COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

)

Petition of Covad Communications Company)

For an Arbitration Award Against Bell) D.T.E. 00-46

Atlantic-Massachusetts, Implementing the Line)

Sharing Unbundled Network Element)

)

RESPONSE OF

BELL ATLANTIC-MASSACHUSETTS

TO PETITION FOR ARBITRATION

Pursuant to section 252(b) of the Telecommunications Act of 1996 ("the Act"), 47 U.S.C. § 252(b), Bell Atlantic-Massachusetts ("BA-MA") hereby responds to the Petition for Arbitration filed by Covad Communications Company ("Covad") on April 26, 2000. The Petition raises issues involving the timing and manner in which BA-MA must implement the Federal Communication Commission's ("FCC") December 9, 1999, *Line Sharing Order*.

BA-MA and Covad have continued to work diligently to resolve the issues raised by the Petition, both before and after it was filed. As a result of those efforts, the parties have resolved Covad Issue 1(a), concerning implementation of line sharing options by June 6, 2000, and removed it from arbitration. As a consequence and in view of other interim agreements which were reached on the "Phase I" issues for which Covad sought expedited arbitration, the parties agree that the remaining issues can be resolved through the standard arbitration process. The interim agreements will allow Covad to proceed with its line sharing plans pending the outcome of this normal arbitration process for any issues the parties do not resolve through continued negotiations.

The filing of the petition by Covad reflects the complexity of the issues surrounding implementing the *Line Sharing Order*, it does not, as Covad contends, reflect any inaction by Bell Atlantic. The process through which line sharing – which generally means "unbundling" and making available to competitive carriers the high frequency portion of the local loop in order to encourage development of broadband xDSL services

– will be made available has been and is under exhaustive and detailed development and discussion nationwide. The FCC itself recognized in the *Line Sharing Order* that carrying out its mandates would be a complicated endeavor, and encouraged "requesting carriers and incumbent LECs to engage in a collaborative process at the regional level to develop solutions to incumbent LEC provision of shared line access." *Line Sharing Order* ¶ 128.

Bell Atlantic has been at the forefront in collaborative efforts to resolve these technical issues on a region-wide basis. Specifically, over the past several months an Industry Collaborative involving Bell Atlantic-New York ("BA-NY") and a host of competitive local exchange carriers (including Covad) has been engaged in exhaustive technical discussions and negotiations to ensure that the requirements of the *Line Sharing Order* are satisfied. This collaborative process has taken place under the supervision of the New York Public Service Commission and the direct involvement of one of its administrative law judges. As part of this collaborative, a number of subgroups have addressed administrative, engineering, and operational support system ("OSS") issues related to line sharing. Each subgroup has met nearly every week to address and resolve issues on a collaborative basis.

Bell Atlantic and the CLECs have resolved numerous line-sharing issues through this collaborative and, notwithstanding Covad's claims here, expect to be able to do so going forward as well. Indeed, the underlying reality concerning line-sharing issues is that, although there are some areas in which the parties have fundamental disagreements they may not be able to resolve, in many others the implementation issues simply require time and analysis to work through cooperatively.

In many instances, therefore, and for virtually all of what Covad had designated as the "Phase II" issues in its petition, Covad has provided only the barest description of the disputed issue and the justification (if any) for its position, often stating that the Bell Atlantic position currently is "unclear" concerning the petitioner's own vague demand. Covad apparently did so in anticipation of further narrowing of the issues and further opportunity to flesh out the issues in Phase II of the arbitration proceeding. It thus is both premature and, in many instances, essentially impossible at this juncture to completely frame the issues for resolution. BA-MA thus reserves its right to respond in detail to these issues during the appropriate portion of this proceeding.

Set forth below is BA-MA's response and explanation regarding each of the issues raised by Covad which have been sufficiently described to allow a considered response. As this analysis shows, in virtually every instance, Covad's demand is unsupported by the law it invokes or the facts.

ARBITRATION ISSUES

1. Implementation and Provisioning of Line Sharing

Covad raised four line-sharing implementation/provisioning issues in its Petition, all of which it had included in its "Phase I" arbitration request.

The first issue (1a) – whether "BA-MA should be required to fully implement all requested splitter configurations for the line-sharing UNE in all requested central offices by June 6, 2000?" – was settled by the parties and removed from arbitration. This settlement will allow Covad to implement its line-sharing plans throughout Massachusetts over the coming months without the need to resolve the remaining three implementation issues on an expedited basis. Nonetheless, Covad had set forth its position concerning each of these issues in sufficient detail to allow the following responses, which will be supplemented as necessary in accord with the procedural schedule in this matter.

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

Covad claims it is entitled to a line-sharing "provisioning interval" (*i.e.*, the time it takes to complete an order to make line sharing available on a loop) that is "significantly shorter than the intervals applicable to standard xDSL-capable loops because BA already has provisioned the loop used for the line sharing UNE [‘unbundled network element’] to the customer premises." Covad Petition at 14. Covad then proposes a series of staggered dates of ever-shorter provisioning intervals in the near future.

Covad is wrong on the law and wrong on the facts. All Covad and the other CLECs are entitled to under the *Line Sharing Order* is a provisioning interval equivalent to the ILEC's standard DSL loop-provisioning interval (six business days), and that is what BA-MA has offered to provide (after loop qualification and any necessary loop conditioning have occurred). Nonetheless, as BA-MA gains experience with the installation of line-sharing arrangements and installs OSS improvements, it has stated that it will work with CLECs to determine if the interval can be shortened.

There is no doubt that the *Line Sharing Order* contemplates and expects *parity* of provisioning line sharing based on the time a standard DSL loop is provisioned today. The FCC expressly stated in the *Line Sharing Order* that "we expect that incumbent LECs will implement ordering and provisioning mechanisms and interfaces that provide competitive LECs with the ability to obtain access to the high frequency portion of the loop *in the same ordering and provisioning time intervals that the incumbent provides for its own xDSL-based service*." *Line Sharing Order* ¶ 107 (footnote omitted). *See also* ¶ 174 ("we urge states to consider a standard based on the time required to provision xDSL capable loops. We believe that this is the most accurate analogue that exists currently.") In an exhaustive analysis, an arbitrator in California also recently endorsed parity-based provisioning, rejecting in his draft decision Covad’s and other CLECs’ arguments by concluding that CLECs had "failed to convincingly show that the proposals of the ILECs are inconsistent with parity, or that less than parity is reasonable."

Moreover, the "factual" predicate for Covad’s demand – that line sharing can be provisioned in less than 10 minutes (Petition at 14) – is misleading and disingenuous. As Covad is well aware, a line-sharing service order must go through a number of BA-MA

OSS, which assign a cable and pair, update inventories needed for maintenance and network management purposes, update billing systems, and send the order through the Work Force Administrator to obtain a dispatch for a central office technician. Furthermore, some service order processing steps must be done manually until modifications to certain OSS that are necessary to accommodate line sharing are completed by a third-party vendor (Telcordia). These modifications are still being planned and negotiated with Telcordia. Thus, there are many steps, both mechanized and manual, in processing a CLEC line-sharing service order, and that process involves much more BA-MA time and effort than merely a technician's snap of the fingers, as Covad claims.

BA-MA's proposal to agree to provisioning line sharing initially within the standard DSL loop interval, to be followed by consideration of a shorter interval as expertise is acquired, is especially reasonable in light of BA-MA's (indeed, the whole industry's) lack of experience with installation of line sharing for Covad and other CLECs. This lack of experience has only been exacerbated by the CLECs themselves. BA-MA had hoped that by now it would have had the benefit of BA-NY's actual operating experience with provisioning line sharing in the New York line-sharing pilot/trial. As noted above (at page 3, footnote 5), the trial plan called for 300 shared lines to be in place by late April. However, the CLECs (including Covad) failed to perform their part of the trial and ordered only a fraction of that number. As a result, no meaningful provisioning testing has occurred.

In other parts of the country Covad has agreed that initial parity in provisioning, followed by consideration of shorter provisioning intervals once more experience is acquired, is appropriate and sufficient. For example, Covad recently announced an agreement with US West that the "ILEC will initially provision the [line sharing UNE] within the current standard unbundled loop provisioning interval at least 90% of the time. The Parties acknowledge that this interval may be subject to improvement based on systems mechanization and/or relevant state or federal regulatory orders." *See* US West Agreement with Covad, *et al*., ¶ 6. If Covad finds a standard interval acceptable for US West, it has no basis for objecting to it in here.

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

After the initial implementation of line sharing under the agreed schedule which settled Issue 1(a), Covad demands that BA-MA be required to effect the necessary line-sharing changes (or "augments") to collocation arrangements in its central offices within 30 days. Covad offers no justification for this request in its petition, and none exists.

BA-MA has proposed – and has agreed in settling with Covad that there is no need for an expedited "Phase I" arbitration – that the physical collocation interval of 76 business days agreed to in the New York collaborative should apply to collocation augments and new collocations. Since the work required to implement a line-sharing collocation augment is

essentially the same as for other collocations arrangements, there is no basis for applying a substantially shorter interval for line sharing. To apply an even shorter, special-case interval would seriously disrupt the standard collocation process, which has been successful in provisioning thousands of collocation arrangements on time. The result would likely be more disruption and delay in carrying out collocation arrangements, not greater speed or efficiency. The Arbitrator in California reached exactly that conclusion in rejecting Covad's claim that it was entitled to a 30 day interval to install tie cables for use in line sharing arrangements, reasoning that "[t]he interval for tie cable installation is a collocation matter. As GTE says, setting intermediate intervals for every piece of equipment will not enhance the likelihood that service will be provisioned smoothly and timely. Rather, multiple and unnecessary intervals detract from efficient operations. ... It is unreasonable to adopt different intervals for different pieces of equipment ... " California Draft Arbitration Decision at 46.

Moreover, while Covad and some other CLECs may believe it will enhance their business plans to receive special treatment in collocation matters for line sharing, it would also have the effect of discriminating against other potential collocators not engaged in line sharing. Such discrimination is unfair. One such collocator raised this as a concern at the New York collaborative, expressing fear that other collocators would be "jumping the line" ahead of his company because his company bought whole loops instead of line-shared loops. Such favoritism is not fair to these other CLECs or to the customers they serve.

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

The premise of this issue – that BA-MA can be required itself to own the "splitter" used for or by Covad to enable line sharing – is wrong, and therefore, Covad's request that BA-MA can be required to provide the splitter in a particular way is moot. BA-MA does not intend to purchase or own line sharing splitters on a CLEC’s behalf, and nothing in the *Line Sharing Order* requires that it assume the expense and risk of doing so, or that BA-MA must place splitters in any particular central office location.

BA-MA has offered Covad and other CLECs two splitter options: (1) a CLEC may purchase its choice of splitters and install those splitters within the CLEC’s collocation space (Option 1 – physical collocation); or (2) a CLEC may use BA-MA or BA-MA-approved vendors selected by the CLEC to install the splitters purchased by the CLEC in BA-MA’s central office space (Option 2 – virtual collocation). Bell Atlantic's early experience has been that CLECs are ordering line sharing under both splitter options, which confirms that they are both effective means of providing line sharing.

The *Line Sharing Order* allows, but does not require, ILECs to own and control the splitter, stating that "incumbent LECs *may* maintain control over the loop and splitter equipment and functions. In fact, both the incumbents and the competitive LECs agree

that subject to certain obligations, the incumbent LEC *may* maintain control over the loop and the splitter functionality, if desired." *Line-Sharing Order* ¶ 76 [footnote omitted](emphasis added). ILEC control over the splitter thus is discretionary, not mandatory. Moreover, requiring BA-MA to purchase and own such splitters to be used by an individual CLEC would be administratively inefficient and cumbersome, given the absence of any reliable forecasts of aggregate or individual CLEC line-sharing/splitter demand. In addition, it could quickly lead to financial disadvantage for BA-MA as a result of stranded splitter investment if line-sharing CLECs move, as they undoubtedly will, to newer, more technologically advanced splitter products. Nothing in the *Line Sharing Order* compels this unfair shift of financial risk and burden to BA-MA.

As to the location of the splitter in BA-MA's central office, the United States Court of Appeals for the District of Columbia recently overturned FCC rules that would have given CLECs the right to designate where equipment can be collocated in an ILEC's central office. In vacating the FCC's rules, the Court concluded that:

> The FCC offers no good reason to explain why a competitor [CLEC], as opposed to the LEC, should choose where to establish collocation on the LEC's property; . . .. It is one thing to say the LECs are forbidden from imposing unreasonable minimum space requirements on competitors; *it is quite another thing, however, to say that competitors, over the objection of LEC property owners, are free to pick and choose preferred space on the LECs' premises, subject to only technical feasibility. There is nothing in Section 251(c)(6) that endorses this approach.*

GTE Services Corp. vs. FCC, 205 F.3d 416, 426 (D.C. Cir. 2000)(emphasis added).

Based in part on the Court's analysis and the language of the *Line Sharing Order* itself, the California arbitrator denied Covad's request that CLECs be allowed to dictate to ILECs the type of splitter and its location in the ILEC's central office for provisioning line sharing. The arbitrator instead concluded that "[t]he [CLECs'] request that the CPUC go beyond what the Court has concluded the FCC could not do in its collocation order (*i.e.*, here asking that the CPUC direct both the type of splitter and the location in the ILEC's area) ... is unreasonable." California Draft Arbitration Decision at 18-19.

2. Pricing

Covad has raised three issues on line-sharing pricing in its Petition (subissues a-c). All of these issues were removed from Phase I arbitration based on the parties' agreement on interim prices subject to "true-up" after permanent prices are established. These issues concern the appropriate (a) recurring and (b) non-recurring prices for all elements of line sharing, and (c) whether BA-MA itself should have to pay for the cabling that carries voice traffic from the CLEC's splitter to BA-MA's main distribution frame in its central offices.

On May 5, 2000, BA-MA filed with the Department in D.T.E. 98-57 a Line Sharing tariff which contains proposed permanent rates and supporting cost studies for recurring and non-recurring line-sharing charges. Covad is a party to that proceeding, and the Department should address line-sharing pricing in that case rather than in this arbitration.

With respect to the tie cable cost that BA-MA seeks to recover from Covad and other CLEC line-sharers (Issue 2c), BA-MA will show that this is an incremental cost to it that it would not incur were there no line sharing, and therefore, no splitter on the line. BA-MA's retail voice rates recover the cost for a cross-connect at the Main Distribution Frame ("MDF") from the line-side to the switch port-side of the MDF. The cable for which BA-MA seeks cost recovery from CLECs in line-sharing rates is a completely different piece of central office equipment. That cable goes from a splitter that may be located anywhere in the central office, including the CLEC's collocation node, back to the MDF, where it can then be connected to office equipment that brings it to the switch.

The FCC already has acknowledged that this cost can be recovered in rates, finding in its *Line Sharing Order*:

> If the splitter is not located within the incumbent LEC's MDF, however, then we would expect the states to allow the incumbent LEC to adjust the charge for cross connecting the competitive LEC's xDSL equipment to the incumbent LECs' facilities to reflect any cost differences arising from the different location of the splitter, compared to the MDF. *Line Sharing Order* ¶ 145.

Accordingly, and as BA-MA will further demonstrate, it should be allowed to recover this cost.

3. Test Access

The last "Phase I" issue Covad raises in its Petition concerns whether BA-MA should be required to provide Covad with direct, physical access to the loop facility for testing, maintenance, and repair activities. This issue, too, was resolved by agreement on an interim basis.

The issue to be resolved in Phase II, as described so far by Covad, is whether CLECs must be given direct, physical access to the shared loop at the point where the combined voice and data circuits leave the central office. The FCC rules concerning line sharing do not require such a result. Rather, they require that one of two types of access be available:

> Incumbent LECs must provide, on a nondiscriminatory basis, physical loop test access points to requesting carriers at the splitter, through a cross-connection to the competitor's collocation space, or through a standardized interface, such as an intermediate distribution frame or a

> test access server, for the purposes of loop testing, maintenance, and repair activities.

47 C.F.R. §51.319(h)(7)(i).

BA-MA has offered Covad both options, which are reflected in the parties' interim agreement. If Covad elects to locate its splitter in Covad's own collocation space, it will have direct physical access to the loop at the splitter for testing purposes. If it chooses to locate its splitter in BA-MA's space in the central office, BA-MA has offered to install – or have a BA-MA-approved vendor do so – a Covad-provided test head (a "test access server") that will permit Covad to access the loop remotely for physical testing purposes. In addition, BA-MA has offered to conduct tests at Covad's request using BA-MA's own test head where one is installed and provide test results to Covad, and to give Covad access to BA-MA's MLT testing platform. In the rare cases where these testing options cannot isolate and help remedy the problem, BA-MA and Covad technicians will meet in the central office to jointly attack and resolve the problem. These options are more than adequate to cover any testing scenario that Covad may legitimately be concerned over, both on an interim and permanent basis.

4. Operational Support Systems ("OSS")

Covad claims that BA-MA should 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.

The current access afforded to CLECs with respect to loop qualification, pre-ordering, and ordering functions is more than sufficient to allow them to provision line sharing in the coming months, as evidenced by their plans to do so and their interim agreement with Bell Atlantic. On a forward-looking basis, Bell Atlantic and Covad already have engaged in extensive discussions about the OSS issue in the context of the New York collaborative. Covad is aware that Bell Atlantic (in Massachusetts as well as regionally) fully intends to implement OSS upgrades that will support line sharing, and that it is in active discussions with third-party vendor Telcordia with respect to this project. Covad is also aware that the timing for availability of these OSS upgrades is largely within Telcordia's control, and that Telcordia has not been able to commit to a date certain to deliver these upgrades. For this reason, BA-MA has not committed to a specific implementation plan for the OSS upgrade, or previously sought to set interim prices for OSS. The California Arbitrator could well have been speaking of the situation here – and he was expressly addressing a Covad demand on this issue – when he said that "OSS matters continue to be developed in other [Commission] and FCC proceedings. There is no convincing evidence here that ILECs are failing to reasonably develop electronic interfaces as soon as possible. It would be an idle act to here order electronic interface . . . if that interface is simply not available." California Draft Arbitration Decision at 30.

5. Digital Loop Carrier/Remote Terminal

Covad raises two issues under this heading. First, Covad asserts that BA-MA should be required to provide line sharing even when the end user is served over fiber-fed DLC and not an all-copper loop. In support of that position, Covad principally relies on paragraph 91 of the *Line Sharing Order*.

The *Line Sharing Order* expressly defines the high frequency spectrum of the loop subject to line sharing as "the frequency range above the voiceband on a copper loop facility used to carry analog circuit-switched voiceband transmissions." *Line Sharing Order* ¶ 26 (emphasis added). To the extent that Covad is attempting to impose line-sharing obligations on fiber facilities, such as fiber-fed DLC loops, it is an impermissible attempt to expand the scope of line sharing. The real issue here, therefore, is the manner in which Covad and other CLECs are allowed to access the loop and DLC so as to serve their potential customers.

The parties are still attempting to work through these operational issues, and the failure to resolve them to date is not the fault of Bell Atlantic. The difficulty, even under the best of circumstances, of these technical complexities was not unexpected, and the FCC recognized in the *Line Sharing Order* that "the functionality required to accomplish line sharing on DLC systems may not be available by the effective date of our spectrum unbundling rules." *Line Sharing Order* ¶ 92. Despite Bell Atlantic's efforts to constructively work through these issues, Covad has provided little concrete feedback to which Bell Atlantic can react in order to further advance the engineering issues.

In light of this state of affairs, it has been impossible to suggest definitive terms for line sharing over DLC-fed loops at this time. BA-MA is committed, however, to continue to pursue good faith negotiations with Covad and to enter into mutually agreeable terms and conditions at the earliest practicable date.

With respect to the second issue Covad has posed under this heading (Issue 5(b)) – whether BA-MA should be required to provide access to feeder subloops at UNE rates – there is little dispute concerning this issue, and Covad only states in its petition that BA-MA's position is "unclear." Covad Petition at 21.

In accord with the FCC's order concerning subloop unbundling, BA-MA is making unbundled copper subloops available to Covad (and other CLECs) and has posted its proposed terms and conditions on the Bell Atlantic TIS web site. In addition, and in accord with the FCC's separate order on Advanced Services, BA-MA will make collocation available at or adjacent to the remote terminal ("RT") or the Feeder/Distribution Interface ("FDI"). Bell Atlantic is in the process of filing amendments to its State collocation tariffs to implement such offerings. Provided Covad has obtained collocation at or adjacent to the RT or the FDI, or established an equipment cabinet at or adjacent to the RT or FDI, in accordance with agreed-upon terms and conditions, BA-MA will be prepared to provide line sharing over the copper subloop running from that location to the end-users' premises.

6. Provisioning Issues

Covad has raised two specific provisioning issues under this heading. The first (Issue 6(a)) is whether BA-MA should be required to test and the CLEC accept the line-sharing UNE to consider the installation of the UNE to be complete.

While still subject to discussion, such a testing/acceptance process may be a needless exercise. When line sharing is provisioned over an existing loop, a dial tone is present, thus eliminating the need for any cooperative testing and "acceptance." Since it remains unclear what Covad's proposal would require and how it would work in practice, it is inappropriate to require it at this time.

Second, Covad has raised as Issue 6(b) whether BA-MA should be required to provide a "Line-Station Transfer" (1) when a customer is served by a loop that suffers interference or (2) when a customer is served over DLC and either (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 has scarcely raised this issue in the New York collaborative. This near silence is hardly surprising because, by definition, line sharing pertains to the sharing of the high frequency portion of an ***existing*** copper loop providing service and not, as Covad would have it, sharing a loop which a LEC must create for a CLECs benefit. *Line Sharing Order*, ¶ 26 ("the frequency range above the voiceband on a copper loop facility ***used*** to carry analog circuit-switched voiceband transmissions")(emphasis added). Moreover, while BA-MA, as Covad indicates, has agreed to provide a line and station transfer (or "pair swap") for stand-alone DSL loops. It is not reasonable or necessary, however, to require it the line sharing context because of the complexities in doing so. Attempting to do so will generate an unreasonably high potential for disruption of the voice service being transmitted on the shared loop, and could require the movement of a large number of working lines. The fundamental premise of Covad’s argument (at 21) – that requiring line-station transfers will allow customers to access high speed data service "without interruption of their voice services" – thus is false. BA-MA will provide further specific evidence and explanation concerning this issue at the appropriate time during this proceeding.

7. Maintenance and Repair Issues

Covad next raises the vague general issue of "what terms and conditions govern the testing, maintenance and repair of line-shared home-run copper loops and fiber-fed DLC loops?" Covad's only discussion of this issue is to state that the non-discrimination provisions of the 1996 Act should govern these issues, and that BA-MA's position is "unknown." Covad Petition at 22.

First, Bell Atlantic's position on these issues is not "unknown." For example, in the context of negotiations concerning Issue 3, above, Bell Atlantic proposed terms and conditions to deal explicitly with testing and repair issues.

Second, in any event, the statement of the issue by Covad is too ambiguous and vague to be responded to in detail at this time. Even in the context of Covad's statement that "the non-discrimination provisions of the federal Telecommunications Act" should apply to this issue, it is unclear from Covad's shorthand what it is asking for. As with all other issues, those concerning repair and maintenance continue to be subjects of the New York collaborative. To the extent these matters remain in dispute and are further amplified and clarified by Covad in the course of these proceedings, BA-MA will respond to them in greater detail at the appropriate time.

8. Voice Interference Issues

With this issue, Covad asks that the burden be placed on BA-MA to demonstrate to the Department that loop "conditioning" (that is, preparing it for line sharing use) will significantly degrade existing voice service *every time* BA-MA concludes that a specific loop cannot be conditioned without causing such degradation. Covad Petition at 22.

Covad's blanket demand is unreasonable and unnecessarily burdensome to both BA-MA and the Department. BA-MA will condition a loop at Covad's request, provided such conditioning does not substantially impair the voice grade service provided over the loop. Some types of conditioning will be possible without such impairment. It is an engineering fact known throughout the industry, however, that some types of conditioning – such as the removal of load coils on loops greater than 18,000 feet in length – will substantially impair voice service. Indeed, a primary reason load coils are on loops of that length is because they were needed to correct the general loss of voice quality on loops exceeding 18,000 feet. Therefore, removal of the very devices that were placed in order to provide acceptable voice quality will significantly degrade voice service. The FCC recognized this virtual truism in one recent order, noting that "if load coils or repeaters are needed to amplify the voice signal over a long loop, removal of those repeaters to allow for the transmission of the high frequency signals would *hamper the quality of the voice service*."

Although BA-MA would be prepared to demonstrate this engineering fact (and any others like it) once to the Department's satisfaction, it would be a waste of everyone's time were it required – as Covad insists – to demonstrate it every time it receives a request for such a line.

9. Pricing Issues

Covad recasts pricing issues under this issue by again raising the question "[w]hat should be the appropriate permanent recurring and nonrecurring pricing for line sharing?" Covad Petition at 23. Specifically Covad presents an abbreviated argument regarding what it should and should not have to compensate BA-MA for with respect to (a) OSS; (b) deconditioning of loops; and (c) loop qualification.

As explained with respect to Issue 2, BA-MA has filed a Line Sharing tariff with the Department and pricing issues should be addressed in the Department's investigation of

the tariff – not in this arbitration. It should be noted, however, that Covad's demand in sub-issue (b) that it be allowed free loop conditioning is a blatant overreach from the start. The FCC consistently has rejected the notion that CLECs are entitled to free loop conditioning. Most recently in the *Line Sharing Order* the FCC reaffirmed that "consistent with our conclusion in the *Local Competition Third Report and Order*, we conclude that incumbent LECs should be able to charge for conditioning loops when competitors request the high frequency portion of the loop." *Line Sharing Order* ¶ 87.

Similarly, Covad's sweeping claim under its Issue 9(c) that it should not have to pay any of the cost of determining loop qualification "[b]ecause loop qualification is a mechanized OSS process requiring no cost causing work," is both legally and factually incorrect. The *Line Sharing Order* itself provides that "incumbent LECs should recover in their line sharing charges those reasonable incremental costs of OSS modification that are caused by the obligation to provide line sharing as an unbundled network element." *Line Sharing Order* at ¶ 144. Therefore, the costs associated with changes to mechanized processes needed to determine loop qualification are appropriately recovered from CLECs. Moreover, the CLECs themselves have demanded the development of a data base on loop qualification which will give them access to the same data Bell Atlantic provides to its retail business; it is patently unfair that CLECs such as Covad not bear the cost of developing such a data base on their behalf. In any event, Bell Atlantic is currently developing the enhancements to its existing mechanized systems which are needed to perform qualification functions performed manually today, and will determine the costs for such enhancements once the development process is concluded. These costs are appropriately recovered from CLECs.

CONCLUSION

BA-MA will continue to negotiate with Covad and keep the Department apprised of the status of those negotiations. However, it is unlikely that all issues will be resolved despite diligent efforts by the parties. BA-MA will be prepared to address issues that remain in dispute in accordance with the schedule on this proceeding.

Respectfully submitted,

Bell-Atlantic Massachusetts

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