

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the matter of)
)
Deployment of Wireline Services Offering) CC Docket No. 98-147
Advanced Telecommunications Capability)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BELL ATLANTIC REPLY COMMENTS

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Introduction and Summary

Congress directed this Commission to ensure that advanced telecommunications services are available to all Americans. The comments filed in this proceeding demonstrate that current regulatory barriers, and the new ones proposed by the Commission, will deprive many Americans of advanced services for years to come. The Commission should modify its proposals here to reduce, rather than increase, the regulatory burdens on the Internet and services to access the Internet. Through the following modifications, the Commission can speed the deployment of advanced services to all Americans and help to promote the health and competitiveness of the Internet.

First, the Internet backbone market is dominated by a few large carriers that are not providing enough bandwidth capacity for those Americans that use the Internet today, much less for all Americans. Many areas of the country are being underserved, or not

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc., New York Telephone Company and New England Telephone and Telegraph Company.

served at all, and few facilities based alternatives exist even in areas that are being served. In order to make the Internet available to all Americans, the Commission needs to make limited LATA boundary modifications that will enable the Bell companies to compete with the dominant Internet providers and make more bandwidth capacity available throughout the country.

Second, the most efficient way for incumbent carriers to rapidly deploy advanced telecommunications services to the mass market is on an integrated basis within their local telephone companies. But imposing unbundling and resale obligations on these services will discourage and delay their deployment in all but the most lucrative business markets. Moreover, the separate affiliate alternative for deployment of advanced services would increase the cost of these services and make them less affordable for mass market consumers. The Commission should therefore modify the unbundling and resale obligations of incumbent carriers to enable them to offer advanced telecommunications services directly to the mass market, rather than through a separate affiliate.

Third, there is absolutely no reason for the Commission to open the doors of incumbent carriers' central offices to allow competitors to bring in whatever type of equipment they want and to place it wherever they want. Many commenters, including competing carriers, recognize the importance of being able to secure their equipment from other competitors, and incumbent carriers should not be deprived of that opportunity to secure their equipment. Moreover, allowing collocators to place any type of equipment they choose in collocation space will more rapidly deplete the already limited amount of available collocation space.

Finally, the commenters' fevered rush to impose more unbundling requirements will neither improve competition nor fulfill Congress's directive to make advanced telecommunications services available to all Americans. The Commission's existing rules are already adequate to address the needs of competing carriers that wish to offer advanced services in competition with incumbent carriers.

I. THE COMMISSION SHOULD GRANT NARROWLY-CRAFTED INTERLATA RELIEF.

The Bell companies are able to bring advanced services to the mass market quickly and efficiently. They have extensive local infrastructures of personnel, equipment and systems that could readily be used to widely deploy advanced telecommunications services throughout urban, suburban and rural areas. But LATA boundaries – as applied to emerging advanced telecommunications services – prevent them from fulfilling this critical Congressional objective. Bell Atlantic has therefore requested targeted LATA boundary modifications that would make possible the mass market deployment of advanced services while keeping the Section 271 carrot intact. Bell Atlantic's requested relief includes permitting Bell Atlantic to offer backbone services² and corporate intranets/extranets³ free of regulation, and allowing Bell Atlantic

² The Commission has defined an Internet backbone as "the transporting and routing of packets between and among ISPs and regional backbone networks." *WorldCom/MCI Order*, CC Docket No. 97-211 at ¶ 148 (Sept. 14, 1998). It defined backbone markets to be a "separate relevant product market" from non-Internet long distance markets. *Id.*

³ By definition, intranets and extranets are not public telecommunications networks. An intranet is a private network that uses Internet software and Internet standards to transport data within a corporation, while an extranet is a private network that uses Internet software and Internet standards to enable a company to exchange data

to provide high-speed access to the nearest network access point (“NAP”) in another LATA. Bell Atlantic NPRM Comments at 4-18.

While the usual suspects oppose any LATA boundary modifications whatsoever (*e.g.*, AT&T 103-108; MCI WorldCom 79-83), the Commission has not been so draconian. The Commission has already acknowledged that as “a general matter, . . . within the discretion granted to it under the Act, [the Commission] weighs the need for the proposed [LATA] modification against the potential harm from anticompetitive BOC activity, and considers whether the proposed modification will have a significant effect on the BOC’s incentive to open its local market pursuant to section 271.” NPRM at ¶ 190. Bell Atlantic’s requested relief meets this test easily. The requested relief is essential if advanced telecommunications services are to be made available to all Americans. Furthermore, these LATA boundary modifications will not have a significant effect on Bell Atlantic’s incentives to meet the checklist since they are a fraction – perhaps 5% – of the size of the overall long distance market. Finally, given both the lack of a monopoly bottleneck in advanced services generally and for these particular services specifically, the relief does not create potential for anticompetitive activity.

A. Targeted LATA Boundary Modifications Are Necessary to Bring More Competition and Capacity to the Concentrated and Congested Internet Markets.

Not surprisingly, the most vociferous opposition to any interLATA relief comes from the carriers that already participate in the Internet backbone and corporate

with its employees and selected customers and/or suppliers. Both are defined by their rigid control of access to the corporate network.

intranet/extranet markets and want to forestall any competition from Bell companies. AT&T claims that the “market for interLATA transport is highly competitive,” AT&T at 108, while AT&T and MCI WorldCom both cite Bell Atlantic’s West Virginia petition as evidence that no bandwidth shortages exist. AT&T at 107-08, MCI WorldCom at 82-83. Cable & Wireless – the company that bought MCI’s spun-off Internet backbone – claims there is little evidence that the interexchange carriers are not meeting their customers’ needs. Cable & Wireless at 18. These arguments are unfounded; the evidence is that a few providers dominate the concentrated backbone market, that Internet backbones are congested and need greatly expanded capacity, and that many areas around the country are not receiving adequate backbone service – including West Virginia.

First, the Internet backbone incumbents are wrong when they claim the backbone market is highly competitive. As this Commission and both domestic and international antitrust authorities have recognized, the Internet backbone market today is highly concentrated and is dominated by the big-three backbone providers – MCI WorldCom, Sprint, and the spun-off MCI backbone.⁴ While no measure of market share for the Internet backbone is ideal, economist Robert Harris has estimated that UUNet has almost 20 percent of the Internet backbone market; the spun-off MCI backbone 29 percent; and

⁴ See, e.g., Antitrust Division Press Release, *Justice Department Clears WorldCom/MCI Merger After MCI Agrees to Sell its Internet Business* (July 15, 1998) (Assistant U.S. Attorney General Joel Klein noted that “[t]he merger as originally proposed would have given WorldCom/MCI a significant proportion of the nation’s Internet traffic, giving the company the ability to cut off or reduce the quality of Internet services that it provided to its rivals”).

Sprint almost 23 percent.⁵ Thus, three companies control almost ¾ of the Internet backbone market.

Second, the Internet backbone incumbents ignore extensive evidence presented by Bell Atlantic and others that the backbone market (and its non-common carrier analogues, the intranet/extranet markets) suffers from a serious capacity shortage that arises in good measure because Bell companies are precluded from entering the market. Internet backbones are a combination of fiber, routers and switches, which connect through network access points to a variety of Internet “on ramps” and “off ramps.” When too much traffic is trying to make its way through congested switches or routers, many packets just drop off if they cannot get through, or some get through much more slowly than others turning the World Wide Web into the World Wide Wait. The problem is not isolated to a few geographic areas, but is systemic. Boardwatch noted that the fastest cities, including Boston in Bell Atlantic’s region, are “often four times faster than the slowest ones,” such as Washington, D.C.⁶ Internet backbone problems are even worse in more remote areas, given the lack of diversity in routing traffic and the lack of any backbones at all.

Current Internet backbones run slowly, even in relation to local loop access technologies. Measurements by Keynote Systems, the recognized authority on the issue, reveal that average backbone speeds run somewhere less than 80 kilobits per second, well

⁵ Internet Affidavit of Robert G. Harris at ¶ 45, attached to Comments of GTE Corp., CC Docket 97-211 (March 13, 1998).

⁶ “*Internet Performance 60% Faster This Year Than 1997*,” (March 11, 1998) <www.keynote.com/news/announcements/pr031198.html>.

below ISDN's 128 kbps and many times below the speeds that advanced technologies such as cable modems and ADSL offer.⁷ (Keynote's measurements factor out the influence of the "last mile" because they measure Internet backbone speed using T-1s.)

Bob Metcalfe, an industry guru who in the past has been critical of the local telephone companies, notes that the Internet is actually much slower and inefficient than Keynote's average measurements suggest. First, Keynote ignores all failures in which users receive no response at all because of lost packets and incomplete downloads. But a great part of consumer frustration with the Internet and the perception of the "World Wide Wait" comes from these frequent and agonizingly long "no response" failures.⁸ Second, Keynote uses an "average" figure that includes measurements in the middle of the day and in the witching hours. At peak times, which by definition is when most users try to access the Internet, speeds generally are lower. Finally, even assuming that Keynote's averages fairly reflected the World Wide Wait, the average speed is unacceptable – it should not take twenty seconds for the average home page to download over a T-1 line.⁹

⁷ Press Release, *DSL and Cable Modems Will Not Solve Internet Performance Problems, According to Keynote Systems; Internet Speed Limit Impedes Full Potential of High-Speed Internet Access Over 'The Last Mile,'* (Feb. 13, 1998) <www.keynote.com/news/announcements/pr021398.html>.

⁸ As Bell Atlantic previously noted, its network is engineered to the highest quality standards, and users often unfairly blame it for problems that occur elsewhere in the Internet, such as lost packets and no responses in the Internet backbone networks and busy signals from ISPs. Petition of Bell Atlantic for Relief from Barriers to Deployment of Advanced Telecommunications Services, White Paper Supporting Petition, CC Docket No. 98-11 at 48 (Jan. 26, 1998).

⁹ Bob Metcalfe, *From the Ether*, InfoWorld (March 30, 1998) <www.infoworld.com/cgi-bin/displayNew.pl?/metcalfe/980330bm.htm>.

The incumbent interLATA carriers that dominate the Internet backbone market did not provide empirical rebuttal to the evidence of slow Internet backbones presented by Bell Atlantic in its original Section 706 petition or here. To the contrary, AT&T acknowledged that “the pace of Internet growth has outstripped the network’s ability to add new capacity quickly enough to handle the demand.” AT&T Opposition to Bell Atlantic’s 706 Petition at 23-24 (April 6, 1998). Meanwhile, MCI’s lawyers threatened to sue some penniless graduate students who were publishing free Internet backbone performance statistics. Bell Atlantic 706 Reply Comments at 14-17.

The assertions by some commenters that new capacity coming on line through Qwest, Level 3 Communications, and others will solve current backbone congestion problems are incorrect. Bandwidth demand is increasing by at least 1000% a year for data. Nationsbanc Montgomery Securities, *Qwest: Reiterate Buy*, Sep. 24, 1998. George Gilder said last month “It’s not inconceivable that there will be a million-fold rise in Internet traffic by 2005.” Kevin Maney, *What Could It Mean?*, USA Today, Oct. 8, 1998, at 1B. In the face of this astronomical increase in demand, the current network builds and upgrades cited by commenters as evidence of abundant backbone capacity simply will be inadequate.

Wall Street and backbone providers alike agree that bandwidth will continue to be scarce. First, Wall Street urges investors to buy bandwidth companies because of the explosion in data traffic. Hambrecht & Quist notes that the “demand for high-capacity network and broadband services is virtually exploding. . . . [W]e think that demand will continue to outstrip supply for some time to come.” Hambrecht & Quist, *Initiating Coverage of IXC Communications with a Buy Rating*, March 25, 1998. As the Wall

Street Journal noted, “demand [for bandwidth] is far outstripping supply Mr. Crowe and his partners [at Level 3] are betting that the trend will continue for decades.” John J. Keller, *Ex-MFS Managers Plan Global Network Based on Internet*, Wall St. J., Jan. 20, 1998 at A3.

Internet backbone companies themselves are vocal about scarce capacity in the backbone. Alan Taffel of UUNet notes that “[i]f you are not a facility-based ISP you will very soon find there is no more capacity out there to lease, and if you find some, you will be paying a premium on it while competing with ISPs that own their own networks.” *Size Matters*, Internet Week, Oct. 13, 1997. Joe Nacchio, the head of Qwest, observed that “in telecom now, giving someone a four year head start means you might as well not be there, . . . I feel like an emerging oil baron.” *Wired Magazine*, May 1998 at 181.

The new “bandwidth barons” stated last month that the expanding use of “bandwidth-intensive applications [] will quickly absorb all the new capacity coming on line.” *Qwest, Williams, RCN CEOs Discount Capacity Glut*, TR Daily, Sept. 1, 1998. Finally, the CEO of Williams Corporation said two weeks ago that “[a]ll of the bandwidth being deployed won’t even come close” to meeting demand. Kevin Many, *What Could It Mean?*, USA Today, Oct. 8, 1998, at 1B.

The price of interLATA capacity is expected to be higher than that of local high-speed capacity, reflecting the perceived scarcity. The bandwidth barons anticipate they will not be engaged in price wars. John Sidgmore of MCI WorldCom noted this month that “[c]ustomers expecting to pay low prices for high-speed [long distance] Internet connections may end up disappointed” and that the local high-speed access would be

lower cost relative to backbone transport. Andrew Craig, *High-Speed Access Means Higher Prices*, CMP Techweb, Oct. 7, 1998.

In short, as Sidgmore also noted, “[w]e haven’t seen the worst of bandwidth consumption yet. . . . If you’re not scared, then you don’t understand.”¹⁰ The Internet backbone incumbents’ bland reassurances in this proceeding not to worry flies in the face of the extensive evidence to the contrary. The Commission would increase much-needed investment in the Internet by permitting Bell companies, such as Bell Atlantic, to build Internet backbone capacity and serve the corporate intranet/extranet market to help meet the exploding demand.

Third, contrary to the claims of the incumbent interLATA providers (AT&T at 107-08, MCI WorldCom at 82-83), many areas of the country have no or very limited local access to Internet backbones and nearly all areas of the country are served by only a very limited number of Internet backbones. The incumbent carriers that dominate the Internet backbone market do not have immediate plans to extend the backbones to all areas of the country. It is the Bell companies that are in the best position to add the necessary competition to this market and build Internet backbones to the currently unserved areas. But without narrowly-crafted LATA modifications, they are not able to do so.

Internet backbones do not reach many areas. Outside of the major metropolitan areas, Internet backbones are either nonexistent or even less robust than major city-to-city routes. Of the 41 LATAs in the states served by Bell Atlantic, twenty-three of the

¹⁰ *Net Industry Puts on a Show*, Network World, May 11, 1998, at 1.

LATAs are not served by any of the national Internet backbones listed by Boardwatch magazine, and five of the LATAs have only one national Internet backbone. Thus, only fourteen of the 41 LATAs in the states served by Bell Atlantic have two or more national Internet backbones. Attachment A depicts the vast swath of unserved or underserved areas.¹¹ These neglected areas receive inherently inferior service, lacking fast access and routing diversity that helps ensure quality service.

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

The increased backbone investment touted by some commenters in the NOI proceeding will not alleviate this problem. The NOI comments confirmed the limited reach of most backbone investment. Level 3 will connect 25 cities with its backbone, Level 3 NOI Comments at 2-5, and Qwest will connect 130 cities, Qwest NOI Comments

¹¹ Bell Atlantic derived this result by counting the POP locations of “national” backbone operators – those that met Boardwatch criteria for a “Level 2 or higher” operator. To meet these criteria, the operator had to be operational, the circuits had to be DS3 or greater; and the circuits had to interconnect two or more NAPs. In addition to inter-NAP connections, these national backbone operators' high capacity circuits that lead to POPs are included in the database. Boardwatch points out there are regional backbone operations (usually an adjunct to a National ISP) that link to these, and in a few cases link to one NAP, but Boardwatch does not believe their network capacity and geographic coverage are significant.

at 5-9, but that leaves the vast majority of American cities without access to these, or indeed for many cities any, Internet backbones. There are well over 200 cities in the United States with a population in excess of 100,000, and literally thousands over 50,000.¹²

Bell Atlantic already has shown the severe bandwidth shortage that exists in West Virginia. Contrary to the claims of some parties in this proceeding (*see, e.g.* AT&T at 107-108; MCI WorldCom at 82-83), many of the comments on Bell Atlantic's West Virginia Petition for Interim Relief confirmed Bell Atlantic's depiction of the bandwidth famine in West Virginia. Allegheny noted in its comments that "[b]y and large, Bell Atlantic's assessment with regard to the absence of high speed Internet backbone capacity is accurate." Allegheny West Virginia Comments, File No. NSD-L-98-99, at 2. Sprint forthrightly admitted it had "capacity constraints" in West Virginia and admitted that only one other carrier may have sufficient capacity "now" to meet the state government's needs. Sprint West Virginia Comments, File No. NSD-L-98-99, at 3. MCI admitted that it "had no excess capacity available" and that there is at least a "temporary exhaustion of Internet capacity in West Virginia." MCI West Virginia Comments, File No. NSD-L-98-99, at 2, n.2; 3. Finally, AT&T's carefully worded pleading, focused mainly on the irrelevant issue of whether AT&T was asked directly if it had bandwidth, could not disguise the fact that AT&T does not have adequate bandwidth. Bell Atlantic West Virginia Reply, File No. NSD-L-98-99, at 1-2.

¹² *Census Counts for Cities With 1990 Population Greater Than 100,000* (Oct. 10, 1995) <<http://www.census.gov/population/censusdata/c1008090.txt>>.

As Bell Atlantic further explained, the struggle to find one DS-3 in West Virginia to connect the West Virginia Government (which submitted affidavits on Bell Atlantic's behalf) proves Bell Atlantic's point that there is a bandwidth famine in that state, and as data traffic continues to grow exponentially every year, especially in West Virginia, the famine will grow worse.

Indeed, while the long distance carriers were drafting their comments in West Virginia, both MCI and Sprint told the project manager of a 1,000-employee Call Center project planned for Clarksburg that they currently cannot serve the call centers in Clarksburg with high-speed facilities. In addition, AT&T failed to provide high-speed connections to another Call Center in Clarksburg, more than 6 weeks after the center's scheduled opening. *Id.* at 2-3.

The shortage of capacity in West Virginia is not surprising, since most carriers – including MCI WorldCom, Sprint, and other major players – have few if any facilities in West Virginia. For the most part, they resell facilities from other carriers. WorldCom noted that it “does not own or operate any of its own telecommunications facilities terminating in West Virginia.... Instead, WorldCom leases the capacity necessary to serve its customers... from other providers.” WorldCom West Virginia Comments at 3.

The lack of bandwidth in West Virginia is illustrative of the difficulties rural and in fact many exurban areas have in obtaining advanced services. It supports the tentative conclusion of the Commission in the NPRM that “some modification of LATA boundaries may be necessary to provide subscribers in rural areas with the same type of access to the Internet that other subscribers throughout the nation enjoy.” NPRM at ¶ 194.

Fourth, contrary to the assertions by the Internet backbone incumbents that permitting Bell companies to provide high-speed connections to the nearest NAP across a LATA boundary should be allowed, MCI WorldCom at vi, LATA boundaries created for the old circuit-switched network hamper the efficient and low-cost provision of Internet services by Bell companies. As the Internet Access Coalition noted, existing LATA boundaries may “be incompatible with efficient deployment of the high-capacity ATM switches used for backbone packet networks or the facilities needed to establish Network Access Points outside metropolitan areas.” Internet Access Coalition at 23. Ameritech notes that Bell companies are forced to deploy redundant facilities in every LATA, and that in many areas “the cost of deploying these facilities [roughly \$700,000 per switch site] exceeds the expected return from them.” Ameritech at 62-63. Ameritech also notes the efficiencies that could be gained, and thus the prices lowered, if Bell companies could aggregate traffic across existing LATA boundaries and transport it to one ATM switch or to customers with multiple locations, and provide a hop to the nearest NAP. *Id.* In Virginia, for example, Bell Atlantic could serve a coalition of universities for whom it has built a fast intraLATA ATM network much more efficiently with this relief. Bell Atlantic 706 Petition at Att. 3 (Letter of Earving Blythe, Vice President for Information Services, Virginia Polytechnic Institute).

In sum, and contrary to the Internet backbone incumbents’ self-serving declarations that all is well in their neck of the woods, LATA boundary modifications for Internet backbones, corporate intranets/extranets and for transporting traffic to nearby network access points are necessary to bring advanced telecommunications services to all Americans.

B. Narrowly-Crafted InterLATA Relief Will Not Have a Significant Effect on Bell Company Incentives to Meet the Checklist.

The Internet backbone incumbents assert that granting Bell Atlantic's requested relief will significantly diminish its incentives to meet the checklist (see, e.g., AT&T at 106), but do not explain how. Contrary to their assertions, the grant of narrowly-crafted interLATA relief would not diminish Bell Atlantic's need to obtain Section 271 relief so it can enter the \$80 billion a year general long distance market. The limited relief sought by Bell Atlantic would only enable it to enter markets that comprise well less than \$5 billion a year, and that in no sense were part of the general long distance market that Congress had in mind when it passed the 1996 Act.

1. Modifying LATA boundaries to allow Bell companies to provide Internet backbone service would not materially diminish incentives to comply with sections 251 or 271. The overall market for backbone services is small relative to the traditional long distance market; in the Commission's investigation of the WorldCom/MCI merger, GTE estimated the actual size of the Internet backbone market (for which no good figures exist) at far less than \$4 billion nationally,¹³ and even MCI WorldCom estimated the entire Internet market – including ISPs and backbone providers – at around \$5 billion nationally – only a small fraction of which could ever be served by a single Bell company. Joint Reply of WorldCom and MCI at 73 (Jan. 26, 1998). Compared to the \$80 billion long distance market, the Internet backbone market is small and would not

¹³ Internet Affidavit of Robert G. Harris at ¶ 45, attached to Comments of GTE Corporation, CC Docket 97-211 (March 13, 1998).

materially reduce Bell Atlantic's incentives to comply with the checklist or to obtain section 271 relief.

2. Modifying LATA boundaries to enable Bell companies to provide intranet/extranet services also would not diminish Bell Atlantic's need to comply with section 251 or to obtain section 271 relief. The corporate intranet/extranet market also is small in absolute terms and relative to the overall long distance market. The overall U.S. market for IP-based Virtual Private Networks is projected to reach \$317 million in 1998.¹⁴ This pales in comparison to the \$80 billion a year long distance market. Furthermore, even were Bell Atlantic to enter this market, it would serve only a fraction of the overall market.

3. Modifying LATA boundaries to allow Bell companies to carry Internet traffic to the nearest NAP is also very small in market value terms. Many carriers have not even built facilities in non-metropolitan areas because they do not perceive a good market opportunity. WorldCom West Virginia Comments at 4. Furthermore, this relief does not expand measurably Bell Atlantic's ability to serve the important retail or business markets by offering end-to-end service. Instead, it adds needed capacity and permits Bell Atlantic to reduce costs and thus prices by routing traffic more efficiently.

Bell Atlantic's incentives to meet the Section 271 checklist simply would not be materially altered by these three slivers of relief which at most a

¹⁴ Melanie Posey, *U.S. VPN Services: The Corporate WAN Alternative or Augmentation*, International Data Corporation, Report No. W15716 at 4 (March 1998).

mount to 5% of the overall long distance market – only a small fraction of which could be served by any individual Bell company. To the contrary, Bell Atlantic requires the ability to bundle a general long distance offering with local and other services so that it can compete with other providers (MCI/WorldCom/MFS/UUNet, AT&T/TCI/TCG, Sprint) who already can offer a full package of services. The Commission has several times recognized the increasing importance of the ability to offer a bundle of telecommunications services. *See, e.g., Bell Atlantic-NYNEX*, 12 FCC Rcd 19985 at ¶¶ 39, 52 (1997); *SBC-PacTel* 12 FCC Rcd 2624 at ¶48, n.94 (1997). Wall Street analysts agree that bundling is the key to competing for old and new customers alike. *See, e.g., Nationsbank Montgomery, Bell Atlantic, Inc.*, July 29, 1998. Without the ability to bundle long distance service, Bell Atlantic faces a serious erosion of its customer base.

That is why Bell Atlantic is moving full speed ahead to meet the checklist in New York and elsewhere. The numbers best tell the story. As of August 1998, Bell Atlantic estimates that competitors served 1,275,400 lines in Bell Atlantic's territory, including over 700,000 facilities based lines. Bell Atlantic had entered into 737 agreements with competitors, of which 487 already have been approved; provided 57,000 unbundled loops and almost 500,000 resold lines; and established 653 collocation sites in its switching centers with an additional 972 under construction. In addition, Bell Atlantic and its local competitors have exchanged more than 18.5 billion minutes of traffic so far this year. Bell Atlantic will continue to move full speed ahead to provide competitors with access to its network, in compliance with the checklist.

C. Narrowly-Crafted InterLATA Relief Does Not Implicate Core Section 271 Concerns.

Narrowly-crafted LATA boundary modifications for high-speed Internet services does not include or otherwise implicate the provision of traditional long distance services.

First, while several commenters express fears that Internet backbone relief would permit broad Bell company entry into the long distance market, MCI WorldCom at 81, those fears are unfounded. There is a distinct and important difference between Internet backbones and long distance traffic. The Commission itself has defined an Internet backbone as “the transporting and routing of packets between and among ISPs and regional backbone networks.” *WorldCom/MCI Order* at ¶ 148. The Commission defined Internet backbones last month to be a “separate relevant product market” from non-Internet long distance. *Id.* The Commission’s correct finding that these products are not substitutes for each other contradicts statements that the requested relief would enable Bell Atlantic to somehow use Internet backbone relief broadly to enter the long distance market and thereby undermine its need to meet the checklist. In addition, the fear that Bell Atlantic would be able to market voice services over the backbones, MCI WorldCom at 81, misstates the issue. Bell Atlantic would be providing the backbone transport facilities and services while ISPs would be marketing the services.

Second, these services for which Bell Atlantic requests relief are not the type of “common carrier” services with which the market-opening requirements of section 271 are uniquely concerned. The clear focus of section 271 is on common-carrier services. The “competitive checklist” is expressly directed at ensuring “[a]ccess or interconnection . . . to other telecommunications carriers.” 47 U.S.C. § 271(c)(2)(B) (emphasis added).

A “telecommunications carrier” is defined to mean a “provider of telecommunications services” (47 U.S.C. § 153(44)), which in turn are defined as common-carrier services offered “for a fee directly to the public” (47 U.S.C. § 153(46)).¹⁵ The focus on protecting competition in the common-carrier long-distance market is evident, too, in section 271(e), which temporarily bars each sufficiently large long-distance “carrier” from joint marketing of their interLATA services with resold local exchange service. Similarly, section 272 states, with respect to section 271-covered services, that a separate subsidiary is required only for “telecommunications services.” 47 U.S.C. § 272(a)(2)(B).

Indeed, the dividing line between non-common carrier services such as Internet backbones and intranets/extranets and the vast bulk of interLATA common carrier services is well-defined and enforceable. Unlike common carriers services, these services are defined by their strict limitation on who can access them – in the case of intranets, for example, only a corporation’s employees, and in the case of extranets, only limited access by defined individuals to parts of a company’s intranet.

Third, high speed Internet services are emerging markets where Bell companies are not the incumbents. Bell Atlantic enters these markets behind cable companies and other facilities-based competitors. Cable companies have rolled out cable modems throughout the Northeast, RCN is building high-speed fiber links to millions of customers and already has reached well over a hundred thousand, and CLECs note they have led the

¹⁵ The interconnection and unbundled-access obligations imposed by Section 251 likewise are obligations to “telecommunications carrier[s]” (47 U.S.C. § 251(c)(2), (3)), and the resale obligation is limited to “telecommunications services” (47 U.S.C. § 251(c)(4)).

way in deploying advanced services to business. Bell Atlantic NOI Comments at 4-8 and Attachment A; Bell Atlantic NOI Reply Comments at 2-5. Furthermore, Internet backbone and intranet/extranet services involve connecting ISPs and corporations who can choose from Bell Atlantic or from the dominant incumbent providers.

D. The Commission Has the Legal Authority to Grant Narrowly-Crafted InterLATA Relief.

The Commission has the legal authority to modify LATA boundaries as Bell Atlantic requests and should exercise that authority to make advanced telecommunications services available to all Americans. Furthermore, the Commission should clarify that information services are not subject to the interLATA restrictions at all, consistent with the 1996 Act and its own precedent.

1. Modification of LATA Boundaries.

The Commission's authority to modify LATA boundaries is undisputed. Indeed, the Commission notes that since the 1996 Act has passed it has "approved a significant number of LATA boundary modifications." NPRM at ¶ 190. This includes a modification, for example, to permit Southwestern Bell to offer ISDN across LATA boundaries.¹⁶

Bell Atlantic previously has explained that modifying LATA boundaries for advanced services is consistent with precedent under the AT&T consent decree, or "MFJ." As even AT&T concedes in its comments, the "Commission's boundary modification authority under § 3(25)(B) is . . . designed . . . 'to give the Commission the

¹⁶ *Southwestern Bell Telephone Company Petition for Limited Modification of LATA Boundaries to Provide ISDN at Hearne, Texas*, Memorandum Opinion and Order, File No. NSD-LM-97-26, DA 98-923 (May 18, 1998).

same authority that the district court exercised in adjusting LATA boundaries under the AT&T Consent Decree.” AT&T at 104. And under that same authority, prior to 1996, the district court approved numerous modifications of the LATA boundaries where the relief enabled the provision of new services like wireless and SS7 services over larger geographic areas.¹⁷ That is exactly the type of relief the Commission and Bell Atlantic’s proposals both contemplate here. As a result, there is nothing radical or new about the Commission’s use of LATA boundary modification authority to provide targeted relief for advanced telecommunications services.

Nonetheless, AT&T and its cohorts argue that only minor LATA boundary modifications for “noncontroversial” purposes are permitted. AT&T at 105; MCI WorldCom at 80. That is clearly wrong, based on AT&T’s own analysis of the relevance of MFJ precedent. The types of LATA modifications proposed – for Internet backbones, intranet/extranet services, and carrying Internet traffic to the nearest NAP – fall squarely

¹⁷ Modifications of LATA boundaries were granted under the MFJ for specified purposes, particularly to make possible the speedier development of new telecommunications services or increased competition. *E.g.*, *United States v. Western Elec. Co.*, No. 82-0192 (D.D.C. Apr. 28, 1995) (wireless services); *United States v. Western Elec. Co.*, 1986-1 Trade Cas. 67,148 (paging services); *United States v. Western Elec. Co.*, No. 82-0192 (D.D.C. Feb. 26, 1986) (paging services); *United States v. Western Elec. Co.*, 1987-1 Trade Cas. (CCH) 67,452 (cellular services); *United States v. Western Elec. Co.*, No. 82-0192 (D.D.C. Feb. 18, 1993) (cellular services); *United States v. Western Elec. Co.*, No. 82-0192 (D.D.C. Sept. 20, 1994) (video and audio programming by satellite and other means); *United States v. Western Elec. Co.*, No. 82-0192 (D.D.C. Sept. 21, 1993) (cable service); *United States v. Western Elec. Co.*, No. 82-0192 (D.D.C. Oct. 24, 1994) (same); *see also United States v. Western Elec. Co.*, No. 82-0192 (D.D.C. Nov. 14, 1988); *United States v. Western Elec. Co.*, No. 82-0192 (Feb. 15, 1991); *United States v. Western Elec. Co.*, No. 82-0192 (May 11, 1994); *United States v. Western Elec. Co.*, 604 F. Supp. 256, 261 (D.D.C. 1984).

within the MFJ boundary modifications for particular technologies that were approved prior to 1996.

AT&T and its cohorts also argue that the MFJ court and now the Commission have guarded against “piecemeal” requests to modify LATA boundaries that might ultimately add up to something more. AT&T at 105-07; MCI WorldCom at 80. It is of course true that the MFJ court and the Commission have not granted broad LATA boundary modifications for voice service; what the MFJ court did, and what the Commission correctly is proposing now, is to grant such modifications for new technology where the old boundaries do not make sense.

2. The Commission Should Clarify That Section 271 Does Not Apply to Information Services.

The Commission should clarify, consistent with the 1996 Act, that information services also are not subject to the Act’s restrictions on providing in-region interLATA services, at least so long as the Bell company obtains the transmission services that are used to provide the information services from a third party. Bell Atlantic at 10-18. As the Commission recently reiterated in its *Report to Congress*, it has conclusively established that a provider of information services is not “providing telecommunications” when it acquires the necessarily-included transmission service from a third party and bundles it into an information service offered at a single price.¹⁸

Nothing in the Commission’s recent order concerning the permissibility of two Qwest/BOC marketing arrangements is to the contrary. There, the Commission

addressed what it means to “provide” a service that all involved agreed qualified as an interLATA service under the Act.¹⁹ Here, in contrast, the issue is whether an information service qualifies as an interLATA service to begin with. At least where the transmission services are obtained from others, it does not. Indeed, the Commission, consistent with the statute, already explicitly has found that an information service provider does not “offer telecommunications” under these circumstances. *Report to Congress* at ¶ 39. And by definition under the Act, a service that does not qualify as telecommunications cannot be an interLATA service. 47 U.S.C. § 153(21). As a result, under Commission precedent as well as the statute, the ban on BOC provision of in-region interLATA services does not apply to information services in this case.

II. THE COMMISSION SHOULD REJECT THE COMMENTERS’ SEPARATE AFFILIATE PROPOSALS.

A. Structural Separation Will Ensure That Many Americans Will Never Have Access To Advanced Services.

Structural separation requirements will deny many Americans access to advanced services. As economist Timothy J. Tardiff discusses in the attached declaration, vertical integration of telecommunication services increases consumer welfare by allowing incumbent carriers to bring new products to market sooner, meets consumers' strong demand for "one stop shopping," and allows carriers to realize significant economies of scope and scale, resulting in lower prices. Attachment A, Declaration of Timothy J.

¹⁸ *Federal State Joint Board on Universal Service. Report to Congress*, 13 FCC Red 11501 (1998). “Necessarily included” because, by definition, an “information service” is provided “via telecommunications.” 47 U.S.C. § 153(20).

¹⁹ *AT&T Corp. v. Ameritech Corp. et al*, Memorandum Opinion and Order, FCC Docket 98-242 (Sept. 28, 1998).

Tardiff at ¶ 3 ("Tardiff Declaration"). These were the very reasons that persuaded the Commission to abandon structural separation requirements for enhanced services:

We find, based on our review of the extensive record compiled in this proceeding . . . that our structural separation requirements create significant inefficiencies for AT&T and consumers in the enhanced services market and should be removed and replaced with appropriate nonstructural safeguards. Structural separation effectively prohibits the offering of all enhanced services that could be efficiently integrated or collocated with AT&T's basic services, but that cannot be offered on a cost-effective basis subject to structural separation. Thus, as a result of our regulatory requirements, services that would provide valuable benefits to the public may never be offered. . . . We are concerned that our regulations in this area have been part of the problem, not part of the solution. *In the Matter of Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, 104 FCC Rcd. 958, ¶ 79 (1986)(emphasis added).

Before this misguided regulation was eliminated, it delayed the introduction of network-based voice messaging services by five to seven years and caused a public welfare loss of \$1.27 billion. Bell Atlantic Comments, CC Docket No. 95-20, Att. A (April 7, 1995)(citing study by Dr. Jerry A. Hausman and Timothy J. Tardiff.)

The Commission now proposes to resurrect this failed regulatory policy to promote deployment of advanced services. *See Advanced Services Order/NPRM* at ¶ 4. It will, as before, have the opposite result.

Advanced services such as xDSL consist largely of electronics that expand the bandwidth of the existing local telephone network. As the CWA, Nortel and others have noted, these electronics are closely integrated with the network itself. CWA at 8; Nortel at 2. The proposed rules would require incumbents to segregate advanced services electronics from their networks, and to create a new business enterprise from scratch to provide services using them – services they provide today on an integrated basis with

voice services. This would increase the cost of providing advanced services in three ways. First, unlike competing carriers, the separate data affiliate could not use the same local loop for both voice and data services if providing voice services would subject it to state regulations as a dominant carrier or to Section 251(c) obligations; rather, the incumbent would use one loop for voice services, and the affiliate a separate loop for xDSL. Tardiff Declaration at ¶ 6. Second, support services²⁰ and systems that can be shared under joint operation would have to be duplicated. *Id.* Third, the price increases necessary to recover the additional costs of the first two types would cause a decrease in demand, providing less volume over which to recover fixed costs. *Id.*

In the case of ADSL, these cost increases would be so substantial that they would make the service unaffordable for many Americans. Today for example, the Bell Atlantic telephone companies have begun to offer an ADSL service that is over 1,000% faster than 56 Kbps modems at a rate of \$39.95 per month. If this service were to be offered through a separate data affiliate, Bell Atlantic's costs would increase by approximately \$40 per month per subscriber. *Id.* at ¶ 7. This cost increase would require a doubling of the tariff

²⁰ The CWA points out one of the many absurdities such artificial separation would cause:

Rather than one network technician sequentially testing the various possible sources of trouble, the incumbent LEC and the advanced services affiliate would have to dispatch different employees to troubleshoot only "their" equipment. The sequence might look like this: 1) an incumbent LEC employee tests the loop; 2) an advanced services affiliate employee checks the xDSL modem/splitter on the side of the building; 3) an advanced services affiliate employee troubleshoots the DSLAM located in either the remote terminal or central office (depending on its location); 4) an incumbent LEC employee troubleshoots any problem in the central office or remote terminal switch. CWA at ¶ 7.

rate from \$39.95 to \$80. *Id.* The increase in price would, in turn, reduce anticipated residential demand for ADSL service in the Bell Atlantic by as much as 80% over the next five years and hobble ADSL as a meaningful competitor to cable modems and other advanced services. *Id.*

In addition, merely implementing structural separation (e.g., creating and staffing the affiliate, developing and deploying facilities and systems, etc.) would delay Bell Atlantic's ADSL deployment by nearly a year and reduce the number of homes passed by 30%. Bell Atlantic Comments, Decl. of Mark A. Wegleitner at ¶ 3. This estimate does not take into account the over 80% reduction in demand that would result from structural separation. This decrease in demand would likely further limit the scope of Bell Atlantic's mass market deployment, or eliminate it altogether.

In fact, the Commission's proposal for structural separation actually encourages incumbent carriers not to offer advanced services to the mass market at all. Only the lucrative larger business data market might be able to sustain an advanced services affiliate. Even if an incumbent were to pursue this market through a separate affiliate, it would make no sense to, at the same time, deploy ADSL in the incumbent carrier to serve the mass market. Such a deployment would subject ADSL to the unbundling and resale obligations that deployment in the advanced services affiliate was meant to avoid.

In sum, far from promoting deployment of advanced services, the Commission's rules will retard their deployment to the mass market. Competing DSL providers would not step in to fill this void; none of them target the residential market. Bell Atlantic 706 Reply Comments at 20-22. This problem, as many others, will be especially acute in rural markets. *See, e.g.,* Kiesling Consulting LLC at 11.

The proponents of structural separation, to the extent they address this issue at all, attempt to explain it away by arguing that efficiencies of scope and scale from integrated operations are either illusory or discriminatory.²¹ Rhythms, for example, argues that the efficiencies realized from integrated operations are artificial advantages not provided to competitors. Rhythms NetConnections at 17. The fallacy of this claim is that the advanced services affiliate would be saddled with a cost structure nearly double that of competing carriers. Unlike competing carriers that can provide all traditional telephone services and advanced services on an integrated basis through a single company over a single loop facility, incumbent carriers would have to operate two separate companies to

²¹ Some commenters seek to make structural separation even more onerous, and hence more costly. For example, the Federal Trade Commission proposes that an advanced services affiliate should not be able to use the incumbents brand or logo. The FTC's position is based on the false premise that the incumbent carriers' name and logo is funded entirely by regulated telephone company revenue. In Bell Atlantic's case, the corporate name and logo are controlled by the parent of the Bell Atlantic telephone companies. Corporate advertising to promote the recognition of the Bell Atlantic name and logo are funded at the corporate level in accordance with the Commission's cost accounting regulations. Moreover, positive customer recognition of the brand may often be due to favorable customer impression of non-regulated business, such as cellular service or voice mail.

Second, the FTC's proposal to bar joint marketing and exchange of customer information between the incumbent carrier and the affiliate is directly at odds with the Commission's CPNI order -- which allows exchange of CPNI among affiliates to market local services, and with the Non-accounting Safeguards Order, which allows joint marketing of local and long distance services. And there is no evidence that incumbents have been advantaged by such joint marketing in other areas. For example, Bell Atlantic's inbound channels currently market its Internet access service, yet Bell Atlantic today serves only a tiny fraction of this market. Moreover, advanced services such as xDSL will typically be sold by third parties as a package with information services such as Internet access. It is the current customers of Internet service providers (ISPs) who are the most likely candidates for advanced services. It is therefore the large ISPs, not incumbent carriers, who have a leg-up in identifying and marketing to these consumers.

accomplish the same result. As noted above, the Commission as well as numerous economists have found the cost of such regulation to be real, and substantial. So has

Wall Street:

The problem, according to securities analysts, is that the FCC proposal comes with so many strings attached that the RBOCs are unlikely to establish subsidiaries to speed up their slow DSL deployments, even if the proposal becomes law. The FCC has promised a final ruling by February 1999.

"RBOCs did not gain any ground in the newly proposed rules," stated PaineWebber telecom analyst Eric Strumingher in a note after the proposal was issued.

"These proposed rules are one more piece of evidence that the RBOCs are getting the short end of the stick in the deregulation of the telecommunications services industry," Strumingher added.

David Rohde, *Wall Street Unhappy with FCC Proposal*, Network World, August 17, 1998 at 23.

By proposing an "optional alternative pathway" as a means to spur the deployment of advanced services, the Commission has recognized that existing regulation discourages the deployment of these services. *See* Advanced Services Order/NPRM at ¶ 13. The alternative pathway of structural separation is not a realistic option, however. The Commission's previous experiments with this type of regulation show that it imposes large costs, slows the introduction of services, and reduces consumer choice. Moreover, both "options" apply only to incumbent carriers, not to competing carriers or the cable monopolists. Thus, while the Commission says it is not interested in "picking winners or losers," *id.* at ¶ 3, if it adopts the proposals in the NPRM, it will not only pick the incumbents as losers, but ensure that they will lose. If the Commission is truly committed to making advanced services available to "ordinary citizens," *id.* at ¶ 8, not

just large businesses, it must put the incumbent carriers who are best positioned to serve this market on the same footing as their competitors.

B. Incumbent Local Telephone Companies Should Not Be Required to Unbundle and Resell Advanced Services.

The surest way to accelerate deployment of advanced services to all Americans is to free local telephone companies from having to unbundle advanced services or offer them for resale when they are offered throughout the telephone company. These requirements force incumbent carriers to make their investments in advanced service capabilities available to competitors at or below actual cost, allowing competitors to enter the market by piggybacking on the investment made by the incumbent with no risk to themselves.

The end result is to discourage new entrants from building their own facilities and to discourage investment in advanced services by incumbent carriers. As Professors Areeda and Hovenkamp have explained, when the government forces a company to "provide [a] facility and regulat[es] the price to competitive levels, then the [prospective entrant's] incentive to build an alternative facility is destroyed altogether." Philip E. Areeda & Herbert Hovenkamp, *Antitrust Law* ¶ 771b, at 175 (revised ed. 1996).

Professor Kahn has reached the same conclusion:

[T]he proposed TSLRIC-BS standard for unbundled network elements and carrier access charges and, even more egregiously, for wholesale discounts on sales for resale, strongly discourages genuinely facilities-based competition. What is the point of a CLEC constructing its own facilities if it can lease or purchase them from the incumbent companies at the theoretically estimated *minimum cost* (let alone below that cost, for the reasons I have already adduced) that would be incurred by a new entrant building from the ground up? What is the point if it can simply buy whatever retail services it wishes to offer from them at a

wholesale discount estimated by the regulators to be sufficient (actually, as I have pointed out, more than sufficient. * * *

As we have moved from cost-plus to a more competitively-oriented system of regulation, however, any requirement that charges to competitors for new network elements or services be closely tied to some tight measure of cost would destroy that previous symmetry. Rival entrants would then have the option of purchasing the results of successful innovation at bare cost, while leaving stranded the costs of unsuccessful ventures. Investors [in incumbent carriers] would be forced to absorb the costs of failed ventures -- as in competitive markets generally -- but denied the essential offsetting opportunity to reap whatever rewards the unregulated market would otherwise confer on ventures that turn out successfully.

Alfred E. Kahn, *Letting Go: Deregulating The Process of Deregulation* (1998) at 101-103. Industry analysts have observed that the unbundling and resale provisions of Section 251(c) have had precisely these effects:

By forcing deep discounts of incumbents' networks not based on actual costs but on the forward-looking costs regulators want them to be, regulators powerfully discourage deployment of new technologies by everyone concerned. Why should a competitor invest capital if they can lease the incumbents' network without risk at a lower cost than even the competitor could build it for? Why should an incumbent invest to upgrade its plant if it will be forced to resell it for less than it costs to provide it?

Scott Cleland, Testimony before the Senate Antitrust Subcommittee (May 19, 1998) at 4.

Many commenters cite recent DSL deployment by Bell Atlantic and other incumbent carriers as evidence that regulation will not slow deployment of advanced services. *See, e.g.*, Sprint at 7; Time Warner at 16; Quest at 19. They are wrong. The additional costs and uncertainties caused by regulation mean that Bell Atlantic currently plans only to offer advanced services in the larger metropolitan markets where there is sufficient demand to help offset these risks. Further, DSL deployment lags far behind

cable modems, and cable modems are projected to capture 80% of the residential advanced services market by 2003. Bell Atlantic NOI Comments at 6. Analysts attribute this disparity in part the regulation of xDSL. *Id.* at 12. Absent wireline competition, there will be less downward price pressure on the cable monopolists and less incentive for them to deploy outside of urban areas.

To remove this deterrent, the Commission should invoke its express authority under section 251 to make clear that the unbundling and resale obligations do not apply to advanced services when they are offered through the local telephone company. For example, under section 251(d)(2), equipment and facilities used to provide advanced services do not need to be unbundled where failure to provide a competitor with access to those elements will not “impair” its ability to provide services (or where access to proprietary elements is not “necessary”). But the equipment at issue here is in no sense an embedded “bottleneck” facility that competitors need access to. On the contrary, it is equipment that is being deployed now for the first time, and that competitors themselves can and do obtain from the same sources as the incumbent and deploy on the same basis:

The evolving DSL equipment necessary to carry high-speed digital signals on properly conditioned local loops is available to both the ILECs and CLECs. So is the associated multiplexing and routing/switching equipment necessary to create advanced high-speed data communications services.

Commissioner Susan Ness, *To Have and Have Not, Advanced Telecommunications Technology* (June 9, 1998) at 6.

Competing carriers likewise admit that they do not need access to the incumbents'

xDSL electronics:

- [N]ew entrants have made significant strides in . . . xDSL deployment, thus indicating that the advanced services market will continue to be vibrant with or without ILEC participation. (Rhythms Communications at 16.)
- We're happy if they don't provide any of the electronics, let us put our own electronics in place, and charge us an appropriately low charge for the copper line. . . . (Charles McMinn, *On the Record, Covad CEO Aims to Make DSL As Pervasive As Current Modems*, Telecom Reports (June 1, 1998) at 44.)
- CLECs can efficiently provide DSL technologies as sufficiently as [the BOCs]. (Opposition of MCI Telecommunications Corp., CC Docket No. 98-26 (April 6, 1998) at 10 n.3.)

Other commenters, such as the New York Department of Public Service, agree that barring resale and unbundling of advanced services capabilities should not impede the ability of other carriers to compete with incumbents. See State of New York Department of Public Service, et al. at 4-5. Indeed, the Commission itself has implicitly recognized as much, since it has concluded that competitors do not need access to this equipment when it is deployed in a separate affiliate. The only network element competitors want (or could need) is access to the local loop, which Bell Atlantic already makes available to them. Any further unbundling has no support in law or policy.

Resale of xDSL services likewise is not required. Section 251(c)(4) creates a duty only to not impose “unreasonable” conditions or limitations on the resale of telecommunications services, and assigns the Commission a role in determining what is and is not reasonable. But this duty must be balanced against the Congressional directive to promote deployment of advanced services. And given this mandate, it is certainly “reasonable” to restrict the availability of these services to competitors at a

wholesale discount -- precisely because subjecting these services to that obligation would interfere with the fulfillment of another express Congressional directive by hampering incumbent carriers deployment of these services and discouraging facilities investment by competitors. And it is "reasonable" not to require incumbent carriers to resell at a discount services that their competitors can and do provide themselves.

C. Affiliated Local Exchange Carriers Are Not Subject to Section 251(c).

Remarkably, the long distance incumbents go so far as to claim that even the Commission's much too limited proposal for a structurally separate advanced services affiliate would still subject that affiliate to the unbundling and resale obligations of Section 251(c). By doing so, MCI WorldCom and AT&T attempt to read out of existence the safe harbor of Section 251(h): "No reasonable reading of the plain language

²² See Comment of the Staff of the Bureau of Economics of the Federal Trade Commission. The FTC's position is based on the false premise that the incumbent carriers' name and logo is funded entirely by regulated telephone company revenue. In Bell Atlantic's case, the corporate name and logo are controlled by the parent of the Bell Atlantic telephone companies. Corporate advertising to promote the recognition of the Bell Atlantic name and logo are funded at the corporate level in accordance with the Commission's cost accounting regulations. Moreover, positive customer recognition of the brand may often be due to favorable customer impression of non-regulated business, such as cellular service or voice mail.

Second, the FTC's proposal to bar joint marketing and exchange of customer information between the incumbent carrier and the affiliate is directly at odds with the Commission's CPNI order -- which allows exchange of CPNI among affiliates to market local services, and with the Non-accounting Safeguards Order, which allows joint marketing of local and long distance services. And there is no evidence that incumbents have been advantaged by such joint marketing in other areas. For example, Bell Atlantic's inbound channels currently market its Internet access service, yet Bell Atlantic today serves only a tiny fraction of this market. Moreover, advanced services such as xDSL will typically be sold by third parties as a package with information services such as Internet access. It is the current customers of Internet service providers (ISPs) who are the most likely candidates for advanced services. It is therefore the large ISPs, not incumbent carriers, who have a leg-up in identifying and marketing to these consumers.

of 251(h) can exclude from its scope a 100% owned subsidiary of an ILEC (or an ILEC parent) that provides local exchange or exchange access services within the ILEC's territory." AT&T at 6; *see also* MCI WorldCom at 8-9. Their reading is contrary to the plain language of the Act and the Commission's prior decisions.

Section 251(h) provides that only an entity that is a "successor or assign" or a "comparable carrier" to an incumbent local exchange carrier may be subject to the requirements of Section 251(c). A data affiliate would be neither. The term "successor and assign" is well understood by the courts. They have found that an entity becomes a successor or assign of another only upon "a completed transfer of the entire interest of the assignor in the particular subject of assignment, whereby the assignor is divested of all control over the thing assigned." *Miller v. Wells Fargo Bank Int'l Corp.*, 540 F.2d 548, 558 (2d Cir. 1976). The assignor must "cease[] its ordinary business operations" and the assignee must "continu[e] ... the enterprise of the seller corporation." *Neagos and Neagos v. Valmet-Appleton*, 791 F. Supp. 682, 689 (E.D. Mich. 1992). As Ameritech notes, the Connecticut Department of Public Utility Control -- applying a similar definition of the term -- determined that Southern New England Telecommunications Corporation's spin-off of its entire retail operations did not make the retail operation a successor or assign. Ameritech at 51. The Department of Justice interpreted the term in the same way under the decree, concluding that "most transferees of BOC assets would not be successors to the BOCs for purposes of the decree." *Id.* at 52.

This well accepted reading of the term "successor or assign" is supported by Section 251(h)(2), which gives the Commission the right to treat "comparable carriers" as incumbents only if the carrier (1) occupies a position in the market for telephone

exchange service within an area that is comparable to the position occupied by the incumbent, and (2) has substantially replaced the incumbent local exchange carrier. This section presumes that an affiliate of an incumbent could meet these two requirements and not be a successor or assign, and that the only reason to treat a carrier as an incumbent is if it has substantially replaced the incumbent in providing local exchange service. The Commission has concluded that these requirements are met only if a carrier occupies a dominant position in the market served by an ILEC. *Guam Public Utilities Commission Petition for Declaratory Ruling Concerning Sections 3(37) and 251(h) of the Communications Act*, CC Docket 97-134 at ¶ 25 (July 28, 1997).

Further, the Commission previously ruled that “a BOC affiliate should not be deemed an incumbent LEC subject to the requirements of section 251(c) solely because it offers local exchange services.” *Implementation of the Non-Accounting Safeguards of Sections 271 and 272*, 11 FCC Rcd 21905 at ¶ 312 (1996). And the Commission correctly held that a Bell company affiliate is neither a “successor” or “assign” under Section 251(h)(1) nor a “comparable company” under Section 251(h)(2) “merely because it is engaged in local exchange activities.” *Id.* The Commission not only permitted a section 272 affiliate to provide local exchange service, but also to use the Bell Company brand name and to share services (other than operating, installation and maintenance) and jointly own property (other than transmission and switching facilities and the land and buildings where those facilities are located). 47 C.F.R. § 53.203.

Some commentators, relying on the *Non-Accounting Safeguards Order*, argue that any transfer of network elements should render the affiliate an assign of the incumbent carrier. *See* MCI WorldCom at 53. That Order, however, does not support such a

conclusion. There, the Commission was addressing some parties' concerns that a BOC would be able to evade Section 272 nondiscrimination requirements by transferring "key local exchange and exchange access services and facilities" to an affiliate, who would then transfer them to the Section 272 affiliate. *See Non-Accounting Safeguards Order*, at ¶ 309 (1997). The Commission found that "if a BOC transfers to an affiliated entity ownership of any network elements that must be provided on an unbundled basis pursuant to Section 251(c)(3), we will deem such an entity to be an 'assign' of the BOC under section 3(4) with respect to those network elements" *Id.* That finding is inapplicable here since the section 272 nondiscrimination requirement does not apply to an incumbent carrier's relationship with an affiliated local exchange carrier. Hence, there is no need to adopt a rule to prevent a chaining transaction aimed at avoiding a nonexistent requirement. Further, the Commission's finding was limited to the transfer of "key" local exchange facilities, such as local loops. As noted above, the facilities used to provide advanced services are not bottleneck facilities and are, therefore, in no sense "key" to the provision of local exchange services.

MCI WorldCom and AT&T contend that the Commission's previous resolution of this issue was premised on the assumption that a BOC would have met the competitive checklist prior to offering local services, and that a different standard should apply here. However, the Commission relied on its existing rules to ensure that Bell companies would not unlawfully subsidize or discriminate in favor of Section 272 affiliates that

provided local exchange service, not on compliance with the Section 271 competitive checklist:

To the extent there are concerns that the BOCs will unlawfully subsidize their affiliates or accord them preferential treatment, we reiterate that improper cost allocation and discrimination are prohibited by existing Commission rules and sections 251, 252, and 272 of the 1996 Act, and that predatory pricing is prohibited by the antitrust laws.

Id. at ¶ 315. Contrary to AT&T's and MCI WorldCom's claim, the Commission declined to tie its interpretation of the term "successor or assign" in the *Non-Accounting Safeguards Order* to compliance with the competitive checklist.

III. THE COMMISSION SHOULD REJECT THE COMMENTERS' COLLOCATION PROPOSALS.

Bell Atlantic has already agreed to provide "cageless" collocation in secured areas of its central offices. Some parties, however, urge the Commission to go further and require that incumbent local exchange carriers make available unsecured "cageless" collocation -- which they refer to as "common cageless collocation" -- under which competitors could commingle their own equipment with equipment the incumbent uses to provide service to its customers and install and maintain that equipment using their own personnel. This proposal, however, would completely disregard security concerns that this Commission -- and the competing carriers themselves -- repeatedly have recognized are legitimate. By doing so, the proposal could undermine the ability of incumbent local exchange carriers to meet their obligations to provide local exchange service and exchange access. It could threaten public safety and the basic integrity of the central offices that provide telephone service to most Americans. Adoption of their proposal would violate one of the overriding purposes of the Communications Act, which the

Commission is obligated to uphold, to “promot[e] safety of life and property through the use of wire and radio communication.” 47 U.S.C. § 151. Nor would unsecured cageless collocation further local competition, so there are no benefits that would outweigh the significant public risks.²³

Moreover, in implementing the 1996 Act, the Commission has already found that “reasonable security arrangements to separate an entrant’s collocation space from the incumbent LEC’s facilities” are needed, and that “[t]he physical security arrangements around the collocation space protect both the LEC’s and the competitor’s equipment from interference by unauthorized parties.” *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, ¶ 598 (1996). Therefore, just two years ago, it adopted rules allowing the incumbents to establish separate, secure space in which competitors may place their collocation equipment. See 47 C.F.R. §§ 51.323(h)(2) and (i). There is no reason for it to revisit those rules now.

A. Unsecured Cageless Collocation Could Impair Incumbents’ Ability to Maintain High-Quality Service.

Most collocators have confirmed in their comments that security is important to them. They want the right to adopt whatever security arrangements they consider appropriate for their own equipment, including augmented cages with alarms, locked cabinets, and other measures. Many of them, however, want the incumbents to be deprived of the same right. They still ask the Commission to order incumbents to allow

²³ Allowing collocators’ personnel to maintain virtually collocated equipment, which some competitors want, raises most of the same security concerns as unsecured collocation and should be denied for the same reasons.

virtually unrestricted access to parts of their central offices, which are sensitive to the security and operations of the public network, by an open-ended number of unaffiliated personnel. They want to place almost any type of telecommunications equipment wherever they want, as if (as one commenter put it) they were stuffing a pair of socks into a packed suitcase. Covad at 33. They insist that incumbents need only minimal security, which is designed not to prevent outages but to assess responsibility after the fact, even though, as discussed below, they want the full right to decide how to secure their own collocated equipment. Not only do they want the incumbent carriers to foot the bill for all additional security, they even want to hold them presumptively liable for any damage to the competitors' equipment placed in common space.

At the same time, the competitors propose to disrupt the operation of the incumbents' central offices by subjecting the incumbents' own employees to the increased security measures, by eliminating office space that enables the employees to remain on-site to react quickly to any problems, by allowing each of dozens of competitors to "tour" each central office almost at whim and propose how it can be remodeled or rebuilt (at the incumbent's expense) to meet that collocator's specific desires, by allowing competitors to collocate equipment that has not received safety or hazard certification, by forcing incumbents to remove "obsolete" equipment even if it is used to provide service to customers, and by prohibiting the incumbents from reserving space in their own offices for more than a few months to meet their own customers' future needs. In short, they want the Commission to adopt measures that promote their own interests above those of the public, even though it is the latter's interest that the Commission is pledged to uphold.

Rather than shirking its responsibilities to preserve network integrity and to help ensure that incumbents are able to provide service on demand, the Commission should continue to confine physical collocation to a separate, secured area of the central office. Increasing the amount and types of equipment in the areas of the central office that house the incumbent's sensitive telephone equipment and the number of personnel working on that equipment will simply increase substantially the risk of accidents. Bell Atlantic is not suggesting that competitors necessarily will have any ulterior motives. After all, they are dependent for their own service on the incumbents' unbundled network elements, and any impairment of the incumbent's service could affect their ability to serve their own customers.²⁴ And the relationship between Bell Atlantic and many of its competitors is already a cooperative one. An officer of NorthPoint recently told the trade press, "[w]e've seen a lot more cooperation from Bell Atlantic" Salvatore Salamone, *Bit by Bit, DSL Making Local Headway*, *Internetweek*, Aug. 24, 1998 at 23 (quoting Ann Zeichner, NorthPoint's Vice President of Sales and Marketing).

However, even though Bell Atlantic has a skilled, highly-trained staff and has adopted detailed methods and procedures for all central office procedures, Bell Atlantic, like other local exchange carriers, has suffered service impairments that can be traced to human error. More equipment and people working in the same sensitive central office space cannot help but cause more accidents. As Bell Atlantic's expert pointed out in the opening comments, "[e]ven if CLECs employ well-trained, conscientious technicians,

²⁴ By discouraging competitors from building their own local networks, the Commission is exacerbating the harm caused by an outage by making all local carriers dependent on the continued integrity of the incumbent's network.

human errors will occur.” Bell Atlantic, Att. 1 at 2-3. The Commission simply cannot responsibly adopt a policy that will significantly increase the chances of major network outages, outages that could disrupt not just local telephone service, but 911 service, access to long distance, and a multitude of other services.

If, on the other hand, the Commission does allow competitors to commandeer the incumbents’ central offices, it must relieve them of legal and financial responsibility for maintaining service to their own customers. In particular, the Commission will need to preempt state and local regulations that obligate the incumbents to provide service on demand and that require them to maintain specified levels of service quality. Incumbents are, and should be, held responsible for the actions of their own employees and for those of the contractors that they employ, but they cannot be held liable when they are deprived of control over their own central offices.²⁵

B. Competitors Demand Security For Their Own Equipment; Incumbents Should Be Allowed No Less.

While many of the competitors play down the need for central office security to protect the integrity of the incumbents’ networks, they are extremely concerned about preventing unauthorized access to their own equipment. In a survey of five of Bell

²⁵ Claims that some incumbents, such as Bell Atlantic, employ outside contractors to work in central offices have no relevance to the issues here. Those contractors do not maintain or repair Bell Atlantic’s network equipment that is in operation – they only install the equipment before it is put into service. Bell Atlantic uses its own personnel for maintenance and repair. In addition, unlike its competitors, Bell Atlantic’s contractors are responsible to Bell Atlantic for their conduct. As a result, Bell Atlantic can properly take responsibility for its contractors, as well as its employees, when providing service to the public, but it cannot be held responsible for the actions of personnel over which they can exercise no control.

Atlantic's largest collocation customers taken in 1996, all but one indicated that they wanted their equipment secured from access by other collocators and by Bell Atlantic personnel. *See* Declaration of Bruce D. Lear, ¶ 2 ("Lear Decl."), Attachment C. And the one collocator that failed to address that issue, MCI, despite urging here that incumbents be allowed to require only minimal central office security, MCI WorldCom at 66-7, nonetheless demands fully-secured cages for all its own collocation installations to prevent access by unaffiliated personnel. In fact, MCI routinely demands added security arrangements beyond those already provided, such as alarms on its collocation cages, to prevent unauthorized access to its own equipment. *See* Lear Decl. at ¶ 3

Even in their comments here, some of the competitors show the serious concern they have about security of their own equipment. NorthPoint, for example, while providing what at most is a half-hearted endorsement of unsecured "cageless" collocation, nonetheless admits that "it is far less attractive than physical collocation, which allows a CLEC to maintain complete and exclusive control over its equipment. Addressing security issues is thus a paramount concern." NorthPoint at 9 (emphasis added). Intermedia maintains that "CLECs should be allowed to determine for themselves the type and cost of security they require for equipment that they are physically collocating." Intermedia at 41. And more recently, in the Commission's October 13, 1998 roundtable on collocation issues, the representative of Focal Communications emphasized that his company felt that it needed the security of placing its own equipment in a separate, secure area of the central office, not commingled with the incumbent's equipment.

Therefore, competitors want the unbridled discretion to secure their own equipment from access by others but want the Commission to deprive incumbents of the same right. If the Commission were now to reverse its earlier clear finding and order incumbents to provide access to the unsecured areas of their central offices, which it clearly should not, the Commission should also require each of the competitors to open its own office on the exact same basis to all of its own competitors, including the incumbent local exchange carriers. This will ensure that all carriers' equipment will be subject to the same security measures, that all customers' services are equally protected, and that no competitor is placed at a disadvantage. This would also be consistent with the position of the company that initiated the Commission's original collocation proceeding, MFS (now part of MCI WorldCom, Inc.). *See* Interconnection of Exchange Access Carrier Facilities, RM-7249, MFS Petition for Rulemaking at 11, n.4 (filed Nov. 14, 1989) ("MFS does not ask that the BOCs be required to do anything it would not be willing to do itself. Any interconnection and collocation obligations imposed on the BOCs should apply reciprocally if a BOC desires access to the network of a competing carrier."). The Commission should hold MCI WorldCom to that commitment and apply any collocation changes to all carriers.

C. Unsecured "Cageless" Collocation Will Not Promote Competition.

Bell Atlantic has recently filed a federal tariff which extends its SCOPE (Secured Collocation Open Physical Environment) cageless collocation arrangement throughout its 14-state region.²⁶ SCOPE allows a collocator to place its equipment in a rack that it may choose to enclose within a locked cabinet, thereby giving collocators whatever degree of security they want. Connection to Bell Atlantic's facilities is through a shared point of termination ("POT") bay, thus alleviating competitors' concerns about the cost of dedicating a POT bay to each collocator. The federal tariff filing also reduces the minimum traditional physical collocation space to 25 square feet, which is the minimum size most competitors request in this proceeding, and permits eligible carriers to share physical collocation space.

These federal tariff changes eliminate any possible competitive benefits that collocators can claim they would obtain from unsecured cageless collocation. The time needed to prepare a central office for unsecured cageless collocation, including installation of monitoring capabilities and the additional cabling and wiring to connect competitors' equipment to Bell Atlantic's network elements, would be no less than the time needed to prepare central office space to house physical collocation and SCOPE.

²⁶ See Transmittal Nos. 1085 (Bell Atlantic) and 523 (former NYNEX states), both filed Oct. 13, 1998. This arrangement was previously available only in New York State.

And the cost to the collocator of the additional monitoring capabilities and network connections would be at least as much as the proposed SCOPE rates.²⁷

D. Requiring Unsecured Collocation Would Be An Unlawful Taking.

Not only would unsecured cageless collocation be a bad policy, it would exceed the Commission's authority. Contrary to the competitors' claims, the collocation authority Congress gave the Commission is very narrow and does not extend to opening up the central office to unrestricted access by competitors' personnel.

Prior to the 1996 Act, the Commission had no authority to require physical collocation. *Bell Atlantic v. FCC*, 24 F.3d 1441 (D.C. Cir. 1994). The Act granted the Commission some authority to allow collocation, but only "for physical collocation of equipment necessary for interconnection or access to unbundled network elements." 47 U.S.C. § 251(c)(6).

In giving the Commission that narrow authority, Congress clearly intended that "physical collocation" would be defined as it then was in the Commission's rules. Certainly, Congress had no intention to undermine network integrity and public health and safety by allowing an unlimited number of competitors' personnel to roam freely around the central office and stuff their equipment in any empty space on Bell Atlantic's racks. It found that, "the risk of discriminatory interconnection grows the farther one gets away from the central office of the carrier," and therefore it provided for physical

²⁷ It is preposterous for the collocators to suggest that the incumbent pay the cost of the additional security to protect the network if their competitors' personnel are given unrestricted central office access. The collocators, the cost-causers, should bear the cost of investment and expenses incurred on their behalf.

collocation within the central office. H. Rep. No. 104-204 at HR-73 (1996). Moreover, the only reason it found it necessary to legislate collocation was to reinstate a portion of the authority that the courts found that the Commission previously lacked. *Id.* Therefore, all Congress intended was to give back to the Commission a portion of the authority that it had previously attempted to exercise, not to allow it to expand physical collocation beyond its earlier parameters.

Further evidence of this intention is that Congress provided for virtual collocation when physical space is exhausted. Under the competitors' proposals, the very same space would be used for both unsecured cageless physical collocation and for virtual arrangements, so that when space is exhausted for one, it would also be exhausted for the other. If Congress had intended to allow the Commission to adopt such a cageless arrangement, there would have been no need for it to have specified virtual collocation as a fall-back when physical space is exhausted.

Moreover, in the absence of such statutory authority, requiring connection to the incumbent's frame in an unsecured collocation area would constitute an unlawful taking. *See, e.g., Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982) (cable installation on appellant's building constituted a taking under the traditional physical occupation test, since it involved a direct physical attachment of plates, boxes, wires, bolts, and screws to the building). Similarly, a transient right given to competing carriers' personnel to enter an incumbent's property to make connections or provide maintenance would be a taking that requires statutory authority, which the Commission does not have. *See, e.g., Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987) (a taking occurs where individuals are given a permanent and continuous right to pass to and

fro, even though no particular individual is permitted to station himself permanently upon the premise). In the absence of express statutory authority, the Commission may not order such takings.

E. The Collocators' Own Actions Are Largely Responsible For Exhausting Physical Collocation Space, and the Proposals Here Would Quickly Use Up Much of the Remaining Space.

1. A Few Collocators Are Causing Central Office Space To Be Exhausted.

Although the collocators are constantly harping that physical collocation space is becoming exhausted, it is a relatively few collocators that are depriving others of space by their own excessive requests. Most physical collocation requests in the pre-merger Bell Atlantic states since May 1996 have been for 100 square feet of space. However, 12% of the total applications, or 66 applications, have used up nearly 30% of the total collocation space by requesting a whopping 400 square feet. Moreover, one carrier alone, has filed 48 of these applications. Despite its cries in this proceeding that the incumbents are not making enough space available and demands that incumbents should offer smaller increments of space, that carrier itself has monopolized more than one-fifth of the entire available physical collocation space in the past two years. *See Lear Decl.* at ¶15.

These figures show that a few collocators themselves, not the incumbent telephone companies, are depriving many new competitors of the ability to collocate by warehousing their collocation space and not making productive use of it for providing telecommunications services to the public.

Carriers are also exhausting space by failing to occupy collocation arrangements for months, or even years, after Bell Atlantic has prepared the space for occupancy. As

shown in Attachment D, even after Bell Atlantic has advanced much of the money to construct a collocation room, built cages, obtained additional power from the local electric company, and installed the needed cabling, in literally hundreds of cases, collocators have not taken possession of the space for an excessive period of time – often for more than a year. In other instances, after requesting far more than the minimum 100 square feet of collocation space, they have occupied only a small fraction of the site.²⁸ As a direct result of the collocators' not fulfilling their own contractual commitments, tens of thousands of square feet of central office collocation space in Bell Atlantic's region alone are unavailable to provide service to the public. Accordingly, it is the collocators, not Bell Atlantic, that have caused the exhaustion of physical collocation space in many offices.²⁹

2. The Commission Should Not Require Collocation of Additional Types of Equipment Or the Connection of Additional Types of Facilities.

While in one breath the competitors claim that physical collocation space in many offices is unavailable, or soon will be unavailable, they also want to expand dramatically the types of equipment that can be physically collocated and, in turn, the demand for scarce collocation space. For example, most competitors want the right to collocate all

²⁸ As cited above, Bell Atlantic has a recently proposed to reduce the minimum physical collocation space to 25 square feet.

²⁹ Despite this record of collocators failing to occupy and pay for space they have ordered, MCI wants the incumbents to bankroll its operations by providing that all collocators, even multi-billion dollar giants like MCI WorldCom and AT&T, can pay for space preparation on an installment basis over many years. *See* MCI WorldCom at 67-68. The Commission should deny MCI's latest attempt to extract subsidies from its competitors.

types of switching equipment, even though, as one observer pointed out, “a local exchange switch can occupy an entire room.” NorthPoint at 5-6. Expansion of the equipment that they may place in the central office would simply exacerbate the space exhaust problem that they want the Commission to alleviate.

Moreover, as discussed above, the Commission’s right to require collocation is limited to the purposes specified in the Act -- “collocation of equipment necessary for interconnection or access to unbundled network elements.” 47 U.S.C. § 251(c)(6) (emphasis added). As the Commission found two years ago, switching equipment is not necessary or even used for these purposes, and therefore it did not require incumbents to allow switches to be placed in collocation space. *Local Competition Order* at ¶ 581. Here, the parties claim that new equipment that has become available includes switching along with other functions that are permissible in collocation space. That does not change the fact that the switching functions are not “necessary for interconnection or access to unbundled network elements.” Whether included in multi-functional equipment or stand-alone devices, the Commission simply may not lawfully require collocation of equipment that contains switching or other functions that are not used for the limited purposes specified in the Act. Certainly, Congress had no intention of requiring incumbents to house their competitors’ central offices, as would result from allowing collocation of all switching equipment.

The Commission should also not require incumbents to allow copper facilities to be brought into the office and connected with collocated equipment. *See* AT&T at 91-2. As AT&T admits, the Commission denied earlier requests to pull copper into collocation space, because such facilities would quickly exhaust the available conduit and riser space.

Expanded Interconnection with Local Telephone Company Facilities, 7 FCC Rcd 7369, ¶ 99 (1992). With the proliferation of collocators, the potential for conduit and riser exhaust has become more acute in the past six years, and AT&T has provided no information as to why the Commission's earlier finding is no longer valid. Moreover, the Commission gave collocators the right to ask for non-fiber connections on a case-by-case basis. *Id.* AT&T has not even tried to make a public interest showing to support copper connections in any individual office – a showing that should be made to the appropriate state regulatory commission in any event – so it should not be heard to claim the need for blanket relief. Instead, the Commission should continue to confine collocation connections to optical fiber and microwave facilities, and permit additional types of facilities on a case-by-case basis if the proponent can make an appropriate public interest showing.

F. National Standards Are Not Needed.

Most of the competitors argue here that the Commission should establish additional national collocation standards as a floor, allowing states to adopt stricter measures. Many of these parties want those standards to include all regulations that have been implemented in at least one state, if they benefit the competitors. However, there is no reason to expect that rules adopted by an individual state could be implemented on a national basis. For example, some of the parties claim that the Texas commission found that 35 days is sufficient to deliver physical collocation space. However, zoning alone could take more time than that elsewhere, and all available contractors who could

perform the work may have backlogs that would make such a deadline unworkable.³⁰ *See* Lear Decl. at ¶ 4.

The comments also show that state commissions nationwide are using their knowledge of local conditions to address the very issues the parties want this Commission to deal with on a national basis. Such state actions are fully consistent with the Act, which gave the states exclusive authority to decide if space for physical collocation is exhausted and granted them sole jurisdiction over interconnection agreements and rates for unbundled network elements, which are the only lawful bases for mandating collocation. The Commission should allow the state processes to proceed, unencumbered by national rules that may or may not meet a particular state's needs.

G. Collocated Equipment Must Be Certified As Passing All NEBS Safety-Related Tests.

Several of the parties urge the Commission to require incumbents to allow collocation of equipment that has not yet passed all NEBS safety and environmental tests. *See, e.g.*, AT&T at 78; Sprint at 13. As Bell Atlantic showed in its opening comments, there is no guarantee that new equipment, even from major manufacturers, will pass NEBS testing. Actual experience proves the point. Equipment that had been placed in collocation space without Bell Atlantic's knowledge had to be recalled after the manufacturer performed the needed NEBS tests. This is because those tests revealed that, when exposed to a fire or high heat, the equipment smoked excessively and even drove

³⁰ There would certainly be no justification for assessing damages for the failure of an incumbent to secure zoning, or because there is no available independent contractor, as some parties propose.

those performing the tests from the room. If the equipment had been in the central office at the time of a fire or exposed to over-heating from adjacent equipment, it could have filled the central office with dense smoke, damaging other equipment and impairing firefighting efforts. Following the test failures, the manufacturer had to recall and redesign the equipment before it could qualify under NEBS. Bell Atlantic requires all of its own equipment to pass NEBS safety tests before it is installed and activated, and collocators should be held to no less a standard.³¹

Nor should the Commission limit collocation equipment to meeting NEBS Level 1 certification standards, as some parties request. NorthPoint at 6; Sprint at 13. Contrary to their claims, Level 2 and 3 certification is not limited to reliability. The only Level 2 and 3 certification requirements that Bell Atlantic demands of collocated equipment are safety and hazard standards. These include earthquake survivability (NEBS Level 2), full spectrum EMI (Level 3), and heat release and aisle-facing surface temperature (Level 3). Bell Atlantic does not require that collocated equipment receive performance and reliability certification to Level 2 and 3 standards that do not affect safety or create a potential hazard.

³¹ Bell Atlantic also requires that equipment it installs for its own services meet NEBS performance and reliability standards, but Bell Atlantic will not apply those standards to collocators' equipment unless they also pose a safety risk. The safety and hazard-related NEBS standards that Bell Atlantic requires are spelled out in its document RNSA-NEB-95-003, Rev7, that is available to all vendors and collocators on request.

H. Claims that Bell Atlantic Has Failed to Provide Collocation Space In A Timely Manner and Provides Substandard Cages Are Unfounded.

Several parties harp on a handful of cases in which they say Bell Atlantic has not delivered collocation space in a timely manner. In fact, as Bell Atlantic demonstrated to the New York Public Service Commission, has nearly always met its time commitments for delivering collocation space. *See* Attachment E at ¶¶46-67. However, as shown in Attachment D, in hundreds of instances, the collocators are not ready to receive and occupy that space at the time they request, even though Bell Atlantic has incurred considerable costs to prepare the space. As discussed above, Bell Atlantic has conditioned a number of central offices and built cages more than a year before collocators installed their equipment or paid the full cost. In some cases, Bell Atlantic is still waiting, and in others, the collocators canceled their order months or even years after the space was ready for occupancy. Not only has Bell Atlantic been forced to advance monies to its competitors that may never be repaid, but other collocators have been deprived of collocation space.

While some competitors assert that Bell Atlantic-New York has delivered supposedly defective cages, the reality is that the few legitimate problems that did exist were promptly corrected. *See* Attachment E at ¶¶43-45. However, there is no reason why the Commission should expect incumbent carriers to even include cage construction in their tariffs. Bell Atlantic, like most incumbent exchange carriers, uniformly uses outside contractors to build cages. Cage construction is not telecommunications, and Bell Atlantic has no unique ability to build and deliver an equipment cage. In addition, a

number of parties here argue that cages are unnecessary, calling them “relics” “unnecessary” and “expensive chicken wire.”

To meet these concerns, Bell Atlantic has recently filed a change to its federal collocation tariff covering seven of its jurisdictions to make the collocation cage optional.³² This will enable a collocator to place its equipment in its designated portion of a secured area – with a choice of whether to place it in the open or in locked cabinets – without enclosing the entire space in a cage.³³ If the collocator still wants a cage, it may hire an approved contractor of its own choosing, negotiate its best price, and have one constructed. But there is no reason for Bell Atlantic to remain in the cage construction business. Therefore, in its pending tariff amendment, Bell Atlantic proposes to withdraw from that business altogether and leave cage construction to the collocators.³⁴

IV. THE COMMISSION SHOULD REJECT THE COMMENTERS’ UNBUNDLING PROPOSALS.

A. The Commission Should Not Require Sub-Loop Unbundling.

While several commenters urge the Commission to require subloop unbundling, none of them addresses the very real problems associated with subloop unbundling. *See,*

³² In that filing, Bell Atlantic also introduces regionwide a new cageless collocation service called SCOPE, in which equipment is installed in individual bays. SCOPE customers may install locked cabinets, if they wish.

³³ Bell Atlantic has coupled this change with a reduction in the minimum collocation space from 100 to 25 square feet to meet collocator requests.

³⁴ Currently, Bell Atlantic simply passes the contractor’s charges through to the collocator. Collocators still complain to regulators about the cost, however. This tariff change will enable collocators to negotiate the lowest price they can from any approved contractor.

e.g., AT&T at 69. It is as if by regulatory fiat the Commission could magically make these problems go away. Unfortunately, it cannot.

The problems associated with unbundling the feeder and distribution components of loops are substantial and must be resolved before such unbundling can occur. Nearly two years ago Bell Atlantic offered to work with competing carriers to resolve these problems through technical and operational trials. Despite their cries of desperate need for subloop unbundling, no carrier has accepted Bell Atlantic's offer. These problems therefore remain unresolved.

Some of the competing carriers themselves identified the problems associated with subloop unbundling. For example, subloop unbundling generally entails some type of collocation at the remote terminal and even MCI WorldCom concedes that "at remote terminals . . . collocation is generally not possible" MCI WorldCom at 76.

Similarly, Covad concedes that collocation at remote terminals is "complicated by physical space, access, rights of way, and local zoning and permit issues." Covad at 53.

There are also many other problems that must be resolved before subloop unbundling could occur. For example, every request for a subloop element would require Bell Atlantic to dispatch a technician into the field and coordinate that dispatch with a CLEC technician. The Bell Atlantic technician would hook up a cross connect from the subloop element and hand it off to the CLEC technician who would then connect it to the CLEC's loop distribution facilities. In addition, Bell Atlantic would no longer be able to test and isolate troubles on that subloop element from a testing point at the distribution frame in its central office. Instead, Bell Atlantic would have to dispatch personnel to the cross connect point in the field to perform the testing and trouble isolation. Obviously, it

would be more costly for Bell Atlantic to provision and maintain subloop elements than the entire loop.

In addition, even if the Commission could resolve all of the subloop unbundling problems that exist today, it cannot anticipate and resolve the problems that will arise tomorrow. As MCI WorldCom noted, “this is a rapidly evolving technology” and “it is far from clear what further technical obstacles will arise as the technology to support advanced services becomes more mature.” MCI WorldCom at 77.

B. The Commission Should Not Require Incumbent Carriers to Construct Advanced Services Network Elements on Request.

As Bell Atlantic explained in its initial comments, incumbent carriers cannot and should not be required to condition loops upon request for competing carriers. Such a requirement would be tantamount to forcing incumbent carriers to provide superior quality network elements – rather than the network elements as they exist in the incumbent’s network – and place them in the position of an “at cost” construction company for their competitors. Of course, to the extent Bell Atlantic conditions loops for its own xDSL offering, it would perform the same conditioning for competitors consistent with its nondiscrimination obligations.

In contrast, AT&T takes the loop conditioning proposal and carries it to an unreasonable extreme. AT&T argues that incumbent carriers should also be required “to perform spectrum capability testing of a loop and give assurances that, when equipped with conforming equipment, the loop will support data transmission within accepted ranges and neither experience unacceptable interference from, nor cause unacceptable

interference with, other services within the same cable binder.” AT&T at 46. This request is plainly unreasonable.

Incumbent carriers are not the only carriers that deploy services over loops. A competing carrier could lease any loop in a binder group and Bell Atlantic could not control the services the competitor placed over that loop. Moreover, Bell Atlantic does not perform the spectrum testing AT&T wants for itself. And even if Bell Atlantic conducted such spectrum testing, nothing would stop the competing carrier from deploying a service the next day that would cause interference to the service AT&T wanted to deploy over a loop in the same cable binder. It would therefore be impossible for Bell Atlantic to give the assurances AT&T wants.

C. The Commission Should Not Require Incumbent Carriers to Create New Databases Of Loop Characteristics.

AT&T, MCI WorldCom and several other commenters argue that the Commission should “order the ILECs to perform a detailed inventory of existing loops.” AT&T at 54, MCI WorldCom at 64; Covad at 43. As Bell Atlantic explained in its comments, the Act does not require incumbent carriers to create databases for the benefit of competing carriers. They need only provide access to the databases that already exist. And Bell Atlantic is providing nondiscriminatory access to the loop qualification information that Bell Atlantic provides to its retail operations.

Moreover, creating this database would require an enormous amount of time and resources. And once it was created, it would not accomplish MCI’s purpose. In order to determine whether a loop can support xDSL service, a carrier must know whether any other services are being offered or equipment placed on other loops in the same or

adjacent binder group that might cause interference. Bell Atlantic does not have that information for loops that have been leased by competing carriers and cannot obtain it by doing a loop inventory. This information must be supplied by competing carriers themselves.

Even if Bell Atlantic had information about the services that competing carriers are providing over the loops they lease from Bell Atlantic, it is arguably carrier proprietary information that cannot be made available to other carriers. Many carriers would undoubtedly object to Bell Atlantic providing information about their services or technologies to their competitors on an individual loop basis.

In addition, MCI readily concedes that industry standards have not yet been developed for electronic access to information that would enable a competitor to determine whether a loop could support xDSL service. MCI WorldCom at 64. It is therefore completely inappropriate to impose any loop inventory requirements on incumbent carriers. A more efficient alternative would be to develop technology that tests the characteristics of a loop from the central office to determine whether it can support particular xDSL services. Such equipment would enable competing carriers to determine whether a loop will support their advanced telecommunications service without conducting an in-depth analysis of the characteristics of the loop. Although Bell Atlantic does not know whether any such equipment exists, Bell Atlantic would support the development and testing of such equipment.

D. The Commission Should Not Require Spectrum Unbundling.

While some new entrants urge the Commission to unbundle the spectrum of individual loops into separate data and voice channels (*see, e.g.*, Allegiance Comments at 8), others oppose such a requirement. For example, AT&T explained that “forcing one carrier to lease a functionality of a network element violate[d] the Commission’s rulings that all features, functions, and capabilities of a network element pass with ownership of the network element.” AT&T at 64. CompTel reached the same conclusion: “Consistent with the Commission’s earlier definition of the loop . . . an entrant (or ILEC affiliate) could not separately obtain the data-enabling spectrum of the loop without also purchasing the voice-enabling spectrum.” CompTel at 47. This same reasoning applies where the incumbent is the owner of the loop providing local exchange service to the customer.

AT&T also pointed out the problems with giving competitors the right to provide service over the same loop.

“If, for example, an internet service provider could obtain the data functionality of a loop owned by another LEC without its authorization, significant billing and customer service difficulties may arise. When service complications arise, the customer is likely to call the LEC despite the fact that (i) the problem may have been caused by the internet service provider or (ii) the LEC might lack the ability to address the problem because the internet service provider controls the implicated facilities.” AT&T at 64.

CompTel also identified problems with unbundling the spectrum on a loop.

Consistent with the Commission’s earlier definition of the loop, . . . an entrant (or ILEC affiliate) could not separately obtain the data-enabling spectrum of the loop without also purchasing the voice-enabling spectrum. CompTel believes that such an approach is appropriate to avoid the impossible task of cost-assignment between these functions. CompTel at 47.

There is therefore no reason for the Commission to require the unbundling of the spectrum of individual loops into separate data and voice channels.

E. The Commission Should Not Require Incumbent Carriers to Provide Dark Fiber.

Several carriers ask the Commission to revisit its decision not to define dark fiber as an unbundled network element. *See, e.g.,* Allegiance NOI Comments at 4-6; RCN at 17-20; Qwest at 66-68. These carriers do not offer any credible basis for the Commission to reverse its previous decision.

In its *Local Competition Order*, the Commission declined to require incumbent carriers to unbundled dark fiber. GTE explained that the definition of network element only encompasses facilities “used in the provision of telecommunications service,” and dark fiber does not meet that definition because local exchange carriers do not “use” it in their networks. The Commission found that no party had submitted information that dark fiber qualifies as a network element under section 251(c)(3) or 251(d)(2).

The situation is no different today. Local exchange carriers still do not “use” dark fiber in their networks and no party has provided any information to show that dark fiber is a network element.

Moreover, state regulatory commissions in New York, New Jersey, Pennsylvania, Maryland, Virginia and the District of Columbia have already rejected claims that dark fiber constitutes a network element under the Telecommunications Act.³⁵ In essence, the

³⁵ *Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising under Section 252 of the Telecommunications Act of 1996*, Order No. 73010 dated November 8, 1996 at 26, Case No. 8731; *Petition of MCI Telecommunications Corporation and MCImetro Access Transmission of Virginia, Inc. for Arbitration of*

commissions generally concluded that dark fiber is not “used in the provision of a telecommunications service” (and thus does not rise to the level of a network element as defined in the Act); that failure to provide access would not impair the ability of the requesting carrier, compared with the carrier’s use of other unbundled elements; and that operational difficulties could reasonably arise. *Id.* In New York, for example, arguably the most intensely competitive telecommunications market in the world, the Commission found that “dark fiber is not an element” and that BA-NY is “not in the business of providing facilities” as opposed to services and service networks “to competitors. Such a requirement could interfere unreasonably with New York Telephone’s investment and construction plans.” *Petition of AT&T Communications of New York for Arbitration of an Interconnection Agreement*, Case Nos. 96-C-0723 and 96-C-0724, Opinion No. 96-31 at 68-69 (November 29, 1996).

In addition to the six decisions cited above, state regulatory commissions in other pro-competitive states have similarly concluded that dark fiber need not be made available under the Act. California, Florida, Indiana, Louisiana, North Carolina and

Unresolved Issues, Case No. PUC 960113, Order Resolving Remaining Arbitration Issues at 2 (December 20, 1996); *Telecommunications Arbitration Case in the Matter of AT&T Communications of Washington, D.C., Inc.* Petition for Arbitration, Order No. 7 at 22 (December 2, 1996); *Application of Bell Atlantic-Washington, D.C. Inc., and MCImetro Access Transmission Services, Inc. For Approval of Interconnection Agreement*, Formal Case No. 964C, Order No. 11115 at 11 (December 12, 1997); *Petition of MCI MetroAccess Transmission Services, Inc. For Arbitration*, Docket No. A-310236F0002, Opinion and Order at 25 (December 19, 1996); *Investigation of Local Exchange Competition for Telecommunications Services*, Docket No. TX95120631, Decision and Order at 113 (September 9, 1997); *Petition of AT&T Communications of New York for Arbitration of an Interconnection Agreement*, , Case Nos. 96-C-0723 and 96-C-0724, Opinion No. 96-31 at 68-69 (November 29, 1996).

Mississippi have all so held.³⁶

Significantly, the United States District Court for the Eastern District of Virginia (Richmond Division) recently ruled, as a matter of law, that Bell Atlantic is not required to make dark fiber available to requesting carriers because it does not constitute a network element within the meaning of the Telecommunications Act.³⁷

Respectfully submitted,



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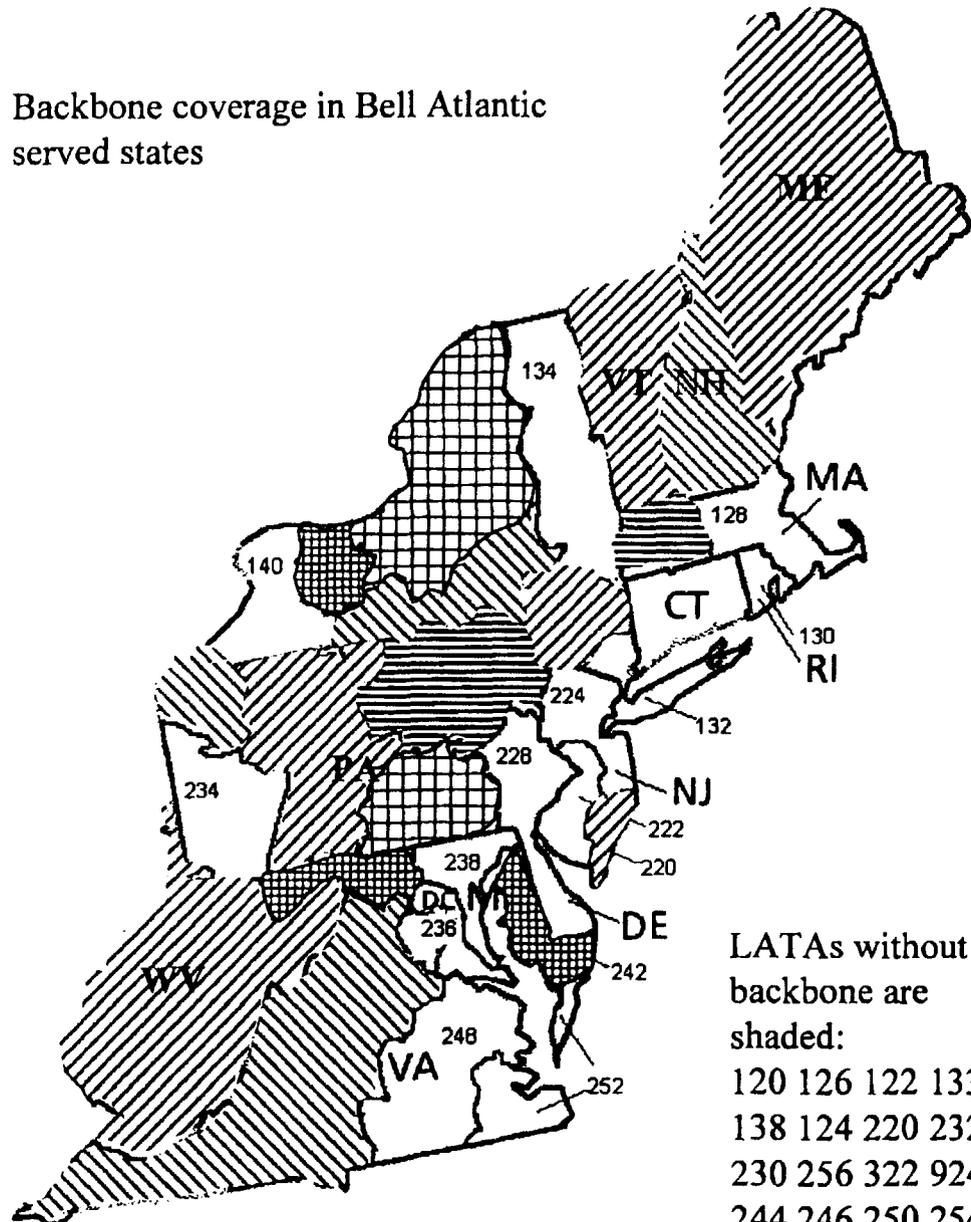
October 16, 1998

³⁶ *Petition for Approval of Transfer*, 1996 Fla. PUC LEXIS 2216 at 525-26 (1996); *Petition of AT&T Communications of Indiana*, 1996 Ind. PUC LEXIS 427 at 40-41 (1996); *AT&T Communications of South Central States, Inc.*, 1997 WL 19108 at 24-25 (La P.S.C. 1997); *MCI Telecommunications Corp.*, 1997 WL 233032 at 9-10 (N.C.U.C. 1997). The Company has been informed by representatives of the incumbent local exchange carriers in California and Mississippi that dark fiber requests were also rejected by the commissions in those states.

³⁷ *MCI Telecommunications Corporation, et al. v. Bell Atlantic-Virginia, Inc., et al.*, Civil Action number 3:97CV629 (E.D. VA. July 1, 1998).

ATTACHMENT A

Backbone coverage in Bell Atlantic served states



LATAs without backbone are shaded:
 120 126 122 133
 138 124 220 232
 230 256 322 924
 244 246 250 254
 927 928 929 932
 951 956 921

LATAs with just one backbone are crosshatched: 136 974 240 242 226

City	State	Population	dist to backbone	nearest backbone	in state
Springfield city	MA	149948	82	Albany	NY
Erie city	PA	105270	75	Cleveland	OH
Manchester city	NH	100967	50	Boston	MA
Roanoke	VA	96600	105	Richmond	VA
Scranton	PA	76500	100	Philadelphia	PA
Lynchburg	VA	66600	75	Richmond	VA
Utica	NY	62300	60	Albany	NY
Portland	ME	61700	100	Boston	MA
Charleston	WV	56000	110	Columbus	OH
Huntington	WV	53200	100	Columbus	OH
Altoona	PA	52400	80	Pittsburgh	PA
Burlington	VT	50000	110	Albany	NY
Wilkes-Barre	PA	62478	80	Harrisburg	PA
Williamsport	PA	48935	70	Harrisburg	PA
Hazleton	PA	28866	65	Harrisburg	PA
Cumberland	MD	32792	55	Harrisburg	PA
Atlantic City	NJ	74449	55	Pennsauken	NJ
Harrisonburg	VA	34625	90	Richmond	VA
Charlottesville	VA	40941	50	Richmond	VA
Roanoke-Christians	VA	169741	75	Winston-Salem	NC
Bluefield-Princeton	WV	21442	75	Winston-Salem	NC
Clarksburg-Bridgep	WV	27635	70	Pittsburgh	PA
Beckley	WV	25160	105	Winston-Salem	NC
Parkersburg	WV	36654	100	Columbus	OH
Morgantown-Fairmo	WV	51361	50	Pittsburgh	PA
Jamestown	NY	39556	60	Buffalo	NY
Elmira-Corning	NY	64576	70	Syracuse	NY
Watertown	NY	34381	60	Syracuse	NY
Binghamton-Endicot	NY	94469	70	Syracuse	NY
Plattsburg	NY	24197	110	Albany	NY
Rutland	VT	21178	90	Albany	NY
Montpelier-Barre	VT	19893	100	Albany	NY
Lebanon-Hanover	NH	20281	100	Albany	NY
Concord	NH	36006	50	Boston	MA
Rochester	NH	26630	65	Boston	MA
Portsmouth	NH	25925	50	Boston	MA
Dover	NH	25042	60	Boston	MA
Bangor-Orono	ME	52780	190	Boston	MA
Waterville-Winslow	ME	28913	160	Boston	MA
Augusta	ME	24459	130	Boston	MA
Auburn-Lewiston	ME	64066	110	Boston	MA
Brunswick-Bath	ME	32458	85	Boston	MA
Saco-Biddeford	ME	35891	70	Boston	MA
Presqu-Isle-Caribou	ME	22915	400	Boston	MA

ATTACHMENT B

DECLARATION OF TIMOTHY J. TARDIFF

1. My name is Timothy J. Tardiff. I am a Vice President at National Economic Research Associates. I have specialized in telecommunications policy issues for about the last 17 years. My research has included studies of the demand for telephone services, such as local measured service and toll; analysis of the market potential for new telecommunications products and services; assessment of the growing competition for telecommunications services; and evaluation of regulatory frameworks consistent with the growing competitive trends. Most recently, I have participated in proceedings related to the implementation of the Telecommunications Act of 1996, addressing the issues of the costing and pricing of unbundled network elements, universal service funding, and interLATA entry for Regional Bell Companies in numerous states and at the FCC. I attach a copy of my full resume as Attachment 1.

2. Bell Atlantic has asked me to comment on economic impacts that would result if incumbent local exchange carriers (ILECs) were required to offer advanced services (such as asymmetric digital subscriber loops (ADSL)) out of a structurally separated subsidiary. As a general proposition, when economies of scale and scope, which are pervasive in telecommunications, are present, separate subsidiary requirements can cause large losses in economic efficiency and deny consumers the benefits of new and innovative product offerings.

3. Indeed, the preservation of the benefits of scope economies was a critical consideration in the FCC's decision to replace the structural separation requirements of Computer II with the ONA requirements of Computer III. In fact, when the Ninth Circuit required the FCC to review the costs and benefits of vertical

integration provided by Computer III rules, I submitted a paper (with Professor Jerry A. Hausman) that assessed the costs and benefits of vertical integration.¹ We identified and quantified three types of benefits that stem from vertical integration of telecommunications services:

- Large consumer benefits that arise when ILECs are able to bring new products to the market sooner.
- Benefits to consumers that arise from their strong preference for “one stop shopping.”
- Economic saving from joint production (economies of scope and scale), which results in lower prices.

4. The ability of ILECs to take advantage of the economies of joint production is of even greater importance in the case of advanced network services. First, because these services are new, the consumer benefits of more rapid introduction (or conversely the harm from impeding such introduction) are large. As we demonstrated in our previous study, the annual loss to the US economy of delayed introduction of new telecommunications services is in the range of \$50 - \$100 billion, or about 1 to 2 percent of the US’s gross domestic product.² In fact, the benefits that flow from the introduction of new services provide a strong economic rationale for the *deregulation* of new services, such as advanced network services.³

5. The importance of one-stop shopping is increasing as telecommunications providers, most of which are unregulated, offer integrated

¹ Jerry A. Hausman and Timothy J. Tardiff, “Benefits and Costs of Vertical Integration of Basic and Enhanced Telecommunications Services,” prepared for filing with the Federal Communications Commission, Computer III Further Remand Proceedings, CC Docket No. 95-20, on behalf of Bell Atlantic, Bell South, NYNEX, Pacific Bell, Southwestern Bell, and U S West, April 6, 1995.

² Hausman and Tardiff, *ibid.*, p. 20.

³ Alfred E. Kahn, *Letting Go: Deregulating the Process of Deregulation*, Michigan State University Public Utilities Papers, 1998, p. 59. Timothy J. Tardiff and William E. Taylor, “Revising Price Caps: The Next Generation of Incentive Regulation Plans,” in Michael A. Crew, editor, *Pricing and Regulatory Innovations Under Increasing Competition*, Boston: Kluwer, pp. 33-34.

packages to consumers. For example, high speed data services offered to residential consumers include not only the DSL services that have recently emerged from ILECs and competitive local exchange carriers (CLECs), but also cable modem services offered by cable television providers. These services, which currently attract more than 2.5 times the number of subscribers as does ADSL⁴ and are growing at a rapid rate,⁵ allow CATV providers to offer package including television and data services. With the emergence of CATV telephony services, such as those recently introduced by Media One in Bell Atlantic's territory, CATV providers are in the position to package voice, video, and data services. Denying this ability to the ILECs will put them at a serious competitive disadvantage.

6. There are also cost savings from vertical integration of traditional voice and advanced network services. In the case of residential DSL offerings, a separate subsidiary requirement would impose substantial addition costs on ILECs. These costs are of three fundamental types: (1) a separate subsidiary for xDSL services would not package voice and data services on a single subscriber loop (as both incumbent and competing carriers currently can do today), resulting in duplication of loop facilities;⁶ (2) support services and systems that can be shared under joint operation would have to be duplicated under a separate subsidiary requirement; and (3) price increases necessary to recover the additional costs of the first two types would cause a decrease in demand, providing less volume over which to recover fixed costs.⁷

⁴ Charles Mason, "Cable Modems vs. DSL: Is There Room for Both," *America's Network*, September 1, 1998, pp. S-14 – S-15.

⁵ Recent articles report growth of over 80 percent for the first four months of 1998 (from 110,000 subscribers at the end of 1997 to 200,000 by May 1) and forecasts of 7.4 million cable modems in North America by 2002. The 2002 forecast would represent a growth rate greater than annual doubling of volume. Mason, *ibid.*, *Cable World*, April 20, 1998, and *Media Daily*, January 16, 1998.

⁶ In contrast, CATV providers offer video and cable modem services over the same coaxial cable.

⁷ The necessary price increase could be large enough to make the advanced service offering uneconomic, thereby denying consumers of any benefits from this new service offering.

7. Based on information provided by Bell Atlantic, these costs could add as much as \$40 to the cost of providing residential DSL services. These increases would require a doubling of the tariff rate of \$39.95 per month.⁸ Such a price increase would clearly harm consumers, who would pay more or forego the service altogether. In fact, market analysis performed by Bell Atlantic indicates that such a price increase would reduce anticipated demand for its ADSL service by as much as 80% over the next five years and hobble ADSL as a meaningful competitor to cable modems and other advanced services.⁹ This loss of a significant competitor not only would advantage certain competitors, but it would undeniably harm consumers and the state of telecommunications competition, in general.

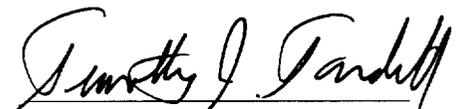
8. In summary, with the emergence of competition, the advancement of technology, and the convergence of formerly separated markets, the case against structural separation is even stronger than when the FCC reviewed Computer III over three and one-half years ago.

⁸ We performed a similar analysis of the cost increase that would result from Bell Atlantic being forced to offer its successful voice messaging service under a separate subsidiary. That increase amounted to about 30 percent of the prevailing price. Hausman and Tardiff, *op. cit.*, pp. 21-22. A major reason why the impacts of separation are greater in the case of ADSL arise from the need to duplicate loop facilities.

⁹ Bell Atlantic's assessment that residential subscribers are very price-sensitive is consistent with prevailing views in the industry. See, for example, Mason, *op. cit.*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 15, 1998


Timothy J. Tardiff

Attachment 1

TIMOTHY J. TARDIFF**BUSINESS ADDRESS**

National Economic Research Associates, Inc.
One Main Street
Cambridge, Massachusetts 02142
(617) 621-0444

Dr. Tardiff received a B.S. with honors in Mathematics from the California Institute of Technology in Pasadena and a Ph.D. degree in Social Science from the University of California, Irvine, under a National Science Foundation Pre-doctoral Fellowship and an NSF Grant for Improving Dissertation Research in the Social Sciences.

Dr. Tardiff joined the faculties of the Department of Civil Engineering and the Division of Environmental Studies at the University of California, Davis. He taught undergraduate and graduate level courses in transportation and environmental policy analysis. His research included applications of econometric models of consumer choice to transportation planning problems. Dr. Tardiff's research was funded by the National Science Foundation, the Institute of Transportation Studies and the California Department of Transportation.

Prior to joining NERA, Dr. Tardiff's work included transportation, energy, public utility and telephone industry projects for the U.S. Departments of Transportation and Energy, the California Energy Commission, and several telephone and electric utilities.

Since joining NERA, he has evaluated pricing policies for increasingly competitive telecommunications markets, including appropriate mechanisms for pricing access services to competitors; studied actual and potential competition for services provided by telephone operating companies; analyzed the demand and revenue impacts of new telephone rate structures; developed and evaluated damage studies used in major telecommunications antitrust actions; analyzed the market potential for cellular radio; evaluated the investment and marketing programs of telephone companies; and developed a demand model for analyzing the market potential for alternative employee health care plans, including health maintenance organizations.

Dr. Tardiff has published extensively in the transportation literature. He has presented and published papers on the telecommunications industry. These papers address the issues of pricing and costing policies for emerging competition in telecommunications markets; evaluating and forecasting the impacts of telephone rate plans such as local measured service; analyzing the markets for new telecommunications products and services; and local competition and the bypass issue.

- 2 -

EDUCATION

UNIVERSITY OF CALIFORNIA, IRVINE
Ph.D., Social Sciences, 1974

CALIFORNIA INSTITUTE OF TECHNOLOGY
B.S., Mathematics, 1971

EMPLOYMENT**NATIONAL ECONOMIC RESEARCH ASSOCIATES, INC.**

1992 Vice President. Works on cases, mainly legal and regulatory, on issues of pricing policy, assessing demand for new and existing products and services, and economic damages. This work involves studies, often involving econometric demand analysis methods, for telecommunications, utilities and other clients. Specific areas have included: assessment of competition in the telecommunications industry; analysis of alternative approaches for regulating telephone utilities; evaluation of the benefits from telecommunication products and services; analyzing the demand for local services, toll, and carrier access; evaluation of the prudence of telephone company investments; damage studies for telecommunications antitrust cases; evaluation of methods for environmental damage assessment; and analysis of energy conservation /programs.

1984-1992 Senior Consultant

CHARLES RIVER ASSOCIATES, INC.--Boston, Massachusetts

1979-1984 Director of Marketing Research. Managed program to apply econometric customer demand models to marketing research problems in telecommunications, electric utilities, transportation and other industries.

Senior Research Associate. Performed studies on urban transportation, freight transportation, energy and telecommunications issues.

UNIVERSITY OF CALIFORNIA, DAVIS--Davis, California

1974-1979 Assistant Professor, Department of Civil Engineering and Division of Environmental Studies. Taught undergraduate and graduate course in transportation and environmental policy and quantitative research methods; conducted research on passenger transportation demand, (including econometric issues).

- 3 -

FELLOWSHIPS, GRANTS, AWARDS

First Place, Dissertation Contest of the Transportation Science Section
of the Operations Research Society of America.

NSF Research Initiation Grant (Engineering Division), 1976-1978.

NSF Grant for Improving Doctoral Dissertation Research in the Social Sciences,
1973-1974.

NSF Predoctoral Fellowship, 1972-1974.

Public Health Service Traineeship, 1971-1972.

AFFILIATIONS

American Economic Association
International Telecommunications Society

- 4 -

TESTIMONY

"An Analysis of the HAI Model Release 5.0a," Rebuttal Testimony filed with the Florida Public Service Commission, Docket No. 980696-TP, on behalf of GTE Florida, September 2, 1998 (with Gregory M. Duncan, Karyn E. Model, Christian M. Dippon, Jino W. Kim, Francis J. Murphy, Robert P. Cellupica, and Thomas F. Guarino).

"Economic Evaluation of High Capacity Competition in Phoenix," prepared for filing with the Federal Communications Commission on behalf of US WEST Communications, Petition of US WEST Communications for Forebearance from Regulation as a Dominant Carrier in the Phoenix MSA (with Alfred E. Kahn), August 14, 1998.

Rebuttal Affidavit before the Arkansas Public Service Commission in the matter of the Application of Southwestern Bell Telephone Company Seeking Verification that It Has Fully Complied with and Satisfied the Requirements of Section 271 (c) of the Telecommunications Act of 1996, June 11, 1998.

Rebuttal Testimony before the State Corporation Commission of the State of Kansas in the matter of Southwestern Bell Telephone Company - Kansas' Compliance With Section 271 of the Federal Telecommunications Act of 1996, Docket No. 97-SWBT-411-GIT (with Alfred E. Kahn), May 27, 1998.

Rebuttal Affidavit Before the Public Utilities Commission of the State of California in support of Pacific Bell's Draft Application for Authority to Provide InterLATA Services in California (with Alfred E. Kahn), May 20, 1998.

"An Analysis of the Hatfield Model Release 4.0," prepared for filing with the California Public Utilities Commission on behalf of GTE California, May 1, 1998 (with Gregory M. Duncan, Karyn E. Model, Christian M. Dippon, Jino W. Kim, Francis J. Murphy, Robert P. Cellupica, and Thomas F. Guarino).

Reply Testimony of Timothy J. Tardiff on unbundled network element prices and retail service price floors, prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, April 27, 1998.

Rebuttal Testimony of Alfred E. Kahn and Timothy J. Tardiff, filed with the Oklahoma Public Service Commission, in support of the Applications of SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., for Provision of In-Region InterLATA Services in Oklahoma, Case No. PUD 970000560, April 21, 1998.

- 5 -

Reply Affidavit before the Federal Communications Commission in the matter of Application of SBC Communications Inc. Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Texas (with Alfred E. Kahn), April 17, 1998.

Testimony of Timothy J. Tardiff on unbundled network element prices and retail service price floors, prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, April 8, 1998.

Affidavit before the Federal Communications Commission in the matter of Application of SBC Communications Inc., Pacific Bell, and Pacific Bell Communications for Provision of In-Region InterLATA Services in California (with Alfred E. Kahn), March 31, 1998.

"Economic Principles Governing Measurement of Nonrecurring/OSS Costs: An Analysis of the AT&T/MCI Recommendations," prepared for filing with the California Public Utilities Commission on behalf of GTE California and Pacific Bell, March 4, 1998 (with Gregory M. Duncan).

"Analysis of the Hatfield Model Release 5.0a," Rebuttal Testimony filed with the North Carolina Utilities Commission, Docket No. P-100, Sub 133d, on behalf of GTE South, March 2, 1998 (with Gregory M. Duncan, Rafi A. Mohammed, Christian M. Dippon, Aniruddha Banerjee, Karyn E. Model, Francis J. Murphy, Robert P. Cellupica, and Thomas F. Guarino).

"Analysis of the Hatfield Model Release 5.0a," Rebuttal Testimony filed with the South Carolina Public Service Commission, on behalf of GTE South, March 2, 1998 (with Gregory M. Duncan, Rafi A. Mohammed, Christian M. Dippon, Aniruddha Banerjee, Karyn E. Model, Francis J. Murphy, Robert P. Cellupica, and Thomas F. Guarino).

Affidavit before the Federal Communications Commission in the matter of Application of SBC Communications Inc. Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Texas (with Alfred E. Kahn), March 2, 1998.

"Analysis of the Hatfield Model Release 5.0a," Rebuttal Testimony filed with the Kentucky Public Service Commission, on behalf of GTE South, February 26, 1998 (with Gregory M. Duncan, Rafi A. Mohammed, Christian M. Dippon, Aniruddha Banerjee, Karyn E. Model, Francis J. Murphy, Robert P. Cellupica, and Thomas F. Guarino).

- 6 -

Affidavit before the Federal Communications Commission in the matter of Application of SBC Communications Inc. Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Arkansas (with Alfred E. Kahn), February 24, 1998.

Testimony before the State Corporation Commission of the State of Kansas in the matter of Southwestern Bell Telephone Company – Kansas' Compliance With Section 271 of the Federal Telecommunications Act of 1996, Docket No. 97-SWBT-411-GIT (with Alfred E. Kahn), February 17, 1998.

"Analysis of the Hatfield Model Release 5.0," Rebuttal Testimony filed with the Alabama Public Utilities Commission, on behalf of GTE South, February 13, 1998 (with Gregory M. Duncan, Rafi A. Mohammed, Christian M. Dippon, Aniruddha Banerjee, Karyn E. Model, Francis J. Murphy, Robert P. Cellupica, and Thomas F. Guarino).

Affidavit before the Federal Communications Commission in the matter of Application of SBC Communications, Inc. Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Oklahoma (with Alfred E. Kahn), February 13, 1998.

"Analysis of the Hatfield Model Release 5.0," Rebuttal Testimony filed with the North Carolina Utilities Commission, Docket No. P-100, Sub 133b, on behalf of GTE South, January 30, 1998 (with Gregory M. Duncan, Rafi A. Mohammed, Christian M. Dippon, Aniruddha Banerjee, Karyn E. Model, Francis J. Murphy, Robert P. Cellupica, and Thomas F. Guarino).

Supplemental Rebuttal Testimony of Timothy J. Tardiff on switching costs, prepared for filing with the State of Maine Public Utilities Commission on behalf of Bell Atlantic-Maine, Case No. 97-505, December 22, 1997.

"Reply to AT&T Recommendations for Regulatory Treatment of OSS Costs," prepared for filing with the California Public Utilities Commission on behalf of GTE California and Pacific Bell, December 15, 1997 (with Gregory M. Duncan).

Rebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the Vermont Public Service Board on behalf of Bell Atlantic-Vermont, Case No. 57-13, November 21, 1997.

Reply Affidavit of Timothy J. Tardiff on the Hatfield Model, filed with the New York Public Service Commission on behalf of Bell Atlantic-New York, Case 94-C-0095 and Case 28425, November 17, 1997.

- 7 -

Rebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the State of Maine Public Utilities Commission on behalf of Bell Atlantic-Maine, Case No. 97-505, October 21, 1997.

Rebuttal Testimony of Timothy J. Tardiff on the application of the Hatfield Model to universal service funding requirements, prepared for filing with the New Jersey Board of Public Utilities on behalf of Bell Atlantic-New Jersey, Docket No. TX95120631, October 20, 1997.

"Analysis of the Hatfield Model Release 4.0," filed with the Pennsylvania Public Utility Commission on behalf of GTE North, October 20, 1997 (with Gregory M. Duncan, Rafi A. Mohammed, Christian M. Dippon, Francis J. Murphy, Robert P. Cellupica, and Thomas F. Guarino).

Supplemental Rebuttal Testimony of Timothy J. Tardiff on toll and carrier access demand elasticities and universal service rate rebalancing, prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, October 10, 1997.

Rebuttal Testimony of Timothy J. Tardiff on toll and carrier access demand elasticities and universal service rate rebalancing, prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, September 30, 1997.

Rebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the State Corporation Commission of Virginia on behalf of Bell Atlantic-Virginia, Case No. PUC970005, June 10, 1997.

Reply Affidavit of Alfred E. Kahn and Timothy J. Tardiff, filed with the Federal Communications Commission, in support of the Applications of SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., for Provision of In-Region InterLATA Services in Oklahoma, May 26, 1997.

Rebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the District of Columbia Public Service Commission on behalf of Bell Atlantic-DC, Formal Case No. 962, May 2, 1997.

Declaration of Timothy J. Tardiff on OANAD Cost Studies, prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, April 16, 1997.

Rebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the Maryland Public Service Commission on behalf of Bell Atlantic-Maryland, Case No. 8731-II, April 4, 1997.

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"Economic Evaluation of the Hatfield Model, Release 3.1," filed with the Washington Utilities and Transportation Commission on behalf of GTE, March 28, 1997 (with Gregory M. Duncan and Rafi Mohammed).

"Economic Evaluation of the Hatfield Model, Version 2.2, Release 2," prepared for filing with the California Public Utilities Commission on behalf of GTE California and Pacific Bell, March 18, 1997 (with Gregory M. Duncan).

Statement of Alfred E. Kahn and Timothy J. Tardiff, "Funding and Distributing the Universal Service Subsidy," Prepared for US West for presentation to the Federal Communications Commission, March 13, 1997.

Testimony of Timothy J. Tardiff on toll and carrier access demand elasticities, prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, March 6, 1997.

Surrebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the Pennsylvania Public Utility Commission on behalf of Bell Atlantic-Pennsylvania, Dockets A-310203F0002, A-310213F0002, A-310236F0002, A-310258F0002, February 21, 1997.

Affidavit of Alfred E. Kahn and Timothy J. Tardiff, filed with the Oklahoma Public Service Commission, in support of the Applications of SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., for Provision of In-Region InterLATA Services in Oklahoma, February 21, 1997.

"Reply to Kravtin/Selwyn Analysis of the Gap Between Embedded and Forward-Looking Costs," affidavit filed with the Federal Communications Commission, In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, on behalf of GTE, February 14, 1997.

Rebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the Arkansas Public Service Commission on behalf of Southwestern Bell Telephone Company, Docket 96-395-U, January 9, 1997.

Rebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the Kansas Corporation Commission on behalf of Southwestern Bell Telephone Company, Docket 97-AT&T-290-Arb, January 6, 1997.

Rebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the Massachusetts Department of Public

- 9 -

Utilities on behalf of New England Telephone and Telegraph Company, Docket 96-80/81, October 30, 1996.

Statement of Alfred E. Kahn and Timothy J. Tardiff, "Joint Marketing, Personnel Separation and Efficient Competition Under the Telecommunications Act of 1996," Prepared for US West for presentation to the Federal Communications Commission, October 11, 1996.

Rebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the Oklahoma Public Service Commission on behalf of Southwestern Bell Telephone Company, September 30, 1996.

Rebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the Missouri Public Service Commission on behalf of Southwestern Bell Telephone Company, Case No. TO-97-040 & TO 97-40-67, September 30, 1996.

"Economic Evaluation of Version 2.2 of the Hatfield Model," prepared for filing in interconnection arbitrations in Pennsylvania, California, Florida, Indiana, North Carolina, Oklahoma, Iowa, Texas, Virginia, Minnesota, Hawaii, Nebraska, Kentucky, Washington, and Missouri on behalf of GTE, September 1996 (with Gregory M. Duncan).

Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the Texas Public Utility Commission on behalf of Southwestern Bell Telephone Company, Docket Nos. 16189, 16196, 16226, 16285, 16290, September 6, 1996.

"Economic Analysis of MFS's Numerical Illustration," prepared for filing with the Federal Communications Commission, In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, on behalf of US West, August 30, 1996.

Affidavit of Timothy J. Tardiff on proxy rates for unbundled local switching, prepared for filing with the Federal Communications Commission on behalf of GTE Corporation, petition for a stay of the First Report and Order in the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, August 28, 1996.

Rebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the New York Public Service Commission on behalf of New York Telephone, July 15, 1996

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Reply Testimony of Timothy J. Tardiff on local exchange service price floors, prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, July 10, 1996.

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"Declaration of Timothy J. Tardiff on Pacific Bell's Productivity Under Price Caps," prepared for filing with the Federal Communications Commission, on behalf of Pacific Bell, February 28, 1994.

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"Pacific Bell's Performance Under the New Regulatory Framework: An Economic Evaluation of the First Three Years," prepared for filing with the California Public Utility Commission on behalf of Pacific Bell, April 8, 1993. William E. Taylor and Timothy J. Tardiff, Study Directors.

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"The New Regulatory Framework 1990-1992: An Economic Review," prepared for filing with the California Public Utility Commission on behalf of Pacific Bell, May 1, 1992. William E. Taylor and Timothy J. Tardiff, Study Directors.

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October 1998

ATTACHMENT C

DECLARATION OF BRUCE D. LEAR

I, Bruce D. Lear, hereby declare as follows:

1. I am Senior Specialist, Collocation Product Development, for Bell Atlantic Network Services, Inc. In this position, I am responsible for the planning and management of all collocation services throughout the Bell Atlantic service area. Prior to the Bell Atlantic/NYNEX merger I was also involved in the review and implementation of all orders Bell Atlantic received for collocation services.

2. The companies that collocate in Bell Atlantic's central office have told me that the ability to secure their equipment is one of their high priorities, just as it is for Bell Atlantic. During the period March 4 through March 20, 1996, I met with representatives of five of the largest collocators operating in the Bell Atlantic service area to ascertain their needs and to improve the service that Bell Atlantic provides to them prior to reintroducing physical collocation following enactment of the 1996 Act. Among the areas discussed was security of collocators' equipment placed in physical collocation space in Bell Atlantic central offices and any preference they might have for a caged area or a condominium type arrangement (i.e., a collocation room without separate cages for each collocator). Four of the five collocation customers told me that they considered a condominium arrangement to be unattractive, because they would not have the ability to secure their equipment. Some felt it critical that their equipment be secured so that it was made inaccessible to personnel employed by competing local exchange service providers, both Bell Atlantic and other new entrants. The one collocator who

indicated that it would consider a condominium type arrangement still expressed concern that there would have to be a security audit trail available to assess blame in case of unauthorized access. Even with such an arrangement they would want the option of constructing a cage.

3. The one collocator that did not articulate its security concerns during our discussions was MCI Telecommunications Corp. (now MCI WorldCom, Inc.). However, in the orders it places for physical collocation services, MCI invariably requests “fully secured cage (top on cage or floor to ceiling sides)” and always asks that these cages have roofs. In addition, MCI has even submitted requests for alarm circuits to be installed to the collocation cages that would sound in the event of unauthorized entry into MCI physical collocation space. In addition, MCI has requested that interconnection agreements specify that it may demand additional security options in connection with physical collocation, including changing the locks and installing its own security. From all this, I conclude that MCI is very concerned about the security of its equipment and wants extra protection against access by persons not employed by MCI or by those which MCI has not authorized to obtain access.

4. Collocators have expressed concern that physical collocation space in some central offices is being filled up. As an initial matter, this reflects the enormous number of collocation offices already in place or in the process of being implemented – currently 531 -- and the rapidly-increasing number of new entrants who are seeking space. Frequently, however, Bell Atlantic has expended the money to condition central office space, build collocation cages, install cabling and DC power to support the forecasted demand, and otherwise to prepare the space for occupancy and service, but the collocator has failed to deliver or activate equipment for many months or, in some cases, more than one year. This failure of the collocators to fulfill their own commitments not only means that Bell Atlantic has advanced significant investment to prepare

the space to meet the collocators' service requests, but also that subsequent requests for physical collocation space may have to be denied.

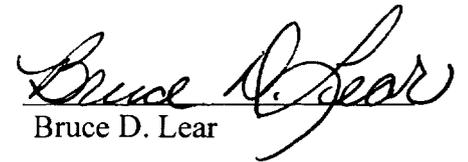
5. Additionally, some collocators are excluding others by ordering large quantities of collocation space. We have received 554 applications for physical collocation arrangements since May 1996 in the seven pre-merger Bell Atlantic jurisdictions, requesting a total of 92,850 square feet of collocation space. This works out to an average of 163 square feet per application, but that does not tell the whole story. While the vast majority of the applications were for the minimum 100 square feet specified in the tariff, 66 of the requests, or 12%, were for 400 square feet, totaling 29% of the aggregate space requested. 48 of the 66 applications for 400 square feet of space were from one customer.

6. Moreover, collocators occupying large amounts of space are not using it efficiently. Of those installations of 200 square feet or more that have been completed, I estimate that on average less than 25% of the capacity of the space is being efficiently used to provide telecommunications services. Therefore, while relatively few collocators are occupying excessive amounts of space, not even one-quarter of their space is being utilized to provide service to the public, resulting in the deprivation of space available to other competitors in these central offices.

7. In addition, the merger of major telecommunications providers over the past two years has created the anomaly that there are a number of central offices where the same merged carrier has multiple cages and virtual collocation arrangements in the same central office, creating duplicate cages with inefficient utilization of both central office space and Bell Atlantic's network facilities. This further limits the available space for additional competitors.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 16, 1998


Bruce D. Lear

ATTACHMENT D

Collocation¹

STATE: CONNECTICUT²

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
Greenwich	6	<ul style="list-style-type: none"> Collocation cage completed 3/6/98. Collocator has not installed any equipment in the 300 square foot cage. 	7 months Warehoused space
	8	<ul style="list-style-type: none"> Collocation cage completed 5/9/97. Collocator has not installed any equipment in the 300 square foot cage. 	17 months Warehoused space

STATE: DELAWARE

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
Dover	20	<ul style="list-style-type: none"> Physical collocation site completed on 10/97. Site occupied by collocator 6/98. 	7 months
Hockessin	20	<ul style="list-style-type: none"> Virtual collocation site completed on 2/6/98. Collocator installation started early 8/98. 	6 months
Milford	20	<ul style="list-style-type: none"> Physical collocation site completed on 1/9/98. Site occupied by collocator early 7/98. 	7 months
Wilmington	8	<ul style="list-style-type: none"> Physical collocation site completed on 8/29/97. To date, no equipment installed at 400 square foot cage. 	12 months; Warehoused Space

STATE: MAINE

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
South Portland	6	<ul style="list-style-type: none"> Collocation cage completed 3/24/98. Collocator has not installed any equipment to date. 	7 months
Westbrook	6	<ul style="list-style-type: none"> Collocation cage completed 3/29/98. Collocator has not installed any equipment to date. 	7 months

¹ These central offices represent a sampling of collocation arrangements and applications across the Bell Atlantic footprint and is not a comprehensive list. They represent an aggregate of collocators that have applied for collocation over the past years. With regard to physical collocation, preparation for occupancy includes completion of room construction, cage construction, requested DC power feeds, and POT Bay terminations (i.e., DS0, DS1, & DS3 at a cost to Bell Atlantic of \$250K or more). With regard to virtual collocation, Bell Atlantic has initiated engineering jobs and implemented the job to the extent possible, including installing frame termination's. The delays encountered result from the collocator's failure to deliver either fiber facilities, transmission equipment, or both, to the collocation site, as well as delays in acceptance of the cage or completed virtual collocation installation, and delays in submitting required deposits.

² The Greenwich central office is the only Bell Atlantic central office in the state of Connecticut.

STATE: MARYLAND

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
Annapolis	8	Collocator submitted physical collocation application 8/8/97. Bell Atlantic awaiting 50% deposit for room construction.	14+ Months
Belair	8	<ul style="list-style-type: none"> Collocator submitted physical collocation application 8/8/97. Bell Atlantic awaiting 50% deposit for room construction. 	14+ Months
Beltsville	13	<ul style="list-style-type: none"> BA completed physical collocation cage 8/29/97. Collocator has no service to the cage. 	13 Months
Bethesda	10	<ul style="list-style-type: none"> Collocator submitted physical collocation application 5/18/98. Bell Atlantic awaiting 50% deposit for room construction. 	4+ Months
Bethesda	13	<ul style="list-style-type: none"> BA completed physical collocation cage 10/1/97. Collocator has no service to the cage. 	12 Months
Cockeysville	8	<ul style="list-style-type: none"> BA completed physical collocation cage 2/17/98. Collocator has no equipment installed in 400 square foot cage. 	8 Months Warehoused Space
Columbia	8	<ul style="list-style-type: none"> Collocator submitted virtual collocation application submitted 9/11/97. BA waiting for Collocator equipment and fiber. 	12+ Months
	13	<ul style="list-style-type: none"> BA completed physical collocation cage 10/20/97. No equipment installed in 200 square foot cage. 	12 Months Warehoused Space
Elkton	8	<ul style="list-style-type: none"> Collocator submitted physical collocation application 8/8/97. Bell Atlantic awaiting 50% deposit for room construction. 	14+ Months
Friendship	13	<ul style="list-style-type: none"> Virtual Collocation equipment installation completed 9/15/97. Waiting for Collocator to deliver equipment and fiber facilities. 	13 Months
Glen Burnie	8	<ul style="list-style-type: none"> BA completed physical collocation cage 12/30/97. Collocator has no equipment installed in 400 square foot cage. 	10 Months Warehoused Space
Hunt Valley	8	<ul style="list-style-type: none"> Collocator submitted virtual collocation application submitted 9/15/97. BA waiting for Collocator equipment and fiber. 	13 Months
Laurel	13	<ul style="list-style-type: none"> BA completed physical collocation cage 10/10/97. No equipment installed in 200 square foot cage. 	12 Months Warehoused Space
Montrose	13	<ul style="list-style-type: none"> Collocator submitted virtual collocation application submitted 4/1/97. BA waiting for Collocator equipment and fiber. 	18+ Months
Northwood	13	<ul style="list-style-type: none"> BA completed physical collocation cage 8/15/97. Collocator has no service to the cage. 	14 Months

STATE: MARYLAND - (CON'T)

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
Owen Bron	13	<ul style="list-style-type: none"> Collocator submitted virtual collocation application submitted 3/11/97. BA waiting for Collocator to deliver equipment and fiber. 	18+ Months
	8	<ul style="list-style-type: none"> Collocator submitted virtual collocation application submitted 9/16/97. BA waiting for Collocator equipment and fiber. 	12+ Months
Parkway	13	<ul style="list-style-type: none"> Collocator submitted virtual collocation application submitted 4/1/97. BA waiting for Collocator to deliver equipment and fiber. 	18+ Months
Parole	8	<ul style="list-style-type: none"> Collocator submitted virtual collocation application submitted 4/11/97. BA waiting for Collocator equipment and fiber. 	18+ Months
Rockville	11	<ul style="list-style-type: none"> BA completed physical collocation cage 5/28/97. No equipment installed in cage. 	17 Months
Silver Spring	11	<ul style="list-style-type: none"> BA completed physical collocation cage 5/28/97. Equipment powered 1 year later. Collocator is currently installing fiber. 	17 Months
Snowden River	13	<ul style="list-style-type: none"> BA completed physical collocation cage 10/21/97. No equipment installed in 200 square foot cage. 	11+ Months Warehoused Space
Towson	8	<ul style="list-style-type: none"> BA completed physical collocation cage 4/11/97. Collocator has minimal equipment bays in a 400 square foot cage. Additional power feeds completed 10/2/97, still not connected to equipment. 	Warehoused Space
Westminster	8	<ul style="list-style-type: none"> Collocator submitted physical collocation application 8/8/97. Bell Atlantic awaiting 50% deposit for room construction. 	14+ Months
Wolff	8	<ul style="list-style-type: none"> Collocator submitted physical collocation application 8/8/97. Bell Atlantic awaiting 50% deposit for room construction. 	14+ Months

STATE: MASSACHUSETTS

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
Back Bay	2	<ul style="list-style-type: none"> Cage completed 2/11/98. Collocator delayed acceptance until 6/11/98 	4 months
Bedford	8	<ul style="list-style-type: none"> Cage complete 7/11/97. No equipment in cage. 	15 Months
Billerica	2	<ul style="list-style-type: none"> Cage completed 2/11/98. Collocator delayed acceptance until 6/11/98 	4 months
Bowdoin	16	<ul style="list-style-type: none"> Cage completed 11/2/97. BA still waiting for Collocator to accept. 	11+ months
Burlington	8	<ul style="list-style-type: none"> Cage complete 7/13/97. Two equipment bays in a 200 square foot cage. 	Warehoused Space

STATE: MASSACHUSETTS - (CON'T)

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
Cambridge Bent	8	• Cage complete 6/14/97. One equipment bays in 300 square foot cage.	Warehoused space
	16	• Cage Complete 10/13/97. No equipment in cage.	12 Months
Cambridge Ware	8	• Cage complete 6/2/97. One equipment bays in 200 square foot cage.	Warehoused space
	13	• Second cage for same. Collocator completed 4/98. No equipment in cage.	7 Months
	7	• Cage complete 6/22/98. BA still waiting for Collocator to accept cage	4 months
Danvers	8	• Cage complete 7/16/97. No equipment in cage.	15 Months
East Boston	8	• Virtual collocation engineering completed 12/10/97. Collocator has yet to deliver equipment.	11+ months
Framington	17	• Cage completed 5/12/97. BA still waiting for Collocator to accept cage.	5 months
	8	• Cage completed 7/18/97. Collocator delayed accepting cage until 10/22/97.	3 months
Franklin	8	• Cage completed 6/17/97. Collocator delayed accepting cage until 10/22/97.	3 months
	2	• Cage completed 1/31/98. Collocator delayed accepting cage until 6/11/98.	4 months
Harrison Avenue	7	• Collocator notified that cage is ready for occupancy on 5/26/98. Collocator began equipment installations the last week of September 1998.	4 Months
	8	• Cage complete 5/30/97. No equipment in cage.	17 Months
Lawrence	8	• Cage complete 7/16/97. No equipment in cage.	15 Months
Lexington	8	• Cage complete 7/13/97. Two equipment bays in a 200 square foot cage.	Warehoused Space
Marlboro	11	• Cage completed 8/23/97. BA still waiting for Collocator to accept cage.	13 months
Natick	8	• Cage completed 7/11/97. Collocator delayed accepting cage until 10/22/97.	3 months
Newton	8	• Cage complete 2/25/97. No equipment in cage.	20 Months
Newtown	2	• Cage completed 9/19/97. Collocator delayed accepting cage until 4/10/98.	7 months

STATE: MASSACHUSETTS - (CON'T)

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
Waltham West	8	<ul style="list-style-type: none"> Cage complete 6/2/97. Two equipment bays in 200 square foot cage. 	Warehoused Space
	16	<ul style="list-style-type: none"> Cage completed 11/16/97. No equipment in 300 square foot cage. 	11 Months; Warehoused Space
Wellesley	8	<ul style="list-style-type: none"> Cage complete 7/8/97. No equipment in cage. 	15 Months
Wilmington	8	<ul style="list-style-type: none"> Virtual collocation installation completed 3/24/98. BA still waiting for Collocator to accept. 	6 months
Winchester	8	<ul style="list-style-type: none"> Virtual collocation installation completed 3/24/98. BA still waiting for Collocator to accept. 	6 months

STATE: NEW JERSEY

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
Bound Brook	11	<ul style="list-style-type: none"> Virtual engineered per 5/98 Collocator request. Collocator has still not delivered equipment. 	4 months
Edison	2	<ul style="list-style-type: none"> Virtual Collocation equipment installation complete 4/27/98. BA waiting for Collocator to deliver fiber cables. 	6 months
Elizabeth	2	<ul style="list-style-type: none"> Collocator cage completed 10/22/97. To date, Collocator has still not activated site. 	12 months
Freehold2	11	<ul style="list-style-type: none"> Virtual collocation site engineered per 6/15/98 Collocator request. Collocator unable to give BA a date when equipment will be delivered. 	4 months
	4	<ul style="list-style-type: none"> Virtual collocation equipment installed on 6/2/97. Collocator delivered fiber cable on 7/29/98. BA still waiting for Collocator to test and complete installation. 	16 months
Hackensack	8	<ul style="list-style-type: none"> Collocator cage completed 9/18/97. To date the 400 square foot cage contains 4 bays of equipment. 	Space
Journal Square	8	<ul style="list-style-type: none"> Collocator cage completed on 5/19/97. To date the 400 square foot cage contains 4 bays of equipment. 	Space
Livingston	2/13	<ul style="list-style-type: none"> Collocator site completed 7/1/97. To date, Collocator has still not spliced fiber cable to activate equipment installed in 200 square foot cage. 	15 months

STATE: NEW JERSEY - (CON'T)

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
Metuchen	8	<ul style="list-style-type: none"> Collocator notified that cage is ready for occupancy on 12/22/97. Collocator failed to occupy space until 4/13/98. Collocator has not installed any equipment in the 400 square foot cage. 	10 Months
	4	<ul style="list-style-type: none"> Collocator provided virtual collocation equipment installation completed 8/16/96. Collocator failed to deliver fiber facilities to activate equipment until 2/6/98. 	18 Months
Morristown	8	<ul style="list-style-type: none"> Collocator notified of cage completion on 12/20/97. Collocator failed to accept cage until 7/17/98. Collocator has not installed any equipment in the 400 square foot cage. 	10 Months
	2	<ul style="list-style-type: none"> Collocator occupancy accepted 8/97. Collocator has not installed any equipment in the 200 square foot cage. 	14 Months
Newark	8	<ul style="list-style-type: none"> Collocator cage completed 12/96. Collocator failed to activate equipment until 6/98. 	18 months
Newark2	4	<ul style="list-style-type: none"> Virtual collocation site engineered and cabled for requested 9/1/97 service date. Collocator has still not delivered equipment. 	13 Months
	8	<ul style="list-style-type: none"> Collocator site completed 11/30/97. To date, only 3 bays of equipment installed in a 400 square foot cage. 	Space Warehoused
	8	<ul style="list-style-type: none"> Collocator request for DC power augment completed 12/5/97. To date, Collocator has not terminated the 6 DC power feeds to any equipment. 	10 months
Penns Neck	11	<ul style="list-style-type: none"> Virtual collocation site engineered per 4/20/98 Collocator request. BA is still waiting for Collocator to deliver equipment. 	6 months
Piscataway	4	<ul style="list-style-type: none"> Virtual Collocation equipment installation complete 9/6/96. Collocator delivered fiber cable on 8/15/97. 	11 months
Plainfield	4	<ul style="list-style-type: none"> Virtual Collocation equipment installation complete 9/6/96. Site remains on hold waiting for Collocator to deliver fiber cables. 	25 months
Rochelle Park	11	<ul style="list-style-type: none"> Virtual collocation site engineered per 2/27/98 Collocator request. BA is still waiting for Collocator to deliver equipment. 	8 months
Somerville	8	<ul style="list-style-type: none"> Collocator notified that cage is ready for occupancy on 12/22/97. Collocator failed to occupy space until 4/14/98. Collocator has not installed any equipment in the 200 square foot cage. 	4 Months
	2	<ul style="list-style-type: none"> Collocator occupancy accepted 10/27/97. Collocator activated power to equipment on 4/3/98. Collocator scheduled to deliver fiber to the cage in October of 1998. To date, Collocator has still not activated site. 	12 Months

STATE: NEW JERSEY (CON'T)

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
South River	4	<ul style="list-style-type: none"> Virtual Collocation equipment installation complete 8/23/96. Site remains on hold waiting for Collocator to deliver fiber cables. 	26 months
Union City	8	<ul style="list-style-type: none"> Collocator cage completed 12/97. The 400 square foot cage remains unoccupied and Collocator has told BA that it does not intend to occupy this year. 	10 months
	2	<ul style="list-style-type: none"> Collocator cage completed 5/23/97. To date, no fiber has been delivered to this 100 square foot cage, and the Collocator has told BA that it does not intend to activate site until next year. 	17 months

STATE: NEW YORK

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
2 nd Avenue	9	<ul style="list-style-type: none"> Cage complete 4/19/97. No equipment in cage. 	18 months
	7	<ul style="list-style-type: none"> Virtual collocation installation complete 5/11/98. Collocator has not activated the equipment. 	5 months
	10	<ul style="list-style-type: none"> Virtual collocation installation complete 3/15/98. Collocator has not activated the equipment. 	7 months
Albany	13	<ul style="list-style-type: none"> Second cage complete 4/11/97. No equipment in 200 square foot cage. 	18 months Warehoused space
	14	<ul style="list-style-type: none"> Cage complete 4/03/98. No equipment in cage. 	6 months
	15	<ul style="list-style-type: none"> Cage complete 11/05/97. No equipment in cage. 	11 months
Bridge Street	8	<ul style="list-style-type: none"> Collocator occupies a 400 square foot cage. Only 3 equipment bays installed. 	Warehoused space
	1	<ul style="list-style-type: none"> Cage complete 5/7/98. Collocator has delayed accepting the cage. 	5 months
	9	<ul style="list-style-type: none"> Cage complete 3/15/97. No equipment in 300 square foot cage. 	19 months Warehoused space

STATE: NEW YORK - (CON'T)

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
Broad Street	7	• Cage complete 6/5/98. Collocator has delayed accepting the cage.	4 months
	8	• Cage complete 3/19/97. Collocator only installed two equipment bays in a 400 square foot cage.	19 months Warehoused space
	1	• Cage complete 5/11/98. Collocator has delayed accepting the cage.	5 months
	9	• Cage complete 2/7/97. No equipment in the 300 square foot cage.	20 months Warehoused space
Central Islip	9	• Cage complete 8/97. No equipment in the cage.	14 months
E 30 th Street	7	• Virtual collocation installation complete 5/11/98. Collocator has delayed activating the equipment.	5 months
	8	• Only 3 equipment bays in a 300 square foot cage	Warehoused space
	2	• Third cage completed 10/24/97, No equipment in the cage.	12 months
	9	• Cage complete 4/15/97. No equipment in a 300 square foot cage.	18 months Warehoused space
E 37 th Street	7	• Virtual collocation installation complete 5/11/98. Collocator has delayed acceptance of equipment.	5 months
E 56 th Street	7	• Virtual collocation installation complete 5/11/98. Collocator has delayed acceptance of equipment.	5 months
	10	• Virtual collocation equipment installation 3/31/98. Collocator has delayed acceptance of equipment.	7 months
Floral Park	2	• Cage complete 9/15/97. Collocator has delayed accepting 300 square foot cage.	13 months Warehoused space
	9	• Cage complete 8/97. No equipment in a 300 square foot cage.	14 months Warehoused space
	11	• Cage complete 8/97. Collocator has delayed accepting cage.	14 months

STATE: NEW YORK - (CON'T)

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
Great Neck	2	<ul style="list-style-type: none"> • Cage complete 8/97. Collocator has delayed accepting cage 300 square foot cage. 	14 months Warehoused space
Harrison	6	<ul style="list-style-type: none"> • Virtual collocation equipment installation complete 4/22/98. Collocator has delayed accepting the installation. 	6 months
	2	<ul style="list-style-type: none"> • Cage complete 7/27/97. Collocator has delayed accepting the cage. 	16 months
Hempstead	2	<ul style="list-style-type: none"> • Cage complete 9/15/97. Collocator has delayed accepting the cage. 	13 months
	9	<ul style="list-style-type: none"> • Cage complete 8/97. No equipment in a 300 square foot cage. 	14 months Warehoused space
Hicksville	9	<ul style="list-style-type: none"> • Cage complete 8/97. No equipment in a 300 square foot cage. 	14 months Warehoused space
Huntington Station	9	<ul style="list-style-type: none"> • Cage complete 8/97. No equipment in a 300 square foot cage. 	14 months Warehoused space
Lynbrook	9	<ul style="list-style-type: none"> • Cage complete 8/97. No equipment in a 300 square foot cage. 	14 months Warehoused space
Mineola	2	<ul style="list-style-type: none"> • Cage complete 9/19/97. Collocator has delayed accepting 300 square foot cage. 	13 months Warehoused space
	9	<ul style="list-style-type: none"> • Cage complete 8/97. Collocator has delayed accepting 300 square foot cage. 	14 months Warehoused space
Newtown	1	<ul style="list-style-type: none"> • Cage complete 4/29/98. Collocator has delayed acceptance. 	6 months
	2	<ul style="list-style-type: none"> • Cage complete 7/29/97. Collocator has delayed acceptance. 	16 months

STATE: NEW YORK - (CON'T)

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
Portchester	8	<ul style="list-style-type: none"> • Cage (400 sq. ft) complete 7/3/97. Collocator has installed two bays of equipment. 	15 months
	9	<ul style="list-style-type: none"> • Cage complete 5/97. Collocator has delayed accepting 300 square foot cage. 	16 months Warehoused space
Poughkeepsie	2	<ul style="list-style-type: none"> • Cage complete 2/20/98. Collocator has delayed accepting the cage. 	8 months
Suffern	8	<ul style="list-style-type: none"> • Cage complete 6/27/97. No equipment in 400 square foot cage. 	15 months Warehoused space
Syracuse	3	<ul style="list-style-type: none"> • Cage complete 4/10/94. Collocator did not accept cage until 12/31/96 	32 months
	4	<ul style="list-style-type: none"> • Cage complete 5/8/97. Collocator did not accept cage until 2/2/98 	9 months
	2	<ul style="list-style-type: none"> • Cage complete 3/13/98. Collocator has yet to accept the cage. 	7 months
	5	<ul style="list-style-type: none"> • Cage complete 7/1/98. Collocator has yet to accept the cage. 	3 months
Tarrytown	6	<ul style="list-style-type: none"> • Cage complete 4/22/98. Collocator has yet to accept the cage. 	6 months
Tuckahoe	9	<ul style="list-style-type: none"> • Cage) complete 3/15/97. No equipment in 300 square foot cage. 	19 months
Utica	5	<ul style="list-style-type: none"> • Cage complete 7/1/98. CLEC has not picked up yet. 	3 months
W 18 th Street	7	<ul style="list-style-type: none"> • Virtual collocation equipment installation complete 5/11/98. Collocator has delayed accepting equipment. 	5 months
	9	<ul style="list-style-type: none"> • Cage 4/15/97. No equipment in 300 square foot cage. 	18 months
W 42 nd Street	7	<ul style="list-style-type: none"> • Cage complete 4/22/98. Collocator installed one equipment bay. 	Warehoused spaces
	8	<ul style="list-style-type: none"> • Cage complete 3/19/97. Collocator has installed two bays, one with equipment and the other power. 	19 months
	9	<ul style="list-style-type: none"> • Cage complete 4/15/97. No equipment in 300 square foot cage. 	18 months Warehoused space

STATE: NEW YORK - (CON'T)

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
W 50 th Street	7	<ul style="list-style-type: none"> • Cage complete 4/22/98. No equipment in 400 square foot cage. 	6 months Warehoused space
	8	<ul style="list-style-type: none"> • Cage (400 sq. ft) complete 3/22/97. CLEC has installed one bay of equipment. 	Warehoused space
	1	<ul style="list-style-type: none"> • Cage (150 sq. ft) complete 4/6/98. Collocator has delayed acceptance. 	6 months
	11	<ul style="list-style-type: none"> • Cage complete 7/31/98. . Collocator has delayed acceptance.. 	3 months
W36 th Street	8	<ul style="list-style-type: none"> • Cage (200 sq. ft) complete 5/14/97. Collocator has installed two bays in a 200 square foot cage. 	17 months Warehoused space
	2	<ul style="list-style-type: none"> • Cage complete 1/28/98. No equipment in cage 	9 months
	10	<ul style="list-style-type: none"> • Cage (120 sq. ft) complete 7/24/98. No equipment installed in cage 	3 months
	9	<ul style="list-style-type: none"> • Cage complete 4/15/97. No equipment in 300 square foot cage. 	18 months Warehoused space
West Street	1	<ul style="list-style-type: none"> • Cage complete 5/6/98. . Collocator has delayed acceptance. 	5 months
	12	<ul style="list-style-type: none"> • Cage (100 sq. ft) completed 5/13/98. CLEC has installed one bay of equipment and five empty racks. 	5 months
White Plains	1	<ul style="list-style-type: none"> • Cage complete 4/21/98. . Collocator has delayed acceptance. 	6 months
	2	<ul style="list-style-type: none"> • Cage complete (300 Sq. Ft) 1/29/98. . Collocator has delayed acceptance. 	9 months Warehoused space
Williamsburg	9	<ul style="list-style-type: none"> • Cage complete 3/15/97. No equipment in 300 square foot cage. 	18 months Warehoused space

STATE: PENNSYLVANIA

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
Allentown	4	<ul style="list-style-type: none"> Virtual collocation site requested by collocator on 3/24/97 not activated until 4/19/98 due to collocator delays in equipment and fiber delivery. 	13 months
Altoona	4	<ul style="list-style-type: none"> Virtual collocation site on hold due to collocator delay in revising application. 	8 months
Ambler	8	<ul style="list-style-type: none"> Physical collocation site completed on 1/9/98. To date, no equipment installed in 400 square foot cage. 	9 months; Warehoused Space
Berwick	18	<ul style="list-style-type: none"> All up front engineering completed on a virtual collocation site from an application received 11/4/96. Site officially canceled 4/8/98. 	Stranded Capacity
Bloomsburg	18	<ul style="list-style-type: none"> All up front engineering completed on a virtual collocation site from an application received 11/4/96. Site officially canceled 4/8/98. 	Stranded Capacity
Carbondale	18	<ul style="list-style-type: none"> All up front engineering completed on a virtual collocation site from an application received 11/4/96. Site officially canceled 4/8/98. 	Stranded Capacity
Churchville	8	<ul style="list-style-type: none"> Physical collocation site completed on 1/9/98. To date, no equipment installed in 400 square foot cage. 	9 months; Warehoused Space
Crafton	8	<ul style="list-style-type: none"> Collocator occupancy accepted 1/28/98. To date, collocator has failed to activate service at this site. 	10 months
Danville	18	<ul style="list-style-type: none"> All up front engineering completed on a virtual collocation site from an application received 11/4/96. Site officially canceled 4/8/98. 	Stranded Capacity
Downtown	8	<ul style="list-style-type: none"> Physical collocation site completed 2/14/97, but collocator failed to occupy space until 12/13/97. To date, collocator has failed to activate service at this 400 square foot cage. 	20 months; Warehoused Space
	13	<ul style="list-style-type: none"> Physical collocation site completed 12/13/96. To date, collocator has failed to activate service. 	22 months
	11	<ul style="list-style-type: none"> Physical collocation site completed 4/16/97. To date, collocator has failed to activate service. 	18 months
East Petersburg	18	<ul style="list-style-type: none"> Virtual collocation requested 5/30/97. Collocator delayed equipment delivery until 11/6/97 and fiber delivery until 1/98. 	7 months
Enola	18	<ul style="list-style-type: none"> Virtual collocation requested 5/30/97. Collocator delayed equipment delivery until 11/6/97 and fiber delivery until 4/98. Ready for service 5/4/98. 	11 months
Fishing Creek	18	<ul style="list-style-type: none"> All up front engineering completed on a virtual collocation site from an application received 11/4/96. Site officially canceled 4/8/98. 	Stranded capacity

STATE: PENNSYLVANIA - (CON'T)

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
Greensburg	8	<ul style="list-style-type: none"> Site survey complete on 7/17/97, but collocator placed site on hold. Collocator submitted physical collocation application on 7/3/97. Bell Atlantic is waiting for 50% deposit. 	15 months
Hatboro	8	<ul style="list-style-type: none"> Physical collocation site completed on 1/9/98. To date, no equipment installed 400 square foot cage. 	9 months; Warehoused Space
Hazleton	18	<ul style="list-style-type: none"> Virtual collocation site completed 12/2/97, but collocator did not activate site until 3/98. 	3 months
Hummelstown	18	<ul style="list-style-type: none"> All up front engineering completed on a virtual collocation site from an application received 11/4/96. Site officially canceled 4/8/98. 	Stranded Capacity
Lancaster	18	<ul style="list-style-type: none"> Virtual Collocation application submitted 11/4/96. Collocator canceled application and submitted physical collocation application on 7/2/97 	Stranded Capacity
Lebanon	18	<ul style="list-style-type: none"> All up front engineering completed on a virtual collocation site from an application received 11/4/96. Site officially canceled 4/8/98. 	Stranded Capacity
Locust	8	<ul style="list-style-type: none"> A 400 square foot physical collocation site completed on 4/10/97. Collocator took possession on 4/10/97 but, to date, only two bays installed plus two small frame mounted network elements. 	Warehousing
Market	8	<ul style="list-style-type: none"> A 400 square foot physical collocation site completed on 4/10/97. Collocator took possession on 4/10/97 but, to date, only two bays installed plus two small frame mounted network elements. 	Warehousing
Mechanicsburg	18	<ul style="list-style-type: none"> All up front engineering completed on a virtual collocation site from an application received 11/4/96. Site officially canceled 4/8/98. 	Stranded Capacity
	18	<ul style="list-style-type: none"> Bell Atlantic completed virtual collocation site 8/13/98, but still waiting for collocator to deliver fiber facilities. 	2 months
	4	<ul style="list-style-type: none"> Virtual collocation site completion date still pending for application received 4/23/98 due to collocator delays in delivering equipment and fiber. 	4 months
Middletown	18	<ul style="list-style-type: none"> All up front engineering completed on a virtual collocation site from an application received 11/4/96. Site officially canceled 4/8/98. 	Stranded Capacity
Moosic	18	<ul style="list-style-type: none"> All up front engineering completed on a virtual collocation site from an application received 11/4/96. Site officially canceled 4/8/98. 	Stranded Capacity
Mountaintop	18	<ul style="list-style-type: none"> All up front engineering completed on a virtual collocation site from an application received 11/4/96. Site officially canceled 4/8/98. 	Stranded Capacity

STATE: PENNSYLVANIA - (CON'T)

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
Mount Pleasant	19	<ul style="list-style-type: none"> Virtual collocation site placed on hold by customer for 9/16/96 request. 	23 months
Nanticoke	18	<ul style="list-style-type: none"> All up front engineering completed on a virtual collocation site from an application received 11/4/96. Site officially canceled 4/8/98. 	Stranded Capacity
Oakland	8	<ul style="list-style-type: none"> Collocation cage complete 10/27/97. Collocator equipment delivered 8/26/98. To date, collocator has failed to activate service at this 400 square foot cage. 	11 months; Warehoused Space
Paoli	20	<ul style="list-style-type: none"> Physical collocation site completed on 7/31/98. In October, equipment installation started by collocator. 	2 months
Perryville	8	<ul style="list-style-type: none"> Physical collocation cage complete 11/3/97. To date, collocator has failed to activate service at this 400 square foot cage. 	11 months; Warehoused Space
Pittston	18	<ul style="list-style-type: none"> Virtual collocation site from 6/22/98 application put on hold by collocator. 	4 months
Reading	18	<ul style="list-style-type: none"> Virtual collocation site completed on 11/25/97, but collocator did not activate until 3/24/98. 	4 months
Scranton	4	<ul style="list-style-type: none"> Application for virtual collocation site received on 1/15/98, but not completed until 4/15/98 due to collocator delays. Completion delayed until 10/1/98 by collocator. 	10 months
Shillington	18	<ul style="list-style-type: none"> Virtual collocation site completed on 11/25/97, but collocator did not activate until 6/98. 	6 months
Sinking Spring	18	<ul style="list-style-type: none"> Virtual collocation site completed on 11/25/97, but collocator did not activate until 6/98. 	6 months
State College	4	<ul style="list-style-type: none"> Virtual collocation site requested 2/25/98 on hold until 10/98. 	8 months
Steelton	18	<ul style="list-style-type: none"> All up front engineering completed on a virtual collocation site from an application received 11/4/96. Site officially canceled 4/8/98. 	Stranded Capacity
Stroudsburg	18	<ul style="list-style-type: none"> Virtual collocation site applied for 3/31/98. Equipment delivery put on hold by collocator. 	5+ months
Wayne	8	<ul style="list-style-type: none"> Physical collocation site completed on 1/9/98. To date, no equipment installed at 400 square foot cage. 	9 months; Warehoused Space

STATE: PENNSYLVANIA - (CON'T)

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
West Chester	8	<ul style="list-style-type: none"> Physical collocation site completed on 1/9/98. To date, no equipment installed at 400 square foot cage. 	9 months; Warehoused Space
	20	<ul style="list-style-type: none"> Physical collocation site completed on 7/31/98. To date, no equipment installed at site. 	2+ months
Wyoming	18	<ul style="list-style-type: none"> Virtual collocation site applied for 3/31/98. Equipment delivery put on hold by collocator. 	5+ months

STATE: RHODE ISLAND

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
Ashton	6	<ul style="list-style-type: none"> Collocation cage completed on 4/2/98. Collocator has not installed any equipment to date. 	6 months
Centredale	6	<ul style="list-style-type: none"> Collocation cage completed on 4/2/98. Collocator has not installed any equipment to date. 	6 months
Woonsocket	6	<ul style="list-style-type: none"> Collocation cage completed on 5/13/98. Collocator has not installed any equipment to date. 	5 months

STATE: VIRGINIA

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
Grace Street	13	<ul style="list-style-type: none"> Collocator notified that cage is ready for occupancy on 6/1/97. Collocator began equipment installations late in 2nd quarter of 1998 and first ordered service 10/98. 	16 Months
Hermitage	13	<ul style="list-style-type: none"> Collocator notified that cage is ready for occupancy on 6/1/97. Collocator began equipment installations late in 2nd quarter of 1998 and first ordered service 10/98. 	16 Months
	4	<ul style="list-style-type: none"> Virtual collocation site engineered per 10/30/95 Collocator request. BA still waiting for Collocator to schedule delivery of equipment and fiber. 	34+ Months
Hull Street	13	<ul style="list-style-type: none"> Collocator notified that cage is ready for occupancy on 6/1/97. Collocator began equipment installations late in 2nd quarter of 1998 and first ordered service 10/98. 	16 Months
Pemberton	13	<ul style="list-style-type: none"> Collocator notified that cage is ready for occupancy on 6/1/97. Collocator began equipment installations late in 2nd quarter of 1998 and first ordered service 10/98. 	16 Months

STATE: VIRGINIA - (CON'T)

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
Randall Avenue	4	<ul style="list-style-type: none"> Virtual collocation site engineered per 8/31/95 Collocator request. BA still waiting for Collocator to schedule delivery of equipment and fiber. 	36+ Months
Stuart	13	<ul style="list-style-type: none"> Collocator notified that cage is ready for occupancy on 6/1/97. Collocator began equipment installations late in 2nd quarter of 1998 and first ordered service 10/98. 	16 Months

STATE: WASHINGTON DC

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
Downtown	7	<ul style="list-style-type: none"> Collocator notified that 400 square foot cage is completed on 5/12/98. No service has been ordered to the cage 	5 months Space Warehoused
	11	<ul style="list-style-type: none"> Collocator notified that 400 square foot cage is completed on 2/28/97. Fill in blanks 	
Dupont	16	<ul style="list-style-type: none"> Cage complete 8/6/98. Collocator has not installed equipment in this 300 square foot cage. 	2 months
Southwest	11	<ul style="list-style-type: none"> Collocator notified that cage is ready for occupancy on 4/23/98. Collocator completed equipment installation, but no service ordered. 	5 Months
	7	<ul style="list-style-type: none"> Collocator notified that 400 square foot cage is completed on 5/10/98. No service has been ordered to the cage 	5 months Space Warehoused
Metro	13	<ul style="list-style-type: none"> Cage complete 10/4/97. No service established by collocator until 10/6/98. 	12 months
Midtown	7	<ul style="list-style-type: none"> Collocator notified that 400 square foot cage is completed on 5/11/98. No service has been ordered to the cage. 	5 months Space Warehoused
	8	<ul style="list-style-type: none"> Collocator notified that 400 square foot cage is completed on 4/11/97. The Collocator currently has 7 bays of equipment installed. 	Space Warehoused

STATE: WEST VIRGINIA

<u>Central Office</u>	<u>Collocator</u>	<u>Collocator Delaying Events After Bell Atlantic Completion</u>	<u>Collocator Delay</u>
Charleston	21	<ul style="list-style-type: none"> Collocation cage complete 3/27/98. Collocator has not installed any equipment in the cage. 	6 months

ATTACHMENT E

Excerpts From Testimony Filed October 13, 1998, Before the New York Public Service
Commission Relating to Collocation Issues

43. BA-NY has acknowledged that several of the cages it turned over to COVAD in July 1998 had quality problems. (See Fogarty ¶¶ 25-28). Immediately after these problems were identified, BA-NY established a quality audit process to prevent these problems from occurring again. BA-NY now inspects each of the collocation arrangements one to 2 weeks prior to the date the cage is turned over to the CLEC.

44. BA-NY is continually evaluating ways to improve the collocation process. These less significant changes include such things soliciting additional vendors and discussing with existing vendors the need to augment their workforces. BA-NY has also explored the possibility of using the same vendor to perform multiple work functions for a single collocation project to avoid scheduling problems if one vendor delays. The vendors would still compete with other vendors on a job-by-job basis.

45. COVAD complains that BA-North and BA-South do not have uniform processes, rate structures, and collocation prices. COVAD's complaints are irrelevant to BA-NY's ability provision collocation in New York. Bell Atlantic has in fact consolidated its operations where appropriate. There will, of course, always be differences in collocation processes and rates in light of the different regulations imposed by the 14 State Commissions and the FCC. Bell Atlantic personnel across the region are always available to explain the different requirements to the collocators.

Intervals

46. Several CLECs argue that BA-NY has missed the required intervals for provisioning physical collocation arrangements. In large measure, however, the CLECs' complaints stem from their misunderstanding of the established rules governing the

intervals applicable to the variety of collocation applications BA-NY has completed or that are pending. BA-NY has met its obligations under the interval rules set out in BA-NY's P.S.C. No. 914 tariff and the Pre-filing Statement.

47. With respect to collocation intervals, BA-NY's physical collocation tariff and the Pre-filing Statement are unambiguous. The 76-day interval applicable to unforecasted applications may be delayed up to 3 months after the application is received. If BA-NY receives a forecast 1 month prior to the application date, the 76-day interval commences 2 months after the application date. If the forecast is received 2 months prior to the application date, the 76-day interval commences 1 month after the application date. The 76-day interval commences on the application date with respect to forecasts received three months or more before the application date. (P.S.C. No. 914, Sections 5.1.4, 5.5.1; Pre-filing Statement at 16-19).

48. In addition, if BA-NY is required to condition raw space to meet a collocation request, the due date will be determined on an individual case basis. (P.S.C. No. 914, Section 5.15; Pre-filing Statement at 23). Finally, the Tariff and the Pre-filing Statement provides that BA-NY will negotiate with the CLECs regarding due dates when spikes in demand exceed BA-NY's then-forecasted capacity of 15 to 20 collocation applications per month. (P.S.C. No. 914, Section 5.5.2; Pre-filing Statement at 18).

49. Exhibit E describes in detail each collocation request pending as of October 13, 1998, including the forecast date, application date, and scheduled due date. This spreadsheet shows the maximum interval established by the Tariff and the Pre-filing Statement, which is based on when the application was forecasted, and calculates the number of days by which BA-NY was under or over the interval. (It is important to note

that this spreadsheet also calculates intervals for collocation requests requiring significant room construction, even though these requests are not subject to these intervals.)

50. As shown on Exhibit E, BA-NY will meet the timeframes established under the Tariff and the Pre-filing Statement for nearly all of the pending physical collocation requests that do not require significant room construction. Indeed, the Exhibit illustrates that BA-NY will provision the majority of these arrangements well in advance of these timeframes, demonstrating that BA-NY is not sitting idly by waiting to provision collocation strictly in the established intervals.

51. A large number of collocation requests require significant room preparation, and therefore are subject to negotiated due dates under the terms of the Tariff and Pre-filing Statement. No CLEC, has, informed BA-NY that the negotiated due dates were unacceptable, except AT&T, which complained directly to the Commission.

52. AT&T questions BA-NY's assessment that certain central offices require significant room construction to meet collocation requests. (Swift ¶¶ 14-15). AT&T's criticisms are unfounded. Exhibit F explains the room preparation required to meet the outstanding physical collocation requests.¹ Moreover, in many cases, BA-NY will be well within the non-room construction timeframes established by Tariff and the Pre-filing Statement.

¹ BA-NY discovered several errors on the spreadsheet provided to AT&T on September 18, 1998 with respect to room construction. The level of room construction required for some central offices was overstated. Several of the central offices provided on this spreadsheet do not require a significant amount of room construction, as laid out in Exhibit E.

53. AT&T in particular criticizes BA-NY provisioning intervals. AT&T currently has 37 physical collocation applications pending. AT&T provided BA-NY with forecasts on May 5, 1998.² On June 19, 1998, BA-NY and AT&T met to discuss AT&T's forecasts and to discuss staggering applications. Under the Tariff and Pre-filing Statement, the 76-day interval did not commence on the application date for any of these arrangements because BA-NY had not received forecasts three months prior to the application date.

54. AT&T's claim that during a conference call with Staff and AT&T in mid-September 1998, BA-NY assured AT&T that all of its collocation arrangements would be provisioned within 76-days (with standard power) is false. (AT&T September 25 Letter, at 2). That meeting was hastily called and BA-NY had less than one day to review the scattered collocation information AT&T had previously submitted to Staff. During the meeting, BA-NY emphasized that it needed to obtain additional information in order to respond fully to AT&T's arguments. Moreover, BA-NY specifically raised the issue of tying intervals to forecasts. Less than one week later, on September 18, 1998, BA-NY provided AT&T more detailed information regarding the status of AT&T's collocation requests. AT&T's attempt to attack the integrity of BA-NY representatives must not be tolerated.

55. AT&T's claim that it was not informed that many of its collocation requests would require significant room construction is likewise false. (AT&T September 25 Letter, at 2). First, BA-NY notified AT&T of space limitations at the June

² AT&T submitted several applications in June and July 1998 that it had forecasted for September 1998 or later.

19, 1998, meeting. Second, although BA-NY did not “formally” notify AT&T of the need to convert raw space to meet the collocation requests within 8-days after the application date (Swift ¶ 4), AT&T representatives were constantly apprised by telephone and in meetings of the details associated with its collocation requests.

56. Moreover, AT&T is incorrect that BA-NY must provide a due date and an estimate of costs for raw space conversion within 8 days. The Tariff and Pre-filing Statement provide that, with respect to converting raw space, BA-NY is required to “inform the CLECs of the time estimates as soon as possible.” (P.S.C. No. 914, Section 5.1.5; Pre-filing Statement at 23).

57. Although, BA-NY has met the terms of the Tariff and the Pre-filing Statement with respect to requests for central offices that require significant room construction, BA-NY recognizes that it must do better with respect to notifying CLECs as soon as possible regarding space limitations and delays resulting from room construction. BA-NY has taken steps to improve its performance in this area as discussed above.

58. AT&T questions BA-NY’s claim that AT&T’s power requirements will significantly delay implementation of AT&T collocation requests. First, AT&T has requested up to 600 amps of power in its cages, far in excess of the power requirements of other carriers. The standard power requirement in the 60-100 amp range. Indeed, BA-NY estimates that only 10% of the non-AT&T collocation requests require augments to BA-NY’s power equipment, compared to nearly all of AT&T’s outstanding collocation requests. AT&T’s power requirements obviously constitute extraordinary requests.

59. Second, BA-NY clearly notified AT&T that its power requirements would delay implementation of AT&T’s requests. At the June 19, 1998 meeting, BA-NY

reviewed space constraints and power issues with AT&T. Subsequent to this meeting, AT&T substantially revised its power and termination requirements.³ BA-NY Engineering immediately advised AT&T that, in many locations, BA-NY could not provision the extraordinary power requirements within 76 days. AT&T's space and power planners openly acknowledged the major work effort involved in meeting AT&T's power needs, but requested that BA-NY continue to pursue ways to provide the required power at turn up. BA-NY agreed to assess the requirements and find an agreeable solution in order to move forward with each of the projects.

60. On July 28, 1998, BA-NY Engineering submitted to AT&T a spreadsheet to confirm the power requirements for the collocation arrangements. BA-NY offered to provision standard power within a shorter interval, and to provide the remaining power at a later time. AT&T confined their power requests on August 7, 1998.

61. It is also important to emphasize that BA-NY met with AT&T on several occasions to negotiate the physical collocation intervals. The due dates in the spreadsheet attached to AT&T's September 25 letter utterly fail to acknowledge the due dates negotiated between the parties. Instead, these dates simply reflect the application date plus 76 days -- an inapplicable interval in any event. AT&T's operations personnel who deal with BA-NY are unfairly leading BA-NY to believe that the parties are working out the issues to AT&T's satisfaction. This type of give and take is precisely what the Pre-

³ In fact, it appeared to BA-NY in subsequent telephone conversations that AT&T's own power and space planners were not aware that the requirements for several projects had changed completely.

filing Statement contemplates. The regulatory sand-bagging AT&T engages in will only make future cooperation more difficult.

62. COVAD similarly complains that BA-NY failed to turn over physical collocation arrangements in a timely manner. To the contrary, BA-NY has met COVAD's collocation intervals well within the established timeframes. COVAD submitted unforecasted applications on May 1, 1998. Under the Tariff and the terms of the Pre-filing Statement, the maximum due date for these was 139 business days after May 1. However, on July 26, 1998 (45 business days after the applications were received), BA-NY notified COVAD that the cages were ready for turn-up.

63. Since May 1998, COVAD has submitted a significant number of unforecasted applications. BA-NY has projected that these arrangements will be turned up within the 139 day interval for arrangements in existing collocation space, and likely will be available much sooner. Several of COVAD's collocation requests, however, require raw space conversion. In addition, a couple of these requests are on hold pending BA-NY's removal of switching equipment, which BA-NY has expedited to meet the CLECs' requests.

64. Interestingly, COVAD witness Fogarty complains on the one hand that BA-NY fails to timely provision collocation, and on the other hand, complains that BA-NY turned up 26 collocation cages on one day. (*See* Fogarty Att. B, at 2). COVAD cannot have it both ways. In addition, Mr. George Holland, COVAD's Vice President and General Manager in New York recently informed Ms. Maguire that he was pleased with BA-NY's ability to quickly provision these collocation arrangements, and that BA-NY had exceeded his expectations. Aside from casting doubt on the sincerity of

COVAD's statements in this proceeding, these comments, like our contacts with AT&T's operations personnel discussed above, unfairly lead BA-NY to believe it is working effectively with the CLECs' operations personnel as provided in the Pre-filing Statement.

65. As Mr. Fogarty notes, some of COVAD's collocation cages had quality problems. Significantly, many were trivial and none of these problems affected COVAD's ability to take possession of the cage, install its transmission equipment and turn-up service. BA-NY has already remedied many of these problems and anticipates that the remaining problems will be remedied by within the next few weeks.⁴ In addition, as discussed above, BA-NY has taken significant steps to ensure that such quality problems are eliminated in the future, and has informed the cage vendors that they must improve the quality of their work or risk losing BA-NY's business.

66. COVAD further complains that BA-NY delivered the cages without the requested number of terminations. COVAD agreed, however, to accept standard collocation arrangements, and therefore the cage size, cabling and terminations were predetermined. COVAD was fully aware of these standard cabling arrangements when they placed these orders. It is therefore disingenuous for COVAD to criticize several of the collocation arrangements for not meeting COVAD's specific power, cabling and termination specifications. (*See* Fogarty Att. B, at 2). COVAD witness Fogarty was part of the BA-NY team that designed the standard arrangements and thus cannot complain

⁴ Contrary to COVAD's claims, BA-NY is not responsible for placing a sign on the CLEC's cage or stenciling outlets. BA-NY has discussed these requirements with COVAD, and it is surprising that Mr. Fogarty has listed these items in his Affidavit.

that he was misinformed. COVAD has since filed augment applications to meet its additional requirements for cabling and terminations.

67. BA-NY has plainly met its obligations under the Pre-filing Statement with respect to virtual collocation. AT&T complains that BA-NY exceeded the 105-day interval for virtual collocation in a number of instances. (Swift ¶ 17). BA-NY in fact has met all of the virtual collocation intervals. The Pre-filing Statement provides that the interval clock will stop, and the final due date adjusted accordingly, for each milestone missed by the CLEC. (Pre-filing Statement at 24). In a few instances, the virtual arrangement was not turned up on day 105 because the CLEC has not provided the required information. On September 21, 1998, BA-NY submitted to the Commission a list of the virtual collocation arrangements provisioned from January to September 1998, including an explanation of any CLEC delay. Interestingly, AT&T has numerous pending virtual collocation projects with BA-NY, and has not met its milestones on any.

68. MCI asserts that BA-NY has not demonstrated that virtual collocation works at the DS0 level. (MCI ¶ 18). MCI provides no substantiation for this claim whatsoever. Although CLECs have requested only a few virtual collocation arrangements at a DS0 level in New York, Bell Atlantic has considerable success provisioning this type of collocation in BA-South. There are currently over 50 virtual collocation arrangements providing DS0 level service throughout the Bell Atlantic region. MCI further claims that with virtual collocation, additional and often unnecessary equipment is placed between the UNE and the CLEC. This is not true. BA-NY installs transmission equipment for CLEC's use in exactly the same way it installs transmission equipment for its own use.

69. BA-NY has demonstrated that it has met the collocation conditions of the Pre-filing Statement. BA-NY implemented 83 physical collocation arrangements and 15 virtual collocation arrangements between January and August 1998, and is scheduled to implement 127 physical and approximately 10 virtual additional collocation arrangements by the end of the year.⁵ And, a total of 343 physical and 18 virtual collocation arrangements will be in place in New York by year's end.

70. Remarkably, AT&T claims that the numbers provisioned through August 1998 demonstrate BA-NY's inability to handle the increase in collocation demand. (Swift ¶ 15). AT&T's argument is illogical. BA-NY provisioned this number of arrangements because they were the arrangements due within this time frame. Contrary to AT&T's claims, the actual numbers of collocation arrangements implemented by BA-NY from January to August 1998 have little bearing on the number of arrangements BA-NY *could* have implemented during that time frame. For the same reason, AT&T's speculation that BA-NY will not be able to complete the current collocation applications until the year 2000 is absurd. (Swift ¶ 15).

⁵ The number of virtual arrangements will depend on whether the CLEC meets its milestones.

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of October, 1998, a copy of the foregoing "Bell Atlantic Reply Comments" was sent by first class mail, postage prepaid, to the parties on the attached list.

A handwritten signature in black ink, appearing to read "Jennifer L. Hoh". The signature is written in a cursive style with a horizontal line underneath it.

Jennifer L. Hoh

* Via hand delivery.

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