

maintain, upgrade or expand the collocated equipment. Instead, Covad has had to pay to train Bell Atlantic's technicians (or its vendors) on how to use Covad's equipment, and then depend entirely on Bell Atlantic to maintain and repair its service (also for a fee). In order to be able to expand services, Covad must either incur the expense of installing up front line card shelves it does not currently need, or submit a request to Bell Atlantic for what its calls an "augment" (which can take up to five months to be resolved) every time Covad wants to add capacity to its collocation.

95. In short, virtual collocation is a method by which a CLEC puts its proprietary technology and the quality of its service entirely in the hands of its competitor and pays for the privilege. Whichever prong of the Hobson's choice Covad chooses (staying out of the central office or agreeing to these terms), virtual collocation puts Covad at an enormous competitive disadvantage and affords Bell Atlantic significant competitive leverage.

96. Accordingly, the Telecom Act makes it the ILECs' duty to provide physical collocation to any CLEC who wants it unless the ILEC demonstrates to the satisfaction of the relevant state public utility commission that physical collocation is not practical for technical reasons or because of space limitations. See 47 U.S.C. § 251(c)(6). The Telecom Act permits virtual collocation only where the ILEC legitimately shows that physical collocation is not possible. Id. And it requires ILECs, like Bell Atlantic, to petition statute public utility commissions for exemption before they deny CLECs space for physical collocation.

97. Covad has applied for physical collocation at hundreds of central offices throughout the Bell Atlantic region. In response, Bell Atlantic has never claimed that physical collocation is technically unfeasible. But it has used an array of tactics to impede both the physical collocation and Covad's competition: false claims of "no space"; unjustified demands

for physical separation; zoo-like wire-mesh cages; unnecessary building additions; price gouging; poor quality provisioning; delay; and discriminatory demands for security measures.

A. False Claims of “No Space”

98. In numerous instances, Bell Atlantic’s response to a request for collocation was simple: Denied. Routinely, Bell Atlantic has denied collocation without petitioning for and obtaining from the state public utility commission an exemption from providing physical collocation, or in other instances petitioning only after a delay of weeks or even months.

99. Also routinely, Bell Atlantic’s claims of “no space” have been exaggerated or flat out false. Bell Atlantic requires that a CLEC pay Bell Atlantic an application fee when requesting collocation. Supposedly, this fee covers the cost Bell Atlantic incurs to conduct a site survey at the central office to determine whether space is available for physical collocation and how much the physical collocation arrangement would cost. In fact, Bell Atlantic typically has pocketed the fee, without conducting the survey. Instead, Bell Atlantic personnel receiving collocation applications have relied on their memory of the building and possibly on outdated floor plans to determine space availability.

100. When Bell Atlantic has petitioned the appropriate state public utility commission for a “no space” exemption from its physical collocation requirement, Bell Atlantic has repeatedly misrepresented both to Covad and the state commissions that the central offices lacked space, even though Bell Atlantic knew that space was available. For example, for one central office in the District of Columbia metropolitan area, Bell Atlantic told the state commission that the central office was a two-story building with very little unused, conditioned space, when in fact the office had four floors and plenty of unused, conditioned space for physical collocation.

101. Bell Atlantic also has sought to conceal the actual space available. After Bell Atlantic denied Covad's physical collocation applications, Covad asked to see the central offices. Bell Atlantic refused. Then, after state regulators insisted that Bell Atlantic allow Covad to inspect certain central offices, Bell Atlantic forced Covad to sign nondisclosure agreements as a prerequisite to viewing those facilities. Through these nondisclosure agreements, Bell Atlantic sought to prevent Covad from revealing the specifics of those central office tours or even the relevant floor plans to the Court, the FCC or other authority.

102. In other instances, when pressed for information, Bell Atlantic suddenly has "found" space in what it first claimed were "no space" offices or proposed "alternative" arrangements that involved utilizing the very same space that Bell Atlantic originally claimed did not exist. Bell Atlantic also has used the false "no space" claim to force Covad into the Hobson's choice of requesting virtual collocation – an arrangement that, in fact, puts the same equipment in the same space where it could have been put in the first place through "cageless" physical collocation.

103. Compounding Covad's competitive injury from these "no space" claims, many alleged "no space" central offices are in critical market areas. For example, in New York the unavailable offices originally were picked to be Covad's "hub" sites because they are in key geographic locations within Covad's network. In the Washington, D.C. metropolitan area, the Arlington, McLean, Herndon and Reston central offices, which are located in such densely populated business centers as Crystal City, Tyson's Corner, and the Dulles Corridor, are critical to Covad's business. In Pennsylvania, Wayne, Conshohocken, Bryn Mawr, King of Prussia and Landsdale are business centers with large communities of small businesses that Covad wants to reach.

104. Meanwhile, Bell Atlantic installed its own DSL equipment and has rolled out its own DSL service in a number of these “no space” central offices – thus, miraculously finding and filling the space that Bell Atlantic has denied Covad.

B. Price Gouging

1. Requiring Unreasonable Build-Outs to Raise the Barrier to Entry

105. Even where Bell Atlantic has not misrepresented the physical dimensions of the central offices, it has misrepresented and exaggerated the physical space required for collocation. Bell Atlantic has used Covad’s need for the collocation as an excuse for demanding the construction and conditioning of separate spaces, separate common rooms, zoo-like physical wire-mesh cages and other “build-outs,” such as separate corridors, stairways and entrances. Bell Atlantic even required Covad to pay for separate bathrooms if Covad wanted to have them available for its employees. The utter waste of these “build-outs” is highlighted by a New Jersey central office where Bell Atlantic did not want Covad to use the elevator because of purported security concerns. After Covad was charged to build an outside stairway to the second floor at enormous expense, Bell Atlantic agreed to let Covad use the elevator in this central office, rendering the stairway completely useless.

106. Bell Atlantic has never suggested that any technological concern motivates its claimed need for cages, separate space, separate entrances, separate walkways and separate bathrooms. Instead, Bell Atlantic has used the pretext that preservation of network security requires the physical separation of CLEC personnel from any Bell Atlantic equipment.

107. These purported security concerns, however, were neither reasonable nor reasonably held. In fact, Covad has as much incentive as Bell Atlantic to protect the integrity of the local telephone network because Covad and Bell Atlantic depend on the same network elements (like local loops and transport). Further, Covad employees have extensive experience

working in telecommunications facilities, particularly central offices. Indeed, many Covad employees formerly worked for Bell Atlantic or other Bell Operating Companies.

108. In addition, Bell Atlantic's inconsistent security measures for its own employees and contractors belie the professed security concerns. Bell Atlantic has authorized literally dozens of independent contractors, such as janitorial services, to enter and work in the central offices. Bell Atlantic permits these contractors and vendors to use existing bathrooms, stairways and other parts of its premises with no noticeable security measures besides a swipe card system. Although Bell Atlantic ostensibly requires background checks for contractors and vendors, Bell Atlantic rarely exercises that right. Thus, even though Bell Atlantic manages access to central offices for dozens of contractors seemingly without incident, Bell Atlantic nonetheless has claimed that physical collocation without complete segregation of CLEC employees and equipment (i.e., "cageless" collocation) poses an unreasonable security risk.

109. Not surprisingly, Bell Atlantic's insistence on unnecessary requirements for physical collocation has drastically inflated Covad's cost to collocate its equipment. Until the FCC ordered Bell Atlantic and other telephone companies to stop requiring these wasteful build-outs, the cost of physical collocation was the single largest one-time, sole-source cost that Covad would incur. It was not uncommon for a simple 10' x 10' collocation cage to cost more than the sophisticated equipment that Covad placed in the cage.

110. For example, for a single central office among the hundreds in which Covad needed to collocate in order to compete, Bell Atlantic quoted Covad physical collocation prices as high as \$412,226 in Virginia, \$368,141 and \$252,300 in New Jersey, \$115,900 in Pennsylvania, \$115,543 in Delaware and \$154,711 in Maryland. These numbers are astronomical compared to the \$10,000 that Covad estimates as the proper cost for cageless

physical collocation. Moreover, Bell Atlantic's price quotes do not include the cost of the separate bathroom construction that Bell Atlantic required if Covad's employees were to have access to such facilities.

111. These numbers also are astronomical compared to average costs for physical collocation in other parts of the Bell Atlantic region, such as Massachusetts (\$35,000) and New York (\$43,814), where the state commissions have supervised more closely Bell Atlantic's collocation practices. In Massachusetts and New Hampshire, the first collocater may be assessed for additional construction only if it is needed. In New York, a collocater will be required to pay for only the costs of space it needs for collocation.

112. In Bell Atlantic South, however, until mid-1999, Bell Atlantic required the first collocater, which was in many instances Covad, to pay 100% of these exorbitant, up-front fees – with the hope of receiving money back only if and when other CLECs arrive. And Bell Atlantic required Covad to pay 50%, in advance, before any work began.

113. By simple multiplication, Bell Atlantic knew that if CLECs needed to face large up-front costs in each of the hundreds of central offices in which they needed to collocate, the cost of entry would be prohibitive. When Bell Atlantic imposed these costs, it neither believed nor had any reason to believe that these costs were reasonable or that they ultimately would be found permissible. (In mid-1999, under pressure from several state commissions and after the FCC prohibited ILECs from charging the first collocater for all of the build-out costs,³ Bell Atlantic finally implemented flat rates in each state in the Bell Atlantic region.)

114. But Bell Atlantic also knew that by requiring these build-outs and demanding the coincident costs, Bell Atlantic could delay competition.

2. Unsupportable Price Quotes

115. As if the build-out requirements did not impose a large enough barrier to entry, Bell Atlantic then quoted excessive prices for the work itself. Some of these prices were so absurd that Bell Atlantic has quoted Covad \$4,500 to place tape and paint lines on a floor for a 10' x 10' space.

116. Nor did it help Covad to ask for back-up documentation of these costs. Even though Bell Atlantic is required to charge Covad for these special construction projects on a "time and materials" basis, under Bell Atlantic's so-called "competitive bid process," Bell Atlantic does not receive from its vendors itemized accounts of work performed, material used or cost breakdown. Accordingly, Bell Atlantic did not provide the requisite time and materials information for these jobs, such as detailed contractors' quotes, specifications or post-construction invoices, that would substantiate its excessive price quotes.

117. Indeed, when Covad or another CLEC has challenged particularly blatant overcharges, Bell Atlantic in many cases reduced the alleged cost, sometimes by hundreds of thousands of dollars.

3. Fraudulent Overbilling of Multiple Collocators

118. As described more fully in paragraphs 250-258 below, Bell Atlantic had not only required the first CLEC to pay up front the total alleged cost of the collocation, it has often quoted multiple CLECs, including Covad, the full alleged cost of construction and collected the purported final costs several times over.

Continued from previous page

³ See Collocation Order, ¶ 51.

4. Power Overcharges

119. In addition to overcharging for the build-out, Bell Atlantic overcharges Covad for power to its collocation sites. In Massachusetts and New York, for example, Bell Atlantic charges Covad for three times the power the equipment can ever possibly use.

120. Covad installs at least one Digital Subscriber Line Access Multiplexer (“DSLAM”) in each central office where collocated. A DSLAM is a device that is used to direct a digital signal along the appropriate lines to their destination.

121. For each DSLAM, Covad orders a 40-amp power feed. In response to these orders, Bell Atlantic should provide: (1) a live power feed to the DSLAM, anchored by a fuse with capacity one and a half times the drain of 40 amps (excess capacity or “headroom”); and (2) a back-up power feed to the DSLAM, anchored by a fuse with the same headroom. The DSLAM is designed so that it may draw power from one or both feeds, but never more than 40 amps. If one feed fails, the other power feed will supply the power – again, not more than 40 amps.

122. In mid-1999, Covad received the first set of Massachusetts invoices for recurring power charges. Bell Atlantic’s Massachusetts tariff states that the charge for power is \$158 per amp per year, which means that the correct annual charge for the 40-amp circuit should be \$6,320. Bell Atlantic’s invoices, however, charge Covad for 120 amps of power – 3 times the proper charge. When Covad questioned the overcharge, Bell Atlantic explained that it had installed two 60-amp fuses (for the 40-amp feed) and then billed for both feeds for a total of 120 amps. The difference between Bell Atlantic’s charge and the correct charge is \$12,640 per power feed per year. With 61 collocation sites in Massachusetts alone, Covad’s costs from Bell Atlantic’s power overcharge total nearly \$800,000.

123. Bell Atlantic subsequently delivered invoices that impose similar overcharges for Covad's collocation sites in New York. And Bell Atlantic has informed Covad that the triple-billing scheme is going to be standard for all parts of Bell Atlantic's region.

C. Unreasonable Delay in Turning Over Physical Collocation Spaces

124. Exacerbating the delay caused by unnecessary build-outs and misrepresentations about space, Bell Atlantic routinely has failed to deliver a usable collocation space within the required interval. Covad must either accept the spaces in poor condition or wait for Bell Atlantic to fix the problems. These poor-quality collocation spaces frequently have not met Bell Atlantic's requirements, let alone Covad's needs, and have delayed Covad's ability to implement its DSL service in a particular central office. Nonetheless, Bell Atlantic considers the space turnover to be "on time" even when the space is substandard and even though Bell Atlantic may need a number of additional attempts before turning over an acceptable space.

II. THE ODYSSEY OF OBTAINING LOOPS AND DEALING WITH OSS

A. Refusals To Check Out Loops or To Provide Loop Information

125. Once Covad has collocated in a central office and has begun ordering loops, Bell Atlantic has responded with another series of impediments to competition. To begin with, Bell Atlantic has withheld information about the loops that Covad orders. Bell Atlantic, like all ILECs, regularly maintains, upgrades and repairs its outside plant facilities, like loops, to provide both voice and data services. This process is called "loop conditioning." By virtue of its ownership and control over the telecommunications network, Bell Atlantic has accumulated extensive information on its loop inventory.

126. Access to detailed loop information ("loop pre-qualification") is a competitive necessity – it allows Covad to determine what, if any, type of DSL service a loop is capable of

supporting and, therefore, what, if any, service Covad will be able to offer to its customers at the outset of the sale or in the preorder stage of ordering a loop.

127. Bell Atlantic, however, has used loop pre-qualification as a way of delaying competition by tying its willingness to provide information about loops to its own ability to provide DSL services. Initially, when Bell Atlantic was not offering DSL services, it refused to provide Covad any loop information. Then, Bell Atlantic would provide information, but only in the locations where it was, itself, ready to provide DSL-type services.

128. Moreover, even where Bell Atlantic was deploying its own DSL service, Bell Atlantic would only tell Covad about loop length. Bell Atlantic would not disclose the existence of other conditions (such as load coils or bridged taps) that could affect DSL transmission over the loop. Even though automated loop information already was available to Bell Atlantic throughout its region, Bell Atlantic insisted on creating from scratch a new database of “DSL-capable” loops based entirely on what would assist sales of its own Bell Atlantic’s limited DSL offering.

129. Bell Atlantic subsequently claimed that, for loops in locations where Bell Atlantic is not providing DSL, Bell Atlantic would look up the pertinent information manually and provide it to Covad on a loop-by-loop basis. This retrograde, manual process is time-consuming and ineffective for handling the volume of loop orders that Covad places with Bell Atlantic.

130. By withholding this information, Bell Atlantic delayed competition until it was ready to offer a competing product. Under this scheme, Covad generally could not know ahead of time in what areas DSL service could be up and running without any need to remove analog load coils or excess bridged taps. Nor could Covad know specifically whether a given service would be technologically feasible until testing the loop itself on the day of installation.

Accordingly, Covad could not guarantee its customers in advance what speed service they would get, or when.

B. Failure to Provide Adequate Operations Support Systems

131. To obtain entrance to Bell Atlantic's OSS gateway, Covad must deal with Bell Atlantic's Graphic User Interface ("GUI"). Bell Atlantic's GUI, however, does not allow orders to flow-through automatically from beginning (ordering) to end (provisioning). Covad must provide various information manually. For example, although Bell Atlantic has automated information on end-users' addresses, its GUI does not. Covad must type customer address information manually and get the information exactly as it already exists in Bell Atlantic's system. Then, Bell Atlantic has set up the system so that once Covad sends the order to Bell Atlantic through the GUI, Bell Atlantic representatives then have to retype each order into another system (called the Service Order Processor) to move the order to provisioning. Then, the order is typed at least a third time into still another system to route it to the appropriate locations for actual installation. Naturally, if anyone mistypes the order, it causes delay.

132. The GUI, however, then has a particularly cumbersome means of identifying errors. If there is at least one error, the GUI will return the order to Covad (a process called a query) and will identify the first error on the order. If there are two errors, Covad will not know about the second one until it corrects the error, re-submits the order and then has it returned again. Three errors, three resubmissions, etc. Moreover, the queries are often so unclear or general that Covad cannot reasonably understand what error needs to be corrected. For example, the query may say that an order has an address error, but not indicate why the address is incorrect. The solution – trial and error – delays the process still further.

133. On top of these problems, the GUI is unstable and unable to handle even a minimal amount of volumes. GUI outages occur frequently and at inopportune times. The outages cause Covad to lose orders in the system, and create long backlogs.

134. Once connected to Bell Atlantic's computer interfaces, Covad can send Bell Atlantic a loop order – if, among other things, Covad has obtained from Bell Atlantic the necessary ordering codes. Bell Atlantic offers CLECs a number of loop products depending on the type of services a CLEC intends to provide over the loop, irrespective of whether there is any difference in the loop itself. Each loop product has a specific ordering code that must be included on the loop order. If the information is not correct, Bell Atlantic will reject Covad's loop orders. And in the Bell Atlantic North, each of Bell Atlantic's scores of central offices, had a different set of codes.

135. Covad has been negotiating for two years with Bell Atlantic in an effort to improve this system. And Bell Atlantic has a superior ordering system for CLECs called "EDI." But Bell Atlantic has delayed Covad's use of this system. In the meantime, Covad's ability to compete has depended on using the inferior system Bell Atlantic has put in place.

C. Unreasonable Delay in Providing Loops for Covad's End-Users

136. The Telecom Act and applicable FCC regulations require Bell Atlantic to supply loops to CLECs on "just, reasonable, and nondiscriminatory" terms. See 47 U.S.C. 251(c)(3) (emphasis added). Accordingly, Bell Atlantic is legally obligated to provide FOC (firm order commitment) dates to CLECs within the same interval that Bell Atlantic provides installation dates to the people who buy its DSL service. Because Bell Atlantic gives installation dates to its retail DSL and voice customers instantly, Bell Atlantic should be able to tell Covad instantly – or certainly within a few hours – when the loop will be installed in good working order. Generally, Bell Atlantic will have that loop installed within 10 to 12 days from the time it is first ordered.

137. Bell Atlantic's delivery system to Covad, however, works differently. In an October 1998 meeting in Silver Spring, Maryland with Covad representatives, Bell Atlantic announced that Bell Atlantic would provide FOC dates within six business days of receiving a loop request from Covad. It often takes six more days to obtain a loop – more if the loop requires conditioning – and still additional time to complete installation. Accordingly, it generally takes Bell Atlantic significantly longer to install a loop needed by a Covad customer than it does to install one needed by a Bell Atlantic Internet or network access customer.

138. Having announced a discriminatory rule, Bell Atlantic did not follow it. Once Covad began to submit loop requests, Bell Atlantic generally took between six and ten business days to provide FOC dates.

139. Also, having a date on which Bell Atlantic has committed to install a working loop, however, is not the same as getting the loop installed. Despite numerous efforts by Covad to obtain FOC dates for its end-users, Bell Atlantic failed to meet deadlines. Bell Atlantic failed to adopt any system that was likely to meet these deadlines. Bell Atlantic even failed to adopt a system that would allow it to know when it was not meeting deadlines. Indeed, Bell Atlantic's system was so haphazard and customer "unfriendly" that it assigned a single representative to handle large numbers of Covad loop orders and simply let those orders accumulate whenever that representative was out of the office or on vacation.

140. In the spring of 1999, Bell Atlantic turned the situation from bad to critical. In Bell Atlantic South, in or about mid-May 1999, Bell Atlantic virtually stopped providing Covad with FOC dates. This breach of Bell Atlantic's legal duties caused such a severe backlog that by late June, scores of Covad's new loop orders remained without FOC dates – even after Covad's efforts led Bell Atlantic to resume issuing at least some dates. In Bell Atlantic North, beginning

in or about April 1999, Bell Atlantic sharply curtailed its responses to Covad's loop requests. By May 14, 1999, more than two hundred loop requests were backlogged without a response from Bell Atlantic. Meanwhile, customer complaints skyrocketed and Covad's reputation and customer goodwill suffered.

141. In or about the summer of 1999, as Bell Atlantic was pressing its efforts to have the FCC authorize its provision of long-distance service to customers in New York, Bell Atlantic started promising FOC dates within 72 hours – within 24 hours if the loop happened to be connected to a central office where Bell Atlantic was providing its own DSL service and thus had some loop qualification information available on Bell Atlantic's new database of "DSL-capable" loops. This announcement, however, did not improve Bell Atlantic's ability to deliver firm order commitment dates. After committing to 72 or 24 hours, Bell Atlantic started giving Covad a FOC date without first determining that a working loop was available. Bell Atlantic then would change the FOC date without calling Covad, or the FOC date simply would come and go only for Covad to find later that no loop was available.

142. Often, Bell Atlantic technicians failed to show up at the end-user premises on the FOC date. When Bell Atlantic finally would send technicians to install the loops, the technicians frequently did not have the proper equipment or training to do the job. This has necessitated second and third service calls, causing customer and end-user frustration.

143. In cases involving apartment and office buildings, Bell Atlantic frequently has installed a loop without identifying the particular loop installed, leaving Covad unaware of the location of the loop that will carry Covad's services to the end-user. In still other cases, Bell Atlantic has installed loops so poor in quality that Covad could not use them. This has forced Covad to request yet another loop from Bell Atlantic or to request repair of the assigned loop.

144. Bell Atlantic technicians have also often failed to complete the central office wiring necessary to connect the loop to Covad's equipment.

145. These problems have the effect of a competitive whipsaw. Because it is Covad that must go back to the customer and explain that the loop does not exist or could not be installed or that it was not installed, it is Covad that loses business and suffers damage to its reputation and goodwill. Indeed, on some occasions, Bell Atlantic not only has profited from failing to provide service to Covad, but has capitalized on it – informing end-users that Covad cannot provide reliable or timely service and urging the customers to use Bell Atlantic because then the service would arrive.'

D. Manipulation of Loop Cost

146. In 1995, prior to passage of the Telecom Act, Bell Atlantic told the FCC that the costs of Basic Loops (used for voice services) were identical to the costs of loops used for ISDN service. NYNEX, then an independent ILEC and now part of Bell Atlantic, told the FCC that ISDN Loops actually cost less than loops used for voice service.

147. After passage of the Telecom Act, however, Bell Atlantic submitted set monthly rates for ISDN Loops to the state PUCs that were approximately double the price of Basic Loops. Then, when Bell Atlantic began offering loops identified as being for DSL services ("ADSL Loops"), Bell Atlantic used ISDN loop rates as the interim rates.

148. Even though Bell Atlantic has charged CLECs twice as much for an ISDN or ADSL Loop than for a Basic Loop, in the case of shorter loops, they all should be identical. But because Bell Atlantic also refused to provide Covad the information that would allow Covad to determine whether it could use a Basic Loop instead of the more expensive loop alternatives for an end-user, Bell Atlantic forced Covad to order the more expensive ISDN or ADSL Loops, the price of which Bell Atlantic has inflated.

149. Worse, as described in more detail below, Bell Atlantic refused to allow Covad to provide ADSL services over existing loops carrying analog voice services for Bell Atlantic's voice customers, even though Bell Atlantic provides its own DSL services in this manner, to reduce its own cost and to increase its availability of loops. Thus, Covad is forced to order, and pay for, a different, separate loop. That separate line typically must be an ISDN or ADSL Loop, again, at an artificially-inflated price.

E. Refusal To Provide Long Loops

150. Digital signals degrade over distances. When a copper loop is longer than 18,000 feet, the signal needs assistance to make its way across the length of the loop. In this case, a device called a "repeater" can be installed on the loop to boost the voltage of the digital signal or to regenerate the transmission across the length of the loop. With a repeater installed, Covad can provide "IDSL," a form of DSL service over a long loop. Bell Atlantic does not provide this service over long loops. The digital service Bell Atlantic provides over long loops is ISDN – a slower dial-up service.

151. There is no technical obstacle to using a repeater. Bell Atlantic routinely uses repeaters to enhance its own voice and digital services. But when it comes to permitting Covad to provide a competing service, Bell Atlantic has used the need for repeaters as another opportunity to impede competition. When Covad first began ordering loops in Massachusetts, New York and in the District of Columbia metropolitan area, Bell Atlantic refused, from time to time and whenever it chose, to provide long loops to Covad. The original stated rationale for Bell Atlantic's refusal to provide long loops was that Bell Atlantic "didn't have to do it."

152. Even after abandoning this rationale in the face of intense regulatory scrutiny, Bell Atlantic still rejected many long loop orders without explanation or failed to deliver promised long loops. To date, Bell Atlantic has rejected over 100 long loop orders, seriously

damaging Covad's market entry and reputation. These rejections have precluded end-users unfortunate enough to live more than 18,000 feet from a Bell Atlantic central office from obtaining Covad's IDSL service.

153. Moreover, Bell Atlantic's long loops policy was irrational. Between November 1998 and January 1999, Bell Atlantic refused generally to provide long loops in Massachusetts, but sometimes accepted long loops orders in Massachusetts anyway and regularly accepted long loop orders in the District of Columbia metropolitan area.

154. Then, in February 1999, Bell Atlantic began to reject long loop orders in the District of Columbia area, but one day later, agreed in Massachusetts to provide 150 long loops for one of Covad's major high-technology customers.

155. Later, Covad learned that many of the long loop rejections in the District of Columbia area were not even long loops. Bell Atlantic informed Covad's Director of Customer Support for the Mid-Atlantic Region that these loops could be provisioned immediately and that there had been no reason for the order rejects because nothing needed to be done to the loops to make them DSL-capable.

156. As with the general loop issues, Bell Atlantic's problem was not technology but competition. When Bell Atlantic launched its Infospeed DSL service in the District of Columbia metropolitan area, Bell Atlantic did not provide service to end-users located more than 12,000 feet from a central office. Covad, however, has offered several types of DSL service for end-users located up to 18,000 feet from their serving central offices. Covad's IDSL service, which is offered in the District of Columbia metropolitan area, can be provided to end-users located up to at least 40,000 feet from the central offices on a straight copper loop with the use of repeaters.

157. By refusing to provision long loops, Bell Atlantic has prevented Covad, which otherwise could provide the service, from providing IDSL service to those end-users. The result is that consumers lose the opportunity to choose Covad's IDSL service, Covad loses potential customers and Bell Atlantic keeps a competitor from attracting customers that Bell Atlantic currently serves only through its older dial-up services: POTS or ISDN. Meanwhile, Covad was forced to cancel hundreds of long loop orders and tell its customers that they could not receive any DSL service.

F. Price Gouging and Price Discrimination on Long Loop Orders

158. In Massachusetts, Bell Atlantic proposed that Covad pay a \$2,238.44 non-recurring charge per long loop as the price for Bell Atlantic's agreement to provide the 150 long loops for Covad's high technology customer. Multiplied by the number of loops Covad needed for this customer, this one-time charge would result in a cost of \$335,760, not counting Bell Atlantic's additional recurring fees.

159. Bell Atlantic since has rolled out prices for long loops in states other than Massachusetts. For example, in New York, Bell Atlantic proposed charging over \$2,600 for certain long loops. The New York Public Service Commission, finding Bell Atlantic's proposed rates to be unsupported, slashed them by 70% See Opinion and Order Concerning DSL Charges, Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements, Op. No. 99-12, Case 98-C-1357, 1999 WL 1427420 (NYPSC Dec. 17, 1999).

160. The additional charge is a form of double-counting. Bell Atlantic set general loop rates to account for the costs it would incur for providing long and short loops. By refusing to deliver the long loop or refusing to do so unless it receives a special charge Bell Atlantic is seeking to exact a unjustifiable premium.

161. Bell Atlantic's proposed non-recurring charge is also discriminatory. For example, Bell Atlantic offers "ISDN Anywhere" service to all its customers, including customers located more than 18,000 feet from a central office. According to its own promotional materials, Bell Atlantic will charge extra for long loops only in "a few instances." In fact, a Covad employee obtained a 45,000-foot loop from Bell Atlantic for "ISDN Anywhere" at no extra charge. Yet, Bell Atlantic has proposed to charge Covad automatically the \$2,238.44 non-recurring fee (in Massachusetts) for any copper loop over 18,000 feet.

162. The loop that Bell Atlantic uses for its ISDN Anywhere service is identical to the loop that Covad has used for its DSL service.

G. Refusal To Provide Copper Loops for Covad End-Users

163. In instances where Bell Atlantic has installed a Digital Loop Carrier system, the type of equipment it uses for that system limits the transmission of digital signals. Although Covad is capable of providing DSL service where there are DLCs, Bell Atlantic's choice of equipment currently limits Covad to providing only IDSL, its slowest speed of DSL service.

164. One way that Covad can provide higher speed DSL services to end-users served by a DLC is if Bell Atlantic permits Covad to make use of a copper loop between the central office and the end-user's premises. When ILECs deploy DLC, they typically leave in place the copper wire that runs along-side the fiber they install for the DLC.

165. Until mid-1999, however, Bell Atlantic had a blanket policy of refusing to allow Covad to use spare copper loops to provide DSL service to Covad customers and end-users serviced by DLC.

166. As with its policy towards long loops, however, Bell Atlantic's policy towards spare copper was uneven. In New York and parts of the District of Columbia metropolitan area, for example, some Covad end-users were denied copper loops, while others living in the same or

adjoining buildings had already been assigned them. In other instances, end users who would have used Covad's services, suddenly managed to obtain the needed spare copper loop when they called to order services from Bell Atlantic.

167. Then, in mid-1999, Bell Atlantic proposed to charge more than \$400 per loop to guarantee copper. Then Bell Atlantic withdrew the charge. Bell Atlantic also began offering – many months after Covad began ordering loops for its DSL service – an “ADSL-capable” loop that supposedly guarantees a copper loop. Even now that Covad has begun ordering the ADSL-capable loop, however, Covad continues to lose end-users when Bell Atlantic moves the end-user from copper to DLC-fed loops (with no prior notice to Covad or the end-user) and then claims that there is no more copper available.

H. Refusal to Provide Covad Access to Remote Terminals

168. Another way Covad can provide higher speed DSL services to end-users serviced by a DLC is by allowing Covad to install DSL equipment in the remote terminal. For some types of DLC, Covad either may collocate equipment at the remote terminal or have Covad or Bell Atlantic install a “line card” with the capability to enable Covad to provide higher-than-IDSLS speed service to end users served by some types of DLC.

169. As early as 1998, Covad began asking Bell Atlantic for access to remote terminals, and offering practical ways of allowing consumers on Bell Atlantic's DLC to receive higher speeds of Internet and network access. But Bell Atlantic refused. In November 1999, the FCC ordered Bell Atlantic and other ILECs to make available the copper portion of the loop between the end users' premises and the remote terminal or DLC. Third Report and Order and Fourth Further Notice of Proposed Rulemaking, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 99-238, ¶¶ 205, 217-18 (Nov. 5, 1999). It was not until May 2000 that Bell Atlantic finally offered

CLECs any way to access remote terminals, and even today Bell Atlantic refuses to consider alternatives that are less expensive and more practical.

170. This long delay is particularly significant because, to this day, Bell Atlantic does not provide its own DSL offerings in remote terminals. By delaying Covad, Bell Atlantic has, once again, prevented a competitor from offering a competing technology..

I. Discriminatory Treatment of Covad's Loop Orders

171. When Bell Atlantic deals with its own customers for Internet or network access, it has a defined process for addressing "no facilities" issues (that is, no loops). Bell Atlantic continually upgrades, enhances and replenishes its loops supplies in the ordinary course of its own business to provide its competing services to its customers. Bell Atlantic engineering commits to service its customer orders within 30 days

172. In dealing with Covad, Bell Atlantic had a very different procedure. Covad attempted to work with Bell Atlantic to establish a regular process for handling "no facilities" orders, such as orders for end-users serviced by a DLC. When Covad is informed that "no facilities" exist to service an order, Bell Atlantic instructs Covad to cancel the order. If Covad instead attempts to have Bell Atlantic install facilities, Bell Atlantic will not issue a firm order commitment date. The order either is cancelled unilaterally by Bell Atlantic or does not get attention until Covad "escalates" the order to Bell Atlantic's senior management.

173. For its Internet or network access customers, Bell Atlantic developed a defined process to address inoperable or defective loops. Bell Atlantic's "facility management" program tests lines to see whether they are working and in the correct status. If a significant number of lines are defective, this program attempts to identify the problem and determine the feasibility of correcting it.

174. Up until the end of 1999, however, Bell Atlantic had no defined process for fixing these problems with Covad, and to this day the process remains incoherent and spotty.

III. THE EFFORT TO OBTAIN TRANSPORT

A. Interoffice Transport (“IOF”)

175. Historically, Bell Atlantic has not permitted Covad to order transport until Bell Atlantic has delivered an operational collocation space and Covad has installed its equipment. Moreover, once Covad finally is allowed to order transport, Bell Atlantic has been persistently late in filling those orders. Then, Bell Atlantic often fails to test IOF circuits to ensure that they are operable before turning them over to Covad, leaving Covad with facilities that do not work and causing Covad additional delay.

176. Thus, the delays surrounding interoffice transport compound the already serious delays occasioned by Bell Atlantic’s collocation practices.

B. Customer Circuits

177. Covad also has experienced delays caused by Bell Atlantic in the provisioning of “customer circuits” – the digital transmission facilities that connect Covad’s network to its customers. Bell Atlantic has failed to provide Covad with the necessary number of transport customer circuits and has failed to provide these circuits on time. These delays have likewise frustrated Covad’s ability to provide its DSL service to its customers.

IV. THE DSL PRICE SQUEEZE AND BELL ATLANTIC’S REFUSAL TO LINE SHARE

178. Bell Atlantic has offered and re-sold its DSL services to ISP customers at a monthly price that is very close to, and in some cases less than, the monthly cost Bell Atlantic charges Covad and other wholesale customers for unbundled loops. If Covad reduced its DSL prices to match this price, Covad might or might not recover the cost of the unbundled loop, but

would recover virtually none of the other costs of providing DSL services, such as the exorbitant nonrecurring conditioning costs and the costs of collocation, transport, order administration, billing, sales, marketing and corporate overhead.

179. Bell Atlantic achieves this discriminatory pricing by allocating a negligible or zero cost to the loops over which it provides its DSL services and recovering virtually all – if not all – of the cost of the loops from its local analog voice services. Bell Atlantic can achieve this by providing DSL services over the same telephone lines used by its customers for local analog voice service.

180. It is technically feasible – in fact, easy – to provide ADSL services and analog voice services over the same line for three reasons:

- Local loops are capable of carrying signals over a broad frequency range. That frequency range is commonly called the “spectrum.”
- Analog voice signals occupy a completely different (and lower) portion of the frequency spectrum than do digital signals. Consequently, analog voice communications and digital signals can coexist simultaneously on the same voice line, without compromising the quality of either service.
- When analog voice signals and digital signals share the same loop, they are separated at the central office by standard “splitting” equipment that sends the voice signal to Bell Atlantic’s traditional switched voice network and sends the digital signal on to the relevant ISP or other computer network.

Indeed, Bell Atlantic has been offering DSL over an existing voice line since it first launched its own DSL service in 1998.

181. For years, however, Bell Atlantic refused to let Covad do the same. Instead of permitting Covad to use the existing voice line to provide digital service, Bell Atlantic required Covad to order and have a second line installed into the home or business that Covad wished to serve.

182. Bell Atlantic's failure to permit competitors to use existing voice lines for digital services in the same way that Bell Atlantic used them itself allowed only Bell Atlantic to advertise and provision DSL service as an "add on" to end-users' existing telephone phone service. Bell Atlantic – and only Bell Atlantic – could add DSL to an end-user's telephone service as easily as call-waiting and voicemail.

183. Bell Atlantic's manipulation of loop prices and costs by itself has provided Bell Atlantic an unfair advantage, wholly unrelated to legitimate economic factors. If Bell Atlantic had charged itself the same wholesale price for loops, Bell Atlantic could not make a profit from its DSL operation at current prices. Conversely, if Bell Atlantic's wholesale and retail costs were fully allocated, the wholesale profit margin would be significantly greater than its retail profit margin.

184. Moreover, even if money were no object, the failure to permit competitors to use existing voice lines for digital services in the same way that Bell Atlantic used them itself operated to freeze competitors out of many premises. Where, for example, a residence is only served by one telephone line, or where consumers have exhausted the telephone lines that serve them by installing multiple phone, modem and fax lines, end users have no additional facilities available that a CLEC could use to provide service. Under Bell Atlantic's scheme, the only company able to provide DSL service to these customers would be Bell Atlantic, through its single-line offering.

185. Bell Atlantic did not and reasonably could not believe that it had any right to manipulate costs or services in this way. Indeed, on December 9, 1999, the FCC explicitly found that line sharing is mandated by the Telecom Act. See Third Report and Order, In the Matter of

Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket 98-147, FCC No. 99-355, ¶ 18 (Dec. 9, 1999).

V. **BELL ATLANTIC'S "VAPORWARE" DSL SERVICE**

186. Since early 1998, Bell Atlantic knew many of the details of Covad's plans to roll out its DSL services to the major metropolitan areas in the Bell Atlantic region, starting in New York and Boston and expanding shortly thereafter to Philadelphia and Washington, D.C. In June of 1998, shortly after learning of Covad's DSL launch plans, Bell Atlantic announced the launch of its own DSL service, "Infospeed DSL," for a September 1998 release in Washington, D.C., and in Pittsburgh and Philadelphia, Pennsylvania.

187. Unlike Covad's service, Bell Atlantic's service was extremely limited in reach and scope. Where Covad sought to collocate in hundreds of central offices throughout the region, Bell Atlantic's launch covered only a fraction of that number. Covad could reach end-users located at least 40,000 feet from the central office – an approach that would cover almost every end-user served by that central office. Bell Atlantic's service, on the other hand, only reached out 12,000 feet. Where Covad could deliver one type of DSL service to end-users served by Digital Loop Carrier systems, Bell Atlantic did not deliver any.

188. As a result, Bell Atlantic's plan only sought to reach about 60% of the end-users for each of the limited numbers of central offices in which it chose to install DSL equipment. Moreover, even these figures were optimistic. Bell Atlantic knew that it had numerous significant problems providing DSL services.

189. Knowing the limited reach and scope of its planned service, Bell Atlantic nonetheless advertised its DSL services aggressively, using radio, newspapers, billboards, subways and buses to portray Infospeed DSL as a reliable, always-on avenue to the Internet. Bell Atlantic used saturation advertising – advertising so extensive that, for example, Bell