BEFORE THE

MASSACHUSETTS DEPARTMENT OF

TELECOMMUNICATIONS AND ENERGY

Emergency Petition of Covad Communications Company)

for an Interim Arbitration Award ImplementingAgainst Bell)

Atlantic – Massachusetts, Inc. Implementing the Line)

the Line Sharing Unbundled Network Element)

)

PETITION FOR ARBITRATION

OF COVAD COMMUNICATIONS COMPANY

Covad Communications Company ("Covad"), through undersigned counsel, by its attorney, hereby submits its an emergency petition for arbitration interim relief for against Bell Atlantic – Massachusetts, Inc. ("Bell Atlantic" or "BA") in order to the immediate implementation of line sharing in Massachusetts. As detailed below, Covad has been unsuccessful in its efforts to negotiate access to line sharing from Bell Atlantic incumbent LECs in this state, and requires the intervention of this Commission in order to secure unbundled access to the FCC-mandated line sharing unbundled network element ("line sharing UNE"). Specifically, Covad respectfully requests the that this Commission (1) to adopt the interim measures proposed herein below in order to ensure that Bell Atlantic provides line sharing is available to Covad competitive LECs by the June 6, 2000, deadline established by the FCC; (2) to use these interim measures as the basis for the Commission's final arbitration award in this case and; (3) to arbitrate any other unresolved issues between Covad and Bell Atlantic.

As the FCC concluded in the *Line Sharing Order*, a state commission must ensure that the measures adopting in its interim arbitration award are actually implemented by the incumbent LEC within 45 days of a competitive LEC's request for arbitration, in order to ensure that incumbent LECs implement the line sharing UNE by the FCC's June 6, 2000 deadline.

Towards that end, Covad respectfully requests that this Commission:

- Issue a preliminary order that requires BA to file a specific implementation schedule for line sharing deployment in Massachusetts within one week of the date of this Petition – i.e. **by May 3, 2000**;
- Convene a conference between the parties to discuss BA's implementation schedule and to address other issues to be included in the Commission's interim arbitration order within one week of the date of this Petition – i.e. **by May 3, 2000**;
- Issue an interim arbitration award as soon as possible but **no later than May 31, 2000**.

In order to facilitate rapid action by this Commission, Covad in this Petition set forth with specificity the terms and conditions that this Commission should adopt as part of the interim order including a detailed timeline that will facilitate full implementation of line sharing by the June deadline. *See* Exhibit 1.

Background

On December 9, 1999, the FCC Federal Communications ordered incumbent LECs around the country to provide unbundled access to the high frequency spectrum of a local loop pursuant to its authority to identify a minimum list of network elements that must be unbundled on a nationwide basis. Specifically, the FCC created a new unbundled network element pursuant to section 251(c)(3) of the Act, that enables competitive LECs to compete with incumbents by providing xDSL-based services through a single telephone line that competitive LECs can share with an incumbent's voice service. The provision of xDSL-based service by a competitive LEC and voiceband service by an incumbent LEC on the same loop is commonly referred to as "line sharing."

The FCC concluded, based on the extensive record developed in its line sharing rulemaking proceeding, that lack of access to the high frequency portion of the local loop materially diminished the ability of competitive LECs to offer xDSL services to residential and small business users, delayed broad facilities-based market entry, and materially limited the scope and quality of competitors' service offerings. The FCC found that line sharing was a vital addition to the list of federal UNEs, because it would encourage the widespread and rapid deployment of broadband services to the entire nation, particularly residentials and small businesses customers in rural areas. Most importantly, the FCC concluded that there was "no evidence of substantial technical, economic, operational, or practical barriers to incumbent LEC line sharing with competitors."

In the *Local Competition Third Report and Order (UNE Remand Order)*, the FCC ordered incumbent LECs to provide unbundled access to several network elements as of the effective date of that Order. In the *Line Sharing Order*, the FCC took an additional step, concluding that rapid deployment of line sharing was the only means of ensuring "that residential and small business consumers receive the benefits of competition and innovation promised in the Act." Thus, not only did the FCC conclude that there were no technical or operational barriers to immediate deployment of line sharing, the FCC also

concluded that incumbent LECs must make line sharing fully available to requesting carriers by a date certain: 180 days after release of the order, or June 6, 2000. The FCC concluded:

> We find that unbundling this [line sharing] network element is technically feasible, presents no substantial operational issues, is legally justified, and serves the public interest. We also find that line sharing promises to bring broadband access to residential and small business consumers, and conclude that incumbents should be able to provide line sharing within 180 days of release of this Order.

The FCC required incumbent LECs to provide line sharing as a UNE based in large part upon the comments of state commissions that absent a federal rule mandating line sharing, incumbent LECs would continue to discriminate against competitors by requiring them to purchase a second, stand-alone loop to provide xDSL services. At the same time, the FCC concluded, incumbent LECs would provision their own retail xDSL services over the same loop as their voice service (and impute zero cost to themselves for the loop), thus raising competitors' costs to more than double the incumbents' own costs. This disparity continues today, with alarming implications for broadband competition. While Bell Operating Companies, for example, all offer their retail customers the ability to purchase xDSL service over the same line as their voice service, saving the customers installation time and money, those companies persist in denying their competitors the same opportunity, in bald violation of federal law.

Request for an Interim Arbitration Awards

The FCC recognized that incumbent LECs would have the incentive to delay their implementation of the line sharing UNE as long as possible to protect further their own monopoly in combined voice/data offerings. As such, the FCC provided a unique mechanism to protect against such anticompetitive behavior. First, as noted above, the FCC required incumbent LECs to fully implement the line sharing UNEs by June 6, 2000 (180 days after the release of the FCC's order*Line Sharing Order*). At the same time, the FCC recognized that incumbent LECs had the incentive and ability to delay provisioning of this UNE. As such, the FCC established an emergency mechanism for state commissions to use to bring incumbents into compliance with federal law.

The FCC concluded that if incumbent LECs refused to implement line sharing in accordance conformity with the FCC's timetable, forcing competitive LECs to seek arbitration, the incumbent LECs would succeed in delaying the availability of the line sharing UNE to any other carriers for as many as at least nine months – the minimum maximum amount of time allotted to necessary for a full an arbitration proceeding pursuant to section 252. As the FCC concluded:

> If parties seek arbitration, however, modifications to existing interconnection agreements to actually provision this new unbundled network element could take up to nine months from the date that an incumbent LEC receives a competitor's request to commence negotiation. We find that a nine-month delay seriously impairs the rapid introduction of competition in the provision of xDSL-based services on a shared line, especially to residential and small business consumers.

In order to prevent such a delay, the FCC strongly urged state commissions, when presented with an a line sharing arbitration emergency petition for relief, to grant that petition on an interim basis within an extremely short time frame, and to include concrete terms and conditions in the award that would permit the immediate deployment of line sharing by the June 6, 2000 deadline. Specifically, the FCC Order permits competitive LECs to file, within 135 to 160 days of the release of the FCC's line sharing Order (*i.e*. between April 22, 2000, and May 17, 2000), an emergency petition for interim arbitration award that would require incumbent LECs to deploy and make available line sharing capacity to requesting carriers by the FCC's deadline of June 6, 2000. To assist state commissions in meeting that short time frame, the FCC set out in its Order the terms and conditions that state commissions should utilize in the interim award.

Many of the line sharing implementation issues have already been resolved by BA and the CLECs under the watchful eye of the New York Public Service Commission. Since at least November, 1999, Covad and BA, as well as many CLECs that also operate in Massachusetts, have been involved in extensive negotiations and technical discussions about the very issues for which Covad seeks interim, emergency relief. BA has repeatedly indicated to the parties that its commitments in New York will apply throughout its region. Thus, this Commission will not be breaking new ground – nor should it – on the essence of Covad's request for immediate relief. Further, Covad's experience with BA in New York demonstrates that a Commission to order is critical to ensuring that BA meets the June deadline.

Covad requests immediate, emergency relief on only those issues that are critically necessary to allow Covad and other CLECs to begin line sharing by the FCC's deadline. These issues are as follows:

1. **<u>Implementation Schedule</u>**. The interim arbitration award must require BA to implement line sharing in all central offices by the June deadline. The FCC strongly encouraged state commissions to ensure that line sharing would be actually available to competitive LECs within the FCC's implementation schedule. Given that that incumbents would have no incentive to speed the deployment of line sharing (in order to protect their own retail xDSL sales), the FCC urged states to recognize "that parties should be able to resolve all outstanding operational issues in six months or less" – that is, by June 6, 2000. Further, the FCC "strongly urge[d] the states to adopt an implementation schedule that requires an incumbent to begin provisioning this network element to requesting carriers no later

than 45 days after the issuance of an arbitration award." Only in New York has BA committed to provide line sharing in all requested central offices by the FCC's deadline; and BA has made a central office-specific deployment commitment because of the involvement of the NY PSC. The Commission should immediately order BA to implement line sharing in all central offices in Massachusetts on the same terms and conditions to which BA has committed in New York. As mentioned above, Covad has attached an implementation schedule based on BA's New York commitments that should form the basis for the Commission's implementation order. *See* Exhibit 1.

2. **Provisioning Intervals**. The interim award must contain specific provisioning intervals that require Bell Atlantic incumbent LECs to provision the line sharing UNE functionality within specific and reasonable provisioning intervals.a short period of time after a requesting carrier orders the UNE. In particular, Specifically, the FCC concluded that states should, at a minimum, require "inccumbent LECs to fulfill requests for line sharing within the same interval the incumbent provisions xDSL to its own retail or wholesale customers, regardless of whether the incumbent uses an automated or manual process." In addition, the FCC found that incumbent LECs must unbundle the high frequency portion of the loop even where the incumbent LEC's voice customer is served by digital loop carrier (DLC) facilities. Covad proposes an initial UNE interval of 3 business days.
3. **Pricing of the Lline Ssharing UNE**. The Commission's interim arbitration award must establish pricing for line sharing. Bell Atlantic's Incumbent LECs that offer retail xDSL service offering, branded Infospeed DSL, services utilizes line sharing technology. Because the FCC has concluded that xDSL services are interstate in nature, it the FCC has required incumbent LECs carriers subject to tariffing requirements to submit federal tariffs for their retail xDSL services. As such, Bell Atlantic has incumbent have filed such tariffs for Infospeed DSL, which includes cost imputation data for the retail xDSL services. Specifically, Bell Atlantic's those federal tariffs reveals that it is incumbent LECs are imputing to itself themselves zero cost for the high upper frequency ies of the loop used in to provide Infospeed DSLtheir own retail xDSL services. The FCC concluded in the *Line Sharing Order* that the zero loop charge ought to must be passed on to competitors requesting the line sharing UNE. The FCC further concluded that such parity of pricing would be the best means of protecting competitive LECs, such as Covad, against a continuing price squeeze by incumbents. As such, the FCC concluded that the proper loop cost, pursuant to TELRIC pricing, was zero, as reflected in the incumbent LEC xDSL tariffs of incumbent LECs, such as Bell Atlantic. The FCC concluded that cross-connect pricing should be "the same as for cross connecting loops to the competitive LECs' collocated facilities, particularly where the splitter is located within the incumbent

LEC's MDF." Covad proposes that the Commission order BA to provide the line sharing UNE at rates proposed in Exhibit 3 to this Petition.

4. **Loop Ttesting**. The Commission's interim arbitration award must order BA to allow Covad direct, physical access to the line sharing UNE at any technically feasible point for testing, repair and maintenance purposes. The FCC concluded that competitive LECs should have direct access to the loop facility for testing purposes. Specifically, the FCC concluded that, "incumbent LECs must provide requesting carriers with access to the loop facility for testing, maintenance, and repair activities. We require that, at a minimum, incumbents must provide requesting carriers with loop access either through a cross-connection at the competitor's collocation space, or through a standardized interface designed to provide physical access for testing purposes. Such access must be provided in a reasonable and nondiscriminatory manner."

For the remaining issues addressed in this Petition (Phase II issues), Covad requests that the Commission conduct an arbitration, in the event the parties are unable to reach agreement.

Positions of the Parties

PHASE I ISSUES

(IMMEDIATE RELIEF REQUESTED)

Issue 1: Implementation and Provisioning of Line-Sharing

1. **Issue 1(a)**: Should BA be required to fully implement all requested splitter configurations for the line sharing UNE in all requested central offices by June 6, 2000?

   Covad's Position: Yes. In the Line-Sharing Order, the FCC expressly stated that "incumbents should be able to provide line-sharing within 180 days of release of this order [*i.e.*, by June 6, 2000]." (Line-Sharing Order ¶ 13.) Further, the FCC "strongly urge[d] the states to adopt an implementation schedule that requires an incumbent to begin provisioning this network element to requesting carriers no later than 45 days after the issuance of an arbitration award." (Line-Sharing Order ¶ 177.) If BA is allowed to "slow-roll" the availability of line-sharing, the overwhelming economic advantage presently enjoyed by the ILECs will remain, impeding the provisioning of competitive DSL services throughout the state.

   For line sharing over home-run copper, Covad proposes that BA offer a menu of splitter configurations to address CLECs' differing business needs: (1) CLEC-owned splitter collocated in CLEC's collocation space;

(2) ILEC- or CLEC-owned splitter collocated in a central office common area; and (3) ILEC-owned splitter collocated adjacent to the main distribution frame. The FCC's Line-Sharing Order anticipated these differences, noting that either the ILEC or a competitive carrier could own the splitter used for line-sharing. (Line-Sharing Order ¶¶ 76-79.)

Covad, for instance, prefers the ILEC to own the splitter and to place the splitter in the central office in proximity of the distribution frame where the CLEC tie cables appear. *See* Exhibit 4. Covad believes that this configuration minimizes the need to add additional cable length, allows for the use of existing CLEC tie cables, and allows the ILEC to make the most efficient use of its central office space. It also allows the ILEC to determine the splitter model and manufacturer and allows the ILEC to maintain control of the voice portion of the shared line and avoid the transporting of the voice service to and from the CLEC collocation arrangement.

Other CLECs may prefer the other network configurations and should be able to utilize their preferred configurations. All three configurations are technically feasible and may be implemented by BA. Accordingly, BA should make all three configurations available to CLECs.

BA Position: BA has not committed to a specific implementation schedule for line sharing deployment in Massachusetts. BA's failure is contrary to the FCC's Line-Sharing Order.

As to splitter configurations, BA's position is that CLECs should either purchase individually owned splitters and place the equipment within the CLEC's collocation space or purchase and install splitters in a common area of the central office. BA refuses to purchase and install splitters for CLECs. Covad believes that such inflexibility will raise CLEC equipment costs and unduly delay provisioning of line-shared loops.

2. **Issue 1(b)**: What is the appropriate interval for provisioning the line sharing UNE?

   Covad's Position: The provisioning interval for the line sharing UNE should be significantly shorter than the intervals applicable to standard xDSL-capable loops because BA already has provisioned the loop used for the line sharing UNE to the customer premises. The only physical work required for the provisioning of a line shared loop is wiring the splitter into the existing service, which involves removing one cross-connect and replacing it with two new cross-connects. This process should easily be accomplished in less than 10 minutes. No additional time or work is necessary. Line sharing does not require any work to be performed outside of the central office and the existing customer telephone number and cable

pair are both reused. Nevertheless, Covad proposes a staggered provisioning interval for the line sharing UNE:

June 6 – September 7, 2000: BA provisions the line sharing UNE within 3 business days for loops that do not require conditioning and 5 business days for loops that require conditioning;

September 7 – December 7, 2000: BA provisions the line sharing UNE within 2 business days for loops that do not require conditioning and within 5 business days for loops that require conditioning;

After December 7, 2000: BA provisions the line sharing UNE within 24 hours for loops that do not require conditioning and within 5 business days for loops that require conditioning.

BA Position: BA has not proposed a specific provisioning interval for the line sharing UNE.

3. **Issue 1(c)**: Should BA be required to provide collocation augments for line-sharing within 30 calendar days?

   Covad's Position: BA should be required prepare for line-sharing in all central offices requested by CLECs by the FCC's June 6, 2000 deadline. For additional central offices, BA should be required to allow collocation augments within 30 calendar days.

   BA's Position: BA proposes that the standard tariffed physical collocation interval of 76 business days should apply for collocation augments.

4. **Issue 1(d)**: If an ILEC owns the splitter, should it be required provide splitter functionality in line increments and shelf increments, at the option of the CLEC?

   Covad's Position: Yes. Providing splitter functionality in line increments and in shelf increments is technically feasible and would allow CLECs to purchase only the amount of splitter space they need, encouraging efficient use of splitter functionality and collocation space.

   BA Position: BA's refuses to own the splitter, and thus refuses to provide any of these provisioning scenarios.

Issue 2: Pricing

5. **Issue 2(a)**: What are the appropriate recurring charges for all elements of the line sharing UNE under federal pricing rules and FCC's Line Sharing Order?

Covad's Position: Covad supports the recurring rates set forth in Exhibit 3. Most importantly, the recurring rate for use of the line shared loop should be zero. For elements such as tie cables to collocation arrangements and cross-connects, the Commission can rely directly on its currently-approved recurring prices. For elements that are listed as "to be determined" ("TBD"), Covad proposes that the Commission resolve these issues in Phase II of this arbitration. There should not be charges for wideband testing, because Covad can provide that functionality itself.

BA Position: In its first presentation on line sharing costs, which occurred in New York, BA initially proposed a recurring charge for use of a line shared loop called the Residential Service Contribution Rate Element. However, BA subsequently withdrew that charge after admitting that it did not recover any costs incurred when requesting carriers use a line shared loop. BA proposed additional recurring rates for splitter maintenance, wideband testing and cross-connects. BA took the cross-connect rates directly from its currently-approved collocation tariff.

6. **Issue 2(b)**: What are the appropriate non-recurring charges for all elements of the line sharing UNE under federal pricing rules and FCC Line Sharing Order?

   Covad's Position: Covad supports the non-recurring rates set forth in Exhibit 3. For elements that are listed as "to be determined" ("TBD"), Covad proposes that the Commission resolve these issues in Phase II of this arbitration. For elements such as tie cables to collocation arrangements and cross-connects, the Commission can rely directly on its currently-approved non-recurring prices.

   BA Position: BA has proposed nonrecurring line sharing charges for performing the following tasks: (1) augmenting a collocation arrangement; (2) installing a splitter; (3) installing tie cables; (4) processing service orders for line sharing both electronically and manually; (5) conducting central office wiring for each line sharing order; and (6) dispatching technicians into the field to provision line sharing.

7. **Issue 2(c)**: Should BA be required to assume the cost of the cable that carries voice traffic from the CLEC's splitter to the ILEC's main distribution frame?

   Covad's Position: Yes. The cable that carries voice traffic from the splitter to the ILEC's main distribution frame is not part of the line sharing UNE and is recovered by the ILEC through standard voice rates.

   BA Position: In New York, BA has agreed with Covad's position on this cable cost. BA's position in other states is unknown.

Issue 3: Test Access

8. **Issue 3:** Should BA provide Covad with direct, physical access to the loop facility for testing, maintenance, and repair activities?

   Covad's Position: Yes. BA should allow Covad direct, physical access to any loop containing a high frequency network element at the point where the combined voice and data loop leaves the central office. The FCC's Line-Sharing Order expressly states:

   Thus, we require that incumbent LECs must provide requesting carriers with access to the loop facility for testing, maintenance, and repair activities. We require that, at a minimum, incumbents must provide requesting carriers with loop access either through a cross-connection at the competitor's collocation space, or through a standardized interface designed for [sic] to provide physical access for testing purposes. *Such access must be provided in a reasonable and non-discriminatory manner.*

   (Line-Sharing Order ¶ 118 (emphasis added).) Covad wants direct physical access to the MDF for testing its data services comparable to the ILEC's access for testing its voice services. This access is necessary to isolate trouble on the line quickly and efficiently. With test access at this point, CLECs would be able to insure that they are working on the correct customer's line by using the automatic number identification (ANI) feature. The CLEC would also be able to verify that the proper cross connect has been made for the customer's service. ILECs utilize this same test access to isolate trouble for their own customers. CLECs should be afforded the same opportunity to test for their customers.

   BA's Position: BA refuses to give CLECs direct, physical test access at any technically feasible point. BA proposes to require CLECs to purchase a BA-installed and BA-operated Hekimian test head for each line-shared loop, even though BA refuses to share with CLECs information learned through use of the testing system. BA proposed a $2 per loop per month fee for this testing capability, regardless of whether the CLEC would prefer to perform its own testing.

PHASE II ISSUES

Issue 4: Operational Support Systems (OSS)

9. **Issue 4**: Should BA be required to provide direct, real-time, electronic access to its OSS for line sharing UNE orders, including without limitation loop qualification, pre-ordering, and ordering functions?

Covad's Position: Yes. Pursuant to FCC rules, BA must provide CLECs with application-to-application electronic OSS interfaces that permit CLECs to integrate their pre-order and ordering OSS operations. In addition, BA must provide CLECs real time, electronic access to all loop information, including loop length, loop characteristics, presence of DLC, load coils, and bridged taps. BA is obligated to develop and implement OSS to allow real-time electronic access to loop make-up information. Such enhancements shall ensure that orders for DSL-capable loops flow through at parity with comparable UNE orders, and BA's retail or advanced services affiliate's DSL orders. For example, BA's own retail DSL operation permits BA representatives to access loop pre-qualification and ordering capability at the same time, facilitating the ordering process while a customer is on the line. CLECs do not currently have that capability, despite BA's obligation to provide parity in its OSS provisioning.

BA Position: BA's present position is that the OSS upgrades that will support line sharing will not be available from Telcordia until the fall of 2000, at the earliest. Thus, BA has not committed to a specific implementation plan for the OSS upgrade so that CLECs can have real-time electronic access to the line sharing UNE.

Issue 5: Digital Loop Carrier/Remote Terminal Issues

10. **Issue 5(a):** Should BA be required to provide the line sharing UNE if the end-user is served over fiber-fed digital loop carrier ("DLC")?

Covad's Position: Yes. The FCC's Line-Sharing Order expressly requires such provisioning:

We conclude that incumbents must provide unbundled access to the high frequency portion of the loop at the remote terminal as well as the central office. Our subloop unbundling rules and presumptions allow requesting carriers to access copper wire relatively close to the subscriber, which is critical for a competitive carrier to offer services using xDSL technology over the high frequency network element.[] For the same reasons, we conclude that incumbent LECs *are required to unbundle the high-frequency portion of the local loop even where the incumbent LEC's voice customer is served by DLC facilities*.

(Line-Sharing Order ¶91 (emphasis added)).

BA's Position: BA refuses to provide the line sharing UNE when a customer's loop is provisioned through a DLC. BA has taken the position (despite the clear language of the FCC's order) that it is not obligated to

provide the line sharing UNE to CLECs when the customer is served through a combination of fiber and copper through a DLC.

11. **Issue 5(b)**: Should BA be required to provide access to feeder subloops at UNE rates?

    Covad's Position: Yes. Under 47 C.F.R. § 51.319(a)(2), BA is required to provide non-discriminatory access to "any portion of the loop that is technically feasible to access at terminals in the incumbent LEC's outside plant, including inside wire." This regulation requires BA to provide access to feeder subloops on non-discriminatory rates, terms, and conditions.

    BA's Position: BA's position on this issue is unclear.

Issue 6: Provisioning Issues

12. **Issue 6(a)**: Should BA be required to test and the CLEC accept the line sharing UNE to consider the installation of the UNE to be complete?

    Covad's Position: Yes. CLECs should not be required to begin paying for a facility until such facility is correctly and verifiably installed. Failure to perform such cooperative testing also prevents accurate measurement of ILEC performance.

    BA Position: BA's present position on this issue is unknown.

13. **Issue 6(b)**: Should BA be required to provide a Line-Station Transfer (1) when a customer is served by a loop with interferors, and (2) when a customer is served over DLC and (a) a spare copper pair running from the demarcation point at the end-user premises to the serving wire center is available or (b) a spare copper feeder subloop running from the remote terminal to the serving wire center is available?

    Covad's Position: Yes. BA has agreed to provide line-station transfers when a requested standalone DSL loop has interferors or if a loop was provisioned on fiber. Thus, providing such transfers on shared loops will not impose any additional burden. Requiring BA to perform a line-station transfer for shared DLC loops allows end users to obtain high-speed ADSL services (which do not operate over DLC) without interruption of their voice services.

    BA's Position: As set forth above, BA has agreed to provide a line and station transfer (or pair swap) for standalone DSL loops. BA's present position on this issue with regard lineshared loops is unclear.

Issue 7: Maintenance and Repair Issues

14. **Issue 7**: What terms and conditions govern the testing, maintenance and repair of line-shared home-run copper loops and fiber-fed DLC loops?

    Covad's Position: Issues regarding maintenance and repair should be governed by the non-discrimination provisions of the federal Telecommunications Act.

    BA's Position: BA's present position on this issue is unknown.

Issue 8: Voice Interference Issues

15. **Issue 8:** Should BA demonstrate to the state commission that loop conditioning will significantly degrade existing voice service?

    Covad's Position: Yes. The FCC has required ILECs to condition loops of any length for which CLECs request line sharing, "unless conditioning of that loop will significantly degrade the incumbent's voice service…." (FCC Order at 84). The FCC requires the ILEC to "make an affirmative showing to the relevant state commission that conditioning the specific loop will significantly degrade voiceband service". (FCC Order at 86). The ILEC must also show that there is no alternate facility available that can be conditioned or to which the customer's service can be moved to enable line sharing.

    BA's Position: BA's current position is that it will not agree to proving to the state commission that line sharing would significantly degrade voice service because it has legally challenged the FCC's Order on this issue.

Issue 9: Pricing Issues

16. **Issue 9:** What should be the appropriate permanent recurring and nonrecurring pricing for line sharing?

Covad's Position: The Commission should establish pricing for the following:

a. OSS. CLECs should not be responsible for any OSS costs other than those undertaken by BA specifically and exclusively for the benefit of CLECs. Thus, if BA undertakes OSS changes that benefit both its retail operation and its wholesale operation, it cannot force CLECs to pay for the entire cost of those changes. Similarly, if BA planned OSS changes for its retail operations that it would have implemented absent a requirement that it unbundle its OSS for the benefit of competitors, none of the costs of those changes can be passed along to CLECs.

b. Deconditioning of loops. In a forward-looking network, all loops are "conditioned" to be xDSL-capable; therefore, the cost of the "conditioning" functionality is included in the monthly recurring charge for the underlying loop. Therefore, the cost of conditioning a line-shared loop should be zero.
c. Loop qualification. Because loop qualification is a mechanized OSS process requiring no cost-causing work by BA, the charges for loop qualification should be zero. Bell Atlantic should not be permitted to impose a charge on CLECs for a simple pre-order OSS inquiry submitted to determine the eligibility of a potential customer for DSL service. Such a charge simply imposes unnecessary costs on each CLEC that attempts to market service to a wide variety of potential customers.

BA's Position: BA's current position on these pricing issues is unclear.

WHEREFORE, Covad now respectfully requests that asks theis Commission:

1. Order Bell Atlantic to provide the Commission with a specific implementation schedule for Massachusetts within one week of today's date – i.e. May 3, 2000;
2. Convene a conference between the parties within one week of today's date – i.e. May 3, 2000 – in order to ensure that Bell Atlantic is unable to continue the delay tactics that are preventing the broad implementation of competitive DSL services in Massachusetts.
3. Enter for an interim arbitration award as soon as possible but no later than May 31, 2000, requiring Bell Atlantic incumbent LECs to implement the line sharing UNE by June 6, 2000, throughout its service territory in the State. In order to assist the Commission as much as possible, Covad has prepared a draft interim amendment to its interconnection agreement with Bell Atlantic modification (and attached hereto as Exhibit 5)it to this pleading. The draft amendment modification contains all of the terms and conditions necessary for Bell Atlantic immediately to implementation of the line sharing UNE in the State.
4. Require Bell Atlantic incumbent LECs to make all of the terms and conditions in the attached amendment interconnection agreement modification available immediately.

Respectfully submitted,

_____

Susan Jin Davis

Antony Richard Petrilla

Covad Communications Company

Hamilton Square, Suite 750

600 14th Street, N.W.

Washington, D.C. 20005

(202) 220-0400 (tel)

(202) 220-0401 (fax)

Counsel for Covad Communications Company

Dated: April 26, 2000