Issue M-Information Request (par. 53):

M(1) We direct Bell Atlantic to justify why it is reasonable to charge access service customers less for late payments than video dialtone customers.

Bell Atlantic proposed an 11.25% interest rate for late payments to ensure that the cost of capital necessitated by customer failure to remit charges for services rendered would be equally offset by the interest assessed for such late payments. An 11.25% interest rate for late payment charges is "revenue neutral" and is based on Bell Atlantic's current cost of capital. Dr. James H. Vander Weide discussed cost of capital and rate of return in his affidavit supporting Bell Atlantic's positions in the price cap proceedings and supported the continued use of the Commission approved 11.25% cost of capital.[95]

Because this interest rate recovers Bell Atlantic's cost of capital, it is reasonable. While not at issue here, the 9% interest rate Bell Atlantic charges its access customers is below the cost of capital, and therefore under-recovers the cost to Bell Atlantic for late payments.

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[95] ***See*** Affidavit of Dr. James H. Vander Weide, filed in support of Reply Comments of Bell Atlantic, CC Docket No. 94-1, ***Price Cap Performance Review for Local Exchange Carriers*** (filed June 28, 1994).

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Issue N: **Is it reasonable for Bell Atlantic not to pay interest on deposits it holds under the Channel Reservation Deposit?**

As set forth below in response to Information Request N(1), where a programmer-customer voluntarily decides to prepay for services in exchange for the benefit of certainty in obtaining channel capacity, it is reasonable for Bell Atlantic not to pay interest on that payment. Moreover, the Channel Reservation Fee portion of the tariff has already been approved by the Commission and can not be the subject of this investigation. The terms and conditions of the Channel Reservation Deposit were included in the portions of Bell Atlantic Transmittal Nos. 741 and 756 that took effect on March 13, 1995. That portion of the tariff was reviewed by the Commission, objections were considered and rejected, and the Channel Reservation Deposit terms and conditions were allowed to go into effect ***without suspension and investigation***.[96] The Commission cannot use this proceeding, which deals exclusively with the remaining issues of the tariff, to reopen consideration of the portion of the tariff already approved.

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[96] ***Channel Reservation Deposit***, 10 FCC Rcd 5036 (Com. Car. Bur. 1995).

Issue N-Information Request (par. 54):

N(1) Bell Atlantic must explain to the Commission why it is reasonable for Bell Atlantic to hold over $500,000 from programmers, interest free, for what may be as long as 8-9 months.

Potential programmer-customers need not pay any deposit. When the service is operational, they may purchase tariffed services to the extent that capacity is available. In order to plan for facilities and marketing, some programmer-customers require the ability to lock-in a set amount of capacity in advance of an actual service date. For these programmers, Bell Atlantic offered an option of reserved channel capacity.

Like other businesses that offer the ability to lock-in capacity, Bell Atlantic required a prepayment for initial services to be rendered.[97] As previously explained, the prepayment requirement also serves to "protect Bell Atlantic and other programmer-customers against the process being gamed with frivolous requests."[98] Effectively, the customer agrees to prepay for its service in exchange for the benefit of certainty in obtaining channel capacity. The customer evaluates the benefits of certainty against the cost of prepayment. If the customer finds the cost

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[97] A prepayment is different from a security deposit. A security deposit is ordinarily required as protection against credit risk, and is held for the life of the contract. In contrast, a prepayment is use for other purposes, for example, to allocate limited capacity, and is applied to initial payments for services when rendered. For example, airlines selling capacity in passenger planes require prepayment to lock-in a reserved seat. Moreover, as is typical in such situations, the airlines pay no interest on the deposit. Other industries with similar reservation options include the hotel, theater, professional sports and concert industries.

[98] Letter from Marie Breslin, Bell Atlantic, to Ms. Geraldine A. Matise, Chief-Tariff Division, Federal Communications Commission, at 2 (dated May 5, 1995).

too high, it need not prepay anything, and can still purchase available capacity at the service date. Because control remains with the customer, there should be no obligation for Bell Atlantic to pay interest.

N(2) Bell Atlantic should also explain why, if the interest free provision is reasonable for the channel reservation deposit, such a provision is not equally reasonable for late payments from programmers to Bell Atlantic.

Assessment of a fee for a delinquent payment is standard commercial practice in almost every industry. The purpose of the interest charge for late payments is two-fold. First, it compensates Bell Atlantic for delay in payment for services that have already been rendered. Second, it serves as a deterrent to late payment by programmer-customers, who could otherwise delay payment without incurring any financial penalty.

The programmer-customer can avoid any late payment charge by paying in accordance with the tariff requirements. If, however, a programmer-customer elects to violate the terms of the tariff, it must pay the price -- the time value of the late payment. Unlike the reservation fee, the late payment interest charge only comes into play when a programmer-customer violates a term of the tariff. In both situations, the programmer-customer decides when to pay and evaluates the burdens or benefits of late or early payment. As currently structured, the fees provide appropriate incentives and costs. It would be unfair, both to Bell Atlantic and to other programmer-customers, to allow a reservation without cost, or a late payment without interest charge.

ANDREWS OFFICE PRODUCTS CAPITOL HEIGHTS, MD (K)

Issue O: **Do the Commission's video dialtone policies require Bell Atlantic to serve part-time or one-time users and , if so, what are reasonable rates, terms, and conditions for part-time or one-time use of the video dialtone system?**

Bell Atlantic's proposed tariff is consistent with Commission policy. The Commission encourages individual carriers to offer the services they believe best meet market demand in their service area,[99] and will not require provision of particular individual services and technologies.[100] Bell Atlantic's decision not to offer a different tariff option to programmer-customers desiring only part-time service is a commercially reasonable decision. Moreover, to the extent a real market exists for such services, programmer-customers acting as resellers are likely to meet that demand more effectively.

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[99] Title II only authorizes the Commission to ensure that rates for services that telephone companies choose to offer on a common carrier basis are reasonable and non-discriminatory. It does not allow the Commission to compel carriers to offer other services that they do not, for business reasons, choose to provide. *See Southwestern Bell Tel. Co. v. FCC*, 19 F.3d 1475, 1481(D.C. Cir. 1994)

[100] *See Telephone Company-Cable Television Cross-Ownership Rules*, 7 FCC Rcd 5781 at ¶ 13 (1992).

Issue O-Information Request (par. 57):

O(1) We require that Bell Atlantic justify why a 3-month minimum service agreement is necessary and reasonable.

The three month minimum service agreement provision is necessary and reasonable as it avoids a constant churn of programmer-customers that could cause customer confusion, create additional administrative burdens for Bell Atlantic and otherwise undermine the viability of the video dialtone platform. The minimum term is also a commercially reasonable requirement--three months is a reasonable period in which to initiate and market a new service and determine market acceptance, without making a burdensome, long-term commitment. To the extent there is market demand for shorter term arrangements, programmer-customers may resell capacity.

The overall value of the video dialtone platform is enhanced by stability among the programmer-customers offering services to end-user subscribers. End-user subscribers benefit when they can find and choose many service providers offering a variety of content. Likewise, the platform gains value for programmer-customers when there are many subscribers connected to the platform to whom they can sell their services.

An analogy can be made to a shopping mall where different stores changed locations constantly. Customers would never find anything in the same place twice, and eventually grow discouraged and not return to the mall. In the case of the video dialtone platform, end-user subscribers faced with frequent changes with respect to channel assignments and content would become confused and discouraged, eventually abandoning video dialtone for the managed simplicity of the cable provider's competing platform.

Finally, the three month minimum commitment Bell Atlantic requires from programmers-customers offering service on the video dialtone platform appears reasonable given that it is far shorter than the standard three year minimum affiliation terms that govern agreements between the cable industry and the programmers who provide programming for cable operators to deliver over their own systems.[101]

[101] Standard affiliation agreements of such programmers as Home Box Office and Cinemax provide for three year minimum terms.

O(2) Bell Atlantic should also explain why the public would not benefit from providing part-time and one-time users with access to the video dialtone platform, even if such users are required to pay a higher rate for such access in order to compensate Bell Atlantic for any added costs incurred.

Bell Atlantic's video dialtone platform does permit part-time use of channels by programmer-customers. Due to the nature of the services currently being offered on the system, however, costs for broadcast channel transport do not vary by the amount of use a programmer-customer makes of its facilities. In order to charge a compensatory rate, Bell Atlantic would have to charge as much as the cost of a full time channel for part-time use.

Bell Atlantic offers access to the video dialtone platform via a video dialtone access link--a dedicated facility extending from the programmer-customer's designated location to Bell Atlantic's video distribution office, which delivers the programmer-customer's 6 Mbps video channels to the video dialtone platform. Due to the dedicated nature of this facility and the required termination points (programmer-customer premises and video distribution office), a part-time programmer-customer would still require this connection even if not using it full time. There is no cost difference for providing an access link on a full time basis as opposed to on a part-time basis.

Broadcast channels are also dedicated in nature. System capacity of 6 Mbps is purchased by the programmer-customer for the transport of programming or information on a full-time or part-time basis at the programmer-customer's discretion. There is no switch function performed at the video distribution office that would permit two video dialtone access links to share a

broadcast channel; the ATM edge device merely assigns a fixed position on supertrunk transmitters to each individual access link input.

The concept of part-time use might be better accommodated through the establishment of an access facility where multiple part-time or one-time users might bring their content for digitization and distribution over the video dialtone system. In addition, programmer-customers might resell portions of their broadcast channel service to others by the week, day, hour or minute. Bell Atlantic believes that establishing such a facility may be a business opportunity for programmer-customers to resell capacity and is more appropriately left, with other secondary market opportunities, for the programmer-customers to explore. In fact, the ancillary services and support such programmer-customers could provide would much more effectively meet the market demand than simple part-time transport capacity from Bell Atlantic.

ANDREWS OFFICE PRODUCTS CAPITOL HEIGHTS, MD (K)

Issue P: **Is Bell Atlantic's four-hour minimum outage period prior to issuing a service credit reasonable? Is it reasonable to require programmers to notify Bell Atlantic of service problems before the four-hour limit begins to run?**

Yes, Bell Atlantic's four-hour minimum outage period prior to issuing service credit is reasonable. It is also reasonable to require programmer notification of service problems before the four-hour limit begins.

As set forth in greater detail below, Bell Atlantic will responsibly maintain video dialtone facilities and equipment by carefully monitoring the network and quickly diagnosing and repairing any problems encountered. As described in response to Information Request P(1), a four-hour outage period prior to refund compares favorably with existing practices already approved for other Bell Atlantic services and is a shorter period than required by many local franchise authorities for cable company service outage refunds. Requiring programmer-customers to notify Bell Atlantic of service problems also assures the most expeditious recognition that a service-affecting problem exists--to the benefit of programmer-customers, end-user subscribers and Bell Atlantic.

Issue P-Information Request (par. 60):

P(1) We direct Bell Atlantic to justify why a four-hour minimum outage prior to refund liability is reasonable.

Bell Atlantic recognizes its responsibility to maintain the facilities and equipment necessary to furnish video dialtone services to its programmer-customers. Bell Atlantic personnel consistently monitor the network, and actively work to prevent service disruptions before they occur. On rare occasions, there are unanticipated events that disrupt service. Bell Atlantic, in good faith, strives to diagnose and repair these problems as quickly as possible and to keep response time at a minimum. The four-hour window allows Bell Atlantic personnel a reasonable opportunity to implement the procedures necessary to repair all troubles.

A four-hour outage period prior to refund liability is well within Bell Atlantic's standard business practices and has been approved by the Commission for other tariffed services. For example:

- No credit allowance applies for any interruption of Switched Access and Directory Assistance services of less than 24 hours.[102]
- No credit allowance applies for any interruption of High Capacity DS3 Services with optical interfaces, or SONET Access Loop Termination service of less than 4 hours.[103]

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[102] Bell Atlantic Tariff FCC No. 1 -§ 2 (General Regulations) § 2.4.4.(B)(1).

[103] *Id.*, at §§ 2.4.4.(B)(5) and 2.4.4.(B)(10).

- No credit allowance applies for any interruption of Lightwave Facilities services of less than 48 hours from the time of the customer's trouble report.[104]
- A Special Access Service Guarantee credit allowance applies after a service interruption of 4 or more consecutive hours for certain Special Access Services, such as Voice Grade, WATS, Metallic, Telegraph, monthly Program Audio and Video, Wideband Data (DDS), and High Capacity (DS1 & DS3).[105]

In addition, Bell Atlantic's tariff provision for video dialtone service compares favorably with the service outage provisions deemed appropriate by the Commission.[106] It is not uncommon for local authorities to permit service outages of 24 hours or more before requiring customer refunds. For example, franchise agreements in Gaithersburg, MD; Fairfax City, VA; and Virginia Beach, VA hold cable operators liable for refunds only after service interruptions of 24 hours, while agreements in Norfolk, VA; Philadelphia, PA; and Pittsburgh, PA hold them liable after 48 hours.

Copies of the referenced tariff and franchise agreement pages are provided as Attachment P(1).

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[104] ***Id.***, at § 2.4.4.(B)(6).

[105] ***Id.***, at § 2.4.4.(B)(7).

[106] MM Docket No. 92-263, Implementation of Section 8 of the Cable Television Consumer Protection Act of 1992 - Consumer Protection and Customer Service, Report and Order rel. 4/7/93 - par. 64 - "...we do not believe it is necessary or appropriate for the Commission to establish refund or penalty guidelines." In this order, the Commission leaves local governments free to avail themselves to reasonable remedies to assure customer service standards are met.

P(2) Bell Atlantic should explain why, when it is aware of a problem that it knows it has a duty to resolve, the four-hour clock should not begin to run from the time Bell Atlantic is cognizant of the problem.

Having the four hour credit "clock" start upon notification of the service problem gives the programmer-customer, who is aware of a network service problem either through its own network monitoring or via end-user subscriber notification, the incentive to report the problem as soon as possible. If this trouble report causes Bell Atlantic to become aware of the problem, it benefits, at a minimum, every customer that has a relationship with that programmer-customer and potentially all video dialtone network users.

Bell Atlantic personnel begin to work on a problem as soon as they become aware that it exists, and do everything feasible to resolve each problem as quickly as possible. Without notification from the programmer-customer, however, there may be no network indication that the programmer-customer and its end-user subscribers have been adversely affected. Of course, if Bell Atlantic becomes aware of the problem through its own network monitoring, efforts to correct the problem will begin immediately.