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SUMMARY

Bell Atlantic's petition for far-ranging regulatory forbearance to provide high-speed broadband services is merely the latest iteration of the RBOCs' drive to be freed from monopoly safeguards before they open their local markets to meaningful competition. In the instant petition, Bell Atlantic dresses up its request with the promise of better Internet access for consumers. First, there is no basis for Bell Atlantic's claim that it requires broad exemption from current laws to offer such new service to customers. Moreover, if unleashed to provide high-capacity "Internet" services outside of the statutory requirements to make these advanced services (and the network elements underlying them) available for purchase by competitors, Bell Atlantic would simply extend its existing monopoly in the local exchange into a more expansive monopoly including all types of calls, including "Internet" as well as traditional voice, fax, data and multimedia.

This is because the high-speed access connection to the home or business that is the subject of the instant petition is entirely capable of carrying all of a customer's traffic, including voice. Once a home or business purchases such access connections, there is no need for it to maintain a separate POTS line for its voice/fax/data calls. To the contrary, the higher bandwidth services already provided by Bell Atlantic in the form of ISDN, and planned by Bell Atlantic in the form of DSL, utilize the customer's existing twisted copper pair loops, and accomplish the greater speeds and capacity through conditioning the loops and then equipping them on either end with sophisticated electronics. There is thus no need for the customer to retain (or purchase) standard phone lines, because all of his/her traffic can be accommodated over the bigger "pipe.

Notwithstanding the existing statutory requirement that RBOCs unbundle their networks and provide the network elements and interconnection to CLECs at cost-based prices, Bell Atlantic has steadfastly refused to comply with these mandates. As a result, CLECs are unable to purchase UNEs, as is their right, or obtain affordable collocation, as is also their right. In the face of this anti-competitive environment (of its own creation), Bell Atlantic now asks the Commission to let it offer "advanced telecommunications services," free of the very unbundling, pricing and resale obligations that it has successfully sidestepped for traditional services up till now. However, if permitted to escape its statutory obligations, Bell Atlantic would control the pace, location and pricing of upgrades to its network, timing its deployment of advanced services to the competitive threats that it faces. And it would do so free of any real competitive pressures from the CLECs, because if it gets its way it would be relieved from any requirement to make the broadband service available to CLECs as UNEs or under resale. And by further acceding to Bell Atlantic's request to be permitted to offer these services on an interLATA basis, the Commission would be opening the door (or, more literally, the "pipe") for Bell Atlantic to leverage its monopoly position in the local exchange to <u>all</u> long distance services as well.

The Comments below demonstrate that, as a threshold matter, Bell Atlantic's request exceeds the Commission's authority to grant. Bell Atlantic relies on the general language of Section 706 of the Act, which directs the Commission to encourage the deployment of advanced telecommunications services. However, that section is not an independent grant of authority, and its reference to "regulatory forbearance" -- the linchpin of Bell Atlantic's statutory claim -- derives its meaning directly from Section 10 of the Telecom Act. Section 10 prohibits the Commission from granting forbearance from the very resale, unbundling and pricing requirements

and interLATA restrictions that Bell Atlantic seeks relief from here. Simply put, Bell Atlantic seeks regulatory relief that the Commission does not have the power to grant.

Further, in these Comments AT&T shows that Bell Atlantic's network is "the only game in town" for the foreseeable future, and that CLECs must have full and fair access to its facilities if broad competition is to emerge -- whether for POTS or for advanced services. Thus Bell Atlantic's request is backwards, in that it asks to be relieved of its interconnection and resale obligations for broadband services before having opened its market for many of the same unbundled network elements when they are used to provide traditional telephony services. Bell Atlantic's longstanding recalcitrance in providing AT&T (and other CLECs) with unbundled network elements, collocation and workable operational support systems for its traditional loops and switching functions will only be more egregious if they are not required to sell their advanced services to CLECs as UNEs or under resale.

There is no legal basis, and just as plainly no policy basis, to allow Bell Atlantic to fence off selected UNEs and services so that it -- and it alone -- can provide advanced services to customers, and seamlessly provide traditional voice and fax services as well. Such wholesale abandonment of the goals of the Telecom Act is entirely unwarranted. The Commission need not focus on ways to relieve Bell Atlantic of its statutory obligations, but rather should concentrate on forcing Bell Atlantic to comply with its duties, and make available to CLECs the building blocks of their networks.

The second prong of Bell Atlantic's request is that it be allowed to provide these advanced services on an interLATA basis because the Internet backbone is congested. As discussed in these Comments, the biggest choke point in the provision of Internet services is the local loop, the technology of which has not kept pace with market demands for high-speed

services. This is due to the decisions of ILECs such as Bell Atlantic not to upgrade their networks before they are required by competitive pressures to do so. In contrast to local facilities, there is much investment already occurring to alleviate any deficiencies in Internet backbone capacity. And ironically, with respect to backbone facilities, Bell Atlantic itself has urged the Commission to impose, as a condition of approving the proposed WorldCom/MCI merger, the very resale and UNE requirements that it is seeking to escape in its own entrenched monopoly environment.

What is clear, in contrast, is that Bell Atlantic's entry into the interLATA "Internet" market would enable Bell Atlantic to carry voice, fax and all other services over that "Internet" backbone. Thus Bell Atlantic's request is really a request to provide interLATA long distance service. By granting Bell Atlantic the broad relief that it seeks, it would have the ability to provide <u>any</u> service nationwide, and its incentive to meet the competitive checklist of Section 271 would be eliminated entirely.

At bottom, Bell Atlantic's promise of a "wired" future is a promise of a continued monopoly marketplace in the local exchange, only under Bell Atlantic's scenario, that marketplace would extend not only to POTS but also to broadband in the local exchange and broadband in long distance services as well. The Commission cannot turn from its statutory responsibilities and sound public policy, both of which confirm that the RBOCs must comply with their responsibility to open their local markets to significant competition <u>before</u> they are rewarded with regulatory flexibility, including interLATA relief.

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

In the Matter of	)	
	)	
Petition of Bell Atlantic Corporation	)	CC Docket No. 98-11
for Relief from Barriers to Deployment	)	
of Advanced Telecommunications Services	)	

COMMENTS OF AT&T CORP.

Pursuant to the Public Notice released on March 16, 1998, AT&T Corp. ("AT&T") respectfully submits its Comments in opposition to Bell Atlantic's petition to be excused from a broad array of statutory and regulatory requirements said to affect its provision of high-speed broadband services on both an intraLATA and interLATA basis. As demonstrated below, Bell Atlantic's petition requests relief that is beyond the Commission's power to grant, and is in any case not justified on the basis of the facts or the policy arguments presented in the petition.

I. INTRODUCTION

In its Petition, Bell Atlantic seeks broad relief from its statutory and regulatory obligations with respect to the fastest growing segment of the industry -- high capacity services -- and urges the Commission to "fully deregulate" the networks that support such services.[1] As Bell Atlantic explains, this means that it should be permitted to provide any packet-based services -- which include broadband services, services based on

[1] Petition at 2.

xDSL technology, other data services, and, increasingly, voice services -- "without regard to present LATA boundaries" and "free from pricing, unbundling and separation restrictions designed for voice calls."[2] It specifically requests that these services not be subject to the requirement of Section 251(c) of the Telecommunications Act of 1996 (the "1996 Act") that a LEC provide access to the unbundled network elements ("UNEs") underlying these services, or that it be required to sell these services to its potential competitors for resale in the local exchange market.[3]

In exchange for this broad relief, Bell Atlantic purports to promise "a regional backbone network, capable of providing Digital Subscriber Loop ("DSL") or fiber-based services, that passes most homes in the major markets in its region – increasing backbone capacity and bandwidth to the home." However, the relief Bell Atlantic is seeking, if granted, would go beyond Internet access and interexchange services for residential customer data applications to all kinds of services, including interLATA residential and business voice, data, video and multimedia services. In essence, Bell Atlantic requests that it be allowed to "trade in" its existing monopoly over "traditional" telephony services, for a new monopoly over both traditional and "advanced" telecommunications services, which the Act is also designed to open.

Bell Atlantic's petition offers neither a statutory basis for the broad relief that it requests, nor persuasive factual or policy support. As discussed in Section II

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[2] Id. at 3-4, 17-19.

[3] Id.

below, neither Section 706[4] nor any other provision of the 1996 Act confers on the Commission the unlimited forbearance authority that Bell Atlantic suggests to release it from the network unbundling, resale and pricing requirements of Section 251(c) and from the statutorily mandated interLATA restrictions under Section 271.

In Section III below, AT&T demonstrates that Bell Atlantic's network is the only path to the consumer and business customer for the foreseeable future, and that CLECs must have access to that network if broad competition is ever to emerge -- whether for POTS or for advanced services. Bell Atlantic's request is backwards, in that it asks to be relieved of its interconnection and resale obligations for broadband services before it has even made many of the same UNEs available for traditional services. Thus, freeing Bell Atlantic from statutory and regulatory safeguards, as it requests here, would provide it an unprecedented and unmatchable ability to leverage its monopoly power into emerging broadband access and interLATA services for residential customers and business customers, and to do so with no obligations whatsoever to provide its underlying broadband facilities or services to its potential competitors.

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[4] Section 706(a) reads as follows:

> The Commission . . . shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.

In Section IV, AT&T explains that the requested relief would undermine, rather than promote, Congressional and Commission policy to promote a competitive telecommunications landscape by creating technology-specific (rather than technology-neutral) policies, discouraging Bell Atlantic (and other RBOCs) from complying with Section 271 to open the local exchange market to competition, and removing economic incentives for competitive providers to develop and deploy competing services. At bottom, although dressed up with the superficial appeal of providing improved access to Internet services in the shorter term, this petition holds out nothing more than the promise of an expanding and durable RBOC monopoly on both local and interexchange services.

II. THE COMMISSION LACKS STATUTORY AUTHORITY TO RELIEVE BELL ATLANTIC OF THE REQUIREMENTS OF SECTIONS 271 AND 251(c).

Bell Atlantic does not dispute that Sections 251(c) and 271 of the Communications Act ("the Act"), by their terms, prohibit it from providing both local and interLATA broadband services in the manner it now proposes to offer them. And Bell Atlantic does not dispute that the Commission's forbearance authority under Section 10 of the Act is explicitly limited, and does not permit the Commission to waive the requirements of Sections 251(c) and 271. Instead, it argues that Section 706 of the 1996 Act permits the Commission to eliminate any and all statutory requirements imposed on carriers by the Communications Act, so long as the Commission's action is in the service of advanced telecommunications.[5]

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[5] Petition at 4-8.

Bell Atlantic's argument is foreclosed by the plain text of the Act, and the Commission has previously and properly rejected similar assertions of such unrestricted Commission authority. Section 706 provides that the Commission shall "encourage" advanced telecommunications services through, among other tools, the Commission's "regulatory forbearance" authority. This is plainly a reference to the Commission's authority under Section 10, which explicitly denies the Commission authority to waive requirements of Sections 251(c) and 271.

A. The Commission Has No Authority Under Section 706 To Grant Bell Atlantic's Petition.

Bell Atlantic contends that Section 706 of the 1996 Act, which provides that the Commission shall "utiliz[e], in a manner consistent with the public interest, convenience and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure development," grants the Commission authority to waive the statutory requirements of Sections 251(c) and 271, and thus to permit Bell Atlantic to offer broadband services without regard to unbundling requirements or interLATA services restrictions.

This argument is baseless under the plain language of Section 706. Agencies, of course, are powerless to waive statutory requirements, unless Congress has

specifically granted them that authority.[6] Section 706 contains no such authority. Section 706's reference to the Commission's use of "regulatory forbearance" is an obvious reference to the Commission's powers under Section 10, which was created as part of the 1996 Act, to waive certain statutory requirements. As even Bell Atlantic concedes,[7] however, that authority expressly excludes the power to waive the requirements of Sections 251(c) and 271 from which Bell Atlantic seeks to be relieved:

> Except as provided in section 251(f), the Commission may not forbear from applying the requirements of section 251(c) or 271 under subsection (a) of this section until it determines that those requirements have been fully implemented.[8]

Bell Atlantic nevertheless contends that Section 10(d) applies only to limit Section 10(a)'s grant of forbearance authority and not to the "grant" in Section 706; i.e., that Section 706's grant of forbearance authority is "independent" of Section 10.[9] But Section 706 says merely that the Commission shall utilize "regulatory forbearance." Section 706 does not by its terms define "regulatory forbearance" or otherwise grant the agency the extraordinary power to nullify a statutory requirement. No such definition or grant of authority was necessary, moreover, because the 1996 Act otherwise defined "regulatory forbearance." "Regulatory Forbearance" is the title of Section 401 of the 1996

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6 See MCI Telecom. Corp. v. FCC, 765 F.2d 1186, 1194 (D.C. Cir. 1985) ("we are not at liberty to release the agency from the tie that binds it to the text Congress enacted [unless] Congress ha[s] supplied explicit deregulatory authority").

7 Petition at 10.

8 Section 10(d), 47 U.S.C. § 160(d) (emphasis added).

9 Petition at 10.

Act, which is the section of that Act that added Section 10 to the Communications Act.[10] Thus, as a matter of the plain text of the 1996 Act, "regulatory forbearance" in Section 706 must refer to Section 10.[11]

Indeed, the Commission has already rejected an argument indistinguishable from Bell Atlantic's. In the U S WEST LATA Boundary Proceeding,[12] the Commission held that its authority over LATA boundaries arose from Sections 3(25) and 251(g) of the Communications Act and Section 601 of the 1996 Act. And it noted that in Section 3(25) Congress expressly gave the Commission power to "modify" LATA boundaries. The Commission nevertheless held that Section 10(d) prevented it from exercising its authority under those other provisions to approve a change to LATA boundaries that would have

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[10] See Telecommunications Act of 1996, Pub. L. 104-104, § 401, 110 Stat. 56, 128 (1996).

[11] As a result, Bell Atlantic's argument that Section 10(d) limits only the forbearance authority conferred on the Commission by Section 10(a) is of no assistance to it, for Section 10(a) is what Section 706 refers to. Moreover, the legislative history of Section 10 makes clear that Congress intended to keep Section 251(c) and 271 outside of any Commission authority to forbear. See H. Conf. Rep. No. 458, 104th Cong., 2d Sess. 185 (1996) ("New subsection (d) provides that the Commission may not forbear from applying the requirements of new sections 251(c) or 271 until the Commission determines that those requirements have been fully implemented"). That was also the position taken by Bell Atlantic's attorneys, including Vice President and Associate General Counsel John Thorne, in a more candid moment. See P. Huber, M. Kellogg and J. Thorne, The Telecommunications Act of 1996: Special Report 61 (Little Brown & Co. 1996) ("the Act protects from Commission forbearance two key provisions: the interconnection obligations specific to incumbent LECs and the guidelines for BOC entry into the interLATA market").

[12] Petition for Declaratory Ruling Regarding U S WEST Petitions to Consolidate LATAs in Minnesota and Arizona, 12 FCC Rcd. 4738 (1997).

the effect of circumventing Section 271. "Thus, Section 10(d) limits the manner in which the Commission may exercise its sole and exclusive authority to approve the establishment of or modification to LATA boundaries."[13] This holding is irreconcilable with Bell Atlantic's suggestion that Section 706 grants authority that can be exercised independent of the limitations established by Section 10(d), and it requires the Commission to reject Bell Atlantic's petition.

Section 271 itself also confirms that the Commission has no authority under Section 706's vague reference to "regulatory forbearance" to waive any of Section 271's requirements. First, Section 271(a) provides that the terms of that section -- and that section alone -- govern BOC provision of interLATA services.[14] Section 271(b) specifically identifies numerous interLATA services that BOCs may offer, but it makes no mention of Section 706 or Bell Atlantic's proposed broadband services. Second, Section 271(d)(4) provides that "[t]he Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B)."[15] Bell Atlantic's request would permit it to offer otherwise unauthorized interLATA services without satisfying the competitive checklist, and would therefore eliminate those requirements. Thus, even if the Commission were to agree that Section 706 grants

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[13] 12 FCC Rcd. at 4751.

[14] 47 U.S.C. § 271(a) ("Neither a Bell operating company, nor any affiliate of a Bell operating company, may provide interLATA services except as provided in <u>this section</u>.") (emphasis added).

[15] 47 U.S.C. § 271(d)(4).

authority independent of Section 10, Section 271 would independently limit the Commission's authority under Section 706 to take actions that would waive Section 271's requirements.

These specific restrictions on the Commission's forbearance authority found in Section 10(d), and reiterated by Section 271's exclusive process for evaluating the BOCs' interLATA entry, trump any reading of Section 706's general reference to forbearance. It is a "venerable canon of statutory construction [that], unless there is clear intention otherwise, a specific statute will not be controlled or nullified by a general one,"[16] and the courts have frequently applied this canon to delimit the scope of the FCC's authority under the Communications Act. For example, in rejecting an FCC detariffing initiative, the D.C. Circuit made clear that the Commission could not use its general authority to act in the "public interest" to avoid specific statutory commands,[17] and the Supreme Court likewise held that rationales based on efforts to further the Act's "broad purpose of promoting efficient telephone service" cannot "alter the meaning" of the Act's terms.[18] Here, of course, Section 706's reference to regulatory forbearance is directly to Section 10(a) and hence is limited by Section 10(d). But even if, as Bell Atlantic suggests,

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[16] Telecommunications Res. & Action Center v. FCC, 836 F.2d 1349, 1361 n.25 (D.C. Cir. 1988) (internal quotation omitted). Indeed, Bell Atlantic's request is non-specific, and Section 706 has no specific forbearance standards; thus it is unclear to what services the requested forbearance would apply, or how such forbearance would be defined and enforced.

[17] MCI v. AT&T, supra, 765 F.2d at 1193.

[18] MCI v. AT&T, 512 U.S. 218, 233-34 (1994).

Section 706 stands on its own, its general terms are not broad enough to support a waiver of Sections 251 and 271 when those specific sections have been otherwise placed beyond the Commission's forbearance authority.

B. No Other Portion Of The Act Provides Any Basis For The Commission To Grant Bell Atlantic's Petition.

Bell Atlantic contends that Sections 251(d) and 3(25)(B) grant the Commission "additional authority" to grant the relief it seeks. In particular, Bell Atlantic suggests that the Commission "determine" under Section 251(d)(2) that the elements of its proposed services need not be made available under Section 251(c)(3), and that the Commission "modify" under Section 3(25)(B) LATA boundaries so that no such boundaries exist for purposes of the services Bell Atlantic describes in the Petition.[19] These arguments have no merit.

First, the elements that Bell Atlantic will utilize to provide these broadband services on a retail basis are, without question, "network elements." Bell Atlantic will utilize "facilities and equipment" in its network that have already been declared to be network elements -- such as loops and switches (for routing of voice calls over the PSTN) -- and "features, functions and capabilities" of those facilities.[20] Bell Atlantic has not

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[19] Petition at 11.

[20] See, e.g., Petition, Attachment B, pp. 12-13 (detailing Bell Atlantic's plans to deploy ADSL and other xDSL technology). See In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325 (August 8, 1996) ("Local Competition Order"), ¶ 258; see also id. ¶ 382 (incumbent LEC must condition loops to provide digital loop functionality such as ADSL, if not currently conditioned to carry digital signals).

attempted to show that these elements will be "proprietary" to Bell Atlantic or that, even if they were proprietary, access to them would be "[un]necessary."[21] Nor does the Commission have the authority to deny new entrants access to the "features, functions, and capabilities" of facilities it has declared to be network elements, for the statute specifically defines "network element" to include all "features, functions and capabilities" of the facility.[22] In all events, there is no reason -- other than Bell Atlantic's desire to expand its monopoly to encompass these new services -- to permit Bell Atlantic to deny competitors access to these elements. Indeed, Bell Atlantic is quite candid that its sole justification for this request is its desire to offer retail broadband services without the risk that CLECs could compete on either a UNE or resale basis.[23]

Second, Courts and the Commission have already rejected Bell Atlantic's assertion that Section 3(25), which permits the FCC to "modify" LATA boundaries, allows the Commission to remove wholesale the LATA restrictions on these Bell Atlantic services. In MCI Telecom. Corp. v. AT&T,[24] the Supreme Court held, in the context of the Communications Act, that Commission authority to "modify" means the authority to make "moderate change," not the authority to make "basic and fundamental changes in the

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[21] Compare 47 U.S.C. § 251(d)(2).

[22] See § 3(29).

[23] Petition at 18 and Attachment B, pp. 16-17.

[24] 512 U.S. 218 (1994).

scheme created by that section."[25] Bell Atlantic's request to provide what it describes as important new services without regard to LATA boundaries would entail much more than "modification" of LATA boundaries and is outside the Commission's authority under Section 3(25). In all events, the Commission has already rejected Bell Atlantic's contention. As previously noted, the Commission has already held that whatever authority it has under Section 3(25), that authority cannot (because of the Section 10(d) restriction) be used to circumvent Section 271's requirements.[26]

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[25] Id. at 225, 228.

[26] See Petition for Declaratory Ruling Regarding US WEST Petitions to Consolidate LATAs in Minnesota and Arizona, 12 FCC Rcd. 4738, 4751 (1997). Bell Atlantic also requests that the Commission waive under Section 201 the price cap rules otherwise applicable to it. But while the Commission has statutory authority to modify its price cap rules under appropriate circumstances, Bell Atlantic's only complaint about price cap regulation has already been definitively rejected by the Commission. Specifically, although the Petition repeatedly states that price cap regulation is stalling the services Bell Atlantic is touting (pp. 4, 11, 18-19), it is not until deep in the attached White Paper that it becomes clear that Bell Atlantic's only complaint is with the application of the "X-factor" productivity offset to these services. Petition, Attachment B, p. 16. The Commission has already fully considered the issues surrounding the X-factor, and has held that the X-factor appropriately balances LEC monopoly power with innovation incentives. See Price Cap Performance Review for Local Exchange Carriers, Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, ¶¶ 141-43 (May 21, 1997), appeal pending, USTA v. FCC, D.C. Cir. No. 97-1469.

III. THE REQUESTED RELIEF WILL STIFLE, RATHER THAN PROMOTE, INVESTMENT IN COMPETITIVE SERVICES.

Under the guise of jump starting network investment and development in high-speed services, Bell Atlantic is in essence seeking a risk-free environment in which it can enlarge its existing monopoly in the local exchange to include high-speed services to the home and business, and at the same time leverage its monopoly into the developing market for Internet backbone capacity. Even if the Commission had the authority to grant the requested relief to enable Bell Atlantic to undertake these efforts (which it does not), such relief is not justified as long as Bell Atlantic retains its monopoly hold on local exchange and exchange access services.

A. Bell Atlantic Must Continue To Be Subject To the Act's Unbundling Rules.

What has become clear in the two years since the Telecom Act was passed is that, for at least the foreseeable future, the only path to broad competition for virtually all residence and most business customers is the ILEC's local network. CLECs will need full and fair access to those ILEC facilities if broad competition is to emerge. This is the case not only for POTS service, but for advanced services as well, because the building blocks of advanced services such as ISDN and xDSL include the very same ILEC local loop and ILEC local switch (for routing of voice calls over the PSTN) that are used for today's telephony services.

Bell Atlantic ignores this simple fact, asking that it not be required to offer these new services to its competitors via purchase of UNEs or resale at any price. Bell Atlantic's purported justification for this requested relief is that its incentive to make the necessary investments will be dampened if it is required to share the "reward" from the

success of these services.[27] As noted above, however, this ignores the fact that these services utilize facilities and equipment in Bell Atlantic's existing local network which are "network elements" and to which CLECs have a statutory right to gain access.[28] Moreover, the Commission has recently confirmed its reliance on the resale obligations of Section 251 to bring innovative competitive services to the local market:

> There is evidence, for example, that carriers that have direct rights under section 251 will compete with the incumbent LECs to provide pure ISPs with the basic network services that ISPs need create their own information service offerings, either by obtaining unbundled network elements for the provision of telecommunications services or through the resale of such services.[29]

Thus, granting the requested relief would not create the investment incentives that Bell Atlantic claims, but would instead enable Bell Atlantic to behave in an unchecked, anticompetitive manner.[30]

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[27] Petition at 17-18, 21. Bell Atlantic does not contend – nor could it – that the access services that it seeks to provide under the requested forbearance authority are not basic telecommunications services.

[28] 47 U.S.C. § 251(c)(3) (ILECs have "the duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network element on an unbundled basis. . .").

[29] In the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services and 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements, CC Docket Nos. 95-20 and 98-10, Further Notice of Proposed Rulemaking, FCC 98-8 (rel. January 30, 1998), ¶ 33 (emphasis supplied; footnotes omitted) ("Computer III FNPRM").

[30] LCI observed, in the similar context of retail/wholesale plans that have been proposed or implemented by SNET, Rochester, GTE, BellSouth and others, that "all these proposals are simply thinly disguised attempts to move selected local exchange retail activity into an unregulated subsidiary (exempt, they claim from Section 251(c) obligations that otherwise would apply). These ILEC plans do nothing to address the

(footnote continued on following page)

In fact, this freedom to act to foreclose competition will extend well beyond Internet services, and will include voice, fax, data and any other service and application carried over traditional local exchange technology as well. As Bell Atlantic well knows, the high-speed access connection to the home or business that is the subject of its petition is entirely capable of carrying all of a customer's traffic, including voice. Once a home or business purchases such access connections, there is no need for it to maintain a separate POTS line or service for its voice/fax/data calls. To the contrary, the higher bandwidth connections already provided by Bell Atlantic in the form of ISDN and planned by Bell Atlantic in the form of DSL utilize the customer's existing twisted copper pair loops, and accomplish their greater speeds and capacity through conditioning of these loops and equipping them on either end with sophisticated electronics. There is thus no need for the customer to retain (or purchase) standard phone lines, because all of his/her traffic can be accommodated over the bigger "pipe."[31] By receiving forbearance to offer these services, Bell Atlantic would thus "raise the stakes" in the local exchange market, by being able to offer uniquely both traditional and advanced services over one "deregulated"

(footnote continued from previous page)

core incentives and ability of the parent holding company to manipulate the subsidiaries in ways that discriminate against CLECs." In the Matter of LCI Petition for Expedited Declaratory Rulings, CC Docket No. 98-5, Petition of LCI International Telecom Corp. for Expedited Declaratory Rulings, filed January 22, 1998, pp. 15-16.

[31] Accord, Telco & Cable Internet Strategies: "The Dawn of Carrier-Class Access," 1997 Jupiter Strategic Planning Services/IT47, November 1997 ("Jupiter Study"), p. 31 ("ADSL offers simultaneous voice and data traffic").

pipe, free of resale, unbundling, pricing and other reasonable obligations before there is any meaningful competition in the local market, and thereby choke off local exchange competition before it can even emerge.

Thus it is critical that the Commission ensure that the requirements of the Telecom Act are implemented, not evaded. The 1996 Act, and the Orders adopted by the Commission implementing the pro-competitive mandates of the 1996 Act, require the RBOCs to open their local monopolies to competition before they are allowed to provide interexchange services. The RBOCs' extraordinary resistance to that mandate is well documented. The Commission must force compliance with these statutory and regulatory mandates in order to bring the benefits of competition to the market. It cannot discharge its statutory obligations by accepting the "trust me" positions of ILECs like Bell Atlantic, who seek to assuage the Commission that they would still satisfy their unbundling obligations for "traditional" UNEs, even as they designate DSL elements "off limits" and plan to offer broadband services over them.[32]

It is already extremely difficult, both from a technical and economic perspective, for competitive LECs ("CLECs") to obtain the network elements that they require to create their own high-speed services. Indeed, CLECs cannot even get access to the underlying "raw" unbundled network elements -- specifically the local loop and the local switch -- from the incumbent LECs ("ILECs") and, in particular, from Bell Atlantic,

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[32] Petition at 21.

at reasonable underlying economic costs to provide basic POTS services, much less the new generation of high capacity services.[33]

For example, in violation of the terms of its interconnection agreements in a number of states and in breach of its obligations under the Act to provide nondiscriminatory access to unbundled network elements, Bell Atlantic has unilaterally attempted to impose inefficient collocation requirements on all CLECs for the purpose of combining unbundled network elements. Not only is this requirement unlawful, but Bell Atlantic's record of making collocation available is abysmal. Bell Atlantic represents that

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[33] If nothing else, Bell Atlantic's petition exposes its long-standing adamant refusal to provide DSL capable loops to its competitors. Despite the clear finding in the Commission's Local Competition Order that the definition of unbundled loops must include loops "conditioned to . . . provide services such as ISDN, ADSL, HDSL, and DS1-level signals" (¶ 380), Bell Atlantic has steadfastly refused to provide such loops to its competitors. The pre-merger Bell Atlantic took the position that because HDSL and ADSL services were not commercially available on a retail basis to Bell Atlantic's end user customers, it had no obligation to make HDSL and ADSL-conditioned loops available as an unbundled network element. Subsequently, Bell Atlantic agreed to make such loops available only after it was already offering HDSL or ADSL services to its end user customers. Now, on the heels of an announcement regarding an alliance between the BOCs and the computer industry which will both ease and reduce the costs of deploying ADSL ("PC, Telecom, and Networking Industry Leaders United to Deliver Ultra-Fast Internet Access to the Home," Press Release, January 26, 1998, www.uawg.org), Bell Atlantic filed this petition which, among other things, seeks an exemption from the requirement that it make the critical electronics of these services available to competitors, as well as an exemption from the resale requirement for the xDSL services themselves. Bell Atlantic's flagrant attempts to avoid its obligations under the 1996 Act should not be rewarded.

it has space constraints in many of its central offices;[34] even where it does have space, its provisioning intervals are unduly lengthy[35] and the costs are prohibitive.[36]

In addition, Bell Atlantic's operational support systems ("OSS") are woefully inadequate. BA-NY, for example, has not made available all of the technical specifications, business rules, and other technical and administrative information necessary for CLECs to complete the necessary OSS interfaces, and testing of Bell Atlantic's OSS in the pre-merger Bell Atlantic states has shown that Bell Atlantic is unable to handle even a minimal amount of orders, much less the volumes required for competitive entry. The inability of CLECs such as AT&T to obtain the elements necessary to provide traditional telephony services forecloses their ability to compete with Bell Atlantic for those services,

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[34] In New York, for example, in 15 of the 54 central offices where it received requests as of December 1997, no space at all was available; in 18 of these central offices, the "space" offered was raw space that could only be made available after "conditioning" -- at prohibitive cost. In Maryland, Bell Atlantic offers physical collocation in only 26 of its 207 central offices in Maryland and virtual collocation in only seven others.

[35] In New York, only 19 of the 50 physical collocation requests made by MCI between September 1996 and July 1997 were provisioned by Bell Atlantic by the close of 1997. In the pre-merger Bell Atlantic states, Bell Atlantic's collocation interval is 120 business days.

[36] For example, in the pre-merger Bell Atlantic states, Bell Atlantic itself claims that the average cost for a physical collocation node is $62,500 in New Jersey and $78,000 in Maryland. AT&T believes that Bell Atlantic's claims regarding these already huge charges is grossly understated and, in any event, they do not include costs associated with equipment and cabling to establish interconnection, or the monthly recurring costs associated with operating and maintaining the collocation-related facilities by Bell Atlantic.

let alone for the advanced digital services which are the subject of Bell Atlantic's petition.[37]

In contrast to the severe difficulties of gaining access to network elements and securing reasonable and affordable collocation just for traditional telephony services, ILECs such as Bell Atlantic can easily deploy advanced telecommunications services by inserting electronics and modem cards directly into their central office switches or as adjuncts thereto and thus gain the efficiencies and cost savings of integrated services. As long as Bell Atlantic can integrate these new services into its embedded plant and equipment, it will have an inherent cost and competitive advantage over new entrants, advantages that the 1996 Act requires be shared among competitors. This advantage is readily acknowledged by Bell Atlantic in its White Paper:

> The Bell Companies have some of the right incentives to invest in these [high-speed digital access] technologies. They allow the telephone companies to earn new revenue out of existing plant with only incremental costs. This helps them avoid deploying costly new transmission facilities.[38]

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[37] Adding to this problem are network complications that limit the scope of deployment of digital services by a CLEC. First, DSL does not work with loaded loops. ILECs may have as much as 20 percent of their current loops equipped with load coils. DSL also does not work with loops that have bridged taps. If a potential customer requests DSL service from a CLEC, there are no pre-ordering processes in place to determine whether it is even possible to offer the service over that subscriber's loop. Further, not all loops are served directly from the central office. With some ILECs, 30 percent of loops are connected to digital loop carrier (DLC) systems. See IDC, "DSL Market Gains Direction," January 1998, p. 4. In these cases the customer loop is terminated at remote huts in neighborhoods where the DSL equipment must be deployed in order to offer DSL service. This would require sub-loop unbundling, which is currently not offered to CLECs.

[38] Petition, Attachment 2, p. 15.

It is this critical aspect of the monopoly LEC's network -- the fact that it, and it alone, can offer the scale and scope (and resulting lower unit costs) -- that underlies the unbundling and resale obligations of Section 251 of the 1996 Act.[39] If emerging competitors are forced to replicate the ILECs' networks from scratch -- especially when they start with no embedded customer base -- they will never be able to enter the market with competitive offers and competitive prices.

Bell Atlantic is well aware of the leveling effect of Section 251's pricing requirements. It is precisely to take advantage of its inherent economic advantages that Bell Atlantic asks that it be relieved entirely from any resale and unbundling obligation. However, the very purpose of Section 251 is to require the ILECs to share their network efficiencies with their potential competitors. This is entirely appropriate, because the ILECs developed and deployed their networks on monopoly revenues. Although Bell Atlantic boasts that almost 94 percent of its switches are digital, it has SS7 capability on at least 94 percent of its lines, and it has deployed packet-switching capabilities in nearly 40 percent of its end offices,[40] it neglects to mention that all of these improvements have been funded by protected revenues from local exchange and exchange access services. Freed of the Section 251 unbundling and resale obligations, Bell Atlantic could load the

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[39] See First Report and Order, ¶ 679 ("Congress recognized in the 1996 Act that access to the incumbent LECs' bottleneck facilities is critical to make meaningful competition possible. As a result of the availability to competitors of the incumbent LEC's unbundled elements at their economic cost, consumers will be able to reap the benefits of the incumbent LECs' economics of scale and scope, as well as the benefits of competition.")

[40] Id. at Attachment 2, pp. 43-48.