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August 31, 1998

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Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
1919 M Street, N.W. – Room 222  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: CC Docket No. 98-11, Emergency Petition of Bell Atlantic-West Virginia  
for Interim Relief Under Section 706

Dear Ms. Roman Salas:

Although Bell Atlantic's reply in the above-captioned proceeding and the press release that accompanied it are heavily larded with invective, they cannot conceal a fundamental fact: By Bell Atlantic's own admission, the major premise of its request for interLATA relief in West Virginia is utterly baseless. Bell Atlantic's Petition is a frivolous stunt that openly courts a show-cause order, and its continued prosecution of its claims wastes the resources of both the Commission and commenters. AT&T urges the Commission to dismiss the Petition forthwith.

The instant proceeding is crucially important because it touches directly on important issues now pending before the Commission concerning the BOCs' requests for LATA modifications and other relief they assert is necessary to provide advanced services.<sup>1</sup> Bell Atlantic's Petition makes plain the need to carefully investigate BOCs' claims that services are not available in a particular area, and to require that requests for interLATA relief be supported by a sufficient factual record. Bell Atlantic seeks authority to provide a high capacity (T3) interLATA circuit from Morgantown, West Virginia to Pittsburgh, Pennsylvania as part of the WVNET system. Two facts are fundamental to this proceeding:

First, although the Petition states that AT&T was among the IXCs from which Bell Atlantic could not obtain service, Bell Atlantic now admits that neither it nor its agents ever contacted AT&T. Second, and more importantly, if Bell Atlantic had requested a T3,

<sup>1</sup> See, e.g., Memorandum Opinion and Order and Notice of Proposed Rulemaking, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, released August 7, 1998.

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AT&T could have provided it -- and still stands ready to provide it. Further, since filing its Petition, Bell Atlantic has obtained a Morgantown-Pittsburgh circuit from another IXC. The Petition thus bases its claim that West Virginia is suffering a "bandwidth famine" on Bell Atlantic's purported inability to obtain a circuit it never asked for, and which it admits is available from at least two different carriers.

Bell Atlantic never sought a T3 from AT&T. The Petition unequivocally states that as part of Bell Atlantic's attempts to fulfill its obligations under the WVNET contract, "[t]he carriers that were contacted include AT&T, Sprint, MCI, Intermedia and others."<sup>2</sup> As AT&T showed in its comments, however, after the Petition was filed Bell Atlantic admitted in writing that it had no record that it or its agents ever contacted AT&T. Instead, Bell Atlantic stated that ICON, the IXC responsible for providing interLATA links for WVNET, contacted Tel-Save, a reseller.<sup>3</sup>

Incredibly, Bell Atlantic's Reply fails to amend or withdraw the Petition's claims that it was unable to obtain a T3 from AT&T. The Reply again asserts that ICON "undertook to query all long distance providers, including AT&T."<sup>4</sup> However, the Reply goes on to reveal that this claim is patently false, stating that ICON "deal[t] with AT&T through intermediaries (agents and resellers)."<sup>5</sup> Bell Atlantic well knows, however, that resellers are neither "agents" nor "intermediaries" of the IXCs whose services they re-sell.

The Reply seeks to obscure this issue further by alleging that ICON was unable to call AT&T because it does not have an AT&T Account Executive assigned to it. Even if this assertion had any merit (as it does not), it would merely highlight the misleading nature of the Petition's claims that Bell Atlantic or its representatives contacted AT&T. But ICON

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<sup>2</sup> Emergency Request of Bell Atlantic-West Virginia For Interim InterLATA Relief, filed July 22, 1998, p. 3 in Request By Bell Atlantic - West Virginia For Interim Relief Under Section 706, Or, In The Alternative, A LATA Boundary Modification, NSD-L-98-99, DA 98-1506 (emphasis added) ("Petition").

<sup>3</sup> See Letter from David B. Frost, Vice President and General Counsel, Bell Atlantic-West Virginia, to Mark Keffer, Chief Regulatory Counsel-Atlantic Region, AT&T Corp., August 6, 1998 (attached to AT&T's Comments as Exhibit C).

<sup>4</sup> Bell Atlantic Reply, p. 4, n.1 (emphasis added). The Reply suggests that AT&T has no record that Bell Atlantic contacted it because ICON, not Bell Atlantic, was the party responsible for securing interLATA circuits for WVNET. *Id.* This claim cannot be credited. The declarations appended to AT&T's comments expressly state that AT&T has no record that "Bell Atlantic, BAIS, or another firm acting on Bell Atlantic's or BAIS's behalf" contacted AT&T. Declaration of Sharon O'Brien, ¶ 4 ("O'Brien Decl.") (attached to AT&T Comments as Exhibit A); see also Declaration of Rick L. Boggess, ¶ 4 ("Boggess Decl.") (attached to AT&T Comments as Exhibit B).

<sup>5</sup> Bell Atlantic Reply, p. 4, n.1.

could have called AT&T at any time -- AT&T routinely deals with small resellers. Further, Bell Atlantic cannot plausibly contend that it willingly partnered with a reseller that is so inept that it was unable even to initiate contact with the nation's largest IXC.<sup>6</sup>

Bell Atlantic's inability to substantiate the allegations on which its Petition rests underscores the importance of careful Commission scrutiny of RBOC claims that interLATA relief is necessary to provide greater bandwidth to telecommunications customers. The Petition was supported only by third-hand accounts of ICON's purported attempts to secure the circuits required for WVNET -- accounts that crumbled upon investigation.<sup>7</sup> Bell Atlantic has yet to present a single affiant from that reseller, much less a detailed account of the steps it asserts ICON, Bell Atlantic, or Bell Atlantic Internet Services took to obtain interLATA transport.

AT&T can provide the T3 circuit that Bell Atlantic claims is unavailable. Although Bell Atlantic has known for weeks that the T3 circuit that is the subject of its Petition is readily available, it has made no effort to withdraw -- or even amend-- its Petition.

The Reply confirms that AT&T contacted Bell Atlantic in early August and offered to provide it with a Morgantown-Pittsburgh T3.<sup>8</sup> Because neither Bell Atlantic nor any firm acting on its behalf had ever requested this circuit from AT&T, the Reply's lament that this capacity was offered only as a result of the Petition is a sheer *non sequitur*. AT&T scarcely can be faulted for failing to offer an interLATA link to a customer that has never contacted it.<sup>9</sup>

Moreover, Bell Atlantic's own affiant admits that when AT&T called to offer it this circuit, that BOC declined the offer on the ground that it already had acquired a T3 from

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<sup>6</sup> Bell Atlantic makes no attempt to rebut AT&T's showing that its arrangement with ICON does not appear to comport with the Commission's rules or its own CEI plan. See AT&T Comments, p. 2, n.1 & p. 2 n.4. The Reply's claim that ICON failed even to attempt to contact AT&T is further evidence that that reseller is nothing more than an inadequate regulatory "fig leaf" for Bell Atlantic's Internet offering.

<sup>7</sup> See AT&T Comments, pp. 3-4.

<sup>8</sup> See Affidavit of H. Stanley Cavendish, ¶ 5 ("Cavendish Aff.") (appended to Bell Atlantic Reply).

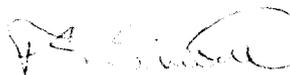
<sup>9</sup> For the same reason, Bell Atlantic's assertion that AT&T's offer to provide a T3 for WVNET is somehow suspect because it is phrased in the "present and future tense[s]" is absurd. Bell Atlantic Reply, p. 4. AT&T naturally referred to its present capacity when it offered -- without ever having previously received an inquiry of any kind -- to make a T3 available. In response to the Reply's claims, however, AT&T hereby confirms that to the best of its knowledge it could have satisfied Bell Atlantic's request for a Morgantown-Pittsburgh T3 had Bell Atlantic made such a request at any time during 1998.

another carrier.<sup>10</sup> And, in its only appearance in any capacity in this proceeding, ICON confirmed on August 10, 1998 that it had obtained a Morgantown-Pittsburgh T3.<sup>11</sup> Although ICON does not state which IXC is providing this circuit, it has not obtained this capacity from AT&T. Thus, the record makes clear that far from being constrained by a "bandwidth crisis," Bell Atlantic has its choice of vendors for the interLATA link that is the subject of its Petition.

Bell Atlantic attempts to explain away these facts by speculating that AT&T is able to provide a Morgantown-Pittsburgh T3 only by diverting an order that another customer had placed for that same circuit.<sup>12</sup> To the contrary, the T3 that AT&T offered to Bell Atlantic was not dependent on another customer's cancellation, but rather is capacity available on AT&T's network in the regular course of business -- as AT&T showed in its comments.<sup>13</sup>

Two copies of this letter are enclosed, in accordance with Section 1.1206(a) of the Commission's Rules.

Sincerely,

A handwritten signature in dark ink, appearing to be "F. S. ...", is written below the word "Sincerely,".

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<sup>10</sup> See id.; Bogges Decl., ¶ 8.

<sup>11</sup> Letter from David L. Goret, General Counsel, ICON CMT Corp., to Magalie Roman Salas, Secretary, Federal Communications Commission, August 10, 1998.

<sup>12</sup> See Cavendish Aff., ¶ 5.

<sup>13</sup> See O'Brien Decl., ¶ 6.