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FEDERAL COMMUNICATIONS COMMISSION
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September 10, 1999

EX PARTE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, DC 20554

Re: **REDACTED -- FOR PUBLIC INSPECTION**
Application for Consent to the Transfer of
Control of Licenses from MediaOne Group, Inc. to
AT&T Corp.

CS Docket No. 99-251

Dear Ms. Salas:

Transmitted herewith on behalf of MediaOne Group, Inc. are certain confidential documents filed under seal and subject to the Protective Order adopted by the Cable Services Bureau for this proceeding.¹ Accordingly, the attached materials filed under seal should not be placed in the public record for this proceeding. A copy of this ex parte letter with the confidential portions redacted is being filed simultaneously herewith to provide notice for the public record. In addition to the confidentiality notice, these documents are marked "Copying Prohibited" in accordance with the Protective Order.

The confidential documents are filed in response to the August 9, 1999, letter of To-Quyen Troung, Associate Chief, Cable Services Bureau, requesting certain materials from MediaOne relating to the Commission's review of the above-referenced application. The confidential documents submitted herewith are responsive to items (a) and (b) of the materials requested in connection with the August 4, 1999 MediaOne presentation referred to in Ms. Troung's

¹ See In re Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., to AT&T Corp., CS Docket No. 99-251, Order Adopting Protective Order, DA 99-1568, at ¶ 2 and Exhibit A (CSB August 6, 1999) ("Protective Order").

No. of Copies rec'd 041
List ABCDE

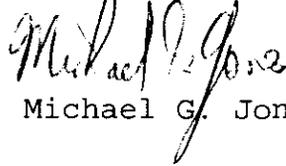
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request. Specifically, the confidential documents provide a detailed description of MediaOne's plans and the status of its upgrade of its cable systems and development of its infrastructure for the provision of telephony and broadband services and a detailed description of MediaOne's plans and the status of its implementation of its marketing strategy for the provision of telephone and broadband services.

An original and one copy of this letter is submitted herewith in accordance with Section 1.1206(b) of the Commission's rules.

Respectfully submitted,

A handwritten signature in cursive script that reads "Michael G. Jones". The signature is written in dark ink and is positioned above the printed name.

Michael G. Jones

cc: To-Quyen Troung
Sunil Daluvoy

4 PAGES REDACTED

ATTACHMENT A

Numbering Issues/Strategies

**Massachusetts
New Hampshire
California**

Massachusetts Numbering Issues

Background

MediaOne has invested millions of dollars in Massachusetts in upgrading its broadband network in order to provide enhanced video, high-speed data and competitive facilities-based residential telephone service in Massachusetts. MediaOne currently provides its Digital Telephony Service in approximately 45 Massachusetts communities. Although MediaOne has NXXs in place to provide service to additional communities for the remainder of 1999, its rollout to additional communities in the year 2000 will be severely hampered because of the numbering shortage in Massachusetts, absent some timely relief.

Timely relief at this period appears extremely uncertain. The Department of Telecommunications and Energy (the "DTE") in Massachusetts has a pending docket open examining area code issues in Massachusetts,¹ but it is unclear when an Order will be issued and thus when a new area code will provide relief. In addition, the DTE has a waiver request pending at the FCC to examine number conservation measures. However, even if a waiver were granted today, it would not likely provide any timely relief since it would simply mean that the DTE would begin an investigation into additional number conservation measures. Actual implementation of any chosen relief method would not likely take place within the needed time frame. The details of the current number assignment process and its effect on MediaOne's ability to market its service to additional communities is set forth below.

In Massachusetts four area codes are in jeopardy and are subject to lotteries. Specifically, in NPAs 617 and 508 the lottery assigns six codes per month; in NPA 781 the lottery assigns eight codes a month; and in NPA 978 ten codes per month are assigned. According to the lottery rules, if more companies request codes than are available in a particular area code in a particular month, the remaining companies that requested codes will be placed on a priority list to receive codes in a subsequent month.

¹ *Area Code Relief*, DTE 99-11 (1999).

MediaOne has participated in these lotteries since their inception and has been able, up to this point in time, to acquire the numbers needed to provide service to its scheduled upgraded communities. However, because of the significant demand for numbers in certain NPAs, MediaOne's ability to serve additional communities in the first quarter of 2000 and thereafter is going to be severely limited absent some type of timely relief.

Impact on MediaOne

Specifically, given the demand for codes in Massachusetts, the priority list has grown significantly in certain area codes. In NPA 617 there are 42 companies on the priority list. This backlog means that it will take seven months to fulfill all of these pending requests. The demand in NPA 508 is also significant. There are currently 35 companies on the priority list for that NPA, which means that it will take six months for these requests to be fulfilled.

Thus, under the present lottery rules, given the current backlog for numbers in certain communities, and given MediaOne's place on the priority lists in NPAs 617 and 508, MediaOne can expect, under a *best case scenario*, to receive only 7 codes out of 21 codes required for the first quarter of 2000 – a meager 33 percent. This translates into approximately 125,000 homes passed, or 67% of MediaOne's planned Massachusetts communities that MediaOne will not be able to market to in the first quarter of 2000, under a best case scenario. The problem will continue into the 2nd quarter of 2000 if no relief is implemented.

Conclusion

The uncertainty and extreme marketing limitations resulting from the above described numbering shortage has severe effects on MediaOne's telephony business as well as on consumers in Massachusetts. First, as described above, many consumers are going to be denied a choice in an alternative local exchange carrier for an undetermined period of time. Second, the severe limitations on MediaOne's ability to market to planned communities will drastically affect the momentum of MediaOne's service rollout, which has repercussions throughout its business. In addition, the uncertainty inherent in the lottery process makes it impossible for MediaOne to effectively plan and market to new communities. Even when MediaOne is lucky enough to receive an NXX

in the lottery, it has not had the advantage of knowing when or if this community would be available to market to until the NXX has been assigned as part of the lottery. Thus, the effectiveness of MediaOne's marketing campaigns will also be severely limited. In conclusion, the numbering situation in Massachusetts is a bad thing for both competition and for consumers and it requires immediate and effective regulatory action.

New Hampshire Numbering Issues

MediaOne does not currently offer its digital telephony service in New Hampshire. MediaOne had planned to launch this service prior to the end of 1999, but its business plan has been changed significantly due to the numbering shortage New Hampshire is currently experiencing.

Background

On November 4, 1998, the North American Numbering Plan Administrator (“NANPA”) declared that New Hampshire’s 603 area code was in jeopardy of exhaust during the fourth quarter of the year 2000. NANPA has since revised the exhaust date to the first quarter of the year 2001. Upon notification of jeopardy, MediaOne immediately filed for certification to provide telephony in New Hampshire, so that it could have access to NXX codes in contemplation of launching its service in the near future.

On January 7, 1999, the industry, by consensus¹, endorsed the overlay relief alternative. However, MediaOne, MCIWorldCom and AT&T – a majority of the CLECs present at the meeting – objected to the “consensus” vote, and in a statement for the record supported the geographic split as the area code relief alternative that would best serve New Hampshire and foster competition. Jeopardy procedures were then agreed to by the industry, resulting in only seven NXX codes available per month via lottery for all carriers.

On February 18, 1999, NANPA filed a Petition requesting approval of a relief plan for the 603 NPA. On March 19, 1999, the Commission opened a relief docket.

¹ MediaOne questions whether a true consensus was reached at the January 7, 1999 meeting. During the meeting, the entire industry segment of incumbent local exchange providers (“ILECs”), including Bell Atlantic and approximately nine of the independent telephone companies unanimously supported an

Evidentiary hearings were held in June, 1999, and on August 9, 1999, the Commission released its "deliberations," a written version of the Commission's public deliberations, which supported an all-services overlay to be implemented in two years. It is MediaOne's understanding that the decision set forth in the "deliberations" will be codified into an Order in the near future.

Deliberations

While MediaOne was at first advocating a split in New Hampshire, it soon became clear that the New Hampshire Commission was reluctant to institute *any* area code relief, but favored conserving the 603 area code at all costs. At that time MediaOne focused its efforts on communicating the need for the implementation area code relief so that all carriers would continue to have access to numbering resources, and so MediaOne could launch digital telephony services in New Hampshire as planned.

As a participant in the monthly lottery since January of 1999, MediaOne has secured only 5 NXX codes, which put it far behind its targeted rollout of telephony to the New Hampshire market. Without access to an uninterrupted supply of numbers, MediaOne cannot make a meaningful entry in the telecommunications market in New Hampshire, which to this date only has a single residential service provider, Bell Atlantic. It had been MediaOne's plan to launch as early as September of 1999, but its plans have since changed as a result of the dearth of available NXX codes. While MediaOne certainly sees a geographic split as the more competitively neutral choice for area code relief, MediaOne is far more concerned with the fact that New Hampshire continues to

overlay. Of the CLECs, three out of the five present, the majority of the industry segment, supported a geographic split.

delay in implementing any area code relief, thus stifling competition in the telecommunications marketplace.

The Commission, in its deliberations, ordered that an all services overlay be implemented, no earlier than two years from the date of the Deliberations or 90 days after the last NXX code has been assigned, whichever is later. As a condition of the overlay, however, the Commission also ordered that the carriers implement unassigned number porting, stating that unassigned number porting must be available within 6 months of the date of the final Order, when issued.

Impact on MediaOne

MediaOne is clearly concerned with result of these “deliberations.” First, to maintain jeopardy procedures and a seven code per month lottery for an additional two years seriously undermines competition in the state of New Hampshire, and effectively thwarts MediaOne’s ability to launch its services in any substantive respect.

Additionally, while unassigned number porting (“UNP”) may sound like a viable “quick fix” to help alleviate the NXX code crisis, it is not an easy solution from a technical standpoint. Moreover, as the Commission admits in its “deliberations,” they have yet to seek a waiver from the FCC for authority to order UNP as a conservation measure. At this time the Commission does not have authority to order the carriers to develop UNP in a six month time period.

Summary

Once MediaOne launches its service in New Hampshire with the five NXX codes it has received via lottery, it may be unable to launch any additional towns for another 6-12 month period, the amount of time it took to garner these first five codes. MediaOne

believes that it is unacceptable that New Hampshire will remain under jeopardy procedures for a total of three years before a new NPA is implemented.

The Shortage of Telephone Numbers in California

Background

The 310 NPA is assigned to Los Angeles, California. That market, as other major markets, has recently experienced a marked increase in demand for telecommunications services that require additional local numbers. Because exhaust of the numbers in the 310 NPA was forecast to take place in early 2000, the California Public Utilities Commission (CPUC) issued an order in May 1998 providing for the opening of a new 424 NPA overlay to begin on July 17, 1999.¹ On June 9, 1999, certain parties petitioned the CPUC to stop the implementation of the 424 NPA overlay. By an *Interim Opinion* issued June 24, 1999, the CPUC suspended indefinitely the introduction of the 424 NPA overlay.² The CPUC stated that a temporary delay in the 424 NPA implementation would allow it to preserve its options for dealing with number exhaust, and allow it to "expand our arsenal for addressing the numbering dilemma that telecommunications growth and competition has created."³ In the interim, the CPUC noted, NXX codes in the 310 NPA were being assigned to carriers by means of a lottery that was expected to continue until anticipated exhaust of 310 NPA NXX codes in April 2000.⁴ The CPUC assigned an Administrative Law Judge (ALJ) to address the merits of the petition.

The presiding ALJ issued a draft decision on August 3, 1999. That draft concludes that it is too late to stop implementation of the 424 NPA overlay without exhausting completely the NXX codes in the 310 NPA and that there are no feasible alternatives to solve the impending number exhaust. The ALJ also rejected the proposal of the Office of Ratepayer Advocates that there be a geographic split of the 310 NPA, because of the need to act quickly and the lack of agreement as to the merits

¹ Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service, D. 98-05-021 (adopted May 7, 1998).

² Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service, D. 99-06-091 (adopted June 24, 1999) (*Interim Opinion*)

³ *Id.* at page 5.

⁴ The *Interim Opinion* did not address other numbering issues pending before the CPUC, such as the request for termination of mandatory 1 plus 10 digit dialing within the 310 area. The ALJ's draft decision, however, proposes that the CPUC petition the FCC for authority to eliminate the requirement once "number pooling and other measures to enhance number availability" are feasible.

of a split. The draft recommends that the 424 NPA be implemented on October 16, 1999. The CPUC is scheduled to consider the draft decision on September 2, 1999.

Although adoption of the draft decision would reinstate the 424 NPA overlay, there is no assurance that the CPUC will take that action. The staff's recommendation that the 310 NPA be split, if adopted, would delay substantially the availability of numbers. Moreover, legislation has been introduced in California that would require the development of an area code relief plan and a suspension of ten-digit dialing within an area code until completion of the study. Because the Commission requires that any NPA overlay be accompanied by ten-digit dialing, passage of the legislation would further disrupt the assignment of NXX codes in the 310 NPA. This legislation (Assembly Bill 818) has been referred to the Committee on Appropriations.

MediaOne's Urgent Need for Relief

MediaOne has invested over \$600 million in upgrading its broadband network in California to provide enhanced video, high-speed data and competitive residential telephone service to southern California. It is the only facilities-based competitive local exchange carrier (CLEC) offering residential service in Los Angeles County. The MediaOne service area covers a broad constituency, including areas as diverse as Beverly Hills and Compton. MediaOne has marketed its services in rate centers throughout the 310 NPA, and intends to continue that effort. It has staff ready to market and provide competitive local service to an expanding customer base, and until the CPUC's *Interim Opinion* was ready to market its service in several new rate centers for which it had obtained NXX codes in the 424 NPA.⁵

MediaOne requires telephone numbers to provide its services to customers who do not already have a number that is to be ported from their existing carrier. Obtaining numbers in California has been a difficult process for MediaOne. During the past 15 months, it has taken every available step to obtain an adequate supply of 310 NPA NXX codes. First, MediaOne has participated in the monthly lottery for California NXX codes since that lottery was instituted in October 1996. Only six NXX codes are made

available each month in the 310 NPA, however, and only 57 NXX codes remain. MediaOne did not warehouse NXX codes in the 310 NPA, and in fact did not seek further 310 NXX codes after February 1999 because it expected to be using numbers pursuant to the new 424 area code overlay. In fact, MediaOne and other carriers devoted considerable resources to implementing consumer education programs designed to ensure a smooth transition to the overlay.

Second, recognizing that the limited supply of numbers in the 310 NPA did not allow MediaOne to market its residential local exchange service in an efficient and comprehensive way, MediaOne filed an emergency request for NXX codes in the 310 NPA (and other NPAs) on May 6, 1998. MediaOne argued that the lack of an adequate supply of numbers requires CLECs to roll out service on a vastly constrained rate center basis, which is irrational from a marketing and economic viewpoint. The CPUC denied that request in July 1998.⁶ The CPUC, however, did instruct the presiding ALJ to "consider whether residential facilities-based carriers should have priority in the lottery."⁷ MediaOne then participated in three workshops held by the CPUC staff, which produced no useful results.

Third, MediaOne obtained NXX codes in the 424 NPA and took all steps required to assign those numbers to subscribers. The 424 numbers, of course, are not now available for assignment, and until the overlay is reinstated the CPUC has requested that the North American Numbering Plan Administrator (NANPA) suspend further assignment of 424 NPA NXX codes.

Fourth, MediaOne twice filed comments with the CPUC prior to issuance of the *Interim Opinion* opposing any delay in implementing the 424 NPA overlay, and describing the dire consequences that would flow from any interruption of the scheduled cutover. MediaOne also has supported the CPUC's petition to the Commission for

⁵ But for the lack of telephone numbers, MediaOne could be offering competitive residential telephony services in the cities of Westchester, Inglewood, Carson and Harbor Gateway. MediaOne passes 44,000 homes in these cities.

⁶ Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service, D. 98-07-096 (adopted July 23, 1998).

⁷ *Id.* at page 11.

additional authority to engage in area code relief planning and implementation and NXX code conservation measures,⁸ and has filed comments in CC Docket No. 99-200.

Fifth, in light of the suspension and urgent need for codes, MediaOne tried to obtain industry consensus on the issue of number availability. By letter dated July 12, 1999, MediaOne requested the NANPA to convene an industry conference call to address assignment of the remaining NXX codes in the 310 NPA. Conference calls were held on July 22, July 26 and August 2, 1999. MediaOne, other CLECs and several wireless companies advocated the development of an emergency pool of 310 codes to be assigned to carriers that could meet a "needs" test.⁹ Pacific Bell and GTE voted against such a pool, as did several wireless carriers. Without consensus, the status quo continues.¹⁰

Finally, on August 12, 1999, MediaOne, AT&T, NEXTLINK, ICG, Firstworld Communications, WIRELESSCO and NEXTEL filed a petition to immediately establish emergency allocation procedures for central office codes in the 310 NPA. This petition is currently before the CPUC.

Accordingly, MediaOne's ability to obtain NXX codes is now limited to participation in the monthly lottery for the remaining codes in the 310 NPA. The NXX codes to be available in the August lottery doubtless will be below the carriers' anticipated demand.¹¹

Effect of the CPUC *Interim Opinion* on MediaOne

The CPUC's June 24 *Interim Opinion* has severely curtailed MediaOne's efforts to provide competitive local service in the 310 area. MediaOne had developed its marketing plans on the assumption that the 424 NXX codes that it had been assigned could be used to satisfy the needs of new customers throughout the area. Indeed, it had initiated the programming of the 424 NXX codes in its switch and loaded the codes in the Local Exchange Routing Guide. Because those numbers are not available for assignment to subscribers, it must limit its marketing to those rate centers for which it

⁸ See MediaOne Comments in NSD File No. L-98-136, filed June 14, 1999.

⁹ Even that plan would have provided MediaOne with, at most, only one additional NXX code.

¹⁰ A group of carriers has filed a petition with the CPUC seeking rehearing of the *Interim Opinion*.

either has an NXX code or can obtain an NXX code through the monthly lottery. Investment incurred to give residential customers a choice in their local carrier, a fundamental underpinning of the Telecommunications Act of 1996, is stranded. The ILECs, because they have NXX codes, can continue to market their services in the rate centers where MediaOne's marketing plans have been put on hold, and thus retain their competitive advantage. This inability to obtain numbers is not merely a potential threat to MediaOne's operations. Already MediaOne has been unable to market service in several communities in which it had planned to solicit subscribers and for which it obtained NXX codes in the 424 NPA overlay. A carrier -- especially a new entrant -- can not conduct efficient and effective marketing when its ability to provide the basic requirement of telephony, a local number, depends upon the draw of a lottery. Even if MediaOne were successful in obtaining one more code in the August lottery, it could carry out only a fraction of its planned marketing. Although the CPUC in the *Interim Opinion* indicated a commitment to rule on the pending overlay issues before the 310 NPA NXX codes are exhausted, it set no firm deadlines to finally resolve this problem (and it is essential that no further proceedings, such as those contemplated by the legislation, be conducted). In the meantime, thousands of residential subscribers in the 310 NPA have no recourse but to obtain local service from the ILECs.

¹¹ In the May 1999 lottery, for example, participating carriers had pending requests for 123 NXX codes. Only six were allotted.

ATTACHMENT B

**COMMENTS IN OPPOSITION TO
BELL ATLANTIC'S 271 APPLICATION**

COMMONWEALTH OF MASSACHUSETTS
Department of Telecommunications and Energy

Inquiry by the Department of Telecommunications)
and Energy pursuant to Section 271 of the)
Telecommunications Act of 1996 into the Compliance)
Filing of New England Telephone and Telegraph)
Company d/b/a Bell Atlantic – Massachusetts as)
part of its application to the Federal Communications)
Commission for entry into the in-region interLATA)
(long distance) telephone market.)

D.T.E. 99-271

INITIAL WRITTEN COMMENTS OF
MEDIAONE TELECOMMUNICATIONS OF MASSACHUSETTS, INC.

I. INTRODUCTION

Pursuant to the Department of Telecommunication and Energy's ("Department") Legal Notice dated June 29, 1999, MediaOne Telecommunications of Massachusetts, Inc. ("MediaOne") respectfully submits its Initial Written Comments on the purported "Compliance Filing" of New England Telephone and Telegraph Company d/b/a Bell Atlantic – Massachusetts ("Bell Atlantic") pursuant to the Communications Act of 1934, as amended by §271 of the Telecommunications Act of 1996 ("Act").

MediaOne is a facilities-based competitive local exchange carrier ("CLEC") serving residential customers in 41 Massachusetts communities. MediaOne and its affiliated entities are engaged in the industry's most rapid and extensive deployment of broadband networks in order to deliver telephony, high-speed data service and additional video services. Via affiliates, MediaOne provides cable

television service over its broadband networks to some 925,000 customers in the Commonwealth. MediaOne competes directly with Bell Atlantic by offering attractively packaged and priced residential telephone services.

The relationship between MediaOne and Bell Atlantic is governed by their existing interconnection agreement dated June 20, 1997. MediaOne and Bell Atlantic currently interconnect at a single fiber-splice mid-span meet-point in Lawrence. MediaOne's attempts to negotiate a successor interconnection agreement with Bell Atlantic have been unsuccessful, and the disputed issues are currently before the Department for arbitration in D.T.E. 99-42/43. ("MediaOne Arbitration"). MediaOne submits that Bell Atlantic's unreasonable positions on numerous interconnection and local number portability issues demonstrate its lack of compliance with §271.

II. THE DEPARTMENT SHOULD DEFER ITS INQUIRY UNTIL BELL ATLANTIC'S FILING IS COMPLETE

Bell Atlantic has asked the Department to conclude Bell Atlantic is meeting all items in the fourteen-competitive checklist in §271(c)(2)(B), and then to verify its compliance when it files its application for long distance relief with the Federal Communications Commission ("FCC"). Bell Atlantic also asserts it is meeting its obligations to provide services and facilities under the Act, and that the local exchange market in the Commonwealth is unquestionably and irreversibly open to competition.¹

¹ Letter of Wayne A. Budd, Bell Atlantic Group President, to Janet Gail Besser, D.T.E. Chair, dated May 24, 1999.

Bell Atlantic's filing further contends there is a "high level of competitive activity for local services" citing, among other facts, MediaOne's entry into the marketplace in August 1998. Bell Atlantic also cites its existing interconnection arrangements with 42 facilities-based CLECs, including MediaOne, as demonstrating that Bell Atlantic complies with checklist items 1 (interconnection) and 2 (non-discriminatory access to network elements).²

Congress recognized that the Regional Bell Operating Companies ("RBOCs") had no incentive to open their local monopoly markets to competition. Accordingly, Congress required an RBOC to meet the fourteen-point checklist before gaining access to the interLATA market. Recognizing the FCC's decision necessarily would be based on its review of a distinct set of complex facts in each state, Congress required the FCC to consult with state utility commissions. See §271(d)(2)(B).

Bell Atlantic apparently will seek the FCC's approval to enter the long distance market very soon. Bell Atlantic states the current filing was made in response to the Department's request for Bell Atlantic to submit its state-filing 90 days before seeking FCC approval. Bell Atlantic states the Department's review can be conducted within that time frame and urges the Department's expeditious review.³ Bell Atlantic has indicated its FCC application will contain information

² Affidavit of Bell Atlantic Witness, Paula L. Brown, at ¶¶ 8, 12-13. The existing Interconnection Agreement between Bell Atlantic and MediaOne is presented as Exh. 1 to Bell Atlantic's filing.

³ Letter of Wayne A. Budd, Bell Atlantic Group President, to Janet Gail Besser, D.T.E. Chair, dated May 24, 1999.

and data comparable to that provided the Department and parties in this proceeding.⁴

MediaOne respectfully urges the Department not to proceed with its inquiry into Bell Atlantic's compliance with the §271 checklist until Bell Atlantic's filing is complete. The Department cannot possibly be expected to rush to a judgment within 90 days much less verify Bell Atlantic's compliance with each element of the fourteen-point checklist. As the Department recognized in its June 29, 1999 Legal Notice, Bell Atlantic's filing is incomplete on its face because it purports to rely on future results of final OSS testing in New York which has been delayed. Further, the Department cannot make factual findings regarding Bell Atlantic's compliance with the checklist until KPMG's OSS testing in Massachusetts has been completed and the results subjected to review.

The Department and participants in this proceeding should not be forced to respond prematurely or to a moving target. Accordingly, MediaOne requests that the Department defer this proceeding until Bell Atlantic's filing is complete in all respects.

III. BELL ATLANTIC HAS NOT SATISFIED ALL ITEMS IN THE COMPETITIVE CHECKLIST

MediaOne also disputes Bell Atlantic's assertion that it has met all of the items in the §271 competitive checklist and that the local exchange market in Massachusetts is unquestionably and irreversibly open to competition. If MediaOne's experience with Bell Atlantic is any measure of its performance with

⁴ Affidavit of Bell Atlantic Witness, Paula L. Brown, at ¶4.

other CLECs, then Bell Atlantic clearly has failed and continues to fail to meet several critical checklist items.

Although MediaOne's dependence on Bell Atlantic may be more limited than other CLECs due to its broadband network design, it still depends on Bell Atlantic for interconnection, coordinating local number portability and obtaining Directory Assistance and Operator Assisted services. Bell Atlantic's performance in these areas critically impacts MediaOne's ability to offer competitive service on a day-to-day basis. When MediaOne cannot obtain interconnection as envisioned by the Act, or when the transition of customers from Bell Atlantic to MediaOne is not prompt, efficient and transparent to the customer, MediaOne's ability to attract telephony customers and enter the local exchange marketplace in the Commonwealth is effectively undermined.

Bell Atlantic has violated the Act and also failed to live up to its obligations under its existing interconnection agreement with MediaOne by refusing, to date, to interconnect at an additional mid-span fiber meet-point. Further, during negotiations for a successor interconnection agreement, Bell Atlantic has taken positions that represent a "retreat" from provisions in the existing interconnection agreement. Bell Atlantic also refuses to adopt measures that would ensure its satisfactory performance with respect to local number portability in the future. The Department cannot conclude the local market is irreversibly open to competition as long as Bell Atlantic can reverse course or is unable demonstrate its willingness to maintain a satisfactory performance in the future.

Indeed, Bell Atlantic cannot demonstrate compliance with §271 by simply offering its existing interconnection agreements and by citing aggregated statistics concerning its alleged accomplishments. As MediaOne has become all too aware, the mere existence of an interconnection agreement does not present the full story. How that interconnection agreement has been implemented (or not implemented) provides the more appropriate level of detail and insight that the Department needs in order to evaluate Bell Atlantic's conclusory statements regarding its compliance with the competitive checklist and its assertion that the local exchange market is irreversibly open to competition.

Moreover, much of the progress to date in opening the local market to competition is attributable to the efforts of companies like MediaOne continually working with and monitoring Bell Atlantic. Therefore, Bell Atlantic also must demonstrate it has or will implement procedures that will ensure its compliance with all checklist as the volume of CLEC traffic increases and competition in the local exchange market truly develops.

As described more fully in the following sections, Bell Atlantic has failed to satisfy checklist items 1 (interconnection) and 11 (local number portability). MediaOne reserves the right to identify additional areas where Bell Atlantic has failed to comply with the checklist as this proceeding progresses.

Specifically, Bell Atlantic has failed to meet checklist item 1 (interconnection) by:

- Refusing to interconnect at a technically feasible fiber-splice mid-span meet-point in violation of its current interconnection agreement with

MediaOne, thereby placing MediaOne in a critical situation where it may not have the capacity needed to support its customers' traffic;

- Establishing interconnection requirements which force MediaOne to establish numerous interconnection points at locations deemed "geographically relevant" by Bell Atlantic;
- Reserving the right to cease transporting Tandem Transit Traffic between MediaOne and another CLEC where the traffic exceeds a DS-1 volume, and insisting that MediaOne negotiate interconnection agreements with all CLECs where traffic between MediaOne and the particular CLEC exceeds a DS-1 volume;
- Proposing language regarding the relationship between its interconnection agreement with MediaOne and Bell Atlantic's Interconnection Tariff No. 17 pending in D.T.E. 98-57 which gives Bell Atlantic the ability to impose unspecified terms and conditions whenever it is to its advantage and which could effectively eliminate material interconnection provisions which were subject to negotiation and arbitration.

Similarly, Bell Atlantic has failed to meet checklist item 11 (local number portability) by:

- Refusing to agree to implement reasonable performance standards and incentives for local number portability ("LNP") activities aimed at maintaining on-time LNP performance at a level which will not adversely affect MediaOne's ability to market and provide service to its customers in Massachusetts.

Bell Atlantic's failure to satisfy the statutory standards with respect to interconnection has impeded MediaOne's ability to compete by forcing MediaOne to arrange for other providers to transport its telephone calls to Bell Atlantic's network thereby imposing additional costs on MediaOne. Bell Atlantic's failures

also prevent MediaOne from executing its business plan in a timely and efficient manner.

IV. BELL ATLANTIC HAS NOT PROVIDED INTERCONNECTION IN ACCORDANCE WITH SECTIONS 251(C)(2) AND 252(D)(1)

1. Interconnection at Fiber-Splice Mid-Span Meet-Points

Bell Atlantic has not met its duty under §251(c)(2)(B)(i) to interconnect with a CLEC at any technically feasible point within Bell Atlantic's network. In its filing, Bell Atlantic contends that it meets this duty by offering interconnection at six standard points⁵ and by providing interconnection at other technically feasible points through a bona fide request ("BFR") process provided for in BA-MA's proposed wholesale tariff, MA DTE 17. Bell Atlantic states it has not received any such BFRs.⁶

Interconnection is the physical linking of two networks for the mutual exchange of traffic. Section 251(c)(2) of the Act requires incumbent local exchange carriers ("ILEC") to interconnect their networks with the facilities and equipment of any requesting carrier at any technically feasible point on an ILEC's network. In its First Report and Order, the FCC found that the Act's interconnection obligation allows "competing carriers to choose *the most efficient points* at which to exchange traffic with incumbent LECs thereby lowering the competing carriers costs of, among other things, transport and termination of

⁵ The line-side of the local switch, the trunk-side of the local switch, the trunk interconnection points for a tandem switch, central office cross connect points, out of band signaling transfer points necessary to exchange traffic at these points and to access call related databases, and points of access to unbundled network elements. Affidavit of Bell Atlantic Witness, John Howard, at ¶11.

traffic.”⁷ The FCC also found that the term “technically feasible” refers solely to technical or operational concerns rather than economic, space or site limitations.⁸ Moreover, the FCC squarely held that mid-span meets are technically feasible and that the incumbent LEC’s obligations include making modifications to its facilities to the extent necessary to accommodate interconnection.⁹

From MediaOne’s perspective, mid-span fiber meets are the preferred method of interconnection because they are more efficient and less expensive than collocation which requires MediaOne to gain access to Bell Atlantic’s facilities to perform maintenance and repair. MediaOne and Bell Atlantic currently interconnect at a single fiber mid-span meet-point in Lawrence and their current interconnection agreement provides that additional meet-points can be established.

Despite this fact, however, Bell Atlantic has violated the above-described statutory duty by refusing to interconnect with MediaOne at an additional fiber-splice mid-span meet-point as permitted under the existing interconnection agreement. Since December 1998, MediaOne has sought to interconnect with Bell Atlantic at a mid-span meet-point in Brockton, Massachusetts. After seven long months, MediaOne has not achieved its goal. Bell Atlantic has refused to move forward on MediaOne’s request unless MediaOne agrees to sign a document which not only is not required under the current interconnection agreement but which contains terms and conditions contrary to that agreement.

⁶ Affidavit of Bell Atlantic Witness, John Howard, at ¶¶11-12.

⁷ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499, at ¶ 172 (1996).

⁸ Id. at ¶198.

This refusal has placed MediaOne in a capacity shortage situation which may affect its ability to serve its customers. Interconnection delayed is interconnection denied. Clearly, Bell Atlantic has failed to meet its obligations under §251(c)(2)(B).

Further, in negotiations for a successor interconnection agreement, Bell Atlantic has taken the position that MediaOne cannot unilaterally specify a mid-span fiber meet arrangement as its selected method for interconnection with Bell Atlantic, but rather that the selection of mid-span meets should be subject to mutual agreement of the parties and the availability of facilities. The Act does not allow ILECs to limit the method of interconnection in this manner. As discussed above, under the Act an ILEC must permit a requesting carrier to choose any method of technically feasible interconnection. Further, technical feasibility does not include considerations of space or site limitations.¹⁰

In the MediaOne Arbitration, Bell Atlantic also has proposed interconnection requirements which require MediaOne to establish an economically inefficient interconnection architecture which mirrors the architecture of Bell Atlantic's network, or MediaOne will incur unfair economic penalties contrary to the Act's interconnection requirements. Specifically, Bell Atlantic proposes that if MediaOne does not establish numerous interconnection points within certain "geographically relevant" distances from the point where Bell Atlantic identifies its Interconnection Point, then Bell Atlantic does not need to pay the applicable reciprocal compensation rate to MediaOne, but MediaOne will be

⁹ Id. at ¶¶ 549, 553.

¹⁰ First Report and Order at ¶¶ 201; 549.

required to pay Bell Atlantic the reciprocal compensation rate plus additional amounts associated the transport of traffic from MediaOne's point of interconnection to Bell Atlantic's tandems.

2. Tandem Transit Traffic

Bell Atlantic fails to meet checklist item 1 in regard to Tandem Transit Traffic.¹¹ Bell Atlantic's support of Tandem Transit Traffic is essential to MediaOne and other CLECs. The existing interconnection agreement between the parties permits MediaOne to interconnect through Bell Atlantic's tandem switches for the purpose of originating and terminating such traffic; that agreement sets no limit on Tandem Transit Traffic. Indeed, with but one exception, each of the nearly fifty interconnection agreements that Bell Atlantic has in place in the Commonwealth obligates Bell Atlantic to transit CLEC-to-CLEC traffic through its tandem switches without restriction or limitation.

In MediaOne's current arbitration with Bell Atlantic, however, Bell Atlantic has demanded unreasonable volume and time limits on the amount of Tandem Transit Traffic that MediaOne may originate to other CLECs and that if these limits are exceeded, Bell Atlantic may elect to block any Tandem Transit Traffic between the two carriers. Further, Bell Atlantic has indicated it intends to place these same limits on other carriers in future negotiations.

¹¹ Tandem Transit Traffic is traffic between two CLECs who both interconnect with Bell Atlantic but who do not directly interconnect with one another; the traffic utilizes Bell Atlantic's network on its way from one CLEC to another.

Placing such limits on Tandem Transit Traffic is a violation of Bell Atlantic's obligation to interconnect under §251(c)(2) of the Act and is consistent with the FCC's recent recognition that as a practical matter incumbent LECs exert "bottleneck control" over interconnection, and that when CLECs need to transmit calls between each other, they frequently do so indirectly through the incumbent LECs. The FCC also stated that in order for competitive facilities based services to develop, providers must have the ability to access potential customers and the freedom to design services that consumers desire.¹²

3. Joint Grooming Plan

Bell Atlantic has not met Checklist Item 1 because it is seeking to preserve the ability to modify and refine the terms of an interconnection agreement by imposing a requirement to negotiate a new joint grooming plan at some later date after the agreement becomes effective. MediaOne and Bell Atlantic have an existing joint grooming plan in place that covers issues related to network growth and maintenance, disaster recovery and service quality issues which can continue to be used with its new interconnection agreement.¹³ Bell Atlantic, however, has taken a position in the MediaOne Arbitration that the parties should start from scratch and negotiate a new joint grooming plan at some later date.

The problem with Bell Atlantic's proposal is that it results in an interconnection agreement that is completely silent on the important rules relating to network growth and maintenance. Without concrete rules in place at the time

¹² Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket 99-217, and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-88 (adopted June 10, 1999).

¹³ Rebuttal Testimony of MediaOne Witness, David Kowolenko, in D.T.E. 99-42/43 at 4.

the agreement is signed, MediaOne can be held hostage to requirements established by Bell Atlantic as MediaOne grows its network. MediaOne cannot effectively plan and operate its business if such significant terms of an interconnection agreement are not defined in advance.

4. Bell Atlantic's Interconnection Tariff – DTE Tariff 17

Similarly, Bell Atlantic fails to meet checklist item 1 as a result of its position on the incorporation of tariff terms and conditions into interconnection agreements. Specifically, Bell Atlantic has proposed language in the MediaOne Arbitration relating to the incorporation of Bell Atlantic's Interconnection Tariff into MediaOne's Interconnection Agreement, which gives Bell Atlantic the ability to impose upon MediaOne certain unspecified terms and conditions whenever it is to Bell Atlantic's advantage. Moreover, Bell Atlantic's position would effectively give it the ability to eliminate material provisions in the interconnection agreement which were subject to negotiation and arbitration.

V. BELL ATLANTIC HAS NOT MET THE REQUIREMENT TO PROVIDE LOCAL NUMBER PORTABILITY

Local number portability ("LNP") provides the capability for customers to keep their telephone numbers when they change LECs and is critical to CLECs in their provision of local exchange service. Bell Atlantic asserts that despite the need to implement significant network, systems and internal processes, it has met or exceeded the FCC's schedule for LNP implementation.¹⁴ However, meeting the schedule for LNP implementation is not the sole factor for determining

¹⁴ Affidavit of Bell Atlantic Witness John Howard at ¶¶78-79.

whether Bell Atlantic has complied, or will continue to comply with the requirements of the competitive checklist item 11 regarding LNP.

In the *Consolidated Arbitrations* the Department agreed that an interconnection arrangement is unlike the standard commercial setting where the provider of a service has a commercial incentive to provide high levels of service to the customer. The Department acknowledged that Bell Atlantic has an underlying commercial interest in slowing down the loss of market share to its wholesale customers (*Consolidated Arbitrations*, Phase 3-B at 22). For this reason, the Department established performance standards designed to provide Bell Atlantic with the necessary incentives to conform to the interconnection requirements of the Act. The Department developed numerous measurements, standards and payment schedules for failure to meet standards relating to certain critical activities which take place between BA and interconnecting parties. The Department did not, however, review or address any activities associated with the number porting process. Such an omission must be corrected if Bell Atlantic's performance in activities associated with transferring a customer from BA to a CLEC are to be measured and tracked.

One of the first experiences that the majority of MediaOne customers have with their new carrier is the porting of their number. The porting process requires coordination between both providers. A CLEC cannot port a number on its own, and thus must rely on BA if the process is to take place without error. When a port is not done properly, the customer either has no dial tone or cannot receive calls from others. Failure in the porting process not only damages the affected

company's reputation but also significantly impacts on that company's ability to move forward and market and install customers as planned. Without any porting standards and remedies, there would be incentives for Bell Atlantic to ensure that the customer transition process is implemented consistent with its interconnection obligations under the Act.

Bell Atlantic's LNP performance has significantly improved. However, the overall volumes of porting requests are low and not representative of a truly competitive market. As competition develops more completely over time, the volumes of ported numbers will increase significantly.¹⁵ Accordingly, the Department must ensure that LNP performance does not degrade significantly as the porting demand increases over time, and it must adopt reasonable porting standards and adequate incentives in order to ensure that Bell Atlantic meets its porting obligations under the Act.¹⁶

VI. GROUPING OF ISSUES

MediaOne recommends separate panel hearings and technical sessions on Checklist Items 1 (interconnection) and 11 (local number portability).

¹⁵ Even Bell Atlantic's witness in the MediaOne Arbitration admitted that increased volumes can negatively effect Bell Atlantic's provisioning performance. (Exh. BA-9, p.).

¹⁶ It is Bell Atlantic's position that no performance standards or remedies are needed since it is currently achieving such a high level of LNP performance at the current time.

VII. CONCLUSION

MediaOne urges the Department to defer inquiry into Bell Atlantic's compliance with the requirements of §271 competitive checklist until its filing is complete. Further, in MediaOne's own experience, Bell Atlantic has not satisfied the checklist requirements. MediaOne has significant disputes with Bell Atlantic regarding its positions on checklist items on interconnection and local number portability. MediaOne respectfully requests that the Department consider the views expressed herein in its further conduct of this proceeding.

Respectfully submitted,

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