DOCKET FILE COPY ORIGINAL

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

RECEIVED
MAY - 6 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
	)	
Petition of Bell Atlantic for Relief from Barriers to Deployment of Advanced Telecommunications Service	)	CC Docket No. 98-11
	)	
Petition of U S West for Relief from Barriers to Deployment of Advanced Telecommunications Services	)	CC Docket No. 98-26
	)	
Petition of Ameritech for Relief from Barriers to Investment in Advanced Telecommunications Capability	)	CC Docket No. 98-32

Bell Atlantic Reply Comments

Of Counsel:
James R. Young
Edward D. Young III
Michael E. Glover

John Thorne
Robert Griffen
Bell Atlantic
1320 North Court House Road
8th Floor
Arlington, VA 22201
(703)974-2943

Richard Taranto
Farr & Taranto
2445 M Street, NW
Suite 225
Washington, DC 20037
(202)775-0184

May 6, 1998

TABLE OF CONTENTS

Page

I Introduction and Summary 1

II. The Commission Has Legal Authority To Grant This Petition 4

III. Bell Atlantic's Entry into the Backbone Market is Procompetitive 9

A. Backbones Do Not Reach Many Areas 10

B. The Backbone Continues to Move Slowly 14

C. The Backbone Market Is Becoming More Concentrated 17

IV. Forbearance from Regulatory Barriers to xDSL Will Speed Deployment 18

A. Commenters and Regulators Support Removing Regulatory Barriers 19

B. Bell Atlantic's Entry Will Widen xDSL Deployment 20

C. Bell Atlantic's Entry into the xDSL Market is Procompetitive 22

1. Bell Atlantic is Not an xDSL Incumbent 22

2. xDSL Competitors Are Entering New York and Massachusetts 23

3. 706 Relief Will Spur xDSL Competition 24

4. Competitor Complaints Are Meritless 26

V. Immediate Action Is Needed 27

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

In the Matter of	)	
	)	
	)	
Petition of Bell Atlantic for Relief from Barriers to Deployment of Advanced Telecommunications Service	)	CC Docket No. 98-11
	)	
Petition of U S West for Relief from Barriers to Deployment of Advanced Telecommunications Services	)	CC Docket No. 98-26
	)	
Petition of Ameritech for Relief from Barriers to Investment in Advanced Telecommunications Capability	)	CC Docket No. 98-32

Bell Atlantic Reply Comments

I. Introduction and Summary

Compaq Computer Corporation, Next Level Corporation, the Alliance for Public Technology, a coalition of advocacy groups, other RBOCs, and a former Commission chief economist agree that the Commission should grant Bell Atlantic's petition. These commenters recognize that innovation and deployment by incumbents is necessary and will occur at a rapid pace only when regulatory shackles on innovation are removed. And they recognize, as does Bell Atlantic, that the Commission can allow incumbents to innovate while continuing to enforce rules that facilitate competition with Bell Atlantic. Chairman Kennard made the same point in a speech last week. Remarks by William

Kennard to USTA's Inside Washington Telecom 6 (April 27, 1998) ("Chairman Kennard's USTA Speech") (www.fcc.gov/speeches/kennard/ spwek813.html).

The views of equipment manufacturers, such as Compaq and Next Level, are particularly important. They will benefit only if the petition will lead to an increase in output in the data transmission market and therefore an increase in business for them. These manufacturers, therefore, "have the incentive to make a completely unbiased judgment on the matter." United States v. Western Electric Co., 993 F.2d 1572, 1582 (D.C. Cir. 1993).

The contrary claim – that removing regulatory barriers to the deployment of advanced telecommunications services would harm consumers – is false. Former Commission Chief Economist Thomas Hazlett notes that "the most reliable path for consumer welfare maximization over time lies with deregulation under the terms of Sec. 706." Hazlett Affidavit ¶3, Attachment A. Dataquest noted as part of a recent extensive review of the Section 706 petitions that "[e]nd users would be big winners if the RBOCs were given inter-LATA relief." www.gartner3.gartnerweb.com/dq/static/whatsnew/wn-a001.html.

Moreover, the parties opposing relief offer no solution to the very real problems addressed in the petition – that transmission speeds on Internet backbones are slowing to a crawl and that high-speed bandwidth is bypassing ordinary consumers. At a time when MCI/WorldCom, AT&T, Sprint and others whom the Commission judged the best possible competitors to Bell Atlantic, Bell Atlantic/NYNEX Order, FCC Dkt. 97-286 ¶94 (Aug. 14, 1997), are abandoning residential competition in favor of business customers, the Commission must find a way to fulfill Section 706's statutory mandate to

encourage the deployment of advanced broadband services to ordinary Americans. Permitting Bell Atlantic to bring advanced broadband to customers in its region free of unnecessary regulatory constraints will achieve Congress's command.

Bell Atlantic has a track record of deploying more quickly and more ubiquitously than its peers advanced technology, including fiber (more than AT&T, MCI, Sprint, WorldCom and Qwest combined), ISDN, and SS7. Just as importantly, Bell Atlantic is far along in meeting the checklist requirements that this Commission and the State Commissions have imposed, and in New York has agreed to market-opening measures well beyond those required by the Act. Bell Atlantic continues to move full speed ahead to receive Section 271 relief in all of its states.

Contrary to the opponents' fears, Bell Atlantic is not using Section 706 to circumvent Section 271. To address these fears, however, the Commission could consistent with past practice reserve the right to regulate in the future any perceived misuse of any Section 706 relief. After the Commission deregulated "premium" cable programming, for example, it policed perceived attempts by cable companies to use that relief to evade basic rate regulation. Third Order on Reconsideration, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, 9 F.C.C. Rec. 4316, 4365-4366 (1994).

The Commission must act quickly; it should not wait another half-year or more to conclude a formal rulemaking proceeding under Section 706(b). As Dataquest notes, for as long as the requested relief is delayed, the "residential consumer will continue to be left in the background," network inefficiencies will raise Internet costs and degrade Internet quality, and xDSL deployment will be hampered.

www.gartner3.gartnerweb.com/dq/static/whatsnew/wn-a001.html. That result would be directly contrary to Congress's intent.

II. The Commission Has Legal Authority To Grant This Petition

The Commission has legal authority under Section 706 to forbear from Sections 251(c) and 271 for the narrow and targeted purpose of promoting the deployment of advanced high-speed data networks. Bell Atlantic Petition at 4-12.[1]

Indeed, Section 706 goes beyond conferring authority. It imposes on the Commission the duty to take deregulatory steps when the requested forms of deregulation would accelerate deployment of advanced telecommunications services to all Americans. The provision uses the language of command: the Commission "shall" take the deregulatory steps to promote rapid and reasonable availability of advanced services. Compare 47 U.S.C. § 254(b)(1)-(7) ("should").

The grant of authority in Section 706 is explicit and independent of any other provisions. Nonetheless, the opponents claim that the reference to "regulatory forbearance" in Section 706 implicitly must refer back to Section 10. See, e.g., MCI Opposition at 22. This claim, however, ignores the plain words of Sections 10 and Section 706.

First, Section 706 does not refer to Section 10 as the source of authority for regulatory forbearance. Congress could have, but did not, insert such a limiting

---

[1] The Commission also has independent authority for some of the requested relief, such as removal of price caps and the limitation of unbundling requirements to network elements that existed in the old monopoly environment. See, e.g., U S West Petition at 45-46.

reference. Instead, Section 706 is an independent grant of authority to the Commission to use "regulatory forbearance" or "other regulating methods" to encourage broadband capability. AT&T argues that, because Section 401 of the Act, which added Section 10 to the Communications Act, is entitled "Regulatory Forbearance," Section 706's reference to the same phrase "regulatory forbearance" must refer to the title of Section 401 and, therefore, refer to Section 10 including all of Section 10's limitations. AT&T Opposition at 6-7. But it is a huge leap of logic to argue that Congress intended to limit Section 706 forbearance to Section 10 forbearance, when the only link between the two statutory sections AT&T can find is the uncodified heading of Section 401.[2] Congress could not have meant to truncate the Commission's power without an explicit reference. Using similar phrases in two places in an Act does not import all the limits of the one to the other. There simply is nothing to suggest that the reference in Section 706 to regulatory forbearance was limited to Section 10.

Restricting the Commission's authority under Section 706 to authority already granted elsewhere in the Act makes Section 706 superfluous and redundant. The Commission would be required, even without Section 706, to exercise such otherwise-granted authority in the interest of promoting advanced infrastructure, since that is the basic statutory policy embodied in the Title of the Act and the Act itself. Bell Atlantic Petition at 4-12.

Similarly, were Section 10 the only provision in the Act granting forbearance authority, Congress's express limitation on forbearance from Sections 251 and 271

---

[2] Accordingly, titles have never been given weight in statutory interpretation, much less uncodified titles. Brotherhood of R.R. Trainmen v. Baltimore & O.R., 331 U.S. 519,

"under subsection (a) of this section" would be meaningless and unnecessary. Opponents are stuck essentially arguing just that. See, e.g., WorldCom Opposition at 11 ("under subsection (a) of this section" a "mere reference phrase"). But it is "an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute," Sutherland Statutory Construction ¶46.06, and the agency must "assume that in drafting this legislation, Congress said what it meant." United States v. LaBonte, 117 S. Ct. 1673, 1677 (1997). Indeed, Section 10(d)'s proviso limiting non-forbearance for 251 and 271 to "this section," i.e. Section 10(a) only, confirms the congressional contemplation of other forbearance authority, such as the specific authority to promote investment in advanced telecommunications infrastructure addressed by Section 706.

Second, the different purposes of forbearance in Section 10 and Section 706 further confirm the independent grant of authority. Section 706 requires the Commission to use regulatory forbearance and other regulating methods for a very narrow purpose: to speed the deployment of advanced broadband capabilities. Section 10, on the other hand, mandates that the FCC "shall" forbear from applying a given statutory provision when enforcement of that provision no longer is necessary to protect consumers. Section 10 is a generic directive to prune statutory and regulatory undergrowth, while Section 706 is a statutory command to use regulating methods such as forbearance to promote a specific, narrow substantive goal.

For this reason, AT&T's claim that Section 706 contains a "general reference" to forbearance that is trumped by Section 10(d)'s specific restriction on forbearance, AT&T Opposition at 9, is backwards. Section 706 contains a grant of forbearance for a very

---

528-29 (1947); United States v. Fisher, 6 U.S. (Cranch) 358, 386 (1805).

specific purpose: to promote high-speed broadband networks. It is Section 10 that has a very generic command – forbear from any regulation or statutory provision whenever not necessary to protect consumers – that required the specific limitation on Section 251 and 271. The cases AT&T cites for its proposition that the Commission cannot use its "general authority" to override specific statutory commands, AT&T Opposition at 9, prohibit broad Commission actions taken pursuant to "public interest" standards and the "purposes" of telecommunications legislation – not actions taken pursuant to specific statutory provisions such as Section 706.

Third, the legislative history states that Section 706 gives the Commission additional authority: as Senator Burns noted, it gives "the FCC authority to quicken the pace of competition and deregulation to accelerate the deployment of advanced telecommunications infrastructure." 142 Cong. Rec. S699 (daily ed. Feb. 1, 1996). If Section 706 contained only authority already granted elsewhere in the Act, Senator Burns's statement that Section 706 gives the Commission additional authority to accelerate the pace of competition and deregulation would be wrong.

Opponents make several other groundless arguments. MCI argues that if Congress wanted Section 706 to be broader than Section 10, it would have written in a phrase at the beginning of Section 706 saying something like "notwithstanding the limit on forbearance found in Section 10." But such a phrase would be appropriate only if Section 706's forbearance authority would otherwise be limited by Section 10. As noted above, this is simply not so. MCI tries to overcome this problem by pointing out that Congress cross referenced Section 332(c)(1)(A) and Section 10, where Section 10 overrides the limits on forbearance found in Section 332(c)(1)(A). MCI Opposition at 22.

Section 332 was specific to wireless, whereas Section 10 is general. For the general provisions of Section 10 to trump the specific provisions in Section 332, it was necessary to include this cross-reference. But Section 10 contains no similar reference that would trump the specific provision in Section 706.

Several opponents argue that Section 271(d)(4) contains an independent prohibition on forbearance from Section 271 until the checklist is met. Section 271(d)(4) states that the Commission "may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B)." But limited forbearance from Section 271(a) for the targeted purpose of constructing high-speed broadband networks does not affect the terms of the requirements under Section 271(c)(2)(B), which open up the existing (mostly narrowband voice) networks. Nothing in Bell Atlantic's petition either would limit or extend the terms used in the competitive checklist, and Bell Atlantic is committed to work with the Commission and the state commissions to meet the checklist.

Finally, the opponents argue that the Commission does not have the right to modify LATA boundaries to take account of the unique nature of packet switched networks, citing MCI v. AT&T, 512 U.S. 218 (1994). That case, which held that the word "modify" in the Communications Act does not permit wholesale abandonment or elimination of a requirement, does not prohibit the LATA modifications here. All parties agree that the FCC can modify LATAs under 47 U.S.C. § 153(25)(B). The modification here, limited to capabilities which the FCC has a mandate specifically to encourage, is consistent with Justice Scalia's reading of modification in MCI v. AT&T. Modifying boundaries for high-speed broadband networks is not the same as eliminating LATA

boundaries altogether. The relief here is no different in scope than prior LATA modifications that have been permitted for particular technologies and services. Bell Atlantic Petition at 11 n.12 (modifications of LATA boundaries for video and audio programming by satellites and other means).

III. Bell Atlantic's Entry into the Backbone Market is Procompetitive

Bell Atlantic has rolled out the first generation of high-speed broadband access services to its customers, but anticompetitive restrictions bar its entrance into the Internet backbone market, and regulations deter the deployment of new, even faster access services. Many Bell Atlantic customers do not live anywhere near a major backbone and suffer from slower Internet backbone service as a result. Even in major metropolitan areas the backbones run at speeds well below the ISDN Bell Atlantic has deployed everywhere. And the backbones themselves are becoming concentrated in the hands of a few, with one "Internet Emperor" – WorldCom – in the throne.

Even without these problems, Bell Atlantic's entry into the backbone market would be procompetitive. Bell Atlantic currently has no market share whatsoever in the backbone market. Rather than keep a large player from innovating in the market, the Commission should be encouraging entry. As Chairman Kennard recently noted, "I want to make sure that current regulation does not prevent the deployment of facilities that otherwise would be built. I want incumbent telephone companies to play a major role in the deployment of these services." Chairman Kennard's USTA Speech at www.fcc.gov/speeches/kennard/spwek813.html.

A. Backbones Do Not Reach Many Areas

Backbone networks outside of major metropolitan areas either are nonexistent or are not robust. Of the 41 LATAs in the states served by Bell Atlantic, twenty-three of the LATAs are not served by any of the national backbones listed by Boardwatch magazine, and five of the LATAs have only one national backbone. Thus only fourteen of the 41 LATAs in the states served by Bell Atlantic have two or more national backbones. Attachment B depicts the vast swath of unserved or underserved areas.[3] See also Bell Atlantic White Paper at 41-43. These neglected areas receive inherently inferior service, lacking fast access and routing diversity that helps ensure quality.

Four states in the Bell Atlantic region – West Virginia, Maine, New Hampshire and Vermont – have no backbones at all, and large parts of other states also lack backbones. For example, even though Pittsburgh and Philadelphia have many backbones, Altoona and Scranton, Pennsylvania are more than fifty miles away from any backbone. Indeed, the cities in major states that are fifty miles away from the nearest backbone are surprisingly large, such as Roanoke and Charlottesville in Virginia and Binghamton, Elmira and Watertown in New York.

---

[3]Bell Atlantic derived this result by counting the POP locations of "national" backbone operators. Thirty-five backbone operators met Boardwatch criteria for a "Level 2 or higher" operator. To meet these criteria, the operator had to be operational, the circuits had to be DS3 or greater; and the circuits had to interconnect two or more NAPs. In addition to inter-NAP connections, these national backbone operators' high capacity circuits that lead to POPs in major (and in some cases not-so-major) cities are included in the database. Boardwatch points out there are regional backbone operations (usually an adjunct to a National ISP) that link to these, and in a few cases link to one NAP, but Boardwatch does not believe their network capacity and geographic coverage are significant.

West Virginia, for one, has suffered from the lack of high-speed connectivity offered by current backbone providers. Bell Atlantic - West Virginia has installed a high-speed broadband (ATM) network in the state but has been unable to procure an interLATA connection to carry traffic out of state. As a result of the major backbone providers' complete neglect, West Virginia has been unable to procure the links necessary to provide high-speed backbone service. Affidavit of Matthew W. Brown, Attachment C. Bell Atlantic Internet Solutions' Global Service Provider has tried diligently to obtain the needed capacity to connect the West Virginia statewide network needed by the state government. But that GSP has been told repeatedly by the major backbone providers, including MFS/WorldCom, MCI and Sprint, that they do not have the T-3 capacity the state government needs. Affidavit of Harry J. McMahon, Attachment C.

This is consistent with the evidence of lack of backbone reach submitted by U S West in its petition, U S West Petition at 8-23, and cited by Commissioner Tristani, "Section 706: An Opportunity for Broadband Competition Policy," Speech before the U S West Regional Oversight Committee (Apr. 27, 1998).

Indeed, the breezy assertions that robust competition in the backbone market has solved all problems and that it is the last mile that somehow is underinvested because of a lack of competition, see, e.g., WorldCom Opposition at 40, are exactly backwards. Bell Atlantic has pushed ISDN out to virtually everybody in its region, including to the 23 LATAs where no backbone goes.[4] And Bell Atlantic plans to pass at least 30% of the

[4] Bell Atlantic has deployed ISDN ubiquitously in its network. Bell Atlantic ended the quarter with more than 450,000 basic-rate ISDN lines in service, up 29.7 percent from first quarter 1997, and more than 550,000 Primary Rate ISDN channels in

homes in its region with xDSL if given the chance to make a fair return on its investment – well more than the combined plans of all of its competitors. But there are no backbones to carry that traffic in many parts of Bell Atlantic's region. Even if Bell Atlantic were to deploy xDSL in these unserved parts, there would be no backbone that could handle such fast speeds, and the lower-speed links over which traffic is backhauled to the major backbones would quickly overload.

If uncorrected, this lack of backbone capability will harm a wide range of individuals and groups who will be left behind by technological advance. Collective comments filed by a broad range of advocacy groups note that "[t]elemedicine, distance learning, video relay, telecommuting and other on-line applications to the home, school, college and university, health care facility, and workplace will only be possible if we have affordable high-speed connections to where we live, learn, work and play and if the internet backbone grows to meet new demands for capacity and speed." Comments of the United Homeowners Association, et al, at 7-8.

The new investment touted by the opponents will not correct the problems of backbone reach these groups identify. Qwest's network, for example, is point-to-point from major city to major city. Its network only goes where other networks have gone before, neglecting West Virginia, Maine, New Hampshire and Vermont entirely, and everything but the major cities in the other states. www.qwest.net/network/ Newyork.html. Even were these companies to begin flying jumbo jets on these major city routes, their investment will not bring even turboprops to smaller towns.

---

service, more than double the first quarter 1997 total. "Bell Atlantic Starts 1998 with Solid First Quarter," Press Release (Apr. 23, 1998).

WorldCom attempts to defend its focus on lucrative metropolitan markets by noting that most nodes are in big cities because that is where the traffic is. That of course is the problem: how to get broadband to Huntington, West Virginia or Butte, Montana, not just how to upgrade WorldCom's congested links in Washington, D.C.

Bell Atlantic, on the other hand, is the most likely candidate for giving many currently neglected customers in its region advanced backbone capabilities. If Bell Atlantic receives Section 706 relief, for example, it plans to place a broadband point-of-presence (POP) in every state in its region that will run Internet protocols. Bell Atlantic is a key partner in the creation of an East Coast "MetaPOP." "New Consortium Announces Deployment of East Coast's First Connection Point to Multiple, Major National, High-Speed Network Initiatives," http://biz.yahoo.com/prnews/980506/ ni_telecom_1.html. This should not be surprising, since Bell Atlantic always has been aggressive giving its customers the best technology. Bell Atlantic already provides virtually ubiquitous ISDN service to its customers, even though the backbone moves slowly and many ISPs do not support ISDN's fast rates. Bell Atlantic White Paper at 17-18. Bell Atlantic has deployed more fiber than the big three long distance carriers and Qwest combined. By the end of 1999 (forecasting from historical fiber deployment data and in Qwest's case from its press releases), Bell Atlantic will have over 5.5 million fiber miles deployed, compared to roughly 1.5 million for AT&T, 1 million for MCI, 500,000 for Sprint, and less than 800,000 miles for Qwest. Attachment D.

B. The Backbone Continues to Move Slowly

Even where backbones do go, they do not go swiftly.

The latest BoardwatchKeynote studies shows the backbone continues to travel at unacceptable speeds – well less than the ISDN rolled out ubiquitously by Bell Atlantic. While WorldCom and others tout the statistics showing performance was 60% higher than last year, this comes from an unacceptable base and still remains significantly slower than the local loop access technologies installed by Bell Atlantic such as T-1s, T-3s, and even ISDN. The latest studies do not quantify the speed in kilobits per second, but a 60% gain from the year before would still leave Internet speeds at little more than half ISDN's 128 kbps.

Backbones are a combination of fiber, routers and switches, which connect through network access points to local loops. When too much traffic is trying to make its way through congested switches or routers, many packets just drop off if they cannot get through, or some get through much more slowly than others turning the World Wide Web into the World Wide Wait.

The spotty quality provided by existing providers is not isolated but systemic. Boardwatch noted that the fastest cities, including Boston in Bell Atlantic's region, are "often four times faster than the slowest ones," such as Washington, D.C. "Internet Performance 60% Faster This Year Than 1997," www.keynote.com/news/ announcements/pr031198.html. That is in marked contrast to the high level of Bell Atlantic's engineering standards for voice networks, where a high quality connection is established every time someone calls from West Virginia or Washington, D.C. or Maine.

Internet quality problems are even worse in more remote areas, given the lack of diversity in routing traffic and the lack of any backbones at all.

Since Bell Atlantic's filing, more evidence of systemic problems in high-speed data networks have become available. A recent article noted that "[f]our of the eight weeks in January and February saw major Internet outages, three of which involved problems at [WorldCom's] MAE-East and MAE-West NAPS." "Internet Performance 60% Faster This Year Than 1997," www.keynote.com/news/announcements/ pr031198.html. AT&T's recent catastrophic router failure shut down the operations of many large customers. "AT&T Frame Relay Service Goes Down for the Count," Network World (Apr. 20, 1998). This is the latest chapter in a long saga of AT&T's Internet problems. AT&T has had severe problems satisfying demand for T-1 lines to connect even large businesses to the Internet. Id.

The critics pooh-pooh the backbone problems. But they do not rebut them.

The opponents offer no rebuttal evidence to the point that today's backbone moves slowly. WorldCom attacks Boardwatch but offers no real alternative methodology of its own. WorldCom Opposition at 41-47. Indeed the opponents apparently have much to hide. MCI has stooped to sending threatening lawyer letters to web sites that publish free statistics on backbone performance. "MCI Accused of Bully Tactics," ZDNet (Apr. 18, 1998). MCI and WorldCom also have stopped publishing maps of their networks, and MCI has adopted a "furtively secretive manner." Boardwatch Directory of Internet Service Providers, 171 (Winter 1998). Previously MCI had claimed that any backbone operator unwilling to reveal its network diagram was untrustworthy. Id.

AT&T acknowledges that "the pace of Internet growth has outstripped the network's ability to add new capacity quickly enough to handle the demand," but does tout the @Home backbone as an example of a fast backbone. AT&T Opposition at 23-24. The irony of this correct assertion is lost on AT&T: @Home is run by the cable companies, true monopolists with no unbundling or resale requirements which have not spent a dime, let alone the billions of dollars that Bell companies have, to open their networks to competition. Bell Atlantic would like to build a backbone to carry ADSL traffic for the same reason @Home built its own backbone. It does not want to rely on the "furtively secretive" likes of WorldCom/MCI, and does not want the fast links at the access level to be degraded by the general congestion in the backbone.

The opponents' argument that the Internet congestion problem is congestion in the local loop, see AT&T Opposition at 22, is pure misdirection. The enormous differential between otherwise similarly situated cities (Boston receives Internet backbone service that is often four times faster than that received by Washington, D.C., "World Wide Wait 60% Faster," Media Daily) proves that the backbone -- not servers, and not local access – is a key gating factor and the source of congestion problems. While the Internet has strained local telephone facilities, Bell Atlantic has added hundreds of millions of dollars of equipment just to ensure that Internet traffic gets through to the backbones any time of the day or night. It is exactly the lack of such a strong reaction by backbone providers to backbone congestion that requires Bell Atlantic entry.

Finally, the assertions that new capacity coming on line through Qwest, Level 3 Communications, and others will solve current backbone congestion problems are incorrect. As the Wall Street Journal noted, "demand [for bandwidth] is far outstripping

supply . . . . Mr. Crowe and his partners [at Level 3] are betting that the trend will continue for decades." J. Keller, "Ex-MFS Managers Plan to Build Global Network Based on Internet," Wall St. J. Interactive Edition, Jan. 20, 1998, cited in Bell Atlantic White Paper at 24. Investment analysts agree; Hambrecht & Quist recently noted that the "demand for high-capacity network and broadband services is virtually exploding. . . . [W]e think that demand will continue to outstrip supply for some time to come." Hambrecht & Quist, "Initiating Coverage of IXC Communications with a Buy Rating," (March 25, 1998). Indeed, the outsized market valuations of these transport companies – Qwest has a market capitalization of $8 billion on annual sales of less than $500 million – reflect bandwidth scarcity, not abundance.

The problems of bandwidth scarcity will only increase as Bell Atlantic and its competitors deploy high-speed access technologies, such as xDSL.

C. The Backbone Market Is Becoming More Concentrated

Bell Atlantic's backbone entry will be particularly procompetitive given the increased concentration in the Internet backbone flowing from the merger of the WorldCom/MCI/Compuserve/ANS backbones. Affidavit of Thomas Hazlett, Bell Atlantic Petition at Attachment 1. Numerous groups have noted that the merger is likely to lead to the monopolization of the Internet. See, e.g., Jeff Keefe, "Monopoly.Com" (Economic Policy Institute 1998).

WorldCom/MCI have the levers to manipulate the Internet world through peering policies and control over internet traffic exchange points. Bell Atlantic White Paper at 27-37. Today, WorldCom and a few other entrenched incumbents can offer higher-quality connections, while those lesser backbones and resellers who depend on

WorldCom and its network access points (NAPs) suffer degraded access that ultimately will make it difficult for them to survive.

With the merger, WorldCom will control roughly 60% of the commercial backbone traffic in the United States, and the key access points to the Internet (the "NAPS"). Hazlett Affidavit, Bell Atlantic Petition at Attachment 1. WorldCom will have the leverage through peering agreements to raise prices for the entire Internet. This increased concentration and resulting leverage comes at a time when Alan Taffel of UUNet notes that "[i]f you are not a facility-based ISP you will very soon find there is no more capacity out there to lease, and if you find some, you will be paying a premium on it while competing with ISPs that own their own network." "Size Matters," Internet Week, Oct. 13, 1997.

Unless Bell Atlantic enters the backbone market soon, the ability to compete with the few entrenched incumbents will be lost. Joe Nacchio, the head of Qwest, brags that "in telecom now, giving someone a four year head start means you might as well not be there, . . . I feel like an emerging oil baron." Wired Magazine, 181 (May 1998).

IV. Forbearance from Regulatory Barriers to xDSL Will Speed Deployment

As Bell Atlantic's petition demonstrated, and numerous commenters noted, lessened regulation of advanced services will lead to further investment and innovation. This lessened regulation is consistent with the FCC's other pro-competition measures, and indeed will provide a further spur to competition.

Internet service provider concerns that Bell Atlantic will favor Bell Atlantic Internet Solutions or cut them out of the high-speed bandwidth market are misplaced.

Bell Atlantic currently intends to offer xDSL services to ISPs. By encouraging all ISPs to sell xDSL service, Bell Atlantic believes it can accomplish xDSL's widest possible deployment. To the extent that ISPs do not like the prices Bell Atlantic charges for these services, the ISPs can seek out competitive xDSL suppliers who give them a better price.

What Bell Atlantic should not be forced to do is unbundle the electronics of its xDSL at TELRIC prices, or resell at mandated discounts, or be subject to investment-deterring cost allocation schemes. Bell Atlantic already has announced it will deploy xDSL, but will be able to deploy more xDSL faster if it receives regulatory relief from these investment-deterring requirements.

A. Commenters and Regulators Support Removing Regulatory Barriers

In their comments, Compaq, APT, Economic Policy Institute, Next Level Communications and others all have embraced the need to remove regulatory barriers to innovation. Compaq notes that the "Commission should utilize the forbearance authority granted to it under Sections 10 and 706 of the . . . Act to create an environment where local exchange carriers . . . will have the incentives to deploy DSL services rapidly." Compaq Comments at 4. The Computer & Communications Industry Association points out that "[b]ecause the Commission has not created an environment that is conducive to broadband deployment, all segments of the computer and telecommunications industry are losing opportunities, and consumers are unnecessarily deprived of services that they urgently demand." CCIA Comments at 3. Similarly, the Alliance for Public Technology notes that the Commission should not apply Section 251(c) requirements to "new advanced capabilities like ADSL or HFC." APT Petition at 2.

The Administration and Commission members have echoed the need for removing regulatory barriers to broadband deployment. Bell Atlantic Petition at 8-10. Recently Commissioners Kennard, Tristani and Furchtgott-Roth have noted in public speeches the crucial role the removal of such barriers could play in speeding broadband services.

B. Bell Atlantic's Entry Will Widen xDSL Deployment

While the opponents claim "competition" is the way to get broadband to the masses, none of the opponents shows how competition without Bell Atlantic's entry will lead to broadband services that serve ordinary Americans. All the evidence is to the contrary.

The major long distance carriers will not deploy xDSL to residential customers anytime in the foreseeable future. AT&T, MCI, WorldCom and Sprint have attacked the lucrative local market for business services but have abandoned residential customers. "Despite Deregulation, Big Phone Carriers Shy Away from Local Service," Associated Press, Dec. 19, 1997. Indeed, a recent study noted that many of the long distance providers will not commit to serve rural areas even if the alleged RBOC barriers to entry – the same "barriers" that have not stopped the big guys from competing in the business market – were taken down. Keep America Connected, "Good News, Bad News: A Look at Telecommunications Competition in Pennsylvania," 3 (Apr. 21, 1998).

This abandonment of residential competition is consistent with the overall corporate strategies of the major long distance carriers to focus on the business market. AT&T is trying to shed nearly one-quarter of its existing residential long distance customers who AT&T deems insufficiently profitable. "AT&T Wants Fewer Infrequent

Users," The Record (March 12, 1998). AT&T also is imposing a residential-customer-only charge of over $10 a year on its long-distance customers as Bell Atlantic and other companies continue to cut the access charges the long distance companies pay. "AT&T Imposing Fee on Residential Customers," Washington Post, C11 (May 6, 1998). WorldCom itself has a "religious focus" on business customers and will impose that on MCI. The New York Times noted that WorldCom was telling one thing to regulators and another to Wall Street about its plans for MCI:

> In October, John Sidgmore, WorldCom's vice chairman, told the Washington Post that after acquiring MCI, WorldCom would look for ways to stop serving MCI's residential customers so it could focus on more profitable business accounts. The next day, WorldCom retracted that statement and said it was committed to serving residential customers and to competing against the Bells for residential local phone customers. The government "bought it, hook, line and sinker," [Investment analyst Scott] Cleland said. "This is a classic case of a company's telling Wall Street one thing and Washington something else," he said. "Shareholders think that they won't spend a lot of money on the residential market, and Washington expects them to do just that."

"MCI and WorldCom Ready to Take the Plunge," New York Times C1 (March 11, 1998).

The competitive xDSL providers also are targeting the business, not residential, market. Covad's web page notes that it provides "high speed remote access solutions for corporations to connect employees who work at home" and access to ISPs "to provide one stop Internet solutions for small businesses." www.covad.com/ covad_serv.html. Northpoint similarly neglects ordinary Joes; its web site claims that it is "focused exclusively on delivering dedicated data to growing businesses nationwide . . ." www.northpointcom.com/html/home.htm.

AT&T, WorldCom, Covad, Northpoint and others all are focusing their efforts on businesses for the same reason Willie Sutton robbed banks – because that's where the money is. But that will leave ordinary Americans without the broadband access they need. The issue of how to get broadband to residences cannot be resolved by glib references to "competition" against the RBOCs. The Commission must include a way to allow RBOCs themselves to compete without unnecessary restrictions. See, e.g., Chairman Kennard's USTA speech, www.fcc.gov/speeches/kennard/spwek813.html.

C. Bell Atlantic's Entry into the xDSL Market is Procompetitive

1. Bell Atlantic is Not an xDSL Incumbent.

Bell Atlantic does not have xDSL facilities in the ground and is entering the xDSL market behind other competitors. See, e.g., Comments of the DSL Access Telecommunications Alliance 6 (Apr. 6, 1998) ("in response to the growing surge of competitive DSL and other digital offerings by *competitors*, . . . RBOCs [have] sought to enter the DSL market").

Furthermore, Bell Atlantic will have to compete not only with xDSL providers but also with other high-speed broadband alternatives to telephone lines, such as cable modems and wireless. Cable companies already have begun the first part of their planned extensive roll-out of cable modems in Bell Atlantic's region. Bell Atlantic Petition at 21 n.31. Compaq notes that "ten percent of the country has already been wired for Internet cable services, and it is anticipated that the availability of Internet services over cable networks will increase dramatically in the near future." Compaq Comments at 7 (citations omitted). This alternative wire spells the end of the "monopoly bottleneck," certainly as far as high-speed data services go.

2. xDSL Competitors Are Entering New York and Massachusetts

As the DATA Coalition point out, xDSL competitors need only an unbundled loop and collocation to enter the market. DATA Comments at 7-8. The barriers to entry are low. The xDSL competitors do not need a great deal of capital to compete. Unlike other CLECs, xDSL competitors do not even pretend to want to duplicate the RBOC networks. Already numerous competitors have announced their intention to offer xDSL services to companies and telecommuters. See "ADSL Trials and Service Deployments," www.adsl.com/trial_matrix.html.

Bell Atlantic has opened its market to xDSL competitors. Bell Atlantic has negotiated over 300 interconnection agreements, many of which have provisions regarding availability of xDSL conditioned loops. These agreements have been approved by State Commissions pursuant to the 1996 Act.

Bell Atlantic has signed an agreement with Covad in New York, for example. In Massachusetts, Bell Atlantic and Covad have reached agreement on every issue but one, which now goes to state arbitration in accordance with the 1996 Act. Bell Atlantic also has signed agreements with Harvard Communications, NorthPoint, and other competitive xDSL providers.

Finally, Bell Atlantic has instituted physical and virtual collocation policies that give competitors access to central offices. As part of its merger commitments, Bell Atlantic agreed to let competitors pay for collocation space in increments rather than pay large fees upfront. Bell Atlantic/NYNEX Order at Appendix C.4.b. In New York, Bell Atlantic provides smaller collocation cages and shared collocation space in its central