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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

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Petition of Bell Atlantic Telephone Companies for Forbearance from Regulation as a Dominant Carrier in Delaware; Maryland; Massachusetts; New Hampshire; New Jersey; New York; Pennsylvania; Rhode Island; Washington, D.C.; and Virginia	))))))	CC Docket 99-24

Comments of Cablevision Lightpath, Inc.

Cablevision Lightpath Inc. ("Lightpath"),[1/] by its attorneys, respectfully submits these Comments in response to the request of Bell Atlantic that the Commission forbear from applying the Part 69 rate structure rules and Part 61 rate level rules to its special access services in a dozen jurisdictions.[2/] Lightpath is a facilities-based competitive local exchange carrier that is currently providing basic and advanced telecommunications services to thousands of business and residential customers in New York and Connecticut. Because Bell Atlantic continues to enjoy market dominance in the special access services market, forbearance in this case will make it easier for Bell Atlantic to price special access services in a predatory manner in areas where Lightpath and other CLECs directly compete with Bell Atlantic. Alternatively, Bell Atlantic could elevate its special access prices to non-economic levels in other areas where Lightpath and

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1/ The company also plans to introduce similar services in several other markets.

2/ See Petition of Bell Atlantic for Forbearance, CC Docket 99-24 (Jan. 20, 1999) ("Forbearance Petition"). Bell Atlantic seeks forbearance for nearly the entire Mid-Atlantic and Northeast corridor including Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York (including the Greenwich, Connecticut service area), Pennsylvania, Rhode Island, Washington, D.C., Vermont, and Virginia. Bell Atlantic also asks the Commission to forbear from applying its tariff filing rules so as to permit Bell Atlantic to file tariffs for special access service on one day's notice.

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other CLECs have not completed their networks and are therefore dependent on Bell Atlantic for these services. For example, Lightpath is dependent on Bell Atlantic because it currently uses special access services as essential wholesale inputs for the end-to-end local services that Lightpath provides to end users. Therefore, the Commission should reject Bell Atlantic's request.

This is not the first request of this kind entertained by the Commission. In August 1998, US West petitioned the Commission for forbearance from dominant treatment over its special access services offered in the Phoenix MSA.[3/] Similarly, SBC Communications recently requested that the Commission forbear from regulating the SBC companies as dominant carriers with respect to high capacity dedicated transport services in portions of selected MSAs.[4/] Both of these cases, as well as the instant case, share two common themes. First, the issues should be addressed globally in the Access Charge proceeding rather than through individual petitions.[5/]

Second, and more fundamentally, the record before the Commission demonstrates that regulatory oversight remains necessary because each of these incumbent local exchange carriers maintain overwhelming market power over special access services.[6/] Bell Atlantic in particular has failed to demonstrate that the special access market in the twelve relevant jurisdictions are sufficiently competitive to warrant forbearance. According to Bell Atlantic's own figures,

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3/ Petition of US West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix Arizona MSA, CC Docket 98-157 (filed Aug. 24, 1998).

4/ Petition of SBC Companies for Forbearance, CC Docket No. 98-227 (filed Dec. 7, 1998).

5/ See, e.g., Comments of Logix Communications Corporation, CC Docket 98-227 at 2 (filed Jan. 21, 1999) (requesting that these petitions be handled "in the ongoing Access Reform Proceeding in which the Commission is directly examining these issues.").

6/ See, e.g., Comments of AT&T, CC Docket 98-157 at 10 (filed Oct. 7, 1998) (arguing that "only a minute fraction [of the businesses in the Phoenix area] obtain service from any of US

competitors provide "approximately 30 percent of the high capacity special access services in [the relevant] jurisdictions."[7/] Even assuming Bell Atlantic's market share estimates are accurate, they reveal that Bell Atlantic still controls 70 percent of this market, which is *prima facie* evidence of market power under any definition. Bell Atlantic's market share dwarfs that of AT&T, for example, when it was granted non-dominance in the interexchange marketplace.[8/] To be sure, market share is not the sole determining factor of whether a carrier possesses market power – here, where Bell Atlantic's market share is considerable, the carrier must show lack of dominance through other factors, such as demand and supply elasticities, conditions of entry, market conditions, and its costs, structure, size, and resources.[9/] Yet, Bell Atlantic's petition performs only a half-hearted analysis of some of these factors and is silent on others. Indeed, it was this same lack of contrary indications of dominance that led the FCC to deny SBC forbearance despite the loss of 43 and 38 percent of the high-capacity services offered in Dallas and Houston respectively.[10/]

Perhaps more important, while 70 percent is the overall market share that Bell Atlantic claims to have, its market share in many areas – including areas where Lightpath does business – is considerably more than 70 percent. Bell Atlantic is unpersuasive in its attempt to argue that the Commission should overlook its considerable market share because competitors can "reach"

West's competitors."); see also Comments of AT&T, CC Docket 98-227 at 3 (filed Jan 21, 1999) ("SBC has failed to show that there is a competitive market.").

7/ Forbearance Petition at 2-3.

8/ At that time, AT&T held a 55.2% market share. See Motion of AT&T Corp. to be Reclassified as a Non-dominant Carrier, 11 FCC Rcd 3271 (Oct. 23, 1995).

9/ Id.

10/ See Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Order Concluding Investigation and Denying Application for Review, 12 FCC Rcd 19311 (1997).

most of Bell Atlantic's current customers.[11/] Bell Atlantic's "addressibility" argument is premised on theoretical, rather than actual, competition. As noted, the only areas in the 12 state region that has any credible special access competition are the major metropolitan areas such as parts of Manhattan. Assuming *arguendo* that there is competition in parts of Manhattan and other select areas, such competition is insufficient to justify the sweeping relief sought by Bell Atlantic.

Therefore, consistent with the goals of reasonable rates, consumer protection, and the public interest, the Commission should deny the petition of Bell Atlantic to prevent the company from wielding its market power in the special access services market unchecked by regulation.

Respectfully submitted,

Cablevision Lightpath, Inc.

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[11/] Forbearance Petition at 6.