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October 19, 1999

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For Public Inspection**

ORIGINAL

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, S.W., Room TW-B-204  
Washington, D.C. 20554

Re: CC Docket No. 99-295

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OFFICE OF THE SECRETARY

Dear Ms. Salas:

Pursuant to the Public Notice issued on September 29, 1999, please find enclosed the Comments of AT&T in Opposition To Bell Atlantic's Section 271 Application for New York. AT&T is submitting to your Office a redacted version, plus two copies, of the entire submission. If a document has been redacted, it bears the legend "Redacted -- For Public Inspection." Documents that have not been redacted contain no such legend.

AT&T is also submitting to your Office the portions of its submission that are proprietary pursuant to the Commission's Protective Order in this matter. The proprietary material consists of pages of AT&T's Comments and supporting affidavits, as well as numerous proprietary attachments. Each page of the submission that contains proprietary material bears the legend "Confidential -- Not for Public Inspection." In addition, AT&T has designated a subset of these pages as "Copying Prohibited."

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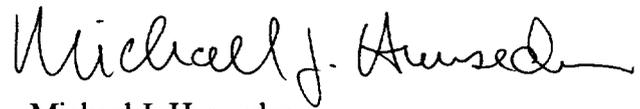
Magalie Roman Salas

October 19, 1999

Page 2

Finally, also enclosed is a CD-ROM that contains the portions of AT&T's redacted submission that exist in electronic form. If there are any questions concerning AT&T's submission in this matter, including matters relating to proprietary material, please do not hesitate to contact me. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Hunseder". The signature is written in black ink and is positioned above the printed name.

Michael J. Hunseder

Before the **DOCKET FILE COPY ORIGINAL**  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
)  
Application by New York Telephone )  
Company (d/b/a Bell Atlantic - )  
New York), Bell Atlantic )  
Communications, Inc., NYNEX Long )  
Distance Company, and Bell Atlantic )  
Global Networks, Inc., for )  
Authorization to Provide In-Region, )  
InterLATA Services in New York )

Docket No. 99-295

**ORIGINAL RECEIVED**  
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FEDERAL COMMUNICATIONS COMMISSION  
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**COMMENTS OF AT&T CORP. IN OPPOSITION TO  
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October 19, 1999

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IN OPPOSITION TO BELL ATLANTIC'S  
SECTION 271 APPLICATION FOR NEW YORK**

**CC Docket No. 99-295**

<b>TAB</b>	<b>AFFIANT</b>	<b>SUBJECT(S) COVERED</b>	<b>RELEVANT STATUTORY PROVISIONS</b>
A	Robert Aquilina	AT&T Market Entry – Residential	§ 271(c)(2)(B)(ii), (iv); § 271(d)(3)(C)
B	B. Douglas Bernheim, Janusz A. Ordoover, Robert D. Willig	Public Interest – Overview	§ 271(d)(3)(C)
C	Robert L. Callahan, Timothy M. Connolly	Directory Assistance, Directory Listing, Loops	§ 271(c)(2)(B)(ii), (iv), (vii), (viii)
D	Richard H. Clarke, Catherine E. Petzinger	Pricing	§ 271(c)(2)(B)(ii)
E	Raymond Crafton, Timothy M. Connolly	Operations Support Systems / Unbundled Network Elements – Platform	§ 271(c)(2)(B)(ii), (iv)
F	Dean A. Gropper	Public Interest – BA-NY Ability to Discriminate	§ 271(d)(3)(C)
G	R. Glenn Hubbard, William H. Lehr	Public Interest – Overview	§ 271(d)(3)(C)
H	Robert E. Kargoll	Section 272	§ 272
I	A. Daniel Kelley	Public Interest – CLEC Market Penetration	§ 271(d)(3)(C)
J	Jack Meek	Loop Provisioning -- Hot Cuts	§ 271(c)(2)(B)(ii), (iv), (xi)
K	Edward Mulligan	AT&T Market Entry – Business	§ 271(c)(2)(B)(ii), (iv); § 271(d)(3)(C)
L	C. Michael Pfau, Michael Kalb	Performance Measurements and Enforcement Plan	§ 271(c)(2)(B)(ii); § 271(d)(3)(C)
M	Lee L. Selwyn	Public Interest – Connecticut Experience	§ 271(d)(3)(C)

**FCC ORDERS CITED**

<b>SHORT CITE</b>	<b>FULL CITE</b>
Accounting Safeguards Order	Report and Order, <u>Accounting Safeguards Under the Telecommunications Act of 1996</u> , 13 FCC Rcd. 21879 (1996)
Ameritech Michigan Order	Memorandum Opinion and Order, <u>Application of Ameritech Michigan Pursuant to Section 271 to Provide In-Region, InterLATA Services in Michigan</u> , 12 FCC Rcd. 20543 (1997)
BellSouth South Carolina Order	Memorandum Opinion and Order, <u>Application of BellSouth Corp., et al. Pursuant to Section 271 to Provide In-Region, InterLATA Services in South Carolina</u> , 13 FCC Rcd. 539 (1997), <u>appeal pending</u> , Case No. 98-1019 (D.C. Cir.)
CPNI Order	Second Report And Order And Further Notice Of Proposed Rulemaking, <u>Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' use of Customer Proprietary Network Information and Other Customer Information</u> , 13 FCC Rcd. 8061 (1998)
CPNI Order on Reconsideration	Order on Reconsideration and Petitions for Forbearance, <u>Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended</u> , CC Docket Nos. 96-115, 96-149, FCC 99-223 (rel. Sept. 3, 1999).
Enhanced Service Providers Order	Order, <u>In the Matter of Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers</u> , 3 FCC Rcd 2631 (1988)
Infrastructure Sharing Order	Report and Order, <u>Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996</u> , 12 FCC Rcd. 5470 (1997)
Local Competition Order	First Report and Order, <u>Implementation of the Local Competition Provision in the Telecommunications Act of 1996</u> , 11 FCC Rcd. 15499 (1996), <u>aff'd in part and vacated in part by Iowa Utils. Bd. v. FCC</u> , 120 F.3d 753 (8th Cir. 1997), <u>aff'd in part and rev'd in part by AT&amp;T Corp. v. Iowa Utils. Bd.</u> , 525 U.S. 366 (1999)

First BellSouth Louisiana Order	Memorandum Opinion and Order, <u>Application by BellSouth Corp., et al. Pursuant to Section 271 to Provide In-Region, InterLATA Services in Louisiana</u> , 13 FCC Rcd. 6245 (1998)
NDA Order	Memorandum Opinion and Order, <u>Petition of U S West Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance</u> , CC Docket Nos. 97-172 and 92-105, FCC 99-133, 1999 WL 759698 (rel. Sept. 27, 1999)
Non-Accounting Safeguards NPRM	Notice of Proposed Rulemaking, <u>Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended</u> , 11 FCC Rcd. 18877 (1996)
Non-Accounting Safeguards Order	First Report and Order and Further Notice of Proposed Rulemaking, <u>Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended</u> , 11 FCC Rcd. 21905 (1996)
Non-Accounting Safeguards Third Order On Reconsideration	Third Order on Reconsideration, <u>Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended</u> , CC Docket No. 96-149, FCC 99-242, 1999 WL 781649 (rel. October 1, 1999)
Performance Measurements NPRM	Notice of Proposed Rulemaking, <u>Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance</u> , 13 FCC Rcd. 12817 (1998)
Resale and Shared Use Order	Report and Order, <u>In the Matter of Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities</u> , 60 FCC 2d 261 (1976)
SBC Oklahoma Order	Memorandum Opinion and Order, <u>Application by SBC Communications Inc., Pursuant to Section 271 to Provide In-Region, InterLATA Services in Oklahoma</u> , 12 FCC Rcd. 8685 (1997), aff'd, SBC v. FCC, 138 F.3d 410 (D.C. Cir. 1998)
Second BellSouth Louisiana Order	Memorandum Opinion and Order, <u>Application of BellSouth Corporation, et al. for Provision of In-Region, InterLATA Services in Louisiana</u> , 13 FCC Rcd. 20599 (1998)
Second Order on Reconsideration	Second Order on Reconsideration, <u>Implementation of the Local Competition Provisions in the Telecommunications Act of 1996</u> , 11 FCC Rcd. 19738 (1996)

<p>Telephone Number Portability Order</p>	<p>First Report and Order and Further Notice of Proposed Rulemaking, <u>Telephone Number Portability</u>, 11 FCC Rcd. 8352 (1996)</p>
<p>Telephone Number Portability Reconsideration Order</p>	<p>First Memorandum Opinion and Order on Reconsideration, <u>In the Matter of Telephone Number Portability</u>, 12 FCC Rcd. 7236 (1997)</p>
<p>Texas Preemption Order</p>	<p>Memorandum Opinion and Order, <u>Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995</u>, 13 F.C.C. Rcd. 3460 (1997)</p>
<p>Third Order on Reconsideration</p>	<p>Third Report and Order on Reconsideration and Further Notice of Proposed Rulemaking, <u>Implementation of the Local Competition Provisions in the Telecommunications Act of 1996</u>, 12 FCC Rcd. 12460 (1997)</p>

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Application by New York Telephone Company (d/b/a Bell Atlantic - New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Services in New York</b>	)	<b>Docket No. 99-295</b>

**COMMENTS OF AT&T CORP. IN OPPOSITION TO  
BELL ATLANTIC'S SECTION 271 APPLICATION FOR NEW YORK**

**INTRODUCTION**

At regular intervals since the passage of the Telecommunications Act of 1996, Bell Atlantic has urged the New York Public Service Commission (New York PSC) to accept its claims that its local markets were fully open to competition. In response, potential competitors and consumer advocates have readily demonstrated that these claims were baseless. And the New York PSC accordingly has repeatedly prodded Bell Atlantic to fix the numerous problems with its provisioning systems and processes that have continued to block widespread competition to provide local service to residential and business customers in New York.

As a result, Bell Atlantic-New York is now closer than any other Bell Operating Company (“BOC”) to fully implementing its checklist obligations, and local competition, at least in certain densely populated areas of New York, is far more advanced than in most states. This admirable progress is a testament to the dedicated efforts of the New York PSC.

And yet, although the progress to date in New York is laudable, the job of opening New York's residential and business markets for local service remains unfinished. Despite substantial investments by competitors and remarkable efforts by regulators, Bell Atlantic still controls over 90% of the local service market statewide. No competitor, including AT&T, is yet able to compete for large volumes of orders from either residential or small- to mid-sized business customers.

The reason is simple. The statutory noncompliance that Bell Atlantic papers over as merely "gripe[s]" (Br. 6) about "competitively insignificant imperfections" (Br. 3) looms in reality as a critical obstacle to full-fledged competition. Most notably, Bell Atlantic still does not provide competitors with nondiscriminatory access to two essential, irreplaceable elements of its network that are critical to supporting full-fledged competition: its loops, and its operations support systems (OSS).

These and other competition-defeating problems must be corrected now, before Bell Atlantic receives interLATA authorization under Section 271. As a legal matter, of course, that is expressly required by the plain terms of the Act. And as a practical matter, it is clear that Bell Atlantic will complete what remains to be done in New York only under regulatory compulsion reinforced by the incentive of section 271 approval. In Bell Atlantic's view, it had fully complied with the Telecommunications Act back in the summer of 1996 – everything it has done since then as been mere "icing on the cake" (Br. 12). Indeed, the only place Bell Atlantic has made any significant progress toward fulfilling its statutory market-opening duties is New York – the focus of its efforts to obtain section 271 authorization. It is thus plain that, once this Commission grants Bell Atlantic long distance authorization, Bell Atlantic will do nothing more to further local competition. Regardless of whether Bell Atlantic may then be prevented from

backsliding, its forward progress most assuredly will stop. Moreover, Bell Atlantic's repeated assertion that parity exists simply because (it claims) that CLECs already serve approximately one million lines in New York neither demonstrates the existence of parity nor removes the legal and marketplace need for it.

What is left for Bell Atlantic to accomplish, although important, is not extensive. Indeed, for the most part, each remaining step is one that this Commission has previously identified, in its orders rejecting Ameritech's and BellSouth's premature applications, as essential to statutory compliance and crucial to competition.

First, Bell Atlantic must cease to discriminate against AT&T and other competitors by providing inferior and inadequate access to its operations support systems. Nondiscriminatory access to OSS is the linchpin of a mass-market competitive offering to residential customers -- such an offer simply cannot succeed without it. The rigorous testing done by KPMG, on which Bell Atlantic chiefly relies, was essential to set the stage for competition, but setting the stage is one step and putting on the show is another. Now that they are in the spotlight, Bell Atlantic's systems are visibly unready to support full-fledged competition.

The discrimination is obvious in the lack of electronic processing of CLEC orders. Bell Atlantic rejects one out of every three CLEC UNE orders. Of the orders that are not rejected, only slightly more than half flow through. As a result, only 4 of every 10 UNE orders today actually flow electronically from CLEC systems through Bell Atlantic's systems without rejection or manual processing. That performance is significantly poorer than the BellSouth performance (flow-through of between 5 and 6 orders out of 10) that this Commission previously found to be inadequate and discriminatory. It is far worse than the nearly 10 out of 10 rate that Bell Atlantic presumptively experiences now when provisioning its own orders, and that it will

enjoy when it receives long-distance authorization and starts electronically switching its competitors' long distance customers over to its own service. It is not parity, it will not support mass-market residential competition today, and it will not keep Bell Atlantic from perpetuating and extending its monopoly long into the future.

This poor performance is all the more inexcusable because Bell Atlantic has now conceded that the responsibility for these low flow-through and high reject rates lies with Bell Atlantic. Specifically, Bell Atlantic has admitted that the root causes of the flow-through problems are its own system design choices and its failure to meet regularly with CLECs to explain the business rules that govern its systems. These admissions confirm that Bell Atlantic's filing is premature. As this Commission has repeatedly held, a BOC must correct its noncompliance before filing its Section 271 application, so that it can demonstrate that the promised fixes actually work.

Poor flow-through and high rejection rates merit particular attention because they are incompatible with high-volume competition. Bell Atlantic's current reliance on manual labor to process CLEC orders is on a collision course with rapidly increasing CLEC order volumes, which finally may be possible, provided Bell Atlantic's long-overdue deployment of an integrated pre-ordering/ordering interface works as promised. Unless Bell Atlantic can rapidly and successfully improve flow-through, it will not be able to handle the competitive volumes of orders that competitors would otherwise be able to submit.

These rates are also important because they reflect discriminatory treatment in other aspects of OSS access. Here, for example, the high rates of rejections and manual processing serve to confirm AT&T's experience -- and KPMG's findings -- that Bell Atlantic fails to provide CLECs with the documentation, technical "help-desk" assistance, and advance warning of, and

consultation on, system changes, all of which CLECs need to operate effectively in the mass-market. These and other discrete but important defects in Bell Atlantic's systems must be corrected in order to support broad-based residential competition and to demonstrate that Bell Atlantic is providing nondiscriminatory access.

Second, to open the small-and-medium size business market and the residential advanced services market to competition, Bell Atlantic must demonstrate that it can provision unbundled loops and number portability accurately and reliably. To date, it has not done so. Indeed, despite extensive collaborative efforts with competitors and the New York PSC, Bell Atlantic still regularly imposes service outages, delays, and the loss of directory listings service on AT&T's new customers. That is why competition for these business customers and their 3.2 million lines, remains moribund years after competitors began attempting to serve them, and why the 44,000 unbundled loops that Bell Atlantic claims to have provisioned pale in comparison to what a truly open market would yield.

For example, throughout this past summer, Bell Atlantic put more than one out of every 10 new AT&T local, small and medium business customers out of service for significant periods of time. For 61% of these customers, the outage lasted over 24 hours, and in some cases it went on for three or more days. No one is demanding perfection from Bell Atlantic, but this frequency of extended service outage is intolerable by any measure. Furthermore, even when the customer does not lose service, Bell Atlantic often delays or mishandles the order, or deletes the new customer's directory listing from the listings database, thereby driving up competitors' costs and degrading the quality of their service.

These are problems that Bell Atlantic can and must fix to comply with the competitive checklist. The directory listings problem could be solved with a systems change to Bell

Atlantic's legacy systems. The hot-cut provisioning problems could be mitigated if Bell Atlantic would train its technicians scrupulously to follow the step-by-step provisioning process to which it and other carriers agreed last March. Until Bell Atlantic makes these changes, facilities-based CLECs will not be able to ramp-up order volumes beyond the marginal levels they are at today.

These problems with Bell Atlantic's OSS, with its loop-provisioning, and with directory listings, are each significant practical obstacles to meaningful competition in the residential and business markets respectively, and the discussion in this brief (Parts I.A, I.B and I.C) begins with them. On each of these grounds alone, Bell Atlantic's application must be denied. Moreover, Bell Atlantic's application also squarely conflicts with several additional important statutory requirements. Because the statute makes plain that a BOC must fully implement all checklist items and otherwise comply with its obligations before its application can be approved, we also address each of the remaining steps that Bell Atlantic must take to comply with the law.

Part I.D explains that Bell Atlantic has not yet provided a complete set of properly defined performance measurements. Its proposed measures omit certain comparative data for its own performance as well as certain categories of performance that this Commission has previously insisted upon, and contain definitions that either are ambiguous or fail accurately to isolate the data that needs to be measured. Getting performance measures right is important not only to measuring checklist compliance but to establishing an appropriate point of departure against which to assess backsliding. Bell Atlantic's measures are not yet ready.

Part I.E addresses the unlawful restrictions that Bell Atlantic has placed on CLECs' access to certain combinations of unbundled network elements, most notably Bell Atlantic's refusal to permit CLECs to use unbundled network elements to provide access services.

Part I.F describes how Bell Atlantic has failed to make the detailed showing this Commission and the competitive checklist require that its unbundled network element prices comport with the Commission's cost-based pricing rules. In fact, both its price for loops and its price for switching are based on assumptions that irreconcilably conflict with the principles that undergird the Commission's pricing rules. Bell Atlantic's loop price improperly presumes an all-fiber network of loop feeder plant, a presumption that this Commission, like most state commissions and even many ILECs, has already rejected as inconsistent with a forward-looking, efficient network. Similarly, Bell Atlantic's switching price fails to reflect the central principle that an efficient, forward-looking network would include the purchase of appropriately sized switches at an appropriate discount, and reflects instead Bell Atlantic's concededly false representations about the unavailability of switch discounts. These two methodological errors each substantially and artificially increased the price of the loop and switch respectively, and must be corrected before Bell Atlantic's application may be approved.

Part II explains why Bell Atlantic has not shown that it will comply with the requirements of Section 272. Its national directory assistance service, for example, conflicts with this Commission's recent NDA order, which mandates that such service be provided by a separate affiliate under Section 272, and which indicates that such service can potentially also violate Section 271. Bell Atlantic has also failed to provide any evidence to support a finding that it will conduct its joint marketing activities in a manner that is consistent with its ongoing equal access obligations. These obligations preclude Bell Atlantic from exploiting its legacy of monopoly power by steering, to its own long distance affiliate, the many customers who will continue to call Bell Atlantic because of its reputation as the only significant provider of local service. The evidence that is available indicates that Bell Atlantic is currently operating in

violation of its disclosure, independent-operations, and non-discrimination obligations under Section 272.

Finally, Part III rebuts Bell Atlantic's claim that approval of its application at this time is in the public interest. Although Bell Atlantic has taken some steps to open its local markets in New York, the inability of its competitors to compete effectively against it underscores its continuing market power. Bell Atlantic retains the incentive and ability to discriminate against competitors in local and long distance markets that prompted both the courts and Congress to prohibit the BOCs from providing long distance services. Moreover, Bell Atlantic's ability to compete unfairly will remain particularly great so long as it is permitted to charge its potential long distance competitors access prices well above the costs Bell Atlantic incurs to provide such access.

Further, Bell Atlantic has yet to put in place any plan to prevent backsliding, having rushed to file its application with this Commission only shortly after the New York PSC's proposed rulemaking on the issue had been set for public notice. Bell Atlantic's proposed plan will not deter backsliding, because the penalties it sets are paltry compared to the benefits of noncompliance, and because the plan's complexity and bias will lead ultimately to litigation rather than enforcement. This Commission correctly concluded in the Ameritech Michigan Order that an effective enforcement plan is essential to a finding that local markets are irreversibly open. The Commission therefore should direct Bell Atlantic to jettison its ineffectual plan in favor of one that is likely to achieve the Commission's aims.

More broadly, to vindicate the public interest in fully achieving competitive telecommunications markets, the Commission must deny this application. To overlook the clear checklist and 272 noncompliance shown here would set an untenable precedent that would

seriously delay, if not foreclose, widespread competition not only in New York but in other states as well. Such a decision would invite every BOC to file a premature application and to characterize its noncompliance as a mere peccadillo to be overlooked. Were the Commission to abandon the standards adhered to in the Ameritech and BellSouth orders, it would lose any principled basis for resolving such claims. That path, if followed, would eventually transform the 271 review process into a Babel of competing standards, exceptions, and alternatives, and the consumers' interest in a competitive local telecommunications market would be further delayed if not lost.

At bottom, the advantages to consumers of insisting that Bell Atlantic provide CLECs with the nondiscriminatory provisioning and access to systems that they need to be able fully to compete -- tasks that Bell Atlantic could complete in short order if compelled to do so -- far outweigh any advantage that consumers might get from having another long distance competitor in the market in the meantime. Consumers would pay a heavy price for premature entry, because Bell Atlantic would quickly establish itself as an efficient provider of one-stop shopping, while CLECs, hamstrung by Bell Atlantic's manual processing, service outages, and delays, would be left unable to compete.

The Commission should therefore treat this application as a valuable opportunity to promote competition by reaffirming the vitality of its prior decisions and setting forth concretely for Bell Atlantic the remaining steps it must take. Indeed, AT&T stands willing to work with Bell Atlantic to develop a record that would demonstrate that the concerns identified here have been resolved and that could thus expedite the Commission's approval of it. In that way, this Commission, Bell Atlantic, and CLECs will finally fulfill the market-opening promise of the Act.

## ARGUMENT

In August, 1996, six months after the Telecommunications Act was signed into law, Bell Atlantic filed a status report with the New York PSC stating that it “is well on its way to meeting the competitive checklist.”<sup>1</sup> In April and in November, 1997, and again in 1999, Bell Atlantic returned to the New York PSC with section 271 filings, each time claiming that it was ready and able to provide competitors with the nondiscriminatory access to its systems and facilities that they need to compete.<sup>2</sup> Each time, the record refuted those claims, showing overwhelmingly that

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<sup>1</sup> Status Report and Comments of NYNEX on its Compliance with Portions of the Telecommunications Act of 1996, Case No. 94-C-0095 (Aug. 15, 1996) Bell Atlantic App. B, Tab 6). In requesting this status report a month earlier, the New York PSC recognized Bell Atlantic’s claim that “it has met many of [the competitive checklist’s] requirements and that it expects to be in full compliance by October 1996.” Order Directing NYNEX To File Status Report And Comments On Its Compliance With Portions of the Telecommunications Act of 1996 and Permitting Responsive Filings, Case No. 94-C-0095, (N.Y. PSC July 15, 1996) (Bell Atlantic App. B, Tab1).

<sup>2</sup> Initial Brief of New York Telephone Company, Case No. 97-C-0271, at 5, 57 (Apr. 18, 1997) (Bell Atlantic App. C, Tab 83) (claiming that even though “improvements can, and in some cases, should be made . . . the essential OSS functionality is provided today, thus eliminating OSS as a competitive bottleneck”); *id.* at 35-38 (claiming that it can “handle additional large volumes of CLEC requests for loop services,” and “currently has the personnel and systems infrastructure necessary to meet” even “as many as 30,000 hot cuts per month”); Reply Brief of New York Telephone Company, Case No. 97-C-0271, at 4 (Apr. 30, 1997) (App. C, Tab 101) (belittling CLEC statements that “OSS functionality is not ready for ‘mass marketing’” and claiming that it “indisputably has more than enough OSS capacity to handle current service orders”); *id.* at 28 (for hot cuts, asserting that it “has demonstrated that it can meet forecasted demand” and that its “on-time performance” for “hot-cuts has been 98%”); *id.* at 43-45 (as to OSS, it has “more than the necessary capacity to meet current and near term needs, . . . and can readily expand;” belittling claims of CLECs as seeking “perfection”); Supplemental Petition of Bell Atlantic – New York, Case No. 97-C-0271, at 27 (Nov. 6, 1997) (App. C, Tab 122) (“BA-NY is capable of timely provisioning a substantial number of hot cuts in a single central office on a single day,” more than “250 hot cuts”); *id.* at 34 (“the performance of BA-NY’s OSS are not impairing success” for CLECs”); Bell Atlantic’s New York’s Opposition to AT&T’s Motion to Dismiss, at 6 (Nov. 17, 1997) (App. C, Tab 140) (“it is ridiculous to maintain that CLECs cannot compete with BA-NY’s existing OSS offerings”); Initial Brief of Bell Atlantic – New York, Case No. 97-C-0271 (Jan. 6, 1998) at 14 (App. C, Tab 272) (“BA-NY has an extensive CLEC support system to ensure effective provisioning of the checklist items”); Reply Brief of Bell Atlantic – New York, Case No. 97-C-0271, at 44, 64 (Jan. 16, 1998) (App. C, Tab 312) (“BA-

CLECs could not possibly compete on a mass-market basis given Bell Atlantic's inadequate performance. And each time, the New York PSC ordered Bell Atlantic to improve its systems.

As a result of the New York PSC's earlier refusals to yield to Bell Atlantic's pressure, Bell Atlantic has been forced to make substantial improvements to its systems and processes, and its current claims of compliance are more nearly correct than before. CLECs, too, have made enormous investments in capital and human resources to enter the local markets for residential and business service in New York. Yet there is still no mass-market competition for either business or residential local service. CLECs cannot offer such service on a state-wide, mass market basis because Bell Atlantic's systems and processes do not provide CLECs with nondiscriminatory access to unbundled network elements. These defects, together with Bell Atlantic's failure to comply with other checklist and statutory obligations, preclude approval of this application.

#### **I. BELL ATLANTIC IS NOT PROVIDING EACH CHECKLIST ITEM.**

In a series of orders rejecting premature BOC applications under Section 271, this Commission has made the basic requirements of proof for demonstrating compliance with the competitive checklist quite clear. Section 271 requires proof that the applicant BOC "is providing" and has "fully implemented" "each" item of the competitive checklist. 47 U.S.C. §§ 271(c)(2)(A), (c)(2)(B), (d)(3)(A)(i). To be "providing" a checklist item, the BOC must show not only "a concrete and specific legal obligation" to furnish the item pursuant to an interconnection agreement, but "must demonstrate that it is presently ready to furnish each checklist item *in the quantities that competitors may reasonably demand and at an acceptable*

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NY has the capacity to perform such hot cuts in commercial volumes;" "BA-NY can provide access to OSS in commercial volumes").

*level of quality.*" Ameritech Michigan Order ¶ 110 (emphasis added). To have "fully implemented" the checklist, moreover, the BOC must demonstrate that it has satisfied each of its checklist obligations at the time of its filing: Mere "paper promises" of future compliance do not suffice. Id. ¶¶ 55, 179; see 47 U.S.C. § 160 (d) ("the Commission may not be forbear from applying the requirements of Section 251(c) or 271 . . . until it determines that those requirements have been fully implemented"). See also Second BellSouth Louisiana Order ¶ 56 n.148.; BellSouth South Carolina Order ¶ 38.

It is Bell Atlantic's burden to demonstrate compliance with these requirements (*e.g.*, Ameritech Michigan Order ¶ 43). It has not done so. Bell Atlantic has failed to demonstrate that competitors have nondiscriminatory access to OSS, to loops, to directory assistance and directory listings or to combinations of unbundled network elements. Bell Atlantic's performance measures are inadequate on their face, and the data Bell Atlantic does report prove that Bell Atlantic is not yet in compliance. Finally, Bell Atlantic does not offer unbundled loops or unbundled switching at cost-based rates. Each of these defects is grounds for denying Bell Atlantic's application.

**A. Bell Atlantic Is Not Providing Nondiscriminatory Access To OSS.**

Under the plain terms of section 251(c)(3), Bell Atlantic must provide "nondiscriminatory access" both to individual network elements, such as OSS, and to combinations of network elements, such as the unbundled network element platform ("UNE-P"). Nondiscriminatory access "require[s], simply, that the BOC provide the same access to competing carriers that it provides to itself." Ameritech Michigan Order ¶ 143; see BellSouth South Carolina Order ¶ 16 (BOC must provide access "that is equivalent to what it provides itself"). For functions that have a retail analogue, the access provided must be equal to the BOC's access in terms of quality, accuracy, and timeliness. Second BellSouth Louisiana Order ¶

87. For OSS functions with no retail analogue, the access must provide “an efficient competitor a meaningful opportunity to compete.” Id.

The Commission's prior orders thus establish a clear standard of parity of access to OSS systems for BOC and CLECs alike. Nondiscrimination -- not perfection -- is the standard. As the Commission most recently explained, “[n]ew entrants must be able to provide service to their customers at a quality level that matches the service provided by the incumbent LEC to compete effectively in the local exchange market. For instance, if new entrants are unable to process orders as quickly and accurately as the incumbent LEC, they may have difficulty marketing their services to end users.” Second BellSouth Louisiana Order ¶ 83.

AT&T's experience in New York aptly illustrates the Commission's point. AT&T and other CLECs cannot process orders “as quickly and accurately as” Bell Atlantic can. For example, CLECs lack the fully functional and fully integrated pre-order and ordering system that Bell Atlantic enjoys; they lack Bell Atlantic's ability to flow through virtually all residential service orders without rejection or manual processing; they lack the proven ability to process whatever volumes of orders they may generate without degraded service or delay; they lack instantaneous electronic notification of order confirmations and of potential problems (jeopardies) with an order; they lack comprehensive understanding of Bell Atlantic's business rules; and they lack control over the content and timing of system changes. The lack of parity in these and other areas is the single most important reason why CLECs are unable today to broadly market their local service offerings to New York residents throughout the state.

Nothing in the KPMG Report is to the contrary. KPMG's rigorous and independent scrutiny played an extraordinarily helpful and pivotal role in exposing Bell Atlantic's original OSS offering for the shambles it was, and in propelling Bell Atlantic into developing systems

that CLECs could actually attempt to use to enter the local market. Its report was never intended, however, to evaluate whether CLECs have nondiscriminatory access to Bell Atlantic's OSS. Indeed, KPMG made no such finding. To the contrary, KPMG's carefully drawn reservations about Bell Atlantic's performance and KPMG's concerns about the limitations of its test have been borne out by AT&T's subsequent experience. See *Crafton/Connolly Aff.* ¶¶ 49-66, 252-273.

It is vital to the future of residential competition in New York that this Commission enforce its standards and insist that Bell Atlantic finish the course and provide CLECs with an equal opportunity to compete for residential customers. Cable-based residential service, though important, will take time to develop, and will never be ubiquitous. *Cf.* *Aquilina Aff.* ¶ 12. To make and follow-through on a broad-based offer of local residential service in New York, AT&T must have nondiscriminatory access to OSS to support its unbundled network element platform ("UNE-P") offering. *Id.* ¶¶ 12, 16-17.

As Mr. Robert Aquilina, AT&T's Vice President for Consumer Services in the Eastern Region, explains, residential consumers properly demand high quality telephone service, and if they do not receive timely and accurate performance and prompt and responsive attention to questions, they will switch carriers. *Aquilina Aff.* ¶ 8. In addition, residential service is a high fixed-cost, low unit-revenue business in which a carrier's long-term survival depends on providing service not only at a high level of quality but in high volumes and at the least possible cost. *Id.* ¶ 9. Because the remaining defects in Bell Atlantic's OSS systems preclude AT&T from offering residential service at either the quality levels customers demand or the volumes that the business case requires, and because they significantly increase AT&T's costs (see *id.* ¶ 38), those defects threaten the viability of long-run residential competition in New York. *Id.*

¶¶ 33-37. Moreover, given the national attention that is focused upon local competition, the simultaneous approval of Bell Atlantic's application before these problems are fixed and consequent customer dissatisfaction with CLECs in New York would have a chilling effect on local residential competition nationwide. *Id.* ¶¶ 22-23. Consumers would conclude that "local competition does not work," BOCs would be convinced that they did not have to provide true nondiscriminatory access, and the prospects for giving most consumers real choices for local service would fade. *Id.* It is thus crucial that this Commission ensure that Bell Atlantic provides CLECs nondiscriminatory access to OSS before granting its section 271 application.

This is not a question of demanding perfection -- the steps that Bell Atlantic needs to take are well within its reach. But because Bell Atlantic knows that once it takes these steps, its markets actually will be open to meaningful competition, Bell Atlantic will not finish the job unless the Commission insists that it do so. The future of local residential competition in New York hangs on that decision.

**1. Ordering/Provisioning:** Bell Atlantic's EDI interface still does not provide CLECs with nondiscriminatory access to the ordering and provisioning functions that are critical to mass-market competition. The actual experience of AT&T and other CLECs, as reported by Bell Atlantic itself, confirms this basic fact.

**a. Flow Through and Rejects:** Few aspects of OSS access are as critical to effective competition as the ability of a CLEC to have its orders flow through the BOC's systems electronically, without being rejected and without falling out for manual processing. There is "a direct correlation between the evidence of order flow-through and . . . nondiscriminatory access," Second Bell South Louisiana Order ¶ 107, because flow-through rates and rejection rates "demonstrate whether a BOC is able to process competing carriers'

orders at reasonably foreseeable commercial volumes, in a nondiscriminatory manner," id. ¶ 108, and because these rates "serv[e] as a clear and effective indicator of other significant problems that underlie a determination of whether a BOC is providing nondiscriminatory access to its [OSS]." Id. Flow-through and reject rates are thus the best indicators of whether, at commercial volumes, the BOC will be able to "switch over customers as soon as the new entrants win them." Ameritech Michigan Order ¶ 21. Bell Atlantic's flow-through rates demonstrate that Bell Atlantic is still providing CLECs with discriminatory access.

First, the standard for flow-through and rejection rates is parity -- CLECs need and are entitled to flow through rates equivalent to those that Bell Atlantic enjoys. See, e.g., BellSouth South Carolina Order ¶ 104-105 (nondiscriminatory access requires "substantially the same" flow through rates); Ameritech Michigan Order ¶ 196 (same). Bell Atlantic, however, has conspicuously refused to report its own rates. See Crafton/Connolly Aff. ¶ 114; Pfau/Kalb Aff. ¶ 33-39. It has therefore refused to provide with its application essential evidence needed to evaluate its statutory compliance, thus precluding a valid finding necessary to any decision approving the application. See Ameritech Michigan Order ¶ 212 (requiring that Section 271 applications must include performance data on "percent flow through" that "permit comparisons with Ameritech's retail operations"); see also p. 45-46, infra.

Second, the only "parity" that Bell Atlantic has demonstrated is performance comparable to that which this Commission has previously rejected as discriminatory. The highest combined flow-through/no-reject rate that BellSouth achieved was in its first Louisiana application, when it reported that 54% of CLEC orders were handled without rejection or manual processing. First BellSouth Louisiana Order ¶ 24. The Commission found that the differences between that 54% flow-through rate and BellSouth's flow-through rates for its own orders "impose a significant

competitive disadvantage on new entrants." Id. ¶ 25. It concluded "that the substantial disparity between the flow-through rates of BellSouth's orders and those of competing carriers, on its face, indicates that BellSouth is not providing competing carriers with nondiscriminatory access to its OSS." Id. ¶ 28.

Here, the best performance that Bell Atlantic has been able to show is a pure flow-through rate (i.e., for UNE orders not initially rejected) of 59% for August, 1999. See Crafton/Connolly Aff. ¶ 105. That performance is a far cry from the 96% flow through rate that BellSouth enjoyed for its own orders (see Second BellSouth Louisiana Order ¶ 109) and that – in the absence of any actual data – Bell Atlantic may be presumed to enjoy. But it also overstates Bell Atlantic's performance as compared to BellSouth, because it measures only the flow through of orders that Bell Atlantic did not reject. More than one-third of all CLEC orders in August were rejected by Bell Atlantic's systems, forcing CLECs to manually examine them for errors, contact Bell Atlantic if necessary, and resend them. Id. ¶¶ 28, 104. When the percentage of orders rejected is combined with the percentage of orders that were accepted and then manually processed, the result is that fewer than 40% of CLEC orders in August 1999 flowed through Bell Atlantic's systems without being either rejected or manually processed. Id. ¶¶ 43 n.19, 107.

This poor performance itself precludes approval of Bell Atlantic's application. Bell Atlantic's combined flow-through/no-reject rate of 40% is far below the 54% that this Commission held to be inadequate for BellSouth and even farther below the performance that Bell Atlantic presumptively enjoys for its own orders. It would be arbitrary to approve in this case what the Commission has previously rejected as inadequate. Moreover, Bell Atlantic's performance is far from the level that CLECs need to be able truly to compete. The extraordinarily high reject rate -- 1 out of 3 UNE orders -- reflects the fact, developed in more

detail below, that Bell Atlantic has failed to give CLECs the information and support they need to understand Bell Atlantic's business rules and to develop a fully integrated pre-order/order interface. And the abysmally high rate of manual processing reflects Bell Atlantic's failure to correct the design defects in its own systems that are responsible for dropping many of the CLECs' orders out for manual processing.

This root-cause analysis is no longer in dispute. Bell Atlantic concedes (Br. 97) that its systems "have not yet been mechanized" to handle certain orders, that other orders fall out "by design," and that CLECs continue to submit "incorrectly" filled-out orders that need manual processing. Moreover, in a post-application filing with the New York PSC, Bell Atlantic set forth in detail the design flaws that account for much of the manual processing, admitted that all of these flaws could be fixed, and proposed a timetable for fixing them. See Joint October Reply Aff., discussed in Crafton/Connolly Aff. ¶¶ 138-142 and appended there to as Attachment 3. Of course, these are paper promises that do not, in themselves, constitute proof that Bell Atlantic can or will successfully make the changes that are needed to provide CLECs with comparable flow-through rates. See Ameritech Michigan Order ¶¶ 55, 179. But these admissions do establish beyond dispute that Bell Atlantic has not yet completed the technically feasible development of its OSS systems needed to provide CLECs with flow-through comparable to what Bell Atlantic enjoys. These admissions alone preclude approval of Bell Atlantic's application at this time.

Bell Atlantic's only response is that "manual processing has not affected Bell Atlantic's provisioning success" because Bell Atlantic "consistently fills orders in the time competing

carriers request." Br. 47. This excuse was previously rejected by the Commission<sup>3</sup> and should be rejected again. First, the argument is inherently circular: it is undisputed that the intervals competing carriers such as AT&T request are often up to two-and-one-half times longer than the intervals to which they are entitled. Crafton/Connolly Aff. ¶¶ 270-272. These longer intervals reflect CLECs' acute awareness of Bell Atlantic's flow-through and reject problems and CLECs' inability to depend on Bell Atlantic's systems to meet the standard intervals. Aquilina ¶ 35. To excuse Bell Atlantic's low flow-through rate on this ground would thus place CLECs in the untenable position of either (1) requesting short intervals that they know Bell Atlantic cannot meet, and therefore establish service dates for their customers that will often be missed; or (2) requesting longer intervals that Bell Atlantic can meet, and thereby forfeit the opportunity to obtain the electronic processing needed for shorter nondiscriminatory intervals.

Second, high levels of manual processing are simply incompatible with high-volume competition. See Ameritech Michigan Order ¶¶ 193, 196. Even with the relatively small volumes that Bell Atlantic is now processing manually, Bell Atlantic's representatives commit errors on more than 36 percent of the UNE orders that they re-key into Bell Atlantic's Service Order Processor. Crafton/Connolly Aff. ¶ 112. These errors create a risk of provisioning problems for over 15% of AT&T's UNE customers, and delay the timely return of LSRC and reject notices to AT&T. Id. ¶¶ 112-13; compare First BellSouth Louisiana Order ¶ 26 (flow-through problems "are aggravated by the poor performance of BellSouth's service centers"). The workload that Bell Atlantic's representatives face today is well below what they will face in the

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<sup>3</sup> See Ameritech Michigan Order ¶ 208 n.535 (noting that "Ameritech disputes the need to examine 'order flow-through,' arguing that flowthrough as a measure is not as important as Ameritech's actual performance in meeting its obligations"); id. ¶ 212 (requiring Ameritech to provide comparative data on "percent flow-through").

next three months, when AT&T and MCI WorldCom expect to be able to take advantage of Bell Atlantic's long-delayed integrated pre-ordering/ordering interfaces and sharply increase their order volumes. See Crafton/Connolly Aff. ¶¶ 143-151.

For example, AT&T began taking orders for local residential service on August 2, 1999. By the end of September, AT&T had submitted more than [ ] orders to Bell Atlantic. Aquilina Aff. ¶¶ 13-14 . AT&T is on track to meet or exceed its projected [ ] orders for October, 1999, and plans to submit [ ] orders per month by the end of 1999, and [ ] orders per month by early 2000. Id. ¶¶ 15-17. AT&T's and MCI's combined projections alone suggest an enormous increase in orders that -- at current levels of manual processing -- would substantially increase Bell Atlantic's manual workload over current levels. Id. ¶¶ 25-27; See Crafton/Connolly Aff. ¶¶ 143-151 & Att. 5. AT&T's and MCI's projected volumes for the coming months are "reasonably foreseeable commercial volumes" (Second BellSouth Louisiana Order ¶ 108), and Bell Atlantic therefore must demonstrate the ability today to provision those volumes at parity. It has not even tried to do so.

There is simply no evidence to support a finding that Bell Atlantic can successfully accommodate explosive and volatile CLEC demand merely by hiring new help. Neither Ameritech nor Pacific Bell was able -- despite their earnest assurances to the contrary -- to handle AT&T's ramped-up volumes with manual processing (see, e.g., Ameritech Michigan Order ¶¶ 193-196; Crafton/Connolly Aff. ¶ 282 & n.124), and there is no reason to think Bell Atlantic can succeed where they failed. The logistics of rapid staff expansion are notoriously difficult to manage (Crafton/Connolly Aff. ¶ 148-150), and Bell Atlantic's track record is poor: A substantial percentage of AT&T's erroneously rejected orders in its service readiness testing

resulted from the deficient training of Bell Atlantic's representatives. Crafton/Connolly Aff. ¶¶ 148, 242 & Att. 18.

Bell Atlantic's reliance on KPMG's findings with respect to capacity and scale (Br. 47) are misplaced. KPMG's volume and stress testing are unreliable guides to actual performance for three reasons. First, KPMG only tested orders that were actually designed to flow through Bell Atlantic's systems. KPMG's tests thus do not support Bell Atlantic's claimed ability to manually process enormous volumes of all kinds of orders. Crafton/Connolly ¶¶ 283-85. Second, even for orders that it designed to flow through, Bell Atlantic has not replicated its test results in the real world; for example, more than 25% of the orders designed to flow through its systems have been falling out for manual processing. Id. at ¶¶ 109, 126. Third, KPMG's estimated stress-test levels were based on outdated volume projections from early 1999; current projections show order volumes for 2000 well above the maximum projected by KPMG, with AT&T's and MCI's projected orders alone exceeding KPMG's maximum "stress levels" early in the new year. Id. at ¶¶ 283-285. Nothing in KPMG's report or in Bell Atlantic's application (see id. at ¶ 278) even alleges that Bell Atlantic can support these volumes.

In short, Bell Atlantic lacks real-world proof that it can deliver nondiscriminatory access to OSS in the commercially reasonable volumes that CLECs in New York will need. Even at today's small volumes, the critical indicators -- flow-through and rejects -- are far below parity standards, a serious problem not only in themselves but also because they signal that other significant problems exist in Bell Atlantic's OSS for which Bell Atlantic must bear responsibility. Crafton/Connolly Aff. ¶¶ 127, 130. The record is undisputed, moreover, that Bell Atlantic's own system design and documentation failures are directly responsible for most of this

poor performance. Bell Atlantic has not yet completed the foundation on which robust statewide residential competition can be built. Until it does, Section 271 bars interLATA authorization.

**b. Other Ordering Deficiencies:** Bell Atlantic's ordering interface is deficient in four additional, significant respects. First, Bell Atlantic's jeopardy notification system does not provide the timely, equivalent notification that the Commission has repeatedly insisted that BOCs provide. See Second BellSouth Louisiana Order ¶ 133; BellSouth South Carolina Order ¶¶ 130-31. Despite numerous requests from AT&T beginning in February 1999 for implementation of electronic jeopardy notification, Bell Atlantic still requires CLECs to check a website for jeopardies -- a process that in some ways is worse than the fax notification the Commission has previously condemned. See Crafton/Connolly ¶¶ 154-158.

Second, Bell Atlantic has repeatedly broken its promise to provide CLECs with a fielded complex completion notification. Originally promised for November 1998, this important notice -- which would allow AT&T the ability that Bell Atlantic now enjoys to determine electronically, whether the order was provisioned correctly, and to nip systemic billing errors in the bud -- has been postponed again and again, most recently until the second quarter of 2000. See Crafton/Connolly ¶¶ 159-167. This is a time-saving, customer-affecting functionality that CLECs must have to offer service on a mass-market scale at parity with Bell Atlantic.

Third, Bell Atlantic has not shown that it has provided CLECs with a functional, fully fielded customer service record (CSR), which would enable a CLEC representative to use the CSR to populate the data in an order automatically, just as Bell Atlantic's representatives are able to do. Like electronic jeopardies and fielded complex completions, fully fielded CSRs are important to AT&T (and other CLECs) that are trying to make the transition from the start-up

volumes of today to their projected volumes for the rest of this year and beyond. Crafton/Connolly Aff. ¶¶ 188-92.

Fourth, even at the relatively modest order volumes that AT&T began sending in September and early October, Bell Atlantic's ordering interface is showing signs of strain. Its ability to provide prompt acknowledgments, firm order confirmations, standard error messages, and completion notices markedly declined as AT&T's volumes increased. Crafton/Connolly Aff. ¶¶ 252-261 & Atts. 19-24. For example, AT&T has discovered that when its relatively small volume of UNE-P orders increased even modestly in September 1999, Bell Atlantic's performance in returning timely firm order confirmations ("FOCs") dropped sharply from only 88% to 77%. See Pfau/Kalb Aff., ¶ 104; Connolly/Crafton Aff., ¶ 258 & Att. 20. In addition, AT&T has been forced to resend [ ] of orders due to Bell Atlantic errors in September and October. *Id.* at ¶¶ 262-267. This experience strongly suggests that Bell Atlantic's ordering interface is not yet stable and reliable, and underscores the need for further experience with higher CLEC volumes before deeming the interface operationally ready.

Moreover, directly contrary to Bell Atlantic's claim that it is performing all ordering functions "on a timely basis" (Br. 45), Bell Atlantic's own performance data actually show that it is not meeting even the minimum performance intervals established by the New York PSC for the return of FOCs, the return of reject notices, or ordering accuracy. See Pfau/Kalb Aff., ¶¶ 103, 107, 115. Indeed, even Bell Atlantic concedes that it returned FOCs and reject notices for certain types of UNE orders within the minimum performance standard set by the New York PSC only 88% of the time, and the minimum standard set by the New York PSC is almost certainly well below the parity requirement which Bell Atlantic must meet under Section 271. See Pfau/Kalb Aff., ¶¶ 96-101; Connolly/Crafton Aff., ¶ 113; see also Ameritech Michigan

Order ¶¶ 165-166, 168, 211 n.542 (finding that reporting only the percentage exceeding a target performance interval is inadequate to establish parity of performance because such measures "can mask discrimination within the interval target"); id. ¶ 188 (finding that such order status notices "should be relatively instantaneous").

**c. Other Provisioning Deficiencies:** Bell Atlantic's performance data also belie its repeated claim that it has consistently provisioned CLEC orders on time. They clearly show for that Bell Atlantic's installation intervals for CLECs are significantly longer than the intervals it provides for its own retail operations. See Pfau/Kalb Aff., ¶¶ 130-37. On their face, these performance results clearly show that Bell Atlantic has failed to provision CLEC orders at parity. Bell Atlantic's attempt to have the Commission disregard these data on installation intervals should be firmly rejected. The Commission has made clear time and again that average installation interval data are absolutely "critical" and "fundamental" to any showing of nondiscriminatory performance for CLECs. See, e.g., Second BellSouth Louisiana Order ¶ 125; First BellSouth Louisiana Order ¶ 41; BellSouth South Carolina Order ¶¶ 132, 134; Ameritech Michigan Order ¶¶ 166-168, 171.

Similarly, the Commission should reject Bell Atlantic's attempt to blame its performance failure on CLEC requests for longer provisioning intervals and on assertions that CLEC orders have a different service order mix. Even when requested intervals are taken into account, Bell Atlantic's average provisioning intervals data show clearly inferior performance for CLECs. For example, despite its flaws, Bell Atlantic's Gertner-Bamberger study shows that the average installation interval for UNEs was longer than the CLEC average requested interval. See Pfau/Kalb Aff., ¶¶ 140-43. Moreover, that study dealt only with CLEC nondispatch orders, it did not address dispatch orders, for which Bell Atlantic's average completion intervals are often

longer for CLECs than for Bell Atlantic's own retail operations. See Pfau/Kalb Aff., ¶ 144. Similarly, Bell Atlantic has provided no substantiation for its claims that CLEC orders have a different service mix. In fact, that contention was specifically investigated and squarely rejected by KPMG as contrary to the evidence. See Pfau/Kalb Aff. ¶ 148 (quoting KPMG Report). Further, even if it were true that CLEC orders had a different service order mix that affected the average installation interval, the answer would not be to disregard the average installation interval data, but to disaggregate the data to permit appropriate comparisons. See Ameritech Michigan Order ¶ 169-170 ("Ameritech can and should disaggregate its data to account for the impact different types of services may have on the average installation interval"). By not disaggregating its data, Bell Atlantic has failed to provide the evidence needed to support its claims and carry its burden of proof.

The KPMG Report does not support Bell Atlantic's nondiscrimination claims. The KPMG Report neither validated the accuracy of Bell Atlantic's performance data nor tested whether the data reported by Bell Atlantic satisfied its Section 271 obligations. Moreover, KPMG's limited metrics evaluation was based on measurements reported under the interim March 1998 Carrier-to-Carrier guidelines, which were substantially modified in two subsequent New York PSC orders. See Pfau/Kalb Aff. ¶ 167. Even more importantly, however, KPMG found a number of areas where Bell Atlantic's performance was deficient and where Bell Atlantic's measurements as then defined and implemented by Bell Atlantic had produced or could produce biased and inaccurate results. See id. ¶¶ 69, 72-73, 76, 136.

**2. Pre-Ordering:** Bell Atlantic has yet to provide a nondiscriminatory interface for pre-ordering. The Web-GUI is not an application-to-application interface, cannot be integrated with ordering, and has numerous other deficiencies. Crafton/Connolly ¶¶ 70-78.

While an EDI pre-ordering interface is theoretically capable of being integrated with an EDI ordering interface, in practice Bell Atlantic's interface cannot be so integrated, as KPMG and CLECs have found. Id. ¶¶ 79-84. Indeed, KPMG's stress-testing knocked the EDI pre-order interface out of service four times, thereby denying responses to 15 percent of the test orders. Id. at ¶ 288. Finally, Bell Atlantic concedes that it has yet to make the superior CORBA pre-ordering interface commercially available to all CLECs, and AT&T only recently deployed CORBA for commercial production – and only for two pre-ordering functions. Id. ¶¶ 86-87. Moreover, like EDI, CORBA currently cannot be fully integrated with the EDI ordering interface. Id., ¶ 88.

The inadequacy of Bell Atlantic's pre-ordering interfaces at the time it filed this application is highly significant. In the absence of an integrated and fully functional pre-ordering interface, a CLEC cannot ramp up to large market volumes. The errors from manually re-keying each order and the delays in placing the order preclude effective mass-market competition. E.g., Second BellSouth Louisiana Order ¶¶ 110-12. While AT&T is hopeful that CORBA will permit AT&T to ramp up order volumes according to schedule, none of this is guaranteed. The fact that Bell Atlantic's ordering systems will undergo their first stress testing by CLECs after the filing of the application is thus the direct result of Bell Atlantic's decision to file prematurely, before its integrated preordering interfaces were readily available and proven to work.

**3. Maintenance and Repair:** Bell Atlantic does not yet offer an application- to-application interface for maintenance and repair. Although the Commission has not held that the lack of such an interface is a denial of parity *per se*, it has observed that a dual-entry interface creates a need for clear evidence that the access to this important function is

nondiscriminatory. See Second BellSouth Louisiana Order ¶¶ 145; 151-52. Bell Atlantic has not satisfied this nondiscrimination standard. Not only did KPMG cite numerous parity-denying deficiencies, it observed that the Web-GUI was so flawed that CLECs (as opposed to resellers) simply opted to report their troubles by telephone. Crafton/Connolly Aff. ¶¶ 168-174. And once those troubles are reported, Bell Atlantic's process for resolving troubles is one that, again in KPMG's view, is inherently likely to give CLECs' customers slower service than Bell Atlantic's customers. Crafton/Connolly Aff. ¶¶ 176-177.

4. **Billing:** Accurate access usage data are essential if CLECs are to be able to bill interexchange carriers properly and promptly for access. Consequently, the Commission has held that a BOC must prove that is providing CLECs with such data. Second BellSouth Louisiana Order ¶ 160. Bell Atlantic has not consistently provided AT&T with accurate and complete usage data. Crafton/Connolly Aff. ¶¶ 178-187. In fact, as a result of Bell Atlantic's failings, AT&T was forced to forego revenues rather than antagonize its customers through "back-billing." Id., ¶¶ 183-184. This, too, is a clear denial of parity.

5. **Technical Assistance:** A final, crucial question this Commission has repeatedly asked in assessing nondiscriminatory access to OSS is whether the BOC is "adequately assisting competing carriers" in their efforts to access the BOC's OSS. Second BellSouth Louisiana Order ¶ 85; Ameritech Michigan Order ¶ 136. Indeed, with one in three CLEC orders being rejected, and many more dropping out for manual processing, it is clear that Bell Atlantic has not provided CLECs the assistance they need. See Second BellSouth Louisiana Order at ¶ 108 (linking rejections and poor flow-through to inadequate documentation). Without the BOC's full and willing cooperation, a CLEC cannot possibly have access comparable to what the BOC enjoys. Bell Atlantic falls short of the mark in three key respects.

First, despite faithful efforts by the New York PSC to obtain compliance, Bell Atlantic refuses to follow elementary change control procedures. CLECs cannot compete if the BOC is free to make changes to its OSS functions unilaterally. South Carolina Order ¶ 164; Ameritech Michigan Order ¶ 137. Yet throughout 1999, and even into September (after new PSC rules took effect), Bell Atlantic has consistently abused the change control process. It classifies virtually every change as an emergency, then releases it as a "flash announcement" (pre-September 1999) or a "type 1 severity bulletin" (post-September 1999) and thereby bypasses the change control requirements. Crafton/Connolly Aff. ¶¶ 194-205. This and other discriminatory practices (see id. at ¶¶ 206-215 led KPMG to conclude that Bell Atlantic had "not satisfied" its obligation to give CLECs timely notice of proposed system changes. Id. at ¶ 216.

Second, Bell Atlantic has yet to provide CLECs with the documentation and business rules this Commission has insisted CLECs be given in order to have nondiscriminatory access. See BellSouth South Carolina Order ¶ 111; Ameritech Michigan Order ¶ 137. Virtually every release of Bell Atlantic's business rules and specifications has been riddled with errors, omissions, and inconsistencies, which has led to the poor rejection rates and high level of manual processing that continues to impede competition. Crafton/Connolly Aff. ¶¶ 217-228. Here again, KPMG concluded that Bell Atlantic's documentation "still falls short of that required by a CLEC in a production environment" and listed over a dozen specific examples of serious deficiencies. Id. ¶ 229.<sup>4</sup> Indeed, Bell Atlantic conceded the point when it predicted to the New York PSC, in a post-filing submission, that it could raise "the overall flow-through rate by as much as 15%" merely by holding monthly workshops and contacting individual CLECs to

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<sup>4</sup> Bell Atlantic also fails to provide adequate cooperation and procedures for carrier-to-carrier interface testing. Crafton/Connolly Aff. ¶¶ 230-238.

explain why their orders are being rejected. Crafton/Connolly Aff. ¶ 139 & Att. 3 (Joint October Reply Aff.) at ¶ 9. Given the undisputed and enormous room for improvement, Bell Atlantic plainly has not demonstrated that it currently gives CLECs nondiscriminatory access to the technical support they need.

Finally, and of equal importance, the representatives at Bell Atlantic's Telecom Industry Services Operations Centers ("TISOCs") and help desks remain incapable of providing CLECs with adequate service. These representatives consistently make errors in a third or more of the CLEC orders that fall to them for manual processing. Crafton/Connolly Aff. ¶¶ 240-241. Even more frustrating is their non-responsiveness and incapacity to assist CLECs in resolving rejected or problem orders or trouble tickets, which has led to substantial backlogs and repeated delays. *Id.* ¶¶ 243-47. AT&T's experience, the subject of numerous meetings with Bell Atlantic personnel, was similar to KPMG's, which found numerous shortcomings with Bell Atlantic's help desks. *Id.* ¶ 248. Only if this Commission reinforces what it has previously held -- that BOCs are required by law to give CLECs technical support comparable to what they provide themselves and must demonstrate such compliance to satisfy Section 271 -- will Bell Atlantic's performance improve.

**B. Bell Atlantic Does Not Provide Non-Discriminatory Access to Unbundled Loops.**

Bell Atlantic also has not proven that it provides nondiscriminatory access to unbundled loops or to number portability on terms and conditions that are just and reasonable. 47 U.S.C. §§ 251(c)(3); 271(c)(2)(B)(iv),(ix). In the Second BellSouth Louisiana Order, the Commission held that a BOC "must demonstrate that it can coordinate number portability with loop cutovers in a reasonable amount of time and with minimum service disruption." *Id.* § 279. And with respect to customers served by Integrated Digital Loop Carrier ("IDLC"), the BOC must