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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; and,	)	CC Docket No. 96-149
Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area	)	

COMMENTS OF MFS COMMUNICATIONS COMPANY, INC.

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COMMENTS OF MFS COMMUNICATIONS COMPANY, INC.

MFS Communications Company, Inc. ("MFS"), by its undersigned counsel and pursuant to Section 1.415 of the Commission's rules, submits these comments in response to the above captioned proceeding.[1/]

1/ Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, CC Docket 96-149, Notice of Proposed Rulemaking (released July 18, 1996) (hereafter cited as "Notice").

INTRODUCTION AND SUMMARY

The Commission is to be applauded for addressing the competitive issues raised by the joint provision of local telephone service, interLATA services and manufacturing activities in the context of the separate subsidiaries requirements of the Telecommunications Act is complex. MFS's comments focus on three areas:

First, the integrated provision of essential and competitive services creates a substantial potential for anticompetitive abuse. So long as there is any margin in the price of essential services, Bell Operating Companies can leverage their control over essential services to achieve anticompetitive results without raising prices for essential services and in spite of imputation requirements. Only the introduction of effective competition in the provision of essential services and pricing essential services at their economic costs can be effective in preventing anticompetitive leveraging of essential services.

Second, Bell Operating Company provided Internet services must conform with both sections 271 and 272. Under Section 271, Bell Operating Companies may not provide interLATA services, which include Internet services, unless they comply with the Section 271 checklist. Even if the Bell Operating Companies comply with the Section 271 checklist, Internet services are plainly interLATA information services and the Bell Operating Companies may only provide such services through a separate subsidiary in compliance with Section 272 requirements. Because some Bell Operating

Companies are beginning to roll-out Internet services, it is important that the Commission make clear the legal requirements of the Telecommunications Act. Also, because the policy issues raised in this docket are similar, if not identical to the issues raised by Bell Atlantic and Southwestern Bell's comparably efficient interconnection ("CEI") plans being considered by the Common Carrier Bureau, MFS urges the Commission to consolidate them into this rulemaking.

Third, the non-discrimination requirements of Section 272 extend various rights to information service providers. In particular, Bell Operating Companies may not provide any facilities, services or information to its affiliates unless such facilities, services or information are made available to others on the same terms and conditions. Also, a Bell Operating Company affiliate may not sell or market the local services of the Bell Operating Company unless competitors have a similar ability to market those services.

I. INTEGRATED PROVISION OF ESSENTIAL AND COMPETITIVE SERVICES CREATES A SUBSTANTIAL POTENTIAL FOR ANTICOMPETITIVE ACTIONS (¶¶ 104-152)

In its Notice, the Commission observed that the Regional Bell Operating Companies' ("RBOCs'") control over essential access facilities creates the potential for

a price squeeze if the RBOCs are allowed to compete in interLATA markets.[2] In fact, the potential for a price squeeze is present in any market whenever a RBOC controls essential facilities or services and competes on a vertically integrated basis. The anticompetitive potential of the integrated provision of essential and competitive services is illustrated by the numerical example presented in Attachment 1. As shown in Attachment 1, price caps on essential services are insufficient to prevent a RBOC from leveraging its control over essential services or facilities to gain an anticompetitive advantage over rivals. Contrary to the analysis suggested in the Notice,[3] a RBOC need not raise the price of access, interconnection, collocation or other essential services to drive rivals (even more efficient rivals) into an unprofitable, "price squeeze" situation. So long as a RBOC is allowed to provide both essential (*e.g.*, access, interconnection, collocation, etc.) services together with competitive services, and so long as essential services prices are maintained above costs, a vertically integrated RBOC can costlessly drive rivals (even more efficient rivals) out of the market.

However, while separate subsidiaries for interLATA information and telecommunications services are clearly required by the Telecommunications Act, it is not clear that requiring that the RBOCs offer competitive services through separate subsidiaries will be helpful in preventing anticompetitive leveraging of essential

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[2] Notice at ¶¶ 134, 143-142.

[3] Notice at ¶ 141.

services. It is also unclear that regulating RBOCs' interLATA or information affiliates as dominant firms, as suggested in the Notice,[4] will be effective in preventing the anticompetitive results illustrated in Attachment 1. The only effective mechanisms for preventing the anticompetitive potential illustrated in Attachment 1 include:

- **Pricing Essential Services at Economic Costs**. The RBOCs ability to leverage their control over essential services is diminished if they are required to provide essential services at their economic costs, as required by the pricing and costing rules recently adopted by the Commission in its Interconnection Order.[5]
- **Developing Competitive Alternatives to the RBOCs' Essential Services**. The RBOCs' ability to leverage essential services is diminished to the extent that competitors have competitive alternatives to the RBOCs' essential services. Obviously, developing such competitive alternatives is a major policy objective of the Telecommunications Act.

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[4] Notice at ¶¶ 108-152.

[5] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, at ¶¶ 618-862 (released August 8, 1996).

II. THE TELECOMMUNICATIONS ACT ESTABLISHES EXPLICIT RULES GOVERNING RBOC PROVISION OF INTERLATA INTERNET AND OTHER INFORMATION SERVICES (¶¶ 36-54)

In its Notice, the Commission sought comment on the definition of information services, the distinction between information services and enhanced services and the types of information services that should be classified as interLATA information services and the impact of the Telecommunications Act on existing regulations governing information and enhanced services.[6] The issues raised in the Notice regarding RBOC provision of information services are not academic as Bell Atlantic, Pacific Bell and Southwestern Bell are either offering or plan to offer Internet services. The issues raised in the Notice may be restated as: Under what conditions may the RBOCs offer Internet services or other interLATA information services?

Prior to February 1996, the thicket of Computer II and Computer III orders, reconsiderations, appeals and reconsiderations on appeal[7] were the appropriate basis

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[6] Notice at ¶¶ 42-49.

[7] The Computer II orders include: *Amendment of §64.702 of the Commission's Rules and Regulations, Second Computer Inquiry*, 77 FCC 2d 384 (1980) (*Computer II Final Decision*), *modified on recon.*, 84 FCC 2d 50 (1980) (*Computer II Reconsideration Order*), *further modified on recon.*, 88 FCC 2d 512 (1981) (*Computer II Further Reconsideration Order*), *aff'd sub nom. Computer and Communications Industry Association v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. den.*, 461 U.S. 938 (1983), *aff'd. on second further recon.*, FCC 84-190 (rel. May 4, 1984). The Computer III orders include: *Amendment of Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85-229, *Phase I*, 104 FCC 2d 958 (1986) (*Phase I Order*), *recon.* 2 FCC Rcd 3035
(continued...)

for answering that question. However, the Telecommunications Act fundamentally changed the legal standard that applies to the RBOCs' provision of Internet and other interLATA information services. In short, as described below, the RBOCs may provide these services only after satisfying the competitive checklist specified in Section 271. In addition, they may provide interLATA Internet and other interLATA information services only through a fully separate subsidiary. In either case, they must also comply with the customer privacy provisions of Section 222, the manufacturing provisions of Section 273, and the electronic publishing provisions of Section 274. Compliance with the Computer II and Computer III rules by themselves is insufficient to satisfy the requirements of the Telecommunications Act.

In light of this conclusion, it is important to emphasize three major points. First, suggesting that RBOC-provided Internet services are within the definition of interLATA

7/ (...continued)
(1987), (*Phase I Recon. Order*), *further recon.* 3 FCC Rcd 1135 (1988), (*Phase I Further Recon. Order*), *second further recon.*, 4 FCC Rcd 5927 (1989), (*Phase I Second Further Recon.*), *Phase I Order and Phase I Recon. Order Vacated, California v. FCC*, 905 F.2d 1217 (9th Cir. 1990), (*California I*); *Phase II*, 2 FCC Rcd 3072 (1987) (*Phase II Order*), *recon.* 3 FCC Rcd 1150 (1988) (*Phase II Recon. Order*), *further recon.*, 4 FCC Rcd 5927 (1989), (*Phase II Further Recon. Order*), Phase II Order *vacated*, *California I*, 905 F.2d 1217 (9th Cir. 1990), *Computer II Remand Proceedings*, 5 FCC Rcd 7719 (1990) (*ONA Remand Order*), recon. 7 FCC Rcd 909 (1992), *pets for review denied, California v. FCC*, 4 F. 3d 1505 (9th Cir 1993) (*California III*), *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order*), *recon. dismissed in part*, Order, CC Docket Nos. 90-623 & 92-256, FCC 96-222 (rel. May 17, 1996); *BOC Safeguards Order vacated in part and remanded, California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*), *cert. denied*, 115 S.Ct. 1427 (1995).

information services that RBOCs may provide only through separate subsidiaries does not mean that Congress intended that all Internet services or service providers should be subject to regulation. Nor does it mean that Congress intended to include hardware manufacturers and vendors, software companies, or Internet service providers in the definition of telecommunications carriers. Nor does it mean that Internet services are "telecommunications services." Nor does it mean the Commission must open Computer IV to decide how to regulate the intersection of computers and telecommunications. The most straightforward interpretation is that Congress included RBOC-provided Internet and information services in the definition of interLATA telecommunications and information services in recognition of the RBOCs' market power and the anticompetitive potential associated with the integrated provision of essential local services and information services. In the interests of promoting the development of the Internet and preserving competition in that market, Congress intended that the RBOCs be prohibited from offering interLATA information services, including Internet services, on a structurally unseparated basis for a minimum of four years and until they had satisfied the checklist that would begin to introduce competition into local service markets.

Second, subjecting RBOC-provided Internet services and other interLATA information services to closer scrutiny and different requirements does not mean that Congress intended that all telecommunications carriers that provide Internet services

be subject to the same regulation. Congress did not subject GTE, other independent local telephone companies, long distance providers or wireless carriers to the requirements of Sections 271 and 272. Again, the simplest explanation is that Congress recognized that because of their size and geographic continuity the RBOCs possess significant market power and the ability to harm competition and made a legislative policy choice to treat them differently than other telecommunications carriers.

Third, the provisions of Telecommunications Act do not prohibit the RBOCs from providing Internet or other information services, but establish the conditions and regulations mandated by Congress that the RBOCs must comply with in order to offer Internet and other information services. Under Section 271(f), Congress created an exception for activities previously authorized by the Courts in the administration of the Consent Decree.[8/] However, none of the RBOCs were offering Internet services prior to the passage of the Telecommunications Act, and the Consent Decree did not regulate the manner in which the RBOCs might provide information services (*i.e.*, using a

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8/ 47 U.S.C. § 271(f). "Neither subsection (a) nor section 273 shall prohibit a Bell operating company or affiliate from engaging, at any time after the date of enactment of the Telecommunications Act of 1996, in any activity to the extent authorized by, and subject to the terms and conditions contained in, an order entered by the United States District Court for the District of Columbia pursuant to section VII or VIII(C) of the AT&T Consent Decree if such order was entered on or before such date of enactment, to the extent such order is not reversed or vacated on appeal. Nothing in this subsection shall be construed to limit, or to impose terms or conditions on, an activity in which a Bell operating company is otherwise authorized to engage under any other provision of this section."

separate subsidiary) so the statutory exception in section 271(f) does not apply to the RBOCs' Internet offerings or plans. Clearly, Congress did not enact the explicit information services provisions of Sections 271, 272 and 274 intending that they be negated by the exception in Section 271(f).

A. The RBOCs May not Provide Internet Services Unless They Satisfy Section 271 Checklist, Including the Interconnection Requirements of Sections 251 and 252

Section 271 prohibits a Bell operating company or any affiliate from providing "interLATA services" until and unless it meets the requirements of Section 271,[9] namely the competitive checklist. The Section 271 restrictions apply to "interLATA services" and are not limited to "interLATA telecommunications services." Congress used and distinguished between "interLATA telecommunications services" and "interLATA information services" in Section 272(a)(2), so its use of "interLATA services" in Section 271 clearly indicates an intent to include both information and telecommunications services in "interLATA services."

Under Section 271(h), an exception is made for services that the RBOCs had been previously authorized to provide. However, RBOCs were not generally allowed to provide interLATA information services, and no RBOCs were providing or allowed to provide Internet services prior to the passage of the Telecommunications Act.

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[9] 47 U.S.C. § 271(a).

At a common-sense level, RBOC-provided Internet services should be considered an interLATA service for the purpose of Section 271. Certainly, because people use the Internet as a communication mechanism to send and receive messages, information and more recently global voice communications, the traditional Computer II distinctions between enhanced and basic services are blurred. There is a common-sense appeal to classifying Internet services that allow a user in Pennsylvania to communicate with people in California or Japan as plainly interLATA, interstate and international long distance. Indeed, when users connect with the Internet, they typically do not know whether the computer they are communicating with is located in the same town, the same LATA, the same state or even the same country. In spite of logic-chopping artificial legal distinctions between "enhanced," "information," and "basic" services, the press increasingly describe Internet providers as competitors of traditional long distance providers.[10/] As described below, in its promotional materials distributed to customers, Bell Atlantic describes Internet services to its prospective customers as long distance services that it does not have the authority to provide.

But, for the purposes of this case, the Computer II technical classifications of Internet service are irrelevant. The Internet services provided by RBOCs, whether they are classified as telecommunications service, enhanced services or information services are clearly interLATA services for purposes of Section 271 and cannot be

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10/ M. Mills, *Phone Service Via the Internet May Slash Rates*, Washington Post, pg. A1 (August 11, 1996).

provided in-region until the Section 271 checklist is satisfied. Under the Telecommunications Act, RBOCs are allowed to provide only certain, carefully proscribed, incidental interLATA services without satisfying the checklist requirements. In relevant part, incidental interLATA services are defined as "the interLATA provision by a Bell operating company or its affiliate" of: (1) "two-way interactive video services or Internet services over dedicated facilities to or for elementary and secondary schools;" or, (2) "a service that permits a customer located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA."[11/] Thus, if dedicated Internet offerings offered by the RBOCs to schools are considered incidental interLATA services, by implication the dial-up Internet services offered by Bell Atlantic and Pacific Bell and planned by Southwestern Bell (described below) must be interLATA services which the RBOCs may provide only after satisfying the Section 271 checklist or through a separate subsidiary. Said differently, if all Internet services were not interLATA services, it would be unnecessary to create an explicit statutory exception for dedicated access based Internet services to schools. If all Internet services are not interLATA services, then the exception for dedicated access based Internet services to schools is rendered irrelevant, which is contrary to basic principles of statutory interpretation.

[11/] 47 U.S.C. § 271(g). [emphasis added]

Congress did not intend for "incidental interLATA services" to be so broadly defined that it effectively allows RBOCs to provide a wide range of interLATA services. In fact, Section 271 states that the definitions of what is included in incidental interLATA services

> are intended to be narrowly construed. ... The Commission shall ensure that the provision of services authorized [as incidental interLATA services] by a Bell operating company or its affiliate will not adversely affect telephone exchange service ratepayers or competition in any telecommunications market.[12]

This language reflects a legislative concern that liberal interpretation of "incidental interLATA services" is not favored, and explicitly directs the Commission to ensure that the services that might be classified as incidental interLATA services do not adversely affect competition in any telecommunications market. That language indicates a legislative intent that the Commission strictly apply the separate subsidiary requirements and reject interpretations that would avoid the separate subsidiary requirements by classifying questionable applications as "incidental interLATA services."

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[12] 47 U.S.C. § 271(h).

B. The RBOCs May Provide InterLATA Information Services Only Through a Fully Separate Subsidiary

1. *The Separate Subsidiary and Non-Discrimination Requirements of Section 272 that Apply to InterLATA Information Services are Substantially Different than the Computer III Requirements*

Even if the RBOCs comply with the provisions of Section 271, the RBOCs may provide interLATA information services only through a fully separate subsidiary which plainly differs from the integrated provision of information and telecommunications services envisioned under Computer III.[13] Section 272(a) of the Telecommunications Act requires:

> (2) SERVICES FOR WHICH A SEPARATE SUBSIDIARY IS REQUIRED. -- The services for which a separate affiliate is required by paragraph (1) are:
>
> (A) Manufacturing activities (as defined in section 273(h)).
>
> (B) Origination of interLATA telecommunications services, other than --
>
> (i) incidental interLATA services described in paragraphs (1), (2), (3), (5) and (6) of section 271(g);
>
> (ii) out-of-region services described in section 271(b)(2); or,
>
> (iii) previously authorized activities described in section 271(f).
>
> (C) InterLATA information services, other than electronic publishing (as defined in section 274(h)) and alarm monitoring (as defined in section 275(e)).[14]

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[13] Notice at ¶¶ 48-50 asking that parties identify the statutory provisions of Sections 271 and 272 to supersede the Commission's Computer II and Computer III requirements.

[14] 47 U.S.C. § 272(a)(2).

Information services are defined as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications and includes electronic publishing, but does not include any use of such capability for the management, control, or operation of a telecommunications service."[15]

The separate subsidiary requirements for interLATA information services expire in February, 2000, unless the Commission extends the sunset date.[16] This reflects an explicit decision by Congress that the separate subsidiary rules be enforced for at least four years, and possibly extended if appropriate. Explicit sunset dates also indicate a Congressional intent that the Commission may not forebear from requiring a separate subsidiary, for otherwise, Congress would have established separate subsidiary requirements that were implemented at the Commission's option.

The separate subsidiary required under the Telecommunications Act for interLATA information services must be fully separate with separate operations, separate officers, directors and employees, separate books, and separate credit arrangements.[17] At a minimum, MFS believes that separate operations mean no customer referrals, no joint marketing, no joint advertising, separate logos, distinct

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[15] 47 U.S.C. § 153(20)

[16] 47 U.S.C. § 272(f)(2).

[17] 47 U.S.C. § 272(b).

names, no shared customer databases or information systems, and separate billing, collections and ordering processes. The RBOC must also submit to a biennial audit, submit such audit to the Commission and the appropriate State commission(s), and any party is allowed to submit comments on the final audit results.[18] As described below, none of the RBOCs existing or proposed Internet offerings comply with these separate subsidiary requirements.

2. *The Separate Subsidiary Requirements Extend to RBOC-Provided Internet Services as InterLATA Information Services*

Internet services fall easily within the definition of information services which are "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications."[19] Because Internet services are literally global in nature, and are used to access data and information that resides throughout the world they are interLATA information services.

Even if one questions whether the Internet is an interLATA information service, a Section 272(a) can be interpreted to include Internet services among those services for which the RBOCs must have a separate subsidiary. Section 272(a) excludes electronic publishing from the interLATA information services for which a separate subsidiary is

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[18] 47 U.S.C. § 272(d).

[19] 47 U.S.C. § 153(20)

required. In turn, section 274(h), which defines electronic publishing, defines the information services and offerings that are not included in electronic publishing. Many of those services and offerings constitute the components of Internet service. In particular, electronic publishing is defined to exclude the services that are traditionally thought of as Internet services, including gateway services, e-mail, and navigational systems.[20] Thus, by implication, the information services excluded from the definition of electronic publishing must be the types of services for which Congress intended to include in the broader collection of information services that require a separate subsidiary.

C. RBOC Internet Offerings do not Conform with the Separate Subsidiary Requirements of the Telecommunications Act

In its Notice, the Commission asked for comments on the types of services that should be classified as interLATA information services.[21] As described below, there are at least three different RBOCs who are planning or providing Internet services, each of which appear to violate the unambiguous provisions of the Telecommunications Act, and each of which appear to be based on a different legal interpretation of the requirements that apply to them with regards to Internet services. Pacific Bell has filed nothing with the Commission, which indicates an apparent opinion that nothing is

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[20] 47 U.S.C. § 274(h)(2).

[21] Notice at ¶ 44.

required and that it is authorized to provide Internet services on an unseparated basis. Bell Atlantic filed a cursory comparably efficient interconnection ("CEI") plan and asserted that Internet services were unregulated enhanced services outside of Title II. As described below, Bell Atlantic's promotional literature acknowledges that it believes that Internet services are long distance services that it cannot provide in-region, but structures its Internet offering so that it is reselling the long distance services of others who specialize in providing long distance data services. Southwestern Bell filed a CEI Plan, but structured its Internet services so that it provided service through a separate subsidiary.

Bell Atlantic's Internet offering and Southwestern Bell's planned Internet offering are before the Common Carrier Bureau in the form of proceedings to evaluate the carriers' respective CEI Plans. The Common Carrier Bureau has approved Bell Atlantic's CEI Plan.[22/] MFS filed a petition for reconsideration, and that Bureau has solicited comments on that petition. MFS also filed a motion to consolidate its petition to reconsider and the Southwestern Bell CEI petition in this rulemaking. Under the Commission's delegated authority rules the Common Carrier Bureau "shall not have authority to act on any applications or requests which present novel questions of fact, law or policy which cannot be resolved under outstanding precedents and

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22/ Bell Atlantic Telephone Companies Offer of Comparably Efficient Interconnection to Providers of Internet Access Service, Order, CCBPol 96-09 (released June 6, 1996).

guidelines."[23] Thus, to the extent that RBOC-provided Internet offerings present the Bureau with novel questions of law, fact and policy, it cannot fully address the conflicts between the requirements of the Telecommunications Act of 1996 [24] and the Commission's Computer III orders. Such a fundamental legal/policy conflict cannot be resolved by reference to prior precedent or guidelines because there is no precedent, nor is it appropriate to resolve such conflicts in an ostensibly "ministerial" process intended to determine whether applicants meet the Computer III and CEI requirements. The Commission needs to respond to these novel policy, legal and factual issues in this rulemaking and issue a declaratory order that the RBOCs may not offer Internet services until they satisfy the requirements of Section 271 and then only through a separate subsidiary.

1. *Bell Atlantic's Internet Offering*

After filing a CEI Plan, Bell Atlantic began offering Internet services this month.[25] Through its Internet offering, Bell Atlantic acts as an Internet Service Provider ("ISP"). As described in its CEI Plan, it provides users with browser software and dial-up

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[23] 47 C.F.R. §0.291(a)(2). [emphasis added]

[24] Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. § 153 *et seq.*

[25] Bell Atlantic Telephone Companies Offer of Comparably Efficient Interconnection to Providers of Enhanced Internet Access Services, CCBPol 96-09 *Order* (released June 6, 1996), *reconsideration pending*, DA 96-1102.

access (*i.e.*, 7 digit or 10 digit dialed access), ISDN access and high-capacity, private line access to the Internet through Bell Atlantic's Internet routers. In turn, Bell Atlantic's routers are connected with its in-region packet data network (*i.e.*, its Switched Multi-megabit Data Service ("SMDS") network, which is Bell Atlantic's in-region version of the very high-speed long distance backbone network services ("vBNS") used by other Internet service providers to transport traffic to remote locations). In its CEI Plan, Bell Atlantic indicated that it would not carry interLATA Internet traffic, but that such traffic would be handed off to the interexchange carrier selected by the customer, but no details were provided regarding how that hand off would work or what, if anything, the selected long distance carrier would charge customers for the interLATA traffic.[26]

In it promotional literature distributed to customers (Attachment 2 contains a print out of Bell Atlantic's Web pages describing its Internet services), Bell Atlantic requires customers to select an Internet Inter-LATA Carrier ("IIC") in addition to using Bell Atlantic's local services to access the Internet. In its Web page addressing frequently asked questions, Bell Atlantic posed and answered the following questions:

Q. What is an IIC?

- IIC stands for Inter-LATA Internet Carrier. IICs are companies which provide connections directly to the Internet -- a service that Bell Atlantic cannot provide to its customers in-region at this time.

Q. Why do I have to choose an IIC?

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[26] Offer of Comparably Efficient Interconnection to Providers of Enhanced Internet Access Services, Bell Atlantic Comments at pg. 4 (March 8, 1996) and Bell Atlantic Reply Comments at pp. 4-5 (April 29, 1996).

- Communications over the Internet have been ruled a long distance service. Until Bell Atlantic receives approval to enter the long distance market in our 7-state region, you will be asked to choose a "long distance" Internet carrier for Internet connections. This is very similar to choosing your long distance carrier when you established your local phone service with Bell Atlantic.

Q. Who will bill me?

- That depends on which IIC you choose. Bell Atlantic Internet Solutions may bill on behalf of an IIC, or the IIC may bill you independently.

Q. Is there anything else I need to know about IICs?

- You need to be aware that pricing may change. If you have additional questions or want further information, please call us at 1-888-NET-2100 anytime, 24 hours a day, 7 days a week.[27]

In July, callers to 1-888-NET-2100 are informed that Bell Atlantic offers two pricing plans for dial-up Internet services -- $19.95 a month for unlimited usage or $6.95 a month for five hours usage plus $1.95 for additional hours. As of July 14, customers are offered a choice of only three IICs that Bell Atlantic describes as the major global providers who provide access to the Internet backbone -- AGIS, Gridnet and ICon. Callers are told that these IICs charge $2 to $4 a month for the long distance portion of Internet usage, and that the $2 to $4 is included in the Bell Atlantic Internet prices. Bell Atlantic's quoted $19.95 price includes the lowest ($2 IIC charge).

While Bell Atlantic claims that picking an IIC is "very similar to choosing your long distance carrier when you established your local phone service with Bell Atlantic," AGIS, Gridnet and Icon are certainly not household names that most consumers would

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[27] Bell Atlantic Internet Solutions, Frequently Asked Questions (July 14, 1996). Reproduced in Attachment 2. [emphasis added]

recognize much less associate with long distance service. They are all companies that specialize the providing access to the Internet vBNS for business customers. They are not companies that market to end-users like residential customers, but rather, they sell access to the vBNS to ISPs. In a sense, they aggregate Internet traffic from a variety of ISPs and route that aggregated traffic on the vBNS. Clearly, customers are not establishing a customer-carrier relationship with the vBNS provider independent of subscribing to Bell Atlantic's Internet service. Bell Atlantic is buying and reselling the vBNS provided by these carriers. In contrast, many long distance carriers have billing arrangements with local telephone companies, but customers establish a customer relationship with their long distance carrier that is independent of the local telephone services they use.

In comments filed with the Common Carrier Bureau, Bell Atlantic argues that its relationship with these vBNS companies is appropriate because Bell Atlantic sent a letter announcing its Internet services roll-out to all potential IICs.[28] A letter to potential IICs announcing Bell Atlantic's Internet roll-out obviously does not relieve it of the requirements of the Telecommunications Act or authorize it to resell interLATA services.

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[28] Bell Atlantic Comments at pg. 4.