

broadband packet-switched information services, particularly Digital Subscriber Loop service (xDSL), will require some additional physical unbundling beyond what was mandated in the Local Competition Order. Although the Commission was reluctant to order sub-loop unbundling in that order, based on network reliability concerns, it has become evident that sub-loop unbundling must be available to any requesting carrier in order for competition in these new services to develop. In particular, carriers should be able to obtain access, as a UNE, to that portion of the loop from the subscriber's premises to a Subscriber Loop Carrier (SLC) hub and to allow interconnection with each requesting CLEC at SLC hubs. Otherwise, MCI and others will not be able to provide xDSL service to more than a small fraction of subscribers served at any given ILEC end office.

Similarly, other providers should be able to interconnect at any point in the ILEC's broadband packet-switched service architecture in order to provide any element of those services, particularly xDSL local transport (between the subscriber's premises and the ILEC end office) and local packet transport (between the ILEC end office and the ISP). Unless these and other potential elements of the ILEC broadband packet-switched service are unbundled so that other providers can compete for any segment of that service, the ILECs will be able to deter competitive entry.

D. Section 251 Should be Enforced, Not Artificially Extended to Cover ISPs

The Commission also requests comment as to whether rights to UNEs under Section 251, which are now only available to requesting carriers, should be extended to ISPs, so that they can take advantage of the maximum degree of unbundling that is available. At this juncture, even putting aside jurisdictional and other statutory issues, it would be difficult to address this question because CLECs are not even obtaining what they should under Section 251, let alone a whole new category of providers. As discussed above, ILECs have been successful thus far in using a variety of techniques, including the legal proceedings leading to the Eighth Circuit decisions, to derail the pro-competitive design of Sections 251 and 252. As a result, there are no competitive choices today for ISPs looking for alternative local service providers, other than those CLECs using their own facilities. To add ISPs to the category of entities unsuccessfully requesting UNEs under Section 251 would accomplish nothing.

There would also appear to be statutory and jurisdictional problems in attempting to shoehorn ISPs by regulation into the Section 251 framework. There appears to be no authority under Section 251 itself to do so. If the Commission were to act under Sections 201 and 202, on the other hand, its reach would only extend to interstate access "UNEs," thus providing ISPs less than they seek in any event.

Inevitably, the analysis has to get back to enforcing Section 251 and otherwise making local competition possible by resolving the problems discussed in the Sallet letter, attached hereto as Appendix B. Once the Commission forces the ILECs to stop undermining Section 251, CLECs will start to obtain access to UNEs, enabling them to provide a significant competitive alternative to the ILECs. Real local competition, in turn, will provide more choices for ISPs that will enable them to compete more vigorously against the BOCs and other ILECs in the information services market. The place to start, therefore, is not by tinkering with the scope of the 1996 Act by regulation, but by enforcing its pro-competitive goals as written.

In short, the Commission needs to follow a two-front strategy: press ILECs to make UNEs available to CLECs under Section 251, and expand on the list of UNEs described in the Local Competition Order, as discussed above; while imposing a deadline on fundamental unbundling of ONA services for ISPs. If CLECs can obtain a full inventory of UNEs, ISPs will be double winners -- they will have the unbundled physical elements they need from the CLECs to provide the newer packet-switched broadband information services and the unbundled ONA switched network services they need to provide traditional information services. One avenue cannot replace the other, however, at least for the foreseeable future. The Commission should certainly resist the temptation to give up on ONA at this juncture, given

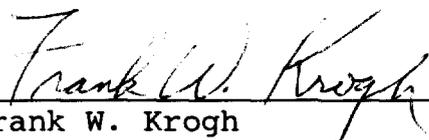
that CLECs are still struggling to secure any UNEs at all, even for themselves. Abandonment of ONA, as useless as it has been up to now, would leave ISPs without any source of unbundled network elements.

CONCLUSION

It is clear that the case for eliminating structural separation is far weaker now than it was at the time of the Computer III Remand proceeding, just as it was far weaker then than it had been at the time of the original Computer III proceeding. For a variety of reasons, Section 251 does not offer an escape from the dilemma caused by the total failure of ONA to bring about the necessary unbundling that might have served as a partial justification for the elimination of structural separation. What Congress has determined is good for interLATA information services is even more appropriate for local and intraLATA information services. Structural separation should be retained.

Respectfully submitted,

By:

  
\_\_\_\_\_  
Frank W. Krogh  
Mary L. Brown  
1801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006  
(202) 887-2372

Dated: March 27, 1998

# APPENDIX A

STATE OF TEXAS     )  
                          ) ss:  
COUNTY OF DALLAS )

**AFFIDAVIT OF PETER P. GUGGINA**

Peter P. Guggina, being duly sworn and under oath, deposes and states as follows:

1. I am employed by MCI Telecommunications Corporation (MCI) as the Director of Technical Standards Management. My office address is 2400 N. Glenville Drive, Richardson, Texas 75082. In this capacity, I am responsible for managing a staff that plans, coordinates and executes MCI's participation in the industry forums and standards process, in which industry representatives attempt to formulate uniform interconnection technical standards and requirements. My position provides a daily view of the status and events that take place in these arenas. In addition to participating directly in this process and monitoring other MCI participants' progress, I am in contact with other industry participants in an attempt to resolve issues and to make the process more effective.

2. I am also my company's representative to the Board of Directors of the Alliance for Telecommunications Industry Solutions (ATIS), formerly the Exchange Carrier Standards Association (ECSA), which sponsors many telecommunications standards setting bodies and industry forums, including the Network Industry Interoperability Forum (NIIF), which replaced the Information Industry Liaison Committee (IILC), discussed

below. In addition, I am also MCI's representative to the American National Standards Institute (ANSI). I have also served as Vice-Chairman, and, subsequently, as the Chairman, of the Carrier Liaison Committee (CLC), which provides oversight management of the ATIS/CLC forums. Further, I am Chairman of the Interexchange Carriers Industry Committee (ICIC), an industry group that reviews technical subject matters associated with exchange access services. Chairing the ICIC provides me additional exposure to a cross-section of industry activities related to the forum and standards process. I also serve as a voting member of the North American Numbering Council (NANC), a Federal Advisory Committee to the FCC on numbering issues. My involvement with these industry activities began in 1984, and I have over 25 years of telecommunications operation, engineering, and network planning experience.

3. I am submitting this affidavit in connection with the Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket No. 95-20, and the 1998 Biennial Regulatory Review of Computer III and ONA Safeguards and Requirements, CC Docket No. 98-10, in response to the Commission's questions related to the effectiveness of Computer III and Open Network Architecture (ONA) rules in the provision of unbundled services to information service providers (ISPs), as well as in response to questions related to the NIIF performance in facilitating ISP ONA requests.

4. This affidavit follows up on previous affidavits submitted in April 1996 by me and three of my colleagues in CC Docket No. 95-20, which detailed the Bell Operating Companies' (BOCs') and other incumbent local exchange carriers' (ILECs') obstructionism of the IILC standards process, to the detriment of ONA development and competition.<sup>1</sup> As detailed in those affidavits, a great deal of unbundling-related industry forums and standards activities took place during the IILC era, but without any real agreements leading to actual unbundling.

5. During the past year, ONA-related activities have nearly come to a standstill in the ATIS-sponsored NIIF. ONA activities were entrusted to ATIS-sponsored industry fora by the FCC in Computer III. Progress on resolving network unbundling issues at the NIIF has not advanced since the NIIF took over the IILC unbundling issues in January 1997. NIIF could have produced meaningful industry agreements and requirements by now, but the BOCs have chosen to do more talking about the issues than producing implementable solutions. Hence, they have not carried out their ONA responsibilities.

6. As of today, the NIIF has made very little progress in addressing and resolving issues growing out of the original IILC

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<sup>1</sup> The 1996 affidavits, in turn, responded to BOC attempts to rebut my previous affidavit on this subject, filed in support of MCI's Comments in CC Docket No. 95-20 in April 1995.

Issue 026 (Long Term Unbundling and Network Evolution), which was begun in July 1991 in response to an FCC directive. IILC Issue 026 could have paved the way for a complete unbundling of the physical and logical interconnection elements of the network, had the BOCs and GTE followed through in good faith. Despite the fact that the IILC reached consensus on Issue 026 on April 19, 1995, and closed out that issue, the implementation by the BOCs and GTE of the physical and logical interconnections specified in the resolution document remain elusive. Although the IILC closed out Issue 026, closing an issue in this process does not mean that anything has been accomplished that actually brings about greater unbundling. Instead, it simply means that a stack of high-level conceptual papers, rather than implementable solutions, has been produced.

7. In some instances, technical specifications and requirements are needed. This work fits into the mission and scope of the NIIF, but the BOCs have chosen to produce high level theoretical documents, which lack technical detail. At this time, for example, NIIF Issue #006 (AIN/IN Trigger Usage in a Multi-Provider Environment) -- which is an outgrowth of IILC Issue 026 -- is the only active unbundling issue at the NIIF's Network Interconnection Architecture Committee. The unfortunate reality is that we have been working this subject at both the IILC and the NIIF for a combined time span of about seven years, and we still have not agreed on an implementable solution for

unbundling the Advanced Intelligent Network (AIN).

8. Despite the failure of this process, the BOCs still take credit for trumped-up accomplishments in this area. Bell Atlantic stated in its 1996 ONA Plan Amendments that

In the past year, the IILC has reached consensus on several additional issues. These are Issue 026 ... ; Issue 038, Call Forwarding Control Capabilities for ESPs; Issue 045, Series Circuits on Selected Telemessaging Subscribers; and Issue 047, Call Forward - Transfer Back.<sup>2</sup>

Unfortunately, reaching "consensus" on these issues does not mean that anything of substance has been created that can be implemented, nor does it mean that the the BOCs and other ILECs have agreed to implement any aspect of the agreements reached in these issues. As of yet, the BOCs have not made these unbundled network elements available.

9. Thus, the IILC never produced anything of value to ISPs. The net result is that the ISP community had largely stopped attending IILC meetings by the time it was replaced by the NIIF, and ISPs have effectively given up their pursuit of ONA at the ATIS-sponsored committees altogether. The record also shows that several ISPs have filed comments in various dockets at the Commission regarding the lack of progress on ONA issues at

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<sup>2</sup> Amendments to Bell Atlantic's ONA Plan at A-10, Filing and Overview of Open Network Architecture Plans, CC Docket No. 88-2, Phase I (April 15, 1996).

the IILC.<sup>3</sup> Complaints to the FCC about the lack of progress at both the IILC and NIIF on access to open AIN capabilities have come from several ISPs. One of those, Low Tech Designs, Inc., filed seven ex parte letters with the FCC during 1996 and 1997.<sup>4</sup> Given ISPs' disappointment and frustration with the 120-day request process, the number of ISPs using that process has been almost negligible. In cases where requests were made to the BOCs, the network capabilities were not in place to deliver the IILC agreed-upon ONA basic services.<sup>5</sup> Even when agreement was reached at the IILC, ISPs found that their local BOC points of contact were not informed of what their companies supported at the IILC. Unfortunately, the BOCs used the IILC to buy time without actually implementing the very unbundled network elements that they were talking about at the IILC.

10. In its May 22, 1996 ex parte letter in CC Docket No. 95-20, Bell Atlantic accused MCI of attempting to discredit the BOCs by stating that they dominate the IILC and other technical

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<sup>3</sup> See, e.g., Written Ex-Parte Comments of James M. Tennant, Intelligent Networks, CC Docket No. 91-346 (Feb. 16, 1996)(criticism by Low Tech Designs, Inc. of ILEC delays in providing access to open AIN capabilities); ex parte letter from Jonathan Jacob Nadler to William F. Caton, FCC, with attachment, CC Docket No. 95-20 (Feb. 28, 1997)(presentation on behalf of EDS, MCI, IBM and ITAA citing failure of ONA).

<sup>4</sup> See, e.g., Low Tech Comments cited in n. 3, supra.

<sup>5</sup> The Commission should continue to enforce the 120-day process and have the semi-annual BOC and GTE reports include the number of ISP requests and the requested ONA services.

standards bodies. Bell Atlantic denied that the BOCs dominate the IILC, pointing out that, sometimes, MCI sends more people to meetings than Bell Atlantic. MCI, however, rarely if ever sent more than one person to the IILC at one time. Furthermore, in my affidavit and in the affidavits submitted by my colleagues in CC Docket No. 95-20, we were referring to the collective dominance of the then seven BOCs supported by Bellcore. A quick review of the ATIS meeting records will verify my statement as being factually correct. The record speaks for itself. Even when the individual BOCs do not have numerical superiority at a particular meeting, they always have more than enough to paralyze the forum or committee into inaction, which is just as useful for the BOCs. It is now 1998, and the BOCs and GTE still do not offer unbundled access to their AIN features.

11. The cooperation of the BOCs and GTE, not the location or title of an industry forum, is the fundamental prerequisite to network unbundling. These ILECs have used both the IILC and the NIIF to give the appearance, but not the reality, of advancing ONA and ISP needs. The BOCs and GTE report that they are diligently working in the forums on ONA issues, but they really are only giving the appearance of making progress on major issues. Since 1991, when the IILC began work on Issue 026, MCI has taken part in the deliberations of all IILC task groups and in the NIIF committees that dealt with the network unbundling issues. Recently, MCI has made proposals on NIIF Issue 006,

discussed above, that could be implemented using the existing SS7 signaling network infrastructure. However, the BOCs and GTE have not agreed and have not offered an alternative that could be implemented in the near term.

12. The only active unbundling issue (NIIF Issue 006) is making very little progress, mainly due to the BOCs' lack of willingness to unbundle their networks to competition. Very few contributions are being submitted on this topic, and protracted discussions ensue without any concrete agreements being reached. Other ONA issues related to the AIN proceeding in CC Docket No. 91-346 have been Tabled (on hold) or withdrawn because the ISP issue originator has given up hope that the NIIF could resolve the issue and is awaiting the Commission ruling in CC Docket No. 91-346, or there have been no contributions to work the issue. Several issues fall in this category, e.g., NIIF Issue 004 (IILC 044H) - AIN Access by Non-LEC Resource Element; NIIF Issue 012 (IILC 056PH) - Mediation Functions for Create a Call; NIIF Issue 007 (IILC 050) - AIN/IN Trigger Provisioning in a Multi-Provider Environment; NIIF Issue 008 (IILC 051) - Guideline for Access to Operations, Administration, Maintenance & Provisioning; and NIIF Issue 010 (IILC 053) - Guideline for Mediation Among Multiple Service and Network Providers.

13. Absent specific Commission directive, the BOCs and GTE will continue to preserve and expand their monopoly capabilities.

These ILECs will maintain their defense of their monopolies regardless of which forum holds the meeting. The Commission should be more directly involved and order a date certain for implementation of unbundled network elements. It should be kept in mind that Toll Free 800 service portability would not have happened on time without the Commission setting a date certain and a tight schedule for SS7 interconnection. Also, expanding Toll Free service to the 888 service access code (SAC) was only made possible with Commission oversight. Local Number Portability (LNP) is another example of an area that requires strong Commission involvement. Just like these areas, unbundling also needs firm regulatory direction.

#### CONCLUSION

14. The BOCs failed in the past to rebut MCI's demonstration in previous filings that they dominate the industry standards and fora processes. There are many others in the industry that are becoming aware of BOC dominance of industry standards and forum processes, as well as the resulting anti-competitive effects. The BOCs and other ILECs have a very well-organized cartel for the purpose of influencing industry forum and standardization processes. They do not implement the solutions and ONA services that they agree to in industry and standards forums.

15. Because of the BOCs' sabotage of the industry

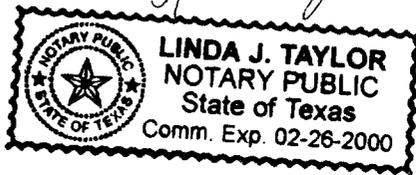
standards processes, the Commission cannot realistically expect industry fora to develop effective ONA or anti-discrimination safeguards. Without such safeguards, structural separation should not be eliminated. Structural separation for BOC provision of information services is in the public interest and promotes fair competition. The forum and standards processes will also be more likely to develop effective nonstructural safeguards if the BOCs are structurally separated from their information service operations, which will put those operations and ISPs on a more even footing.

Further Affiant saith not.

*Peter P. Guggina*  
 Peter P. Guggina

Subscribed and sworn to before me  
 this 26<sup>th</sup> day of March, 1998.

*Linda J. Taylor*



## APPENDIX B



**MCI Communications  
Corporation**

1801 Pennsylvania Avenue, NW  
Washington, DC 20006  
202 887 3351  
FAX 202 887 2446

**Jonathan B. Sallet**  
Chief Policy Counsel

October 22, 1997

The Honorable Reed E. Hundt  
Chairman, Federal Communications Commission  
1919 M Street, N.W.  
Room 814  
Washington, D.C. 20554

Dear Chairman Hundt:

MCI is making a concerted effort to enter local phone markets. Recently, local phone monopolies -- like Bell Atlantic -- have sought to justify their systematic efforts to delay competition by attacking the motives and actions of new entrants like MCI while dispensing a blizzard of misinformation.<sup>1</sup> On October 7, 1997, for example, Bell Atlantic's Chairman and Chief Executive Officer described MCI's complaints as "uninformed" and "purposely inaccurate," claiming instead that "local competition has bloomed" in its region because Bell Atlantic has "take[n] all the necessary actions to open our networks." In that same speech, Bell Atlantic claims that MCI and other long-distance companies are "pretend[ing]" that Bell Atlantic is blocking competition in order to protect their "profitable long distance cartel."

In this letter we refute these innacurate assertions by providing the most effective antidote -- the facts. The truth is that Bell Atlantic's local phone markets are not open because Bell Atlantic is blocking competition to protect its incredible monopoly profits. A look at last year's financial results, for example, shows the local exchange industry was once again the most profitable (legal) industry in America with cash flow margins of roughly 40.5 percent. Those cash flow margins are higher than those of oil companies, electric utilities, and drug companies, and roughly double the competitive long-distance industry average of 23 percent. Moreover, in contrast to the competitive long-distance industry, which has invested roughly 120 percent of annual cash flow over the years, major local exchange carriers have made annual investments as a percentage of cash flow that averaged below 70 percent. (See attachment "A"). It is simply

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<sup>1</sup>See for example, "Smoke Detection," Ray Smith, 10/7/97; "Bell Atlantic Wholesale Centers Handle Load and Then Some," Bell Atlantic News Release, October 9, 1997; and Letter from Thomas Tauke and Edward Young, III to the Honorable Reed E. Hundt, Chairman of the Federal Communications Commission, September 10, 1997.

absurd for Bell Atlantic to attempt to shift the focus by asserting that MCI is "hoping to delay the entry of the only competitors who could change the price dynamics of their profitable long distance cartel."

It is equally absurd for Bell Atlantic to declare, as it does in a recent press release, that it has "taken every step imaginable to bring competition into our local markets."<sup>2</sup> The facts show otherwise. Time and again Bell Atlantic has sought to delay competition. It has stalled contract negotiations with last minute legal maneuvers, refused to implement operating support systems (OSS) in accordance with the FCC's January 1, 1997 deadline, sought to attach excessive costs to the price of switching local service providers, and overall fought bitterly and constantly to make local service provision harder than it has to be and more expensive than it should be for new entrants and for consumers.

The result, according to Bell Atlantic's own statistics, is that 20 months after the Act became law, in states like New York only 130,000 lines have been resold, a number that represents less than 1% of the lines in the state.<sup>3</sup>

While MCI is eager and serious about entering local markets, by law the first step is for Bell Atlantic to release its stranglehold on local markets in its territory. To date, MCI, quite reasonably, chooses not to make it -- or its customers -- guinea pigs through the use of service delivery mechanisms that are inadequate as a matter of law and unreliable as a matter of fact.

In this letter we focus our attention specifically on our experiences dealing with Bell Atlantic.<sup>4</sup> The following is a summary of the major issues:

#### **1. Merger Conditions**

The FCC placed specific conditions on the Bell Atlantic-Nynex merger to obviate "the competitive harms that we otherwise foresee as likely resulting from the elimination of Bell Atlantic as a likely independent market participant."<sup>5</sup> Recently, Bell Atlantic has sought to stall implementation and even back away from fulfilling the Merger Order conditions. For example,

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<sup>2</sup> "Bell Atlantic Wholesale Centers Handle Load and Then Some," Bell Atlantic News Release, October 9, 1997.

<sup>3</sup> "Smoke Detection," Ray Smith, 10/7/97 and Preliminary Statistics of Communications Common Carriers, Federal Communications Commission, June 1997, Table 2.3.

<sup>4</sup> References to Bell Atlantic refer to the merged entity of Bell Atlantic and Nynex.

<sup>5</sup> Applications of NYNEX Corporation and Bell Atlantic Corporation For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries, CC Docket No. 97-42 (NSD-L-96-10) at ¶ 14 (released August 14, 1997) (Merger Order).

MCI has had great difficulty getting Bell Atlantic to agree to a meeting to discuss the implementation of the Merger Order conditions. In addition, in a recent letter to MCI, Bell Atlantic tells us it can find "no conceivable legitimate purpose" in the performance monitoring reports that MCI has determined to be necessary to evaluating and ensuring that local market are in fact open to competition; states that while it is merely "evaluating [MCI's] proposals" for various performance standards and remedies (e.g., related to service outages and restorals) it nonetheless has concluded that those proposals are "neither appropriate nor reasonable;" accuses MCI of attempting to "bootstrap unrelated issues" onto the requirements in the Merger Order such as assurances of consistency among OSS between states; and suggests no need to discuss with MCI fulfillment of its obligations with respect to cost-based rates for recurring and non-recurring charges.<sup>6</sup>

## **2. Contract Negotiations:**

Bell Atlantic has done all it can to stall the contract negotiation process with last minute procedural maneuvers, frivolous legal arguments, and a multitude of strategic delay tactics, such as renegeing on "agreed to language." The single best example occurred in New York, where it took 13 months to get an effective contract. At one point, hours before the filing of the New York interconnection agreement earlier in the year, Nynex counsel advised MCI for the first time that the agreement contained provisions that Nynex could not possibly meet, forcing further unnecessary delay. These and other blocking maneuvers forced MCI to file a complaint alleging "bad faith" against Bell Atlantic for failure to complete the New York agreement in the manner to which both parties had agreed.

## **3. Resale, Unbundled Network and Interconnection Pricing:**

One of the most critical components of local market entry is pricing. Here again, we have witnessed a systematic effort by Bell Atlantic to delay competition, this time by making it prohibitively expensive for competitors to provide local service. Bell Atlantic is seeking to impose highly inflated and unjustified costs on new entrants that artificially raise the costs of entering local markets. In New York, for example, MCI analysis show that Competitive Local Exchange Companies would lose \$6.05 the per month per customer in residential resale. Yet, Bell Atlantic's Chairman and CEO absurdly wonders why with such "deeply discounted rates for resale" there is not greater residential competition.

## **4 Pricing and Non-Recurring Charges (NRCs):**

Perhaps the most egregious form of pricing manipulation is NRCs. In New York, for example, Bell Atlantic proposed in January 1997, an NRC of \$74.88 to order an unbundled

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<sup>6</sup>Letter from Jacob Goldberg, President, Telecom Industry Services, Bell Atlantic, to Donald Lynch, Senior Vice President, Local Financial Operations, MCI, October 9, 1997.

network loop. Bell Atlantic, however, charges a new residential customer only \$55 to sign-up for local service. The \$20 difference not only exploits consumers, but also gives Bell Atlantic a large financial advantage over new entrants. Finally, after more than nine months of litigation, on October 2, 1997, a New York Administrative Law Judge recommended the reduction of the proposed NRC for loop provisioning from \$74.88 to \$19.85. At present, however, an interim NRC rate of \$55 remains in effect until the commission can confirm the recommended decision.

**5. Access to OSS:**

Bell Atlantic is also engaged in a systematic effort to prevent new entrants from being able to serve their new customers well. Instead, they offer new entrants inferior ordering systems and they discriminate against consumers who are trying to switch local service providers by delaying orders and repairs, dropping features, and supplying misleading and often incorrect information. Bell Atlantic claims that processing orders from competitors is "no sweat for Bell Atlantic's wholesale operations centers."<sup>7</sup> However, during a recent "stress test" of their system, in which, according to Bell Atlantic, orders were processed "quickly and accurately," MCI systems experienced severely degraded performance and system outages up to 18 hours. This is not the first time MCI has had its systems put on hold by Bell Atlantic. As we detailed in a recent letter to the FCC in August, MCI was forced to completely halt resale in New York because the former Nynex's OSS was erroneously rejecting 90% of MCI's resale orders.<sup>8</sup>

**6. Collocation:**

Bell Atlantic and the other incumbents are making it difficult and expensive for new entrants like MCI to collocate equipment necessary to provide competitive local services. In New York, for example, eighteen applications made by MCI have been rejected by Bell Atlantic due to alleged space constraints in Bell Atlantic facilities. Yet, Bell Atlantic has not demonstrated to the state commission that there actually are space constraints, as required under the Act. For another 18 of the applications, MCI received abnormally high-cost estimates to complete the physical collocation. For these applications, Bell Atlantic cited an estimated average of \$400,000 per physical collocation for the former Nynex region when the previous physical collocation figure in New York was already a costly average of \$108,000.<sup>9</sup>

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<sup>7</sup> "Bell Atlantic Wholesale Centers Handle Load and Then Some." Bell Atlantic Press Release, October 9, 1997.

<sup>8</sup> Letter from Lisa B. Smith, Senior Policy Counsel, MCI, to Regina Keeney, Chief, Common Carrier Bureau, September 4, 1997.

<sup>9</sup> By contrast, the cost in Boston is \$42,500.

## Conclusion

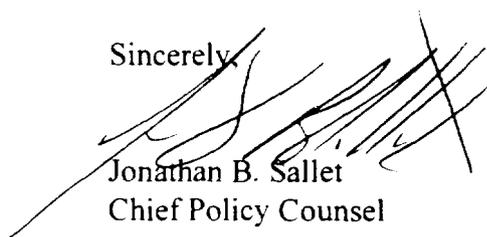
Bell Atlantic also has made a number of assertions regarding other critical issues (intellectual property, number portability, billing and collections, directory assistance, and single LATA states). While taken separately, these issues in and of themselves may seem episodic and trivial, taken together, they are indicative of the persistent and systematic efforts by Bell Atlantic to delay competition in every way, and at every turn.

The bottom line is that the Bells continue to block efforts to open their markets to competition. It is consumers who lose when incumbent local phone monopolies -- like Bell Atlantic -- abuse their market power to block competition. Yet this is precisely what Bell Atlantic is doing throughout its region. In the pages that follow we provide in greater detail our experiences as we attempt to enter local markets in Bell Atlantic's territory.

As you know, MCI is serious about entering local markets all across the nation. By the end of the year, MCI will have invested \$2 billion to bring facilities-based service to 31 markets. As we have stated publicly over and over, we intend to serve business and residential customers in every part of the nation: urban, suburban, and rural.

MCI has always fought to bring greater values and more choice in telecommunications markets. Working with the FCC, state regulators and others, we look forward to the day when choices about prices, products and services will be determined by millions of consumers exercising free choice.

Sincerely,



Jonathan B. Sallet  
Chief Policy Counsel

## **BELL ATLANTIC IS BLOCKING LOCAL COMPETITION THE KEY ISSUES**

Bell Atlantic has attempted to obscure from sight its actions to delay competition. Here are the facts.

### **1. Merger Conditions**

The FCC placed specific conditions on the Bell Atlantic-Nynex merger to "make it more likely that other market participants can enter, expand or become more significant market participants that are capable of mitigating in the relevant market, the competitive harms that we otherwise foresee as likely resulting from the elimination of Bell Atlantic as a likely independent market participant."<sup>10</sup> In fact, the Commission concluded that but for the merger conditions, the steps taken by Bell Atlantic and Nynex up to the date of the merger were not sufficient to open their local markets to competition.

Recently, however, Bell Atlantic has sought to publicly embrace the merger conditions as illustrative of progress in the market place while privately backing off its commitments. For example, in a recent speech, Bell Atlantic's Chairman and CEO lauded the merger conditions, stating: "We struck a landmark agreement with the FCC . . . that addresses every one of the concerns expressed by the interexchange carriers and federal regulators -- voluntarily committing ourselves to stringent performance monitoring, uniform interfaces, flexible pricing and forward-looking costs."

Yet, in private dealings with MCI, Bell Atlantic has sought to stall implementation and even back away from fulfilling the Merger Order conditions in the marketplace. For example, MCI has had great difficulty getting Bell Atlantic to meet with us to discuss the implementation of the Merger Order conditions. On September 17, 1997, MCI sent a letter to Bell Atlantic requesting it to satisfy its obligations as set forth in the conditions of the Merger Order and asking for a meeting by October 3, 1997 to discuss the implementation of these conditions. Receiving no response, MCI sent a follow-up letter on October 6, 1997 reiterating its request for a meeting. It was only after receipt of the second request for a meeting that we received a call from Bell Atlantic acknowledging receipt of our correspondence and promising to call to

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<sup>10</sup> Applications of NYNEX Corporation and Bell Atlantic Corporation For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries, CC Docket No. 97-42 (NSD-L-96-10) at ¶ 14 (released August 14, 1997) (Merger Order).

schedule a meeting with MCI in the near term.

Moreover, even after the delay of nearly one month from the original request for a meeting, Bell Atlantic responded to MCI with a letter that limited its negotiations with MCI to "on certain conditions in the Merger Order."<sup>11</sup> A review of that letter shows Bell Atlantic pulling back significantly from a number of its commitments as it positions itself for drawn out negotiations. For example, Bell Atlantic finds "no conceivable legitimate purpose" in fulfilling the performance monitoring reports that MCI has determined to be necessary to evaluating and ensuring that local market are in fact open to competition; states that while it is merely "evaluating [MCI's] proposals" for various performance standards and remedies (e.g., related to service outages and restorals) it nonetheless has concluded that those proposals are "neither appropriate nor reasonable;" accuses MCI of attempting to "bootstrap unrelated issues" onto the requirements in the Merger Order such as assurances of consistency among OSS between states; and suggests no need to discuss with MCI fulfillment of its obligations with respect to cost-based rates for recurring and non-recurring charges

## **2. Contract Negotiations:**

Bell Atlantic, like the other Bells and the other incumbent local monopolies, has done all it can to stall the contract negotiation process with last minute procedural maneuvers, frivolous legal arguments, and a multitude of strategic delay tactics. Yet, in its recent letter to the FCC and public statements, Bell Atlantic has attempted to place blame for long delays in obtaining approved and effective contracts on the shoulders of State Public Utilities Commissions (PUCs). Bell Atlantic has called criticisms of the delay "disingenuous." Here, once again, it is important to set the record straight.

The single best example of the use of delay tactics to prevent a contract from going into effect occurred in New York. MCI's first request for arbitration occurred in August 1996, but it was not until 13 months later that the contract was put into effect. Throughout the process Nynex delay tactics abounded. For example, Nynex sent representatives to negotiations but months later claimed those people did not have the authority to negotiate on behalf of Nynex. Nynex reneged on commitments to use "agreed to language" across the region and to work towards reaching a regional template agreement that could be used in all the former Nynex states. Most egregiously, Nynex counsel advised MCI only hours before the filing of the New York interconnection agreement in April for the first time that the agreement contained provisions that Nynex could not possibly meet, forcing further unnecessary delay. Overall, these and other legal maneuverings forced MCI to file a complaint alleging "bad faith" against Bell Atlantic for failure to complete the New York agreement in the manner to which both parties had agreed.

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<sup>11</sup>Letter from Jacob Goldberg, President, Telecom Industry Services, Bell Atlantic, to Donald Lynch, Senior Vice President, Local Financial Operations, MCI (via Fax October 9, 1997).

The contract negotiation process in New York and elsewhere illustrates the difficulties companies like MCI face in virtually every interaction with Bell Atlantic, as well as Bell Atlantic's willingness to purposely delay each and every process intended to open their markets. The result of these and similar efforts by Bell Atlantic and others, as we have stated to the FCC on several occasions, is that obtaining "approved" or "effective" contracts has taken much longer than necessary.

Some progress -- albeit much slower than necessary -- has been made in obtaining approved or effective contracts since MCI's statement to the FCC on July 10, 1997. For example, the contract between MCI and Bell Atlantic for Virginia, which was finally filed on June 16, 1997, was approved by the Virginia State Corporation Commission on July 16, 1997. In addition, as noted above, the New York Public Service Commission recently (effective October 1, 1997) approved the interconnection agreement between MCI and New York Telephone while MCI's contract in New Jersey became effective on September 9, 1997. MCI also has a signed agreement with Bell Atlantic for Washington, D.C., which was conditionally approved by the D.C. Public Service Commission on September 12, 1997. The same is true in Pennsylvania, where a contract was conditionally approved on September 3, 1997. MCI does not yet have signed or approved agreements in Maryland or Massachusetts.

### **3. Resale, Unbundled Network and Interconnection Pricing:**

One of the most critical components of local market entry is pricing. Here again, we have witnessed a systematic effort by Bell Atlantic to delay competition, this time by making it prohibitively expensive for competitors to provide local service. Bell Atlantic -- like other local monopolies -- is seeking to impose highly inflated and unjustified costs on new entrants that artificially raise the costs of entering local markets. The result is inevitably to delay competition.

When it comes to resale, according to MCI's analysis, there is no area in Bell Atlantic's region where it is profitable for a Competitive Local Exchange Carrier (CLEC) to resell residential local service. That is because small wholesale discounts coupled with ordinary business expenses and excessive NRCs make resale uneconomical. For example, in New York, a wholesale discount of 19.1 percent off the current retail rate of \$16.65 combined with expenses and NRCs inflate the per month per customer loss for CLECs to \$6.05.<sup>12</sup> Nonetheless, Bell

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<sup>12</sup> The current retail rate in New York is \$16.65. The resale discount is 19.1 percent for a wholesale rate for residential customers of \$13.47. This leaves \$3.18 to cover all remaining costs for Competitive Local Exchange Carriers (CLEC) and NRCs. Under the current interim rates, NRCs in New York are \$44.50 for wholesale providers (or \$1.85 per month for the assumed 24 month customer lifetime). This leaves \$1.33 for carriers to cover all other expenses. Total expenses faced by a CLEC, however, would be approximately \$7.37, coming from uncollectables (\$1.01), Customer Service & Billing (\$1.37), G&A (\$2.29), and Sales & Marketing (\$2.70). Thus, the loss would be \$6.05.

Atlantic's Chairman and CEO oddly questions MCI's commitment to local service with such "deeply discounted rates for resale" available.

When it comes to rates for interconnection and unbundled elements, the truth again is Bell Atlantic rates include historical or embedded costs which artificially inflate the prices that new entrants must pay. Again, Bell Atlantic seeks to find justification in charging artificially inflated costs by stating that rates are "being set" by individual state commissions, who are basing their rates on forward-looking, economic cost studies. These rates have not been proposed or set, however, based on cost, as required by the Telecommunications Act.

Evidence of the distortions that are occurring can be seen in the wide disparities among rates for unbundled network and interconnection pricing.<sup>13</sup> Rates in Pennsylvania, for example, are more than double the rates in most states. Two of the Public Service Commissioners in Pennsylvania wrote dissenting opinions in this case, stating that these rates produce arbitrary and capricious results. Clearly, these rates are not cost-based.

Moreover, one should note that contrary to the assertions by Bell Atlantic's Chairman and CEO, rates have not been negotiated. Rather, they have been arbitrated or decided in state cost proceedings. In addition, Bell Atlantic knows that the rates it actually proposed in state arbitrations do not constitute "Total Element Long-Run Incremental Cost" (TELRIC) rates, as required in the Merger Order. Finally, although Bell Atlantic correctly indicates that the long distance carriers are participating in these state proceedings, one cannot assume that MCI is in full agreement with the results. In fact, MCI has appealed state arbitration decisions in those states such as Pennsylvania that have resulted in rates that are not cost based.

#### **4 Pricing and Non-Recurring Charges (NRCs):**

Perhaps the most egregious form of pricing manipulation is NRCs. NRCs are employed across the board by the incumbents, as exorbitant one-time fees on top of the often inflated recurring charges that new entrants must pay for resale, unbundled elements, collocations, and more. NRCs are a very real way in which the Bells -- including Bell Atlantic -- are making it

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#### Rates for End Office Unbundled Switching

<u>State</u>	<u>RBOC</u>	<u>EO UNB Switching</u>
MI	Ameritech	\$0.00245
GA	Bell South	\$0.00160
CA	SBC	\$0.00220
TX	SBC	\$0.00290
CO	US West	\$0.00500
PA	Bell Atlantic	\$0.01100