeding other than the Dover tariff investigation; and
- (c) That accidental disclosure of competitively sensitive information shall not be deemed a waiver of the privilege.
13. In the event that any competitively sensitive information is released or otherwise becomes publicly available other than as a result of a violation of this Agreement or other unlawful means, the nondisclosure provisions of this Agreement shall cease with respect to such competitively sensitive information, but shall remain in full force and effect as to

the competitively sensitive materials not so released or made publicly available.

14. Outside counsel may request Bell Atlantic to make one copy of competitively sensitive information (of which counsel must acknowledge receipt pursuant to this Agreement), and counsel may thereafter make additional copies but only to the extent required and solely for preparation and use in the Dover tariff investigation, and provided further that all such copies shall remain in the possession and custody of counsel at all times. Competitively sensitive information may not be provided or disclosed in any manner by the Commission or any authorized recipient hereunder to any individual with operational responsibilities at any party or intervenor or to anyone else whatsoever except those designated as permissible recipients hereunder. Counsel shall make no further copies of any competitively sensitive information or portions thereof but shall return to Bell Atlantic immediately after the final decision in the Dover tariff investigation (including any administrative or judicial review thereof) all competitively sensitive information originally provided by Bell Atlantic as well as copies made, and shall certify that no quotes or excerpts from such competitively sensitive information have been retained by any person having access.
15. Upon conclusion of the Dover tariff investigation, including any appeals that may be taken, the competitively sensitive information, other than the competitively sensitive information that has been made part of the formal record in this proceeding in accordance with paragraph 11 hereof, shall be returned to Bell Atlantic, or shall be destroyed pursuant to written permission from Bell Atlantic. Upon conclusion of this proceeding, notes, memoranda or other written material of any kind containing competitively sensitive information or summaries or compilations of the whole or any part thereof (other than those which constitute attorney work products) shall be tendered to Bell Atlantic or shall be destroyed pursuant to written permission from Bell Atlantic.
16. This Agreement shall continue in full force and effect until the Dover tariff investigation, including all administrative and judicial appeals, has ended and _____ (the party) has complied fully with the terms of this Agreement.
17. Notwithstanding the expiration of this Agreement at the end of the proceedings, the terms and conditions of this Agreement shall continue to apply to any competitively sensitive information provided by Bell Atlantic to _____ (the party) hereunder.

18. This Agreement shall benefit and be binding upon the parties hereto, their counsel, and each of their respective heirs, successors, assigns, affiliates, subsidiaries, and agents.
19. This agreement shall be governed in accordance with the laws of the Commonwealth of Virginia.

[PARTY]

Signature
(Print name)
Business address

Business telephone
Date signed

BELL ATLANTIC

Signature
(Print name)
Business address

Business telephone
Date signed

RATES, TERMS AND REGULATIONS
FOR VIDEO DIALTONE SERVICE
IN DOVER TOWNSHIP, NEW JERSEY

Transmittal Nos. 741, 786
CC Docket No. 95-145

ORDER DESIGNATING ISSUES FOR INVESTIGATION

BELL ATLANTIC DIRECT CASE
OCTOBER 26, 1995

**BELL ATLANTIC DIRECT CASE
CC DOCKET NO. 95-145**

PRELIMINARY ISSUES-Information Request (par. 10):

Pre(1) We direct Bell Atlantic to provide the Commission all of the material that was redacted from Bell Atlantic's May 5, 1995 cost study material.

The information redacted from Bell Atlantic's May 5, 1995 cost study material is pricing information considered to be proprietary by Bell Atlantic or its vendors or information that, if provided, would lead to the direct calculation of this proprietary information. After further review and discussion with vendors, Bell Atlantic continues to seek proprietary treatment for a limited subset of pricing information. For the reasons explained in more detail in the Introduction and Summary to Bell Atlantic's Direct Case, supra, Bell Atlantic has requested that the Commission withhold such information from public inspection, pursuant to 47 C.F.R. §§ 0.457(d), 0.459 and 0.461, and restrict disclosure to those parties who agree to be bound by the terms of the Nondisclosure Agreement, attached as Exhibit C to the Introduction and Summary.

Certain previously redacted data is disclosed in the revised copy of the May 5, 1995 cost study material attached in a separate volume as Attachment Pre(1) to the publicly filed version of the Direct Case.

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Pre(2) Bell Atlantic must provide the remaining projected costs that will be incurred in completing and operating the system. Such projections should cover, at a minimum, from now until the time in which demand for the service is projected to mature.

All tariff cost studies are based on estimates, at a particular point in time, of the projected costs to provide a particular service -- here, video dialtone service. Those projections include only the direct costs of the facilities used to provide video dialtone service, plus a reasonable allocation of common equipment. They are not based on an actual engineering construction plan; instead, they are based on projections of the "average" characteristics of the facilities, equipment and labor required to implement such a plan. These are the only complete projections Bell Atlantic has and, because they are not updated or monitored, they do not permit Bell Atlantic to calculate "remaining" projected costs. They do, however, allow Bell Atlantic to be responsive to that portion of the Commission's request that asks for a calculation of the cost of constructing and operating the "system", i.e., all video-only investment plus the total cost of facilities placed for joint use by video dialtone and other services.

The projected construction costs of the integrated broadband system that Bell Atlantic will utilize to provide video dialtone services in Dover Township can be calculated from Bell Atlantic's tariff cost study estimates of the investment requirements for each rate element and demand projections, where relevant to build quantities. The total projected construction costs are \$68,402,434, as shown in Attachment Pre(2). The projected costs include all direct video dialtone cost plus all shared equipment that will be utilized by multiple services, one being video dialtone. Details regarding Bell Atlantic's projected demand estimates are provided in response to

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Information Request Pre(3).

The projected costs for operating the incremental video dialtone portion plus all of the shared portion of the Dover Township system can also be calculated from the tariff cost study documentation by considering the Administration and Maintenance components of the annual cost calculations performed for each rate element. These annual costs were considered for the 5 years expected for the service to mature, and where appropriate, for the number of each rate element demanded in each year. Total projected operating costs are: \$23,437,667, as shown in Attachment Pre(2). Total projected construction and operating costs equal \$91,840,101.

In contrast, certain actual expenditures to date can be reported from Bell Atlantic's accounting records for the Dover Township build. These records include the full cost of all facilities to be constructed to provide present and future narrowband and broadband services in Dover Township, including video dialtone.¹ For the reasons described in more detail below, it is not possible to compare fairly the projected costs developed for purposes of the tariff filing to the actual expenditures reported to accounting records in order to calculate "remaining projected costs."

Actual capital expenditures associated with broadband network construction, including the Dover Township video dialtone project, based on standard financial reporting, through August 1995 amounted to \$50,807,690.

As described above, projected construction costs developed from the tariff and actual

¹ Once the Dover Township system is ready for service, Bell Atlantic will create subsidiary accounting records to categorize actual construction costs to the appropriate service account.

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capital expenditures cannot be fairly compared. Projected costs estimated from a tariff filing represent long run incremental costs associated with the equipment and facilities placed or utilized for or by the proposed service. Actual expenditures are the capital dollars required to engineer, furnish and install the facilities and equipment required in the build area, reported in accordance with the Commission's accounting rules. Such figures include expenditures for the placement of excess capacity to support future growth. Standard engineering practices recommend that when equipment and facilities are placed, sufficient capacity is included to meet future needs -- thereby avoiding duplicative expenses and municipal disruption in the future.

The following chart summarizes the major differences between projected construction costs developed from the tariff cost study and actual capital expenditures for particular network components:

Network Component	Cost Study Investments	Actual Expenditure Report
Fiber/Copper	Video dialtone pays for the actual number and mileage of fiber or copper cables utilized plus a proportionate share of poles and conduit calculated from investment-based factors, e.g., if the service utilizes 2 fibers within a 216 fiber sheath, it pays 2/216th of the installed cost of that sheath without regard to whether the actual fiber sheath already exists or is planned for construction.	Field personnel report the full cost of actual construction of fiber and copper cables to the project estimate-- without consideration to the ultimate use of all fibers within the sheath, e.g., when field personnel construct an underground fiber cable facility capable of transporting 216 fibers, the entire construction cost, including conduit placement, is reported.

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Network Component	Cost Study Investments	Actual Expenditure Report
Fiber and Digital Distribution Equipment (fiber distribution equipment, digital cross connect equipment, multiplexers)	Video dialtone pays for the actual number of terminations utilized on the distribution frames by system transport facilities plus a proportionate share of the common portions of the relevant equipment such as bays and powering cards.	Distribution equipment is part of the normal inventory of outside plant equipment and almost all interoffice facilities entering or exiting a central office or CEV do so through a distribution equipment. Field personnel report the actual equipment and installation costs associated with entire frames of fiber and digital distribution equipment to the project estimate -- without consideration for which services will ultimately utilize equipment terminations.
Power Equipment and Batteries	Power and common equipment investment is developed by applying an investment-based factor to equipment located in central offices and controlled environmental vaults.	Field personnel report the actual power equipment and battery equipment and installation costs.
Host Digital Terminal DS1 Cards	Because DS1 cards are the voice network connections to the HDT, they are not appropriately considered part of VDT costs. ²	When field personnel report host digital terminal equipment and installation costs, the DS1 card(s) are included.
Host Digital Terminal Interconnection Cards	VDT tariffed services pay for the Interconnection cards placed for their use.	When field personnel report host digital terminal equipment and installation costs, all Interconnection cards are included - even those that are placed now for use with the future introduction of future services.

² Arguably, the DS1 cards could have been considered voice only components within the shared plant. Including DS1 cards as voice-only components of the HDT would have served only to decrease the allocation of shared plant investment to video dialtone service.

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Pre(3) Further, Bell Atlantic must provide its forecasts of demand for video dialtone services under the tariff for the same time period.

In its January 1995 tariff filing,³ Bell Atlantic provided demand projections for video dialtone access links, broadcast and narrowcast service arrangements and messaging ports based on internal evaluation of the expected requirements of prospective programmer-customers on the Dover Township system. This initial projection was based on the mid-point of Bell Atlantic's five year demand projection.

Upon approval of Bell Atlantic's video dialtone channel reservation tariff,⁴ Bell Atlantic conducted its reservation process and received requests to reserve more channels than the video dialtone service tariff had estimated. Therefore, in its May 1995 tariff amendment,⁵ Bell Atlantic provided a revised revenue forecast based on the actual number of channels reserved.

Pursuant to the Commission's request, Bell Atlantic is now providing a 5-year market forecast of demand based on a current assessment of the needs of programmer-customers who have already reserved channel capacity on the Dover Township system and prospective programmer-customers who may purchase capacity on the system at a future date. This updated demand forecast is provided as Attachment Pre(3).

³ The Bell Atlantic Telephone Cos., Transmittal No. 741 (filed Jan. 27, 1995) ("Tariff").

⁴ *The Bell Atlantic Telephone Cos.*, Tariff FCC No. 10, Channel Reservation Deposit, 10 FCC Rcd 5036 (Com. Car. Bur. 1995).

⁵ The Bell Atlantic Telephone Cos., Transmittal No. 741-A (filed May 5, 1995) ("Amended Tariff").

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As illustrated by the demand projections, Bell Atlantic expects that, after the initial service introduction and once programmer-customers gain experience with the system, demand will migrate from month-to-month term purchases to 5-year term purchases. This migration will allow programmer-customers to take advantage of the tariff's term discounts.

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Pre(4) Bell Atlantic must also provide the dollar amounts of the investment expenses, taxes and other costs and cost components associated with the video dialtone service and explain the methodology used to derive these amounts.

Dollar amounts of the investment expenses, taxes and other costs and cost components associated with each of the video dialtone service rate elements and network components are provided as Attachment Pre(4).

Investments and resultant costs for broadcast and narrowcast channels were determined by the following methodology:

- First, circuit layouts representing the typical outside plant configurations⁶ found in the service area were supplied by Bell Atlantic's local engineers. Based on these layouts and the design of the fiber-to-the-curb system, Bell Atlantic network engineers and planners, in cooperation with equipment vendors, determined the network components and materials necessary to provide video dialtone service to potential end-user subscribers in the service area. The equipment was then categorized by Part 32 accounting classifications.

- Second, vendor prices for this equipment and material were determined by individual component element (e.g., bays, shelves, plugs, power supplies and other required piece parts). Based on the analysis of the planned network and the capacity characteristics of the particular equipment and facilities, the total quantities of equipment and material were determined. Costs

⁶ Amended Tariff, Cost Study at Tab 4B (plant layouts) (“Cost Study”).

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for engineering, furnishing and installing each network component were added to these prices based on company and vendor estimates of the labor required for each component.

- Third, for equipment to be located in a company central office building, a factor derived from company accounting records⁷ was applied to the associated investments to determine the related power and common equipment investments. The power and common equipment investments reflect the required central office investments in auxiliary frames, lights, rolling ladders, power, office alarms and the like. Land and building factors, also derived from company accounting records, were then applied to the investments to develop the proportionate share of investment in land and floor space associated with the equipment. Pole and conduit factors were applied to outside plant investments to develop the proportionate share of pole and conduit investments associated with these outside plant facility investments.

- Fourth, the investments were divided by the number of potential subscribers capable of being served by the particular piece of equipment, assuming study specific utilization estimates, to arrive at the investment per potential subscriber for each component in each Part 32 category.

- Fifth, the investment per potential subscriber was divided by the available channels on the system to determine the investment per channel per potential subscriber, per Part 32 category. In this case, the channel capacity of the system is 383 channels, equal to the 384 channels of 6 Mbps

⁷ *Id.*, at Tab 7 (development of land, building, power and common equipment, pole, and conduit factors).

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capacity the system is capable of handling minus the 1 channel that will serve as the menu channel for the system.

- Sixth, these figures were multiplied by the appropriate cost factor for each component's Part 32 account to determine the recurring annual cost per category, per channel, per potential subscriber. The purpose of the annual cost factors is to translate investment into annual recurring costs. Factors are applied to the total investment, by account, to calculate the recurring annual costs, both capital (depreciation, income tax and cost of money) and expense (maintenance, administration and other).⁸

- Finally, investment for each equipment category was totaled to arrive at total investment per channel per potential subscriber.

In completing the above steps, all equipment and facilities were designated as either video only, voice only or shared between both. The ratio of video only investments to the sum of video only and voice only investments was then developed and used to allocate the shared investment to

⁸ The maintenance cost factor was calculated based on the same factor applied to cable and wire and circuit equipment that is used for loop plant utilized for interstate access services. Fiber specific factors are developed to reflect the fact that maintenance costs for fiber plant are typically lower than for copper. Similarly, the administrative expense factor -- applied to the costs required to operate the business and deliver service -- is the same factor used to calculate administrative expenses for such loop plant equipment. The cost of money factor is based on the company's anticipated costs of obtaining future debt and equity capital. The depreciation factor is based on the prescribed economic lives of equipment in the particular account and the tax factor is computed based on federal and state tax rates, as well as the effect of debt interest and expense deductions used in calculating income taxes.

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video dialtone.

The identical methodology, except for the fourth and fifth steps, was employed to determine the costs associated with video dialtone access links and messaging ports.

Further detail regarding the types and quantities of equipment found in each investment category and Bell Atlantic's study methodologies is found in Bell Atlantic's tariff Description and Justification⁹ and in the cost study information filed as a tariff amendment.¹⁰

⁹ Tariff, D&J, § 3.

¹⁰ Amended Tariff, Cost Study

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Pre(5) Pursuant to the Commission's Video Dialtone Reconsideration Order, Bell Atlantic is required to record its video dialtone costs in subsidiary Part 32 accounting records. The booked portion of the video dialtone costs should be readily available from these records.

All of the plant investment associated with the broadband fiber to the curb network being built in Dover Township, New Jersey, which includes equipment that will be used to provide video dialtone transport, is currently charged to Part 32.2003 Account, "Total Telecommunication Plant Under Construction".

As required by the Commission's rules, construction costs remain in the Part 32.2003 Account until the telecommunications plant "is completely ready for service".¹¹ Concurrent with service availability in Dover, subsidiary records (i.e., basic property records) for video dialtone costs will be established.

¹¹ *See* 47 C.F.R. § 32.2003(d); *see also* response to Information Request B(4).

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ISSUE A: **Has Bell Atlantic reasonably assigned the costs associated with primary plant among wholly dedicated video dialtone costs, wholly dedicated telephony costs and shared costs?**

Yes, Bell Atlantic has reasonably assigned costs associated with primary plant among wholly dedicated video dialtone, wholly dedicated telephony and shared costs.

Bell Atlantic based its cost development on the requirements of the Reconsideration Order.¹² As required in that Order, direct costs of Bell Atlantic video dialtone service include the primary plant investment, incremental costs associated with shared primary plant, a reasonable allocation of other shared plant, and an assessment of other costs, including maintenance and administration expenses. In addition, all video dialtone services were assigned a share of overhead costs.

Bell Atlantic has appropriately examined the components of the network it is constructing and assigned costs on the basis of each component's function and use in the network in providing each service.¹³ Bell Atlantic directly assigned to video dialtone service the investment associated with any network equipment used only to provide video dialtone service. Similarly, Bell Atlantic directly assigned to voice service the investment associated with any network equipment used

¹² *Telephone Company-Cable Television Cross-Ownership Rules*, 10 FCC Rcd 244 at ¶¶ 217-20 (1994) (“Video Dialtone Reconsideration Order”).

¹³ Bell Atlantic Telephone Cos., Tariff FCC No. 10, Trans. No. 741, Reply of Bell Atlantic, Jackson Affidavit at ¶¶ 8 - 17 (filed March 6, 1995) (“Jackson Reply Affidavit”) (explaining how each network component is appropriately characterized as voice, video or shared, depending upon its function and use). A copy of this affidavit is also provided here in Attachment A.. *See also* Letter from Janice Obuchowski, counsel to BroadBand Technologies, Inc., to Mr. William Caton, Acting Secretary, Federal Communications Commission (dated May 19, 1995).

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only to provide voice service.

A significant amount of investment in a joint use, integrated network is appropriately characterized as shared investment, because it supports both these services (as well as other existing and future services) and is not used exclusively by either. Bell Atlantic allocated to video dialtone service a portion of these shared investments based on the relative proportions of directly attributable voice and video costs.¹⁴ Economists agree that, once incremental costs have been directly assigned on the basis of cost-causation, any method of assigning remaining common or shared costs is inherently arbitrary.¹⁵ However, Bell Atlantic's method of allocation is reasonable. It is based on the actual functions performed by each equipment component, moreover, the Commission has approved use of that type of allocation methodology in other contexts.¹⁶

¹⁴ Tariff, D&J, § 3.2.

¹⁵ Bell Atlantic Telephone Cos., Tariff FCC No. 10, Trans. No. 741, Reply of Bell Atlantic, Taylor Affidavit at ¶ 10 (filed March 6, 1995) ("Taylor Reply Affidavit"). A copy of this affidavit is also provided here in Attachment A.

¹⁶ *See, e.g.*, 47 C.F.R. §§ 64.901, 36.151(c).