

bulk of its network costs onto its regulated entity, continue to receive monopoly returns on those costs, and price its advanced telecommunications services to its end user customers on the basis of incremental cost alone.<sup>41</sup> At the same time, it would not have to offer the "advanced" UNEs or wholesale services at all to its competitors (let alone at cost-based rates). This would eliminate any possibility of local competition in Bell Atlantic's territory, leaving Bell Atlantic free to offer less desirable services at inflated prices.<sup>42</sup> Such a result is plainly contrary to the overarching mandates of the Act and any notion of the "public interest."<sup>43</sup>

**B. Extending Bell Atlantic's Market Power Into InterLATA Internet Services Will Not Create A More Competitive Internet Backbone Market.**

Allowing Bell Atlantic to provide interLATA Internet services will not create a more competitive market for Internet backbone services. Bell Atlantic's purported justification for its request -- that the Internet backbone suffers from severe

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<sup>41</sup> Petition at Attachment 2, p. 15.

<sup>42</sup> Notwithstanding the relative ease of deployment of ISDN for an ILEC such as Bell Atlantic, the ILECs have been painfully slow in implementing this 20-year-old technology in their territories. Accord In The Matter of Usage of the Public Switched Network by Information Service and Internet Service Providers, CC Docket No. 96-263, Comments of Internet Access Coalition, March 24, 1997, pp. 23-25.

<sup>43</sup> In stark contrast, the interexchange marketplace offers these same technologies -- stimulated by a robust competitive market and not cushioned by monopoly revenues. These healthy investment decisions -- and their associated risks and rewards -- should not be distorted by allowing an incumbent monopolist to leverage that power and stifle emerging local competition, let alone to leverage that power into the interexchange market (see Section III.B, infra).

network congestion and Bell Atlantic's entry into that market would solve that capacity problem -- is not accurate on either count.

Any congestion on the Internet backbone facilities pales in comparison to the degraded throughput that users experience due to choke points in the local network resulting from the ILECs' failure to upgrade their local facilities to accommodate broadband services. Indeed, Bell Atlantic is one of many ILEC commenters that warned the Commission of the threat of local "network congestion" as a result of the paucity of packet-switched local access alternatives.<sup>44</sup>

Bell Atlantic's own White Paper explains that congestion can occur in the local access facilities, the Internet Service Provider's ("ISP's") equipment or interconnection facilities to the Internet backbone, and specific websites and connections to the websites, as well as on the Internet backbone transport facilities. As to the Internet backbone, congestion primarily occurs at the Internet Network Access Points ("NAPs"),<sup>45</sup> where peering arrangements (or the lack thereof) can cause Internet connections to fail. Congestion on the Internet backbone's transport and routing facilities themselves is only

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<sup>44</sup> In the Matter of Usage of the Public Switched Network by Information Service and Internet Access Providers, CC Docket No. 96-263, Joint Comments of Bell Atlantic and NYNEX on Notice of Inquiry, March 24, 1997. The longstanding "temporary" exemption from payment of access charges accorded to enhanced service providers has certainly sent the wrong economic signals to both ISPs and ILECs, the latter of which are understandably reluctant to upgrade their networks so long as ISPs can continue to utilize the circuit-switched local network at discounted, non-usage sensitive prices.

<sup>45</sup> Petition at Attachment 2, pp. 5-27.

one minor source of strain on the Internet, and is not a problem that requires entry by a monopoly RBOC to solve.

Current backbone providers are capable of expanding their networks, and are doing so today with significant new investments. For example, MCI and UUNet quadrupled their backbone capacity in 1997<sup>46</sup>, and the major backbone providers have plans to quadruple capacity again.<sup>47</sup> Dense wavelength division multiplexing is lowering the cost of fiber by orders of magnitude<sup>48</sup> and switching prices are falling rapidly. However, it takes time to install additional capacity, and the pace of Internet growth has

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<sup>46</sup> MCI spent \$60 million to increase its backbone links from OC-3 (155 million bits per second ("Mbps") to OC-12 (622 Mbps) (see Newsbytes, March 18, 1996). UUNet invested \$300 million upgrading its networks (see Interactive Week, February 14, 1997).

<sup>47</sup> "Sprint Dramatically Boosts Speed and Bandwidth on its Internet Network," Sprint Press Release, September 3, 1997 ("By deploying the Cisco 12,000 series [of router], Sprint will increase bandwidth 400 percent by running live traffic over full-line speed OC-12 connections. . ."). In late 1997, AT&T itself introduced and invested in the first phase of a robust IP backbone designed to deliver both dedicated and dial-up IP-based services. See "AT&T IP Backbone: Giving Business the Edge," October 1997, www.att.com. Commissioner Ness has acknowledged that "this is an area in which multiple providers are making massive investments to meet burgeoning demand." Remarks of Commissioner Susan Ness before the WashingtonWeb Internet Policy Forum ("Ness Remarks"), Washington, D.C., February 9, 1998, p. 6.

<sup>48</sup> "Chairman Unveils Plans to 'Future Proof' AT&T Network," AT&T Press Release, January 26, 1998 ("DWDM technology - which uses light to magnify transmission - makes it possible for us to increase the transport capacity of our existing network by a factor of 10, without having to lay any additional fiber-optic cable").

outstripped the network's ability to add new capacity quickly enough to handle the demand.<sup>49</sup>

Bell Atlantic's claim that congestion on the Internet backbone's transport facilities has slowed transmission speeds to 40 Kbps is far from accurate.<sup>50</sup> There is ample evidence that the Internet is fully capable of carrying traffic at speeds that well exceed 40 Kbps. AT&T's own cable modem trials were conducted at average speeds of 400-700 Kbps. The cable ISP, @ Home, advertises that it typically operates at speeds in the range of 1,500-3,000 Kbps.<sup>51</sup> Time Warner's cable modem service in San Diego also operates at significantly higher speeds -- 10 Mbs downstream and 1.5 Mbs upstream -- which Time Warner claims that its users are fully capable of achieving.<sup>52</sup> The ubiquity of these successful broadband trials confirms the availability of the average speeds over the Internet backbone well above the maximum available over standard analog phone lines (i.e., 56 Kbps), and strongly suggests that any congestion experienced by customers is in the ILECs' local loops, which plainly have not been upgraded to meet demand. Finally, the Keynote System Inc. Backbone Performance Index quoted by Bell Atlantic is highly controversial. According to press reports, "many Internet providers felt the methodology

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<sup>49</sup> Moreover, router technology is not keeping up with the speed capabilities of the transport facilities being installed.

<sup>50</sup> Petition at 13 and Attachment 2, p. 22.

<sup>51</sup> See [www.home.net](http://www.home.net).

<sup>52</sup> BancAmerica Robertson Stephens -- Network Hardware Research Group, "The First Mile -- Release 1.4," February 23, 1998.

was flawed -- namely that it tested only server speed -- the speed at which a server uploads data onto the Net -- and not the speed at which data travels through the backbone."<sup>53</sup>

Of greater concern is the breakdown of the peering structure, which is the system of agreements between Internet backbone providers for the interconnection of their networks and the exchange of traffic. As traffic continues to increase exponentially on the Internet, a major source of congestion occurs at the NAPs, where backbone providers exchange traffic. In particular, Metropolitan Access Exchanges ("MAEs") at MAE East and MAE West, through which 70 percent of all Internet traffic transits, are severely strained.<sup>54</sup> As a result, backbone providers are moving toward private peering arrangements, in effect directly connecting with each other to bypass these crowded crossroads. The refusal of a large Internet backbone provider -- especially one with emerging market power such as WorldCom/UUNet, and the proposed WorldCom/MCI merged company -- to execute a peering agreement can prevent a small ISP from gaining direct connectivity to the larger provider's customer base, including popular websites.<sup>55</sup>

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<sup>53</sup> Inter@ctive Week, "Backbone Survey Takes on Keynote," February 23, 1998. One Internet access provider, Net Access Inc., plans to use different methodology to measure Internet backbone performance; the results of this study, expected this month, should be materially different. See [www.netperf.net](http://www.netperf.net) (announcement of NetAccess Internet Performance Measurement Study).

<sup>54</sup> See, e.g., HPPC Week, December 22, 1997, p. 4.

<sup>55</sup> Public peering is not a sufficient substitute for private peering, which offers several significant service advantages. The disparity in service quality between public and private peering will be further exacerbated until backbone carriers upgrade their interconnections to public NAPs to alleviate congestion.

Although Bell Atlantic acknowledges these concerns,<sup>56</sup> it does not explain either generally how its entry into the Internet backbone market would alleviate these problems, or specifically why Bell Atlantic is so uniquely qualified to address these issues that the Commission should exempt it from regulatory and statutory competitive safeguards to permit it to provide interLATA Internet services. What the Commission can learn instead from the competitive problems that are cropping up in the Internet market is that when a provider gains market power, it will seek to dictate the terms of access to its facilities to its competitors. This is precisely the situation that exists in the local exchange market today, and is the reason for the adoption of the interconnection, access, and resale provisions of the 1996 Act -- the very provisions from which Bell Atlantic is seeking relief here.<sup>57</sup>

In fact, Bell Atlantic has elsewhere acknowledged as much in its opposition to the proposed WorldCom/MCI merger.<sup>58</sup> There, Bell Atlantic has argued that the

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<sup>56</sup> See Petition at Attachment 2, pp. 28-33.

<sup>57</sup> See generally S. Conf. Rep. No. 458, 104<sup>th</sup> Cong., 2d Sess. p. 248 ("New subsection 251(a) imposes a duty on local exchange carriers possessing market power in the provision of telephone exchange service or exchange access service in a particular local area to negotiate in good faith and to provide interconnection with other telephone exchange service or exchange access service;" H. Conf. Rep. No. 458, 104<sup>th</sup> Cong., 2d Sess. pp. 254-55 (1996) ("Section 242(a)(1) [of the House amendment] sets out the specific requirements of openness and accessibility that apply to LECs as competitors enter the local market and seek access to, and interconnection with, the incumbent's network facilities").

<sup>58</sup> In its petition in opposition to WorldCom's application for transfers of MCI's operating authority, Bell Atlantic has acknowledged that "it is difficult to switch from one backbone provider to another" and that "[n]ew capacity is useless unless

(footnote continued on following page)

merged entity could exert monopoly power over Internet backbone facilities, and has stated that the appropriate relief would be the adoption and enforcement of conditions on the merger similar to the requirements of Section 251.<sup>59</sup>

So long as Bell Atlantic retains a dominant market position in the local exchange, its entry into the interexchange market has much more potential to impede competition than foster it. Bell Atlantic is unabashed in its plans to leverage its market power. According to Bell Atlantic, allowing it to provide Internet backbone services

would expand Bell Atlantic's ability to sell other complementary products to consumers. These include not just xDSL services, but also the second or third lines that consumers often seek for their Internet services. Additional incentive to invest would come from the resulting boost to Bell Atlantic's own Internet-access service itself, which has been uniquely hobbled by the fact that the customers of Bell Atlantic, unlike other providers, must obtain a separate interLATA provider.<sup>60</sup>

With the ability to bundle Internet services with both advanced and traditional basic telephone services (relief that Bell Atlantic implicitly requests), Bell Atlantic would foreclose competitors in each of these markets from constructing a viable

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customers can switch to it." In the Matter of Applications of WorldCom, Inc. and Howard A. White, Trustee, for Transfers of Control of MCI Communications Corporation and Request for Special Temporary Authority, CC Docket No. 97-211, Petition of Bell Atlantic to Deny the Application of WorldCom or, in the Alternative, To Impose Conditions, filed January 5, 1998, p. 6.

<sup>59</sup> Id. at 2 ("First, WorldCom should be required to divest some of its Internet backbones in order to lessen its dominance of the Internet. . . . Second, the Commission should ensure that Bell Atlantic and other currently precluded long distance entrants have access on a resale basis to all network facilities and features that MCI and WorldCom currently use to service their long distance customers").

<sup>60</sup> Petition at 16.

competitive offer. No Internet provider or CLEC could compete with a Bell Atlantic offer of free Internet service with purchase of a DSL service. And that arrangement would not alleviate the Internet backbone congestion problem that Bell Atlantic cites as its justification to enter the market free from any restrictions on its existing market power in the local exchange.

**IV. THE REQUESTED RELIEF IS CONTRARY TO, AND WOULD UNDERMINE, CONGRESSIONAL AND COMMISSION POLICY TO PROMOTE A ROBUSTLY COMPETITIVE TELECOMMUNICATIONS MARKET.**

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Not only would Bell Atlantic's petition, if granted, run counter to the statutory scheme established by Congress for opening of RBOC local exchange monopolies and RBOC entry into interLATA markets as discussed in Section III above, it is entirely inconsistent with Congressional mandates, Commission policy and the public interest.

First, Bell Atlantic's broad request for special treatment for the provision of "high-speed broadband services" runs counter to the pro-competitive, technology-neutral policies of the 1996 Act. In other contexts, the Commission has adopted a technology-neutral policy to allow the marketplace to direct the advancement of competitive services.<sup>61</sup> In contrast, Bell Atlantic's proposal would free Bell Atlantic to direct its

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<sup>61</sup> See, e.g., In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 97-157, rel. May 8, 1997, ¶¶ 47-49 ("Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor one technology over another").

investment decisions to its new technology services to the detriment of its traditional services -- the latter of which would be the only ones available to its potential competitors for purchase of UNEs and for resale. Thus, both Bell Atlantic's competitors and end user customers would suffer from the lack of competitive alternatives resulting from the grant of technology-focused (and not competition-focused) relief.

Second, Bell Atlantic's claim that "Section 271 is not undermined or compromised by allowing the limited interLATA relief sought here"<sup>62</sup> is simply untrue. Contrary to its assertion that it is requesting "limited high-speed data relief,"<sup>63</sup> as discussed herein grant of the requested forbearance authority would enable Bell Atlantic to provide all telecommunications services to its customers on an interLATA basis, including voice, fax and data over the same broadband pipe. Having achieved de facto 271 relief, Bell Atlantic would have no incentive whatsoever to meet the competitive checklist to implement local entry. Bell Atlantic's self-serving assertion that it "would not have agreed to the merger commitments if its strategy were to defer achieving checklist compliance" is as meaningless as it believes its merger obligations are. As AT&T has demonstrated in its pending Section 208 complaint proceeding before the Commission, Bell Atlantic has violated its merger obligations, and its interpretation of those obligations would render them a nullity.<sup>64</sup>

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<sup>62</sup> Petition at 19.

<sup>63</sup> Id.

<sup>64</sup> AT&T Corp. v. Bell Atlantic, File No. E-98-05, (complaint filed Nov. 4, 1997). For example, Bell Atlantic has taken the position in the complaint proceeding that its

(footnote continued on following page)

Furthermore, Bell Atlantic's claim that it "does not have the same alleged anticompetitive potential or unfair or special advantages entering the Internet and high-speed data market the Commission has thought Bell companies might have entering the regular long-distance market"<sup>65</sup> is plainly wrong. Bell Atlantic may well provide Internet access service to only a small portion of the subscribers to all Internet access services, as it claims.<sup>66</sup> However, it provides local service to virtually 100 percent of the Internet subscribers in its territory, and connectivity to virtually all the ISPs in its territory. Thus, every Internet access customer and virtually every ISP is also a customer of Bell Atlantic's monopoly local services. With this competitive advantage, Bell Atlantic could easily and quickly market a bundled offering to its existing customer base -- one that no ISP, CLEC, or IXC could match, especially if Bell Atlantic succeeds in having its "packet-switched" services sheltered from interconnection and resale requirements. This is directly contrary to the Commission's policy to ensure that innovative RBOC services be made available to competitive local exchange service providers:

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obligation to propose prices for UNEs based on forward looking economic costs applies only to proposals first made after August 14, 1997, despite the fact that the Merger Order states that "Bell Atlantic's and NYNEX's proffered commitments, and the conditions we impose, are not limited to interconnection agreements that are executed after approval of the Merger." In the Applications of NYNEX Corp. Transferor and Bell Atlantic Corp. Transferee For Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries, Memorandum Opinion and Order, File No. NSD-L-96-10 (Aug. 14, 1997); see also id. ¶185; id. n.347; id. Appendix C, Condition 9.

<sup>65</sup> Petition at 20.

<sup>66</sup> Id.

We want to encourage the BOCs to provide new technologies and innovative information services that will benefit the public, as well as ensure that the BOCs will make their networks available for the use of competitive providers of such services.<sup>67</sup>

Finally, Bell Atlantic's reliance on the existence of cable, wireless and satellite services as viable competitive local service alternatives is grossly premature.

Although Bell Atlantic cites press articles announcing future service offerings,<sup>68</sup> alternative broadband technologies are not likely to compete with any ILEC-offered DSL services in the near term. According to International Data Corporation ("IDC"), ILECs have "a fair amount of breathing room with respect to introducing DSL service" because cable companies have not been able to deploy cable modem technology either quickly or ubiquitously, obtaining only 100,000 cable modem subscribers by the end of 1997.<sup>69</sup>

Additionally, "the cost of the required access network upgrades to support modem service will hold back wide availability of cable modem service" as cable operators install fiber in their access networks at a fixed cost that IDC estimates to be on the order of \$100 billion to cover all of the cable systems in the country.<sup>70</sup> "Cash-strapped cable companies will require years to perform these upgrades, with the result being that cable modem service will be available only in pockets across the U. S. In contrast, DSL does not require

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<sup>67</sup> Computer III FNPRM, ¶ 7.

<sup>68</sup> Id. at 21-22.

<sup>69</sup> IDC Report, "DSL Market Gains Direction," January 1998, p. 5.

<sup>70</sup> Id.

massive investments to upgrade the access network."<sup>71</sup> Thus DSL can be provided on a phased basis as customers demand the service.

Any real competition from satellite and wireless companies, particularly for two-way interactive services, is still years away as well, as those technologies have yet to be developed and broadly deployed.<sup>72</sup> This suggests that Bell Atlantic (and the other ILECs) are in a powerful position to hold back the introduction of broadband services to business and residential customers until the emergence of real competitive alternatives, and thereby delay rather than hasten their market introduction.<sup>73</sup>

At bottom, Bell Atlantic has offered only half-hearted and inaccurate information to support its contention that there is any meaningful competition in the local exchange today. It has clearly offered no basis for the Commission to conclude that its ability or incentive to behave in an anticompetitive manner are in any way tempered by

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<sup>71</sup> Id. Bell Atlantic admits the lack of competitive broadband alternatives in its own filing: "Cable and wireless providers likewise have invested far less capital, and built far less network. Cable companies have deployed few switches of any kind, and have not linked in to the nationwide digital signaling system (SS7) at all. Only 10 to 20 percent of cable subscribers are served by networks that have been upgraded to support two-way traffic. Test of cable modems are under way, and a few companies already offer commercial service, but these initiatives remain small and localized for now. Only about 15 percent of cellular networks are digital. Wireless data services remain quite limited, expensive, and slow. Cellular Digital Packet Data (CDPD) services are being rolled out slowly, and are currently used by only about 10,000 customers." Id. at Attachment 2, p. 49 (footnotes omitted).

<sup>72</sup> IDC Report, p. 6.

<sup>73</sup> See, e.g., Jupiter Study at 31 ("Currently, the RBOCs have a stranglehold on high-speed Internet access via leased lines by virtue of their ownership of the local loop.

(footnote continued on following page)

these so-called competitive alternatives, and that grant of the requested relief would not "impede other statutory policies."<sup>74</sup>

## V. CONCLUSION

Bell Atlantic's request, if granted, would stop competition in the local exchange market before competitors even gain a foothold; it would enable Bell Atlantic to extend its existing market power into the interexchange market, contrary to the express intent of Congress in adopting Sections 251 and 271 of the 1996 Act; and it would do nothing to address the real competitive concerns of the Internet backbone market, as Bell Atlantic has itself acknowledged. Commissioner Ness correctly noted that

we can't simply eliminate all the rules we have today and hope for competition. As long as the incumbent local exchange carriers, and particularly the Bell Operating Companies and GTE, retain significant market power from their control over their bottleneck local loop, we will need a transitional regime to move from regulation to competition.<sup>75</sup>

Bell Atlantic's petition is a useful tool to analyze the wisdom of these remarks. Stripped of the superficial appeal of "bringing Internet services to the home," the petition is nothing more than a request by a monopolist to introduce new services into its existing monopoly market without any competitive safeguards, and to leverage its market power into the

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The RBOCs will have little reason to invest in ADSL for business use until businesses have options for high-speed access besides leasing T1 and ISDN lines").

<sup>74</sup> Petition at 19.

<sup>75</sup> Ness Remarks, p. 3.

interexchange market as well. Bell Atlantic has provided no valid justification to effect such full-scale deregulation of its services before it sheds its monopoly power.

For the reasons set forth above, Bell Atlantic's petition should be denied, including the request for expedited treatment.

Respectfully submitted,

AT&T CORP.

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April 6, 1998

CERTIFICATE OF SERVICE

I, Rena Martens, do hereby certify that on this 6<sup>th</sup> day of April, 1998, a copy of the foregoing "Comments of AT&T Corp." was served by U.S. first class mail, postage prepaid, to the parties listed below.

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DOCKET FILE COPY DUPLICATE

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

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

COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.

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Dated: April 6, 1998

## **SUMMARY**

Teleport Communications Group Inc. ("TCG") opposes the Bell Atlantic, U S West, and Ameritech petitions ("Petitions"), which request that the Commission essentially permit them to ignore their express obligations under Sections 251, 252, 271, and 272 of the Communications Act. Petitioners argue that regulatory forbearance of their statutory requirements is permissible when telecommunications and information services are provided over high capacity facilities. However, the Petitions are a transparent and improper attempt to circumvent the core requirements of the Act, a result Congress could not possibly have had in mind in creating a general section of the Telecommunications Act of 1996 to encourage the deployment of advanced telecommunications capabilities.

Simply put, the Commission may not forbear from Sections 251(c) and 271 of the Communications Act. Congress recognized that these statutory obligations are essential for the transition to a competitive environment. Therefore, in permitting the Commission the right to forbear carriers from certain regulations, Congress expressly declined to permit forbearance from Sections 251(c) and 271. Indeed, the purpose of regulating dominant carriers has been to ensure that the facilities they provide to themselves and others are made available on a nondiscriminatory basis. Thus, Bell Atlantic, U S West, Ameritech, and all other Bell operating companies must comply with all Section 271 requirements, including the competitive checklist, before offering in-region interLATA service over an existing or proposed network. Once Section 271 authority has been granted, these carriers must still be made subject to Sections 251 and 252 pricing

interconnection, access, and performance parity requirements, and Section 272 separate subsidiary requirements.

Policies to encourage deployment of "high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics and video communications" must be considered in light of existing statutory regulatory policies, like those embodied in Sections 251, 252, 271, and 272 of the Act. The best method of achieving facilities-based competition is to foster an environment in which numerous competitors invest in backbone facilities, thereby leading to innovations and ingenuity that are hallmarks of a thriving competitive market. Grant of the Petitions, however, would stifle competition by permitting a dominant carrier to provide telecommunications services free of necessary and pro-competitive regulations. For these reasons, the Commission must deny the Bell Atlantic, U S West, and Ameritech petitions.

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

In the Matter of	)	
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Telecommunications Services	)	
	)	
Petition of Ameritech for Relief from	)	
Barriers to Deployment of Advanced	)	CC Docket No. 98-32
Telecommunications Services	)	
	)	

**COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.**

Teleport Communications Group Inc. ("TCG") hereby opposes the above-referenced petitions filed by Bell Atlantic, U S West, and Ameritech ("Petitions"). Each of the Petitions, relying on Section 706 of the Telecommunications Act of 1996 ("1996 Act"), requests that the Commission essentially excuse the carriers from their obligations to provide unbundled network elements subject to certain pricing standards, and from the statutory requirement to obtain Commission approval prior to the provision of in-region, interLATA service. The Petitions, however, are a transparent and improper attempt to circumvent these core requirements of the Communications Act of 1934, as amended (the "Communications Act" or "Act"), intended to foster and encourage competition. Congress could not possibly have intended to permit such an easy unraveling of the balance struck in the 1996 Act by adopting Section 706.

## I. INTRODUCTION

The Bell Atlantic, U S West, and Ameritech proposals are obviously and irretrievably wrong on two grounds. First, the Petitions seek to open a "back door" into the prohibited interLATA marketplace by relying on Section 706, which, codified as a note to Section 7 of the Communications Act, could hardly have been intended by Congress to trump the essential balance struck in the core of the Act — Sections 251, 252, 271, and 272. Construction of interLATA networks such as that proposed by Bell Atlantic, U S West, and Ameritech will only be appropriate once these regional Bell operating companies ("RBOCs") have satisfied the pro-competitive conditions that form the bargain that was struck by the RBOCs and Congress in adopting Section 271 of the Act. The RBOCs' failure to comply with the Act, and thus, their inability to satisfy Section 271, should not be obscured by their claimed inability to invest in new technologies in the absence of requested regulatory incentives.<sup>1</sup>

Second, the carriers propose that this new network be exempt from virtually all of the pro-competitive requirements of the Act. At a time when incumbent local exchange carriers ("ILECs") like Bell Atlantic, U S West, and Ameritech continue to

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<sup>1</sup> Contrary to the Petitions' depiction of a dismal rate of innovation and investment, companies like Qwest Communications are responsible for an acceleration in investment over the last two to three years. Qwest has committed to a multi-billion dollar national broadband network spanning 16,000 miles in 125 cities. Over 3,500 miles of that network are currently operational. See Qwest website. Similarly, cable companies spent an aggregate \$6.9 billion on capital improvements in 1996, and the three largest CLECs invested a combined \$1.2 billion. See Bell Atlantic Petition, Attachment 2 at 44.

control some 99 percent of the local telecommunications market, total deregulation of a potential major ILEC network infrastructure project cannot possibly be in the public interest. Thus, once constructed these networks must remain subject to Sections 251, 252, and 272.

There are, of course, many other flaws and failures inherent in the advanced services deployment proposals, including that fact that the carriers' attempted use of Section 706 is at odds with the limited and conditional nature of the Commission's mandate under Section 706. But these two problems described here alone require that the Commission deny the Petitions.

**II. AN RBOC MUST RECEIVE SECTION 271 AUTHORITY BEFORE PROVIDING ANY IN-REGION INTERLATA SERVICE, REGARDLESS OF THE FACILITIES USED TO PROVIDE THOSE SERVICES**

**A. Section 706 Does Not Override Section 271**

Section 271 states that "[n]either a Bell operating company, nor any affiliate of a Bell operating company, may provide interLATA services" except as permitted under the provisions of the section. Bell Atlantic, however, asserts — unconvincingly — that Section 271 requirements should not apply to the grant of its Petition and that "the limited interLATA relief sought here" does not undermine Section 271.<sup>2</sup> Ameritech and U S West directly acknowledge that Section 271(a) bars them from providing Internet backbone services, such that they cannot

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<sup>2</sup> Bell Atlantic Petition at 19.

provide advanced telecommunications services in the absence of Section 271 forbearance or LATA boundary relief.<sup>3</sup>

Petitioners seek forbearance from a statutory provision that is integral to the continued development of competition. However, the Commission is expressly prohibited from providing the relief requested — its forbearance authority does not extend to Section 271. Moreover, Bell Atlantic is simply wrong in presuming that the generalized “public interest” regulatory goals set forth in Section 706 override the statutory mandate of Section 271. Where, as here, a statute expressly provides a precise and detailed formula to achieve a particular goal, vague and generalized provisions elsewhere cannot be read to override the specific statutory formulation.<sup>4</sup>

The Act provides a specific avenue by which RBOCs can attain long distance entry. The Act also provides a specific avenue for seeking forbearance under Section 10(d). Neither avenue permits a BOC to circumvent Section 271. Therefore, Petitioners should file applications under Section 271 and demonstrate compliance with those specific requirements in their respective searches for long

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<sup>3</sup> See Ameritech Petition at 9; U S West Petition at 27, 42.

<sup>4</sup> See Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437, 445 (1986) (“[w]here there is not clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment”) (citations omitted); HSC-Laundry v. U.S., 450 U.S. 1, 8 (1981) (holding that “it is a basic principle of statutory construction that a specific statute . . . controls over a general provision . . . particularly when the two are interrelated and closely positioned”).

distance operating authority, rather than attempt to chip away at the interLATA prohibition by filing exemption petitions.

**B. The Commission May Not Forbear from Applying Section 271**

Section 10(d) of the Act expressly prohibits the Commission from forbearing from Sections 271 and 251(c) unless those requirements have been "fully implemented."<sup>5</sup> This language makes clear that the Commission may not forbear from applying Section 271 or Section 251(c), even if each of the forbearance criteria under Section 10(a) are otherwise met. For that reason, the Commission has stated that "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."<sup>6</sup>

Section 706 of the 1996 Act also refers to regulatory forbearance. In this context, however, regulatory forbearance is simply one alternative in a list of regulatory methods by which the Commission may encourage the deployment of advance telecommunications capability.<sup>7</sup> Contrary to Petitioners' assertions, forbearance under Section 706 may not be granted without regard to the limitations and requirements set forth in Section 10. Indeed, Section 706 itself

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<sup>5</sup> 47 U.S.C. § 160(d).

<sup>6</sup> Petition for Declaratory Ruling Regarding US West Petitions to Consolidate LATAs in Minnesota and Arizona, NSD-L-97-6, Order, DA 97-767 (Com. Car. Bur. rel. April 21, 1997) at ¶ 25, application for review pending.

<sup>7</sup> The Commission may also consider utilizing price cap regulation, measures that promote competition in the local telecommunications market, or other means to remove barriers to infrastructure investment. 47 U.S.C. § 157 note (§ 706(a)).