APPENDIX A

Section

General Terms & Conditions

1. This Agreement, which consists of these General Terms and Conditions and Attachments 1-15 and their accompanying Appendices, sets forth the terms, conditions and prices under which GTE agrees to provide (a) telecommunications services for resale (hereinafter referred to as "Local Services") and (b) certain unbundled Network Elements, Ancillary Functions and additional features to AT&T, for purposes of offering telecommunications services of any kind, including, but not limited to, local exchange services, intrastate toll services, and intrastate and interstate exchange access services and (c) access to GTE's poles, conduits and rights of way. This Agreement also sets forth the terms and conditions for the interconnection of AT&T's local network to GTE's local network ("Interconnection Services") and the reciprocal compensation to be paid by each Party to the other for the transport and termination of Local Traffic of the other Party. The Network Elements or Local Services provided pursuant to this Agreement may be connected to other Network Elements or Local Services provided by GTE or to any Network Elements, combinations of Network Elements ("Combinations") or Local Services provided by AT&T itself or by any other vendor. Subject to the requirements of this Agreement, AT&T may, at any time add or delete the Local Services, or Network Elements purchased hereunder."

3.1 Subject to any applicable restrictions and requirements contained elsewhere in this Agreement, AT&T may elect at any time to terminate this entire Agreement at AT&T's sole discretion, upon ninety (90) days prior written notice to GTE. Unless otherwise provided in this Agreement, in such case, AT&T's liability shall be limited to payment of the amounts due for Local Services, Network Elements, and Interconnection Services provided up to and including the date of termination. The Parties recognize that provision of uninterrupted service to customers is vital and services must be continued without interruption. Upon the termination or expiration of this Agreement, AT&T may itself provide or retain another vendor to provide comparable Local Services or Network Elements. GTE agrees to cooperate in an orderly and efficient transition to AT&T or another vendor such that the level and quality of the Local Services and Network Elements are not degraded and to exercise reasonable efforts to assist in an

orderly and efficient transition.

3.2 AT&T may terminate any Local Service(s) or Network Element(s) provided under this Agreement upon thirty (30) days written notice to GTE, unless a different notice period or different conditions are specified for termination of such Local Service(s) or Network Element(s) in this Agreement, in which event such specific period and conditions shall apply.

3.3 GTE will not discontinue any unbundled Network Element or Ancillary Function during the term of this Agreement without AT&T's written consent which consent shall not be unreasonably withheld, except (1) to the extent required by network changes or upgrades, in which event GTE will comply with the network disclosure requirements stated in the Act and the FCC's implementing regulations; or (2) if required by a final order of the Court, the FCC or the Commission as a result of remand or appeal of the FCC's order In the Matter of Implementation of Local Competition Provisions of the Telecommunications Act of 1996, Docket 96-98. In the event such a final order allows but does not require discontinuance, GTE shall make a proposal for AT&T's approval, and if the Parties are unable to agree, either Party may submit the matter to the Dispute resolution procedures described in Attachment 1. GTE will not discontinue any Local Service or Combination of Local Services without providing 45 days advance written notice to AT&T, provided however, that if such services are discontinued with less than 45 days notice to the regulatory authority, GTE will notify AT&T at the same time it determines to discontinue the service. If GTE grandfathers a Local Service or combination of Local Services, GTE shall grandfather the service for all AT&T resale customers who subscribe to the service as of the date of discontinuance.

10.4 Obligation to Indemnify

Each Party shall, and hereby agrees to, defend at the other's request, indemnify and hold harmless the other Party and each of its officers, directors, employees and agents (each, an "Indemnitee") against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement or any nature or kind, known or unknown, liquidated or unliquidated, including without limitation all reasonable costs and expenses incurred (legal, accounting or otherwise) (collectively, "Damages") arising out of, resulting from or based upon any pending or threatened claim, action, proceeding or suit by any third party (a "Claim"): (I) based upon injuries or damage to any person or property or the environment arising out of or in connection with this Agreement, that are the

result of such Indemnifying Party's actions, breach of Applicable Law, or breach of representations, warranties or covenants made in this Agreement, or the actions, breach of Applicable Law or of this Agreement by its officers, directors, employees, agents and subcontractors, or (ii) for actual or alleged infringement of any patent, copyright, trademark, service mark, trade name, trade dress, trade secret or any other intellectual property right now known or later developed (referred to as "Intellectual Property Rights") to the extent that such claim or action arises from the Indemnifying Party's or the Indemnifying Party's Customer's use of the Network Elements, Ancillary Functions, Local Services or other services provided under this Agreement.

17.1 For the purposes of this Agreement, "Confidential Information" means confidential or proprietary technical or business information, in written or tangible form, given by the Discloser to the Recipient that is stamped, labeled, or otherwise designated as "Proprietary" or "Confidential" or that contains other words or symbols clearly indicating that the information is intended to be secure from public disclosure. "Confidential Information" also includes information that is intentionally provided or disclosed orally or visually if it is identified as proprietary or confidential when provided or disclosed and is summarized in a writing so marked and delivered within ten (10) days following such disclosure. "Confidential Information" also includes information that is observed or learned by one Party while it is on the premises (including leased collocation space) of the other Party. Notwithstanding the foregoing, all orders for Local Services or Network Elements placed by AT&T pursuant to this Agreement, and information that would constitute Customer Proprietary Network Information of AT&T Customers pursuant to the Act and the rules and regulations of the FCC and Recorded Usage Data as described in Attachment 7, whether disclosed by AT&T to GTE or otherwise acquired by GTE in the course of the performance of this Agreement, shall be deemed Confidential Information of AT&T for all purposes under this Agreement whether or not specifically marked or designated as confidential or proprietary.

18. **Branding**

AT&T may, at its option, use the Network Elements and Local Services provided in accordance with this Agreement to provide to its customers services branded as AT&T. Except as otherwise provided in this Agreement or specified in a separate writing by AT&T, AT&T shall provide the exclusive interface to AT&T Customers in connection with the marketing or offering of AT&T services. When a GTE technical representative goes to a customer premise on behalf of AT&T,

in the event the representative has contact with the customer, the representative will indicate to the customer that he or she works for GTE but is at the customer premise on behalf of AT&T regarding AT&T service. If the customer is not at the premise at the time that the technical representative is at the premise, GTE agrees to deliver generic material or documents to the customer, and the representative will write AT&T's name on the document or material left for the customer. GTE personnel acting on behalf of AT&T will not discuss, provide, or leave information or material relative to GTE's services and products.

23.19.2 The Parties recognize the possibility that some equipment vendors may manufacture telecommunications equipment that does not fully incorporate or may deviate from the technical references contained in this Agreement. To the extent that, due to the manner in which individual manufacturers may have chosen to implement industry standards into the design of their product, or due to the differing vintages of these individual facility components and the presence of embedded technologies that pre-date certain technical references, some of the individual facility components deployed with GTE's network may not adhere to the technical references, then, within forty-five (45) days after the Effective Date of this Agreement:

(a) the Parties will develop processes by which GTE will inform AT&T of any such deviations from technical standards for Network Elements ordered by AT&T;

(b) the Parties will develop further processes and procedures designed, upon notice of such deviations from technical standards, to address the treatment of GTE and AT&T customers at parity; and

(c) the Parties will take such other mutually agreed upon actions as shall be appropriate in the circumstances.

26.2 CLASS/LASS and Custom Features Requirements

AT&T may purchase the entire set of CLASS/LASS and Custom features and functions, or a subset of any one of such features, on a customer-specific basis, without restriction on the minimum or maximum number of lines or features that may be purchased for any one level of service, provided such CLASS/LASS and Custom features are available to GTE Customers served by the same GTE

Central Office. GTE shall provide to AT&T a list of CLASS/LASS and Custom features and functions within ten (10) business days of the Effective Date and shall provide updates to such list when new features and functions become available. GTE shall provide to AT&T a list of all services, features, and products including a definition of the service (by specific reference to the appropriate tariff sections) and how such services interact with each other. GTE shall provide features and services by street address guide and by switch. All features shall be at least at parity with the GTE service offering.

Attachment 4:

Table of Contents: Item number 8 should read "[Intentionally Deleted]"

1.1 GTE shall complete on a timely basis AT&T's orders for Network Elements and for services that GTE is required to offer to AT&T pursuant to this Agreement in all its serving areas from and after the Effective Date of this Agreement.

2.1 AT&T may order Network Elements individually so long as provision of the Network Element is technically feasible and the Network Element is currently available.

2.2 [Intentionally Deleted]

2.3 [Intentionally Deleted]

2.5 GTE shall provide a Single Point of Contact (SPOC) for all ordering and provisioning activities involved in the purchase and provisioning of GTE's Network Elements. GTE shall also provide to AT&T a toll-free nationwide telephone number (operational from 8:00 a.m. to 5:00 p.m., Monday through Friday, within each respective time zone) which will be answered by capable staff trained to answer questions and resolve problems in connection with the provisioning of Network Elements and other orders made under this Agreement.

2.6 GTE will recognize AT&T as the customer of record of all Network Elements ordered by AT&T and will send all notices, invoices and pertinent information directly to AT&T.

3.3 GTE will provide AT&T with a Firm Order Confirmation (FOC) for each order, as specified in Attachment 12. The FOC will contain an enumeration of AT&T's ordered Network Elements (consisting of circuit number, telephone number

and/or component ID), PON, version, and GTE's commitment date for order completion (Committed Due Date).

3.8 At AT&T's request, GTE will cooperate with AT&T to test Network Elements purchased by AT&T in order to identify any performance problems identified at turn-up, including trouble shooting to isolate any problems. The costs for these items will be included in the underlying costs of the Network Element.

4.1 Upon AT&T's request through a Suspend/Restore Order, GTE shall suspend or restore the functionality of any Network Element. GTE shall suspend or restore each Network Element in a manner that conforms with AT&T's requested priorities and any applicable regulatory policy or procedures at appropriate service order charges to the extent not otherwise included in the underlying element cost.

4.4 Unless otherwise directed by AT&T, when AT&T orders a Network Element, all pre-assigned trunk or telephone numbers currently associated with that Network Element shall be retained without loss of feature capability and without loss of the associated Ancillary Functions including, but not limited to, Directory Assistance and 911/E911 capability.

4.5 When AT&T orders Network Elements that are currently interconnected and functional, such Network Elements will remain interconnected and functional without any disconnection or disruption of functionality.

6.1.3 All engineering design and layout information for each Network Element;

6.1.4 A listing of all technically and currently available functionalities for each Network Element; and

7.1 AT&T and GTE shall each use the appropriate Data Elements for the ordering and provisioning of Network Elements.

7.2 Each order for a Network Element will contain the following order-level sections, as then currently defined by the Ordering and Billing Forum (OBF), including, as appropriate, Administration, Bill, and Contact Information. This information is contained on both the ASR and LSR forms. In addition, each Network Element to be used for a specific AT&T End User customer shall contain the End User Information section.

7.3 AT&T and GTE will use the OBF formats defined below for the exchange of ordering and provisioning data for Network Elements. AT&T shall use the ASR forms and processes for ordering Network Elements that AT&T will use to serve more than one End User customer and the LSR form and processes for ordering Network Elements that AT&T will use to serve a single End User customer. AT&T and GTE shall use the forms and formats that have been approved by the OBF and, if mutually agreed, those that have reached the "initial closure" status at the OBF. If AT&T needs to order or have provisioned Network Elements for which OBF approved or "initial closure" forms and formats do not yet exist, AT&T and GTE shall, within 30 days of a request by either party to do so, jointly develop a proposal for such forms and formats. AT&T and GTE shall use the jointly proposed forms and formats for the exchange of ordering and provisioning data unless the OBF modifies such forms and formats upon "initial closure" or final approval. If the OBF modifies such forms and formats upon "initial closure" or final approval, AT&T and GTE shall, upon mutual agreement, use the forms and formats as modified by the OBF. If AT&T and GTE do not agree on the interim forms and formats described in this Section, either Party may submit any disputed issues to the Alternative Dispute Resolution process in accordance with this Agreement.

7.4 When ordering a Network Element, the interconnection characteristics and functionality of that Network Element will not be specifically ordered by AT&T and will automatically be provided by GTE.

8. [Intentionally Deleted]

8.1 [Intentionally Deleted]

8.2 [Intentionally Deleted]

8.3 [Intentionally Deleted]

8.4 [Intentionally Deleted]

9.1 AT&T will specify on each order its Desired Due Date (DDD) for completion of that particular order. GTE will not complete the order prior to the DDD or later than the DDD unless authorized by AT&T. If the time period from the date of the order to the DDD is less than the intervals for provisioning Network Elements and the Footprint Order as set forth in the following table, and is also less than the intervals for provisioning the same or like Network Elements and Footprint

Orders that GTE provides to itself or to any third party, the order will be considered an expedited order.

9.1 [Table describing intervals for order completion should not contain references to "combinations"].

Attachment 5:

1. GTE shall provide repair, maintenance, and testing for all Local Services and Unbundled Network Elements in accordance with the terms and conditions of this Attachment. In addition, GTE shall provide surveillance for all Local Services and Unbundled Network Elements to the same extent that GTE provides such surveillance for itself.

2. GTE shall cooperate with AT&T to meet maintenance standards for all Local Services and Unbundled Network Elements ordered under this Agreement, as specified in Section 9 of this Attachment. GTE shall otherwise meet Commission maintenance and repair standards, if any, with respect to Local Services and Unbundled Network Elements.

5. For all Local Services and Network Elements provided to AT&T under this Agreement, GTE shall provide the same maintenance, including, without limitation, maintenance intervals and procedures, that GTE provides for its own network. GTE shall provide AT&T notice within one business day of the scheduling of any maintenance activity which may impact AT&T's Customers. Scheduled maintenance shall include, without limitation, such activities as, switch software retrofits, power tests, major equipment replacements and cable rolls; provided, however, that such activity is not related to a network or technology change covered elsewhere in this Agreement. Plans for scheduled maintenance shall include, at a minimum, the following information: location and type of facilities, work to be performed, date and time work is scheduled to commence, and date and time work is scheduled to be completed.

7. Major network outages will be reported to AT&T via a telephone number designated by AT&T. GTE and AT&T shall work cooperatively on the establishment of emergency restoration procedures. GTE may invite other carriers to join in this effort. In establishing such procedures, consideration shall be given to: (I) provision for immediate notification to AT&T of the existence, location, and source of any emergency network outage potentially affecting customers; (ii) establishment of a single point of contact responsible for initiating

and coordinating the restoration of all Local Services and Network Elements; (iii) methods and procedures to provide access to information relating to the status of restoration efforts and problem resolution during the restoration process; (iv) an inventory and description of mobile restoration equipment, by location; (v) methods and procedures for the dispatch of mobile equipment to the restoration site; (vi) methods and procedures for reprovisioning of all Local Services and Network Elements after initial restoration; (vii) priority, as between AT&T Customers and GTE Customers, with respect to restoration efforts, consistent with FCC Service Restoration guidelines, including, without limitation, deployment of repair personnel, and access to spare parts and components; and (viii) a mutually agreeable process for escalation of maintenance problems, including a complete, up-to-date list of responsible contacts, each available twenty-four (24) hours per day, seven (7) days per week. Said plans shall be modified and up-dated as needed.

For purposes of this subsection, a major network outage is defined as 5,000 or more blocked call attempts in a ten (10) minute period in a single exchange. GTE shall provide timely notification to AT&T of any outage.

9.4.1 Where an outage has not reached the threshold defining an emergency network outage, the following quality standards shall apply with respect to restoration of Local Service or Network Elements:

Total outages requiring a premises visit by a GTE technician that are received by GTE between 8 a.m. to 6 p.m. on any day shall be restored within four (4) hours of referral, ninety percent (90%) of the time; within eight (8) hours of referral, ninety-five percent (95%) of the time; and within sixteen (16) hours of referral, ninety-nine percent (99%) of the time and Mean time to Restore (MTR) within eight (8) hours.

Total outages requiring a premises visit by a GTE technician that are received between 6 p.m. and 8 a.m. on any day shall be restored during the following 8 a.m. to 6 p.m. period in accordance with the following performance metrics: within four (4) hours of 8 a.m., ninety percent (90%) of the time; within eight (8) hours of 8 a.m., ninety-five percent (95%) of the time; and within sixteen (16) hours of 8 a.m., ninety-nine percent (99%) of the time and MTR within eight (8) hours.

Total outages which do not require a premises visit by a GTE technician shall be restored within two (2) hours of referral, eighty-five percent (85%) of the time; within three (3) hours of referral, ninety-five percent (95%) of the time; and within four (4) hours of referral, ninety-nine percent (99%) of the time and MTR within

two (2) hours.

9.4.2 Trouble calls (e.g., related to Local Service or Network Element degradation or feature problems) which have not resulted in total service outage shall be resolved within twenty-four (24) hours of referral, ninety-five percent (95%) of the time, irrespective of whether or not resolution requires a premises visit. For purposes of this Section, Local service or a Network Element is considered restored, or a trouble resolved, when the quality of the Local Service or Network Element is equal to that provided before the outage, or the trouble, occurred.

9.5 GTE shall provide progress reports and status of repair efforts to AT&T upon request. GTE shall inform AT&T within one (1) hour of restoration of Local Service or Network Element after a network outage has occurred. GTE shall clear all repair tickets in compliance with GTE policies and guidelines. GTE shall close all repair tickets, including "test OK" ("TOK")and "Came Clear" ("CC") repair tickets, with the AT&T work centers designated by AT&T on the repair ticket, unless a different notification procedure is mutually agreed to by the Parties. GTE shall make one attempt to notify AT&T of closed repair tickets using a mutually agreed to notification method. At AT&T's option, AT&T shall contact the Customer to verify that the repair has been effected. GTE shall provide AT&T with a list of any applicable charges, as specified in Attachment 14, at the time a repair ticket is closed.

Attachment 6:

1. **General**

This Attachment contains the provisions applicable to billing and payment of all charges AT&T incurs for purchasing wholesale Local Services for resale and Unbundled Network Elements, and the billing and payment procedures to be followed when AT&T is interconnected to GTE Network Facilities. The specific provisions for Local Service Billing are set forth in Appendix A; the specific provisions for Unbundled Network Element billing are set forth in Appendix B; and the specific provisions for Interconnection Billing are set forth in Appendix C.

2.1.1 The Parties agree that as further set forth in accordance with this Attachment 6 and in order to ensure the proper performance and integrity of the entire Billing process, GTE will be responsible and accountable for transmitting to AT&T accurate and current bills on a monthly basis. GTE agrees to implement control mechanisms and procedures to render a bill that accurately reflects the Elements

and Local Service ordered and used by AT&T. The Parties agree that under meet point billing both Parties are responsible and accountable for recording and transmitting to the other Party accurate and current billing data as specified in Attachment 6, Appendix C. In addition, the Parties agree to meet monthly or as deemed necessary by either Party to review and resolve potential billing discrepancies.

Attachment 6A:

2.1 GTE will bill and record in accordance with this Agreement those charges AT&T incurs as a result of AT&T purchasing from GTE wholesale Local Services, as set forth in this Agreement (hereinafter "Local Service Charges"). Each Local Service, purchased by AT&T shall be assigned a separate and unique billing code in the form agreed to by the Parties and such code shall be provided to AT&T on each Local Service Bill in which charges for such Elements or Local Services appear. Each such billing code shall enable AT&T to identify the Local Services ordered or utilized by AT&T in which Local Service Charges apply pursuant to this Agreement. Each Local Service Bill shall set forth the quantity and description of each such Local Service provided and billed to AT&T. All Local Service Charges billed to AT&T must indicate the state from which such charges were incurred.

Attachment 6B:

1. **General**

This Section contains the provisions applicable to the billing and recording of all charges AT&T incurs for purchasing Unbundled Network Elements and/or Unbundled Network Elements.

2.1 GTE will bill and record in accordance with this Agreement those charges AT&T incurs as a result of AT&T purchasing from GTE Unbundled Network Elements as set forth in this Agreement (hereinafter "Unbundled Network Element Charges"). Each such Element purchased by AT&T shall be assigned a separate and unique billing code in the form agreed to by the Parties and such code shall be provided to AT&T on each Unbundled Network Element Bill in which charges for such Elements appear. Each such billing code shall enable AT&T to identify the Element(s), Objects and Options as described in Attachment 4 to this Agreement ordered or utilized by AT&T in which Unbundled Network Element Charges apply pursuant to this Agreement. Each Unbundled Network

Element Bill shall set forth the quantity and description of each such Element provided and billed to AT&T. All Unbundled Network Element Charges billed to AT&T must indicate the state from which such charges were incurred.

2.2 GTE shall provide AT&T a monthly Unbundled Network Element Bill that includes all Unbundled Network Element Charges incurred by and credits and/or adjustments due to AT&T for those Elements, ordered, established, utilized, discontinued or performed pursuant to this Agreement. Each Unbundled Network Element Bill provided by GTE to AT&T shall include: (1) all non-usage sensitive charges incurred for the period beginning with the day after the current bill date and extending to, and including, the next bill date, (2) any known unbilled non-usage sensitive charges for prior periods, (3) unbilled usage sensitive charges for the period beginning with the last bill date and extending up to, but not including, the current bill date, (4) any known unbilled usage sensitive charges for prior periods, and (5) any known unbilled adjustments.

2.4 GTE shall bill AT&T for each Element supplied by GTE to AT&T pursuant to this Agreement at the rates set forth in this Agreement. GTE will bill AT&T based on the actual Unbundled Network Element Charges incurred, provided, however, for those usage based Unbundled Network Element Charges where actual charge information is not determinable by GTE because the jurisdiction (i.e., interstate, interstate/interLATA, intrastate, intrastate/intraLATA, local) of the traffic is unidentifiable, the Parties will jointly develop a process to determine the appropriate charges. Measurement of usage-based Unbundled Network Element Charges shall be in tenths of conversation seconds. The total conversation seconds per chargeable traffic types will be totaled for the entire monthly bill cycle and then rounded to the next whole minute.

Attachment 12:

1. Introduction

This Agreement contains provisions which are applicable to Local Services, Network Elements, including Ancillary Functions and features, access to GTE's poles, conduits and rights of way, and Interconnection Services, and shall apply on a national and/or an individual state basis, as herein specified or as otherwise established by agreement of the parties or by the context in which a quality standard, process or measurement is applied. The service quality standards, processes and procedures, including Direct Measures of Quality (DMOQs), set forth in this Attachment shall apply to GTE's provision and performance of

services, systems, processes and related activity under this Agreement, and are in addition to and not in place of or satisfaction of specific performance standards or obligations imposed on GTE elsewhere in this Agreement or in other Attachments to this Agreement. To the extent indicated in this Attachment, related performance obligations are imposed on AT&T, and the indicated service quality standards, processes and procedures shall apply to AT&T's performance of said obligations.

3.6.1 Representatives of AT&T and GTE will meet on a quarterly basis, beginning with the end of the first quarter of 1997, to determine that the service cycle of pre-ordering, ordering, provisioning, maintenance and billing categories are addressed, including the following:

a) Interfaces and processes are operational and the agreed upon numbers of AT&T Customers for residential and business Resale Services are successfully completed per day;

b) Interfaces and processes are operational and the agreed upon numbers of orders for Network Elements, Ancillary Functions are successfully completed per day;

c) Interfaces and processes are operational and the AT&T orders for unbundled loops are successfully completed per day;

d) All agreed upon performance standards and DMOQs will be reviewed with respect to the Implementation Plan.

4.1 Bona Fide Request. The Parties may agree that certain services, including features, capabilities, functionality, Network Elements, or Combinations, are to be ordered through the use of customized Service Orders. In such event, the Bona Fide Request Process described in Appendix 5 to this Attachment will be followed.

5.1 The Parties negotiated and included in this Agreement common provisions which are applicable to Local Services, Network Elements, including Ancillary Functions and features, access to GTE's poles, conduits and rights of way, and Interconnection Services for all geographic areas in which GTE provides Telecommunications Services on a national basis. However, the Parties recognize that certain provisions, in addition to pricing, must be handled on a state specific basis to address unique local requirements. These items are

described below in this Attachment.

5.1.1 By the end of Contract Month 1, AT&T will provide a forecast of the quantities of Local Services, Network Elements, and Ancillary Functions to be made available to AT&T during Contract Year 1 on a State-wide basis. The Parties shall meet during the last Contract Month of each Contract Year to agree upon the quantities of Local Services, Network Elements, and Ancillary Functions to be made available to AT&T for the next Contract Year. These quantities shall be sufficient to meet AT&T's anticipated requirements as communicated to GTE. If GTE is not able to meet AT&T's forecast requirements at any time during the term of this Agreement, GTE must document to AT&T within fifteen (15) days of receiving AT&T's forecast the reasons why such requirements cannot be met.

5.2 In addition, AT&T will furnish a per month quarterly forecast of service order volumes, quantities of Local Services, Network Elements, and Ancillary Functions on a State-wide basis. These forecasts will be furnished at least one month before the beginning of the quarter covered by the forecast. These projections will allow GTE to provide sufficient Staff for the projected demand and to secure appropriate inventories to meet AT&T's requirements. In the event that the first month of AT&T's next quarterly forecast is greater than ten (10%) percent of the last month of the current quarter forecast, AT&T will notify GTE promptly of the increased order volume.

Attachment 12, Appendix 2

1.3.1.1 If a Local Service or Network Element is interrupted, AT&T will be entitled to outage credits. An interruption period begins when AT&T reports to GTE that a Local Service or Network Element is interrupted (or GTE has knowledge that an interruption has occurred through service monitoring or other means). An interruption period ends when the Local Service, or Network Element is repaired and returned to AT&T. A Local Service or Network Element is considered to be interrupted when there has been a loss of continuity, the Local Service, Network Element or Combination does not operate in accordance with the applicable service standards, or it is otherwise unavailable for use by AT&T. This definition is not intended to conflict with state Public Utility Commission requirements.

1.3.1.2 The Implementation Team will evaluate if and set the amount of outage credits for unbundled Network Elements and determine when they should apply.

Attachment 12, Appendix 4:

2. The Parties agree to negotiate by the end of Contract Month 4, additional requirements and milestones which relate to those obligations of GTE in this Agreement that are not addressed in the Deployment Plan, including, but not limited to, the implementation of the following:

Electronic Interfaces as described in Section 29.1 of the Agreement and Section 5.1 of Attachment 4.

Alternative Routing Capabilities as described in Section 28 of the Agreement.

Service and Operational Readiness Testing as described in Attachment 29.8 of the Agreement.

Alternative Interim Agreement for Local Service bills as described in Section 3 of Attachment 6A.

Procedures for notifying AT&T of changes in retail services as described in Section 25.6 of the Agreement.

Procedures for referring misdirected requests for AT&T products and services as described in Section 29.3 of the Agreement.

Customer contact training as described in Section 29.6.6 of the Agreement.

Procedures for referrals of misdirected calls for repair as described in Section 8 of Attachment 5.

Replication of Access Billing Supplier Quality Certification Operating Agreement as described in Section 2.1.2 of Attachment 6.

Interim arrangements for clearinghouse procedures as described in Section 9 of Attachment 7.

Disaster recovery plans as described in Section 7 of Attachment 5.

Route Indexing (RI) as described in Section 2.3 of Attachment 8.

Processes for service ordering and provisioning of Local Services, Network Elements.

Processes for maintenance of Local Services and Network Elements.

Attachment 13:

2.2.1 The Parties understand and agree that baseline information such as a main billing account, intercompany contact points, the 800 number for GTE to transfer a misdirected end user UNE customer's call, geographic coverage for common use UNE; and other mutually agreeable information is required prior to the first UNE customer specific order. The parties also agree to document, in the Joint Implementation Agreement, the relevant information from the AT&T Infrastructure Footprint Form and the GTE CLEC Profile into a mutually acceptable notification mechanism. GTE will respond to the initial notification request with a batch feed of information related to Switch/Feature Availability and Street Address Guide (SAG) and relationship file that are further discussed in Section 1 (PREORDERING). AT&T and GTE may mutually agree to use an alternative format for exchange of Footprint Order related information, provided that the same information content is delivered. GTE will accept the Infrastructure/ Footprint Form developed by AT&T or the mutually agreed-upon equivalent format, until such time as AT&T and GTE agree that the OBF has adopted an acceptable alternative form. AT&T and GTE recognize that modifications to routing tables may be necessary in order to accommodate the treatment of customer calling associated with the UNEs that AT&T may employ to deliver service. Both parties agree that a mutually agreeable mechanism for communicating routing changes, at the local office level, will be documented in the Joint Implementation Agreement relating to this interface. Unless another mutually agreeable mechanism is established, GTE will accept delivery of these forms through the ASR process, including passing of the information over a mutually agreeable file transfer network (e.g. the Network Data Mover Network) and file transfer protocol.

2.2.2 Unless otherwise agreed by the Parties, the customer specific provisioning order will be based upon OBF LSR forms. The applicable implementation guidelines described in the prior paragraphs relating to resale of GTE retail services also apply to the customer specific provisioning orders. GTE agrees that the information exchange will be forms-based using the Local Service Request Form, End User Information Form, Loop Service Form and Port Form, Loop Form with Number Portability, and Number Portability Form developed by the OBF. The SOSC interpretation of 850, 860, 855, 865, and 997 transactions, in accordance with the OBF forms, will be used to convey all the necessary data to connect, modify or disconnect GTE customer-specific UNEs employed by AT&T

to deliver retail local services. Customer-specific elements include, but are not limited to, the customer loop, the network interface device, the customer-dedicated portion of the local switch. AT&T and GTE will translate ordering and provisioning requests originating in their internal processes into the agreed upon forms and industry standard transactions. Both parties will diligently pursue completing mutually consistent translations within six (6) months after the Effective Date of this Agreement and proceed to systems readiness testing that will result in a fully operational interface for ordering UNEs within one (1) year from the Effective Date of this Agreement. Unless otherwise mutually agreed because of time, cost and compatibility with existing systems, AT&T and GTE agree to adapt the interface based upon evolving industry standards.17Ok as modified by the parties.

Adaptations to SOSC implementation guidelines, to the extent relevant to local service ordering and provisioning for customer specific UNEs, will be implemented based upon a mutually agreeable schedule. Changes to ATIS guidelines and standards relevant to Ordering and Provisioning Information Exchange will be implemented based upon a mutually agreeable schedule, but in no case will the time for adoption, including testing of the changes introduced, extend more than 6 to 12 months beyond the date of initial closure by the relevant ATIS committee or subcommittee. This preceding target implementation obligation may be modified by mutual agreement.

3.1 Maintenance and repair information exchange will be transmitted over the same interface according to the same content definition both for resold GTE retail local services and for services AT&T provides using a GTE UNE. AT&T and GTE will, for the purpose of exchanging fault management information, establish an electronic bonding interface, based upon ANSI standards T1.227-1995 and T1.228-1995, and Electronic Communication Implementation Committee (ECIC) Trouble Report Format Definition (TRFD) Number 1 as defined in ECIC documents ECIC/TRA/95-003, and all standards referenced within those documents. The parties will use and acknowledge functions currently implemented for reporting access circuit troubles. These functions include Enter Trouble, Request Trouble Report Status, Add Trouble Information, Modify Trouble Report Attributes, Trouble Report Attribute Value Change Notification and Cancel Trouble Report, all of which are fully explained in clauses 6 and 9 of ANSI T1.228-1995.

Attachment 14, Appendix 2, First paragraph

APPENDIX A

Beginning with the Effective Date of this Agreement, Network Elements will be priced in accordance with the standards and prices described in this Appendix 2.

APPENDIX B

Together with all of Appendix A to Attachment 2, the following sections should be stricken as they do not conform with the Act and *Iowa Utilities Board*:

Attachment 2:

2.1.2.
2.1.2.1
2.1.2.2
2.1.2.3
2.1.2.4
2.1.2.5
2.1.2.6
2.1.4
3.1.1.1
3.1.1.2
3.1.1.3
3.1.1.4
3.1.1.5
3.1.1.8
3.1.4
3.1.5
3.2.1.1
3.2.4
3.3.3
3.4.3
3.4.4
4.2.1
4.2.1.6
4.2.1.18
4.2.1.19
4.2.1.26
4.2.1.31
4.2.2.14
4.3.1.1
4.3.1.2
4.3.1.3
4.3.1.4

4.3.1.5
4.3.1.6
4.3.1.7
4.3.1.8
4.3.2.5
5.1.2 (delete entire section including subsections)
5.1.2.15
6.2 (delete entire section including subsections)
6.2.2
7.2.2
7.2.3
7.2.5
8.2
8.2.1
8.2.2
8.2.3
8.2.4
8.2.5
8.2.6
8.2.7
8.2.8
8.2.8.1
8.2.8.2
8.2.8.3
8.2.8.4
8.2.9
8.2.9.1
8.2.9.2
8.2.9.3
8.2.11
8.2.12
8.2.14
8.3.
8.3.1
8.3.1.1
8.3.1.2
8.3.1.3
8.3.1.4
8.3.1.4.1
8.3.1.4.2

8.3.2
8.3.2.1
8.3.2.2
8.3.2.3
8.3.2.4
8.3.2.5
8.3.2.6
8.3.2.7
8.3.2.8
8.3.2.9
8.3.2.10
8.3.2.10.1
8.3.2.10.2
8.5
8.5.1
8.5.2
8.5.3
8.5.4
8.5.5
8.5.6
8.5.6.1
8.5.6.2
8.5.6.3
8.5.6.4
8.5.6.5
8.5.7
8.5.8
8.5.9
8.5.10
8.5.11
8.5.12
8.5.13
8.5.14
8.5.15
8.5.16
8.5.17
8.5.18
8.5.19
8.6.1
8.6.2

8.6.3
8.6.4
8.6.5
9.2
9.4.3
9.4.3.1
9.4.3.2
9.4.4
9.4.5
9.4.6
10.2.2
10.2.3
10.2.4
10.2.5
10.2.5.1
10.2.5.2
10.2.6
10.5
11.2
11.2.1
11.2.2
11.2.3
11.2.6
11.2.5
11.2.7
11.2.8
11.2.9
11.3.1 (delete parenthetical in second sentence)
11.3.2.1
11.3.2.2
11.3.2.3
11.3.2.4
11.3.2.4.1
11.3.2.4.2
11.3.2.6
11.3.2.11
11.3.2.12
11.3.2.13
11.3.2.15
11.3.2.17

11.3.2.18
11.3.2.19
11.3.3
11.3.3.1
11.3.3.2
11.3.3.3
11.4.2
11.6.2.5
11.6.2.6
11.6.3
11.7.1.3
11.7.1.6
11.7.2.1
11.7.2.4
11.7.2.7
12.2.13
12.4
13.1.2.14
13.1.2.16
13.2
13.2.4
13.2.4.1
13.2.4.2
13.2.4.3
13.2.4.3.1
13.2.4.3.1.1
13.2.4.3.1.2
13.2.4.3.1.3
13.2.4.3.1.4
13.2.4.3.1.5
13.2.4.3.1.6
13.2.4.3.1.7
13.2.4.4
13.2.4.4.1
13.2.4.4.1.1
13.2.4.4.1.1.1
13.2.4.4.1.1.2
13.2.4.4.1.2
13.2.4.4.1.2.1
13.2.4.4.1.2.2

13.2.4.4.1.3
13.2.4.4.1.3.1
13.2.4.4.1.3.2
13.2.4.4.1.4
13.2.4.4.1.5
13.2.4.4.1.5.1
13.2.4.4.1.5.2
13.2.4.4.1.6
13.2.4.4.1.6.1
13.2.4.4.1.6.2
13.2.4.4.1.7
13.2.4.4.1.8
13.2.4.4.1.8.1
13.2.4.4.1.8.2
13.2.4.4.1.9
13.2.4.4.1.9.1
13.2.4.4.1.9.2
13.2.4.4.1.10
13.2.4.4.1.10.1
13.2.4.4.1.10.2
13.2.4.4.1.11
13.2.4.4.1.11.1
13.2.4.4.1.11.2
13.2.4.4.1.12
13.2.4.4.1.12.1
13.2.4.4.1.13
13.2.4.4.1.13.1
13.2.4.4.1.13.2
13.2.4.4.1.14
13.2.4.4.1.14.1
13.2.4.4.1.14.2
13.2.4.4.1.15
13.2.4.4.1.15.1
13.2.4.4.1.15.2
13.2.4.4.1.16
13.2.4.4.1.16.1
13.2.4.4.1.16.2
13.2.4.4.1.17
13.2.4.4.1.17.1
13.2.4.4.1.17.2

13.2.4.4.1.18
13.2.4.4.1.18.1
13.2.4.4.1.18.2
13.2.4.4.1.19
13.2.4.4.1.19.1
13.2.4.4.2
13.2.4.4.2.1
13.2.4.4.2.1.1
13.2.4.4.2.1.2
13.2.4.4.2.1.2.1
13.2.4.4.2.1.2.2
13.2.4.4.2.1.2.3
13.2.4.4.2.1.2.4
13.2.4.4.2.2
13.2.4.4.2.2.1
13.2.4.4.2.2.2
13.2.4.4.2.3
13.2.4.4.2.3.1
13.2.4.4.2.3.2
13.2.4.4.2.4
13.2.4.4.2.4.1
13.2.4.4.2.4.2
13.2.4.4.2.5
13.2.4.4.2.5.1
13.2.4.4.2.5.2
13.2.4.4.2.6
13.2.4.4.2.6.1
13.2.4.4.2.6.2
13.2.4.5
13.2.4.5.1
13.2.4.5.1.1
13.2.4.5.1.2
13.2.4.5.2
13.2.4.5.2.1
13.2.4.5.2.2
13.2.4.5.3
13.2.4.5.3.1
13.2.4.5.3.2
13.2.4.5.3.3
13.2.4.5.3.4

13.2.4.5.3.5
13.2.4.5.3.6
13.2.4.5.3.7
13.2.4.5.4
13.2.4.5.4.1
13.2.4.5.4.2
13.2.4.5.5
13.2.4.5.5.1
13.2.4.5.6
13.2.4.5.6.1
13.2.4.5.6.2
13.2.4.5.6.2.1
13.2.4.5.6.2.1.1
13.2.4.5.6.2.1.2
13.2.4.5.6.2.2
13.2.4.5.6.2.2.1
13.2.4.5.6.2.2.2
13.2.4.5.6.2.3
13.2.4.5.6.2.3.1
13.2.4.5.6.2.3.2
13.2.4.5.6.2.3.2.1
13.2.4.5.6.2.3.2.2
13.2.4.5.6.2.3.2.3
13.2.4.6.3.2.3.2.3.1
13.2.4.6.3.2.3.2.3.2
13.2.4.5.6.2.4
13.2.4.5.6.2.4.1
13.2.4.5.6.2.5
13.2.4.5.6.2.5.1
13.2.4.5.6.2.6
13.2.4.5.6.2.6.1
13.2.4.5.6.2.7
13.2.4.5.6.2.7.1
13.2.4.5.6.2.8
13.2.4.5.6.2.8.1
13.2.4.5.6.2.9
13.2.4.5.6.2.9.1
13.2.4.5.6.2.9.2
13.2.5
13.2.5.1

13.2.5.1.1
13.3.2.4
13.4.3
13.4.3.1
13.4.3.2
13.4.3.3
13.4.3.4
13.4.3.5
13.4.3.6
13.4.3.7
13.4.3.8
13.4.3.9
13.4.3.10
13.4.3.11
13.4.3.12
13.5.2
13.5.2.5
13.5.2.6
13.5.2.7
13.5.2.8
13.5.2.9
13.5.3.3
13.5.3.5
13.5.3.6

Delete Attachment 2, Appendix A in its entirety.

Attachment 3:

2.2.8 (second sentence)
2.2.23.3.1
2.2.23.3.2 (delete only "as required by the equipment manufacturer's specification for AT&T equipment, or , at a minimum,")
2.2.23.6.2
2.2.23.6.3
2.2.23.6.4
2.3
2.3.1
2.3.2
2.3.3

2.3.4
2.3.5
2.3.6
2.3.7
2.3.8
2.3.9
2.3.10
2.3.11
2.2.15
2.2.23

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Supplemental Comments of GTE South Incorporated and Contel of the South, Inc. was served on all parties of record, by either hand delivery or by placing a copy of same, properly addressed, in the U. S. Mail, first class postage prepaid, this the 30th day of July, 1997.

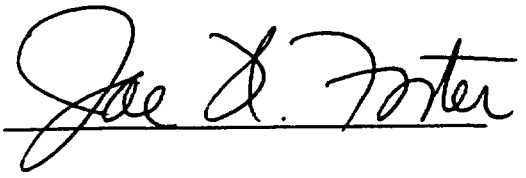


EXHIBIT 7

Connie E. Nicholas
AVP Wholesale Markets -
Interconnection

GTE Network Services

HQE03N52
600 Hidden Ridge
P.O. Box 152092
Irving, TX 75015-2092
972 718-4586
Fax: 972 719-1523
connie.nicholas@telops.gte.com

October 14, 1997

VIA FACSIMILE

Mr. Steve Hueis
AT&T
795 Folsom St.
San Francisco, CA 94107

Dear Steve:

Late last month Ron Shurter informally requested that GTE consider the development of an interim interconnection agreement limited only to the exchange of traffic. He suggested that this interim agreement would be used in states where a comprehensive interconnection, resale and unbundled network element agreement (referred to hereafter as the "comprehensive agreement") is pending, and that it would be replaced by the comprehensive agreement once it was approved. Upon further discussion of this idea with you and Joyce Beasley on September 30, 1997, however, we both concluded that what AT&T is actually proposing is to renegotiate, as a stand-alone contract, the interconnection section of our comprehensive agreement with certain AT&T proposed modifications, which then would be supplemented by resale and unbundled network element sections when the comprehensive agreement is approved. We discussed that GTE would probably also have certain proposed modifications. You suggested that once the revised interconnection provisions were negotiated as a stand-alone contract, the changed interconnection provisions from that contract also might be renegotiated into the effective comprehensive agreements of the other states. I committed at that time to get back to you with GTE's response to AT&T's proposal, and Randy Vogelzang and I did get back to you on October 9, 1997. This letter confirms our response to you in our October 9 telephone conference.

Currently, the comprehensive agreement is in the final stage of the negotiation/arbitration process under the Act in those states where it is still pending. To globally commence further and duplicative negotiations at this time to address only interconnection with the intent of producing a partial interconnection agreement would not further judicial economies or take advantage of the substantial efforts over the last year that both companies have expended before the respective commissions in arbitration. Such "dueling agreements" is not contemplated by nor is it in the conformance with the Telecommunications Act of 1996. It would stilt the development of a competitive market and is not in the best interests of GTE. Moreover, the presentation of a negotiated agreement that

contains terms and conditions that are currently on appeal in federal district court from the 251/252 arbitrations is problematic. Accordingly, it is our desire that we devote our respective resources to completing the pending agreements that are under consideration as a result of already completed arbitrations, or initiate separate section 251/252 negotiations.

This seems the best approach to us since we have already devoted months to this effort and the end is in sight. GTE's motions regarding the effects of the 8th Circuit's opinion are ripe for disposal to the extent that they have not already been ruled on, and the arbitration orders dictate the remainder of the agreement. Resolution of the 8th Circuit motions, along with adherence to the arbitration order, will produce a final agreement that GTE can appeal to court.

By taking for foregoing approach, AT&T will have the global ability and resources to enter the local market in any manner it deems appropriate. Likewise, other new entrants will have the ability to take advantage of Section 252(i) of the Telecommunications Act of 1996 and be able to make rapid market entry.

If you have any questions, please contact me at 972/718-4586.

Connie Nicholas

Connie E. Nicholas
Assistant Vice President
Wholesale Markets - Interconnection

CEN:pf

C

BEFORE THE
STATE CORPORATION COMMISSION
OF VIRGINIA

Application of **Bell Atlantic – Virginia, Inc.**	**PUC960164**
For Exemption from Physical Collocation	

AFFIDAVIT OF PATRICIA BOYLE IN SUPPORT OF AT&T COMMUNICATIONS OF VIRGINIA'S RESPONSE IN OPPOSITION TO BELL ATLANTIC-VIRGINIA'S SUPPLEMENTAL APPLICATION

In support of AT&T Communications of Virginia, Inc.'s Response in Opposition to Bell Atlantic-Virginia, Inc.'s Supplemental Application, I, Patricia Boyle, being duly sworn according to law, do depose and say as follows:

1. I am Staff Manager in the Law and Government Affairs division of AT&T. My office is located at 1600 Market Street, Philadelphia, Pennsylvania 19103. I have been employed by AT&T in various positions for more than twenty-six years.

2. In my position, I am responsible for managing the dockets in which AT&T is involved in the state of Delaware. Among other things, I have participated as both a witness and as an affiant in cases involving AT&T Communications of Delaware, Inc.

3. By virtue of my position with AT&T, I had direct experience in the proceeding concerning Bell Atlantic – Delaware, Inc.'s ("BA-DE's") April 15, 1997

petition for exemption from the federal physical collocation requirement at four BA-DE central offices.

4. In its petition, BA-DE asserted that there was no space available for physical collocation at any of the four subject central offices. BA-DE also provided floor plans to AT&T that indicated all collocation space at the four central offices was being used or reserved for future use.

5. Pursuant to an order issued by the Delaware Public Service Commission, AT&T and other parties were given the opportunity to walk through and inspect the four subject central offices.

6. On November 13, 1997, representatives from AT&T, Conectiv, BA-DE and the PSC Staff inspected the central offices. I was one of two AT&T representatives who toured all four of the central offices.

7. In two of the central offices, the site inspection seemed to confirm BA-DE's assertion that the space at the premises was fully utilized. In two of the other central offices, however, the site inspections revealed additional space that could be made readily available for physical collocation.

8. In the third central office, I observed a large entrance lobby area (14 feet by 10 feet) that was vacant except for boxes. Several "closets"/storage areas were filled with empty boxes and/or Christmas decorations. These areas ranged from 5 feet by 15 feet to15 feet by 18 feet. In an office area there were cubicles that appeared to be unoccupied which contained unused desks and chairs. One secretary and a copy machine occupied one office area (15 feet by 30 feet). A kitchen measured 10 feet by 15 feet. In an equipment area, there

was a rack of equipment that was marked "not working". There was otherwise vacant floor space cluttered with boxes, but no permanent fixtures. I estimated that over 2,500 square feet of space could have been used for physical collocation with competitors. Given that the typical physical collocation space is 100 square feet, I believe that there was room for a number of additional collocators. This did not even include consideration that the building housed many personnel whose functions were unrelated to the operation of the central office.

9. In the fourth central office, I observed that the walk in area appeared to be temporarily filled with deliveries. Even though this was a so-called "unmanned" central office, there were large areas designated as "administrative space". The center of the floor contained three workstations with tables and chairs but no permanent fixtures or electrical outlets. One administrative area appeared to be in use and had overhead lighting. Another administrative area had an empty equipment rack on the ceiling and contained desks, telephones and some computer equipment. However, this equipment was obsolete (rotary telephones and early vintage PC's) and the area did not appear to have lighting or electrical outlets. I concluded that much of this space could have been easily used to provide physical collocation without disruption to BA-DE's activities. In the aggregate, I estimated that over 1,000 square feet were available for physical collocation despite BA-DE's claim that no space was available.

10. BA-DE ultimately withdrew its exemption requests for the four central offices prior to a ruling on the Petition by the Delaware Public Service Commission.

11. AT&T was able to conclude that space was available at two of the central offices only because it was permitted to physically inspect the premises for which the exemption was being sought. The site plans and other information submitted by BA-DE in itself did not provide sufficient information to allow AT&T or any other party to conclude that space was available.

12. Conversely, because of the site inspection, AT&T was able to conclude that BA-DE accurately described the space limitations at the other two central offices. As a result, no further regulatory action was necessary.

13. I verify under the penalty of perjury that all the facts set forth in this Affidavit are true to the best of my knowledge, information and belief.

Patricia Boyle
PATRICIA BOYLE

Sworn to and subscribed before
me this 21st day of October, 1998

Tina M DeAngelis
Notary Public
My Commission Expires:

NOTARIAL SEAL
TINA M. DeANGELIS, Notary Public
City of Philadelphia, Phila. County
My Commission Expires Sept. 2, 2000

D

BEFORE THE
STATE CORPORATION COMMISSION
OF VIRGINIA

Application of **Bell Atlantic – Virginia, Inc.**	**PUC960164**
For Exemption from Physical Collocation	

RESPONSE OF AT&T COMMUNICATIONS OF VIRGINIA, INC. IN OPPOSITION TO BELL ATLANTIC – VIRGINIA, INC.'S SUPPLEMENTAL APPLICATION

Bell Atlantic – Virginia, Inc.'s ("BA-VA") Supplemental Application seeking an exemption from the physical collocation requirement of Section 251(c)(6) of the Telecommunications Act of 1996 ("Act") should be rejected by the Commission.[1] BA-VA has failed to submit any credible and probative evidence to support its assertion that physical collocation is not practical at six additional BA-VA central offices because of space constraints. Instead BA-VA has attempted to make a case for an exemption based on bald assertions and conclusions. BA-VA's Supplemental Application is totally inconsistent with the requirements of the Act.

[1] Bell Atlantic-Virginia, Inc. Supplemental Application (Aug. 28, 1998). BA-VA is requesting exemptions from the physical collocation requirement at the Crystal City, Dulles Corner, Fox Mill Road, Lake Fairfax, Centreville and Sterling central offices. BA-VA had previously filed exemption requests for its Herndon and Pentagon central offices on December 27, 1996 and its Lewinsville central office on April 16, 1997 in this same docket. The Commission has not yet ruled on BA-VA's requests. AT&T incorporates by reference in this Response its "Motion to Suspend Tariff Filing and to Consolidate Issues with Consideration of BA-VA Atlantic's 'Statement of Generally Available Terms and Conditions'" Case No. PUC960164 (Jan, 24, 1997); and "Motion of AT&T Communications of Virginia, Inc." Case No. PUC970014 (May 8, 1997).

As BA-VA is well aware, collocation is a key driver of the development of competition in the local telecommunications market. Every action that BA-VA takes to make physical collocation more difficult for competitive local exchange carriers ("CLECs") to obtain – whether by proposing unreasonable rates, terms and conditions, or, as in the instant case, seeking to exempt central offices from the physical collocation requirement – slows the development of competition and provides BA-VA with an unfair competitive advantage in the local exchange market. This is particularly the case because BA-VA has taken the position that collocation is the sole means by which competing carriers will be able to access and combine unbundled network elements.[2] Accordingly, the Commission must carefully scrutinize all applications for exemption from the physical collocation requirement.

The FCC, in interpreting the Act, provided guidance to the states in determining what factors should be examined before granting an exemption based upon space limitations. After considering the Supplemental Application in light of these and other relevant factors, the Commission can reach only one conclusion: BA-VA has fallen woefully short of demonstrating that space limitations make physical collocation impractical at the subject premises. Accordingly, the Commission should deny BA-VA's Supplemental Application.

---

[2] *See* Letter from Jeffrey A Masoner, Vice President, Interconnection Services, Bell Atlantic to Vice President, Atlantic States Local Service Organization, AT&T (dated Oct. 27, 1997).

I. Physical Collocation Is Superior to Virtual Collocation; BA-VA's Petition, If Granted, Would Force CLECs To Settle For Less Desirable Virtual Collocation Arrangements.

In general, physical collocation is the most efficient and desirable approach to interconnection for competitors.[3] Using physical collocation, a CLEC can own, install and maintain its own equipment without unnecessary (or improper) interference from the incumbent local exchange carrier ("ILEC"). The CLEC thus maintains control over the quality of service it provides. Of course, the ability to ensure high quality service is essential for a new entrant to be successful in the telecommunications marketplace.

In contrast, virtual collocation imposes a much greater burden on interconnectors. For example, virtual collocation arrangements often raise significant equipment ownership issues. Most incumbent carriers, including BA-VA, require that the competing carrier turn over ownership of the collocated equipment to the ILEC for the nominal sum of $1.00. Under this arrangement, a CLEC is unable to install its equipment or to access the equipment for provisioning, augmentation or maintenance. Further, once the CLEC has turned over control of the "virtually collocated" equipment, the parties must develop elaborate, and often unsatisfactory, procedures for the CLEC's use of ILEC-controlled equipment.

[3] Although virtual collocation may be preferable to a CLEC in certain situations, a CLEC's voluntary preference does not affect an ILEC's duty to provide, or AT&T's right to demand, physical collocation.

Virtual collocation can impede a CLEC from providing comparable quality of service to that provided by the incumbent and can limit a CLEC from rapidly introducing new technology into its networks. The introduction of each new type, or even brand, of equipment requires the CLEC to train ILEC personnel in its use.[4] This in not only a slow and costly process, but eliminates many of the opportunities for CLECs to innovate. The inefficiency and inconvenience are compounded by the fact that the ILEC charges the interconnector for these "services." The end result is that a CLEC's competitive advantage gained by acting quickly to incorporate new technologies within its network is effectively canceled.

II. Section 251(c)(6) of the Telecommunications Act of 1996 Requires BA-VA To Provide Physical Collocation Unless It Can Prove It Has No Space Available.

The superiority of physical over virtual collocation highlights why any ILEC effort to limit or deny physical collocation must be carefully scrutinized. The Act recognizes and addresses this need for competitors to be able to physically collocate with ILECs. Section 251(c)(6) establishes an affirmative duty for ILECs

> . . . to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that *physical collocation is not practical for technical reasons or because of space limitations.*[5]

[4] Moreover, the training expense issue may, in effect, limit a CLEC to using the same equipment used by the ILEC, even if such equipment would otherwise not be optimal for the CLEC.

[5] 47 U.S.C. § 251(c)(6) (emphasis added). In addition to demonstrating that physical collocation is "not practical" because of space limitations, the Act requires that ILECs like BA-VA to provide interconnection that is "at least equal in quality to that provided by the local exchange carrier to itself," and access to unbundled network elements at any technically feasible point "on rates,

Notwithstanding the statutory preference for ILECs to provide physical collocation, the Act provides a narrow exemption from the physical collocation requirement if the ILEC can demonstrate that there are space limitations or technical reasons that make physical collocation not practical.[6] Placing this evidentiary burden on the ILECs is important especially given the FCC's recognition that "incumbent LECs have the incentive and capability to impede competitive entry by minimizing the amount of space that is available for collocation by competitors."[7] Alleging insufficient space for physical collocation is perhaps the easiest way for an ILEC to act on this incentive.

In its *Local Competition Order*, the FCC also recognized the critical need for state commissions to carefully scrutinize any ILEC claim that space is unavailable at a particular premise.[8] The FCC described what type of information would assist in making the determination of whether an ILEC met its burden of proof that space was unavailable. The FCC first looked to diagrams of the premise space. The FCC explained:

---

terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of [section 251] and section 252." *Id.* §§ 251(c)(2)(c), 251(c)(3).

[6] The FCC has previously noted that "our experience in the *Expanded Interconnection* proceeding has not demonstrated that technical reasons, apart from those related to space availability, are a significant impediment to physical collocation." *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC Docket No. 96-98, FCC 96-325, First Report and Order ¶ 603 (August 8, 1996) ("*Local Competition Order*").

[7] *Id.* ¶ 585.

[8] Although BA-VA discusses collocation only with respect to its central offices, the Act requires interconnection at the "premises" of the ILEC. 47 U.S.C. § 251(c)(6). The FCC has broadly defined "premises" to include not only central offices, but also serving wire centers and tandem offices, as well as all buildings or similar structures owned or leased by the incumbent LEC that house LEC network facilities. *Local Competition Order, § 573.*

> [W]e require that incumbent LECs provide the state commission with detailed floor plans or diagrams of any premises where the incumbent alleges that there are space constraints. Submission of floor plans will enable state commissions to evaluate whether a refusal to allow physical collocation on the grounds of space constraints is justified.[9]

In addition to providing floor plans, the FCC required that incumbent LECs take collocator demand into account when renovating existing facilities and constructing or leasing new facilities "just as they consider demand for other services when undertaking such project."[10] The FCC also precluded ILECs from reserving space for themselves on more favorable terms than those it applies to other carriers.[11]

Further, the FCC found that AT&T's proposal to require incumbent LECs to make a more detailed showing of space exhaustion was "useful" and that "state commissions may find it a valuable guide."[12] AT&T proposed that, *inter*

---

[9] *Id.* ¶ 602.

[10] *Id.* ¶¶ 585, 605.

[11] *Id.* ¶ 604. This Commission has held that reserved space by an ILEC must be limited to a two-year planning period. Case No. PUC960117, *Petition of AT&T Communications of Virginia, Inc. for arbitration of unresolved issues for interconnections with GTE South, Inc. pursuant to § 252 of the Telecommunications Act of 1996,* Order Resolving Non-Pricing Arbitration Issues and Requiring Filing of Interconnection Agreement (Dec. 11, 1996) at 7. *See* further discussion, pages 11-13, *infra.*

[12] *Id.* ¶ 602 (*citing* AT&T *Ex Parte* Presentation, CC Docket No. 96-98, (Letter of Betsy J. Brady to William F. Caton, July 12, 1996). A copy of AT&T's submission to the FCC is attached and marked as Attachment 1. AT&T's proposal required the incumbent carrier, at a minimum, to report the following:

> Total amount of ILEC-occupied space at the location, broken out as follows:
>
> - Total amount of space occupied by the ILEC;
> - Amount of space housing in-use telecommunications equipment, including the identification of switch turnaround and time lines;
> - Amount of space housing idle telecommunications equipment, including identification of removal plans and timelines;
> - Amount of space used for ILEC administrative purposes;

alia, an ILEC should be required to file detailed information on the existing and prospective utilization of space at the ILEC premises, a detailed ILEC description of central office rearrangement / expansion plans and a detailed description of its efforts to avoid exhaustion.[13]

Recently, in its proceeding to address the deployment of advanced services, the FCC tentatively concluded that any competing carrier seeking physical collocation should be permitted to walk through the LEC's premises.[14] The FCC explained that "state commissions will be better able to evaluate whether a refusal to allow physical collocation is justified if competing providers can preview the LEC's premises and present their arguments to the state commission."[15] The Commission also tentatively concluded that upon request from a CLEC, an ILEC should submit a report regarding the availability of collocation space, including the

---

- Total amount of space which does not currently house telecommunications equipment or ILEC administrative offices, but is reserved by the ILEC for future use; and
- Total amount, if any, of remaining space, together with a detailed description thereof.

Space at premises not occupied by the ILEC, as follows:

- Total amount space occupied by interconnecting collocators (for the sole purpose of network interconnecting);
- Total amount of space occupied by third parties for purposes other than network interconnection, including a description of the uses of such space; and
- A detailed description of the amount and use of remaining space.

[13] *Id.*

[14] *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147 *et al.*, FCC 98-188 (released August 7, 1998) ("*Advanced Services NPRM*") at ¶ 146.

[15] *Id.*

amount of space available at each requested premises, the number of collocators, any modifications in the use of the space since the last report and measures the ILEC is taking to make additional space available.[16]

III. BA-VA's Exemption Request Fails to Demonstrate that Physical Collocation is Unavailable at Its Premises

BA-VA's Supplemental Application, considered in light of the FCC's findings and recommendations, miserably fails to demonstrate that physical collocation is unavailable. BA-VA neglects to address most of the factors considered important by the FCC in determining the veracity of an ILEC's claims.[17] Instead of specifics, BA-VA offers only generalities.

For example, while BA-VA asserts physical collocation space is "exhausted" in the subject central offices, BA-VA provide no support for its contentions.[18] The meat of BA-VA's Supplemental Application consists of one short paragraph per central office that describes where the premises is located, the total size of the building and vague assertions regarding the insufficiency of collocation space.[19] Merely repeating the conclusionary refrain "all space is

---

[16] *Id.* ¶ 147. In the *Advanced Services NPRM*, the FCC also asked Commenters to address how the use of alternative collocation arrangements, such as shared collocation cages, cageless collocation and the option to request collocation without a minimum space requirement would impact space allocation for physical collocation. *Id.* ¶ 137.

[17] Interestingly, BA-VA did not provide an affidavit to support its assertions. Therefore, there is no person who can verify the assertions made in BA-VA's filing.

[18] Supplemental Application at 2.

[19] Although BA-VA provided copies of the floor plans of the six central offices to the Commission, it did not serve them on the other parties to this proceeding. AT&T is in the process of executing the necessary protective order to obtain and review these documents. BA-VA explains that it will make the floor plans available for inspection by other interested parties "as necessary" pursuant to a protective agreement. *Id.* at 2 n.2.

currently in use or reserved for future use" cannot possibly satisfy the Commission's evidentiary standards.

It is even more instructive to examine what BA-VA does *not* describe. For example, BA-VA does not describe how much current space is used for network-related activities; the amount of administrative space at each BA-VA premise; the amount of space currently used by interconnecting collocators; or a description of either rearrangement or expansion plans. BA-VA's descriptions do not provide even a partial picture of the alleged space limitations at the subject premises. While this information is not difficult, time-consuming or burdensome to provide, without it the Commission does not have a sufficient record upon which to grant an exemption from the Act's physical collocation requirement.

The Commission should review BA-VA's Supplemental Application in light of the considerations articulated by the FCC in its *Local Competition Order* and the *Advanced Services NPRM* regarding allocation of collocation space. As described *supra*, the FCC supported a thorough examination of an ILEC's exemption filing, with consideration given to how the space is currently used; the proposed future use for the space; the nature of an ILEC's expansion and rearrangement plans; and an ILEC's efforts to avoid space exhaustion.[20] Furthermore, floor plans must be carefully reviewed and site inspections conducted. BA-VA has not made a sufficient showing on any of these factors to obtain the desired exemptions.

---

[20] *See* pages 4-8, *infra.*

1. BA-VA Must Show How It Is Utilizing Existing Space.

BA-VA failed to provide useful information concerning the amount of floor space at each central office. In five of the six central offices, BA-VA provided the total floor *in the building* but provided no information on total floor *space used for central office functions.*[21] The total square footage of a building provides no useful information for the Commission in determining whether BA-VA has legitimate space constraints. For example, the fact that one central office is 2,000 square feet and a second central office is 4,000 square feet, does not, in itself, help answer the question of whether space is reasonably available at either central office. At a minimum, BA-VA should be reporting the square footage of space used for network related activities[22] (including a detailed description of the activities), the amount of administrative space[23] and the amount of space used by other collocators. Most importantly, the Commission should ask whether BA-VA's use of all of this space is reasonable and appropriate.

BA-VA also made no showing as to whether its central office space is being used efficiently. Full and efficient utilization of collocation space is essential. If there is no space available in the central office space, but there is space available in other parts of the building, BA-VA should be obligated to

---

[21] Supplemental Application, Amended Attachment A at n.1. BA-VA did not provide any square footage information regarding the Lake Fairfax (RSTNVALF) central office. Supplemental Application, Appendix at 2.

[22] This description should include the amount of space used to house in-use telecommunications equipment and idle or obsolete equipment.

[23] For example, CLECs would be directly harmed if BA-VA were able to consume an entire floor of a central office building with administrative occupancy while simultaneously asserting that there was no room for physical collocation.

provide that non-central office space for collocating CLECs. BA-VA did not provide any information in its filing that would allow the Commission or parties to determine whether additional collocation space was available. Without being apprised of whether additional collocation space is available in other parts of the building, the Commission is not in a position to grant an exemption request.

At a minimum, an exemption from the physical collocation requirement should not be granted unless an ILEC can show that

(1) it has removed all obsolete and unused equipment from the premises;

(2) all non-network operations functions in the building have been eliminated and moved elsewhere; and

(3) it cannot reconfigure the equipment in its office within a reasonable time to accommodate additional collocation requests.[24]

These actions are essential to maximize the availability of space for collocation. BA-VA, however, provided no information that would enable the Commission to determine whether BA-VA had taken such actions.

2. Without Any Facts To Indicate What the "Future Use" Might Be, BA-VA's Claims that Space is Required for "Future Use" are Wholly Inadequate to Support an Exemption Request.

BA-VA relies heavily on the statement that all existing floor space is in use or reserved for future use. For example, in the Crystal City central office, space is reserved for "future switching and power equipment additions" and in the Dulles Corner central office, BA-VA has reserved space for "future switching

[24] AT&T has recently addressed this issue in response to the FCC's Advanced Services NPRM. *See* Comments of AT&T Corp., filed September 25, 1998, at 89.

equipment growth jobs."[25] These descriptions are wholly inadequate to explain how the space is being utilized. A claim of "reserved for future use" without further explanation or support is insufficient to demonstrate to the Commission that BA-VA has a reasonable and legitimate use for the central office space. The Commission cannot possible determine, based on the information filed, whether the future use is reasonable. BA-VA has the burden to demonstrate the need for such reserved space and the appropriateness of the timing.

A similarly vague claim for exemption by Bell Atlantic based on unidentified "future uses" has already been rejected by the FCC. In evaluating Bell Atlantic's request for exemptions from providing physical collocation in certain central office in light of its *Extended Interconnection Order*, the FCC stated:

> . . . we believe that the Commission did not contemplate granting exemptions based on unreasonable reservations for future use. We conclude that Bell Atlantic has not justified an exemption in reserving 400 square feet for "unidentified future uses." Such vague assertions are insufficient to demonstrate that space is unavailable. Therefore, we deny Bell Atlantic's petition for the 13 central office for which Bell Atlantic seeks exemption based on unidentified future uses.[26]

In addition, BA-VA is using an excessive planning period for its space forecasts. BA-VA uses a four and five year forecasts for equipment removals

---

[25] *See also* Fox Mill Road ("reserved for future switching and electronic cross connect system equipment additions"); Lake Fairfax ("reserved for equipment additions"); Sterling ("reserved for future switching, toll and frame equipment growth jobs"); and Centreville ("reserved for switching and transmission equipment growth"). None of these descriptions provide sufficient information for the Commission to rule upon the reasonableness of BA-VA's request for an exemption.

[26] *In the Matter of Expanded Interconnection with Local Telephone Company Facilities Petitions for Exemption from Physical Collocation Requirement*, CC Docket 91-141, 8 FCC Rcd No. 4569, 4572 (rel. June 9, 1993).

and additions in most the central offices for its exemption petition.[27] In fact, in the Sterling central office, BA-VA does not provide a forecast time frame for the "future switching, toll, and frame equipment growth jobs." The Commission, in the AT&T – GTE arbitrations, determined "GTE may reserve collocation space for a planning horizon period not to exceed two years."[28] There is not sound policy basis to impose a lesser requirement on BA-VA. Accordingly, BA-VA should be required to use a forecast period of no greater than two years.

3. BA-VA Provided No Information on Its Expansion or Rearrangement Plans.

BA-VA did not provide an explanation of its expansion and rearrangement plans for any the six central offices. Nor did BA-VA provide the time tables for any such expansion (other than suggesting that expansion was to begin within the four or five year forecast period) and or indicate whether any party other than BA-VA would be a beneficiary of these undertakings. BA-VA also failed to address rearrangement plans, and specifically did not state whether there were rearrangement opportunities (equivalent to those that BA-VA undertakes or would undertake on its own behalf) that could be developed to make space available for CLECs. Moreover, there is no indication in its Supplemental Application that BA-VA considered collocator demand in making such expansion

---

[27] *See, e.g.*, Crystal City (four year additions; five year removals); Lake Fairfax (five year additions and removals).

[28] Case No. PUC960117, *Petition of AT&T Communications of Virginia, Inc. for arbitration of unresolved issues for interconnections with GTE South, Inc. pursuant to § 252 of the Telecommunications Act of 1996,* Order Resolving Non-Pricing Arbitration Issues and Requiring Filing of Interconnection Agreement (Dec. 11, 1996) at 7.

or rearrangement plans.[29] Simply put, the Commission has insufficient information to determine whether BA-VA's expansion or rearrangement plans are reasonable.

4. BA-VA Provided No Information on Its Efforts to Avoid Space Exhaustion.

In addition, BA-VA failed to provide information on regarding efforts to avoid exhaustion of the physical collocation space. Specifically, BA-VA failed to indicate whether it removed obsolete equipment or whether it rearranged inefficiently configured equipment. BA-VA did not indicate whether it even considered such actions. BA-VA must put forth a good faith showing that it attempted to prevent the exhaustion in order for the Commission to grant the requested exemption. BA-VA has not done so in this case.

5. The Commission Should Require BA-VA to Give Requesting Parties A Walk Through of the Subject Premises.

Perhaps the most useful and efficient manner in which to determine the reasonableness of space constraints is through a walk through of the BA-VA premises. BA-VA has made no offer for a walk through of the premises involved.[30] Thus, neither the parties nor the Commission Staff has had the opportunity to examine the actual BA-VA premises and verify BA-VA's claims.

Although floor plans and other documents do provide some limited help in examining the validity of BA-VA's claims of space constraints, these documents

---

[29] *See Local Competition Order*, at ¶ ¶ 585, 605.

[30] AT&T requests that BA-VA provide it (and other interested parties) the opportunity to walk through the subject premises. In addition, AT&T believes that it would be helpful for a representative of Commission Staff, as a neutral fact finder, to be present for such site inspections to assist in assessing the reasonableness of BA-VA's space limitation claims.

alone are insufficient to meet BA-VA's burden to demonstrate that physical collocation is not practical. In many cases, building plans do not accurately describe the "as built" portion of a site. For example, building modifications made after the drafting of blue prints may not be accurately reflected in the blue prints. A walk through, however, would provide an opportunity to ensure the accuracy of those plans, and BA-VA's overall assertions of lack of space.

A site inspection could include a Commission Staff representative and affected parties. A site inspection would be neither time consuming nor burdensome. Significantly, it would allow for very speedy resolution of many of these time-sensitive issues. In addition to verifying space limitations, site inspections by the interested parties would also allow parties to discuss whether alternative collocation arrangements were possible. CLECs, however, have a much more limited ability to propose alternative arrangements without both access to floor plans and an opportunity for a site visit.[31]

Moreover, site inspections are a well-accepted method of assisting in the critical determination that BA-VA seeks in this case. As noted above, the FCC has tentatively concluded that CLECs should have the right to a walk through of the premises.[32] In addition, site inspections are used in other jurisdictions to verify RBOC space limitation claims.[33] In fact, during the site inspection in

---

[31] A site visit would allow a CLEC to propose other collocation arrangements, such as cageless collocation, shared collocation or nontraditional space configurations.

[32] *See* footnotes 14-15 and accompanying text, *supra,* for a discussion of the FCC's findings.

[33] In New York, the Public Service Commission explained that "[I]f a [telecommunications carrier] has been advised that there is no conditioned space (or any space) available in a building, then staff will review the floor plans and construction plans for the building, *conduct a walk through and certify that space is not available." Order Directing Tariff Changes for Non-Price Terms and*

Delaware,[34] AT&T and other parties identified substantial space that was being misused or not efficiently used by Bell Atlantic-Delaware, Inc. ("BA-DE").[35] In the Delaware proceeding, the walk through inspection enabled AT&T to determine that additional space was available at two of the BA-DE central offices.

Thus, the Commission should not approve BA-VA's Supplemental Application until all of the parties and Commission Staff have a full opportunity to inspect the subject premises.

IV. BA-VA's Petition Is Not Timely Filed.

The timeliness of exemption filings from the collocation requirement is extremely important to competing carriers. Understanding which central offices will or will not support physical collocation at the earliest possible date will allow CLECs to engage in reasonable and timely network planning decisions. Reasonable access to this basic information may have the effect of expediting deployment of facilities to a geographic area. Therefore, incumbent carriers must be required to seek a physical collocation exemption when they first learn that

---

Conditions for Collocation, Case Nos. 95-C-0657, 94-C-0095, 91-C-1174 and 96-C-0036 (March 2, 1998) at 13 (emphasis added). The New York Commission further noted that such a procedure would be in conformance with Section 251(c)(6) of the Act "which contemplates that each State Commission will confirm an ILEC's space limitations." *Id.* at 13-14. In Massachusetts, in response to a Teleport Communications Group Inc. complaint about Bell Atlantic improperly denying TCG physical collocation space at a certain LEC premises, a technical conference was conducted by the Department of Telecommunications and Energy with the parties and DTE Staff at the subject ILEC premises. *See* Docket No. DTE 98-58, *Investigation into Petition by Teleport Communications Group Inc. to Establish Collocation Procedures.*

[34] In Delaware, the Delaware Public Service Commission ordered Bell Atlantic to make available its central offices for inspections in order to resolve requests for exemption from the physical collocation requirements. *In the Matter of the Petition by Bell Atlantic - Delaware, Inc. for Exemption from Physical Collocation Under Section 251(c) of the Telecommunications Act of 1996*, PSC Docket No. 97-009T, Order No. 4621 at 3-4 (April 15, 1997).

[35] *See* Affidavit of Patricia Boyle marked as AT&T Attachment A.

they have no space available, rather than wait until the "next" collocator arrives with a request.

BA-VA's Supplemental Application does not provide any information as to when BA-VA first became aware of the space limitations in the additional six central offices. The filing does not describe whether BA-VA became aware of the space issue after a physical collocation request, whether it was it was through a general survey of central office space or whether it was determined in another manner. BA-VA may have been aware for months of the alleged space constraints. Instead of filing when it first became aware of space limitations at the particular central offices, BA-VA apparently waited until it could aggregate a number of collocation requests, and make one filing with the Commission.[36] While this approach may have been more convenient to BA-VA, it does not take into account the reasonable needs of CLECs or the requirements of federal law. The delay in filing the exemption request harms only CLECs.

To remedy this situation, BA-VA should be required to survey its central offices on a regular basis in order to determine those central offices where physical collocation is not now feasible or where it will not be feasible in the immediate future.[37] Such information should be maintained on a web page accessible to carriers.[38] As soon as BA-VA is aware that there is (or will be) a

---

[36] It is unlikely that BA-VA "discovered" the space limitations in the six central offices all on the same day.

[37] Such a requirement would not be burdensome on BA-VA. As a matter of common sense, it would seem that BA-VA would already maintain sufficient information to make the necessary demonstration to the Commission.

[38] Among other things, such a web page should contain total square footage at a central office, the amount of administrative space, the amount of network-related space, the amount of

space limitation in a central office, BA-VA should immediately file a petition seeking an exemption from the physical collocation requirement.

Carriers should not have to wait until BA-VA denies a specific request for physical collocation. In no instance should BA-VA be in a position of denying a physical collocation request of a CLEC without prior Commission approval for the exemption.[39] In all cases, BA-VA should ask the Commission to approve the exemption *before* receiving a request from a CLEC for collocation at a particular central office.

Indeed, the lack of a formal process for BA-VA to file for exemption of the Act's physical collocation requirement encourages BA-VA to delay its filing, thus directly harming competitors. Allowing BA-VA to file for exemption with the timing left solely to BA-VA's discretion eviscerates the protections contained in Section 251(c)(6) of the Act. If BA-VA is under no time constraint within which to file for an exemption, the pro-competitive benefit of requiring physical collocation

---

collocator space, the amount of vacant space and the proposed exhaustion date for the premises. The determination of vacant space should include inactive and under utilized equipment. *See In the Matter of MFS Communications Company, Inc Petition for Arbitration Pursuant to 47 U.S.C. § 252(b) of the Interconnection Rates, Terms and Conditions with US WEST Communications, Inc.*, Docket No. UT-960323 (Washington Utilities and Transportation Commission) Initial Order on U S WEST Request for Exception from Duty to Provide Physical Collocation (Dec. 23, 1997) at 15.

[39] For example, suppose BA-VA denied a CLEC request for physical collocation before BA-VA had received an exemption from the Commission. The Commission could ultimately deny the exemption request by finding that BA-VA had not met its burden of establishing that there was insufficient space to allow physical collocation. In such a case, CLECs would be harmed by the operational and administrative inconvenience of proceeding with virtual collocation and switching to a physical collocation arrangement a short time later. In addition, there are expenses associated with such a conversion that fall squarely on the requesting CLEC. At a minimum, if BA-VA has not received an exemption at the time it denies a request for physical collocation, and ultimately the Commission denies the BA-VA exemption request, BA-VA should be responsible for all of the costs associated with migrating a virtual collation arrangement to a physical collocation arrangement and any additional costs related to BA-VA's improper denial. Such a policy would only put a CLEC in the same position it would have been in had BA-VA timely filed its exemption request.

(unless an exemption is obtained) becomes virtually meaningless. The remedy is to require ILECs to file when it first becomes aware of collocation space constraints at a particular premise.

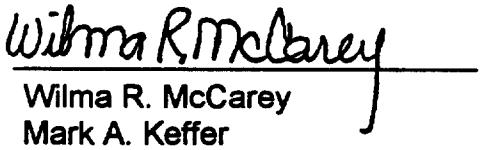
CONCLUSION

BA-VA has failed to provide evidence to support its assertions that collocation is not practical at the premises in question due to space constraints. Accordingly, the Commission should deny BA-VA's Supplemental Application.

Respectfully submitted,

AT&T Communications of Virginia, Inc.

By Its Attorneys



Wilma R. McCarey
Mark A. Keffer
Ivars Mellups
Michael A. McRae
3033 Chain Bridge Road
Oakton, VA 22185
(703) 691-6043

Dated: October 22, 1998

CERTIFICATE OF SERVICE
Case PUC 960164

I hereby certify that a copy of the Response of AT&T Communications of Virginia, Inc. in Opposition to Bell Atlantic – Virginia, Inc.'s Supplemental Application was sent via U.S. mail, postage prepaid, or Federal Express on this 22nd day of October 1998 to the following:

Warner F. Brundage, Jr., Esq.
Bell Atlantic - Virginia, Inc.
600 East Main Street, 24th Fl.
Richmond, VA 23261

Robert M. Gillespie
Office of General Counsel
State Corporation Commission
10th Floor, Tyler Building
1300 East Main Street
Richmond, VA 23219

Kathleen Cummings
Deputy Director
Division of Communications
State Corporation Commission
1300 East Main Street, 9th Floor
Richmond, VA 23219

William Irby
Division of Communications
State Corporation Commission
1300 East Main Street
Richmond, VA 23218

Sarah Hopkins Finley, Esq.
Williams Mullen Christian & Dobbins
Two James Center
1021 East Cary Street
Richmond, VA 23210-1320

Susan Jin Davis
COVAD
6849 Old Dominion Drive
Suite 220
McLean, VA 22101

Robin F. Cohn, Esq.
Swidler & Berlin
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007

Wilma R McCarey
Wilma R. McCarey

E

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

In the Matter of	)	
Applications for Consent	)	
to the Transfer of Control of Licenses	)	
and Section 214 Authorizations from	)	**CC Docket No. 98-184**
	)	
GTE CORPORATION,	)	
Transferor	)	
to	)	
BELL ATLANTIC CORPORATION,	)	
Transferee	)	

AFFIDAVIT OF PAUL KOUROUPAS
ON BEHALF OF AT&T CORP.

1. My name is Paul Kouroupas. I am Vice President, Regulatory and External Affairs for AT&T Local Services, formerly Teleport Communications Group, Inc. My business address is 2 Lafayette Center, 1133 21st Street, N.W., Suite 400, Washington, D.C. 20036.

2. Before TCG merged with AT&T this year, I worked for TCG for over six years, representing TCG before state public utility commissions throughout the country. For the past 4 years, I have been responsible for negotiating and overseeing the implementation of interconnection agreements with incumbent local exchange carriers ("ILECs"), including Bell Atlantic and GTE, both prior to and subsequent to the passage of the federal Telecommunications Act of 1996 ("Act"). In 1994, I negotiated the first interconnection agreement with Bell Atlantic (then New York Telephone) for TCG's New

York Operations. I have since negotiated and/or arbitrated seven interconnection agreements with Bell Atlantic and assisted in their implementation. I also oversaw the production of state regulatory complaints concerning Bell Atlantic's failure to implement various aspects of the interconnection agreements. These complaints were prosecuted in Massachusetts, Rhode Island, New York, New Jersey, Pennsylvania, Maryland and Virginia.

INTRODUCTION

3. The purpose of my testimony is to describe how Bell Atlantic, in violation of its obligations under the Act, the Commission's Rules, and its Interconnection Agreements, has acted anticompetitively in providing advanced telecommunications services and technologies.

4. First, Bell Atlantic failed to interconnect for the provision of advanced telecommunications services to all customers in a timely or efficient manner. Specifically, Bell Atlantic refused for many months to interconnect at its tandem at the 64 kbps clear channel ISDN capacity. Consequently, the advanced telecommunications services offered by TCG and AT&T[1] could not inter-operate with the advanced services offered by Bell Atlantic. In this regard, Bell Atlantic's conduct harms consumers, because, where competitors cannot establish the proper interconnection with Bell Atlantic, then consumers who elect to purchase advanced services from competitors risk being cut off from Bell Atlantic's customer base.

5. Second, Bell Atlantic unreasonably delayed providing unbundled xDSL loops to TCG that it seeks to use to provide advanced telecommunications services. Bell Atlantic has worked to provide these facilities and services to its own customers, but it has taken every available opportunity to slow its competitors' ability to deliver these advanced services. This has delayed competitors' market entry, denied consumers a realistic choice of providers, and resulted in more monopoly profits for Bell Atlantic. Bell Atlantic's conduct serves as the prototype for how a monopoly provider can disrupt and delay competition.

6. As the Commission has found, the market for advanced telecommunications services, and specifically for the xDSL services that consumers use for faster and more efficient data communications, is still early in its development.[2] Nonetheless, as the monopoly provider of all local telephone service, Bell Atlantic and other ILECs retain a distinct advantage over competing local exchange carriers ("CLECs"), who must still largely rely on ILEC facilities to provide these advanced services. In fact, although ILECs such as Bell Atlantic may assert that they do not exercise market power in the burgeoning market for advanced services,[3] my experience with Bell Atlantic does not bear out that claim.

---

[1] TCG and AT&T merged in July, 1998. For the sake of simplicity, I refer to TCG in this affidavit regardless of whether the events described occurred after the merger.

[2] *See In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147 et al., ¶¶ 10, 28-31 (Aug. 7, 1998) ("Section 706 Order") (describing xDSL services).

[3] *See, e.g.*, Petition of Bell Atlantic, CC Docket 98-11, at 21 (Jan. 26, 1998) (claiming that "there is no 'local bottleneck' issue in high-speed data services"); *cf. Section 706 Order*, ¶¶ 10-11 (denying Bell Atlantic Petition, but noting that in the market for advanced services ILECs may not "currently enjoy the overwhelming market power that [they] possess[] in the conventional circuit-switched voice telephony market").

7. Even though the Commission has now twice affirmed the ILECs' duty to provide to CLECs on just, reasonable and nondiscriminatory terms unbundled access to xDSL facilities,[4] Bell Atlantic has not complied with those obligations. To the contrary, Bell Atlantic has exploited its monopoly power to deny facilities to TCG while acting to promote its own offerings.

A. For Over Two Years in New York, Bell Atlantic Failed to Interconnect To Allow Interoperability at the 64 Clear Channel ISDN Capacity Level That Would Allow TCG To Improve Its Offer Of ISDN Service

8. Throughout 1995 and 1996, consumer demand for ISDN services was growing due to more and better applications. ISDN is a type of advanced telecommunications service that TCG's customers could use to receive high speed data access for use in obtaining, as just one example, Internet services.

9. At that time, TCG had been providing ISDN service to its own customers. But in order for TCG's customers to communicate with Bell Atlantic's customers at the ISDN level, it was necessary to establish interconnection. This was achieved by interconnection with Bell Atlantic's 56 kilobit facilities at New York Telephone's end offices.[5] However, and in light of the increased demand for ISDN, this arrangement for providing ISDN was inefficient, costly and technically inferior. Consequently, in early

---

[4] *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98 (First Report and Order), ¶¶ 380-382 (finding that ILECs have the duty to provide unbundled loops, which includes "two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL, and DS1-level signals"); *Section 706 Order* ¶¶ 52-56 (CLECs "must be able to obtain access to incumbent LEC xDSL-capable loops on an unbundled and nondiscriminatory basis").

[5] At that time, New York Telephone ("NYT") was a subsidiary of NYNEX; it later was acquired by Bell Atlantic through its merger with NYNEX. For the sake of simplicity, I refer to NYT throughout this section of the affidavit, even for conduct occurring after the completion of the merger.

1996, TCG asked NYT to establish interconnection at NYT's tandems at the 64 kbs level where it would be more efficient. This would also enable the interoperability of TCG's ISDN service with NYT's ISDN service on a broad customer basis. NYT repeatedly refused to provide such service, however, claiming a "lack of capacity" at its tandems.

10. As a good faith effort to eliminate or to work around any purported capacity constraints, TCG offered to move its existing end office interconnection to the tandem level thus conserving capacity rather than adding additional capacity. TCG explored and raised with NYT numerous technical solutions to this significant problem, but NYT not only continued to deny TCG interconnection to the requested ISDN capacity at its tandems but also refused to discuss any of the solutions proposed by TCG to the alleged capacity constraints. As a result, TCG had to cancel the orders it had submitted to NYT for ISDN trunks from NYT's tandems. NYT maintained this stance for many months, even after the passage of the Act (and the Commission's efforts to implement it), the completion of an interconnection agreement with TCG, and its parent's merger with Bell Atlantic. Consequently, consumers were denied a competitive ISDN offering and TCG's existing customer base could not communicate with NYT's customer base on an ISDN level.

11. Although this conduct was anticompetitive from the outset, both the Interconnection Agreement between NYT and TCG and Section 251(c)(2)(C) of the Act unambiguously require NYT to grant TCG's request for interconnection at the tandem. First, the Interconnection Agreement plainly states that "[e]ach party shall provide trunk

groups where available that are configured utilizing the B8ZS ESF protocol of 64 Kpbs clear channel transmission to allow for ISDN interoperability between the parties respective networks." More generally, the Agreement requires that each party establish trunk groups in sufficient capacity to provide a grade of service comparable to what is provided on NYT's network. Second, Section 251(c)(2)(C) of the Act requires Bell Atlantic and other ILECs to provide interconnection that is "at least equal in quality to that provided by the Local Exchange Carrier to itself or to any subsidiary, affiliate or any other party to which the carrier provides interconnection." Because NYT used 64 kbps clear channel ISDN capacity in its network, it was required to interconnect at that level to TCG. In fact, NYT – and then, after the merger, Bell Atlantic -- aggressively marketed and provided ISDN service to its own customers, and did so without encountering "capacity problems."

12. TCG believed that NYT's refusal to provide appropriate services and facilities to TCG, so that TCG could provide ISDN services to its customers, was in direct violation of these unambiguous obligations. In particular, TCG was reluctant to accept NYT's assertions that it did not have capacity at its tandem to provide the requested interconnection.

13. First, TCG found it unreasonable – and suspicious -- that NYT would not work with TCG to eliminate any alleged capacity constraints. In addition, and even more convincing, was NYT's conduct in the marketplace. In particular, TCG's belief was based on its specific experience at the White Plains New York tandem. On numerous occasions in 1996 and 1997, TCG had requested capacity at this tandem. Each time,

TCG was told that the tandem was out of capacity. In 1997, TCG received an order from IBM Global Service, which TCG had to decline because NYT had refused to provide capacity at the tandem. However, shortly thereafter, the customer called NYT directly to place the same order. But rather than declining to provide service itself due to the alleged lack of tandem capacity, New York Telephone in fact accepted and processed that order.

14. TCG sought interconnection to gain the ability to provide ISDN using 64 kbps clear channel capacity for almost two years, but NYT consistently displayed at best a total indifference to TCG's needs and at worst an anticompetitive refusal to meet its plain obligations under law and contract. To resolve these problems, TCG ultimately was required to resort to litigation, and filed a complaint before the New York Public Service Commission in September, 1997.[6] At the time it filed the complaint, TCG had submitted to NYT in 1997 over 70 pending orders for ISDN trunks (T1). Rather than defend the position it had maintained for so long, NYT, apparently anticipating the NYPSC's intervention, at last made attempts to resolve this unacceptable situation.

15. NYT's refusal to provide the 64 Clear Channel ISDN interconnection capacity to which TCG was plainly entitled severely hampered TCG's ability to serve new customers and also harmed TCG's existing customers by forcing them to use an inferior grade of service to access Internet and other data services. Although NYT couched its

[6] *See* Complaint of Teleport Communications Groups, Inc. Against New York Telephone Company for Failure to Provide 64 Clear Channel ISDN Service and Facilities, Case 97-C-1532 (Sept. 8, 1998) (Attached as Exh. 1); Reply of Teleport Communications Group, Case No. 97-C-1532 (Oct. 17 1998) (Attached as Exh. 2).

denial of access in technical terms, its own conduct suggests this was a mere pretext, and was likely designed to obtain a competitive advantage in the market place.

16. For the entire time that NYT maintained its unlawful and unreasonable position, NYT was able to continue providing ISDN service to its own customers. TCG, on the other hand, was prevented during this time from making a truly competitive offering because of NYT's unlawful and anticompetitive conduct. Because of TCG's inability to match NYT's offer of ISDN, it seems likely that IBM was not the only customer who turned to Bell Atlantic, rather than to TCG, to obtain ISDN service using 64 kbps clear channel capacity.

B. In Pennsylvania, Bell Atlantic Has Unreasonably Delayed Providing to TCG Access To a Four-Wire HDSL-Compatible Loop, But Has Worked To Provide ADSL And Other Advanced Service On Its Behalf

17. TCG recently encountered similar resistance from Bell Atlantic in TCG's efforts to provide HDSL-compatible loops in Pennsylvania.[7] Although Bell Atlantic has used this technology in its own network since at least 1995, Bell Atlantic has been unable to provide the unbundled facilities that TCG needs to provide this service. In fact, the first live, HDSL-compatible loop was turned up for TCG only in mid-October, 1998, over one year after TCG first requested the facilities from Bell Atlantic. At the same time, however, Bell Atlantic was apparently working to offer its own ADSL service, which it is now aggressively marketing. *See* www.bellatlantic.com/business/adsl/;*see also* http://www.bellatlantic.com/infospeed/

18. As I noted at the outset, the Act and the Commission's rules plainly require Bell Atlantic to provide unbundled loops that can be used to provide HDSL and other advanced services. In addition, TCG's Interconnection Agreement with Bell Atlantic-Pennsylvania, Inc. provides that, upon mutual agreement by Bell Atlantic and TCG, the parties would undertake a joint technical and operational trial of HDSL 4-Wire or ADSL 2-Wire Unbundled Local Loops.

19. The Interconnection Agreement also states that Bell Atlantic shall, upon request and to the extent technically feasible, provide access to its network elements on an unbundled basis for the provision of telecommunications service. Any request for access to a Bell Atlantic network element that is not already available would be treated as a network element Bona Fide Request ("BFR"). On October 13, 1997, TCG requested that Bell Atlantic provide access to an unbundled HDSL 4-Wire loop.

20. Bell Atlantic consistently dragged its feet during this process. During an exchange of correspondence between TCG and Bell Atlantic from October, 1997 to December, 1997, TCG sought to expedite its entry by eliminating any technical trial and/or the use of the BFR process. TCG questioned whether such procedures were necessary given that Bell Atlantic had utilized the HDSL technology in its own network since 1995. Bell Atlantic, however, objected. Because of pressing business needs, TCG agreed to conduct a trial that would address the development of the necessary systems requirements and processes for ordering and provisioning an HDSL 4-Wire

[7] TCG has requested via the BFR process HDSL-compatible loops in other areas in Bell Atlantic's region, including New York and Massachusetts. Although the situation in those states is no better than in Pennsylvania, I focus in this affidavit on TCG's experiences in that state.

unbundled loop. TCG, however, strongly emphasized that the trial should last no longer than 30 days.

21. Once the parties agreed to a trial, TCG again suffered through delays by Bell Atlantic in conducting the trial. One of the most egregious examples was Bell Atlantic's refusal even to schedule a conference call with TCG to discuss the ordering process for the HDSL-compatible loop. *See* Letter from Thomas Schroeder, TCG, to Antonio Yanez, Bell Atlantic, June 15, 1998 (attached as Exh. 3).[8] Moreover, it seemed that Bell Atlantic was apparently devoting considerable resources to its own offering of ADSL services. *See id.* at 2 (complaining of delay, and stating that "[i]nterestingly, Bell Atlantic recently announced that it will be offering ADSL services to business and residential customers this fall. From TCG's perspective, it is evident that Bell Atlantic is focusing its attention on deploying a retail service for ADSL versus supporting the availability of an unbundled offering").

22. Over a year after TCG's initial inquiry and over six months after the beginning of the trial, Bell Atlantic finally was able to provide service on one HDSL-compatible loop as part of the trial. However, Bell Atlantic remains unable to provide this service at all, let alone at those volumes that TCG and its customers are demanding. In October 1998, Bell Atlantic identified a major problem in its provisioning systems.[9] TCG (now AT&T) was recently informed that until this problem is resolved, Bell Atlantic would not

[8] *See also* Letter of Rebecca H. Sommi, TCG, to Jeffrey A. Noack, Bell Atlantic, May 29, 1998 (attached as Exh. 4) (noting that Bell Atlantic has refused to hold a call to discuss ordering procedures "since March 31st," 1998).

offer this unbundled element. Although Bell Atlantic originally told TCG that a tariffed offering would be available in June, 1998 in the Bell Atlantic South jurisdictions,[10] Bell Atlantic now admits that the problem may not be resolved until January 1999.

23. As these examples amply demonstrate, Bell Atlantic clearly lacked the commitment required to deliver the HDSL-compatible loop that it was unquestionably obligated to provide. Simply stated, Bell Atlantic did not provide sufficient resources and project management to this project.[11] Rather, TCG was almost invariably the party that initiated the numerous exchanges of correspondence and phone calls that were necessary to ensure that a service crucial to TCG's business needs would be available.[12] If Bell Atlantic had cooperated with TCG by making this element available as an unbundled network element, TCG's costs in the provisioning of T-1s for dial-tone service could have been significantly reduced. These potential savings have been lost for over a year. Moreover, Bell Atlantic's failure to devote the resources to this project was apparently to the benefit of its own retail offering of ADSL, which – unlike TCG's HDSL service – is currently available to consumers.

Conclusion

24. As these two examples show, when Bell Atlantic denies interconnection for advanced services, consumers are denied the benefits of competition for these

---

[9] The sole purpose of the trial was to test the ordering and provisioning process. It was not until the eleventh hour that Bell Atlantic determined there was an issue with assigning a 4-wire circuit via an LSR and Bell Atlantic's provisioning systems.

[10] *See* Letter of Jeff Noack, Bell Atlantic, to Rebecca Sommi, TCG, March 30, 1998 (Attached as Exh. 5).

[11] *See* Letter of Rebecca H. Sommi, AT&T, to Amy Stern, Bell Atlantic, at 5 (Oct. 15, 1998) (Attached as Exh. 6).

[12] *See id.* (detailing history of Bell Atlantic's delays in providing the unbundled elements that TCG needed to provide HDSL service).

services. Moreover, those customers who decide to take service from a facilities-based competitor offering its own advanced services cannot establish advanced communications links with Bell Atlantic's monopoly customer base. This Commission cannot tolerate Bell Atlantic's failure to cooperate in the development of an advanced "network of networks." Nor can the Commission reward Bell Atlantic for its failure to comply with its obligation to provide access on a timely and efficient basis to unbundled, HDSL-compatible loops that competitors need to provide service in competition with Bell Atlantic's own services.

AFFIDAVIT OF PAUL KOUROUPAS **CC Docket 98-184**

I, Paul Kouroupas, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Paul Kouroupas

SUBSCRIBED AND SWORN
Before me this 23rd day of
November, 1998.

Notary Public

My Commission Expires April 30, 2002

EXHIBIT 1

ROLAND, FOGEL, KOBLENZ & CARR, LLP

ATTORNEYS AT LAW

1 COLUMBIA PLACE

ALBANY, NEW YORK 12207

(518) 434-8112
(518) 462-4242

TELECOPIER (518) 434-3232

KEITH J. ROLAND
USHER FOGEL
MARK L. KOBLENZ
MURRAY S. CARR*
EMILIO A. F. PETROCCIONE

GEORGE A. ROLAND*
COUNSEL
*ALSO ADMITTED TO FLORIDA BAR

EDMUND A. KOBLENZ
1908-1972
A. ABBA KOBLENZ
1922-1979

September 8, 1997

HAND DELIVERED

Hon. John C. Crary
Secretary
New York State Public
Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: Complaint of Teleport Communications Group, Inc. Against New York Telephone Company for Failure to Provide ISDN Service and Facilities

Dear Secretary Crary:

Enclosed please find ten copies of a Formal Complaint by Teleport Communications Group, Inc. against New York Telephone Company for its failure to provide ISDN service and facilities.

A copy of this Complaint is being served today on counsel for New York Telephone Company.

All questions should be addressed to the undersigned.

Sincerely,

Keith J. Roland

KJR:tlm
Enclosures
cc: Sandra D. Thorn, Esq.
Allan Bausback
Yog Varma

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Case 97-C-___ - Complaint of Teleport Communications Group, Inc. Against New York Telephone Company for Failure to Provide 64 Clear Channel ISDN Service and Facilities

TO THE COMMISSION:

Teleport Communications Group, Inc. on behalf of its subsidiaries operating in New York (collectively referred to as TCG), hereby complains of New York Telephone's breach of its Interconnection Agreement, and its failure to provide just, adequate and reasonable service, relating to 64 Clear Channel ISDN, as required by the Public Service Law. In support thereof, it is respectfully shown as follows.

1. TCG operates as a competitive Local Exchange Carrier in this State. It provides various forms of local exchange service to its customers, and, as a participant in the competitive marketplace, constantly strives to meet the demands of its customers for various services in an efficient, reasonably priced manner according to the highest standards in the telecommunications industry.

2. TCG has experienced numerous requests from its customers to provide ISDN capability so that these customers may enjoy high speed data access for use, among other purposes, in obtaining Internet services.

3. For some time, TCG has been providing ISDN service to its customers by interconnecting with New York Telephone 56

kbs facilities at New York Telephone end offices. However, TCG has found this means of provisioning ISDN to be inefficient, costly and technically inferior. Accordingly, beginning in early 1996, TCG asked New York Telephone for interconnection to 64 kbs clear channel capacity at New York Telephone tandems. New York Telephone has repeatedly refused to provide such service, on the ground of an alleged "lack of capacity" at its tandems.

4. At the present time there are approximately seventy service order requests pending from Teleport for this service dating back to April of 1996.

5. In a further effort to meet the needs of its customers, while responding to NYT's claim of inadequate capacity, TCG offered as a solution to the tandem capacity issue the conversion of approximately 200 end office T-1s between three TCG switches and various New York Tel Class five end offices, from 56 kbs, AMI to 64 kbs CC B8ZS/ESF. New York Telephone has refused to cooperate with TCG in effectuating this conversion.

6. TCG's repeated requests that New York Tel address the lack of ISDN capacity is summarized in a letter dated April 11, 1997, from Mr. Jeff Hogan, TCG's Eastern Region Director - Carrier Relations to Mr. Howard Levine, New York Telephone's Account Manager for TCG. A copy of that correspondence is attached to this Complaint.

7. New York Telephone's refusal to provide the requested ISDN capacity at its tandems, or to work with TCG to eliminate the capacity problems by converting end office services

and facilities, violates New York Telephone's obligations under its Interconnection Agreement with Teleport, as well as under this Commission's ONA policies.

8. Section 4.2.2 of the Interconnection Agreement between New York Telephone and TCG, which has been approved by this Commission, reads as follows:

> "The parties mutually agree to establish trunk groups sufficient in capacity to provide a grade of service, availability and service quality which is comparable to that provided on inter-office trunk groups within NYNEX's network and which meets all appropriate and relevant industry accepted quality, reliability and availability standards. Notwithstanding the foregoing, each party may construct its network, including interconnection facilities, to achieve optimum cost effectiveness and network efficiency."

9. Section 5.4.4 of that Interconnection Agreement reads as follows:

> "Each Party shall provide trunk groups where available that are configured utilizing the B8ZS ESF protocol for 64 Kpbs clear channel transmission to allow for ISDN interoperability between the Parties' respective networks."

10. Furthermore, Section 251(c)(2)(C) of the Telecommunications Act of 1996 requires New York Telephone, as an Incumbent Local Exchange Carrier, to provider interconnection to TCG "that is at least equal in quality to that provided by the

Local Exchange Carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection."

11. New York Telephone aggressively provides ISDN service to its own customers, and does so without encountering any "capacity problems". Its refusal to provide appropriate services and facilities to TCG, so that TCG may provide ISDN services to its own customers, is in direct violation of its statutory obligation under the Telecommunications Act, as well as its contractual obligation under its Interconnection Agreement with TCG.

12. This Commission has long required Local Exchange Companies to open their networks, and to provide services and facilities which encourage the growth of competition. The Commission's landmark ONA Order stated this policy as follows:

> "The issues of unbundling and collocation go to the very heart of ONA. The ONA process, in very broad terms, is an avenue to increased competition in telecommunications markets, not simply a device for encouraging the development of information services. Our ultimate ONA objective is the creation of an environment in which all users can create their own services or networks using, where necessary or desirable, the functional elements of the LECs' local networks. To the extent users can substitute their own or other parties' facilities for those of the present monopoly LECs, telecommunications competition will be enhanced. And that enhancement will produce innovation, choice

and economic efficiency.[1]

13. In the ONA Order, the Commission set forth a "Statement of ONA Principles", among which was a statement on unbundling, which concluded:

> "The unbundling of network services into individual functional elements is fundamental to the success of ONA. Network functions should be offered in a substantially disaggregated fashion...
>
> Individualized or custom ONA service elements should be made available under arrangements similar to the existing mechanism for special assemblies. Users may develop custom service elements, subject to reasonable LEC technical specifications."[2]

14. In an Order which preceded the ONA Order, this Commission established procedures for the creation of ONA Task Forces.[3] Therein, the Commission authorized the creation of various ad hoc forums for the expeditious resolution of state-specific ONA issues, particularly technical ones. The purpose of such forums, as set forth by Commission Staff, was "to establish

---

[1] Case 88-C-004, Proceeding on Motion of the Commission to Review Telecommunications Industry Interconnection Arrangements, Open Network Architecture, and Comparably Efficient Interconnection, Opinion 89-28, "Opinion and Order Resolving ONA Issues and Adopting a Statement of ONA Principles", September 11, 1989, at p. 6 (hereinafter "ONA Order").

[2] ONA Order, Statement of ONA Principles, Appendix 2.

[3] Case 88-C-004, "Order Instituting Procedures for the Creation of ONA Task Forces", March 29, 1989.

procedures for identifying, evaluating, and implementing new service elements and for resolving the conflicts which can be expected to arise as ONA evolves."

15. Since issuance of the ONA Task Force Order, this Commission has utilized that procedure to resolve requests from a number of carriers for services which they desired, but which New York Telephone was unwilling, or allegedly unable, to provide.

16. Accordingly, to the extent the Commission deems the ONA Task Force process would be appropriate for resolving this issue, TCG formally requests the establishment of such a Task Force pursuant to the procedures set forth in the ONA Task Force Order.

17. The policy of both this State, and Federal authorities, is to encourage use and growth of all forms of telecommunications, particularly use of Internet resources. New York Telephone's refusal to provide the 64 Clear Channel ISDN interconnection capacity requested by TCG is severely hampering the ability of Teleport customers to access Internet services. Indeed, while NYT couches its conduct in technical terms, it is far more likely to have been motivated by New York Telephone's desire to obtain a competitive advantage in the marketplace.

18. Accordingly, this Commission's immediate review of New York Telephone's refusal to provide the requested 64 Clear Channel ISDN service, in the Commission's role as the enforcer of

the Public Service Law as well as the Interconnection Agreement between TCG and New York Telephone, is respectfully requested.

Respectfully submitted,

Teleport Communications
Group, Inc.
By: Keith J. Roland
Roland, Fogel, Koblenz
& Carr, LLP
Its Attorney
One Columbia Place
Albany, New York 12207
(518) 434-8112

Dated: Albany, New York
September 8, 1997

EXHIBIT 2

ROLAND, FOGEL, KOBLENZ & CARR, LLP

ATTORNEYS AT LAW

1 COLUMBIA PLACE

ALBANY, NEW YORK 12207

(518) 434-8112
(518) 462-4242

TELECOPIER (518) 434-3232

KEITH J. ROLAND
USHER FOGEL
MARK L. KOBLENZ
MURRAY S. CARR*
EMILIO A. F. PETROCCIONE

GEORGE A. ROLAND*
COUNSEL
*ALSO ADMITTED TO FLORIDA BAR

EDMUND A. KOBLENZ
1908-1972
A. ABBA KOBLENZ
1922-1979

October 17, 1997

HAND DELIVERED

Hon. John C. Crary
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: Case 97-C-1532 - Complaint of Teleport Communications Group, Inc., Against New York Telephone Company for Failure to Provide 64 Clear Channel ISDN Service and Facilities

Dear Secretary Crary:

Enclosed please find an original and five copies of the Reply of Teleport Communications Group, Inc. in the above-captioned matter.

A copy is being served upon counsel for New York Telephone.

Sincerely,

Keith J. Roland

KJR/mac
Enclosures
cc: Maureen F. Thompson, Esq.
Mr. Yog Varma
Paul Kouroupas, Esq.
Mr. Jeff Hogan

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Complaint of Teleport Communications Group, Inc., Against New York Telephone Company for Failure to Provide 64 Clear Channel ISDN Service and Facilities	))))	Case 97-C-1532

REPLY OF TELEPORT COMMUNICATIONS GROUP, INC.

Teleport Communications Group, Inc. (TCG) hereby replies to the response submitted by New York Telephone on or about October 3, 1997.

In general, New York Telephone denies it has failed to provide TCG with the 64 Clear Channel ISDN capacity which TCG has sought in order to provide service to TCG's own customers. As will be shown below, many of the statements set forth by New York Telephone are either inaccurate or grossly misleading.

Equally as important, however, is that the response indicates the overall nature of New York Telephone's conduct towards its competitors. TCG has been seeking this capacity for almost two years, and generally met with either a total indifference to the problem, or even worse, a refusal to cooperate on the part of New York Telephone. It was only upon the filing of this complaint, and the anticipated intervention of the Commission, that New York Telephone belatedly made attempts to address this unacceptable situation.

A point-by-point rebuttal to the New York Telephone submission follows.

A. NEW YORK TEL CLAIM: "NYT HAS PROVIDED TCG WITH THOUSANDS OF 64 CLEAR CHANNEL ISDN INTERCONNECTION TRUNKS"

The basis of TCG's complaint was New York Telephone's failure - or refusal - to provide 64 Clear Channel ISDN capability at New York Telephone tandems. New York Telephone responds by indicating it has provided TCG with approximately 3,800 trunks from end offices. But end office connectivity is not the issue. As indicated in the complaint, provisioning ISDN at end offices is an inefficient, costly and technically inferior method of providing service. That is why tandem connections were requested in the first place.

New York Telephone also claims that it has provided 360 "such trunks" from the tandems. That is correct. However, that is still a sub-standard and unacceptable level of service.

The "360" trunks are DS-0 trunks. Recognizing there are 24 DS-0s in each T-1 trunk group, that equates to a mere 15 T-1 trunk groups.

The "360" trunks must be contrasted to the pending requests of Teleport for 70 T-1 trunk groups, which equate to 1,680 DS-0 trunks. That unfulfilled service request is far from "a relatively small number of trunks".

New York Telephone also defends itself by claiming it has kept TCG "fully informed" about its capacity constraints. Apparently, NYT believes as long as it

says "no", that's the end of the issue. TCG disagrees.

Teleport's requests for service go back to April of 1996, and those requests were uniformly met by denials because of the alleged "lack of capacity". Simply repeating to TCG over the years that the same "lack of capacity" prevents the provision of service does not excuse the Company's failure or refusal to remedy that situation.

Nor has TCG in fact been kept "fully informed". For example, New York Telephone makes reference to "recently installed new software" at its tandems, and claims that as a result it has "already been able to begin the process" of provisioning capacity at the Williamsburg tandem. This alleged "new software" is news to TCG; one would have thought that in light of TCG's continued efforts to obtain service, New York Telephone would have made some efforts to keep TCG informed on its progress. Apparently, NYT feels no obligation to do so.

New York Tel also alleges that its failure to provide service to TCG is justified by its failure to provide the same type of service to itself. TCG again disagrees.

First, a poor level of service, no matter which carrier's customers are affected, is unacceptable and should be promptly corrected. New York Telephone alleged as far back as early 1996 that capacity was lacking at its tandems, yet apparently little, if anything has been done to correct that situation. As this Commission has found with respect to the quality of New York Telephone's provision of special services in general, it is both the absolute level of performance, as well as the "parity" level of

performance, which are critical.

Second, TCG is not so willing to accept New York Telephone's assertions that it does not itself have access to capacity at the tandem.

On numerous occasions, TCG has requested capacity at New York Tel's White Plains tandem. Each time, TCG was told that the tandem was out of capacity. Recently, TCG had an order from IBM Global Services, which TCG had to decline because New York Telephone refused to provide capacity at the tandem. However, shortly thereafter, the customer called New York Telephone directly to place the same order. But rather than declining to provide service itself due to the alleged lack of tandem capacity, New York Telephone in fact accepted and processed that order, with service having been turned up to the customer on September 16, 1997.

TCG has previously brought to this Commission's attention incidents where New York Tel refused to provide service to TCG based upon the alleged "lack of capacity", and then turned right around and provided the very same service to TCG's customer. This apparently is becoming standard operating procedure.

While New York Telephone now alleges it expects to make significant progress in providing the requested trunks "within the next week", it is again worth noting that its sudden efforts to provide service are clearly the result solely of the filing of this complaint. Neither Teleport, nor any other carrier, should be forced to file a complaint with this Commission as a prerequisite to obtaining service which New York

Telephone is obligated to provide.

As of this date, New York Telephone has provisioned only two of the eleven pending orders at the Williamsburg tandem. One which has been filled, No. NYCP9702396, was sent to New York Tel on February 3, 1997; the other, which has now been filled, was sent on February 21, 1997. It is now eight months with nothing but a minimal response. That is not the provision of "just, adequate and reasonable service."

B. NYT CLAIM: "TCG DOES NOT HAVE 70 PENDING SERVICE ORDER REQUESTS FOR 64 CLEAR CHANNEL ISDN CAPACITY"

New York Telephone claims TCG's allegation that there are 70 pending service order requests is "vastly overstated", and indicates, according to its records, that there are now only eight orders pending from TCG for capacity in three tandems.

Apparently, New York Telephone is so cavalier about providing capacity that it doesn't even know how much service has been denied.

For the Commission's review, attached to this pleading is a document entitled "1997 TCG Engineering Status Report" which shows 70 orders placed since 12/23/96 for capacity at the White Plains, Williamsburg, Broadway, 37th Street, Brentwood, and Garden City tandems (Attachment A to this pleading). The current status of each of those is "no NYNEX capacity".

It should also be noted that in addition to these 70 "pending" orders, TCG

was forced to cancel 28 orders during 1996 due to "no capacity" at New York Tel's tandems. See, Attachment B to this pleading.

C. NEW YORK TEL CLAIMS: "NYT HAS PROVIDED END OFFICE TRUNKS WHERE CAPACITY WAS AVAILABLE"

New York Tel denies it has refused to cooperate with TCG's request that NYT convert end office trunks from 56 AMI to 64 Clear Channel to relieve tandem constraints.

The initial contact by TCG requesting the conversion was made on March 31, 1997 (see Attachment C to this pleading). From that time on, there has been nothing worth categorizing as "cooperation" on this project.

Further correspondence relating to the 56 Kbps to 64 clear channel conversion is set forth in a letter from TCG to New York Tel account manager Howard Levine, dated April 11, 1997 (Attachment D to this pleading). There has never been a satisfactory response.

True to form, however, on October 9, 1997, in direct response to the filing of this complaint, TCG was finally contacted by New York Tel personnel to discuss re-establishing the project. But once again, neither Teleport nor any other carrier should be forced to invoke this Commission's complaint process in order to interest New York Telephone in meeting its public service obligations.

II. NYT'S OBLIGATIONS

New York Telephone has asked the Commission to reject Teleport's complaint on the ground that it is only obligated to provide 64 Clear Channel ISDN capacity where "facilities exist". TCG does not see New York Tel's obligations as so limited.

Separate and apart from any duties under the interconnection agreement between TCG and New York Telephone, New York Tel has a statutory duty, under the Public Service Law, to provide "such instrumentalities and facilities as shall be adequate and in all respects just and reasonable." (Public Service Law, Section 91(1)). A utility which, through poor planning, inefficiency or refusal to devote sufficient resources, fails to provide services reasonably requested by customers, does not comply with that standard.

III. COMPETITIVE ALLEGATIONS

New York Tel denies it is discriminating against TCG by refusing to provide capacity to TCG out of the tandems, while giving itself capacity in those affected tandems. NYT claims its own trunk groups at the tandems were provided prior to any requests for similar service from TCG. New York Telephone has not, however, answered the relevant questions.

For example, it has not indicated whether customers served by its "pre-existing" capacity were able to have their own services augmented, or whether any new or additional service was provided to any New York Telephone customers (but not to Teleport), using the "pre-existing" capacity, following submission of Teleport's orders.

More importantly, however, is that New York Telephone has not set forth any justification for its failure to eliminate the alleged capacity shortages when service was reasonably requested by TCG. As discussed above, it has been eighteen months since New York Tel began denying TCG's requests, and eight months since it refused to cooperate in converting the 56 Kbps capacity to 64 KBS Clear Channel capacity at end offices. During that time, while New York Telephone was able to continue providing ISDN service to its own customers, Teleport was unable to do so. Because of inability to provide ISDN capacity, TCG may well have lost other business from prospective customers. Since the "status quo" - in which New York Telephone was able to provide service, but Teleport was not - served New York Tel's best interest, it is hardly a situation where competitive harm has not existed.

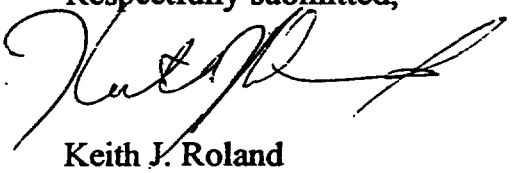
Finally, as discussed earlier, it does appear that at least one customer, IBM Global Services, was able to obtain service from the White Plains tandem in September of 1997. New York Telephone's willingness to serve that customer directly - while denying the very same service to Teleport - cannot be considered acting in a competitively neutral manner.

CONCLUSION

New York Telephone has failed to justify its refusal to provide 64 Clear Channel ISDN capacity at its tandems in response to Teleport's reasonable requests. This Commission should find that New York Telephone's failure or refusal to provide that service is in violation of its obligation under its interconnection agreement with TCG, as well as its statutory obligation to provide just, adequate and reasonable service.

New York Tel should be ordered to promptly provide the requested capacity; to withhold service to its own customers (whether from an end office or tandem) until all carriers can obtain service; and to compensate TCG for the damages it has suffered.

Respectfully submitted,



Keith J. Roland
Attorney for Teleport
Communications Group, Inc.
Roland, Fogel, Koblenz & Carr, LLP
1 Columbia Place
Albany, New York 12207
(518) 434-8112

Dated: October 17, 1997
Albany, New York

EXHIBIT 3

TCG®

Via Airborne Express

June 15, 1998

Mr. Antonio Yanez
Vice President
Bell Atlantic Network Services, Inc.
222 Bloomingdale Road
Room 272
White Plains, New York 10605

RE: HDSL - Ordering

Dear Tony,

This letter represents an escalation of Rebecca Sommi's correspondence sent to Jeff Noack on May 29th, with regards to TCG's request to schedule a conference call/meeting to discuss the process associated with ordering a 4-Wire HDSL compatible unbundled loop in Philadelphia. It has come to my attention that Bell Atlantic has, and continues to be unresponsive, to this request. Bell Atlantic's delay tactics are puzzling to me.

On January 30, 1998, you, on behalf of Bell Atlantic responded to TCG's Vice President of Regional Operations Don Helms' request for immediate access to 4-Wire HDSL compatible unbundled loops and stated that "Bell Atlantic is in the initial phase of conducting a trial with a CLEC for an unbundled local loop (and possibly also an HDSL unbundled local loop). The trial is expected to help Bell Atlantic develop necessary systems requirements and processes for ordering the correct facilities, provisioning the facilities in ways that will not cause harm to the embedded copper plant and services on that plant ...."

TCG responded to Bell Atlantic on February 12th and agreed to move forward with a trial to "test" the procedures for ordering, provisioning, installing and maintaining HDSL loops. On March 16th, Bell Atlantic replied and established a mid-April start date for the trial. TCG, on several occasions, suggested that a conference call should be scheduled to discuss the trial. Bell Atlantic stated that a call was not necessary. In late March, Bell Atlantic communicated that it had not received the NEBS certification documentation from TCG and/or the vendor. This issue was addressed and resolved. During this same time period, TCG continued to request a call to

discuss the ordering of a 4-Wire HDSL compatible unbundled loop. Bell Atlantic stated that it would not discuss the ordering process until the NEBS certification was completed. This position perplexed TCG, in that the certification of the equipment was completely unrelated to a discussion associated with the process to submit an order.

Almost six (6) months have passed since TCG's initial request for access to a 4-Wire HDSL compatible unbundled loop. It is clear to TCG that Bell Atlantic has failed to make any progress with respect to the development of a process for the ordering of an HDSL 4-Wire compatible unbundled loop. BA also communicated to TCG that it intended to file a tariff "on or around June 1, 1998." This date has come and gone, and to TCG's knowledge, no tariff has been filed or is planned to be filed in the short term. Interestingly, Bell Atlantic recently announced that it will be offering ADSL services to business and residential customers this fall. From TCG's perspective, it is evident that Bell Atlantic has focused its attention on deploying a retail service for ADSL versus supporting the availability of an unbundled offering.

This strategy is clearly in violation of the pro-competitive mandates of the Telecommunications Act. TCG expects to receive the information to place an order within the next week. If you have any further questions, please contact Becky Sommi at 703-437-7532. I can be reached at 732-392-2921.

Sincerely,

Thomas Schroeder
Vice President
Carrier Relations

cc: Don Helms
Becky Sommi
Chris Nurse
Tilly Valls McFadden
Jeff Noack

EXHIBIT 4

TCG®

Via Airborne Express

May 29, 1998

Mr. Jeffrey A. Noack
Bell Atlantic
Telecom Industry Services
Account Manager
1320 North Courthouse Road
3rd Floor
Arlington, Virginia 22201

RE: Training for HDSL

Dear Jeff:

As a follow-up to our conversation on May 15th, I am again requesting a meeting and/or conference call to discuss the procedures associated with the ordering of a 4-Wire HDSL compatible Unbundled Local Loop. Bell Atlantic, as it has done since March 31st, stated that it is not appropriate to schedule a call until all other issues are resolved. Since the ordering of unbundled elements, and in particular a 4-Wire HDSL compatible loop, is new to TCG and to BA, the response to this request should be immediate. It appears that BA is delaying this discussion because either it does not have the process defined or in fact BA is delaying TCG's entry into the market. Either of these reasons is unacceptable and TCG expects an expeditious answer to its request.

Since both parties agreed that a trial would serve the purpose of testing the internal procedures for the ordering/provisioning/installation and maintenance of a 4-Wire HDSL compatible loop, it seems virtually impossible that these practices do not yet exist. Again, TCG wants to proceed as soon as possible with discussions pertaining to the ordering of a 4-wire HDSL compatible loop. I look forward to your expeditious response to this request by June 7th. I can be reached at 703-437-7532.

Sincerely,

Rebecca H. Sommi
Director Eastern Region
Carrier Relations

cc: Tilly Valls McFadden
Jim Washington
Thomas Schroeder
Chris Nurse
Don Helms

EXHIBIT 5

Bell Atlantic
1320 N. Courthouse Road - 2nd Floor
Arlington, VA 22201
703-974-4523

Jeffrey Noack
Account Manager

Ms Rebecca Sommi
Director - Carrier Relations
Teleport Communications Group
13120 Lou Alice Way
Herndon, VA 20171

VIA INTERNET

March 30, 1998

Dear Becky,

This is in response to your letter dated January 28, 1998, RE: Network Element Bonafide Request, in which TCG has requested 4-Wire HDSL compatible Unbundled Local Loop (ULL).

A letter sent to Mr. Don Helms from Mr. Tony Yanez, dated March 16, 1998, agrees to proceed with a trial in the Philadelphia, PA area with TCG in mid April. To further clarify that letter, I believe it was Bell Atlantic's intention that the letter would serve as the response to TCG's BFR request.

As of this writing, Bell Atlantic is still committed to a mid to late April trial with TCG in the Philadelphia area. Bell Atlantic is in the process of internal testing of our Service Order, Provisioning, Billing and Maintenance systems. At the conclusion of this trial, it is Bell Atlantic's intention to file for HDSL 4 wire ULLs on or around June 1, 1998 in all Bell Atlantic South jurisdictions where TCG has requested this service.

As to your concerns about the costs stated in Mr. Yanez's letter, with the loops being rated as DS1 tariffed UNE rates until Bell Atlantic has an approved HDSL ULL rate in Pennsylvania, would be subjected to a track and true once the HDSL ULL rate has been approved.

Sincerely,

Jeff Noack
Account Manager

EXHIBIT 6

Via Airborne Express and E-Mail

October 15, 1998

Ms. Amy Stern
Director
Bell Atlantic Network Services, Inc.
222 Bloomingdale Road
White Plains, New York 10605

RE: HDSL and ADSL Trials

Dear Amy,

This correspondence is to provide you with the details of TCG Delaware Valley's, Inc. ("TCG")[1] unsatisfactory experience with the HDSL and pending ADSL trial with Bell Atlantic ("BA"). To familiarize you with the activities associated with the HDSL trial a summary of the issues is provided below.

1) On October 13, 1997, TCG's switch engineering department submitted a letter to BA requesting an augmentation to TCG's Newark collocation. The purpose of the augment was to install ADC's Soneplex equipment for the provisioning of 225 HDSL compatible unbundled loops. Activation of the loops was requested under the ISDN tariff. [2] TCG also communicated that its equipment was NEBS compliant.

2) On October 17, 1998, BA responded to TCG's letter, as well as conversations with Ray Gillen and Robert Gianquinto to reaffirm BA's position regarding the deployment of HDSL. BA stated that it did not have an offering for the provisioning of HDSL service, either loop or transport. BA stated that attempts to

[1] A wholly owned subsidiary of Teleport Communications Group, Inc., a wholly owned subsidiary of AT&T Corp.
[2] ISDN qualified loops are also technically qualified for HDSL or ADSL.

provide HDSL over a POTs loop, could result in a technical failure within BA's network. In addition, BA communicated that there were no current provisions

for the ordering of ISDN loops as an Unbundled Network Element (UNE) in New Jersey. BA also included a copy of the NEBS compliant documentation. This documentation outlined the NEBS certification process. BA also stated that it would wait to hear from TCG regarding the augmentation.

3) In October, TCG reviewed the language in its interconnection agreements pertaining to HDSL. The TCG agreement provided a provision which required BA to commence an HDSL trial within thirty (30) days of a request by TCG.

4) From October to December, TCG held conversations with BA regarding TCG's requirements for HDSL. BA instructed TCG to file a BFR, in addition to the trial provision in it agreements. TCG stated that it was aware of BA's requirement to submit a BFR, but believed it was unreasonable and unnecessary. However, TCG agreed to comply with the requirement.

5) On December 12, 1997, TCG sent a letter to BA requesting a 4-Wire HDSL compatible unbundled local loop. TCG also stated that it knew of the two (2) xDSL trials, with other CLECS, which were expected to conclude in the first quarter of 1998. TCG communicated that it was unnecessary to conduct a technical trial and that it would work with BA to resolve any outstanding HDSL issues.

6) On January 28, 1998, TCG submitted a BFR for the applicable Bell Atlantic South states pursuant to TCG's interconnection agreement. The BFR included a technical description, means of interconnection and a forecast.

7) On January 30, 1998, BA responded to TCG's December 12th correspondence. BA explained why it did not offer HDSL or ADSL services as a retail offering and why BA's introduction of the service would be assisted by conducting a trial. BA stated that they were in the initial stages of testing an ADSL unbundled loop and possibly an HDSL unbundled local loop. The trial was expected to assist BA in the development of the necessary systems requirements and processes for the ordering, provisioning and maintenance of ADSL and HDSL loops. BA stated that they were willing to conduct a trial with TCG in Philadelphia. It was left to TCG to contact BA.

8) On February 12th, TCG wrote back to BA. TCG communicated that both companies agreed that a technical trial was not needed and that TCG assumed the trial was for purposes of addressing procedural issues. TCG questioned what the difference, if any, was between ordering a 4-Wire Analog Voice Grade

Unbundled Local Loop (ULL) and an HDSL compatible loop. TCG agreed to "test" the procedures for the ordering, provisioning and maintenance of HDSL

loops on the condition that it would not exceed 30 days. The Locust central office in Philadelphia was selected for the trial.

9) On March 16, 1998, BA responded to TCG's February 12th letter. BA explained the perceived differences between provisioning a 4-Wire Analog loop, which was available under tariff and an HDSL loop. In addition, BA again stated it was willing to conduct a trial with TCG. BA stated that TCG should order no less than ten (10) HDSL compatible unbundled local loops. The loops would be rated at the DS1 tariffed UNE loop rate and its associated NRC's until Bell Atlantic has an approved HDSL ULL in Pennsylvania. Once the trial was completed, it was BA's intention to file for HDSL 4-wire ULLs on or around June 1, 1998.

10) On March 26, 1998, conversations were held with BA regarding the lack of response to TCG's BFR. Per TCG's interconnection agreement, a response was due within 30 days of January 28th. BA believes that it had responded to the BFR in its March 16th letter. I communicated that TCG required a written response to the BFR. TCG also requested the scheduling of a conference call to review the ordering/processing requirements for HDSL.

10) On March 30, 1998 BA responded to TCG's BFR in writing. The correspondence stated that the trial would begin in mid-to-late April and that it was BA's plan to roll out HDSL compatible unbundled loops in the BA-South states in the June time frame. TCG contacted BA and requested that a conference call be held to discuss ordering issues.

11) On March 31, 1998 BA contacted TCG and stated that TCG had not submitted the NEBS compliant paperwork and that it had not received the augmentation request. TCG requested a conference call.

12) On May 29, 1998 TCG sent a correspondence to BA again requesting a meeting and/or conference call to discuss the procedures associated with the ordering of a 4-wire HDSL compatible Unbundled Local Loop. BA had previously stated that it would not hold a call until all other issues were resolved.

13) On June 15, 1998 TCG sent a subsequent letter again requesting a conference call/meeting to discuss the ordering process.

14) On July 1, 1998, TCG and BA held a call to review the ordering process, inclusive of the information required in each field of the LSR. BA provided the NC, NCI and SNCI codes as well as discussed the process for the submission of

the order. BA also stated that a 4-wire termination was required. An action item for BA was to verify the availability of a 4-wire termination in its systems. The order was to be faxed to the TISOC in addition to sending a copy to the TISOC staff group. TCG initially sent the order on July 6th and then inadvertently cancelled the order. Another order was placed on August 6th. Since much of this process was handled manually there were no checks and balances established to track the order.

15) On August 21st, TCG contacted BA's TISOC staff personnel and learned that BA believed that it had never received the August 6th order. BA determined that the August 6th order could be resubmitted. BA then identified specific fields on the LSR which needed to be corrected. TCG resubmitted the order. On September 2nd, TCG was notified that the HDSL Test Order had been put out to query by BA, due to the unavailability of an HDSL compatible unbundled loop. Because the order had been delayed since July, the TISOC personnel were not aware of the pending trial. The issue was escalated to BA and consequently the order was accepted.

16) On September 4th, TCG received a Firm Order Commitment (FOC) from BA with a due date of September 9th. On September 8th, TCG received a call from BA stating that TCG was incorrectly assigning the facility. TCG was trying to assign two (2), 2-wire terminations, a technically viable alternative, but this was unacceptable to BA. BA stated that a 4-wire termination was required for the HDSL compatible unbundled loop. It was at this time,that TCG learned that BA had established a requirement to identify the type of termination e.g. 2-wire/4-wire on the collocation application. TCG communicated that this option was not available on the collocation application in 1996, nor today, and thus BA needed to tell TCG how to assign the HDSL loop for the trial.

17) On September 14th, TCG sent a correspondence to BA stating that BA had never required a collocator to identify the type of termination e.g. 2-wire/4-wire on the collocation application. TCG asked if BA had adopted a new policy and formally requested that it be given guidance with regards to assigning one (1) 4-wire termination for the purpose of the HDSL trial.

18) During the next month numerous conversations were held with BA in an effort to process the order. Manual intervention was required and it was determined that the loop would be terminated on SLOTS 601 and 602. BA learned that there were

limitations on the LSR and TCG learned that its collocations needed to be inventoried to determine the available types of terminations e.g. 2-wire/4-wire.

19) On September 30th BA contacted TCG and communicated that the HDSL circuit had been terminated in the basement of 2130 Arch Street, Philadelphia, and was ready to be tested. TCG extended the DMARC and attempted to test the circuit.

20) TCG was not receiving any voltage on the circuit and contacted BA's local contact. On October 2nd, TCG learned that BA had terminated the circuit on SLOTS 501 and 502, which was unacceptable to TCG. During the day several BA made calls internal BA organizations to determine if the cross-connect could be moved from Shelf 6 to Shelf 7 without the submission of additional paperwork.

21) On October 5th TCG was told to resubmit the paper work to reassign the termination from SLOTS 501 and 502 to SLOTS 601 and 602.

22) Due to scheduling conflicts in TCG's National Customer Service Center BA did not receive the order until October 8th. On October 8th TCG received a call from BA's product management organization stating that the order had been completed. As of today, October 15th, TCG completed testing of the circuit.

As you can see from this recap, this process has been extremely tedious for both organizations. At a minimum, TCG learned that its equipment was not NEBS "certified" and that there are issues with the cabling in its collocation cages. BA learned that its collocation process does not require that a collocator specify 2-wire versus 4-wire terminations and that the LSR does not support and/or that BA's systems do not support the assignment of a 4-wire termination via the LSR. Although it is certainly more beneficial to identify problems in a trial, versus with live customers, I am not confident that the existing trial process allows for the long term resolution of these problems.

Per TCG's interconnection agreement BA agreed to conduct a trial for a 4-Wire HDSL-compatible Unbundled Local Loop (ULL). Although BA has allegedly participated in a trial, BA has provided no project management of this process. Little activity took place unless TCG initiated a phone call. TCG requested meetings and/or conference calls which were frequently denied on the basis that there was nothing to discuss. It appears BA was wrong. It is now well over 6 months since the start of the trial and TCG has just accepted the circuit. TCG has taken the initiative and requested that a senior management level meeting be scheduled to conduct a post mortem of this trial.

Of even greater concern is TCG's pending ADSL trial in the Pennypacker central office in Philadelphia. Since there was a tremendous learning curve as a result of the HDSL trial, I was confident that this trial would build off the experiences and lessons learned in the HDSL trial. In an effort to avoid any future delays and to avoid "reinventing the wheel" a call was held on September 10th to review the outstanding issues. A correspondence was sent on September 11th detailing the call and identifying action items. Many of the action items were similar to those issues raised in the HDSL trial e.g. NEBS certification, 2-wire versus 4-wire terminations, order requirements, etc. Although I've left several messages and sent a number of e-mails no formal response has been received. Ironically, in the same period of time, BA has rolled-out its ADSL retail service in Pittsburgh. TCG is perplexed how BA can roll-out an ADSL service to its customers, but is unable to offer an ADSL compatible unbundled loop to a CLEC.

To ensure that the ADSL trial gets off on the right track, TCG requests the BA immediately establish a project team to manage this process. In addition, a senior level meeting should be scheduled to review the HDSL trial. I look forward to hearing from you on the above issues by Tuesday, October 20th. If you have any questions, I can be reached at 703-437-7532.

Sincerely,

Rebecca H. Sommi
Director of Carrier Relations
Eastern Region

Cc: Jeff Masoner - BA
Rose Clayton – BA
Bob Accorsini – BA
Richard Sampson – BA
Wayne Madden - BA
Don Helms
Jim Washington

Via Facsimile and Airborne Express

September 14, 1998

Mr. Wayne Madden
Senior Project Manager
Bell Atlantic Network Services, Inc.
416 7th Avenue
7th Floor
Pittsburgh, PA 15219

RE: Collocation - Cabling Terminations

Dear Wayne,

As you are aware, during this past week AT&T Local Services (ALS), formally TCG, has been in discussion with Bell Atlantic (BA) regarding the ordering of a 4-wire HDSL compatible unbundled loop, pursuant to the our Interconnection Agreement. This loop was to be ordered utilizing our collocation in the Locust central office in Philadelphia. BA and ALS have exchanged numerous correspondences and have had many conversations pertaining to the ordering of one (1) 4-wire HDSL compatible unbundled loop.

During the conference call to review ordering requirements, on July 1st, BA indicated that ALS must provide a 4-wire termination at its frame. BA was to verify that its System ID(s) reflected the availability of a 4-wire termination. This action item was never completed. On September 8th, ALS learned that the assignment it submitted on the LSR, two 2-wire terminations, was unacceptable and was again told that ALS must provide a 4-wire termination. In addition, ALS was told that the System ID's BA had assigned to ALS in the Locust central office did not support 4-wire terminations.

When ALS placed its application for collocation and cabling at the Locust central office, in 1996, HDSL-compatible unbundled loops were not available. DS3, DS1, DS0 and voice grade terminations were the only available terminations, thus ALS requested 700 DS0 terminations to support its loop requirements. Since no other alternatives were addressed e.g. HDSL, ALS verbally communicated that it was interested in using the assignments for all types of loops. Neither at that time, nor since that time, has BA officially notified ALS that it must make a designation on the collocation application as to the "type" of unbundled loop, e.g. ISDN, HDSL, 2-wire or 4-wire, that will be provisioned on each cross-connect cable between ALS and BA.

Has BA established a policy which states that a CLEC must order cabling based on the type of loop it plans to order e.g. ADSL, Voice Grade, HDSL, etc.? If the answer is yes, please provide ALS with this policy. Please also provide a copy of the methodology BA will use to establish assignments which will enable ALS to order a 4-wire HDSL compatible unbundled loop.

As you are aware, both companies have expended considerable resources managing this trial. Now is the time to complete this process and to prepare for the planned "wholesale" offering of BA's 4-wire HDSL compatible unbundled loop offering. ALS requires your assistance to alleviate any remaining roadblocks.

I you have any questions, or require further clarification, please contact me at 703-437-7532.

Sincerely,

Rebecca H. Sommi
Director of Carrier Relations
Eastern Region

cc: Jim Washington
Bruce Cooper
Doug Olsen
Gina Calabria
Gene Leahy
Ken Weaver
Karen McGuire - BA
Gary Yokelson - BA

F

SCC-62

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

980940029

APPLICATION OF

GTE COMMUNICATIONS CORPORATION OF VIRGINIA

CASE NO. PUC980080

For a certificate of public convenience and necessity to provide local exchange telecommunications service

1998 SEP 30 P 1:23

HEARING EXAMINER'S RULING

September 30, 1998

On September 28, 1998, GTE Communications Corporation of Virginia ("GTE-CC" or the "Applicant") submitted three documents for in camera review by the Hearing Examiner. The documents are responsive to outstanding interrogatories submitted by Cox Virginia Telecom, Inc. ("Cox"). The outstanding Cox interrogatories request GTE-CC to:

30. Produce, and provide copies of, any and all reports, studies, analyses, business case studies, proposals, and similar documents, prepared by any person, including, without limitation, employees of GTE Corporation, GTE Service Corporation, GTE South, GTE Communications of Virginia or any of their affiliates and/or any outside consulting firms or advisors, regarding:

    a. Formation of any business entity or affiliate to provide local exchange telephone service as a competitive or alternative carrier in the same region serviced by the ILEC affiliate; and

    b. the benefits, advantages and disadvantages of operating an ILEC, and a competitive or alternative carrier, in the same territory.

GTE-CC maintains that these three documents constitute trade secrets whose disclosure to competitors, even under the terms of the Hearing Examiner's protective provisions would result in irreparable competitive harm.

Having reviewed the three documents, I conclude that they are relevant to the inquiry before the Commission in this case. However, I also recognize that this information is sought by a competitor of the Applicant, is commercially sensitive, and in the hands of the marketing personnel of a competitor could have an adverse effect on GTE Communications Corporation. In my opinion all three documents can, and should, be provided under more limited protective measures.

The first document is entitled "The Business Imperative for Non-Dominant Market Position and Entry." No date appears on this document; however, upon inspection, it is apparent that the document itself is not a current analysis. The sensitive nature of the analysis contained therein thus may be questionable. Yet, providing the Applicant with the

RECEIVED

OCT - 2

benefit of its assertion that the document should be maintained as confidential, I will compel its production only under the protective provisions of the September 14, 1998 Ruling with the additional provision that it need only be produced to counsel and their designated regulatory or legal personnel and outside expert witness, employed or retained by the parties and under the direction and control of counsel, to review, but not to copy. Moreover, disclosure shall not be made to any marketing personnel of a potential or actual competitor.

The remaining two documents appear related. One document, also undated, defines a business strategy which GTE Communications could effect nationally. The last document, dated February 12, 1998, appears to question whether the business strategies set forth in the earlier report are still valid considering changes in the industry.

Both the second and third documents are relevant, but contain sensitive information. Neither report contains a significant amount of detail. No specific implementation plans are detailed. Rather, general targets and strategies are defined. These documents identify business plans, and critique the advantages and problems with operation as a competitive local exchange company. Therefore, they are relevant to this case. I will compel their production, however the documents warrant having the additional level of protection which prohibits review by any individual involved or hereafter to be involved in marketing efforts. Moreover, there are portions of the reports which identify individuals interviewed by the research team. Those names, which appear on pages 4, 5 and 45 of the second document should be redacted from the copies prepared for production. It is not necessary for the parties to have access to those names. Moreover, portions of the reports critique the operations of GTE Communications' competitors including several parties participating in this proceeding. I believe those parties can critique their own strengths and weaknesses. Hence, certain additional portions of the reports may also be redacted from the copies produced in response to discovery. Specifically, the additional portions which may be redacted are:

The first document:

- Page 1, para. 8;
- Page 2, para. 1, 3; and
- Page 2, the sentence which begins at line 4 in para. 4.

In the second document:

- Page 6, line 7;
- Page 14, lines 5 and 6; and
- Pages 17 and 18.

In the third document:

- Pages 47-52.

Accordingly, **IT IS DIRECTED:**

1) That the three documents described above should be produced immediately subject to execution of a confidentiality agreement as provided by Hearing Examiner's Ruling dated September 14, 1998 and additional safeguards. Specifically, they shall be produced only to counsel and their designated regulatory or legal personnel and outside expert witness, employed or retained by the parties and under the direction and control of counsel, to review, but not to copy. Moreover, employees, officers or directors of a party, or consultants or experts retained by a party, who have been and who are currently involved in marketing shall not be provided access to the information in the above three documents. Individuals who become reviewing representatives under this paragraph may not engage or consult in any marketing activities for three years after reviewing the subject documents; and

2) That GTE-CC may redact all individual names and critiques of any of the party protestants from the copies produced as described above.

Deborah V. Ellenberg
Chief Hearing Examiner

Document Control Center is requested to mail or deliver a copy of the above Ruling on September 30, 1998, to: David W. Clarke, P. O. Box 796, Richmond, VA 23218-0796; Stephen C. Spencer, 1051 E. Cary St., Ste. 1200, Richmond, VA 23219; Office of Attorney General, Division of Consumer Counsel, 900 E. Main St., 2nd Fl., Richmond, VA 23219; Christopher D. Moore, Esquire, 1805 M St., NW, Ste 1110, Washington, DC 20036; Wilma R. McCarey, Esquire, 3033 Chain Bridge Road, Oakton, VA 22185; John D. Sharer, Esquire, 909 E. Main St., Ste. 1200, Richmond, VA 23219-3095; Michelle Billand, Esquire, 1133 19th St., NW, Washington, DC 20036; Mark A. Keffer, Esquire, and Ivars V. Mellups, Esquire, 3033 Chainbridge Rd, #3-D, Oakton, VA 22185-0001; Edward L. Petrini, Esquire, 909 E. Main St., Ste. 1200, Richmond, VA 23219-3095; James R. J. Scheltema, Esquire, 1133 19th St., NW, 4th Fl., Washington, DC 20036; Don Mueller, Esquire, Commission counsel; and to the Commission's Division of Communications.

G

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF BELL ATLANTIC - PENNSYLVANIA, INC.	:	
For a Determination of Whether the Provision of Business Telecommunications Services Is Competitive Under Chapter 30 of the Public Utility Code	:	Docket No. P-00971307

RECOMMENDED DECISION

THIS DOCUMENT CONTAINS PROPRIETARY MATERIAL

Before
Michael C. Schnierle
Administrative Law Judge

July 24, 1998

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265
ISSUED: July 28, 1998

IN REPLY PLEASE
REFER TO OUR FILE
P-00971307

ALAN KOHLER
& DANIEL CLEARFIELD ESQS
WOLF BLOCK SHORR & SOLIS- COHEN
LOCUST COURT BLDG SUITE 300
212 LOCUST STREET
HARRISBURG PA 17101

PETITION OF BELL ATLANTIC-PENNSYLVANIA, INC.
For a Determination of Whether the Provision of Business Telecommunications
Services Is Competitive Under Chapter 30 of the Public Utility Code

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Recommended Decision of Administrative Law Judge Michael C. Schnierle.

An original and nine (9) copies of signed exceptions to the decision, if any, MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-20, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265; a copy in the hands of the Office of Special Assistants, Room 210; and a copy in the hands of each party of record no later than August 7, 1998 by 4:30 P.M. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions or reply exceptions.

Replies to exceptions, if any, must be served on the Secretary of the Commission, in the manner described above, no later than August 14, 1998 by 4:30 P.M. as well as served upon the parties. A certificate of service shall be attached to the filed exceptions.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535, particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should be clearly labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

Any reference to specific sections of the Administrative Law Judge's Recommended Decision shall include the page number(s) of the cited section of the decision.

Parties are also requested to provide the Commission's Office of Special Assistants with a copy of exceptions/reply exceptions on a computer disk, 3 1/2" in size, in Microsoft Word 6.0 format. If Word 6.0 is not available, either Wordperfect 5.1 or ASCII format is acceptable.

Very truly yours,

James J McNulty
Secretary

law
Encls.
Certified Mail
Receipt Requested

orders, I approved BA-PA's request for subpoenas, with the exception of 11 names withdrawn by BA-PA and one or more CLECs which provided BA-PA with information without the subpoena.

All other parties filed their direct testimony on March 27, 1998. BA-PA filed rebuttal testimony on May 6, 1998. Other parties filed surrebuttal testimony or outlines of oral surrebuttal testimony between May 15 and May 20, 1998. BA-PA filed outlines of oral surrejoinder testimony on May 26, 1998.

Public input hearings were held in Williamsport on March 16, 1998 and in Scranton on March 17, 1998. Thirteen individuals representing businesses, schools, local agencies or associations testified regarding BA-PA's Petition.

Hearings were held on May 27-29 and June 1-2. Overall, twenty witnesses were presented by several parties, including five witnesses for Bell Atlantic, four witnesses each for MCI and AT&T, two witnesses for TCG, and one witness each for OTS, OSBA, OCA, CAPA, and CTSI. The hearings resulted in a transcript of 1,708 pages of oral testimony; 83 exhibits, including statements of written testimony were admitted into the record.

DISCUSSION

I. Introduction.

By this petition, BA-PA seeks to have the Commission declare competitive all telecommunications services provided to businesses throughout BA-PA's service territory. This would have the effect of eliminating most regulatory oversight of 84 separate services that are identified in BA-PA St. 1, Appendix B.

Under BA-PA's view of the case, if this petition is granted, with respect to each of these services, BA-PA will be allowed to raise or lower rates as it desires. BA-PA may also impose new terms and conditions on the use of these services, or may discontinue offering these services. (Tr. 429-431, 462). BA-PA proposes to meet the imputation test of Chapter 30 by aggregating the revenues for all of these services. That is, a proposed rate for a deregulated BA-PA business service would pass the imputation test as long as the revenues for all business services exceed the revenues that BA-PA would realize from the sale of the associated basic service functions to its competitors. Thus, BA-PA would be free to offer some services at below cost as long as others were priced above cost. According to BA-PA, even a price of zero on a specific service would not flunk this test. (Tr. 339).

When I first saw BA-PA's petition in this case, I was surprised. It seemed to describe a telecommunications market with which I am completely unfamiliar after hearing many cases, over the past two and one-half years, that specifically relate to telecommunications deregulation and competition. I could not begin to imagine how BA-PA planned to establish that all business telecommunications services are competitive throughout its entire service territory. I expressed that opinion to the parties during the prehearing conference. (Tr. 15-16).

Having now presided over this case from the prehearing conference through briefing, I conclude that BA-PA has not come close to establishing the major fact that it must establish to prevail here, namely, that there is effective competition for

business services throughout BA-PA's service territory such that BA-PA would be unable to sustain price increases for its services. BA-PA's presentation on the issue of competitive presence does not withstand even the most cursory review. For this reason, I recommend denying this petition.

I also urged BA-PA to present evidence in support of partial relief (i.e., a grant of competitive status limited to certain services, customers, or geographic areas). (Tr. 17-18). BA-PA has not made such a presentation. As will be discussed further, BA-PA is now asking for partial relief based on certain record evidence, if full relief is not granted. For reasons that I will discuss, I also recommend that partial relief not be granted here.

Because I believe that BA-PA has failed to establish the primary fact that it needs to establish, I will not discuss in minute detail every argument made by the parties. I will, however, attempt to touch on more important issues that may be revisited in other cases in the future.

One other point is worth mentioning here. BA-PA's petition has one attractive feature. It presents an opportunity to bring about politically unpopular, but economically necessary, rate rebalancing under the guise of promoting competition. While this result may have something to recommend it, conditions in Pennsylvania are such that granting the petition now is likely to result in almost immediate rate rebalancing, but very little competition (which <u>might</u> serve to restrain rural rates) any time soon.

solution was not explored in depth because it was injected into the proceeding too near the end of the hearings.

Before commenting on the legal and technical aspects of the UNE-P, it is also useful to explore the economic aspects. The CLECs claim that the UNE-P is overpriced, and that BA-PA's collocation requirements make it financially impractical to render service using UNE-P. (AT&T M.B. at 21-34). BA-PA responds that the UNE-P is just a way of letting the CLECs purchase service for resale at a better price. (BA-PA R.B. at 30-32). The reality is neither, but involves the relationship between costs and retail rates of the ILECs, like BA-PA. As explained in more detail at pages 18-22 and 56-57 of my recent decision in Generic Investigation of Intrastate Access Charge Reform, I-00960066 (issued June 30, 1998), while purchasers of UNEs will not have to pay access charges, that is not true of CLECs who provide service by reselling an ILEC's service. Resellers, unlike the purchasers of UNEs, are not paying for access when they purchase local service for resale. BA-PA, and other ILECs, clearly do not like the idea of UNEs, especially the UNE-P, and for good reason. If an ILEC is required to provide a UNE loop or the UNE-P, it loses that customer's access revenues. On the other hand, ILECs are not as hostile to providing service for resale at a wholesale discount off their retail rates; when providing service for resale, the ILEC continues to collect access charges. Obviously, if access charges decrease and basic service rates increase, the retail rates for basic service will approach the UNE rates, making UNEs more attractive as a way to

serve customers. At the same time, because access charges, and thus revenues, will decline significantly, the ILECs' animosity toward UNEs, and the UNE-P in particular, should also decline.

It seems to me that the Eighth Circuit decision is an unfortunate attempt to impose a legal solution on an economic problem (the imbalance of rates and costs). Similarly, BA-PA's collocation requirements for UNE-P are a misguided engineering solution to the same problem. Frankly, from a purely technical standpoint, it makes no sense to require collocation cages (in the case of physical collocation) or robotic connection frames (in the case of virtual collocation) to solve an economic problem. Moreover, BA-PA's approach to this not only imposes unnecessary costs on the CLECs seeking to use UNE-P to serve customers, it also wastes collocation space for no good reason.[5] On the other hand, given the current rate structure, it should not be surprising that BA-PA is trying to protect its access charge revenue stream.

UNE-P should be made available at a reasonable cost to facilitate entry in rural areas. As discussed below, facilities based competitors are unlikely to invest in switches and their own loop facilities in rural areas, simply because the number of available customers does not justify the expense. However, in the long run, society would be better served by first addressing

---

[5] AT&T resorts to rather lurid language in describing BA-PA's collocation requirement, describing it as "ripping the network apart." (Tr. 583). While this kind of language is overly dramatic, and, consequently not very helpful, the fact remains that BA-PA's interpretation of the Eighth Circuit order serves no legitimate technical purpose.

the rate imbalance problem. This might avoid imposing counterproductive legal or technical solutions on an economic problem arising from the historic regulation of phone service. After rates have been brought more in line with costs, if BA-PA continues to resist providing UNE-P in a rational fashion, the Commission should order that it be provided without the requirement of collocation or robotic connection frames. (While BA-PA insists that the Eighth Circuit decision precludes even the state commissions from ordering an ILEC to rebundle the service, it acknowledges that the state commissions probably have the authority to decide the manner in which an ILEC must allow a CLEC to rebundle UNEs. See BA-PA M.B. at 32-36, and especially note 78 on page 33).

3. Unbundled loops.

In this case, a CLEC purchases from BA-PA only the customer's unbundled loop(s). The loops are disconnected from the BA-PA switch and connected to the CLEC's own switch. This has the obvious advantage to society of increasing switch capacity in the telephone network. It also obviously allows the CLEC to offer services that are not offered by the ILEC, and reduces the CLEC's dependence on the ILEC. For these reasons, it is a superior method of competition as compared to resale or UNE-P. There are, however, certain other prices to pay.

First, it takes six to nine months to install, test, and begin to use a switch. (Tr. 530-531, 766). When a competitor purchases unbundled loops from Bell Atlantic, it must establish collocations in order to access those loops.

VII. Ease of Market Entry.

Strictly as an empirical matter, there cannot be ease of entry. As discussed above, fully five years after the passage of Chapter 30 of the Public Utility Code, BA-PA retains over 90% of the business local telecommunications market in its service territory. If entry is easy, where are the competitors? The CLECs point to two factors: the prices set by the Commission for resale and UNEs, and problems encountered in dealing with BA-PA. As I have previously indicated, I will not discuss the pricing issues. Whether due to prices or other factors, there is precious little competition in BA-PA's service territory. Moreover, UNE prices will be reviewed in the upcoming MFS Phase IV. Problems arising from the interactions between the CLECs and BA-PA are another matter.

The CLECs enumerate several problems arising from BA-PA's Operation Support Systems ("OSS"), including preordering, ordering, maintenance, repair and billing. Having heard this litany of complaints during several cases over the past two and one-half years, and confident that the Commission itself also has heard the litany multiple times, I will not repeat it here, but refer the reader to some of the briefs for examples of the problems: CTSI brief at 5-10, MCI main brief at 34-57. BA-PA offers several responses to those claims.

BA-PA claims that because its competitors are entering the market despite any problems with its OSS, the problems must be minimal. (BA-PA R.B. at 33, 38). Frankly, I am unsure what data BA-PA is relying upon to support this claim. As discussed,

the credible market share data shows that competitive entry has been minimal.

BA-PA also argues that the complaints are exaggerated, that some of the problems are caused by the CLECs themselves, that BA-PA is solving many of the problems, and that OSS is largely irrelevant to service provided by facilities based CLECs to large volume customers. (BA-PA R.B. at 33-43). Considering that I recommend denial of this petition for other reasons, it is unnecessary to discuss each of these points in detail, but it may be useful to discuss some points to provide guidance for the future.

While the CLECs are undoubtedly responsible for some of the problems that have arisen, it appears to be the case that BA-PA is dragging its feet in this area. It has been two and one-half years since the passage of the Act, and five years since the passage of Chapter 30. I have heard complaints from CLECs about these problems during several cases over the past two years. At this late date, it is unacceptable for BA-PA to provide the CLECs' programmers with inaccurate or insufficient information of the kind that they need to construct the CLEC side of electronic interfaces that they share with BA-PA. (MCI St. 4 at 25-26). It is equally unacceptable for BA-PA to make substantial changes to its electronic interfaces just as the CLECs are preparing to use them. (MCI St. 4.0 at 25-26). These kinds of problems suggest that BA-PA is making somewhat less than its best effort to meet this critical need. While developing these interfaces is undoubtedly a major task, it has been several years now.

Similarly, while it is true that OSS is less important for service provided by a facilities based CLEC to large volume customers, it is also true that certain forms of OSS are necessary even for these customers. Obviously of prime importance is that CLEC customers be included in the phone book. As described in CTSI's brief at page 7, BA-PA has omitted CLEC customers from phone directories published in February 1998 for Wyoming Valley and in May 1998 for Harrisburg. While it is possible to accept the first omission as an understandable mistake, it stretches one's credulity to think that a second mistake of this serious nature several months after the first was purely coincidental.

Lastly, it seems no coincidence that BA-PA is most responsive to these problems when it is asking for Commission approval of a petition like this one, or its request to enter the interLATA toll market. (CTSI Brief at 6).

It is obvious that the CLECs have an incentive (their desire to enter the market) to fix these problems, while BA-PA has an incentive (retention of its enormous market share) to drag its feet. It seems that the Commission must establish, monitor, and enforce specific performance standards in this area for BA-PA. Independent monitoring of these processes is necessary to sort out the charges and counter-charges between BA-PA and the CLECs. Permanent monitoring is needed to ensure that these problems, once solved, do not reoccur after BA-PA has been allowed into the interLATA market, and once all markets have been declared competitive.

VIII. Ability Of Competitors To Offer Services At Competitive Prices, Terms And Conditions.

This is another finding where empirical evidence (five years after the passage of Chapter 30 of the Public Utility Code, BA-PA retains over 90% of the business local telecommunications market in its service territory) directs an obvious answer. If competitors were able to offer all business services or other similar activities throughout BA-PA's service territory, one would expect that they would be doing so now. That clearly is not the case today.

IX. The Availability Of Like Or Substitute Services Or Other Activities In The Relevant Geographic Area.

This issue has been covered at pages 12-14 and 33, and further elaboration is unnecessary.

X. Coin Telephone and Internet Service Providers.

The coin telephone providers (CAPA) and the Internet service providers (ISP) differ from the CLEC parties in that they are both purchasers of retail service from BA-PA and competitors of BA-PA or a BA-PA affiliate. Because I am recommending denial of BA-PA's petition, it is unnecessary to address their specific claims.

XI. The Imputation Standard.

BA-PA proposes to meet the imputation test of Chapter 30 by aggregating the revenues for all of these services. That is, a proposed rate for a deregulated BA-PA business service would pass the imputation test as long as the revenues for all