

Ellis Jacobs, Esq.  
Dayton Legal Aid Society  
333 West 1<sup>st</sup> Street, Suite 500  
Dayton, OH 45402

Robert J. Jenks  
Executive Director  
Citizens' Utility Board of Oregon  
921 Southwest Morrison, Suite 511  
Portland, OR 97205-2734

Peter D. Keisler  
C. Frederick Beckner III  
Michael J. Hunseder  
Sidley & Austin  
1722 Eye St., N.W.  
Counsel for AT&T Corp.

Elliot F. Elam, Jr., Staff Attorney  
Philip S. Porter, Consumer Advocate  
Nancy Vaughn Coombs, Deputy  
Consumer Advocate  
The South Carolina Department of  
Consumer Affairs  
2801 Devine Street  
P.O. Box 5757  
Columbia, SC 29250-5757

Thomas K. Crowe  
Elizabeth Holowinski  
Law Office of Thomas K. Crowe, P.C.  
2300 M Street, N.W.  
Suite 800  
Washington, D.C. 20037  
Counsel for the Commonwealth of the  
Northern Mariana Islands

William McCarty  
Chairman of the Indiana Utility  
Regulatory Commission  
302 West Washington Street  
Suite E306  
Indianapolis, IN 46204

Rick Guzman  
Assistant Public Utility Counsel  
Texas Office of the Public Utility Counsel  
P.O. Box 12397  
Austin, TX 78711-2397

Pat Wood, III, Chairman  
Judy Walsh, Commissioner  
Patricia A. Curran, Commissioner  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, TX 78711-3326

Billy Jack Gregg  
Gene W. Lafitte, Jr.  
Consumer Advocate Division of the Public  
Service Commission of West Virginia  
700 Union Building  
Charleston, WV 25301

Leonard J. Kennedy  
David E. Mills  
Laura H. Phillips  
Dow, Lohnes & Albertson, PLLC  
1200 New Hampshire Avenue, N.W.  
Suite 800  
Washington, D.C. 20036-6802  
Counsel for Triton PCS, Inc.

Mark Buechele, Esq.  
David Dimlich, Esq.  
Supra Telecommunications & Information  
Systems, Inc.  
2620 S.W. 27<sup>th</sup> Avenue  
Miami, FL 33133

Brad E. Mutschelknaus  
Andrea D. Pruitt  
Kelley Drye & Warren, LLP  
1200 19<sup>th</sup> Street, N.W., Suite 500  
Washington, D.C. 20036  
Counsel for e.spire Communications, Inc.

Eric J. Branfman  
Eric N. Einhorn  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007-5116  
Counsel for CoreComm, Ltd., Freedom  
Ring Communications, LLC, Paetec  
Communications, Inc., State  
Communications Inc.

Mary C. Albert  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007-5116  
Counsel for KMC Telecom, Inc.

Cherie R. Kiser  
William A. Davis  
Gil M. Strobel  
Mintz, Levin, Cohn, Ferris, Glovsky and  
Popeo, P.C.  
701 Pennsylvania Avenue, N.W.  
Suite 900  
Washington, D.C. 20004-2608  
Counsel for Cablevision LightPath, Inc.

William A. Davis  
Gil M. Strobel  
Mintz, Levin, Cohn, Ferris, Glovsky and  
Popeo, P.C.  
701 Pennsylvania Avenue, N.W.  
Suite 900  
Washington, D.C. 20004-2608

Maureen Lewis, General Counsel  
Donald Vial, Policy Committee Chair  
The Alliance for Public Technology  
901 Fifteenth Street, N.W., Suite 230  
Washington, D.C. 20005

Scott Blake Harris  
Jonathan B. Mirsky  
Harris, Wiltshire & Grannis, LLP  
1200 Eighteenth St., N.W.  
Washington, D.C. 20036  
Counsel for Pilgrim Telephone

Martin O'Riordan  
EMC Corp.  
171 South Street  
Hopkinton, MA 01748-9103

Todd McCracken, President  
National Small Business United  
1156 15<sup>th</sup> Street, N.W., Suite 1100  
Washington, D.C. 20005-1711

Irvin W. Maloney, Director  
Occidental Petroleum Corp.  
1640 Stonehedge Rd.  
Palm Springs, CA 92264

Linda F. Golodner, President  
National Consumers League  
1701 K Street, N.W., Suite 1200  
Washington, D.C. 20006

Bear, Stearns and Co., Inc.  
Attn: John Vitale, Managing Director  
245 Park Avenue  
New York, NY 10167

Debbie Goldman  
Communications Workers of America  
501 Third Street, N.W.  
Washington, D.C. 20001

James L. Gattuso, V.P.  
Competitive Enterprise Institute  
1001 Connecticut Avenue, N.W.  
Suite S. 1250  
Washington, D.C. 20036

Angela D. Ledford, Executive Director  
Keep America Connected  
P.O. Box 27911  
Washington, D.C. 20005

Kim D. Wallace, Public Policy  
Coordinator  
Alpha One  
127 Maine Street  
South Portland, MD 04106

Sheldon E. Steinbach  
Vice President & General Counsel  
American Council on Education  
One Dupont Circle, N.W.  
Washington, D.C. 20036

Florence Rice, President  
Harlem Consumer Education Council  
Triborough Station  
P.O. Box 1165  
New York, NY 10035

Ann Gross  
National Association of College and  
University Business Officers  
2501 M Street, N.W., Suite 400  
Washington, D.C. 20037

Patricia T. Hendel, President  
National Association of Commissions  
for Women  
8630 Fenton Street, Suite 934  
Silver Spring, MD 20910-3803

Aliceann Wohlbruck, Executive Director  
National Association of Development  
Organizations  
444 North Capitol Street, N.W., Suite 630  
Washington, D.C. 20001

Garry A. Mendez, Jr. Executive Director  
The National Trust for the Development of  
African American Men  
6811 Kenilworth Road  
Riverdale, MD 20737

Milton J. Little, Jr., Executive Vice  
President  
National Urban League  
120 Wall Street  
New York, NY 10005

Cherly Heppner, Executive Director  
Northern Virginia Resource Center for the  
Deaf and Hard of Hearing Persons  
10363 Democracy Lane  
Fairfax, VA 22030

Jordan Clark, President  
United Homeowners Association  
655 15<sup>th</sup> Street, N.W., Suite 460  
Washington, D.C. 20005

Anne Werner, President & CEO  
United Seniors Health Cooperative  
409 Third Street, S.W.  
Second Floor  
Washington, D.C. 20024

Deborah Kaplan, Executive Director  
World Institute on Disability  
510 16<sup>th</sup> Street  
Oakland, CA 94612

Thomas A. Hart, Jr.  
Shook, Hardy & Bacon  
600 14<sup>th</sup> Street, N.W.  
Suite 800  
Washington, D.C. 20005  
Special Counsel to Rainbow/PUSH  
Coalition

Christopher A. McLean  
Deputy Administrator  
United States Department of Agriculture  
Rural Development  
Washington, D.C. 20250

Lauren Kravetz  
Wireless Telecommunications Bureau  
445 Twelfth Street, S.W., 4A 163  
Washington, D.C. 20554

Matthew Vitale  
Internation Bureau  
445 Twelfth Street, S.C., 6A 821  
Washington, D.C. 20554

Peggy Arvanitas  
P.O. Box 8787  
Seminole, FL 33775

The Progress & Freedom Foundation  
1301 K Street, N.W.  
Suite 550E  
Washington, D.C. 20005

Mark C. Rosenblum  
Lawrence J. Lafaro  
Aryeh S. Friedman  
295 North Maple Avenue  
Basking Ridge, NJ 07920

Jonathan Askin  
General Counsel  
888 17<sup>th</sup> Street, N.W.  
Washington, D.C.  
The Association for Local  
Telecommunications Services

Carol Ann Bischoff  
Executive Vice President and  
General Counsel  
The Competitive  
Telecommunications Association  
1900 M Street, N.W. Suite 800  
Washington, D.C. 20036

R. Gerard Salemme  
Senior Vice President, External Affairs  
Cathy Massey  
Alaine Miller  
NEXTLINK Communications, Inc.  
1730 Rhode Island Avenue, N.W.  
Suite 1000  
Washington, D.C. 20034

Daniel M. Waggoner  
Robert S. Tanner  
R. Dale Dixon  
Davis Wright Tremaine LLP  
1500 K Street, N.W., Suite 450  
Washington, D.C. 20005

Jason D. Oxman  
Senior Governmental Affairs Counsel  
Covad Communications Company  
600 14<sup>th</sup> Street, N.W., Suite 750  
Washington, D.C. 20005

George Kohl  
Senior Executive Director  
Communications Workers of America  
501 Third Street, N.W.  
Washington, D.C. 20001

ITS  
445 12<sup>th</sup> Street, SW, CY-B402  
Washington, D.C. 20554

Jennifer Hoh  
Bell Atlantic Corp.  
1320 North Courthouse, 8<sup>th</sup> Floor  
Arlington, VA 22201

James L. Casserly  
Mintz Levin Cohn Ferris  
Glovsky & Popeo, P.C.  
701 Pennsylvania Ave., NW  
Washington, D.C. 20004

Ronald J. Binz, President  
Debra R. Berlyn, Executive Director  
1156 15<sup>th</sup> Street, NW, Suite 520  
Washington, D.C. 20005

Jonathan Jacob Nadler  
Brian J. McHugh  
Scott A. Mackoul  
Squire, Sanders & Dempsey, L.L.P.  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

  
\_\_\_\_\_  
Steven G. Bradbury



ALL STATE LEGAL AFFAIRS DIVISION RECEIVED

Responses to Specific Allegations Regarding Proposed Conditions

In this attachment, Bell Atlantic and GTE respond to the specific allegations made by the parties relating to the applicants' further submission proposing to add to or modify the merger conditions that were initially proposed on January 27, 2000. These additions and modifications will produce still further benefits and provide additional confirmation that the merger of Bell Atlantic and GTE is in the public interest. As a whole, the proposed conditions are modeled after those adopted for the SBC/Ameritech merger which the Commission reviewed and approved, rejecting many of the same allegations that the parties are making here.

*Condition 1, Separate Affiliate for Advanced Services*

This condition tracks closely the SBC/Ameritech condition which, the Commission found, "will provide a structural mechanism to ensure that competing providers of advanced services receive effective, nondiscriminatory access to the facilities and services of the merged firm's incumbent LECs that are necessary to provide advanced services." SBC/Ameritech Order at 363.

In their further submission, Bell Atlantic and GTE have proposed an addition to this condition that offers even greater benefits. This proposal would preserve the option for Bell Atlantic/GTE to deploy advanced services equipment in remote terminals (along with related equipment in the central office) and offer wholesale service arrangements to all carriers – the separate advanced services affiliate and non-affiliated advanced services providers alike – at non-discriminatory rates, terms and conditions. This will enable those carriers to provide advanced services to their retail customers quickly and economically – and will particularly benefit residential customers and customers in less-populated areas.

Adding this option expands the ability of carriers to provide advanced services while preserving all of their existing options. Indeed, even WorldCom "strongly supports" this addition. WorldCom at 3. And even the one party that raises any objection, NorthPoint (at 2) does not say that Bell Atlantic/GTE should be barred from making wholesale services available. Instead, NorthPoint claims that this provision may somehow prejudice a pending SBC petition asking the Commission to clarify that retention of such equipment is consistent with its merger conditions. But whether the proposal is consistent with the terms of the SBC/Ameritech conditions has no relevance here. Inserting explicit language preserving this option will avoid a

similar ambiguity while providing carriers a wholesale offering that is indisputably pro-competitive and will further deployment of advanced services.

WorldCom argues, however, that Bell Atlantic/GTE should be required to install additional equipment that other advanced service providers may need for their services, even if that equipment is not compatible with the equipment deployed for Bell Atlantic/GTE's wholesale offering. WorldCom at 4. However, as pointed out above, this new option simply expands the opportunities that carriers already have available to deploy their advanced services. And paragraph 3(d)(1) of the proposed conditions merely gives Bell Atlantic/GTE the option to deploy other equipment that is consistent with industry standards where they exist – and with which competitors can design their own services to be compatible – and provide a wholesale service using that equipment. It would not be cost-effective to force Bell Atlantic/GTE to deploy multiple discrete technologies, some of which may be incompatible with each other and with technologies that Bell Atlantic/GTE has already deployed, at the request of individual carriers. Instead, doing so would defeat the pro-competitive purpose of the condition, which is designed to allow Bell Atlantic/GTE to deploy equipment through which it can offer wholesale services economically and quickly to multiple carriers.

AT&T argues that the affiliate will be a “successor or assign” of Bell Atlantic/GTE and must be treated as an incumbent local exchange carrier for purposes of section 251(c) of the Act. AT&T at 8-15. Its arguments here are the same as those the Commission considered and rejected in regard to the SBC/Ameritech merger. The Commission there found that “a determination as to whether an affiliate is a successor or assign is ultimately fact-based, and the terms take their meaning from the particular legal context in which they are used.” SBC/Ameritech Order at 454, citing *Howard Johnson Co. v. Detroit Local Joint Executive Bd.*, 417 U.S. 249, 264 n.9 (1974). After considering the very argument that AT&T makes here, it examined whether there is “substantial continuity” between the incumbent and the advanced services affiliate. SBC/Ameritech Order at 457. The indicia it considered in that examination are whether:

- (1) there is identifiable physical separation between the entities;
- (2) the incumbent LEC has not transferred to its affiliate substantial assets or assets that are necessary for the continuation of the incumbent's traditional business operations;
- (3) transactions between the incumbent and affiliate are conducted at arms-length and are transparent; and
- (4) the affiliate does not derive unfair advantage from the incumbent.

*Id.* (footnotes deleted). The Commission then evaluated the separate affiliate conditions – the same conditions that are being proposed here – against that standard. *Id.* at 458-76. Based on that evaluation, it concluded that “the affiliate structure set forth in the conditions will ensure that the SBC/Ameritech advanced services affiliate occupies a position in the market comparable not to an incumbent, but rather to a non-incumbent advanced services competitors [sic].” *Id.* at 461.

AT&T makes no attempt either to refute that analysis or to distinguish Bell Atlantic/GTE's advanced services affiliate from SBC/Ameritech's, nor could it. As with

SBC/Ameritech, Bell Atlantic/GTE's incumbent telephone companies will transfer to the affiliate only that limited amount of equipment that will enable the affiliate to provide advanced services to existing and new customers. The incumbent will continue to provide traditional telephone services to all customers, including providing on a non-discriminatory basis to both the affiliate and competitors the services and facilities on which key advanced services (such as DSL) will ride. Therefore, contrary to AT&T's claims that the separate affiliate will always be a successor or assign to the incumbent, the Commission has already adopted an express presumption that it is not. SBC/Ameritech Order at 458.

Covad proposes that the definition of "advanced services" be amended to include ISDN. Covad at 9. Covad ignores the fact that the Commission, in approving a similar affiliate condition, expressly limited advanced services to those that "rely on packetized technology" and excluded from that definition dial-up Internet access services. SBC/Ameritech Order at n.671. But ISDN is a *circuit-switched* service that can be used for *dial-up* Internet access. Therefore, the Commission has already excluded ISDN from the scope of advanced services. Even if it had not, Covad's proposal makes no sense. ISDN is provided through the same circuit switches that are used for traditional voice services, so adoption of this proposal would require Bell Atlantic/GTE to transfer to the affiliate the switches through which it provides nearly all of its telephone services. This would mean that the affiliate, not the incumbent, would become the telephone service provider and would eliminate the goal of establishing the separate affiliate – to separate advanced services from the provider of the underlying telephone network.<sup>1</sup>

WorldCom wants the Commission to require network splitters to be retained in the incumbent telephone company and not transferred to the advanced services affiliate, even when they are used to provide advanced services to the public, such as when DSLAM functionality is incorporated into the same device. WorldCom at 4-5. But just because a device is not defined as advanced services equipment does not preclude Bell Atlantic/GTE from transferring it to the affiliate. Neither the approved SBC/Ameritech conditions nor those proposed here contain any such limitation, and WorldCom has not attempted to show any benefit to such a constraint. On the contrary, either the separate affiliate or the incumbent telephone company can own non-advanced services equipment. In addition, WorldCom's proposal would be inconsistent with the intent of the conditions. While the condition states that a stand-alone splitter is not defined as advanced services equipment, a device in the Bell Atlantic/GTE network that contains a splitter function but is without doubt being used to provide retail advanced services can and should be owned by the entity that provides such advanced services to the public.

Finally, WorldCom asks for clarification of the language in paragraph 3(j) that Bell Atlantic/GTE may decide "on a state-by-state basis" whether to provide advanced services through a section 272 affiliate. WorldCom at 5. That provision was inserted in recognition that proceedings to grant interLATA relief to Bell Atlantic are conducted on a state-by-state basis. Therefore, Bell Atlantic/GTE should have the right to decide in each instance whether to offer

---

<sup>1</sup> Covad is simply wrong in its claim that Bell Atlantic's DSL service uses the same architecture as ISDN. Covad at 9. Bell Atlantic's DSL is a packet-switched data service that meets the Commission's definition of an advanced service, while ISDN is a circuit-switched dial-up service that a customer may use for voice or data and does not meet that definition.

advanced services through the interLATA affiliate based on the circumstances of the particular state.

*Condition II, Discounted Surrogate Line Sharing Charges*

This provision, which was adopted from the SBC/Ameritech conditions, gives providers of advanced services substantial discounts on local loops used for advanced services in those instances in which the Bell Atlantic/GTE separate affiliate is provided with interim line sharing but where line sharing is not yet generally available to other providers. The condition will soon be largely moot, because the Commission's line sharing order has been issued and becomes effective in a few weeks.

Covad, however, objects to language added in paragraph 13 that the surrogate charges "shall apply only when line sharing is not required." Covad at 11-12. That language was inserted in response to requests for clarification to make sure that, even after line sharing is initially available, carriers will continue to be able to receive surrogate line sharing in the event the Commission's line sharing order is ultimately reversed at the conclusion of any appeals. It does not modify the requirement in paragraph 3(d)(2) that the discounted surrogate line sharing charge must be made available where the affiliate obtains interim line sharing but where actual line sharing is not available to other providers "within the same geographic area." Bell Atlantic and GTE certainly intend to comply fully with the requirements of the line sharing order and offer line sharing by June 6, 2000. However, there may be some instances in which the parties are not ready to deploy line sharing immediately in a given geographical area. Covad apparently wants to ensure that the surrogate line sharing arrangement will remain available in those limited instances. Under the terms of the condition, it will. Consequently, Bell Atlantic/GTE will continue to make the discounted surrogate line sharing discount available to other advanced service providers until line sharing becomes generally available in that area.

There is also no need for a condition requiring Bell Atlantic/GTE to comply with the Commission's line sharing order. *See* Covad at 15. Bell Atlantic/GTE is required to comply under the terms of the order and will offer line sharing throughout their footprint as required. And despite Covad's claims to the contrary, the applicants are in full compliance with the requirement that they negotiate in good faith any needed amendments to the interconnection agreements. It is Covad that has yet to provide detailed responses to draft interconnection agreements that Bell Atlantic and GTE sent for consideration nearly a month ago. Both Bell Atlantic and GTE are willing to continue to negotiate with Covad and attempt to reach a mutually-acceptable agreement, even though Covad has already filed for arbitration in several states. Moreover, contrary to Covad's claim, Bell Atlantic and GTE are giving line sharing requests and collocation augmentations needed to implement line sharing their highest priority in order to meet the requests of Covad and other carriers. In fact, just this week, an arbitrator with the California Commission approved the line sharing agreement proposed by GTE. *Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks*, Rulemaking 93-04-003, Draft Arbitrator's Report (Calif. PUC, issued May 8, 2000).

For its part, NorthPoint objects to this provision in its entirety, asserting that the affiliate should not be permitted to obtain interim line sharing until line sharing is available to other carriers. NorthPoint at 1. NorthPoint fails to point out, however, that the very purpose of giving non-affiliates a surrogate line sharing discount is to put them in the same position as the separate affiliate during the period when the latter receives interim line sharing, and that the Commission concluded that the surrogate discount is the “economic equivalent” of line sharing. SBC/Ameritech Order at 369. This is because non-affiliates receive an entire loop at the same price that the affiliate pays to share the line. The Commission reviewed and approved this precise arrangement in the SBC/Ameritech merger, finding that it “will spur deployment of advanced services by SBC/Ameritech, as well as other carriers, while ensuring that these other carriers receive treatment from an SBC/Ameritech incumbent LEC comparable to that provided to the SBC/Ameritech separate affiliate.” *Id.* at 370. Given the imminent effectiveness of the line sharing order, there is even less reason to object to this condition here, and NorthPoint does not attempt to provide any additional support for its argument.

#### *Condition V, Carrier-to-Carrier Performance Plan*

The measurement categories and remedy structure proposed by Bell Atlantic/GTE are closely modeled on the performance plan adopted by the Commission as a condition of the SBC/Ameritech merger. In addition, in the revised proposed conditions, Bell Atlantic/GTE have committed that, within 30 days of merger close, they will propose an additional performance measurement or sub-measurement to measure Bell Atlantic/GTE’s performance with respect to the provisioning of line sharing.

Only one party has anything to say that is even arguably relevant to the addition included in the applicants’ further submission. Specifically, Covad argues that CLECs should have an opportunity to comment on the line sharing measurement that Bell Atlantic and GTE will propose following the merger. Covad at 10-11. In both California and New York, CLECs have participated in collaborative proceedings that addressed, among other things, measurements for line sharing. Consistent with the general carrier-to-carrier performance measurement plan, the new performance measurement or sub-measurement that Bell Atlantic/GTE will propose after the merger will be based on the measurements developed in New York and California. CLECs, therefore, have had ample input into the development of that measurement.

The remaining comments with respect to the proposed performance measures have nothing to do with the addition proposed in the further submission, largely rehash arguments that previously were addressed, and are wrong. For example, AT&T and NorthPoint argue that the proposed performance measurement plan could hide discriminatory performance because it omits important measurements and has too many exceptions to have real value. AT&T at 15; NorthPoint at 2. These claims merely repeat arguments from earlier comments that Bell Atlantic and GTE have already addressed. Although the Bell Atlantic/GTE measurements are grouped into 17 categories (rather than 20, as in the SBC/Ameritech conditions) and the categories have different names, the measurement categories included in the Bell Atlantic/GTE Plan cover all of the performance areas covered by the measurements in the SBC/Ameritech plan.

The Commission already has determined that the measurement categories in the SBC/Ameritech plan – and, therefore, in the Bell Atlantic/GTE Plan – “cover key aspects of pre-ordering, ordering, provisioning, maintenance and repair associated with UNEs, interconnection, and resold services,” and that reporting these measures will “ensur[e] that [the merged company’s] service to telecommunications carriers will not deteriorate as a result of the merger and ... stimulate the merged entity to adopt ‘best practices’ that clearly favor public rather than private interests.” SBC/Ameritech Order at ¶ 377.

Similarly, the per-occurrence payment levels are identical to those in the SBC/Ameritech plan, and the overall payment caps are higher than and proportional to the revised caps contained in the SBC/Ameritech plan. In addition, the Bell Atlantic/GTE Plan includes a “low-volume multiplier” modeled on the SBC/Ameritech conditions. Finally, the structure that requires monthly reporting, payments after three consecutive months of below-standard performance, and payments for performance beginning 270 days after merger close, also mirrors the structure approved by the Commission in conjunction with the SBC/Ameritech merger. The Commission therefore already has found that this voluntary payment structure and cap are sufficient to address the purposes of the Carrier-to-Carrier Performance Plan. SBC/Ameritech Order at ¶ 378, n.706.

Allegiance et al. claim that the Proposed Conditions contain “no operative loop provisioning standard applicable to GTE that could be used to assure that it is providing adequate and timely loop provisioning.” Allegiance et al. at 15. This assertion is flat wrong. Under the proposed measurements, Bell Atlantic/GTE will report on the percent of non-designed unbundled loop orders completed within five days (PR-3), the percent missed due dates and average delay days for unbundled loops (PR-4), the percent of unbundled loop orders missed for lack of facilities (PR-5), the percent of installation troubles for unbundled loops reported within seven and thirty days of installation (PR-6), and percent of on-time coordinated conversions (PR-9). In each instance, the proposed measurements define a standard by which Bell Atlantic/GTE’s performance can be measured.

Finally, Covad argues that Bell Atlantic/GTE should not require CLECs to sign a protective agreement in order to receive performance data for the separate data affiliate because Bell Atlantic/GTE should not be able to “block disclosure of post-merger performance data” to regulators. Covad at 10. Bell Atlantic/GTE do not seek to prevent CLECs from showing performance data to regulators. They simply seek to have that information treated as confidential in order to prevent its use by competitors for marketing or other inappropriate purposes.

*Condition VI, Uniform and Enhanced OSS and Advanced Services OSS*

Bell Atlantic/GTE initially proposed conditions that would provide CLECs uniform interfaces and business rules (including for Advanced Services) for obtaining access to Bell Atlantic/GTE's OSS in Bell Atlantic's service areas and separately in GTE's service areas,<sup>2</sup> and would introduce new functionality, including systems enhancements allowing GTE to produce bills for CLECs using the BOS format standard.<sup>3</sup> The revised proposed conditions will provide significant additional uniformity for CLECs operating in Bell Atlantic and GTE service areas, while minimizing the disruption and expense that would be faced by CLECs and by Bell Atlantic/GTE if the merged company were to undertake the massive changes that would be required for nationwide uniform interfaces and business rules.

First, Bell Atlantic/GTE will provide CLECs uniform interfaces and business rules (including for Advanced Services) for obtaining access to Bell Atlantic/GTE's OSS throughout the northeastern/mid-Atlantic regions of the United States – that is, from Maine through Virginia.<sup>4</sup> This includes a plan to make the interfaces and business rules uniform between Bell Atlantic and GTE in the two states – Pennsylvania and Virginia – where both companies operate as incumbent local exchange carriers.<sup>5</sup>

---

<sup>2</sup> The condition provides that Bell Atlantic and GTE will each provide uniform interfaces and business rules within their respective service areas for OSS that support pre-ordering, ordering, provisioning, maintenance/repair, and billing of resold local services and unbundled network elements. As a result, the claims of some commenters that the condition only covers pre-ordering and ordering, Allegiance et al. at 10, is simply wrong. Similarly, Covad's concern that Bell Atlantic/GTE have somehow limited their obligation to provide nondiscriminatory OSS for the separate data affiliate and unaffiliated CLECs to pre-ordering and ordering, Covad at 9-10, is wrong. The conditions also provide that "[p]rocesses, systems, and procedures" made available for the separate data affiliate to obtain "OI&M services" – that is, operations, installation, and maintenance – will be made available to unaffiliated CLECs on nondiscriminatory terms. *See* Conditions, ¶ 3(c)(2).

<sup>3</sup> Both companies currently provide ordering interfaces consistent with the industry standard Local Service Ordering Guidelines (LSOG). Bell Atlantic also supports LSOG for pre-ordering, and GTE will support industry standards for pre-ordering with its implementation of LSOG 4 over EDI that is scheduled for later this year.

<sup>4</sup> Where Bell Atlantic is already subject to requirements to implement interfaces or business rules on a particular schedule – e.g., as the result of collaboratives that have already been held – the plan Bell Atlantic/GTE submit to achieve uniformity will set out the remaining scheduled changes, and these changes will be implemented under the schedules adopted in those proceedings.

<sup>5</sup> Bell Atlantic/GTE will convert at least 80% of GTE's access lines to be uniform with Bell Atlantic's systems within five years after the merger closes. The exception will be lines served by central offices where there is no active collocator exchanging minutes of use with GTE.

Second, Bell Atlantic/GTE will provide additional specific company-wide uniformity that will benefit CLECs. Bell Atlantic/GTE have committed that they will offer uniform transport and security protocols to their OSS interfaces across the merged company. Because there are a number of different transport and security technologies in the industry, offering uniform transport and security protocols will reduce the cost to CLECs associated with developing, supporting, and maintaining multiple technologies, both in terms of the number of components that must be monitored and maintained, and in terms of the skill sets their technical personnel must be proficient with.

Bell Atlantic/GTE also have agreed to provide a specified list of pre-order, ordering, and maintenance/repair functions across the merged company and application-to-application ordering capability for a specified list of products across the merged company (although the way in which the functions are performed and the methods and terms under which the products are ordered necessarily may vary).<sup>6</sup> This will provide CLECs with a set of functions and products that will be available across both the Bell Atlantic and GTE service areas.

Third, Bell Atlantic/GTE have committed that, within 12 months after the merger, they will implement the current Bell Atlantic change management process originally developed as part of the New York collaborative proceeding throughout the merged company. The change management process will include provisions for a developmental view, release announcements, comments and reply cycles, new entrant and new release testing processes and regularly scheduled change management meetings. This will provide CLECs doing business with both pre-merger companies with a uniform process to facilitate communication about OSS changes, new interfaces and retirement of old interfaces, as well as the implementation timeframes.

Finally, Bell Atlantic/GTE will provide teams of OSS experts to assist qualifying CLECs with OSS issues. In particular, Bell Atlantic/GTE will make assistance available to CLECs that currently provide service in only one of the companies' service areas and want to begin operations in the other company's service area, or to CLECs that do not currently operate in either the Bell Atlantic or GTE service areas and want to begin operations with the merged company.

Despite the significant additional uniformity to which Bell Atlantic/GTE have committed in the revised proposed conditions, several commenters seek to require Bell Atlantic/GTE to do

---

<sup>6</sup> As explained in the proposed revised conditions, the forms, business rules, and methods for performing the specified functions and for ordering and provisioning the specified products may not be uniform between the Bell Atlantic Service Areas and the GTE Service Areas. The terms, conditions and prices or rates for the specified functions and products will be determined by tariffs, statements of generally available terms and conditions, or interconnection agreements and may not be uniform. See Conditions, ¶ 19.d.

more and to do it faster.<sup>7</sup> *E.g.*, Allegiance et al. at 7-12; Covad at 12-14; WorldCom at 10-13. Implementation of completely uniform interfaces and business rules across the merged company may not be achievable at all in the next several years. Even if it were achievable, the cost could approach \$1 billion, and it would cause enormous disruption, but have only limited value, for the CLECs. *See* Declaration of Paul A. Lacouture at ¶¶ 7-11 (filed April 14, 2000).

The reason this is true (as demonstrated in prior filings) is not disputed by any party. Bell Atlantic and GTE do not share common histories from either a network or a systems perspective. Their respective OSS have been developed from significantly different sources and, as a result, the interfaces and business rules through which CLECs obtain access to those systems differ significantly. GTE did not participate in the Bell System network and systems development. Instead, GTE developed its own telecommunication equipment manufacturing capabilities and its own operating support systems, including the systems now used to perform pre-ordering, ordering, provisioning, maintenance/repair and billing functions.

Today, largely as a result of these different development histories, the network architectures of Bell Atlantic and GTE are significantly different. For example, the most widely deployed switch in GTE's local network today is not used anywhere in Bell Atlantic. Moreover, the network architectures are tightly linked to each company's respective OSS. Thus, 37% of GTE's network, the portion represented by the GTD5 switch, could not interact with or be supported by Bell Atlantic's network management systems and OSS without substantial re-programming efforts.

The existing interfaces that are provided to CLECs have been designed to work with each company's separate core retail systems for customer care, billing, and trouble management, and those systems are integrated with core provisioning systems that serve both retail and wholesale customers. These systems are intricately tied to business processes and practices that have grown up over many years, reflecting different local regulatory and business environments.<sup>8</sup>

Contrary to the claims of some commenters, creating uniform interfaces and business rules is not just a matter of "simple software workarounds for masking the differences." Covad

---

<sup>7</sup> Several commenters suggest that Bell Atlantic/GTE should provide their plan of record for meeting this condition within 30 days, rather than 90 as the companies have proposed. *E.g.*, AT&T at 17, n. 21; Covad at 12-13; WorldCom at 12. The companies originally proposed to submit their plan within 30 days after merger close when the proposed condition required uniformity of interfaces and business rules within Bell Atlantic and separately within GTE. The revised proposed conditions require greater uniformity, and accordingly additional time to present a plan is appropriate. Bell Atlantic/GTE will submit their plan 90 days after merger close, less time than was included in the SBC/Ameritech conditions.

<sup>8</sup> As just one example, Bell Atlantic uses over 25,000 Uniform Service Order Codes (USOCs), for ordering both retail and wholesale services. GTE only uses USOCs within CABS for access services. For retail and wholesale services, GTE uses approximately 30,000 of its own service codes, called Item of Service Codes, which are fundamentally different service codes from USOCs.

at 13; *see also* Allegiance et al. at 9. Business rules inform the CLECs what information is needed by Bell Atlantic's and GTE's internal systems and how it must be formatted in order to conduct the desired transaction. Therefore, changes to the business rules, in order to make them more common, require significant and fundamental changes to Bell Atlantic's and GTE's core systems and business practices (to recognize and respond to different information, or information in a different format, from the CLECs), substantial programming efforts (to "translate" some new or differently formatted information provided by CLECs into the information and formatting needed for the core systems and processes), and significant internal work to implement new business practices based on the changed information.

Moreover, some differences between the companies cannot be masked, and even where masking is possible, it would create significant additional difficulties for the CLECs. For example, masking the pre-order responses returned to CLECs so they appear uniform would mean that the pre-order information provided to CLECs would no longer match the formats and business rules required for submitting orders. That would diminish or eliminate the CLECs' ability to integrate their pre-order and ordering functions. "Re-masking" the information in the ordering context would obviously increase the programming and systems effort and cost, and would add processing time to each CLEC transaction, potentially degrading response times to the point where the CLECs' own processes and practices are affected. Lacouture Decl., ¶¶ 8-9.<sup>9</sup>

The changes that would be required to move toward uniform interfaces and business rules would be disruptive to virtually all CLECs, while uniformity would have only limited value. As interfaces and business rules change to become more uniform, all CLECs would have to re-program their own systems and retrain their personnel. There are currently over 350 CLECs authorized to use Bell Atlantic's electronic interfaces to order unbundled elements or resold services. In December of 1999, there were 188 different CLECs that used at least one of GTE's electronic interfaces for ordering. Of these, only about 50 are doing business with both companies. In other words, about 485 different CLECs use electronic interfaces to order services from Bell Atlantic or GTE, but only 11% of the total operate in both companies' service areas. Eight out of nine CLECs operate in only one of the companies' service areas, yet all CLECs would be required to make changes in their own systems and operations to accommodate any changes designed to bring greater uniformity to Bell Atlantic's and GTE's interfaces.

---

<sup>9</sup> For these reasons, to achieve uniformity in Pennsylvania and Virginia, Bell Atlantic/GTE would be likely to rely on a network based solution. Lacouture Decl. at ¶ 12. This would require the replacement of some of GTE's host and remote switches and the modification and upgrading of other switches to enable them to work with Bell Atlantic's network and systems. In addition, all of GTE's customer records would have to be converted so they could be included in Bell Atlantic's databases. Bell Atlantic/GTE would need a minimum of five years to accomplish this work in a rational manner. Switch replacements need to be carefully planned and scheduled so they can be accomplished smoothly and without disruption to customers' services. In addition, it would take approximately 12 - 18 months of programming effort to prepare the software necessary to convert customer data to the Bell Atlantic databases. Lacouture Decl. at ¶¶ 13, 16. As a result, it would not be reasonable to shorten the timeline Bell Atlantic/GTE have proposed to meet this condition.

Even CLECs that operate on a national basis would find the changes associated with implementation of uniformity disruptive. Both AT&T and MCI WorldCom argued to the California PUC that implementation of uniform interfaces between Bell Atlantic and GTE would “ultimately hinder the efforts of AT&T, MCI, Sprint and other CLECs to compete against GTE in California when the CLECs are not able to access customer information or to exchange ordering and provisioning data.” (AT&T/MCI Brief in Case No. A.98-12-005, filed August 27, 1999, at 36.) Moreover, AT&T itself does not use the same interfaces across its operations, even where they are available. For example, in New York (and generally in the Bell Atlantic region), AT&T uses the Common Object Request Broker Architecture (CORBA) interface for pre-ordering. In Texas, however, although SBC offers a CORBA pre-ordering interface, AT&T does not use CORBA because “[s]witching from [the interface AT&T is currently using] to EDI or CORBA for pre-ordering would require considerable time and expense, and would be imprudent at this critical stage of AT&T’s UNE-P market entry, when AT&T is attempting to ramp up to commercial volumes.” Chambers/De Young Supplemental Declaration, Supplemental Comments of AT&T (Filed April 26, 2000) filed in CC Docket No. 00-65, ¶ 61 and n. 27.<sup>10</sup>

Finally, a few commenters rehash their arguments that Bell Atlantic/GTE should be required to implement a uniform change management process within 30 days, rather than the 12 months provided in the proposed conditions. Allegiance et al. at 17-18; WorldCom at 14-15. Implementing the Bell Atlantic change management process in GTE’s service areas is more than simply holding joint meetings; Bell Atlantic/GTE must also establish a CLEC test environment that mirrors GTE’s production environment. To do so requires the ordering and installation of equipment, and loading and testing of software. As a result, 12 months is needed to implement a uniform change management process.

#### *Condition IX, Most-Favored-Nation Provisions for Out-of-Region and In-Region Arrangements*

This provision, which allows competing carriers to adopt in one state agreements negotiated in other states, will accelerate adoption of interconnection agreements by avoiding the need to repeat negotiations in each state in which a carrier chooses to operate. In addition, the applicants’ further submission proposes to waive the minimum statutory negotiation period (of 135 days) prior to arbitration in cases where a carrier wants to arbitrate in one state an interconnection arrangement or UNE that was arbitrated in another state after merger close. This provision will not only speed completion of the arbitration process but will further increase the merged company’s existing incentives to resolve issues voluntarily through negotiation. Successful negotiation will avoid the risk that an arbitration could provide a worse result than an arbitrated agreement, and that other states might then quickly adopt that arbitrated result through the accelerated arbitration process.

---

<sup>10</sup> Indeed, in its comments on the revised proposed conditions, AT&T claimed that Bell Atlantic/GTE’s proposed condition would provide no benefits, arguing that efforts to achieve greater uniformity in the near term could detract from work currently underway on implementing OSS interfaces and business rules. AT&T at 19. AT&T implies that the interfaces currently offered by Bell Atlantic and GTE do not provide nondiscriminatory access to OSS for CLECs. *Id.* This is simply incorrect.

Several carriers, however, want the out-of-state “most favored nation” provision extended to arbitrations. Allegiance et al. at 3-4, WorldCom at 6. The Commission addressed and rejected these same arguments in connection with the SBC/Ameritech merger, finding that allowing arbitrated agreements to be adopted in another state “might interfere with the state arbitration process under sections 251 and 252 of the Communications Act.” SBC/Ameritech Order at 491. This is because one state, by adopting an interconnection provision, “could effectively interpret the merged firm’s obligations under sections 251 and 252 for all other states.” *Id.* This would amount to preemption by one state of the statutory authority over interconnection agreements of all other states.

The parties claim, however, that SBC/Ameritech has, post-merger, limited the issues on which it will voluntarily agree and, instead, has forced most issues to go to arbitration. As previously demonstrated, whatever the merits of the commenters’ factual claims, extending the region-wide application to arbitrated provisions, besides undermining state authority, would simply exacerbate the supposed problem. Reply of Bell Atlantic and GTE In Support of Their Supplemental Filing, App. C at 24 (filed March 16, 2000) (“Bell Atlantic/GTE Supp. Reply”). Knowing that arbitrated provisions will apply region-wide is likely to harden the parties’ litigation posture, making settlements less likely, and result in extensive regulatory and judicial litigation. The additional provision proposed here will not only reduce the administrative burden and time of any state review of arbitrated provisions, it will also provide Bell Atlantic/GTE with an even greater incentive to reach negotiated agreements, as shown above. The parties who comment on the issue here have no answer of any of these prior showings by the applicants.

WorldCom also wants agreements negotiated by either Bell Atlantic or GTE prior to the merger to apply automatically within the other’s pre-merger territory. WorldCom at 6. As was also demonstrated in prior filings, the Commission properly rejected a similar retroactive application of this condition to SBC in regard to terms that Ameritech had negotiated and agreed to before the merger. *See* Bell Atlantic/GTE Supp. Reply, App. C at 24-25. There, SBC was acquiring Ameritech, and the Commission found that SBC should not be bound by agreements that had been negotiated by the acquired company, Ameritech, at a time when SBC had no say over what terms were agreed to. The Bell Atlantic/GTE merger is a merger of equals – neither company will simply absorb the other – with a new company emerging. Applying the same principle as was followed in SBC to these very different circumstances, neither Bell Atlantic nor GTE should be bound by terms agreed to in one another’s regions at a time when they had no say over those terms. Application on only a going-forward basis will place the merged company “on notice as to which systems and procedures could become uniform across its region.” SBC/Ameritech Order at 492. There is no reason for a different result here, and WorldCom does not even try to provide one.

A group of carriers asks that the Commission require a response to section 252(i) requests within ten business days after receipt of the request. Allegiance et al. at 4-5. This proposal has no relevance whatever to this merger or any of the proposed conditions but instead goes to the general procedure for use in adopting terms from other agreements under section 251(i). That broader issue is already the subject of a petition filed by WorldCom, and general proceedings such as that are the appropriate forum for deciding such issues of general applicability.

Finally, Northpoint (at 2) again objects to the addition of performance measures as an exception to the interconnection agreement provisions that may be adopted in another state. That language was added simply to make explicit an implicit provision in the SBC/Ameritech conditions and avoid possible future disputes. As previously explained, many states have adopted, or are in the process of adopting, performance measures that are unique to the regulatory environment in that state, including the particular systems, processes and service provisioning systems already implemented in that state. *See Bell Atlantic/GTE Supp. Reply, App. C at 26.* The performance measures that are integral to these systems will simply have no applicability in states with different systems, and it would make no sense to require measures adopted in one state to apply automatically region-wide. NorthPoint does not even try to show otherwise, nor could it.

*Condition XI, Carrier-to-Carrier Promotions: Unbundled Loop Discount*

This provision, which gives other carriers promotional discounts on unbundled loops that are to be used to provide residential telephone services, is intended to encourage competing carriers to offer service to residential customers rather than just to businesses. It closely tracks similar promotional discounts in the SBC/Ameritech conditions that the Commission approved. Both AT&T and WorldCom object to this provision, AT&T claiming that it is unlawfully discriminatory, WorldCom that it is of little value. AT&T at 4-7, WorldCom at 7-9. If the intended recipients of the discounts have no desire to obtain the discounts, Bell Atlantic/GTE will eliminate them. However, there is no unreasonable discrimination here. The loop discounts are available to all carrier-customers that, under section 251, are eligible to subscribe to unbundled network elements and use the loops for their specified purpose – providing residential voice services.

In addition, even if the condition could otherwise be considered discriminatory – which it could not – by approving the promotion in the SBC/Ameritech Order the Commission has adopted promotional unbundled loop rates for residential voice use as a separate classification of service as permitted under section 201(b), the same subsection that gives the Commission authority to adopt rules for all other provisions of the Act.

In addition, the Commission has long recognized the lawfulness of similar promotional discounts. *See, e.g., Personal Communications Industry Association's Broadband Personal Communications Services*, 13 FCC Rcd 16857, 29 (1998) (“By now, there is a substantial body of precedent that promotional programs, volume discount and other arrangements may be reasonable and non-discriminatory”); *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 11 FCC Rcd 9564, 27 (1996) (temporary promotions are lawful “provided they are available to all similarly situated customers, regardless of their geographical location”); *Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd 5880, 129 (1991) (“individually negotiated contracts are not unreasonably discriminatory if their terms are made generally available to other similarly situated customers willing and able to meet the contract’s terms”). Even AT&T recently received Commission approval of its proposal to make its 800 service available at a discount to a small group of customers (former customers of certain other

AT&T services) for a promotional period. *See AT&T EasyReach 700 Service and AT&T 500 Personal Number Service*, NSD File Nos. W-P-D-439 and 440, DA 00-771, 2000 FCC LEXIS 1861 (rel. April 11, 2000).

Covad asks that the unbundled loops that receive promotional discounts not be restricted to those used to provide residential voice services but be extended to loops used for advanced services as well. But, as the Commission pointed out in adopting a similar SBC/Ameritech condition, “carrier-to-carrier promotions for *residential service* will spur other entities to enter these markets and establish a presence in residential markets that can be sustained after expiration of the promotional discounts.” SBC/Ameritech Order at 422 (emphasis added). Covad makes no attempt to show why the same logic applies to advanced services. And given the extensive deployment and promotion of advanced services by Covad and others, it is apparent that such services are already being offered extensively and that promotional discounts are unnecessary for their widespread deployment.

WorldCom, despite its claim that the promotional discounts provide little or no benefit, still wants them to be expanded to include non-recurring charges. WorldCom at 7-8. The scope of the promotional discounts proposed here is the same as the Commission approved in the SBC/Ameritech merger, however, where it found that the discounted recurring charges will help spur residential competition. There is simply no reasonable justification for extending still further the generous promotional discounts that Bell Atlantic/GTE have already proposed.

Finally, the joint carriers propose that the promotional discounts be made automatic, without an amendment to the interconnection agreements. Allegiance et al. at 6-7. The carriers ignore the fact that section 252 of the Act requires inter-carrier arrangements for unbundled network elements to be embodied in interconnection agreements, and this statutory requirement is reflected in the proposed condition.

#### *Condition XVI, Out-of-Territory Competitive Entry*

The revised out-of-region condition recognizes that Bell Atlantic and GTE have already invested considerable sums in providing services outside of their footprint, yet they still have proposed major investments in out-of-region competition with specific annual benchmarks. No party posed a substantive objection to this proposal and it should be adopted.<sup>11</sup>

---

<sup>11</sup> Only AT&T comments on this provision at all, and it merely repeats the same irrelevant argument about the scope of services provided by GTE Internetworking – now Genuity – that it made in its earlier comments and to which the applicants responded. *See* Bell Atlantic/GTE Supp. Reply at n.2.

### *Condition XXII, Independent Auditor*

WorldCom (at 5) asks for “more frequent audits” than those in the proposed conditions. The conditions here simply adopt the audit provisions to those in SBC/Ameritech, but with the addition of UNE Remand and Line Sharing, in recognition of orders the Commission has issued since the SBC/Ameritech merger was approved. Given the myriad of audits already provided in the proposed conditions, as well as those otherwise specified in the Act and the Commission’s rules, there will be at least one, and often several, audits being conducted at any one time. As a result, there will be no dearth of audit data to confirm that Bell Atlantic/GTE is meeting all applicable requirements, and more frequent audits will provide no additional relevant data.

### *Miscellaneous Claims*

Several parties raise issues that have no relevance to any of the merger conditions. Typically, these involve erroneous claims that the applicants are not living up to their legal obligations established elsewhere. The Commission has repeatedly held that these claims are not appropriately considered in the context of a merger proceeding, because the relevant inquiry in a merger proceeding is the changes between the pre-merger and post-merger markets. *See, e.g., Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee*, 12 FCC Rcd 19985, 157-59 (1997). It has also found that state commissions are well-equipped to resolve interconnection-related disputes. *See, e.g., Joint Reply of Bell Atlantic Corporation and GTE Corporation to Petitions To Deny and Comments*, CC Docket No. 98-184, Attachment K (filed Dec. 23, 1998) *quoting Applications of Pacific Telesis Group, Transferor, and SBC Communications, Inc., Transferor*, 12 FCC Rcd 2624, 38 (1997) (footnote omitted). Therefore, there is no justification for the parties raising them here or for the Commission to consider them. Nonetheless, Bell Atlantic/GTE will respond briefly to the allegations.

Cavalier Telephone, while supporting many of the proposed conditions as in the public interest, nonetheless opposes the merger based on allegations in a complaint it filed before the Virginia State Corporation Commission (“Virginia Commission”) in which it cites “performance problems” involving Bell Atlantic’s provision of certain services, including unbundled loops. Cavalier at 2. As Bell Atlantic has shown in filings before the Virginia Commission, most of Cavalier’s claims are unsupported, contain misrepresentations, and argue substantive issues that are pending – and as yet are unresolved – before the Virginia Commission (such as certain performance measures). In reality, Bell Atlantic has undertaken significant efforts to work with Cavalier to address jointly any problems they may have encountered in obtaining service and has fully complied with all requirements of the Act and the Commission’s rules.

SCC Communications, which describes itself as a provider of 911 services and information, contends that Bell Atlantic and GTE are not providing subscriber list information to SCC. Despite SCC’s contention, the policy of Bell Atlantic and GTE is to comply fully with all legal requirements and, in particular, to provide subscriber list information to emergency service support providers for appropriate uses. Both applicants are willing to provide SCC with the terms under which it can obtain that information.

Allegiance et al.'s (at 13-14) claim that GTE's loop provisioning statistics are "meaningless" is unfounded. GTE is providing monthly data to competitors for all states based on the performance measures developed in the California Commission's collaborative that included extensive participation by competing carriers. In addition to the actual results, GTE makes the raw data used to calculate the results available to individual carriers upon request. A third-party audit of this process is underway to ensure the data being collected adheres to the rules established by the collaborative. The statistics cited by GTE regarding loops provisioned solely for Mpower show that GTE is providing loops to Mpower within the same time frames as GTE provides loops for its own customers.<sup>12</sup> The statement that GTE is providing "a far better performance picture to the Commission than is actually the case" is undocumented, unfounded and completely untrue.

BlueStar's assertion that GTE has refused to provide DS1s as unbundled elements is misleading. Allegiance et al. at 16. BlueStar's interconnection agreement required GTE to provide 4-wire DS1 (digital) Loops/ISDN PRI, which do not include electronics, but BlueStar later claimed it wanted loops with electronics. GTE is currently providing BlueStar with DS1s with attached electronics while it negotiates the appropriate amendment to BlueStar's interconnection agreement. BlueStar's further claim that GTE rejects unbundled loop orders because of loop length without explanation (Allegiance et al. at 16) is also inaccurate. BlueStar has told GTE it will accept loops up to 21,000 feet. GTE mistakenly rejected 11 loop orders because the loops did not meet the GTE loop length standard, even though they met the BlueStar standard. This error has been corrected, and GTE is now providing BlueStar with loops up to 21,000 feet. Similarly, BlueStar's claim that GTE rejects orders because of "inadequacies of its address database" (Allegiance et al. at 16) is also incorrect. GTE's systems reject orders when the address entered by the ordering carrier is incorrect. Although GTE is continually working to improve its systems and processes to allow accurate processing of orders with incomplete or slightly inaccurate information, current order rejections are a result of address errors in the orders that GTE has received.

GTE has previously fully addressed Allegiance et al.'s claims (at 16-17) on the need for D4 channel banks to obtain unbundled loops where the end user is served through an integrated digital loop concentration (IDLC) device. *See Bell Atlantic/GTE Supp. Reply, App. E at 3.* GTE will begin providing access to subloop elements in compliance with the Commission's rules on May 17, 2000. Although this will eliminate the need for D4 channel banks in some cases, D4 channel banks will still be necessary for some types of services.

---

<sup>12</sup> Allegiance et al. again makes reference to some carrier's claim that provision of 201 unbundled loops was delayed, but it still fails to provide the name of the carrier, making it impossible for GTE to respond.

DataCo for purposes of section 3(1). On this issue, the ALI Principles explicitly disclaim the position that a stand-alone option is an equity interest.

(ii) Under Section 7.02(a) of the ALI Principles, the holder of an "equity security" has standing to bring a derivative suit. If AT&T is correct that under the ALI Principles a stand-alone option is an equity security (and therefore also an equity interest), then, tautologically, the holder of a stand-alone option must have standing to bring a derivative suit. In fact, the ALI Principles disclaim precisely this result. Paragraph c of the comment to section 7.02 states that "Section 7.02(a) takes no position on whether the holder of a warrant or right issued by the corporation and not attached to some other security should have standing to bring a derivative action." On this issue, state corporate law is clear – an option holder lacks an equity interest and therefore does not have standing to bring a derivative suit, and the ALI Principles decline to take a contrary position. Until exercised, NewCo's option adds no additional equity interest to NewCo's initial 9.5 percent interest in DataCo.

9. The American Law Institute's reluctance to treat stand-alone options as an equity interest, and thereby confer standing to bring a derivative suit on its holder, is consistent with the general structure of corporate law: only exercise of an option confers equity rights on its holder. Corporate fiduciary principles provide a compelling illustration. Directors owe equity holders a fiduciary duty. *Directors do not owe option holders a fiduciary duty.*<sup>2</sup> And that proposition brings us full circle, to the argument in

---

<sup>2</sup> See *Glinert v. Wickes Cos.*, 1990 WL 34703, at \*9 (Del.Ch. Mar. 27, 1990)("Under our law, the option feature of these instruments does not qualify for the protections that flow from a fiduciary duty."); *Powers v. British Vita, P.L.C.*, 969 F. Supp. 4, 6 (S.D.N.Y. 1997)("Clearly, any attempt to analogize options to stocks in order to suggest a fiduciary duty are to no avail."); *Simons v. Cogan*, 549 A.2d 300, 303 (Del. 1988)("[A] mere expectancy does not create a fiduciary duty."); *Starkman v. Warner Communications, Inc.*, 671 F. Supp. 297, 304 ("The [option] instrument stands alone, claiming no equity in the corporation, entitled to no vote, and with no fiduciary obligation of the management to the option holder's interest.").

my Initial Declaration: "[F]or corporate law purposes the boundary between an equity security and an option is quite explicit and sharp. Only the exercise of the option transmutes the holder's interest into an equity interest with corporate participation rights." Initial Declaration ¶16. And that proposition brings us full circle, to the argument in my Initial Declaration: "[F]or corporate law purposes the boundary between an equity security and an option is quite explicit and sharp. Only the exercise of the option transmutes the holder's interest into an equity interest with corporate participation rights." Initial Declaration ¶16.

10. Also in its May 5<sup>th</sup> Opposition, AT&T advances what appears to be a new argument for why an option is really an equity interest. Citing the article for which Merton Miller and Franco Modigliani were awarded the Nobel Prize in Economic Science,<sup>3</sup> AT&T asserts that "financial theory teaches that a firm's capital is in the form of either equity or debt." May 5<sup>th</sup> Opposition ¶ 2, p.21. The point, I suppose, is that an option must be one or the other; not being debt, it must be equity. While I am aware of no basis for AT&T's proposition that the issuance of an option or a warrant must be either debt or equity, Professors Miller's and Modigliani's seminal article certainly provides no support for it (or, indeed, even bears on the claim). That article advanced, what are called in financial economics, the "Irrelevancy Propositions" - in effect, that a firm's cost of capital is not affected by the mix of debt and equity in its capital structure and that the value of the firm is unaffected by whether the firm finances an investment with retained earnings or instead pays a dividend and finances the investment with debt. In other words, debt and equity are equivalent for valuation purposes. The FCC, of

---

<sup>3</sup> Merton Miller and Franco Modigliani, The Cost of Capital, Corporation Finance and the Theory of Investment, 48 Am. Econ. Rev. 261 (1958).