BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	DOCKET FILE COPY ORIGINAL
	)	
Petition of Bell Atlantic Telephone Companies for Forbearance from Regulation as Dominant Carriers in Delaware; Maryland; Massachusetts; New Hampshire; New Jersey; New York; Pennsylvania; Rhode Island; Washington, D.C.; Vermont; and Virginia	)	CC Docket No. 99-24

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OPPOSITION OF TIME WARNER TELECOM

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List A B C D E

TABLE OF CONTENTS

Page

I. INTRODUCTION AND SUMMARY 1

II. BELL ATLANTIC'S PETITION SHOULD BE CONSIDERED IN THE ACCESS CHARGE REFORM PROCEEDING. 3

III. BELL ATLANTIC'S PETITION FAILS TO DEMONSTRATE THAT FORBEARANCE FROM PRICE REGULATION IS WARRANTED. 5

A. Bell Atlantic's Definition of the Relevant Geographic Market Is Incorrect And Unsupported. 6

B. Special Access Is Not The Relevant Product Market For Analyzing Whether Bell Atlantic Should Be Granted The Requested Flexibility. 8

C. Supply Elasticity Is Inadequate To Warrant Pricing Flexibility. 11

D. Bell Atlantic Has Not Demonstrated That Demand Elasticity In The Relevant Market Justifies Pricing Flexibility. 13

E. Bell Atlantic Continues To Obstruct Access To Facilities Essential To The Provision Of Special Access And Switched Services. 13

F. Entry Barriers Remain Formidable 16

G. Bell Atlantic Possesses Cost Advantages That Preclude Effective Competition. 17

H. Bell Atlantic's Market Share Does Not Justify A Grant Of Pricing Flexibility For Special Access Services. 18

IV. COMPETITION WILL BE HARMED BY GRANTING BELL ATLANTIC'S PETITION. 22

A. The Requested Flexibility Would Enhance Bell Atlantic's Ability To Engage In Strategic Pricing Designed To Deter Entry And Limit Expansion. 22

B. Bell Atlantic Has Not Demonstrated That Monopsony Power Of Special Access Customers Would Prevent Discrimination. 26

C. If Granted, The Requested Flexibility Would Increase Bell Atlantic's Ability To Act On Its Incentive To Cross-Subsidize. 28

V. BELL ATLANTIC ALREADY POSSESSES SUFFICIENT PRICING FLEXIBILITY. 30

VI. CONCLUSION 32

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OPPOSITION OF TIME WARNER TELECOM

Time Warner Communications Holdings Inc. d/b/a Time Warner Telecom ("TWTC"), hereby files these comments in the above-captioned proceeding.[1]

I. INTRODUCTION AND SUMMARY

Bell Atlantic fails to justify forbearance from regulation of its special access pricing in the states specified in its Petition. A prerequisite to price deregulation is a showing that the carrier no longer possesses substantial market power. Bell Atlantic has failed to make this showing. Indeed, its Petition is fraught with contradictions and unsupported conclusions that render it a very poor basis for taking the highly consequential

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[1] Petition of Bell Atlantic Telephone Companies for Forbearance from Regulation as Dominant Carriers in Delaware; Maryland; Massachusetts; New Hampshire; New Jersey; New York; Pennsylvania; Rhode Island; Washington, D.C.; Vermont; and Virginia, CC Docket No. 99-24, *Petition of Bell Atlantic for Forbearance* (filed Jan. 20, 1999)("Bell Atlantic Petition").

action it requests. The Commission should dismiss the Bell Atlantic Petition and clarify that cursory lip service to a market power analysis is insufficient for obtaining forbearance under Section 10. Moreover, the Commission should reiterate that Bell Atlantic's Petition and all other similar BOC forbearance requests must be filed and considered in the comprehensive access charge proceeding, as has been requested by the Commission.

Bell Atlantic's conclusory assertions of relevant geographic and product markets serve its interests, but they are simply incorrect. They defy Commission precedent on the relevant measures and ignore market realities. They distort Bell Atlantic's market power by artificially decreasing the size of the relevant product and geographic markets thus artificially increasing the level of competition for special access services. They overestimate supply elasticity and fail to account for constraints on demand elasticity.

Furthermore, Bell Atlantic ignores its substantial control over essential facilities and its less than satisfactory record in providing reasonable and nondiscriminatory access to the same. The Petition underestimates the market entry barriers for competitors and fails to consider Bell Atlantic's cost advantages in providing special access services. These factors, combined with Bell Atlantic's enormous market share, can only lead to the conclusion that Bell Atlantic continues to possess and exercise substantial market power.

If granted, the flexibility requested in the Petition would threaten consumers and competitive markets in the relevant

states. Bell Atlantic would have the ability to engage in strategic pricing designed to deter entry and prevent existing competitors from expanding entry. Moreover, all but the largest customers would experience higher rates as a result. Finally, the effects of this behavior would extend beyond the special access market to the broader local exchange market. The Commission should therefore reject Bell Atlantic's Petition.

II. BELL ATLANTIC'S PETITION SHOULD BE CONSIDERED IN THE ACCESS CHARGE REFORM PROCEEDING.

As a preliminary matter, the request Bell Atlantic makes in its Petition must be addressed in the access charge reform proceeding.[2] In that proceeding, the Commission is considering the market conditions that must precede the exact pricing flexibility requested in Bell Atlantic's Petition.[3] Indeed, the more general access charge reform docket is the forum for this inquiry precisely because the flexibility sought by Bell Atlantic would have significant implications for the Commission's market-based approach to reforming all access services -- dedicated as well as switched. For example, the Commission has proposed, as part of its market-based approach to access charge reform, to establish "competitive triggers" that, when met, would allow the ILECs a defined level of regulatory forbearance.[4] The Commission

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2 Access Charge Reform, CC Docket No. 96-262.

3 See Access Charge Reform, CC Docket No. 96-262, *Notice of Proposed Rulemaking and Third Report and Order*, 11 FCC Rcd 21354 at ¶¶ 168-217 (1996)("Access Charge NPRM/Order").

4 Id. at ¶ 162.

sought comment on how those or alternative triggers should be defined, what level of regulatory relief should be afforded ILECs that meet the triggers and how the process should function procedurally.[5] Ruling on the instant Petition outside of the broader Access Charge proceeding would likely commit the Commission to a resolution of some of these critical issues without the benefit of the comprehensive record established in the Access Charge docket.

It is for this reason that the Commission has appropriately expressed a clear preference for considering pricing flexibility issues comprehensively rather than on the ad hoc basis of individual requests.[6] Thus, Bell Atlantic's Petition and the like petitions of other BOCs appear to be a concerted attempt to hound the Commission from all angles with flexibility requests that are simply out of order. The strategy is familiar: file as many requests for relief as possible, regardless of their merits, in the hope that the Commission will succumb to political pressure and grant ILECs regulatory relief before it is appropriate. The Commission should emphatically refuse to entertain these requests independent of the comprehensive access charge reform proceeding.

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5 Id. at ¶¶ 161-217.

6 Southwestern Bell Telephone Co., Tariff F.C.C. No. 73, CC Docket No. 97-158, Transmittal No. 2633, *Order Concluding Investigation and Denying Application for Review*, 12 FCC Rcd 19311 at ¶ 53 (1997)("SBC RFP Tariff Order").

III. BELL ATLANTIC'S PETITION FAILS TO DEMONSTRATE THAT FORBEARANCE FROM PRICE REGULATION IS WARRANTED.

Under Commission precedent, the level of a carrier's market power determines whether forbearance from price regulation under Section 10 is warranted.[7] As the Commission has stated, the threshold issue in assessing a firm's market power is defining the relevant product and geographic market.[8] Erroneous market definitions result in flawed market analyses with potentially harmful consequences for consumers and markets.

Bell Atlantic's Petition fails to define the relevant geographic and product markets properly. Indeed, Bell Atlantic's definitions represent nothing more than unsupported and flawed assertions. This central failure renders it unnecessary for the Commission to consider the remainder of Bell Atlantic's Petition.

If the Commission were to consider the remainder of the Petition, it would again find little more than rhetoric. Bell Atlantic overstates supply and demand elasticities, fails to mention its control over essential facilities, understates the prohibitive market entry barriers, ignores its network cost advantages, and fails to acknowledge the combined effect of these factors with its substantial market share.

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[7] Bell Atlantic Petition at 5 (quoting IXC Forbearance Order at ¶ 36).

[8] Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, *Order*, 11 FCC Rcd 3271 at ¶ 19 (1995)("AT&T Non-Dominant Order").

A. Bell Atlantic's Definition of the Relevant Geographic Market Is Incorrect And Unsupported.

A relevant geographic market definition entails an examination of "whether a 'small but significant and nontransitory' increase in the price of the relevant product at a particular location would cause a buyer to shift his purchase to a second location."[9] A statewide geographic market for special access services fails to meet this standard.

Bell Atlantic offers no support for its choice of states as the relevant geographic markets. Affiants McDermott and Taylor simply conclude, without supporting analysis, that the Commission should define the geographic market as statewide without offering support for their proposal.[10]

Moreover, there is every reason to conclude that the geographic market for special access includes all urban areas in the Bell Atlantic region. Special access customers often seek carrier bids on a regionwide basis. The McCullough affidavit concedes this point, noting that Bell Atlantic recently bid on an RFP for services:

> throughout the entire Bell Atlantic region [and that large customers] expect a bid that encompasses their entire needs, without

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9 Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-149, CC Docket No. 96-61, *Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61*, 12 FCC Rcd 15756 at n.174 (1997)("BOC In-Region Order").

10 McDermott/Taylor Aff. at ¶ 12.

regard to the regulatory jurisdiction of the service.[11]

MCI noted in a similar proceeding that "most IXCs . . . purchase access services throughout [the ILEC's] region."[12]

Moreover, Bell Atlantic's pricing strategies reflect its view that the market for special access services is not limited to a statewide geographic market. For example, Section 7.2.13(D)(3)(c) of Bell Atlantic's FCC Tariff No. 1 (governing special access services), permits a customer to aggregate multiple LATA plans under the tariff. Section 7.5.18(A)(2) of the same tariff demonstrates that a special access customer will enjoy lower rates with a larger number of DS0 equivalent channels ordered. As a result, customers have an incentive to aggregate their special access purchases on a multiple-LATA, including multiple-state, basis. Bell Atlantic would only include multiple-LATA offerings in its tariff if customers demanded and purchased special access services that covered such large geographic areas.[13]

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11 McCullough Aff. at ¶¶ 12-13.

12 Petition of SBC Communications, Inc. for Forbearance from Regulation as a Dominant Carrier for High Capacity Dedicated Transport Services in Fourteen Metropolitan Service Areas, CC Docket No. 98-227, *MCI WorldCom Opposition* at 3 (filed Jan. 21, 1999).

13 In fact, aside from state governments, there is nothing significant about state boundaries that would cause a special access customer to demand the service in accordance with those boundaries.

B. Special Access Is Not The Relevant Product Market For Analyzing Whether Bell Atlantic Should Be Granted The Requested Flexibility.

Again, Bell Atlantic fails to define properly the relevant product market. The Commission defines the relevant product market as "a service or group of services for which there are no demand substitutes" and considers "whether, in the absence of regulations, if 'all carriers raised the price of a particular service or group of services, customers would be able to switch to a substitute service offered at a lower price.'"[14] Special access does not satisfy these criteria.

As with the relevant geographic market, affiants McDermott and Taylor simply assert that special access constitutes the relevant product market for the Commission's inquiry. Incredibly, McDermott and Taylor then concede that special access probably does not represent the relevant product market.[15] By way of explanation, Bell Atlantic claims that restricting the product market to special access services is a narrow definition reflecting "conservative assumptions."[16] But this is of course misleading. Bell Atlantic has excluded the substitutes for special access over which it retains its monopoly. Far from

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14 The Merger of MCI Communications Corporation and British Telecommunications, GN Docket No. 96-245, *Memorandum Opinion and Order*, 12 FCC Rcd 15351 at ¶ 48 (1997)(quoting BOC In-Region Order at ¶ 28 (1997)).

15 McDermott/Taylor Aff. at ¶ 9 ("[I]t is possible (and in some cases probable) that other services also compete with special access services.").

16 Id.

being conservative (from Bell Atlantic's perspective), a narrow definition of the product market to exclude those products for which entry barriers are highest and competitive alternatives are lowest presents the most aggressive definition for purposes of obtaining the requested flexibility.

The Commission has recognized that, to the extent consumer demand for bundled service packages forces carriers to offer such bundles, the bundled services may become a relevant product market.[17] A carrier cannot survive in the market if it does not use its facilities to provide all of the services that can be provided over those facilities. For this reason, special access cannot be isolated as a relevant product market; it must be included with other service offerings, including switched services, that are provided over the same facilities.

The ability of a single channel to deliver multiple services undermines Bell Atlantic's limited focus. As discussed in the AT&T Non-Dominant Order, the Commission approached the relevant product market inquiry from the perspective of all the services that could be offered over the carrier's facilities.[18] Applying the AT&T analysis to Bell Atlantic's Petition, it becomes apparent that all local services may be provided over the facilities that Bell Atlantic uses for special access services.

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17 Applications of NYNEX Corporation and Bell Atlantic Corporation For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries, File No. NSD-L-96-10, *Memorandum Opinion and Order*, 12 FCC Rcd 19985 at ¶ 52 (1997) ("Bell Atlantic/NYNEX Order").

18 AT&T Non-Dominant Order at ¶ 23.

There is no competition for many of those services -- such as residential local exchange service -- and only limited competition exists for many others.

Bell Atlantic even admits that success in the provision of special access services depends on success in the provision of, inter alia, switched services. For example, Bell Atlantic notes that competitors are deploying more facilities in order to gain scope economies.[19] Indeed, survival as a competitor depends upon the successful achievement of scope economies. Bell Atlantic also observes that services packages are imperative because different services can be delivered over the same channel.[20] Restricting the product market inquiry to special access is thus dangerously narrow. As Bell Atlantic concedes, an increase in the ability of Bell Atlantic's competitors to offer local exchange services is relevant in measuring market power for special access.[21] In fact, it goes to the definition of the relevant product market.

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19 McDermott/Taylor Aff. at ¶ 21.

20 Id. at ¶ 46 ("A crucial part of a competitive firm's arsenal is its ability to provide customized services or service packages. In telecommunications, the success of such a strategy can go a long way toward determining which competitors survive and thrive in the long run, and which do not. That is because many different telecommunications services can be transmitted to consumers over the same channel (e.g., a wireline or wireless connection to the service provider).").

21 Id. at ¶ 37.

C. Supply Elasticity Is Inadequate To Warrant Pricing Flexibility.

Of course, even if the statewide market is accepted as the properly defined geographic market and special access is accepted as the properly defined product market, competitive alternatives to Bell Atlantic on a statewide basis are minimal. As is evident from Bell Atlantic's description of CLEC networks, no competitive carrier maintains a statewide presence for special access. CLECs thus can hardly constitute an adequate source of alternative supply for customers that demand special access service throughout the Bell Atlantic region. Indeed, AT&T is Bell Atlantic's largest special access customer. If AT&T has an anti-ILEC policy for purchasing special access, as Bell Atlantic claims,[22] then its large special access customer status must be due to supply limitations. Put simply, AT&T must purchase a substantial amount of special access from Bell Atlantic because it has no alternative.[23]

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22 See Bell Atlantic Petition at 7-8 (noting AT&T's policy to move its special access demand to competing access providers and its purchase of its own competitive access provider).

23 It is indeed ironic and telling that the BOCs (SBC, US WEST, Bell Atlantic and Ameritech) have requested high capacity pricing flexibility under the pretext of offering high capacity customers lower prices, and the BOCs' largest customers for those services consistently oppose the BOCs' requests. See, e.g., Petition of SBC Communications, Inc. for Forbearance from Regulation as a Dominant Carrier for High Capacity Dedicated Transport Services in Fourteen Metropolitan Service Areas, CC Docket No. 98-227, *MCI WorldCom Opposition* and *AT&T Opposition* (filed Jan. 21, 1999).

Bell Atlantic's measure of supply elasticity contemplates network capacity constructed for a particular end user as being available to all end users. Consequently, it misrepresents supply elasticity. It seems unlikely that all of the capacity on a CLEC's network is available to all potential customers since a good portion of the sunk costs of special access facilities are customer-specific. Bell Atlantic's analysis fails to account adequately for the enormous expense and time it would take for CLEC capacity to become substitutable for Bell Atlantic's capacity. While Bell Atlantic's analysis may describe the amount of alternative capacity in the ground, it says nothing about the capability of serving customers (the relevant inquiry for a supply elasticity analysis). Indeed, Bell Atlantic's analysis assumes that fiber on one side of an urban area is readily capable of serving customers all the way across town. That assumption is incorrect. Bell Atlantic's use of capacity as a measure of supply elasticity therefore clearly overstates the available alternative capacity on CLEC networks.

Moreover, Bell Atlantic's absolute capacity analysis does not represent an accurate measure of readily substitutable supply because that capacity is distributed among numerous competitors with varying degrees of market coverage. The aggregate capacity controlled by competitors may or may not be adequate to serve large regional customers seeking a single source of supply when this capacity is split among various CLECs whose networks have different geographic ranges. Again, the aggregate capacity analysis fails to inform the substitutability inquiry.

D. Bell Atlantic Has Not Demonstrated That Demand Elasticity In The Relevant Market Justifies Pricing Flexibility.

Bell Atlantic claims that demand for special access services is concentrated among a small number of large customers with significant purchasing power.[24] It also avers that special access customers exhibit high demand elasticity.[25] Like so much else in the Petition, Bell Atlantic offers no support for these assertions. For example, Bell Atlantic offers no evidence of customer churn, as AT&T did in support of its request for non-dominant treatment.[26] Moreover, the penalties for early termination in Bell Atlantic's special access interstate tariff render demand elasticity lower than it might seem.[27] TWTC recognizes that such provisions are standard. But, the fact remains that they temporally extend the monopoly legacy by increasing the cost of switching special access carriers prior to termination of the time period for which the customer committed to buy the service.

E. Bell Atlantic Continues To Obstruct Access To Facilities Essential To The Provision Of Special Access And Switched Services.

The Bell Atlantic facilities that are used to provide special access services are also essential production inputs for local exchange service. Control over bottleneck facilities is an

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[24] McDermott/Taylor Aff. at ¶ 7.

[25] Id. at ¶ 27.

[26] See AT&T Non-Dominant Order at ¶ 63.

[27] See Bell Atlantic F.C.C. Tariff No. 1, Section 7.2.13(F).

important element in the market power inquiry.[28] That Bell Atlantic retains such control over, inter alia, collocation, UNEs, interconnection trunks, and multiplexing facilities cannot be credibly disputed and further demonstrates Bell Atlantic's market power.[29]

The numerous accounts demonstrating Bell Atlantic's failure to comply with the 1996 Telecommunications Act and the Bell Atlantic/NYNEX merger conditions illustrate that Bell Atlantic is not providing these essential inputs -- such as collocation, unbundled network elements and, in the case of switched services, interconnection -- in a reasonable and nondiscriminatory manner. The comments filed by the Association for Local Telecommunications Services ("ALTS") with the New York Public Service Commission describe some of the difficulties that CLECs have had with Bell Atlantic in New York.[30]

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28 See BOC In-Region Order at ¶ 98.

29 Indeed, if properly modeled, Bell Atlantic's analysis of competition would demonstrate insufficient competition to warrant the requested pricing flexibility. Understanding this, Bell Atlantic's competitive analysis includes as evidence of existing competition collocation arrangements that have not even begun construction. See McDonnell Aff. at n.1. In short, Bell Atlantic's analysis relies on phantom competition.

30 Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996; Draft Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996, Case No. 97-C-0271, *Comments of the Association for Local Telecommunications Services (ALTS) in Response to the New York Public Service Commission's February 22, 1999 Request for Information* (NY PSC, March 4, 1999)(attached hereto as Attachment 1).

- Enhanced Extended Loop: Bell Atlantic promised to provide Enhanced Extended Loop offerings to competitors that would allow CLECs to combine loop and transport elements (including multiplexing) and could be used to provide switched local exchange service and switched access service. Bell Atlantic has failed to make this offering available pursuant to an approved tariff.[31]

- Trunking: Bell Atlantic has failed to provision two-way trunking, except for limited trials, thereby imposing unnecessary but substantial costs and inefficiencies on competitors.[32]

- Collocation: Although the New York Public Service Commission ordered secured cageless collocation for all services at all Bell Atlantic central offices, Bell Atlantic's tariff limits the central offices where such cageless collocation will be available. Moreover, some members wait months for a response to their inquiries as to available space. Finally, CLECs have received collocation cages that are sub-standard and fail to meet their requirements.[33]

- Performance Reporting: Bell Atlantic's data is so unreliable that it is often impossible for CLECs to confirm that their UNE and collocation requests are being provisioned in a timely and adequate manner.[34]

- Customer Cutovers to CLECs: ALTS reports that Bell Atlantic continues to experience difficulty in cutting over its customers to CLECs.[35]

- Unbundled Loops: Bell Atlantic claims that it currently is not required to provide unbundled loops in excess of 18,000 feet. While it has provided such loops to Covad Communications Company on a limited basis in Massachusetts, it has refused to make such an offering generally available.[36]

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31 Id. at 3-4.

32 Id. at 4.

33 Id. at 6.

34 Id. at 7.

35 Id. at 9.

36 Id.

This anecdotal evidence represents a mere partial accounting of a much larger problem: Bell Atlantic's resistance to competition through exclusionary and anticompetitive control over essential facilities -- facilities that are used in the provision of special access services.

F. Entry Barriers Remain Formidable.

Bell Atlantic claims that "[t]he ability of competitors to enter the market and serve customers indicates that barriers to entry are not prohibitively high."[37] This is simply disingenuous.

First, It is notable that the competitive entry that has occurred was achieved, in part, because Bell Atlantic's ability to exercise its market power in an anticompetitive manner was constrained somewhat by regulation. The removal of this regulatory oversight and permitting Bell Atlantic to engage in more "flexible" pricing strategies would severely diminish the ability of competitive firms to enter the market.

Nevertheless, the mere existence of competitors does not suggest that entry barriers are "not prohibitively high." Notwithstanding the substantial space and cost constraints of collocation, and the difficulties that CLECs encounter when purchasing and combining UNEs, it must be remembered that this form of competition still exhibits CLEC reliance on essential BOC facilities. Under collocation and UNE scenarios, Bell Atlantic continues to maintain control between the central office and the

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[37] McDermott/Taylor Aff. at ¶ 21.

customer. Construction of duplicate facilities remains a prohibitively expensive proposition. The financial barriers are made more acute by the reduction in market size caused by Bell Atlantic termination liability provisions.

Nevertheless, as noted above, CLECs' provision of switched as well as dedicated services is an economic necessity. Hence, whether the errors in Bell Atlantic's Petition are viewed as a product market issue or as an entry barrier issue, once entry is made, survival depends upon offering the bundled package of services, including switched services, as Bell Atlantic concedes. The fact that Bell Atlantic's market share for switched services remains infinitesimally high three years after passage of the Telecommunications Act is a strong indicator of how high entry barriers continue to be. The entry barriers in switched services remain formidable and highly relevant to any request for flexibility in pricing of special access services.

G. Bell Atlantic Possesses Cost Advantages That Preclude Effective Competition.

In its Petition, Bell Atlantic does not mention its cost advantages over other carriers. Yet, the Commission has recognized that cost advantages are highly relevant in the consideration of a carrier's market power.[38] The initial investment for construction of facilities that Bell Atlantic uses to provide special access occurred at a time with little or no

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[38] AT&T Non-Dominant Order at ¶ 73.

competition and has already been recovered.[39] Moreover, Bell Atlantic's substantial market share allows it to achieve economies of scale.

By contrast, CLECs are investing heavily in facilities while simultaneously seeking to break open markets and compete with an entrenched monopolist. The competing demands on their limited resources, combined with a much smaller base of customers over which costs can be spread, renders them at a distinct cost disadvantage vis-à-vis Bell Atlantic. While this is an inevitable result of entering historically monopolistic markets, this entrance difficulty should not be compounded by premature deregulation of the entrenched monopoly.

H. Bell Atlantic's Market Share Does Not Justify A Grant Of Pricing Flexibility For Special Access Services.

In an attempt to demonstrate the absence of market power, Bell Atlantic claims that competitors have won over 30 percent of the high capacity special access business.[40] Bell Atlantic's assertion is meaningless. First, special access market share figures are not meaningful where special access must be bundled with other services as a market necessity. If a CLEC remains unable to enter the switched access market, it will be unable to be a viable competitor to Bell Atlantic. Should this occur, Bell

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[39] Bell Atlantic's sunk costs offer it pricing advantages. As the Commission has explained, "[b]ecause an incumbent has already invested in facilities, a large portion of its costs are considered sunk, and should not affect pricing decisions. Only on-going costs, or variable costs, must be covered in the short-run once an investment is made." SBC RFP Tariff Order at n.119.

[40] Bell Atlantic Petition at 7.

Atlantic will win back those special access customers it had lost to the CLEC.

Second, Bell Atlantic's claim rests on a Quality Strategies Report that is not included with the Petition,[41] thereby preventing a critical examination of the underlying assumptions and methodologies of the study. Indeed, a critical examination is warranted given that Bell Atlantic's figures are not self-explanatory.

For example, Bell Atlantic states that

> [a]ccording to a report by Quality Strategies Inc., in 18 areas surveyed by the first quarter of 1998 (1Q 1998), Bell Atlantic's average market share loss for high capacity services was 31.7 percent. This loss represents a 76.1 percent change from 1Q 1995.[42]

It is not clear whether the 31.7 percent average market share loss represents a comparison with the prior year or whether it represents the absolute market share lost.[43]

Moreover, Bell Atlantic claims a 386.5 percent change in market share loss in Richmond from 1995 to 1998 and 181.8 percent change in market share loss in Norfolk over the same time

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41 See McDermott/Taylor Aff. at ¶ 36.

42 Id.

43 Because Bell Atlantic has not produced the Quality Strategies report upon which it relies, it is difficult to decipher the meaning of its figures. Moreover, it is impossible to determine the means by which the figures from various areas were averaged. Nevertheless, as with SBC, even were Bell Atlantic to produce the report, it would likely prove deficient in supporting the conclusions that Bell Atlantic has derived from it.

period.[44] The notable absence of absolute market share figures and the use of convoluted calculations to present the illusion of low market share demands some explanation of the underlying calculus. These numbers suggest that Bell Atlantic is understating its market share. Given the strange numbers its analysis presents, Bell Atlantic must explain its market share, as well as the percentage it would attribute to a loss of the entire market in an area. More fundamentally, Bell Atlantic must explain what its analysis defines as a "loss" of market share (i.e., whether it includes the mere potential for competition). Finally, the figures do not present an accurate accounting of Bell Atlantic's special access market share (as distinct from high capacity special access or high capacity services generally). Bell Atlantic simply fails to offer any quantitative basis for relying on the conclusory "figures" it presents.

Moreover, using a more traditional calculus, the Commission has found that a loss of even 43 percent of the market is insufficient evidence of a lack of market power.[45] In the AT&T decision, although AT&T retained approximately 60 percent of the long distance market, the Commission found that AT&T lacked market power because it had demonstrated the presence of significant supply and demand elasticities in long distance, did not enjoy large cost advantages over its competitors, and did not

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44 See McDermott/Taylor Aff. at ¶ 36.

45 See SBC RFP Tariff Order at ¶¶ 46-47.

control bottleneck facilities.[46] Bell Atlantic cannot claim the same status.

Remarkably, Bell Atlantic uses the term "addressable" as interchangeable with the presence of a competitive alternative.[47] This reflects a studied ignorance of the relative cost disadvantage of the CLEC. A CLEC would be required to incur substantial investment (not to mention encountering formidable obstacles to securing customers) in order to transform its potential competition into actual competition. Meanwhile, Bell Atlantic's facilities are presently in place; no additional financial outlays are required for it to serve those customers. While the relative cost disadvantages should decrease over time, it is premature to suggest that the current relative cost structures of CLECs and Bell Atlantic do not advantage the latter. The use of "addressability" as a measure of competition places an overreliance on potentiality and ignores the real and present disparity in cost structures. Bell Atlantic's large market share in special access services and even larger share of the local exchange market, when combined with the absence of mitigating factors, demonstrates that it retains substantial market power.

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46 AT&T Non-Dominant Order at ¶¶ 57-73.

47 See, e.g., McDermott/Taylor Aff. at ¶ 40 and T.3.

IV. COMPETITION WILL BE HARMED BY GRANTING BELL ATLANTIC'S PETITION.

Because Bell Atlantic's Petition does not demonstrate that Bell Atlantic lacks substantial market power, the Commission should conclude that price deregulation would not be in the public interest at this time. The likely harm to customers as well as to competition generally (in both special access and switched services) far surpasses any minimal benefits that may be achieved by granting Bell Atlantic's Petition.

A. The Requested Flexibility Would Enhance Bell Atlantic's Ability To Engage In Strategic Pricing Designed To Deter Entry And Limit Expansion.

If granted the requested flexibility, Bell Atlantic could engage in pricing strategies designed to stop potential competitors from entering and to discourage existing entrants from expanding their entry. For example, Bell Atlantic could take advantage of the fact that its competitors do not know its cost of providing special access service. It could set special access prices low, although not necessarily below cost, for selected customers. In this way, Bell Atlantic would signal to CLECs that have entered or are considering entry that its costs are so low that the CLECs are better off not expanding entry or entering at all. Alternatively, Bell Atlantic could use selective price reductions simply to establish a reputation as a ruthless competitor. Again, the deterrence effect is the same.[48]

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[48] See Janusz A. Ordover and Garth Saloner, "Predation, Monopolization, and Antitrust," in *Handbook of Industrial Organization*, Richard Schmalensee and Robert Willig, eds., Vol. I, 1989 Elsevier Science Publishers B.V., pp. 550-561

Unlike traditional notions of predatory pricing, signalling and reputational predation are not especially costly to the predator and can be highly rational. The predator's "investment" in predation is limited to a few customers, and indeed there is no requirement that the predator price below cost for the strategy to succeed. The "return" on the investment is the reduced level of competition over time and across its service area.[49]

This strategy is especially likely to succeed in deterring and disciplining entry in the local telecommunications market. The large initial investment required for local entry makes CLECs especially reluctant to enter or expand entry where there is a diminished chance of amassing enough customers to achieve the economies of scale needed to compete. Especially in the early stages of competition, CLECs are also often disproportionately reliant on a small number of large customers, another factor that makes strategic pricing particularly dangerous.

Moreover, the elimination of price regulation on Bell Atlantic would also allow it to pay for steep reductions in rates where it faces competition with higher rates for special access and local switched services where it faces little or no competition.[50] The opportunity to engage in this form of

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(surveying literature demonstrating the rational basis for "predation for reputation" and "predation for signalling").

[49] See id.

[50] The Commission recognized the potential for this behavior when ruling on a similar pricing strategy employed by Southwestern Bell. In that order, the Commission noted that

behavior is almost inevitable since any geographic market definition will likely include areas where Bell Atlantic is the only available network.

The Commission recently held that another BOC would likely engage in strategic pricing behavior if prematurely granted the freedom to offer customer-specific rates. In explaining the problem, the Commission observed that in order to enter the competitive access market, "a new entrant must be able to attract a sufficient amount of business to achieve significant economies of scale."[51] Such economies of scale are necessary to recover the "large up-front investments required for entry."[52] The Commission stated further that,

> [a] new entrant's decision to enter is, therefore, based on its expectation that it will be able to recover, within a reasonable time frame, its cost of these up-front investments, along with the on-going costs of providing access services, plus a reasonable return on its investment. SWBT, being an incumbent provider, has already made such investment and has a customer base that allows it to benefit from significant economies of scale. Therefore, it may well be in SWBT's long-term interest to deprive entrants of the opportunity to achieve

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the contract-like pricing Southwestern Bell sought would give Southwestern Bell "a virtually unlimited opportunity to preempt new market entrants in its territory by reducing rates to individual customers to which it believes new entrants may make offers, without making those rates available to similarly situated customers elsewhere. The threat of such market foreclosure is inconsistent with our ultimate goal -- competition for the provision of access service and the deregulation of incumbent LEC access services." SBC RFP Tariff Order at ¶ 42.

51 Id. at ¶ 49.

52 Id.

> significant economies by locking in large customers using customer-specific, long-term contracts before a competitor enters on a facilities basis. SWBT may find it advantageous to offer lower prices to a few relatively large access customers even when such reductions might not, in the short term, contribute as much to profits as would a generally available tariffed rate.[53]

Moreover, the Commission recognized the reputational benefits of such strategic pricing. As the Commission explained,

> [i]f the incumbent is able to develop a reputation of aggressively competing via targeted bids with recent entrants by doing so in a handful of markets, it may be able to dissuade potential entrants from entering any of its other markets. Thus, the incumbent may protect its monopoly position in all of its markets by aggressively competing in markets where entry initially occurs.[54]

It is significant that the Commission reached these conclusions in a context similar to the instant petition. There, as here, the petitioner sought virtually unfettered ability to drop prices selectively for services within its region. Moreover, in both cases, the petitioner relied on the alleged fact that it had lost between 30 and 50 percent of the business for the dedicated high capacity service(s) at issue in urban markets along with anecdotal evidence of competitive entry.

Nor is it an adequate response that such an analysis prevents Bell Atlantic from charging more competitive prices that benefit consumers. Telecommunications is a highly dynamic market in which technology is likely to enable new entrants eventually

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53 Id.

54 Id. at ¶ 50.

to operate more efficiently than incumbents. To allow Bell Atlantic to engage in strategic pricing at this stage in the development of competition is to run the risk that those more efficient firms of the future are never able to become established. A highly restricted class of consumers could receive lower prices in the short run if Bell Atlantic is granted the flexibility it currently seeks. But a much broader range of consumers is likely to receive much more substantial efficiency gains if competition is allowed to develop.[55]

B. Bell Atlantic Has Not Demonstrated That Monopsony Power Of Special Access Customers Would Prevent Discrimination.

Bell Atlantic is incorrect to assert that, under its proposal, discrimination would not be possible. Bell Atlantic claims that large customers in urban areas will leverage their purchasing power to ensure that special access rates in rural areas do not increase.[56] This proposition raises three issues.

First, the accuracy of Bell Atlantic's theory is questionable. To the extent that large special access customers exert purchasing power to extract savings or otherwise control

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[55] See James Meeks, "Business Law Symposium: Entering A New Era In Telecommunications Law: Essay: Predatory Behavior A An Exclusionary Device In The Emerging Telecommunications Industry" 33 Wake Forest L. Rev. 125 (1998) (concluding that strategic pricing behavior is peculiarly suited to emerging competition in telecommunications markets and suggesting that "[p]erhaps utilities should be prohibited from pricing at different levels, particularly in formerly regulated markets undergoing transition from regulated to competitive markets, or a mix thereof, in order to gain all the benefits of competition in the long run").

[56] See McDermott/Taylor Aff. at ¶ 41.

rate increases, they will be indifferent to the geographic region in which those savings occur. Put another way, so long as Bell Atlantic lowers urban special access rates more than it raises rural special access rates, these large customers would experience net savings and would be satisfied. The guarantee on maintaining rural special access prices at reasonable levels is, in fact, no guarantee at all.

Second, if Bell Atlantic's contention is correct, any decrease or stabilization in rural special access rates for large customers would operate as contract pricing. That is, the benefits of this leveraging scenario would go to only a select few customers. Smaller customers and those located only in urban or only in rural markets would not enjoy the benefits of this pricing regime. They would pay for Bell Atlantic's flexibility.

Third, Bell Atlantic's theory does not hold where supply is not highly elastic. That is, a firm with monopsony power cannot exert that power effectively where supply alternatives are not readily available. Were McDermott and Taylor to be complete in their description of the relevant economic analysis, they would have noted that for consumers to benefit from the exercise of a seller's countervailing power, the following three conditions must exist simultaneously:

> upstream supply functions are highly elastic, . . . buyers can bring substantial power to bear on the pricing of monopolistic suppliers, and . . . those same buyers face substantial price competition in their end product markets.[57]

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[57] F.M. Scherer, Industrial Market Structure and Economic Performance p.307 (2d.ed. 1980).

Clearly, the first condition does not exist throughout Bell Atlantic's region. Moreover, it is highly doubtful that the second condition is satisfied. AT&T's power over Bell Atlantic's pricing activities is highly questionable, particularly given that AT&T continues to complain about Bell Atlantic's pricing behavior. Hence, Bell Atlantic's assertions about urban buyer discipline on special access rates for rural customers must be disregarded.

C. If Granted, The Requested Flexibility Would Increase Bell Atlantic's Ability To Act On Its Incentive To Cross-Subsidize.

The Commission's price cap scheme has not removed Bell Atlantic's incentive and ability to engage in cross-subsidy because the price cap plan is designed to consider explicitly underlying ILEC costs. The plan requires reporting requirements for, and periodic agency reviews of, Bell Atlantic's profit levels, i.e., rates of return. The reporting requirements and periodic reviews continue cost-based regulation. Thus, if special access were to be removed from the price cap regime, Bell Atlantic would have the incentive and opportunity to misallocate costs from these newly unregulated services to regulated services. State price cap regimes create a similar opportunity to cross-subsidize unregulated access services with non-competitive local services. Cross-subsidization will permit Bell Atlantic to more fully appropriate the monopoly rents otherwise earnable in the regulated business in the absence of rate regulation.

Attention to Bell Atlantic's performance, measured in terms of its rate of return, ensures that over time its rate levels do not become unjust or unreasonable, either in the political or legal sense. This performance inquiry retains the unwholesome incentives embedded in traditional rate-of-return regulation. Vestiges of rate-of-return regulation persist in the periodic adjustment of productivity factors and the attending reliance upon an examination of ILEC costs.[58] The link between Bell Atlantic's costs and rates retains its incentive to incur costs in order to avoid rate decreases or productivity factor increases.

> [P]rice-cap regulation can best be regarded as a loose form of rate-of-return regulation with a formal time lag. Price-cap regimes typically include a periodic review of performance (including the historic rate of return) and an adjustment in the formula to bring the projected rate of return in line with what regulators would regard as just and reasonable.
>
> We can imagine the regulated firm seeking to game the system by incurring excessive costs and thereby establishing a strong basis during the formal price-cap review for higher prices than otherwise. With these costs passed on to consumers (with a time lag), the firm could subsidize outside activities at the expense of its monopoly ratepayers.[59]

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58 See Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, *First Report and Order*, 10 FCC Rcd 8962 at ¶ 156 (1995)(reviewing LEC costs of providing service in setting the X-Factor).

59 Leland L. Johnson, Toward Competition in Cable Television 78 (1994)(citations omitted).

Bell Atlantic uses largely the same facilities to provide special access services and regulated services. The substantial joint and common costs of these identical facilities will greatly aggravate the risk of cross-subsidization of special access services through allocation of costs to regulated services.

Bell Atlantic retains the incentive to engage in a broad range of anticompetitive behavior. Granting it the pricing flexibility it requests will increase its ability to act on those incentives, to the ultimate detriment of consumers and competition. The forbearance sought by Bell Atlantic is premature and, if granted, would reverse the competitive inroads that have already occurred.

V. BELL ATLANTIC ALREADY POSSESSES SUFFICIENT PRICING FLEXIBILITY.

The Commission has recognized that ILECs already possess more than adequate pricing flexibility to compete fairly in the special access market. For example, ILECs can offer volume and term discounts on special access.[60] Indeed, Bell Atlantic's federal special access tariff demonstrates that it already offers substantial discounts to customers as they purchase greater service volumes as well as substantial discounts for longer term plans.[61] ILECs can geographically deaverage these services, as

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60 See Expanded Interconnection With Local Telephone Company Facilities, CC Docket No. 91-141, *Memorandum Opinion and Order*, 9 FCC Rcd 5154 at ¶¶ 171, 174-176 (1994).

61 See Bell Atlantic F.C.C. Tariff No. 1, Section 7.5.18(A)(2)(the cost of the smallest available quantity of DS0s exceeds the cost of the largest available quantity by over 400 percent and 5 year-plans cost almost half as much as 3 year-plans).

well, since zone density pricing allows a carrier to price differently in rural areas than it does in urban areas.[62] Through the design of these volume and term discounts, Bell Atlantic already retains the ability to tailor prices for specific customers. Moreover, the Commission has removed the lower pricing limits in price caps so that Bell Atlantic may reduce its averaged rates to cost[63] and it has relaxed the procedures required for ILECs to introduce new services.[64] Finally, Bell Atlantic may freely increase and decrease the price of services in the trunking basket so long as it does not exceed the relevant price cap for the basket overall. The Commission has recognized that the existing pricing flexibility is fully adequate to allow Bell Atlantic to respond to the present level of competition.[65]

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62 See id. at ¶¶ 153-156.

63 See Access Charge NPRM/Order at ¶¶ 305-306.

64 See id. at ¶¶ 309-310.

65 See SBC RFP Tariff Order at ¶ 56.

VI. CONCLUSION

For the foregoing reasons, the Commission should reject Bell Atlantic's Petition for pricing flexibility in the provision of special access services in the states listed.

Respectfully submitted,

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ATTORNEYS FOR TIME WARNER
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INC. d/b/a TIME WARNER TELECOM

March 18, 1999

ALTS
Association for Local Telecommunications Services

NEW YORK STATE
PUBLIC SERVICE COMMISSION

Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996 Draft Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996	)	Case No. 97-C-0271

COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES ("ALTS") IN RESPONSE TO THE NEW YORK PUBLIC SERVICE COMMISSION'S FEBRUARY 22, 1999 REQUEST FOR INFORMATION

On February 22, 1999, the New York State Public Service Commission ("NYPSC" or "Commission") issued a request for information ("Request") to all parties in the above-captioned proceeding inviting competitive local exchange companies ("CLECS") to identify and detail all issues they believe are negatively affecting their ability to compete in New York. The Request states that to the extent issues are known to the parties at the time of the March 4, 1999, filing date, but are not submitted, those issues may not be raised later in this proceeding. Further, the Request requires that all issues be identified with sufficient detail to enable Bell Atlantic-New York (hereinafter

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"Bell Atlantic") to constructively address, and resolve, the issues and to permit the NYPSC to gauge their competitive significance.

The Association for Local Telecommunications Services ("ALTS") is the national trade association representing facilities-based CLECs, many of whom seek to compete with Bell Atlantic for New York local customers. ALTS has actively participated in the New York 271 process and files the following comments in response to the Commission's request. In preparing to file these comments, we have been able to survey some of our members who seek to provide competitive telephone service in New York.

We note, however, that the extremely short period of time permitted for response has limited our ability to collect all the relevant information that we believe could have been collected had the response time been longer. As ALTS has suggested in the past,[1] we believe that the Commission should commence a unified proceeding relating to Bell Atlantic's compliance (or lack thereof) with the Section 271 checklist and related matters. A unified proceeding to consider Bell Atlantic's final application in its totality would lead to a more focused, and accurate, review of the openness of the New York local market. It has been difficult for CLECs, and presumably all other parties, to reply to the various requests for information or record updates, each on short notice, that the Commission has released.

As noted, ALTS surveyed its members in New York prior to filing these comments. The survey revealed that although there are unresolved issues in New York

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[1] See ALTS' March 23, 1998 comments, filed in Case 97-C-0271.

and problems that negatively affect our members' ability to compete in New York, those problems appear to be less severe, in general, than in some other Bell Atlantic states. Therefore, ALTS believes that the Commission must implement accurate performance measures and must monitor Bell Atlantic in order to effectively detect and deter any performance backsliding. The Commission's role in this area is especially significant given that Bell Atlantic could shift resources from New York to address difficulties in region-wide systems that are necessary for seamless interaction with CLECs throughout the fourteen-state Bell Atlantic footprint.

ALTS seeks to preserve the right to address on a policy and factual basis these issues at a later date and to ensure that all issues critical to local competition in New York are addressed, and resolved, in advance of Bell Atlantic's 271 federal filing.

UNRESOLVED ISSUES

Enhanced Extended Link (EEL)

On April 6, 1998, Bell Atlantic filed a Pre-filing Statement in Case 97-C-0271. According to Bell Atlantic, the purpose of its Pre-Filing was to set forth the steps Bell Atlantic would undertake to open its local network to competitors prior to Bell Atlantic's filing of an application for long distance relief at the Federal Communications Commission ("FCC"). Bell Atlantic submitted a supplemental filing in May, 1998, whereby Bell Atlantic promised to provide to competitors the Enhanced Extended Loop, or EEL. The EEL offering would enable a CLEC to use a combination of loop and transport elements (including multiplexing where required and, where technically feasible, concentration). These combinations would extend from an end user to a CLEC collocation cage or CLEC premises, and may be used to provide switched local

exchange service and switched access service. This loop and transport offering would provide CLECs with access to unbundled loops without the need to collocate in the central office. The scope of this offering and its use remains a significant area of dispute, since Bell Atlantic has proposed a version of EEL that is extremely limited.

Nonetheless, many of our member were encouraged with the commitment to provide a form of EEL and have been eagerly anticipating the date when Bell Atlantic's EEL will actually become available. As of the date of this filing, no type of EEL offering is available to our members pursuant to an approved tariff.

(2) Bell Atlantic Trunking

In its April 6, 1998, Pre-Filing Statement, Bell Atlantic committed to providing two-way trunking by August 1998. Despite this commitment, Bell Atlantic has failed to provision two-way trunking, except for limited trials. The competitive ramifications are that CLECs are forced to use one-way trunks, which is far more costly and inefficient than using two-way trunks. In addition, CLECs are forced to use twice the number of ports on their switches, which is also extremely inefficient. Bell Atlantic should be forced to make good on its promises with respect to two-way trunking.

Platform for Ordering Interconnection Trunks

Bell Atlantic requires CLECs to use a different interface platform when ordering interconnection trunks than when ordering UNEs. For ordering UNEs and resale services, CLECs are able to use the Direct Customer Access Service ("DCAS") platform. Thus, resellers can use a single unified platform, DCAS, for the vast majority of their pre-ordering and ordering functions. However, facilities-based CLECs ordering interconnection trunks are forced to use the interface platform that Bell Atlantic uses for

access services, rather than the DCAS platform. Where facilities-based CLECs order both interconnection trunks and UNEs, the CLECs cannot use the same interface for both orders. As a result, facilities-based CLECs must incur significant additional expense in establishing two separate ordering systems, due only to an internal policy decision by Bell Atlantic.

(4) Local Service Provider (LSP) Freeze

On December 15, 1998, ALTS, CompTel, and the Telecommunications Resellers Association ("TRA") sent a letter to the NYPSC regarding Bell Atlantic's Local Service Provider Freeze to be implemented in the Bell Atlantic North region some time in the first quarter 1999. The NYPSC responded to the December 15, 1998 letter stating that since the local service provider freeze raises potential consumer and competitive concerns, Bell Atlantic should clarify its plans.

The issues surrounding the Local Service Provider Freeze are important to the competitive process. ALTS urges the Commission to ensure that a process is in place prior to Bell Atlantic's 271 approval that will prevent any anti-competitive behavior while at the same time protecting fully the rights of consumers

(5) Collocation

There remain numerous problems with collocation. The first is that although the Commission has ordered secured cageless collocation ("Collocation with Escort") "for all services...at all central offices where such method is technically feasible".[2] Bell Atlantic has filed a tariff that limits the central offices where secured cageless

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[2] Case Nos. 98-C-0690, Case 95-C-0657 - Opinion and Order Concerning Methods for Network Element Recombination, (November 23, 1998).

collocation will be available. Bell Atlantic should not be allowed to violate the Commission's clear order and to limit collocation anywhere, except upon a strong showing that there is no space available or that could be made available in a central office.

Further, since this form of cageless collocation takes up only a fraction of the space of caged collocation, it seems highly unlikely that there would be any central offices where any type of cageless collocation could not be made available. As the Commission undoubtedly is aware, the CLEC industry has been using secured cageless collocation for years among themselves and there have been few, if any, issues raised by the use of that type of collocation.

Second, despite Bell Atlantic's assertions that it is meeting due dates for collocation, ALTS members do not believe these assertions can be supported. Our members are still, on occasion, waiting months for a response to a simple inquiry relating to available space. There is no reason why, after a collocation arrangement is agreed upon, it should take two or three months to obtain collocation.

Third, Bell Atlantic continues to be unable to correctly provide collocations. ALTS members continue to receive cages that do not meet their requirements and that do not meet generally acceptable standards.

In contrast to Bell Atlantic's policies and procedures for collocation, Focal Communications, a CLEC offering collocation to CLECs and ILECs, is able to profitably provision collocation arrangements within 30 days for initial orders, and 24 days for subsequent orders. Focal charges no up-front costs and about $550.00 per month in the case of a customer purchasing two 24" by 24" cabinets containing 8 T-1s (the

necessary space for most equipment). Focal offers these types of collocation arrangements in New York, there appears to be no reason why Bell Atlantic cannot offer the same.

(6) Inaccurate Data For Performance Reporting

As noted in the KPMG exceptions arising out of the Operations Support Systems ("OSS") review, data that Bell Atlantic has supplied has turned out to be either unreliable or the auditor has not been able to make determinations as to its reliability.[3] Thus, it is often impossible to determine, for example, whether UNEs or collocation space is being provisioned in a timely and adequate manner. If Bell Atlantic cannot provide accurate data to KPMG, in a cumulative process under the direct supervision of the Commission, then how can CLECs be assured that data on other important measures will not be – or is not today – inaccurate?

These problems reaffirm the need for the Commission to ensure that Bell Atlantic complies with the commitments it made in the Pre-Filing Statement with respect to ensuring continued performance after the grant of interLATA authority.[4]

The salient point is that once Bell Atlantic is allowed to offer in-region long distance service the incentives for on-going cooperation with the CLECs, and the Commission, lessen. One of the most potent devices the Commission will have post

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[3] See, e.g., Exception Number 18. We also note, for example, that in Bell Atlantic-New York's response to Exception Number 26 Bell Atlantic has claimed 100% on-time collocation completion for the months of February, March and April of 1999. Yet, this claim was made in a report that was submitted in January of 1999.

[4] See page 41, Bell Atlantic's Pre-Filing Statement filed April 6, 1998: "In addition to providing monthly performance measures, Bell Atlantic – NY shall make available, in electronic format, the data underlying these measures."

271 approval are adequate performance measures calculated utilizing accurate data. Absent accurate data, the Commission loses one more, extremely important, tool.

(7) No Access to Universal Service Order Codes

There is no process by which CLECs can access to Universal Services Order Codes ("USOCs"). When our members have contacted Bell Atlantic account managers to obtain this information, the CLECs have been directed to the Bell Atlantic tariff, yet not all USOCs are contained in the tariff. This is a serious problem for CLECs who need the USOCs in order to decipher the encoded language for orders, customer service records ("CSRs"), etc. ALTS requests that Bell Atlantic be required to provide a comprehensive list of USOCs via the internet.

(8) KPMG Third Party Test Exceptions on Bell Atlantic's OSS

The KPMG third party test has revealed deficiencies in Bell Atlantic's Operations Support Systems ("OSS"). ALTS is especially concerned that KPMG has limited or no plans to conduct adequate regression testing once Bell Atlantic purportedly fixes flaws identified in its initial procedures. Thus, Bell Atlantic's "fixes" may cause additional problems that will go untested and unrepaired.

(9) Coordinated Cutovers For Loops

Bell Atlantic continues to experience difficulty in cutting over its own customers to CLECs. This greatly limits the number of unbundled loops provisioned by Bell Atlantic. The existing coordinated cutover process is not scalable to CLECs' expected demand. Also, this problem results in an unacceptable level of customer-affecting outages. This is in direct conflict with the nondiscriminatory access provisions of the Telecommunications Act of 1996.

If BA cannot resolve this issue with existing procedures and manpower, then the Commission should consider requiring Bell Atlantic to utilize Digital Access Cross Connect ("DAX") systems in every end office.

(10) Access to Unbundled Loops

ALTS is concerned about Bell Atlantic's position that it is not obligated to provide unbundled loops in excess of 18,000 feet until the FCC issues new rules pursuant to Section 251(c)(3). Bell Atlantic is prepared to develop and implement a new product offering that provides a link at a loop length greater than 18,000 feet. In addition, Bell Atlantic has committed to provide long loops to Covad Communications Company ("Covad") only in Massachusetts for a discrete volume of orders but has not yet agreed to provide these loops throughout its entire region, including New York.

Further, ALTS is concerned about Bell Atlantic's failure to provide automated access to important loop information such as loop lengths, the presence of load coils, and the presence and number of bridge taps. This information would enable CLECs to determine whether a loop can support digital service and the type of Digital Subscriber Line ("DSL") service that the loop will support.

CONCLUSION:

ALTS is encouraged that the Commission continues to look at the state of local competition in New York. However, given the complexity of the issues still unresolved, coupled with the limited time to prepare this response, ALTS urges the Commission to enable all CLECs to comment on Bell Atlantic's section 271 compliance as a single package prior to the Commission's final determination at the state level.

Respectfully Submitted,

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