Carrier-Initiated Remedies

- Deem repeated failures to meet Critical Measure performance metrics in the P.A.P. – *e.g.,* failure to meet any performance metric twice in a three consecutive reporting periods, or three times in any six consecutive reporting periods – to be prima facie evidence in complaint proceedings of a violation of BA-NY's interconnection agreements.

- Deem Critical Measure performance that is significantly worse than the benchmarks to be prima facie evidence of a failure to provide interconnection or access under Section 251.

- Address non-quantitative failures by presumptions of non-compliance. For example, prima facie evidence of discrimination could be provided by evidence that Bell Atlantic does not devote equivalent resources to wholesale and retail businesses or that it applies discriminatory performance bonuses and incentives for executives in the wholesale and retail businesses.

- Deem certain failures to comply with basic obligations under Section 251 to be prima facie evidence of liability to CLECs. For example, failure to respond to an interconnection request within 14 days or failure to provide opt-in under Section 252(i) within 14 days shall be deemed to be bad faith by Bell Atlantic. Similarly, failure to provide collocation within the time frames specified in the *Collocation Order* will be deemed a breach of its obligation under Section 251(c)(2) to provide interconnection.

- "Ordinary" poor service, as described above, when coupled with "intent" evidence that Bell Atlantic is seeking to profit its retail arm by exploiting competitor's poor service, for which it may be at least partially responsible. E.g., Bell Atlantic provides poor repair and maintenance intervals to a CLEC, and sends CLEC retail customers a "winback" letter asking them whose service they would trust during the next big storm.

Agency-Initiated Remedies

- Repeated failures to meet any Mode of Entry performance metric *on an industry-wide basis* should trigger a performance improvement evaluation under the supervision of the FCC's Common Carrier Bureau. For example, upon a repeated failure to meet a metric, BA-NY should be required to submit a performance improvement plan to the Common Carrier Bureau, and the Bureau should submit public comment on the improvement plan.

- Significant non-compliance with performance metrics should trigger forfeiture proceedings with substantial ($1 million or more) penalties. Each day under the reporting period should be deemed a separate event subject to the forfeiture authority of the agency.

- Whenever wholesale provisioning problems are either so egregious or pervasive as to be, in the Commission's opinion – industry affecting, such that the public policy goals of Congress may be jeopardized, the FCC should take whatever action it needs to implement the goals of Congress, including, possibly, consideration of a structural separation between Bell Atlantic's wholesale and retail businesses.

These conditions are necessary to ensure that the requested authorization is consistent with the public interest, convenience and necessity. These limited prophylactic measures are intended to prevent any future violations of Section 271 and the Act. The Commission has repeatedly recognized that it has the authority in actions that are inherently prospective, like licensing actions, to condition approval in a manner that protects statutory policy.[137] Unless the Commission conditions approval on compliance with these conditions, grant of the Bell Atlantic application would not protect the statutory policy of Section 271 or the Act, and thus would be arbitrary and capricious in violation of the APA and Section 271 itself.

A finding that these conditions are necessary to ensure that the requested authorization is consistent with the public interest, convenience and necessity is the key to the Commission's authority under Sections 154(i), 201(b), 214(c), 271 and 303(r) to condition grant of the Bell Atlantic application on compliance with these conditions. Upon so finding, the Commission must either grant the Bell Atlantic application subject to these conditions, or deny it

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137 *The Seven Hills Television Company*, 3 FCC Rcd 826, 827 (1998) ("As emphasized above and again, the limited prophylactic measures imposed upon Seven Hills are intended to prevent future transgressions of 47 U.S.C. § 310(b). To the extent that these conditions have any slight impact on petitioners, they are necessary and incidental to the Commission's statutory responsibilities, responsibilities that invariably affect the scope of activities of those subject to federal regulation. As we stated in our *Seven Hills* decision, 'we believe that the Commission clearly has authority in a licensing action, an (continued...)

outright. By granting the Bell Atlantic application subject to these conditions rather than denying it outright, the Commission gives Bell Atlantic the choice of either voluntarily complying with the conditions, or choosing not to provide in-region interLATA services until market conditions have changed so that the Commission could find that the requested authorization is consistent with the public interest, convenience and necessity without the conditions.

As explained in the previous Section, Congress intended the Act to grant the Commission extremely broad discretion in determining what the public interest, convenience and necessity requires. The Court of Appeals for the Fifth Circuit recently reiterated this point, observing that "[j]udicial deference to agency judgments is near its zenith where issues of the public interest are involved."[138] The Supreme Court has explained that its opinions have "repeatedly emphasized that the Commission's judgment regarding how the public interest is best served is entitled to substantial judicial deference."[139] Accordingly, "[t]he Commission's implementation of the public-interest standard, when based on a rational weighing of competing policies, is not to be set aside by the Court of Appeals, for the 'weighing of policies under the "public interest" standard is a task that Congress has delegated to the Commission in the first instance.'"[140] Given these precedents, CompTel submits that the courts would affirm the Commission's policy choice if the Commission considers competing arguments and articulates a

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action prospective by its very nature, to condition a license renewal in a manner that protects the statutory policy inherent in 47 U.S.C. § 310(b)(3).'")

138 *City of Dallas, Texas v. FCC*, 165 F.3d. 341, 354 (5th Cir. 1999).

139 *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 596 (1981), *citing FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 814 (1978); *FCC v. WOKO, Inc.*, 329 U.S. 223, 229 (1946).

140 *FCC v. WNCN Listeners Guild*, 450 U.S. at 596, *quoting FCC v. National Citizens Committee for Broadcasting*, 436 U.S. at 810.

reasonable basis for its conclusion that the proposed conditions are necessary to ensure that the requested authorization is consistent with the public interest, convenience and necessity.

Apart from challenging the Commission's determination that granting Bell Atlantic's application subject to these conditions is necessary to ensure that the requested authorization is consistent with the public interest, convenience and necessity, Bell Atlantic[141] could not challenge the Commission's authority to impose these or any other conditions. As an initial matter, Bell Atlantic would have no incentive to challenge the Commission's authority to impose these conditions if a court affirms the Commission's judgment regarding how the public interest is best served, because the court would order the Commission to deny Bell Atlantic's application outright if it accepted Bell Atlantic's argument that the Commission exceeded its authority by imposing the conditions.[142]

More importantly, however, Bell Atlantic would have no legal basis to challenge the Commission's authority to impose these or any other conditions pursuant to Sections 154(i), 201(b), 214(c), 271, and 303(r). As explained in the previous Section, the Commission's authority to impose conditions on the grant of applications is well-established, and granting Bell Atlantic's application subject to these conditions would in no way "limit or extend the terms used in the competitive checklist . . . ." Finally, because these are conditions that apply solely to Bell Atlantic, and not generally applicable rules or regulations, the Commission need not initiate a separate notice and comment proceeding in order to grant the Bell Atlantic application subject

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141 CompTel notes that because the conditions would apply only to Bell Atlantic and would be based specifically on Commission findings about Bell Atlantic's application, the history of Bell Atlantic's behavior, and the specific conditions of the New York market, no other parties would have standing to challenge the imposition of these conditions.

142 As explained in the previous section, Section 271 prohibits the Commission from granting applications when the requested authorization would not be consistent with the public interest, convenience and necessity.

to compliance with them. In any event, the proposed conditions – unlike the checklist requirements – will have absolutely no effect on Bell Atlantic if it complies with Section 271 and keeps the promises it made in its application.[143] The conditions increase the burden on Bell Atlantic only if it violates Section 271 and the performance commitments it made in its application.[144]

1. Self-Executing Remedies

CompTel urges the Commission to impose the proposed self-executing remedies. These remedies should be triggered by bright-line measurements designed to ensure that Bell Atlantic promptly sends order confirmations, performs scheduled cutovers at the appointed time, etc. The Commission has already recognized that "the establishment of substantive standards or 'bright-line' tests could assist in expediting the ultimate disposition of complaints invoking the 90-day statutory resolution."[145] The Commission should clearly define the triggering event in order to eliminate controversy over whether a self-executing remedy has in fact been triggered.[146]

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143 Limiting or extending the terms of the competitive checklist, in sharp contrast to imposing consequences for failure to fulfill these obligations, would increase or decrease the "performance" burden of Bell Atlantic independent of whatever enforcement measures are imposed.

144 Although the Commission may not "limit or extend the terms of the competitive checklist," it has a statutory duty to determine what minimum performance measurements are necessary to prove compliance with Section 271. Bell Atlantic may also commit to exceeding the minimum requirements of Section 271, which would subject BA-NY to enforcement proceedings for violating these commitments even when the same performance might not be a violation of Section 271 in the absence of the commitments.

145 *Non-Accounting Safeguards Order,* 11 FCC Rcd at 22068.

146 *See Implementation of the Telecommunications Act of 1996; Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers,* 12 FCC Rcd 22497, ¶ 278 (1997) ("[T]he Commission has considerable discretion to tailor sanctions to the individual circumstances of a particular violation.").

When a triggering event occurs, the CLEC should send written notification to Bell Atlantic,[147] which will then immediately comply with the self-executing remedy.[148] If Bell Atlantic believes that the self-executing remedy should not apply due to extenuating circumstances, it may file an appeal with the Commission after complying with the self-executing remedy. If the Commission subsequently determines that the self-executing remedy was not justified due to extenuating circumstances, it can reverse the self-executing remedy and order that Bell Atlantic be made whole (refund forfeitures or payments made to other carriers).[149]

The Commission should condition grant of the Bell Atlantic application on compliance with the P.A.P. at both the state and the federal level. Thus, a violation of the P.A.P., which would subject Bell Atlantic to enforcement of the P.A.P. by the NY PSC, would also violate the mirror federal Plan, which would subject Bell Atlantic to enforcement of the federal Plan by the Commission. Because the mirror federal Plan would be entirely independent from the state Plan, interpretation and enforcement of the federal Plan would have no effect at the state level, and thus would not interfere with the NY PSC's interpretation and enforcement of the Plan.

The benefits of adopting a mirror federal plan are numerous. First, it would provide the Commission with a performance monitoring and enforcement framework, based on Bell Atlantic's own offer, which the Commission could oversee and supplement as needed

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147 The Commission should require the CLEC to file a copy of the notification with the Commission in order to assist it in monitoring BA-NY's performance.

148 *See Implementation of the Telecommunications Act of 1996; Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers,* 12 FCC Rcd 22497, ¶ 159 (1997) (recognizing that the Commission has the authority "to act promptly to restrain, on a temporary or interim basis, apparent or prima facie violations of the Act and our rules and orders without resorting to Section 312 procedures.").

149 *Id.*

without interfering with operation of the NY PSC. Second, it would double the payments for damages and penalties to which Bell Atlantic would be subject for violations of Section 271, which is an absolute necessity because the level of payments that Bell Atlantic has proposed is insufficient and grant of the requested authorization thus would not be consistent with the public interest, convenience and necessity.

The Commission should amend the *federal* Plan by clarifying enforcement triggers and enforcement measures, including self-executing remedies, as necessary to ensure that the requested authorization is consistent with the public interest, convenience and necessity. For example, if Bell Atlantic's score under the *federal* Plan is significantly worse than the benchmark, then Bell Atlantic should give an affected CLEC a refund in an amount equal to all charges that the CLEC billed to affected end users, which the CLEC must then pass-through to those end users. Moreover, if Bell Atlantic's score under the Plan is deficient on an industry-wide basis, then Bell Atlantic should refund all NRCs charged for the affected services during the relevant time period.

In other contexts, the Commission has attempted to remove economic incentives for unlawful behavior. For example, in its most recent order implementing its slamming rules,[150] the Commission stated that its goal was to take the profit out of slamming by absolving subscribers of liability for some slamming charges, and also to compensate subscribers for the confusion and inconvenience they experience as a result of being slammed.[151] Remedies under a

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150 *See Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, 14 FCC Rcd 1508 (1998).

151 *See, e.g., id* at ¶ 4.

self-enforcing plan similarly should be designed to preclude the possibility Bell Atlantic would find the consequences of non-compliance palatable.

In instances of repeated failures or egregious behavior, self enforcing remedies must also escalate. These remedies should be much greater, so as to take away all incentives for sub-par performance. Performance assurance criteria here would use presumptions of bad faith or egregious behavior to increase (perhaps multiply) remedies to the CLEC, and perhaps would include future discounts as well.

2. Carrier-Initiated Remedies

Self-enforcing remedies will not prevent all anticompetitive behavior and will not be well-suited for some types of violations. Therefore, carriers will in many instances want to present violations directly to a third party for adjudication. Adjudications would include the FCC's complaint procedures – especially its "rocket docket" procedures – as well as state and private arbitrations, and perhaps court adjudication of interconnection violations. Under these circumstances, a violation of the *federal* Plan – which by definition gauges present compliance using benchmark designed to measure performance over time[152] – would be prima facie evidence[153] that Bell Atlantic is not in compliance with its authorization and therefore is subject to the appropriate enforcement measure upon which its authorization is conditioned. CompTel

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152 *Ameritech Michigan Order,* 12 FCC Rcd at 20748-49, ¶ 393 (explaining that performance monitoring (1) provides a mechanism by which to gauge present compliance and (2) establishes a benchmark to measure performance over time).

153 The term "prima facie evidence" is defined as "[e]vidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue which it supports, but which may be contradicted by other evidence. . . . That quantum of evidence that suffices for proof of a particular fact until the fact is contradicted by other evidence; once a trier of fact is faced with conflicting evidence, it must weigh the prima facie evidence with all of the other probative evidence presented. . . . Evidence which, standing alone and unexplained, would maintain the proposition and warrant the conclusion to support which it is introduced." *Black's Law Dictionary* at 1190 (6th Ed. 1990).

therefore urges the Commission: (1) to establish bright-line conditions and performance measurements; (2) to announce that violations of these conditions and performance measurements will be deemed prima facie evidence in subsequent enforcement actions; and (3) to clarify the payment for damages or penalties that Bell Atlantic must pay for each type of violation.

An effective performance plan would identify activities which demonstrate bad faith, discrimination, egregious conduct, and/or presumptive failures to provide UNEs and/or interconnection. The FCC, states or arbitrators could then use these presumptions to make findings of liability, or to impose punitive damages and/or injunctive relief. For example, Bell Atlantic's failure to meet any Critical Measure performance metric twice in a three consecutive reporting periods, or three times in any six consecutive reporting periods should be deemed prima facie evidence that Bell Atlantic has breached its obligation to provide interconnection, unbundled network elements, or resale under Section 251.[154] A score under the Plan that is significantly below a performance metric should be deemed prima facie evidence of a failure to provide interconnection or access under Section 251. Prima facie evidence of discrimination can be provided by evidence that Bell Atlantic does not devote equivalent resources to wholesale and retail businesses. Discriminatory bonuses and incentives for executives in the wholesale and retail businesses also will constitute prima facie evidence of discrimination. Failure to respond to an interconnection request within 14 days or failure to provide opt-in under Section 252(i) within 14 days should be deemed to be bad faith by Bell Atlantic. Likewise, failure to provide collocation within the time frames specified in the *Collocation Order* will be deemed a breach of its obligation under Section 251(c)(2) to provide interconnection. Failure to provide on-time

performance over three months, for example, could be deemed prima facie evidence of bad faith performance. Or, any failure to meet a scheduled date by more than 24 hours (or any out-of-service condition of 8 hours or more) could be deemed prima facie evidence of failure to provide that element at all.

CompTel is not asking the Commission to shift the burden of proof. Rather, CompTel merely urges the Commission to define clearly – based on the *federal* Plan – the facts necessary for a CLEC to meet its burden of proof that Bell Atlantic is in violation of its authorization and the legal consequences therefore.[155] This is essential to ensure that the requested authorization is consistent with the public interest, convenience and necessity because it will minimize disputes about the definition of a violation, the evidence needed to establish a violation, and the legal consequences of a violation,[156] all of which are crucial to streamline

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154 This evidence can be rebutted by evidence provided by Bell Atlantic that it did not breach the Act's obligations.

155 *See also Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, 14 FCC Rcd 1508, ¶ 54 (1998) ("The majority of the parties commenting on [the proposed slamming liability test] support the adoption of the proposed liability test. They agree that this test not only properly allocates liability for unauthorized carrier changes, but also establishes clear standards for when liability will be imposed. With these clear standards, carriers can take appropriate measures to protect themselves against liability and therefore reduce all instances of slamming, whether intentional or inadvertent."). *See also Implementation of the Telecommunications Act of 1996; Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers,* 12 FCC Rcd 22497, ¶ 295 (1997) (recognizing the Commission's "discretion to effectively shift the burden of production in particular cases by directing defendant carriers to produce relevant information deemed to be within their exclusive possession or control.").

156 The Commission would retain the discretion to increase or decrease any payments for a particular violation as the public interest, convenience and necessity requires. For example, if a carrier can provide evidence that its monetary damages exceed the amount due by Bell Atlantic under the *federal* plan, the carrier should be able to recover the excess amount by filing a complaint under Section 208.

disputes and enable the Commission to address complaints within 90 days as Section 271 explicitly requires.

The Commission has already concluded that the burden of production with respect to an issue should shift to the BOC after the complainant has demonstrated a prima facie case that a defendant BOC has ceased to meet the conditions of entry.[157] Now is the time to prescribe specific elements and factors that would warrant enforcement action.[158] The Commission has already found that the phrase "opportunity for hearing" in Section 271(d)(6)(A) does not require a trial-type hearing before an ALJ prior to the imposition of non-forfeiture enforcement measures.[159] The conclusion that Section 271(d)(6)(A) does not require a trial-type hearing to be used to prosecute violations is fully supported by the precedent.[160] In the words of the Commission:

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157 *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22072.

158 *Cf. Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 22076 (1997) ("*Non-Accounting Safeguards Order*") ("As to non-forfeiture enforcement measures, we conclude that it is impractical, at this point in time, to prescribe the specific elements and factors that would warrant issuance of an order to "correct the deficiency" or an order suspending or revoking a BOC's approval to provide in-region interLATA service.").

159 *Non-Accounting Safeguards Order* at 22077 (finding that regardless whether the Commission is imposing a non-forfeiture sanction in a proceeding commenced on its own motion or in the context of a complaint proceeding, the Commission can satisfy the hearing requirement of Section 271(d)(6)(A) through written submissions rather than oral testimony.)

160 Courts have consistently interpreted the phrase "notice and opportunity for hearing" as not automatically requiring a trial-type hearing. *See, e.g., New England Fuel Inst. v. Economic Regulatory Admin.*, 875 F.2d 882, 886-87 (D.C. Cir. 1989)(holding that in the absence of disputed material facts, a trial-type hearing is not necessary despite statutory provision requiring "opportunity for hearing"); *Sierra Association for Environment v. FERC*, 744 F.2d 661, 663-64 (9th Cir. 1984) (holding that 5 U.S.C. §§ 554-557 does not automatically require a trial-type hearing and that agencies may exercise discretion in not holding formal evidentiary hearings); *Buttrey v. United States*, 690 F.2d 1170, 1174-75 (5th Cir. 1982) (interpreting statute which provides that agency "may issue permits, after notice and opportunity for public hearings" as not requiring trial-type hearings).

> Federal agencies have wide discretion to fashion procedures that are appropriate to completing their mission. The Supreme Court has recognized that "[the] ultimate choice of procedures (in the absence of a statutory mandate) is left to the discretion of the agency involved . . . ." Moreover, Congress has provided this Commission with flexibility to determine the necessary procedural requirements "as will best conduce to the proper dispatch of business and to the ends of justice," 47 U.S.C. § 154(j), as long as such procedures are consistent with the requirements of the Administrative Procedure Act (APA), 5 U.S.C. §§ 551-559. The APA by itself "never requires a trial-type hearing. Applicability of [5 U.S.C.] §§ 554, 556, and 557 is always dependent on § 554(a): 'This Section applies . . . in every case of adjudication required by statute to be determined *on the record* after opportunity for an agency hearing . . . .' Unless another statute requires a determination on the record, §§ 554, 556, and 557 do not apply."[161]

Section 271(d)(6)(A) does not explicitly require a trial-type hearing adjudication "on the record" and therefore a trial-type hearing is not required. In the overwhelming majority of cases, Bell Atlantic can adequately protect its rights on a paper record if it disputes the facts relied upon by a complainant or if extenuating circumstances warrant waiver of the enforcement measure in that particular case.[162] If the facts so warrant, however, Bell Atlantic can request a hearing to resolve the dispute. Therefore, the proposed enforcement measures are within the Commission's authority to adopt.

3. Agency-Initiated Remedies

In this category falls all of a regulator's traditional enforcement mechanisms,

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161 *Intercambio, Inc., Apparent Liability for Forfeiture,* 3 FCC Rcd 7247, 7254, ¶ 46 (1998) (footnotes omitted and emphasis added), *citing Bell Tel. Co. of Pa. v. FCC,* 503 F.2d 1250, 1266 (3rd Cir. 1974), *cert. denied,* 422 U.S. 1026 (1975); *United States v. Florida East Coast Railway Co.*, 410 U.S. 224, 244-46 (1973); 2 K. Davis, Administrative Law Treatise, § 12.10 at 447 (2nd ed. 1979); *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.,* 435 U.S. 519 (1978) ("even apart from the APA, the formulation of procedures should be basically left within the discretion of the agencies."); *ITT World Communications, Inc. v. FCC,* 595 F.2d 897, 900-01 (2nd Cir. 1979); *Comark Cable Fund III,* 104 FCC 2d 451, 460-61 at n.20 (1985).

including forfeitures, Show Cause proceedings, proceedings to suspend Bell Atlantic's authority to provide in-region interLATA services, (and/or of marketing activities) and 271 revocation procedures. As with carrier-initiated remedies, a violation of the *federal* Plan would be prima facie evidence that Bell Atlantic is not in compliance with its authorization and therefore is subject to the appropriate enforcement measure upon which its authorization is conditioned. As explained above, CompTel therefore urges the Commission: (1) to establish bright-line conditions and performance measurements; (2) to announce that violations of these conditions and performance measurements will be deemed prima facie evidence in subsequent enforcement actions; and (3) to clarify the consequences for each type of violation if the agency initiates an enforcement proceeding.

Bell Atlantic's failure to meet any Critical Measure performance metric on an industry-wide basis twice in any three consecutive reporting periods, or three times in any six consecutive reporting periods should be deemed prima facie evidence that Bell Atlantic has breached its obligation to provide interconnection, unbundled network elements, or resale under Section 251. Upon the occurrence of such an event, Bell Atlantic should be required to submit a performance improvement plan to the Common Carrier Bureau, and the Bureau should submit public comment on the improvement plan. (The Common Carrier Bureau could be delegated the authority to require submission of the plan to the state commission.)

If Bell Atlantic's score under the Plan is significantly below a performance metric, an agency with regulatory authority may begin forfeiture proceedings against Bell Atlantic. Each day under the reporting period should be deemed a separate event subject to the

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[62] The Commission can also initiate a proceeding if the paper record is inadequate to resolve a dispute.

forfeiture authority of the agency.[163] Moreover, if a BOC fails to provide collocation within specified intervals or if it is found to have unreasonably refused a collocation request, the agency could initiate forfeiture proceedings against the BOC. Systematic problems, such as a failure to devote resources to the wholesale product, could generate Show Cause proceedings and specific future relief.

Finally, whenever wholesale provisioning problems are either so egregious or pervasive as to be, in the Commission's opinion – industry affecting, such that the public policy goals of Congress may be jeopardized, the FCC should take whatever action it needs to implement the goals of Congress, including, possibly, consideration of a structural separation between Bell Atlantic's wholesale and retail businesses.

None of these recommendations would require the Commission to amend the rules for its forfeiture, suspension or revocation proceedings. Rather, these recommendations would merely expedite the resolution of complaints as required by Section 271 by clarify the consequences that will follow if Bell Atlantic violates the terms and conditions of its authorization.

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163 Each day of a continuing violation is considered a separate violation for purposes of computing a forfeiture. *See American Beeper Company of the Virgin Islands,* Notice of Apparent Liability for Forfeiture, 1999 FCC Lexis 3612 (July 29, 1999), *citing Eastern Carolina Broadcasting, Inc.,* 6 FCC Rcd 6154, 6155 (1991).