This history specifically recognizes that where essential facility bottlenecks exist in a network, certain critical regulatory mechanisms are necessary to ensure the development of competition.

- The Commission has recognized that monopolists must not be permitted to use artificial restrictions, including tariff restrictions, and restrictions ostensibly based on technology considerations, to prevent competition that is technically feasible.[16]
- The Commission has long recognized that resale provides an important policing function against anticompetitive behavior. The Commission has determined that to the extent incumbents prohibit resale, they "restrict subscribers' use of their communications service, . . . [and] are discriminatory, and thereby unlawful."[17]
- The Commission has determined that where a monopolist retains control of an essential bottleneck facility, promoting competition requires that the incumbent be obligated to unbundle individual elements of the service it provides at retail. Thus, the Commission concluded in the ONA proceedings that it was "basic services must be available to other enhanced services providers and users under the same tariffs on an unbundled and functionally equal basis."[18]

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[16] *Decision*, FCC Docket 16942, "Carterphone" 13 FCC 2d 420 (June 26, 1968); *Hush-A-Phone Corp.*, 20 FCC 391, *order set aside, Hush-A-Phone v. US*, 238 F.2d 266 at 269 (D.C. Cir. 1956), *on remand* 22 FCC 112, (1957).

[17] *Report and Order*, "Resale and Shared Use," 60 FCC 2d 261 (July 16, 1976) at 263, *recon.* 62 FCC 2d 588 (1977), *aff'd sub nom.* American Telephone and Telegraph Co. v. FCC, 572 F.2d 17 (2nd Cir. 1978) *cert. denied*, 439, 439 U.S. 875 (1978).

[18] Report and Order, "ONA Proceedings," 104 FCC 2d. 958, at 965 (May 15, 1986).

- Another, even older mechanism employed by the Commission to assure the growth of competition is to require that a monopolist's prices be set based on its incremental costs, and to prohibit monopolists from eliminating competition through below-cost predatory pricing. The Commission determined in the historic *TELPAK* decision that it was

> unable to find that the rates [AT&T proposed to counter competition in the private line field] are compensatory and that, in consequence, the discrimination is justified by competitive necessity . . . that the company is giving up more than it is gaining leads to the conclusion that, [AT&T's rates] have not been shown to be justified in order to meet competition and thus not burden other users, but to benefit them. Therefore, . . . the tariff . . . must be held to be unjustly and unreasonably discriminatory. *Tentative Decision*, "AT&T's TELPAK Service and Channels," 37 FCC 370 (March 18, 1964) at 394.

The Commission cannot simply disregard forty years of pro-competition policy or the numerous instances of anticompetitive behavior on the part of incumbent monopolists identified in those proceedings. The Commission's own history demonstrates the difficulty of developing competition from monopoly markets and provides numerous tools and mechanisms for policing anticompetitive conduct. Based on the Commission's pre-Act authority and policies, the FCC must take affirmative steps to promote competition for DSL services.

Moreover, the procompetitive measures historically employed by the Commission to manage the transition from monopoly to competitive markets are fully consistent with the provisions of the 1996 Act. Indeed, the Act's local competition provisions, including sections 251, 252, 271 and 272 are largely designed

to embody the regulatory tools and mechanisms this Commission has used historically to manage the development of competitive markets. Among other things, the Act requires that incumbents make unbundled network elements available at cost-based prices, ensures unrestricted resale, and provides for separate subsidiaries. Nothing in the Act precludes the Commission from continuing its long tradition of procompetitive action. Thus, the Commission should ensure that the procompetitive mechanisms, whether extensions of historical policies or statutorily-required, ensure that vibrant competition for DSL service can fully and rapidly be realized.

There are several steps the Commission should take to ensure and promote competition in advanced telecommunications services. These include:

- *Continue to require the ILECs to actually unbundle loops capable of supporting DSL ("DSL-capable" loops) and to make collocation space available,*

- *Require ILECs to reform their current collocation practices to facilitate DSL competitors in obtaining "blanket" collocation coverage in residential neighborhoods and business districts, including, for example, by permitting sharing, smaller cages, and other creative alternatives acceptable to competitors;*

- *Where either unbundled loops or collocation are unavailable, require ILECs to unbundle ILEC DSL-equipped loops and to resell ILEC DSL services;*

- *Subject the LECs' retail entities to a "first-come-first-served" regime for collocation space* so that they cannot add new equipment to central offices where competitors have been told no space is available;

- *Impose sanctions* on ILECs for obstructionist conduct, including, delaying or denying OSS suitable for digital and data services, imposing repetitive, lengthy, and unilateral BFR processes,

questioning and delaying the placement of DSL central office equipment.

These pro-competitive steps would take the Commission much farther toward attaining the goals of telecommunications competition, especially for advanced services, than would the Petitioners' requests for extension of their monopoly control over bottleneck services. Given the Commission's long history of support for the promotion of competition in new telecommunications industries and the intent and purpose of the Act, the Commission's clear obligation is to do everything in its power to allow new entrants to compete and deliver the benefits of the open market to the consumers of advanced data services.

V. THE COMMISSION CANNOT GRANT THE RBOC PETITIONS, ON THE RECORD BEFORE IT, AND WITHOUT THE BENEFIT OF A FULL NOTICE OF INQUIRY

The RBOCs' Petitions are full of complex issues and unanswered questions. The information available to the Commission is insufficient to permit the Commission to grant the Petitions. Indeed, the Commission cannot build a record sufficient to support action in favor of the Petitions without, at a minimum, a full Notice of Inquiry ("NOI").

DATA suggests that an appropriate forum for this examination would be the Commission's upcoming Section 706 proceeding, required by Section 706(b) of the 1996 Act.

The Petitions raise many complex and important issues, yet obscure key facts and fail to provide other crucial information. Indeed, on some issues the RBOCs' Petitions are crafted to intentionally blur the distinctions this Commission must make in ruling on Petitioners' requested relief. For instance, it is unclear from the

Petitions whether the data networks they seek to develop to supplement the Internet backbone are distinct from their voice networks. Bell Atlantic specifically notes that a "packet-switched" network will relieve overcrowding on its voice network, suggesting that these networks would be *distinct* and used distinctly. Similarly, Bell Atlantic states that "[e]xpanded packet-switching capacity would allow data traffic to be re-routed onto such network in order to relieve the burdens on the local voice networks caused by increased use of on-line services." BA Pet. at 17.

Bell Atlantic's past public statements say just the opposite. For example, Bell Atlantic's Annual Reports and other public pronouncements reflect its intention to serve all its markets with a single "full-service" network.[19] "In fact, the same broadband network that we're building to serve the voice and data markets will also service the video market."[20] These statements reveal Bell Atlantic's intention to deploy all services, voice, data, Internet, video and others over a *single* broadband network. As Bell Atlantic's CEO Raymond Smith puts it, Bell Atlantic can enter new markets such as long distance, video and Internet access, "with our advanced network" with "very little incremental investment."[21]

> In short, our network strategy is to transport more information, in more forms, more efficiently, with higher quality and lower costs than any other network. Loading many revenue-generating services on the

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[19] Bell Atlantic 1995 Annual Report at 6.

[20] Bell Atlantic 1995 Annual Report at 10. Mr. Smith reiterated this strategy just over a year ago: "The end-game is building a switched broadband network in all our major markets—a network that can carry digital cargo in any form, efficiently, economically, and in a way that's transparent to customers." Speech of Raymond W. Smith, Bell Atlantic before the Institute of Public Utilities (Dec. 4, 1996).

[21] Bell Atlantic 1995 Annual Report at 7.

> same network is the key to value-creation in a fixed-cost business like ours--what I like to call our 'Breakfast at McDonalds' strategy.[22]

Thus, Mr. Smith clarified, "[g]rowth will result from selling packages of bundled, high-value services over our low-cost, high-speed network to the most voracious consumers of the information world."[23]

If the RBOCs are creating a single, enhanced network, then their "IP"- based networks will be capable of data and voice, which means the deregulation requested in these Petitions would allow the RBOCs to provide *all* their services in an unregulated environment. On the other hand, if the RBOCs intend to establish two separate networks, one voice and one data, then the RBOCs will soon return to the Commission to request permission to move their voice service onto their "data" networks for "efficiency reasons." Moreover, if they migrate their voice traffic, the RBOCs will no doubt seek authority to recover their substantial investment in the "old" voice network from their competitors through higher charges for access to monopoly bottleneck elements and interconnection.

The Petitions also implicitly raise the question of pricing for digital services.[24] Until the state of competition in the digital services market can be fully determined, and until the Commission knows the state of any of the pricing rules for the DSL

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[22] Bell Atlantic 1995 Annual Report at 8.

[23] Speech of Raymond W. Smith, Bloomberg Telecommunications Day (Feb. 19, 1997). "We are already generating 6 percent revenue growth from our core business, just from our existing portfolio of products and services. As we add long distance, data connectivity, and video, we will be able to sustain or increase revenue growth, even in the face of competition. *And because all the opportunities ahead of us leverage our in-place network, we will product [sic] attractive incremental margins - a recipe for growth." Id.*

[24] Currently DSL competitors have a cost structure which includes charges for collocation and loops. In contrast, it appears that ILECs are not charging themselves or imputing for themselves the charges for these costs. Clearly, fair competition is dependent upon a level playing field.

services market, it would be premature for the Commission to abdicate responsibility on this issue and grant ILECs complete pricing flexibility.

These issues are just a few of the many that require additional attention from the Commission. The digital services industry is the next battlefield between competitors and monopolists.[25] It is the Commission's duty to actively participate to ensure that the nation's pro-competition goals, as embodied in the Communications Act, are enforced.

[25] Special Report: Telecommunications, The New Trailblazers, *Business Week* (April 6, 1998).

CONCLUSION

WHEREFORE, in light of the arguments set forth above, DATA respectfully requests that the Commission enforce unbundling, collocation, and other obligations on ILECs, including the obligation to unbundle ILEC DSL-equipped loops where the ILEC claims that DSL-capable loops are not available due to a lack of either collocation space or "spare" DSL-capable copper loops. At a minimum, if the Commission does not deny the RBOCs' requested relief and grant the relief requested herein, the Commission should open a Notice of Inquiry with respect to the issues raised in the Petitions.

Respectfully submitted,

DSL ACCESS
TELECOMMUNICATIONS
ALLIANCE ("DATA")

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Dated: April 6, 1998

ATTACHMENT

1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AFFIDAVIT OF STEVEN GOROSH ON BEHALF OF NORTHPOINT COMMUNICATIONS

1. My name is Steven Gorosh. I am Vice President and General Counsel for NorthPoint Communications, Inc. ("NorthPoint"). I am responsible for negotiating all of the interconnection agreements, and securing all of the ILEC services, necessary for NorthPoint to provide its DSL services.

2. As explained below, NorthPoint cannot provide DSL service without access from ILECs to unbundled loops, collocation and OSS services. Although these services are explicitly guaranteed by the Telecommunications Act, ILECs continue to erect onerous, arbitrary and anti-competitive roadblocks, which delay DSL, access for the country's consumers. In attempting to secure the services required to provide DSL service, NorthPoint's only leverage is to remind ILECs of their regulatory obligations, and then to seek regulators' assistance if required. In contrast, if ILECs were to receive the broad regulatory waivers they now seek, CLECs such as NorthPoint might be prevented from providing DSL service, and consumers would arbitrarily be denied choice in procuring innovative data services.

BELL ATLANTIC

3. NorthPoint has been attempting to provide service in Bell Atlantic territory since it initiated formal interconnection negotiations in November 1997. As explained below, after receiving various oral and written assurances about the availability of unbundled loops and collocation, Bell Atlantic suddenly in February 1998 refused to allow NorthPoint to 1) order unbundled loops for DSL service; 2) use certain equipment in its collocation cages necessary for remote access management service; 3) order certain retail services to the collocation cages necessary for remote access management services; and 4) use any equipment that did not meet with unnecessarily onerous and vague NEBS 3 equipment standards as unilaterally reviewed by Bell Atlantic. Although Bell Atlantic subsequently relented on the first three issues after weeks of discussions, Bell Atlantic's anti-competitive actions and collocation

policies continue to jeopardize NorthPoint's ability to provide DSL services. The ability and willingness of Bell Atlantic to prevent competing CLECs from providing DSL services is well documented and requires enforcement, not elimination, of Bell Atlantic's current regulatory obligations.

UNBUNDLED LOOPS

4. On November 12, 1997, I wrote to the Bell Atlantic negotiator assigned to negotiate an interconnection agreement with NorthPoint in order to obtain formal clarification of Bell Atlantic's position regarding several issues of importance to NorthPoint. Among other things, I requested Bell Atlantic to confirm that NorthPoint can buy an unbundled premium (ISDN) loop to provide DSL service.

5. Shortly thereafter, I participated in a conference call with Bell Atlantic to discuss the issues raised in my November 12 letter. Following a discussion about NorthPoint's business plans, including a specific discussion regarding NorthPoint's manner of providing DSL service, Bell Atlantic stated that NorthPoint could use unbundled premium loops for providing DSL service. In addition, Bell Atlantic filed a host of affidavits in its Section 271 Application to the New York Public Service Commission, two of which explicitly state that CLECs are free to purchase unbundled premium loops to provide DSL service. *See* Supplemental Petition, Bell Atlantic-New York, 97-C-0271, Nov. 6, 1997, Affidavit of Antonio Yanez at 11-12; Affidavit of Gary Butler at 6.

6. Beginning around February 1998, NorthPoint began receiving indications that Bell Atlantic was retreating from its commitment to provide unbundled loops to NorthPoint. A conference call was held between Bell Atlantic and NorthPoint. Bell Atlantic stated that NorthPoint would not be allowed to purchase unbundled premium loops to provide DSL service. Bell Atlantic stated that NorthPoint could not offer DSL service prior to the point at which Bell Atlantic began providing an unbundled DSL loop, which it estimates to be no earlier than July 1998.

7. Weeks of time-consuming discussions followed, ending in a meeting in New York. During this time, NorthPoint continually reminded Bell Atlantic of its explicit commitments in writing in its Section 271 Petitions to the New York Commission as well as its letter to NorthPoint. As a result, Bell Atlantic is again now taking the position that NorthPoint may purchase currently available premium (ISDN) loops to provide DSL service. Presumably, the result would be different if Bell Atlantic's obligations were reduced in this or any other proceeding.

USE OF TERMINAL SERVER AND RETAIL SERVICES FOR NETWORK MANAGEMENT SERVICES

8. NorthPoint has designed an innovative and robust network management system, which can be remotely accessed to monitor and ensure optimal functioning of its equipment. This remote management is especially important for a CLEC which, by definition, does not have personnel permanently stationed in Bell Atlantic COs, and thus requires remote management to monitor its service levels.

9. One critical component of NorthPoint's remote access management design is a terminal server, which connects to and monitors the functioning of other equipment in the collocation cage. In February, Bell Atlantic expressed concern that the terminal server could be used for other data routing purposes which Bell Atlantic believes should not be provided. During many weeks of dispute, NorthPoint repeatedly explained that it will utilize the equipment in a manner consistent with Bell Atlantic's concerns, and eventually provided a letter allowing Bell Atlantic to inspect the equipment and order it removed if the equipment is not used in the manner specified by NorthPoint.

10. In order to monitor its equipment remotely, NorthPoint also must purchase a few Bell Atlantic telephone lines to carry information between its collocated network management equipment and NorthPoint's Network Management Centers. This requires the seemingly simple task of ordering a few POTs and high-speed lines, out of Bell Atlantic's retail tariff, to be provisioned to NorthPoint's collocation cage. Though the services are tariffed, and there are no technical barriers, Bell Atlantic said in February that it would not allow NorthPoint to purchase such services. Although Bell Atlantic has recently allowed NorthPoint's to purchase retail services to its collocation cage, and authorized NorthPoint's use of a terminal server, its willingness to assert a monopolist position as an equipment "gatekeeper" requires the Commission to maintain the full set of CLEC protections currently in force. Only continued oversight authority will ensure that disputes like this continue to be resolved in favor of competitive DSL providers and their customers.

ONEROUS AND UNNECESSARY NEBS REQUIREMENTS

11. ILECs have long used certain standards, known as NEBs, for measuring the performance characteristics of the equipment they buy. Now that CLECs providing innovative services such as DSL are using innovative equipment in COs, ILECs obviously have legitimate interests in ensuring that CLEC equipment will not cause damage to ILEC equipment. Bell Atlantic, however, unlike any other ILEC, recently issued a policy that would

require a level of compliance that goes well beyond legitimate questions of safety and threatens to scuttle innovative product offerings.

12. For months, Bell Atlantic had been assuring NorthPoint that equipment need only meet Level 1 NEBS requirements. This is the policy of all other ILECs (including GTE) and makes sense because Level 1 NEBS focuses on ensuring that equipment in COs is unlikely to catch fire or explode thereby damaging contiguous network equipment. In February, Bell Atlantic informed NorthPoint that it had adopted a new policy that requires NEBS Level 3 Compliance certified by a Bell Atlantic lab. This policy is unnecessary and highly anti-competitive.

13. NEBS Levels 2 and 3 focus primarily on the ability of equipment to perform under certain normal and extreme environmental situations. They were designed as an equipment buyer's performance warranty for buyers who desire a specific performance level. The decision of whether to require Level 3 compliance is thus properly a decision made by an equipment buyer; it is not the legitimate interest of an ILEC.

14. Bell Atlantic's NEBs policy is sure to wreak unnecessary havoc on innovative data vendors and providers. The equipment used to-date by ISPs to carry data traffic in various national backbones is rarely NEBS compliant. Even Bell Atlantic admits that it has never previously required Level 2 and 3 compliance for its own equipment. Moreover, it can take many months and many thousands of dollars to go through the three levels of NEBS compliance. Arbitrarily requiring equipment to meet these standards effectively curtails innovation and means that equipment is simply unavailable to serve consumer needs. Bell Atlantic adds insult to injury by customizing some of the NEBs requirements. This would require even Level 3 compliant vendors to start all over in Bell Atlantic certified labs, effectively delaying and in some cases forcing vendors to forego selling equipment in Bell Atlantic territories.

AVAILABILITY OF PHYSICAL COLLOCATION

15. One of the biggest barriers facing CLECs providing DSL service is the need for physical collocation space in Bell Atlantic's COs. If CO space is unavailable, a CLEC cannot provide service in the area served by the CO. Unfortunately, space is running out in many areas. An affidavit submitted earlier this year by Bell Atlantic reveals the following information regarding physical collocation applications and space availability in New York:

1991 - 1995	69 Completed Cages
1996	29 Completed Cages
1997	63 Completed Cages

The exponential increase in demand has led to an increasing number of space denials. 43 applications were filed in December 1997, of which Bell Atlantic reports that conditioned space was available for less than half of the applicants. NorthPoint has been denied conditioned physical collocation space in close to a dozen of its applications.

16. To date, Bell Atlantic has exercised unilateral determination of space availability, in violation of clear mandates of the FCC. Where challenged, and space has been found, Bell Atlantic has cited expensive and painfully slow procedures for conditioning new space which can increase the cost of a cage beyond the point of economic practicality and can increase the wait for a cage to more than one year. In contrast to all of these limitations and delays, Bell Atlantic routinely reserves to itself all of the space it requires to initiate its DSL trials and simply takes the space it needs without any of the hardships imposed on CLECs.

MISCELLANEOUS ISSUES

17. In addition to loops and collocation, NorthPoint will be dependent on Bell Atlantic for a wide range of OSS services, which it has yet to prove it can provide on a parity basis. For example, even after Bell Atlantic agrees to sell unbundled loops to NorthPoint, Bell Atlantic will have to prove it can provision those loops on a parity basis with the manner in which it provides the loops to its retail customers. Likewise, there is significant progress to be made on Bell Atlantic's OSS systems for facilities-based DSL providers, to ensure that Bell Atlantic provides to NorthPoint and other DSL CLECs pre-ordering, ordering, provisioning, maintenance and billing information and systems comparable to the systems it provides for its retail DSL services. Given the high level of control Bell Atlantic can exercise on stifling competition, it would be highly counterproductive to provide it with regulatory waivers which would leave competitive DSL providers without regulatory recourse to bring innovative DSL services to the American public.

US WEST

18. NorthPoint is pending or certificated in a number of US West states, and is in various stages of the interconnection agreement negotiations with US West in those states. Thus, NorthPoint has much less experience with US West than it has with Bell Atlantic and Pacific Bell. Nonetheless, there are already disturbing signs that highlight the need for continued Commission oversight to enforce the full range of existing ILEC obligations.

19. For example, US West has recently taken the highly anti-competitive position of refusing to accept collocation applications from NorthPoint in any state in which the state PUC has not approved a signed interconnection agreement between US West and NorthPoint. This arbitrary demand flies in the face of the clear dictates of the Telecommunications Act and the Commission's interconnection order which order ILEC's to parcel out collocation space on a first-come-first-served basis. No other ILEC requires this onerous waiting period, no doubt in deference to the fact that the first-come first-served rule is nowhere qualified by the disclaimer "only for CLECs with approved interconnection agreements". All other ILECs have allowed NorthPoint to at least get in line for collocation by formally requesting a quote for space, which takes a minimum of 30 - 45 business days, and purchasing the space at the point it has signed an interconnection agreement.

20. The effects of US West's arbitrary collocation ordering policy are highly antithetical to its alleged commitment in this proceeding to ensuring DSL alternatives for American consumers. Under the US West policy, NorthPoint must wait two months to sign an interconnection agreement, three months for state approval, and two months to get a formal space quote. Assuming there is any space left at that time, which is problematic given the statistics on disappearing space, NorthPoint would have to wait at least four months more for a provisioned cage. Thus, even under a best case scenario, NorthPoint is unable to provide service in US West territory for more than a year. In contrast, US West routinely adds DSL equipment to its Central Offices to provide its own DSL trials without subjecting its own service to any delays or space limitations whatsoever.

AMERITECH

21. NorthPoint is pending certification in several Ameritech states and has recently initiated interconnection agreement negotiations. Recently, Ameritech denied physical collocation requests by NorthPoint in

five metropolitan Chicago area Central Offices. No proof was provided establishing that space was indeed exhausted. Until this problem is resolved, consumers in those offices will arbitrarily and unjustifiably lack the full range of choices available to other consumers.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Steven Gorosh

ATTACHMENT

2

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AFFIDAVIT OF ERIC H. GEIS ON BEHALF OF
RHYTHMS NETCONNECTIONS, INC.

1. My name is Eric H. Geis. I am Vice President and General Manager for Rhythms NetConnections, Inc. ("Rhythms"). I am responsible for negotiating the interconnection agreements with PacBell and GTE, and securing all of the ILEC services necessary for Rhythms to provide its high performance DSL services.

2. Rhythms was founded and exists to provide high performance data communications services. It does this by using new access technologies such as DSL, and unbundled network elements as defined and permitted under the Telecommunications Act. The ability of Rhythms to provide new cost-effective data communications services to residence and business customers across the United States, depends directly on the ILEC's willingness and responsiveness to provide central office collocations space and unbundled network elements to Rhythms. Rhythms has encountered significant market implementation delays and numerous operational challenges caused by the ILEC's unwillingness to cooperate in its required responsibilities of providing central office collocation space and provisioning of unbundled network elements. Both of which are critical to Rhythms ability to serve its customers. Should ILEC's be given the broad regulatory waivers they now seek, Rhythms expects further stall tactics from the ILEC's and might not be able to offer the

new innovative cost-effective data communications services that the FCC and the Telecommunications Act have attempted to foster.

CENTRAL OFFICE COLLOCATION SPACE

3. In establishing San Diego, CA as its first service area, Rhythms initially identified seventeen (17) ILEC central offices where it needed collocation space to install its DSL equipment, in order to provide its DSL data services. Of the seventeen ILEC central offices required, collocation space was not available in six (6) central offices. In San Francisco, CA, of fourteen central offices required by Rhythms, collocation space was not available in four (4). In Oakland, CA, of thirteen (13) central offices required, collocation space was not available in seven (7). In San Jose, CA, of ten (10) central offices required, collocation space was not available in eight (8). In Los Angeles, CA of twenty two (22) central offices required, collocation space was not available in seven (7). This continuing denial of central office collocation space by ILECs has created a large gap in Rhythms service area coverage, causing Rhythm's inability to provide service to customers requesting DSL service in those "space denied" central offices, and significantly curtailing Rhythms business opportunities. Collocation space denials, as Rhythms experience has shown, will only continue to increase, as the number of CLECs increase and the limited availability of central office collocation space continues to be acquired by CLEC's.

4. In an attempt to solve the space denial problem creatively, in a win-win for both the ILEC and Rhythms, in November 1997, Rhythms prepared and filed Bona Fide Requests ("BFRs") with the ILEC for possible solutions to the collocation problem. Rhythms BFRs included using less-than 100 square foot of collocation space and using a remote terminal located in the ILEC

parking lot, among other possible solutions. These suggestions were initially rejected. We are now continuing to explore one of Rhythms proposed options with the ILEC. However, as of today, no alternatives have been implemented. Therefore the space denial problem remains unsolved, and the ILEC's have been very slow to accept new ideas, or propose their own solutions to this issue.

5. In one documented instance, Rhythms requested collocation space in several central offices, and was denied space in many of those requested, which at the time of the space denial, had shared collocation space available. When Rhythms subsequently found out about the existence of the shared collocation space and brought it to the attention of the ILEC, Rhythms was told that "it had not requested shared collocation space, therefore its request for space was denied." This, even after an escalated meeting with the ILEC, where Rhythms had argued for collocation space and in which it had presented its creative BFRs identified above. This incident clearly shows the unwillingness of the ILEC to cooperate with CLECs in providing collocation space—even when space is available, and the tactics it will use to prevent competition in its local market!

UNBUNDLED NETWORK ELEMENTS (COPPER LOOPS)

6. The other critical element Rhythms needs in order to offer its DSL services is access to unbundled copper loops, as defined in the Telecommunications Act. While an unbundled copper loop is identified and defined in Rhythms Interconnection Agreement with the ILEC, securing it from the ILEC—in a usable form for providing DSL services—has been a long and tedious process, with thus far, only marginal results.

7. Today's DSL technology can provide significantly fast bandwidth over great distances. But it requires a "clean copper line", one without loading coils or repeaters. To date, the ILEC has refused to remove repeaters on copper lines over fifteen thousand feet in length, this in a time when DSL technology can work to on loops for distances of up to 30,000 feet in length. Again, the unwillingness of the ILEC to cooperate on technological advances, such as this issue, deprives both residence and business customers of new cost-effective high performance data networking products and services that are being provided today.

8. Another example of the ILEC's unwillingness to support local access competition is its refusal to provide interconnection at any technically feasible point as required under the Telecommunications Act. Many residential and small business customers are locating in fast-growth suburban areas, which are served by ILEC installed Digital Loop Carrier ("DLC"). In this situation, the customer's line is part copper and part fiber. Yet the ILEC refuses to provide to Rhythms, access to the copper portion of the line, thereby eliminating a large percentage of potential customers who could benefit from new services, but cannot do so because of the ILEC's intransigence on providing access to the copper portion of the line.

I swear under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief.

Eric H. Geis

ATTACHMENT

3

INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

Dated as of _____, 1997

by and between

BELL ATLANTIC - PENNSYLVANIA, INC.

and

[CLEC]

reverse-battery, duplex, and no signaling. The service is more fully described in Bell Atlantic TR-72570.

11.2.3 "2-Wire ISDN Digital Grade ULL" or "BRI ISDN" provides a channel with 2-wire interfaces at each end that is suitable for the transport of 160 kbps digital services using the ISDN 2B1Q line code.

11.2.4 "2-Wire ADSL-Compatible ULL" or "ADSL 2W" provides a channel with 2-wire interfaces at each end that is suitable for the transport of digital signals up to 6Mbps toward the Customer and up to 640 kbps from the Customer. BA will offer ADSL-Compatible ULLs only when [CLEC]'s method of operation or use of equipment in connection with such ULLs does not impair BA's use of technology or provisioning of services in the same cable. In addition, ADSL-Compatible ULLs will be available only where existing copper facilities can meet applicable industry standards.

11.2.5 "2-Wire HDSL-Compatible ULL" or "HDSL 2W" provides a channel with 2-wire interfaces at each end that is suitable for the transport of 784 kbps digital signals simultaneously in both directions using the 2B1Q line code. HDSL compatible ULLs will be available only where existing copper facilities can meet the specifications.

11.2.6 "4-Wire HDSL-Compatible ULL" or "HDSL 4W" provides a channel with 4-wire interfaces at each end. Each 2-wire channel is suitable for the transport of 784 kbps digital signals simultaneously in both directions using the 2B1Q line code. HDSL compatible ULLs will be available only where existing copper facilities can meet the specifications.

11.2.7 "4-Wire DS1-compatible ULL" provides a channel with 4-wire interfaces at each end. Each 4-wire channel is suitable for the transport of 1.544 mbps digital signals simultaneously in both directions using PCM line code. DS-1-compatible ULLs will be available where existing copper facilities can meet the specifications.

11.2.8 ULLs will be offered on the terms and conditions specified herein and on such other terms in applicable Tariffs that are not inconsistent with the terms and conditions set forth herein. BA shall make ULLs available to [CLEC] at the rates specified by the Commission, as amended from time to time, subject to the provisions of subsection 11.2.9 below.

11.2.9 BA will make Analog 2-Wire ULLs, BRI ISDN ULLs, Analog 4W ULLs, and 4-Wire DS-1-compatible ULLs available for purchase by [CLEC] at any time after the Effective Date. BA will make HDSL 4-Wire, HDSL 2-Wire, and ADSL 2-Wire ULLs available to [CLEC] no later than the date on which it makes such ULLs commercially available to any other Telecommunications Carrier in Pennsylvania, unless such date is earlier than the ULL milestone date contained in Schedule 3.0 with respect to a particular LATA, in which case the ULL milestone date shall apply.