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# ***Public Hearing***

before

## SENATE COMMERCE COMMITTEE

*“What actions State Government could take to foster competition  
in the telecommunications market”*

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**LOCATION:** Committee Room 1  
State House Annex  
Trenton, New Jersey

**DATE:** May 27, 1999  
10:00 a.m.

### **MEMBERS OF COMMITTEE PRESENT:**

Senator Gerald Cardinale, Chairman  
Senator Robert W. Singer, Vice-Chairman  
Senator Gary J. Furnari



### **ALSO PRESENT:**

Dale C. Davis Jr.  
*Office of Legislative Services  
Committee Aide*

Laurine Purola  
John Strachan  
*Senate Majority  
Committee Aides*

Patrick M. Gillespie  
Douglas Wheeler  
*Senate Democratic  
Committee Aides*

*Hearing Recorded and Transcribed by*  
The Office of Legislative Services, Public Information Office,  
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

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SENATOR SINGER: Ladies and Gentlemen, as it is after 10:00 and Senator Furnari and I are both here -- I don't know if Senator Cardinale is somewhere in the building -- but as Vice-Chairman of the Committee, we'd like to start the hearing, because there are a number of people that are here to testify and have asked and requested that we get going, as they can have other commitments as well, as Senator Furnari and I both have commitments.

So as we start the testimony, I'm sure that Senator Cardinale will be coming in. And I don't know, is any other Senator supposed to be here today?

MR. DAVIS (Committee Aide): No.

SENATOR SINGER: Or just the three of us?

Well, the three outstanding Senators are here. (laughter)

The first gentleman to testify is John Langhauser, Vice President Atlantic Region of AT&T, along with John Sheridan. Thank you both for being here today.

**JOHN J. LANGHAUSER:** Good morning, Mr. Vice-Chairman, members of the Committee. I'm John Langhauser, Regional Vice President of AT&T for Law and Government Affairs.

First, I want to thank the Committee for holding these hearings today. This is certainly a very timely topic. It's now been over three years since the Federal Telecommunications Act was passed. No one is more disappointed than AT&T that local competition has not arrived here in New Jersey. It's certainly the right time to look at what is happening in the local markets, why competition is not taking place, and, more importantly, consider the actions necessary to move forward.

I'd like to cover the extent of local competition here in New Jersey, the actions necessary to move competition forward, and finally turn to a very important bill, Senate 1556, now pending before this Committee.

Before I do that, however, I would like to address the rhetoric that you may have heard to the effect that AT&T is not interested in entering the local market, and is particularly uninterested in serving residential customers. This rhetoric is more than untrue, it's outright silly.

During the past 18 months, my company has spent, or committed to spend, over \$120 billion to acquire the assets necessary to provide local telephone service. Over \$100 billion of these expenditures are to acquire two cable companies, TCI, which is completed, and MediaOne which is pending. And these acquisitions are designed to allow us to provide residential service over cable facilities. We are not only interested in competing in the local market, we have literally bet the future of AT&T on our ability to do so.

However, despite these expenditures, right now our ability to provide telephone service over cable lines is limited. Where we own cable facilities, we are moving very aggressively to build out the systems. That will take some time. Even when we complete the MediaOne acquisition, our owned and operated systems will cover only about 26 percent of the households in the United States, and unfortunately, virtually none in New Jersey.

Our intent is to enter into agreements with other major providers to enable us to use their cable facilities to provide telephone service, but none of these agreements are yet in place. What that means for the near term is that AT&T and the other competitive companies must use the only telephone

network that currently exists in this state -- Bell Atlantic's network -- to provide telephone service. This is a right that we are entitled to under the Federal Telecommunications Act. It's analogous to the way that the competitive long-distance companies, MCI and Sprint, enter the long distance market.

Let me now turn to the actual state of competition in New Jersey. Unfortunately, there is precious little of it. This Committee is probably going to hear a lot of numbers this morning about number of licensed carriers and number of minutes and things like that. The number I would like you to focus on and the number that I think is meaningful, is market share.

Recently all of the competitive carriers commissioned a consultant, Atlantic ACM, to gather statistics on the actual competitive penetration in New Jersey. The results of this study show that there is very little competition. The total market share of the entire competitive industry three years after the Federal Act was passed is approximately 1.25 percent. It's a little more than that in business, about 2.2 percent, and virtually nonexistent in the residential market, about one-quarter percent to one percent. These tiny numbers become absolutely insignificant when compared to the growth that is currently occurring in the telecommunications market.

Last year alone, Bell Atlantic-New Jersey increased its business access lines by about nine and a half percent. Last year alone Bell Atlantic-New Jersey increased its local service revenues by about \$120 million, about 8 percent. In February, Bell Atlantic's Chief Financial Officer got up before the investment community and represented that Bell Atlantic, as a whole, had grown its voice grade equivalent access lines last year by 38.3 percent.



You may hear that competition is here, it's present, it's vibrant, it's robust. I think the numbers speak for themselves. A one and a quarter percent market share in a business growing at over 35 percent can only mean that we still have a monopoly in this state.

SENATOR SINGER: Excuse me, it sounds like a good stock tip.  
(laughter)

MR. LANGHAUSER: Their stock is doing very well.

SENATOR SINGER: Excuse me.

MR. LANGHAUSER: What do we need to move on? Three things. Because the new entrants need to use Bell Atlantic's network, they need rates that make economic sense and are based on forward-looking economic cost as the law requires. The new entrants need nondiscriminatory and reasonable access to Bell's networks. And, very importantly, the computer systems that are used to switch customers have to function flawlessly. We can't have customers experiencing delays, inconvenience, or out-of-service conditions when they try to switch carriers.

First, the rates. Everyone agrees that the rates should be based on forward-looking economic costs. The problem in New Jersey is that the current rates are far, far in excess of this level. The rates are currently being challenged in court by AT&T, MCI, and the Ratepayer Advocate. But the Board does not have to wait for the court case to be resolved. They can and they should, as some other states have done, reconsider those rates now. Unless new entrants see the prospect of profitable entry, they are not going to enter this market.

Nondiscriminatory access. The principle dispute right now is over Bell's ability to physically disconnect piece parts of its network before it

provides it to new entrants. In January the United States Supreme Court upheld an FCC rule that prohibits the incumbent telephone companies from doing that. There is now a staff recommendation before the board that would limit the extent of this FCC rule. It would not apply it to the medium-sized businesses, it would not apply it to large businesses, and it would limit its applicability to very small businesses. If this rule is adopted by the board it will stifle and curtail the ability of new entrants to compete in the business market.

Finally, the computer systems. I can't stress enough how important it is to get these computer systems right. Local telephone service is a lifeline for customers. They can not be without service. Unfortunately, our experience with Bell Atlantic has been very unsatisfactory. In New York State, there has been commission supervised testing of the systems since last fall. Bell claims it has passed the test. We and the test results would dispute that. But we started submitting commercial orders recently.

The last week's data I have show that in all of New York State we submitted 37 orders. Fourteen of them did not work at cutover. We had customers who lost service from anywhere from two hours to seven days.

We do think here the Board is on the right track. Recently there was a staff recommendation calling for third-party testing of Bell's computer systems. It's a good first step. There are a lot of details to be worked out, but it is essential to this state that we move forward with rigorous third-party testing, and then we move forward with real-world commercial testing before we unleash these systems on customers.

I'd next like to turn to Senate Bill 1556, the Telecommunications Tax and Rate Relief Act. This bill serves two problems in the marketplace. It reduces access charges, and it promotes fair tax treatment among telecommunications carriers. Access charges are the fees that Bell Atlantic charges long-distance companies to bring the call from your home to our network and then bring it from our network back to the home of the person you are calling. They are a very significant part of the rate that you pay for long distance.

For example, on a local toll call a call from Trenton to Princeton, the price of that call is about eight cents a minute. Imbedded in that price is 3.7 cents of access charges. On an in-state long-distance call, a call from Morristown to Trenton, the price of that call is about a dime. Imbedded in that is 6.2 cents of access charges. The problem here is that in both cases Bell Atlantic's cost of providing that service, including a reasonable profit, is about four-tenths of a cent. The end result is that customers in this state are being overcharged for their toll and their long-distance services, overcharged to the tune of about \$160 million a year, about 25 percent.

Senate 1556, if enacted, will fix that. It requires Bell Atlantic to reduce its access rates to cost space levels, and it requires the long-distance companies to pass every nickel of their excess savings onto consumers, and AT&T will do that.

This bill also solves another problem, and that's one of competitive parity in the toll markets. Right now we compete with Bell Atlantic in the local toll market. They have a huge advantage. We pay them 3.6 cents per minute for access. Their costs are four-tenths of a cent. This is just a huge competitive

advantage that will only get worse when and if Bell is allowed into the long-distance market and can provide service in all parts of the state.

There is also something in this bill for Bell Atlantic. As I mentioned, it promotes equitable tax treatment. This bill would relieve Bell Atlantic from the obligation to pay the personal property tax which, right now, is levied only on monopoly providers and not on long-distance companies or the new entrants. The bill requires that these tax savings be used to reduce access charges.

I'm sure that you will hear today that access charges are needed to subsidize local telephone service. There is a problem with that argument. Telecommunications usage in this state and everywhere is growing at leaps and bounds. Access revenues are escalating with the increased telecommunications usage. So, for example, since 1993 Bell Atlantic's access revenues in the State of New Jersey have grown by over \$75 million a year. Yet in 1993 there were sufficient revenues to cover universal service. There were sufficient revenues to keep local rates affordable. We are in a declining cost business. There is no need anymore for any subsidy.

Finally, I'd like to say a word about the Board staff's April 28th proposal on access reform. We're gratified that the staff has recognized that access charges are a problem and reform is necessary. However, their recommendations fall far, far short of true access reform. They really come in two parts. The first part is a little more than a reaffirmation of what the FCC said in August of 1996, that when competitive carriers lease all parts of the incumbent's network, they are also entitled to the access revenues. This will

have little, little affect on the access charges we currently pay, largely because the competitive penetration is so tiny today.

The second part of the staff's recommendation is a revenue neutral restructuring of something called the local transport rate. Without getting into the details, which really have not been specified yet, it's a very small portion of access charges, and it's hard for us to see how a revenue neutral restructuring results in meaningful access reform.

To sum up, I urge you to support Senate 1556. It's a good bill. It will reduce customers long-distance and toll bills in this state very substantially. It's fair to Bell, it's fair to the industry.

Finally, I urge you to follow the decisions before the board. Matters will come before the Board during the remainder of this year that will have a profound effect on whether local competition does take route in the State of New Jersey. We have a wonderful opportunity in this state. We have more telecommunications expertise than anywhere else. This state should take the lead in moving into the new world and not be satisfied by being somewhere in the middle of the pack.

I thank you for holding these hearings. I thank you for working to bring the benefits of telecommunications competition to New Jersey, and I would be happy to answer any questions you may have.

**SENATOR GERALD CARDINALE (Chairman):** Thank you very much. Before we do that, I think we have some housekeeping that has not yet been done. We need to call the roll for this hearing.

Dale, would you do that.

MR. DAVIS: Sure.

Senator Lesniak is absent.

Senator Furnari.

SENATOR FURNARI: Here.

MR. DAVIS: Senator Singer.

SENATOR SINGER: Here.

MR. DAVIS: Senator Cardinale.

SENATOR CARDINALE: Here.

MR. DAVIS: Senator Sinagra is absent.

SENATOR CARDINALE: Thank you very much.

I have a question or two. You use the term cost-based levels with regard to access fees. What do you mean by cost-based levels?

MR. LANGHAUSER: What I'm referring to there is during its rate proceedings, the Board of Public Utilities set a cost-based rate for something called local call termination. And they set it at about two-tenths of a cent per empt. Local call termination is exactly and precisely the same as access. It's the delivery by Bell Atlantic of a call originated by one of its customers to the office of either a long-distance company or one of its local competitors. The rate that the Board selected was reportedly based on forward- looking economic cost, plus a reasonable profit. And that is the correct legal standard, and I believe everyone here agrees that's the correct legal standard.

SENATOR CARDINALE: Now, if we were to tamper with that access fee -- it's been represented, and I'm sure it will be represented at this meeting -- that there would be implications for the rate that is charged to the average residential consumer. That, in fact, this rate has been set in such a way

that there is a built-in subsidy for the basic monthly charge that residential consumers pay. Would you respond to that.

MR. LANGHAUSER: Senator, I believe Dr. Selwyn is going to testify in more detail, but let me take a stab at that. We don't believe that local rates are subsidized today at all. The way this bill will work is-- The problem today is about \$160 million. And that's a measure of Bell's access charges in excess of their cost of providing the access service. The reduction in the personal property tax is worth about \$100 million to Bell Atlantic. That leaves a gap of \$60 million. That \$60 million can be recovered from any variety of sources. One is the growth in the access revenues over the last five years. That growth is not being used to subsidize anything. That growth has been used to increase Bell Atlantic's corporate dividend to its parent.

Another source of that \$60 million are Bell Atlantic's merger savings. They have claimed huge merger savings, first through their merger with Nynex, and secondly, if it's approved, through their merger with GTE. The state's ratepayers have not benefited one nickel from those merger savings.

A third source of the \$60 million could be Bell Atlantic's Yellow Pages revenues, which the Board allowed to separate out from the regulated entity during the past two years, but turns out enormous profits.

And the last point I would make is there is a variant of Senate 1556 introduced and supported by Bell Atlantic. Even that bill concedes that access charges are far, far too high in the state.

SENATOR CARDINALE: You've urged us to adopt a particular bill. While it's not on the agenda, this Committee -- we are obviously not going to vote today on those bills. We are all aware that there have been

several bills introduced which have slightly different approaches to the problem. But it's also been suggested that we shouldn't do a bill at all, that this is really a regulatory matter. And what you just said has always been, in my way of thinking, something that the BPU needs to address in changing times -- prior determinations with respect to rates, access fees, and other things that they do. Those conditions change. Why do you believe that we need to do this as a legislative matter rather than as a -- leave it to the regulatory process to work its own timely solution to the problem?

MR. LANGHAUSER: Senator, I think there are two answers to the question. First, to the extent this bill links tax relief for Bell Atlantic to reduction in access charges, the tax relief portion can only be done before the Legislature.

Secondly, the board has not moved forward expeditiously on access reform. And in fairness to the Board, they have a lot on their plate. They are dealing not only with telecommunications, but a lot of other industries. There is a need to get this done. I think it can be done most expeditiously here before the Legislature.

Thirdly, as I mentioned, the Board staff recommendations simply don't get us there. They do not result in meaningful access reform, and they would continue the current situation where consumers in this state are paying \$160 million more than they should for their toll calling.

SENATOR CARDINALE: Do you see this strictly as an issue for the consumer, or is this also a commercial issue? Does this deal with the economic vitality of New Jersey?



MR. LANGHAUSER: I think it is both. To the extent we make the cost of-- We reduce the cost of telephone service in new Jersey. Obviously, New Jersey becomes a more attractive place to do business. I think as importantly to the extent we level the competitive playing field, New Jersey gets the full benefit of vigorous competition in the interLATA toll market and the long-distance markets.

SENATOR CARDINALE: Thank you.

Are there questions from any members?

Senator Furnari.

SENATOR FURNARI: Now, this bill seems to be based upon the \$110 million property tax break for Bell Atlantic. And then, in the scheme, the tax break is passed along to AT&T in the form of access rate reductions. AT&T is a \$53 billion annual revenue company, is that right?

MR. LANGHAUSER: That's about right.

SENATOR FURNARI: And I guess Bell Atlantic is about \$31 billion or considerably smaller, half the size. Sitting here as a local mayor as well, just understanding the way things work, why would we want the State to give a tax break of \$110 million to benefit hugely profitable companies when we are looking at -- or I look at senior citizens on fixed income having a very difficult time dealing with property taxes? What guarantees do local taxpayers have, first of all, even that the Treasury is going to be willing to be involved in this program of giving the money back, etc., to the municipalities? What guarantees will local property taxpayers have once this happens? And I call it a property tax, and I mean the personal property tax.

And that's where my concern is. I understand, and I want to see some rate reductions. If you could comment on those.

MR. LANGHAUSER: Certainly, Senator. I think the important step that is missing that AT&T will not keep a nickel of these access reductions. Every nickel in access reductions will be passed on to customers. The bill requires us to do that. We have always passed on access reductions, and we would be willing to prove, in any format that is acceptable to the Legislature or to the Board of Public Utilities, that we, in fact, have passed on every nickel of these access reductions.

So the end result of this exercise is that the consumers get lower long-distance and lower toll bills. And this is very important in a state like New Jersey. In fact, New Jersey is almost unique. There is more local toll calling in New Jersey than in virtually any other state in the nation. And the reason for that is because the local calling areas are so tiny that virtually every call you make is charged for separately as a local toll call.

SENATOR FURNARI: Who do we have right now competing in New Jersey as long-distance carriers?

MR. LANGHAUSER: There are probably at least 500 companies providing long-distance service in New Jersey right now. Certainly, the big carriers are here: AT&T, MCI WorldCom, Sprint, Quest, and there are a number of other companies that resell the services of the larger companies.

SENATOR FURNARI: So that with that going on, why is the reduction of an access fee so important to promote competition?

MR. LANGHAUSER: Where it's important right now is to reduce customers' bills. Where it becomes essential to preserve competition is in

markets where these long-distance companies go head-to-head with Bell Atlantic. If you could think forward to the day whenever Bell Atlantic, in fact, opens its local market, complies with the Federal law, established that the market is irreversibly open to local competition, they will compete with us for a call from Morristown to Trenton. The problem that we will face is that on a 10 cent call, we will send Bell Atlantic 6.2 cents on every minute. And their costs are only four-tenths of a cent. The risk here is that sort of scenario, if left to continue, could destroy what today is very robust and very vibrant competition in the long-distance market.

SENATOR FURNARI: Thank you.

SENATOR CARDINALE: Senator Singer.

SENATOR SINGER: In due deference, I'm a little disappointed today, Mr. Chairman, that the Chairman of the BPU is not here today to testify.

SENATOR CARDINALE: Let me say this. I had invited the BPU to come, and just a couple of days ago it was suggested to me by Governor's Counsel that it might be inappropriate for them to appear here at this hearing, because they have their quasi-judicial bodies, as you know, and they have this matter under discussion themselves. And for them to appear at a public hearing might somehow be seen as prejudicing that matter. I don't believe-- They will be here because they have--

However, I'm sure that you can avail yourself, as I have, of meeting with them and reviewing. I know that they have sent me voluminous materials which I've read, and I'm sure that they will be very happy to do the same for you.

SENATOR SINGER: They sent it to me, also. I have also met with the Public Advocate on that. My concern being -- and I disagree with that, though I'm not an attorney, but I don't see why setting the stage as to what is happening and their concerns prejudices anything. I didn't ask them to make a decision here. I think they could have at least set the stage for what is happening.

I have concerns about what is going on, because you should know this is small compared to what we are dealing with, the deregulation of the energy cost in the state, which are more involved, which create more problems to residents, it is more confusing. And I think that as an entire package-- I agree with you on one thing you said, Mr. Chairman. To a great extent the legislation, other than looking for tax relief, that should be the legislation. The BPU should be doing their job to foster competition at both local and long-distance markets. That's their job. How they get there is something that they should be discussing. If there is a problem legislatively that needs to be requested to do that they should be the ones coming in front of us and talking about reduction in taxes to allow the competition market to open up, and that is not prejudicing anything. That's just saying how they view what is happening.

And I would suggest that at a future meeting we have the Rate Advocate here. Let her talk about what she believes to be in the best interest of the public as to how we make phone calls affordable. You know, representing probably the largest senior contingent in the State of New Jersey, my seniors are concerned that every time they call a friend in a neighboring town it's a long-distance call, it's a toll call. They call me on a regular basis.

They don't understand it. One part of my town it's not, the other part it is. They don't understand this. There is a lot of confusion here.

I would ask, though, at some future date we have the Public Advocate come in. I know she is not concerned about coming in and talking to us and giving us a viewpoint as to where it should be at. And I think that if we are going to hear more today-- But I hope the end result of this is if we are not seeing action by the BPU within a relatively short time in the best interest -- and we are going to hear both sides of the issue here today -- that we will take the legislative action to take it out of their hands and do it ourselves. That's just a thought.

SENATOR CARDINALE: Thank you, Senator.

Just-- Many of the issues that you raise are issues that the Chair had to consider before calling these hearings. And being that no one here has sponsored a bill on this subject, it was thought by many that it would be a good forum for us to air this issue.

Secondly, the issue has many implications for the economic life of New Jersey, as well as for the convenience and ambiance and just general standards that our constituents are all going to enjoy, such as you mentioned. There is a point to having hearings that may or may not result in legislation, in that we do provide a forum for various opinions to be heard, perhaps on a wider basis than they might be heard if they were limited to a Board meeting. And so from that perspective alone, we have some validity. We are going to highlight this issue a bit by the very fact of having these hearings and perhaps bringing a greater understanding on the part of the public, not just of government, but on the part of the public to what it is that we are doing here.

Now, as to the issue you raised with respect to the Ratepayer Advocate, I believe the Ratepayer Advocate is on our witness list. It is the fourth witness to speak here today.

SENATOR SINGER: But I wanted--

SENATOR CARDINALE: Well, we issue our notices and who they send is-- I might wish to have a different person appear with AT&T, but I don't make those determinations.

That is not aimed at anything that you have said or your presentation or anything, it's just an example. The people who appear are the people who are selected to appear by their various entities.

Are there any other questions for this witness? (no response)

Do you have anything to add?

MR. LANGHAUSER: No, sir, I don't.

SENATOR CARDINALE: Thank you very much.

MR. LANGHAUSER: Thank you.

SENATOR CARDINALE: Carl Giesy and Seth Maiman from MCI.

**SETH MAIMAN:** We brought visual text up.

Good morning, Mr. Chairman, members of the Committee, my name is Seth Maiman. I'm Manager of Government Affairs for MCI WorldCom. With me testifying today is Carl Giesy, our Director of Public Policy.

**CARL GIESY:** Mr. Chairman, members of the Committee, my name is Carl Giesy. I appreciate the opportunity to speak with you today and hopefully cut to the chase a bit. As I was preparing my testimony for you

today, I sent Seth a draft of it, and it was about 15 pages, not quite single spaced, but quite detailed telling sort of my life story trying to get into local markets here in New Jersey and elsewhere. And I thought it was a great story to tell, and Seth called me up the other day and said, "Oh, my God, you can't file this testimony, you will bore them to death." So Seth politely rewrote my testimony to be about five pages, and we will submit it here today, and I hope you will have an opportunity to read it, because it does read a lot better than my original draft.

But that being said, I want to sum-- I'll mercifully even spare you from reading that testimony and I'll try to summarize it and then highlight a few other points for you. Let me summarize it in the following way.

MCI WorldCom has been doing its part for the past three-plus years to try to get into local markets in New Jersey and elsewhere. We are a facilities-based, competitive local exchange company in New Jersey and in other states. We have invested tens of millions of dollars in this state in hi-tech state-of-the-art networks, fiber optic systems, switches in attempts to provide local service here.

That being said, we still have a relatively limited network in New Jersey. In order to try to reach a broader market we need access to Bell Atlantic's network. And Bell Atlantic has -- should we say -- been less than forthcoming in allowing us to try to use their network. And I don't blame them on that point.

So we have gone to the Board to ask them for their assistance to try to get access to Bell Atlantic's network on terms, as Mr. Langhauser described, that are nondiscriminatory, at rates that are hopefully reasonable.

And the Board has taken -- and I'll go through this in greater detail later in my testimony -- the board has taken a slow and piecemeal and sometimes tentative approach to getting markets open in New Jersey.

And that's why you see charts like what I have over here to the right (indicating) where Bell Atlantic's share of the phone lines in the state is still close to 100 percent -- 99, 98, whatever the numbers are. Bell Atlantic continues to have a virtual monopoly here in New Jersey despite three years at work at the Board, despite the Federal Telecommunications Act, despite our investment of tens of millions of dollars in this state.

So let me go through a couple of things that you might hear later on, because I won't have a chance to refute them later on. There are a lot of myths about competition and the process out there, and I want to take a few minutes to try to debunk these myths.

Myth number one that I hear a lot is that somehow competition is bad, or that somehow competition isn't really worth it here in New Jersey. And in support of that kind of statement, you will hear people talking about the local rate being the lowest in the nation at \$8.19, and that competition won't do much to help that rate, or that competition might actually even threaten that rate and make that rate go up.

There are a couple of responses to that. Response number one is that you can't just look at the \$8.19 local rate. Look at the total telecommunications bill that New Jersey consumers pay. When you look at those statistics, those statistics show you that New Jersey consumers pay for their telephone service about the same as the national average. So it's a myth



to say that New Jersey consumers are paying low telecommunications rates in the state. They are not. They are paying about the average in the country.

The second point is, and focusing on the price, misses two very important parts of the puzzle that why competition is, in fact, good. The notion of services: Competition isn't just about price. You would hope that competition would lower price, but competition is also about bringing new and innovative services that consumers want, that consumers need, that consumers will buy and hopefully buy from us.

Around the country we are on the verge of what I term a revolution in telecommunications with high-speed, broad-band access to the Internet. The world is going to move, in my opinion, far beyond the plain old voice service that we are used to today. And as we move into that new world of high-speed access to the Internet, it is going to be critically important to have a multiple of choices, a multiple of networks out there that people can choose from so they get the services they want at the prices they need.

The other element of competition that people tend to overlook is this notion of choice. As we were walking in this morning, there is a truck that's parked out in front here that says "We are Bell Atlantic. Essentially we don't care. We don't have to because we are the monopoly." And those of you who remember the old Lily Tomlin routine about the operator, one ringie dingie and two ringie dingies, will know that when you don't have a choice that's a problem.

Competition is the ultimate in consumer protection because it is the ultimate in giving the consumers the power to choose carriers, the power to say, "The heck with you. I don't want to buy my service from you anymore.

I'm going to this guy." That's a very important aspect that you don't want to overlook.

Look at New York, for example -- and I'll get into New York a bit more later. Right now customers by the thousands are moving away from Bell Atlantic and choosing MCI WorldCom. Residential customers are choosing MCI WorldCom for their local service. And we would like to think that is partly because of the price reductions we are offering. We would like to think that it's also partly because of the better service that we think we are offering. But it's also just plainly about choice. They are fed up with having Bell Atlantic as their only local choice, and they want a chance to move, and they are exercising that.

The second myth that I want to debunk, and that you might hear about later on, is that local competition is rampant here in New Jersey. I think Bell Atlantic is fond of pointing out the number of new entrants that are coming into the local market, a number of new entrants that have been certified by the Board, the number of inner connection agreements under the Federal Act that the Board has approved.

I have two responses to that. First of all, most of those inner-connection agreements that you are seeing, most of those new entrants that are coming in are resellers. Resellers are not facility-based carriers the way MCI WorldCom is a facility-based carrier. And it's an important distinction that I won't bore you with too much. But the notion is a reseller is totally dependent on Bell Atlantic's network and, therefore, it's not real competition. A facility-based carrier like MCI WorldCom represents a real threat to Bell Atlantic, and that's where the competition comes and that's the kind of competition that

you want to drive. We're not seeing much facilities-based competition in New Jersey.

The second thing is that even though Bell Atlantic has signed an inner-connection agreement with MCI WorldCom, Bell Atlantic hasn't exactly lived up to its promises in that inner-connection agreement. We have been to court on it; we've been at the BPU trying to get Bell Atlantic to live up to its commitments; we have been to the FCC to try to get Bell Atlantic to live up to its commitments. The fact of the matter is the inner-connection agreement isn't worth the paper that it's written on, basically. So when you hear Bell Atlantic crow about the number of inner-connection agreements, just take that with a grain of salt.

The reality of the situation is the chart that you see on the right. The reality of the situation is that there is virtually no local competition for residential or business customers in this state. You're not getting calls in the middle of dinner asking people to switch your local carriers over to MCI WorldCom or to AT&T or to any other carrier the way that you are getting calls to switch your long-distance services. When you see that kind of-- That's sort of the rude dinnertime interruption test that I call. When you know you have a real competition in the state is when you start getting annoying calls from telemarketers to switch your local service. And hopefully you will be getting some of those rude calls before too long, maybe even from us.

The third myth that I want to try to debunk here today is that the Board is moving rapidly to implement local competition in this state. The Board will cite to you a lot of things that it has done. The Board issued a report in July that identified some of the problems with getting local

competition going in this state. The Board set up a TSFT process, a technical -- I can't remember what the acronym stands for, basically, staff involvement to try to resolve some of these very technical issues. The process worked through for the following months. The Board staff has issued two recommendations that the Board is now considering. Is that progress? Sure, it's progress, absolutely, and I thank the Board for that progress.

But it's progress in the same way that my getting up from this table and taking a few steps out the door is progress for me getting home and back down to Washington, D.C., today. Eventually if I keep walking towards D.C. I'll eventually get home sometime, and the same way the Board's progress here. If the Board keeps at its current pace and with what it is currently doing, it will eventually get to local competition in this state, but I don't know where and I don't know when, and I don't know to what extent.

Here is the problem, and I alluded to it earlier in my testimony. It's not only slow, but it's piecemeal and tentative. Let me try to walk you through that. There are five major issues that the Board needs to address to get competition underway in New Jersey -- local competition underway. We have outlined this for the Board. The Board has taken these tentative steps on two of them, which means that there are three of them left to be addressed, and we don't know where and we don't know when the Board will address those issues.

Even on the two that the Board staff, at least, has taken the step to issue a report on the recommendations of the staff are tentative, are interim, and are still piecemeal. And I won't bore you with all the details. We have expressed these concerns with the Board and the Board staff. What the Board

needs to do is to take a more comprehensive, a strong and decisive action, to get competition moving. Slow, piecemeal, tentative steps just won't get us to where we need to go.

While the Board is moving in the direction of local competition, your neighboring states, in New York and in Pennsylvania, are moving ahead much more rapidly. And these again are states in which both Bell Atlantic operates and in which MCI WorldCom operates. In New York, for example, over a year ago the former chairman of the PSC up there, Chairman O'Mara, basically cracked a few heads together and came up with what's been termed a prefiling statement up in New York -- Bell Atlantic's prefiling statement up in New York. It's basically Bell Atlantic's proposed road map for opening up the local markets in New York. This is a year ago, April of 1998.

It's not a perfect road map. We disagree with parts of it and we are fighting at the PSC up there to make it better. But the fact of the matter is it's been good enough for us to get into the market in New York and to get into the market in New York in a relatively big way. We have been signing up residential customers for our local service in New York at the rate of thousands per week now. And that's even with a relatively inefficient computer system that Mr. Langhauser described up there.

We have now over 70,000 local exchange customers -- MCI WorldCom local exchange customers in New York. We've been getting into the market, we've been making strides up there. It's a start.

In Pennsylvania, Chairman Quain of the Pennsylvania PUC made the parties sit down in October of 1998 and started cracking a few heads together there. It's a very difficult process. He was trying to reach a

comprehensive settlement among all the parties. He failed at that, but it was a valiant effort. And the beauty of that effort was this. He was able to hone the issues down so that now before the board are two very crystal clear -- excuse me, before the PUC in Pennsylvania -- are two very crystal clear proposals that the PUC there can choose from. And the PUC there is moving to adopt one or the other or some mixture of the two. And that's scheduled to conclude sometime towards the end of the summer. So we are hopeful in Pennsylvania that we'll have some of these basic rules of the road resolved in Pennsylvania by the end of the summer, maybe early September.

I understand that the Board has a lot on its plate right now. I understand that it has electric dereg going on. But New Jersey doesn't have to be a second-class state when it comes to local telephone competition. New Jersey can move ahead just as New York and just as Pennsylvania are doing, and we've been asking the Board to do that.

To do that the Board needs to do the following: The Board needs to address all the issues that we have outlined for it, not just a couple. The Board needs to issue definitive rules, not interim tentative rules that are subject to this or subject to that. We need to know what the rules of the road are, so we can formulate a business plan and get into this state. And the Board needs to move more quickly. You can't keep taking small steps in the right direction. That's nice, we appreciate that, but the Board needs to move faster.

This brings me to my conclusion and why I'm here today. I'm here today to support the Senate Bill 1796 that has been filed in the Senate. We strongly support that bill and here is why. About a month ago-- Bell Atlantic is currently under alternative regulation in New Jersey. And under

alternative regulation in New Jersey is basically price cap regulation. As you can see from this chart, Bell Atlantic has enjoyed a substantial increase in its profits. You'll notice from the chart here (indicating) alternative regulation began in 1992 and you can see through '93, '94, and '95, '96, and '97 the latest numbers that we have available-- And these numbers are based upon Bell Atlantic's filings at the Securities and Exchange Commission. You can see Bell Atlantic's profits under alternative regulation have just shot up through the roof, especially for a regulated monopoly. These numbers are astronomical.

About a month ago the Board basically rubber stamped another year for Bell Atlantic to live under alternative regulation, without hearings, without -- just under comments that we filed, the Board just basically said, "Okay, you can have another year of earning profits like this." We had asked the Board as part of the review process saying, "Hold on, if you want them to continue under alternative regulation fine, let them do that. But at least make Bell Atlantic do the things they need to do to open up the local markets first, before they continue to have these kinds of profits."

The Board unfortunately did not agree with us. The Board just approved the extension for a year. And we think the Board missed a golden opportunity to try to jump-start the issues, to try to get things moving on the local competition front, hopefully erode some of these profits. Be that as it may, this issue is not going away.

Next year, Bell Atlantic will be in front of the board again asking for either another extension of its current plan or a new plan. And what Senate Bill 1796 does is say hold on, before you continue another year, or another few years of living well like this, at least do the things that you are

supposed to do under the Federal Act to make local competition a reality in this state. We think that's a good measure. It at least puts local competition on the same par with Bell Atlantic getting their alternative regulation that they want.

In other words, if the Board wants to move swiftly -- if Bell Atlantic wants to move swiftly -- to give Bell Atlantic alternative regulation, Senate Bill 1796 would at least make local competition at the same level of priority as Bell Atlantic's continued profits under alternative regs. And so for those reasons we support Bill 1796.

Thank you, that completes my testimony, and hopefully I didn't bore you as much as Seth was worried I would bore you. If you have any questions, I will be happy to take them.

SENATOR CARDINALE: Thank you.

I have one question really. You talked about these early in your statement, about consumer interest in the competition. Is there some way that you could suggest that that competition can take place in an understandable forum? If there is anything that has confused me personally, it's all of these solicitations, which of one seems to say that they are the best deal we can get for long-distance service. And I suppose if you are a large business that makes a lot of long-distance phone calls, you can hire a consultant to try to figure your way through this mind path of competing formats, as well as competing prices, and find out which one is really cheaper.

But Senator Singer's constituents are not going to be able to hire a consultant to figure their way through this process. Is there anything that



you can suggest -- is there any hope that anyone can suggest a way that competition can be understandable?

MR. GIESY: Absolutely. I have a two-part answer to that. Let me give you the first part, and that's sort of what I tell people all the time. Competition is messy. I mean, there is no doubt about it. You've got carriers out there saying *X* and other carriers saying *Z* and another carrier giving you a rate here if you call on nights and weekends and another carrier doing this.

That's sort of what competition is all about. It's different carriers trying out different services that maybe some customers will like and some won't. If you just want one thing that everybody buys, then stay with a monopoly. If you want competition, you are going to have to put up with some of the messiness out there as we try different things that customers might like. That's part one of the answer.

Part two of the answer is, sometimes the complexity is a selling point for our competitors. And when you look at it-- I use the example of the Sprint free and clear ads that I see on TV, at least down where I live. Where they show the person coming up to a -- it's a cellular. On the cellular side they show somebody going up to an unnamed cellular carrier saying, "What plans do I have?" And they say, "Well, if you call from area *B* to area *C* during nights and weekends, you might get this and you might get that," and the consumers head starts to spin and the eyes start to go wild. And Sprint then chimes in saying, "We have a much simpler plan."

In other words, the simplicity that you are looking for sometimes can be a selling point for other carriers who say that consumers are fed up with

the complexity, they want something simpler, and the market will move towards that.

MCI has done a similar thing. We have our five cent Sunday program. It can't be much simpler than that. You call on Sunday, and it's five cents a minute, period. That's a big selling point for us. You don't have to worry about what time, who you call, where you call. It's five cents a minute on Sundays. So you are right, competition is messy, but the market responds to that to the extent consumers want that cleared up.

SENATOR CARDINALE: Thank you.

Are there questions from other members of the Committee?

SENATOR SINGER: Just one thing. I think what the Chairman said is probably the most confusing to most of us. I know, for example, my wireless car phone, I went from a \$450 a month or \$500 a month bill to \$90 based on digital usage of it. Like overnight it went down \$300 and something, because I went to a digital phone. I think people are looking for that kind of simplicity and understand--

I, like everyone else who gets called nightly to switch my long-distance carrier, I'm getting \$25 checks in the mail and all kinds of other benefits to do so, and it kind of skews you really to what is the cheapest rate. And I'm a small long-distance user, and I can't imagine why they are fighting for it because some of the checks are six months worth of long-distance calls to be made. But again, I think--

MR. GIESY: I hope you cash them, by the way.

SENATOR SINGER: But I think that's part of the confusion, certainly to the senior population. I think they really want to be able to take the bill someplace and someone say, "Am I getting a good deal?"

MR. GIESY: It is a problem, but again it's to the extent the market responds to that hopefully. And the other point that I would like to make, as new entrants to a market, we lose if there is confusion on customers' parts.

SENATOR SINGER: I'll bring my bill in next week. (laughter)

MR. GIESY: No, I'm serious. I'm serious, by the way. People tend to stay-- If they are confused, people tend to stay where they are. We are coming into markets, and long distance is a bit different because we have been there for a while. On the local side we are going to be coming into the market. We have no market share right now, basically. If customers are confused by our product offering, they won't come to us. If they are not convinced that they need to switch to us, they are not going to go to the trouble of switching. So it's going to be up to us to try to make it simpler for them so they understand it.

SENATOR CARDINALE: Thank you very much.

William Freeman, Bell Atlantic.

**WILLIAM M. FREEMAN:** Good morning, my name is William Freeman, President and CEO of Bell Atlantic-New Jersey. It's a pleasure to be here this morning. I think the hearings are timely, and it's my pleasure to come here before you today and be able to answer the questions that you have, and to address some of the issues about a competitive market here in the State of New Jersey.

What I'd like to do this morning would be to read a brief statement and describe a market overview of the telecommunications market in New Jersey, and then to address some of the specific issues that have been raised this morning.

I look at what is happening in the real world of new markets and new technologies and growing competition, and I see a world where data drives investment and growth, where most prices are unregulated, where consolidation, merger, and globalization are daily events, but where long-distance voice and data markets are still protected from full competition. And where competitors like AT&T and MCI still operate under a very different set of ground rules from those imposed on Bell Atlantic for reasons that in today's market no longer make sense or serve any reasonable public policy goal.

Frankly, at Bell Atlantic we feel a little bit like the last prisoner left in the stockade long after the war is over. That's because in our world of telephone regulation my company, alone among all major players, is still operating by the old rules. We are heavily regulated, fenced out of new markets, limited in terms of opportunities to invest and grow, and subject to an outdated view of telecom marketplace, which assumes that so-called new entrants like IXC's, MCI, and AT&T, and the CLEC and the DLEC, which are data local exchange carriers startups -- they have all been doing extremely well on Wall Street, by the way -- still need a variety of subsidies from the regional Bell operating companies in order to get on their feet, so to speak.

Let's go back in time for just a minute and try and figure out how we got kept back in the old world while everybody else, it seems, has moved on to the next. Our strategy at Bell Atlantic since the Act was passed has been

very simple: to fully implement all requirements for opening our networks. We spent the last three years doing just that, aggressively implementing these changes, and in many cases, even before the regulatory process required us to do so. We used forward-looking costs, shared transport, aggressive collocation policies, and more than \$1 billion of investment systems in local number portability and our competitive local exchange carrier customer service centers and other marketing opening initiatives.

Our adversaries have been tenacious in blocking our entry into new markets. They continue to turn to Washington for regulatory fixes to every little operational and technical problem they encounter in the local market and through the tel-rik (phonetic spelling) process, which is an incremental costing process and the platform prices that were mentioned earlier today, for access to our network elements. Everyone knows they are below our actual cost, and we continue to subsidize our competitors' entry into our markets.

Most frustrating for me is that here we are, three years after the Telecommunications Act, and still neither Bell Atlantic nor any other regional Bell operating company is yet in the long-distance business. This, while in the real world, the level of competition we face from AT&T, MCI, RCN, Covad, and others is growing by the day, all of them operating with few, if any, restrictions on their ability to compete and to grow.

As you all know, the Telecommunications Act was designed to be a carrot and stick approach to opening all markets. We had a reference to head cracking before. Unfortunately, from our point of view, so far it's been all stick, no carrot. And from a public policy point of view it's hard to see

exactly what objectives are being furthered by perpetuating and perhaps even extending high-speed data services to this unique set of regulatory handicaps. This regulatory state of affairs might be justified if it had resulted in widespread consumer benefits or added to the public good. Instead, I submit that the opposite is true.

This regulatory state of affairs has left us without real competition in the long-distance marketplace, and the rates for the average customer continue to go up. Inner-state rates for basic customers went up 44 percent from 1996 through 1998, despite a 10 percent reduction in access charges. Two-thirds of AT&T's customers make less than five dollars worth of long-distance calls each month. And they pay almost 20 cents a minute, not the widely advertised dime a minute rates reserved for those on the special calling plans.

And in case these smaller residential users couldn't take the hint, AT&T has imposed a \$3 a month silence tax on those customers who don't make enough long-distance calls. These customers will be assigned to AT&T's new unlucky dog company. (laughter)

And access charge reductions, in large part not passed through to the average customer, have become little more than a transfer of operating margins from the companies providing universal service and open networks to the country's biggest and most dominant providers. And without companies like Bell Atlantic to provide real competition in the high-speed data backbone market, the Internet is actually becoming more concentrated and less competitive. All Internet users and Internet service providers cry out for more capacity in the Internet backbone. Data transport speeds have slowed to an

average of 40 to 56 kilobyts per second as backbone traffic is controlled by a small handful of carriers dominated by AT&T and MCI.

Meanwhile, the one company that could change its competitive picture remains in a regulatory straitjacket, apparently in the belief that many customers and all long-distance companies require the continued protection of the Federal government. Now our opponents will tell you that we belong in this regulatory straitjacket because we are “a monopoly.” In fact, the only thing we have a monopoly on is the customers our competitors don’t want. The long-distance companies have been very successful on focusing the debate on our share of the consumer market.

But here is the reality of a local service market in metropolitan areas throughout Bell Atlantic’s territory: less than 85 percent of the local service and usage market is small businesses; less than 40 percent of the connectivity and usage in the market called large businesses; and less than 10 percent of the market that our competitors really care about, the predominant source of future growth and profit, data.

By pushing the 98 percent monopoly party line, the long-distance cartels convinced regulators to keep the companies best able to provide real competition to the greatest number of customers on the sidelines under full lock and key, and subsidizing their entry into local markets.

Are we keeping companies like Bell Atlantic out of long distance to protect the customers paying a \$3 a month silence tax, or perhaps to protect AT&T and MCI’s huge Internet backbone businesses from legitimate investment and competition from Bell Atlantic? In fact, I think AT&T’s recent announcement that they are finally entering the local market in New York

shows that the only thing that will drag them into the market is the threat of our entry into long distance.

As the *New York Times* suggested a few weeks ago, maybe AT&T's latest buying spree is also the recognition that long-distance markets will soon be open and they will be forced to compete in exactly the competitive response we have predicted for years, this for companies, the data LEC's that I mentioned before, who, in the words of one analyst, have a powerful cost structure for offering voice and high-speed data -- when they lease an unbundled loop for \$15 a month and use the XDSL technology to soup up the capacity of that line to one and a half mega byts.

Uneconomic regulations like these have a chilling effect on growth and investment in data. As one authority on this subject has noted, and I quote, "No company will invest billions of dollars to become a facilities-based broad-band services provider if competitors who have not invested a penny of capital, nor taken an ounce of risk, can come along and get a free ride on the investments and risks of others." Now this sounds very logical. In fact, I wish I was brilliant enough to have thought of it myself. But that's a direct quote from Mike Armstrong of AT&T.

Think about that as you watch AT&T demand discounts from Bell Atlantic of up to 50 percent or more on access to our network, while locking up 50 percent of the nation's households on its closed cable modem platform, freezing out hundreds of Internet service providers and restricting consumer choice in the process. Incidentally, if you want to do a little brief real-world test of the closed cable markets, sometime you should try calling your local



cable company to place an ad on cable TV for DSL services and just see how open those cable markets are.

Bell Atlantic can be a strong competitive force in this marketplace, expending investment and providing better service for consumers. But we can't do it if, like Armstrong's words, our competitors get a free ride on our investments and our risk.

So what's the answer to this? One, open all markets now. Despite all the rhetoric, we know that in the real world many local markets are today wide open to competitors, let's get on with opening long distance. Two, by doing that, create real competition and real customer choice across the board. Three, clarify and streamline the 271 review process which is now being used by long-distance companies to protect their markets, and by many CLECs to demand a never-ending string of operating, technology, and price concessions. Four, promote investment, growth, and fair competition in the critical high-speed data market, not even further for subsidies to the data carriers who already have a great business model when they pay us a fair price for our copper loop.

The ultimate answer in bringing regulation in line with market and technological realities is, at the end of the day, a very simple one. Focus on the customer, the customer who wants more choices and real competition in long distance and data, the customer who wants choice and control over what Internet service provider or content provider to pick, and the customer who wants more investment, better service, lower prices, and faster connections.

What I'd like to do now is to talk about briefly what the market looks like from an overview standpoint. On the chart to my left -- my right,

your left -- you will see this is a source from FCC data. This is not our data, this is the FCC's data. In 1997, the total telephone revenue market in New Jersey was \$9 billion. That \$9 billion is broken out as follows: \$1.3 billion is in the wireless marketplace. You have \$400 million in subscriber line charges, which is an FCC-imposed charge. You have \$900 million in access service. You have \$1.7 billion in the local market. And you have \$4.7 billion in the long-distance and toll market. Forty-four percent of that total market is not open to Bell Atlantic today. The local exchange market that most of the debate you hear about is \$1.7 billion.

The critical issue there is that when you start talking about competition in the marketplace in New Jersey, you have to look at the entire market to understand where the competitive dollars are going and where the competitive dollars are not going. By the way, that was our easel, but I won't charge a value-based access fee to MCI for using it. (laughter)

Now, also in the previous testimony there was some discussion about what the actual dollar figures are and what the cost in pricing structure of local services in New Jersey. This is again FCC data, not our data. It shows that the total average monthly telephone bill in New Jersey is \$86.85. The local and subscriber line charge piece of that bill is 29 percent, or \$25.51. And, by the way, FCC data again, that is still the lowest in the nation. New Jersey customers, whether you are talking about the \$8.19 or what they actually pay, are paying the lowest in the nation for their local service.

But if you go on down that chart you will see something on the right side that it says 61 percent. And if you go back over to the left it says LD in state, for long distance in state, and LD out of state for long distance

interstate calling. You'll see that total is 61 percent of the average customer's bill in this state. That's also the dollars that we can not compete for that customer.

Now the \$25.51-- excuse me. The local charges of \$8.33 is the intrastate, that's short-distance toll calling that was mentioned earlier today, that it was opened up even before the Federal government mandated here in New Jersey by a BPU decision which we most vigorously fought and lost that battle. But that market was opened up in 1997, but prior to that it was opened up in 1995 on a dial around basis, which we dial the 10-10 three digits.

So you can see that the average bill for a customer in New Jersey is kind of top heavy. It's not dominated by local service. It's dominated by toll calling and long-distance calling. The reason why competition has not developed in the State of New Jersey for residential customers is explained by this chart. I look at in terms of piles of money.

If you had a business that was generating a pile of money with high margins in it, and you were told that now you can go after businesses generating a much smaller pile of money, with much lower profit margins in it, you probably wouldn't be too excited about that. Well neither are the long-distance carriers. But if you are a company like Bell Atlantic that has been told that if you open your market and comply with these laws that you will be able to go into that market -- that 61 percent of that marketplace there, which is double the amount of revenue that I have today with respect to that local market -- I get pretty excited about that. I want to do that.

The incentive for me is to open my markets and do what we need to do to open those markets, so I can go after that money. The incentive for

the long-distance carrier is exactly the opposite, and that's why you continue to hear, as you heard this morning, that things aren't right, Bell Atlantic is stonewalling us, Bell Atlantic is impeding what we need to do, it's delay, delay, delay. The longer the delay the longer it takes me to get into that market and start competing for those dollars. That's the very simple truth about the issue of competition in New Jersey.

Now we hit some issues that were raised this morning, and that I would like to take an opportunity to address a little bit. We had issues with respect to operating support systems that were raised by Mr. Langhauser. And fundamentally the process is doing exactly what he said. We support the fact that there should be rigorous testing. In fact, the BPU, along with Pennsylvania Commission, has agreed on a joint testing process, and they will be going through and doing those processes of our support systems to make sure that a third party can come in and say the systems are working the way they should. We support exactly what you said, and we support that testing process. We think that the BPU has been on top of that issue and has put together a reasonable plan to go forward.

With respect to access charges and access to our network and the function of access overcharges, one of the things that was cited this morning is that Bell Atlantic will have a competitive advantage because of the access charges that are imbedded in the prices that the long-distance carrier must charge its customers. And I think the cite was a call from Morristown to Trenton would be charged with 10 cents, I believe, and there was 6 cents of access charges in that. And when Bell Atlantic finally gets into the long-distance market -- I hope I live to see that day -- that we will be competing

with them, and we will be able to undercut their prices. Well this is actually an issue that has been long since resolved.

When the market was opened up for the intraLATA piece in 1997 that I talked about earlier, that \$8.33 that's on there, it is already a matter of statute in the state that says that Bell Atlantic has to impute to itself whatever access charge levels it is charging, and its prices must be above those access charge levels. So there will be no inherent competitive advantage no matter what the access level charges are. This is an issue that has already been decided in the state, so I don't understand why that is still a competitive issue from that perspective.

Also, the question, I believe, was raised about what is cost based by Senator Cardinale; although I believe the financial will be given later on by Dr. Selwyn. It was cited that there is a belief that there is no subsidy in the Bell Atlantic rate structure that needs to be covered by the access charges. I think historically that is not an accurate statement. The prices are not Bell Atlantic prices. The prices that are charged in this state have been built over decades of social public policy pricing by the State government apparatus represented by the BPU. The subsidies are no secret. They have been in place for a long time. That is why this state has the lowest charges in the nation. So to say that there is no subsidy I think is just a blatant error. But, more importantly, you can not look at one aspect of a subsidy or service providing the subsidy like access charges without looking at all the services that provide subsidy to that basic service that we have here in the state.

I think the State really has two choices. One is that the State can say, as a public policy matter, that we will remove all subsidies, that prices will

float to market, open up the markets of competition, and the result in prices for telephone services in the State of New Jersey will be determined by the market. Now, of course, there are problems with that. There are a lot of social public policy issues that were built into that pricing structure over time that that sort of cuts right through and says we are not going to deal with those anymore.

You can also take a more reasoned approach to this subsidy issue and over time deliberately reduce the subsidies, or change the subsidies, and change pricing structure so as to eliminate the subsidies. But it must all be done at the same time with all the subsidies involved, not a piece part like access charges as a single component of the subsidy structure. That is not fair to the consumers in New Jersey. It does not protect the consumers, and I think that would be an inappropriate way to deal with the subsidies. Flash cut and let the market rule or look at them all at a process and put a reasonable plan in for how you are going to undue and eliminate the subsidies as we move to a competitive marketplace.

Also, issues were raised about a couple of pieces of legislation. S-1566 was raised, which was the piece of legislation that AT&T supports, which has a property tax offset for access charge reductions and plus an additional \$60 million of access charge reductions that Bell Atlantic has to be left to find some way to cover that subsidy that's going to basically change and find some way to pick up that \$60 million.

Bell Atlantic has a piece of legislation in S-1604 that really looks at the issue and says that if there were a dollar-for-dollar offset-- If you took the property tax issue-- And, by the way, either bill, quite frankly, has that the

State picking up the property tax differential providing that dollars that go back to the municipality in some way, shape, or form. So the Treasurer is very involved and would have a decision to make clearly.

But our piece of legislation is very simple. It says that on a dollar-for-dollar basis we would look at reducing access charges for every dollar offset we got in property taxes, no more, no less. And that we would like to see those dollars applied to all of the toll customers in the state so that some of our customers would be able to get reductions, and, in addition to AT&T customers, they would get the access reductions. They could flow through a price reduction to them. And we also put a mechanism in place that we used with the BPU to ensure that those price reductions are indeed flowed through to the consumers.

So I think very simply put, we think our legislation -- our proposed legislation, is a better bill, given the State would have to pick up the \$100 million in any case, because it is a dollar-for-dollar offset and does not require any impact on the local rate structure or any opportunity to go in and have to rejigger those subsidies.

Another issue that was raised-- The gentleman from MCI, when he was referring to the head cracking going on in New York and Pennsylvania as a way to move this ahead-- I'm not here to be a BPU supporter or apologist. In fact, we've taken our head knocks from them in a series of ways, not just opening up the market I mentioned before which is, by the way, the fifth most lucrative market in the country, but was open up to competition before it had to be. We've lost area code issues, we've lost all kinds of issues in this process.

But I do take exception to the characterization that New Jersey is second class or that New Jersey has become some kind of a backwater in this process.

It was in 1998 that the Board held comprehensive local competition hearings, just a little over a year ago, and came out with their order which moved the process forward to where we are today, in August of last year and that identified the issues they thought were the main barriers to competition. And the result of that is the issue that Mr. Langhauser raised with respect to the staff recommendation on access to our network and the pricing reductions that were put in place. And the fact is that the BPU is going to be ruling on that shortly. And also the operating support systems issue was a part of that decision that was made by the BPU and the negotiating process that started last fall and basically culminated in the March and the April time frames.

So if you look at the states that are “ahead of us,” there are a precious few of them. New York may be considered to be ahead of us. Massachusetts or Pennsylvania may be considered to be marginally ahead of us, but New Jersey is right there in the forefront of these issues being decided. So the characterization of, one, being second class and, two, being well behind the curve here is just not true. It’s not supported by the facts.

And, in fact, the Board decision that’s going to come out is going to address a staff recommendation that has in it that we will implement these market opening initiatives with these huge super discounts that are going to reduce access charges up to 80 percent for carriers that want to come in and take advantage of that -- and by the way, it seems a great way for the policy to be implemented.



Here you have a situation that actually will get some competition in the local market, and they can use their access charges at the same time as opposed to reducing access charges with no promise of competition coming from the local exchange carrier -- from the long-distance carriers.

But that market is supposed to be opened up on August the first -- now that's two months away -- under these new rules, under this staff recommendation. Now we have to see how this is going to come out, but I hardly characterize that as foot dragging in this process.

The key issue that was also raised along S-1796 was predicated on a statement that said that the BPU rubber stamped a continuation of an alternative regulation plan for Bell Atlantic, with another year of access profits. Well, I'm a little mystified by that one. You see under our plan of regulation -- and it's been in effect for years -- we have earnings ceilings. In fact, if we go over a certain level of earnings, we have to share those profits with the consumers in the State of New Jersey. We haven't done that yet. We filed that information on a regular basis with the BPU. So if we were in this excessive profit situation, I don't think it would be a secret and, in fact, the ratepayers in New Jersey would have gotten 50 percent of what overearnings we were supposed to have generated.

This was a very simple process that has become very convoluted. The process that said here is a plan that has worked well for the State of New Jersey, for its citizens and its businesses. Technology has been deployed, accelerated investment has been made, and exchange for the earnings caps and the sharing capability. Then we had some flexibility in terms of pricing some

of our services and some more competitive flexibility in markets that are deemed to be competitive.

We simply said we would like to have that extended for one year with a lot of other things going on. It's the same plan, it's the same process that's worked well. You've got the same safeguard you've had before. You've got the same opportunity to investigate anything you wanted to investigate. Nothing has changed, just extend it for one year and let us file our new plan the end of this year to be effective in the year 2001. Nothing more nefarious, nothing more complicated than that.

I think those were the key issues that I would like to raise this morning, and I thank you for your time and I will be able to take your questions.

SENATOR CARDINALE: Thank you very much.

Earlier in your presentation you said you feel the solution to this problem is to open all markets now. What does that mean when you say open all markets now? Are you willing to abandon your net worth and put it out to bid and let other people bid on it? Are you willing to forego access charges? Are you willing to change the access charges in some way? What do you mean by open all markets now?

MR. FREEMAN: What I mean, Senator, is that -- in going back to that pie chart -- we are the only company that is prohibited by law from participating in certain markets in this state. I would like the ability to obviously go after those markets where I showed you that the revenue stream is more than twice what we are getting from our local market.

In order to do that we have to make the demonstration that our markets are open. Now I'm not going to cite you numbers of connection agreements and things like that that were talked about this morning. I'm simply going to go to the facts. The facts are that there is no incentive for the long-distance carriers such as MCI, AT&T and Sprint to want to enter our relative paltry little market of that \$25.51. The incentive is for us to open our markets so we can go after that 61 percent of the market, so we have every incentive to do that. Because if I don't, the competitors that are already in the market today will continue to chip away at the \$25.51, and my business gets smaller and smaller and smaller. The only opportunity I have to grow is to open my market to all the competitors, so they can buy whatever piece parts they want, these access charges that we are talking about, the UNIs that we are talking about. They can buy whatever piece parts they want, bundle them however they want, and provide services to their customers.

Once the demonstration has been made that our markets are irrevocably open -- hopefully by the evidence of competition as opposed to a regulatory decision it says we've done everything we can, we still can't make this horse drink, so we are going to open the markets anyway. But either way it's time to get on with the deal and make sure that all New Jersey customers have the opportunity to have the best array of potential suppliers to their services they can have. I think a customer in New Jersey may not want to ultimately choose Bell Atlantic as a provider, but I think they would believe that having Bell Atlantic as a viable player in that mix makes for a stronger competitive market, a stronger set of options and choices that customer can have and, therefore, giving them lower prices and more options.

SENATOR CARDINALE: I agree with what you're saying, however, I don't know that I'm agreeing with your meaning of what you're saying. And I want to get some of the details because that may create some differences.

In that 61 percent, is a portion of that 61 percent now going to Bell Atlantic?

MR. FREEMAN: No.

SENATOR CARDINALE: None of those revenues? Your access fees are not part of that 61 percent?

MR. FREEMAN: No, that's-- Okay, I see what you're saying. Those are revenues that are going to the long-distance carriers, and they have to pay us the access fees out of those revenues, that's correct.

SENATOR CARDINALE: Okay.

I've seen things that say that the access charges amount to somewhere around half. I've seen things that say 40 percent, 60 percent. Let's say somewhere around half. I'm not trying to be exactly accurate. So then half of that 61 percent really is money that's coming back to you now. Is that correct?

MR. FREEMAN: On your numbers, yes.

SENATOR CARDINALE: Then that would mean-- And that access fee is not subject to competition. That would mean that half of, or 50 percent of, the long-distance market, even though it appears to be subject to competition, is not subject to competition today.

MR. FREEMAN: No, that's not true.

SENATOR CARDINALE: All right, tell me why.

MR. FREEMAN: Because from a marketing standpoint it's customer -- it's who has the customer that is important. We can not market to those customers. So, for example, an AT&T or an MCI or any long distance carriers can market to that customer and say, "I will provide you a bundle of services. I'll give you your interstate calling, your state calling from Cape May to Newark, I'll give you your intraLATA calling. I can bring all of that to you, and based upon the bundle of service you're taking, I will price that to you at whatever price level they want to price it at."

I cannot offer a customer that same bundle, so I don't have a presence in that marketplace. So it's not correct to say that I have market share in that long-distance marketplace. And also, you're assuming then that both ends of that call are coming to Bell Atlantic. Let's say that it's a call that originates from Newark and it goes to Los Angeles. I only get one end of that. I have no idea what Pacific charges in access to whoever carried that call on the other end.

In fact, in New Jersey it could be a call that goes from Bell Atlantic territory into Sprint territory. They are going to charge whatever access charges they are charging for that.

SENATOR CARDINALE: But access charges make up a big piece of this long-distance charge that comes down to the consumer. And I'm really only interested-- I'm really not interested in how that money is split up among the companies, so long as that split doesn't create a lack of competition or an advantage to one company or another that ultimately results in a lack of competition. Because I do believe, as everybody has believed here today who has come in, that competition is the way to go.

The problem is that if you have a large piece of this fee-- If I am a seller -- take it out of the telephone business. I was thinking of an example from my youth. My family used to know a fellow who made clothing, and if we wanted to buy a suit cheaper, we could go to this manufacturer. But he wouldn't let us go there during the regular week when there would be buyers present, because he didn't want his buyers to know that he was going to sell directly to us. Because his buyers would say, "Hey, wait a minute, I can't stay in business and pay rent and pay my employees, and so forth, if you, the factory, are going to sell to my customer."

I see an analogy here, that AT&T, or any of the others, has to buy local access from you or someone else. And if that piece of their overall cost-- I think the overall cost of a long-distance call is minuscule. But the access charge is the principle cost that they have to deal with, so that limits how low they can go. But if you opened all of the markets, at least from my current understanding -- and I want you to correct me if I'm wrong -- Bell Atlantic would ultimately dominate that market with or without monopolies because they would have the ability to profit from the access fee. And even though you have to impute the cost of the access fee to yourself -- and I understand that that's how you address this problem -- you could sell it for the access fee and still have revenue. Whereas, if they sold it for the access fee they would have no revenue.

So I think that's a limitation, and I think that's the crux of this problem. And how do we overcome-- How do we create competition, true competition in the market, and let you be part of that competition -- because

I think that's necessary -- and still overcome this obvious defect in the competitive model? And I would like to hear how you would approach that.

MR. FREEMAN: Good, Senator, thank you.

Let me use the actual numbers now. In the example that you gave before, with the 50 percent, I said that using your example that was true. If you look at this chart again you will see that the total access dollars that are paid are \$900 million. That dark piece there represents the interstate piece. The lighter shaded piece there is -- about \$200 million -- is the total access dollar fees that are in the state. So you would have to ask AT&T to give you--

SENATOR CARDINALE: But isn't there an access fee on the outside on the other end of the line? There is an access fee on each end of the line.

MR. FREEMAN: Yes, there is access on each end.

But, again, I don't know where those calls are going. These are the access fees that are paid in the State of New Jersey. For interstate calls somebody else has got that revenue on their pie chart somewhere else. That's not coming here.

But the point that I want to make is to address your issue about the level of access charges. We're talking about \$200 million, roughly, of total access charges, intraLATA and interLATA within the state. So based upon whatever rates they are charging for the calls, if the 10 cents was the right one for that -- but I don't know what their overall average is -- you're are going to have to figure out from that point how much access fees are with respect to the total price they are charging for the long-distance service. But I can tell you

the access is only \$200 million, which is a very small piece of that total market here in New Jersey.

The second issue that I will address from your question, which was an appropriate question with respect to the ability to price the access charges inside of that, would we be able to compete with them from a competitive standpoint, and Bell Atlantic is allowed in this marketplace. The issue of how and when and what level of access charges are necessary goes back to what I raised before, in terms of all of those subsidies. This has to be an issue that is addressed within the total subsidy box.

What I was saying is you cut access charges, you drive access charges to cost, you actually increased the problem in the subsidies, because you left people holding the bag. If you are going to address the access charge issues as a competitive issue, if that is a policy that you would like to do, then let's address all of the subsidies at the same time. In other words, how are we going to work our way out of all of these subsidies? Otherwise the imputation standard, in terms of pricing, is a safeguard. But as long as we have subsidized services and pricing policies in the state, that is an issue that does not really go well, hand in hand, with competition. You must address those issues together.

SENATOR CARDINALE: What's their total average annual revenue -- last year's annual revenue to Bell Atlantic?

MR. FREEMAN: For New Jersey?

SENATOR CARDINALE: For New Jersey.

MR. FREEMAN: It's about a \$3.5 billion company. That's interstate and intrastate.

SENATOR CARDINALE: That's gross revenues?



MR. FREEMAN: Gross.

SENATOR CARDINALE: There's apparently -- according to one of the charts that we saw -- an increase in percentage of profit from '92 coming forward, pretty much increasing every year. Is that accurate in your view?

MR. FREEMAN: I think we've become a more profitable company, yes.

SENATOR CARDINALE: Is that technology driven?

MR. FREEMAN: Well, in a large part it is. Nobody could have predicted the Internet issues and driving additional lines and houses that are hooked up to computers. I mean the usage numbers are way up. I mean the whole industry is growing. That number in 1996 was only \$8 billion.

SENATOR CARDINALE: So their total gross revenues have increased to phone companies, but profit margins-- What we were looking at was a bar graph of profit and margins. We were not looking at absolute dollars. But profit margins are approaching 40 percent today, whereas they were 20 percent at some point in time. Is that, in your view, accurate? I mean, I just saw this bar graph produced by one of your competitors. I want to see whether you think that is--

MR. FREEMAN: I would agree that profit margins are increasing. As to those levels, I don't know, because I don't know what they have included and excluded. I mean, over that period of time, more services become deregulated, not regulated. So they may be excluding services that we had before that were in 1992 that were regulated. They are now deregulated and that's going to change the mix of profitability just by changing revenue from one regulated pocket to a deregulated pocket. I didn't build their chart, I don't

know. As a general proposition our profits increasing -- although business is increasing, it's growing. So I would assume the overall levels of profits are indeed increasing.

SENATOR CARDINALE: Well, if you're making greater use of your capital investment, and you're deriving more revenue from capital investments, it's quite likely that your margins are increasing. And if you have a growing market and a fairly stable capital investment, that would probably be true, wouldn't it?

MR. FREEMAN: Well, it would, but I don't have a fairly stable capital investment. In fact, we have put almost \$4.5 billion over the last four or five years into New Jersey and accelerate a lot. We had a billion dollar investment last year.

You see what's happening is, as the markets change, the investment that we had before and the technology we had before is not adequate. We need new investment, new equipment. We're putting in synchronized transfer mode switches which will allow full motion data, full motion video data services -- all of these things will be switched. That's a new technology. It wasn't around in 1992. That has to be deployed. We've got about 1,200,000 miles of fiber in this state that's been accelerated. That wasn't here before. That had to be deployed.

So I can't sit here and tell you that all things being equal, our profits have gone up. We've had to invest additional amounts of money in this state, significantly, in order to be able to deliver on those markets.

SENATOR CARDINALE: I'm going to ask if any of the members, before I--

SENATOR SINGER: First of all, just one statement, one question. The first statement is that Senator Furnari and I are very upset. You never told us that you get the suits wholesale. (laughter) We learn everything at these meetings.

In talking to the long-distance carriers, their claim is that you've blocked them from getting into the local service market. Bell Atlantic's claim has been that they blocked you from getting into the long-distance market. The long-distance carriers claim they have to first get into the local market before you can get into the long-distance market. Can you just comment to me on that. I'm a little confused as to why that has to occur that way and is that true in your viewpoint?

MR. FREEMAN: Well, Senator, that brings back old memories. It almost gave me a headache there for a minute. The 1996 Telecom Act, which was a product of many, many long months and years of back and forth, lots of shoe leather was expended in the halls of Congress to come up with a process that basically said that the sequence is when the local market is open, then we are allowed into the long-distance marketplace.

A definition that was used -- personal opinion -- very ill-advisedly by the former chairman of the FCC, Reed Hunt, said that his interpretation of that, when the FCC was putting the regs in to implement the law, that until he saw one of the big three, as he it called it -- that's MCI, AT&T, or Sprint -- providing residential facility-based competition, he would not believe that a local market was open and, therefore, he wouldn't allow us into a long-distance marketplace.

Well, what that has done is created all kinds of mischief. Because as long as one of the big three makes no move to provide services in that residential marketplace in New Jersey, or anywhere else, they can always say there is no competition and, therefore, Bell Atlantic should not be allowed in the long-distance marketplace. That has sort of been the battleground for what has happened.

I would just like to briefly read you a quote in a transcript. This is from Commissioner Armenti in the local competition hearings last year, and it addresses your point specifically. Commissioner Armenti inquired whether reestablishment of arbitrated rates, revising the rules to avoid access charges, reducing nonrecurring charges, rejecting (indiscernible) charges for recombined elements, and lowering uni-rates would permit AT&T to enter the local market. AT&T's witness said there were still "about five or six things you still have to get right." And when Commissioner Armenti asked, "If the Board were to resolve the other impediments, would there be others?" The AT&T witness responded, "You never know."

Similarly, President Tate asked whether MCI would be able to compete for residential customers if the Board lowered the loop rate to \$10.40, drop access fees to four-tenths of one cent, and reduce nonrecurring charges. MCI still refused to commit to enter the residential or small business market in New Jersey. The issue is, that lucrative 61 percent is a market they have and they want to keep. They win by delaying our entry into long distance.

SENATOR SINGER: Thank you.

SENATOR CARDINALE: Senator Furnari.

SENATOR FURNARI: Thank you.

I just have a statement before we begin. The process of creating an agency, a government agency, a delegation of the Legislature's power to regulate an industry, is -- the basis behind it is to have experts, or people in that area, deal with issues. And I'm going to tell you that a lot of the stuff that I'm trying to get up on here spins my head, as I'm trying to figure out-- It reminds me of the little puzzle that we're trying to put the lines together. You move this and then something else moves, and you can't seem to get it down. And if I'm very simplistic in my questions here. Please understand that I'm trying to grasp the things that I think I can the best.

I want to tell you that I think-- I don't know how we got there from a historical perspective, but I think that it's wrong that this personal tax is only against Bell Atlantic. There are certainly a lot of other people putting lines in our communities, and those lines then -- especially when we start talking about cable, and somebody has got some idea to have telephone access through cable. It starts one to think about how maybe how much more unfair it is to only be doing it against one company.

But, also, I understand it as a local mayor. And when we talk about reducing or eliminating a tax and getting it to the State, and then counting on the State every year to getting it back to the municipality, I see this affecting local property tax rates immediately.

Now, as I read the bill you support, it doesn't necessarily address the issue that you talked about today of opening up all the markets. But it seems that it acknowledges that access fees can be reduced by a significant amount. And it looks for a way to eliminate that \$110 million tax. It seems to me that there might very well be an alternative, and I know that some

people have discussed that. In the bill that you support, which is not all that much different from the one that AT&T does, on paper, the effect of it seems to be dramatically different.

But if those long-distance carriers that want to get-- If those other companies that want to get into the local market were willing to participate in a fund to hold your company harmless from the tax with a commensurate reduction as you suggest-- It seems that you are suggesting that there should be a reduction in access fees. Doesn't that seem like an alternative, rather than us starting to fiddle around with a property tax? Doesn't that seem like an alternative that might be able to work?

For example, every company -- a local subsidy fund -- that deals with this very issue so that you continue to pay tax on it, there would be an offset by all of these companies that are entering into the market, still allowing Bell Atlantic to get a profit on access rather than an overall access. I mean, doesn't that seem like a better vehicle to work with? Just your suggestions.

MR. FREEMAN: Well, Senator, the piece parts of that sound like something that you might be able to discuss and to work something around, but I think there are some critical issues that need to also go into that process. First and foremost is -- I'll go back to the point I raised before. What is the incentive to fiddle around with a corner of the subsidy issue and not deal with all of the subsidy issue?

SENATOR FURNARI: Could you just, for a moment, help me out just a little bit more with what that means. There are other things, there are other products that you're offering that are subsidized by this because the BPU has regulated them in that manner. Can you give me some examples so--

MR. FREEMAN: Yes.

Well, call waiting, call forwarding, all of those services, business services. Historically, we used to be in something called a rate case mode before it got into alternative regulation. What you would do is you would go in with your -- what we would call a rate design, or your pricing structure. We would offer pricing structure, and what would often come back from that process is-- If you need-- If you're asking to raise the local rates by \$3, let's take the amount of money that you need in aggregate. Let's say I'd equate it to say \$100 million. Well, let's go and put that \$100 million on everything else, raise prices, and everything else, so we don't have to put that \$3 on basic service. And that has happened over decades and decades.

So now you've got this spiderweb of all these services whose prices are being used to keep that \$25.51 where it is. Access charge is but one of those. So it's like if you knock a corner out of the rock, what happens to the rest of the people there that were depending on the rock. So I think you need to look at all the subsidies and understand what we're going to do. The State can do a flash cut and let them float the market and let everybody go at it in the marketplace and see where the price is raised to, and maybe people overall have less bills because they are spending less for long distance and less for Internet and a little bit more for their local service, but overall they are okay. You have to study that.

Or you take a more reasoned approach and take all of the subsidies, access included, and say how do we want to treat the subsidy issue in the State of New Jersey?

SENATOR CARDINALE: Let me interrupt that for just a minute, because I think that's an important question that one of the prior witnesses, appears to me at least, to have addressed that.

If that \$8 charge, \$8 a monthly charge, on a stand-alone basis, what would that charge be if it was on a stand-alone basis?

MR. FREEMAN: You mean if it was covering its costs?

SENATOR CARDINALE: If it was covering its costs and allowing you the normal profit margin that the BPU allows you on investment. And I'm not sure what that number is, but it seems to have been growing. What would that charge really be if it was on a stand-alone basis?

MR. FREEMAN: Okay, I'm going to address that, but I want to come back to the growing issue and understand what you meant by the growing. If it was referring to the access charges, about the way they have grown over the years, I want to address that. That number would probably be somewhere in the neighborhood of \$15 to \$20 on a stand-alone basis.

Now the issue about growing. There is a very simple reason why access charges have grown over the last few years, and it's because the local toll market was opened up in 1995 and then opened up on a pre-subscribed basis, which means you no longer had to dial the 10 whatever it is. You simply picked up your phone and you already were pre-subscribed to a carrier, and they carried that call. Well it stands to reason as I lost the retail market share, as I lost the toll market, my competitors gained the toll market. I traded out retail revenue, which was supporting basic exchange service, for access, wholesale revenue, which now goes to support basic exchange. The more successful they are at taking my market, the higher the access charges become.



But I'm trading a dollar for 30 cents. So it's no secret. If they are successful, access charges are going to grow, and they have been successful. They have taken 28 percent to 30 percent of that market in two years.

SENATOR CARDINALE: I'm sorry, Senator Furnari, I'll let you continue your--

SENATOR FURNARI: I think you were addressing it. But the bill that you seem to be supporting here, 1604, doesn't address the overall issue and still reduces the access fees.

MR. FREEMAN: That's because it's a dollar for dollar. You see, if we are getting our expenses reduced by eliminating that property tax, then I do not need to go back and address the subsidy issue. It's when you get over the property tax amount, such as the \$160 million verses the \$100 million, that you get into the subsidy issues.

SENATOR FURNARI: So it's when we start talking about the difference in the amount that you can make, whether their contingent is if it's four-tenths of a cent as opposed to the six or seven cents that are being--

MR. FREEMAN: Right, and that's the other issue. Theirs is driven to cost. Ours is saying we'll do a dollar-for-dollar offset.

SENATOR FURNARI: Thank you.

MR. FREEMAN: Thank you.

SENATOR CARDINALE: Are there any other questions? (no response)

I had one question that I was trying to formulate. I don't know that I really have it expressed properly, but perhaps we can get it. It appears that one of the areas of subsidy of this basic rate is the fact that the basic rate

only applies to a very small calling area, and that you have a sort of local -- what appeared to be local calls, which are really billed as long-distance calls. That's an aggravating factor to many consumers. To what extent does the call within the area code that is not a local call subsidize that local service, that basic service?

MR. FREEMAN: Well, now those calls are not regulated. That market was declared competitive. So they are not providing a regulated subsidy to that at all.

SENATOR CARDINALE: I see.

MR. FREEMAN: The \$8.33 is built into this bill. Built into this is-- The \$8.33 is what I believe you were referring to.

SENATOR CARDINALE: Yes, that's the basic charge.

MR. FREEMAN: No, in the basic charge is the \$25.51. That calling outside the-- It's a local call, like you said, within an area code. That is not part of that \$8.19. That's the \$8.33.

SENATOR CARDINALE: If I have a telephone in my home, and I never make one call, that's the \$8.33.

MR. FREEMAN: No.

SENATOR CARDINALE: No.

MR. FREEMAN: If you have a telephone in your home and you never made one call, you are going to pay the \$8.19 plus the Federal charges, which makes it \$13 and some cents, and then you are going to have to -- depending on who your long-distance carrier is-- If you are using AT&T you are going to pay probably a \$3 fee because you're not making any calls. You are one of the unlucky dog company customers. (laughter)

SENATOR CARDINALE: So that what I need to compare your \$15 to \$20 figure is not the \$8.33.

MR. FREEMAN: No.

SENATOR CARDINALE: It is to, maybe, \$15.

MR. FREEMAN: Say that again.

SENATOR CARDINALE: That \$8.33 is not the comparison for your \$15 to \$20 fee that you gave me a moment ago.

MR. FREEMAN: No, that's correct.

SENATOR CARDINALE: What is the comparative figure to that \$15 to \$20?

MR. FREEMAN: The \$8.19. That's the rate we charge. I believe you are asking me what it would cost-- If there were no subsidies, what would that rate rise to?

SENATOR CARDINALE: So that \$8.33 would rise to somewhere between \$15 and \$20--

MR. FREEMAN: No, the \$8.19 is imbedded in the \$25.51.

SENATOR CARDINALE: I'm sorry.

MR. FREEMAN: It's all right. We've all hit head spinning days here. These things will make you go to Advil in a hurry. (laughter)

SENATOR CARDINALE: What is the \$8.33? Tell me what the \$8.33 is.

MR. FREEMAN: Okay, this goes back to the issue that I believe Senator Singer raised before. The local call area is covered in the \$25.51, which may be the \$8.19 rate. You can call-- All the calls in Nutley will get you that number. The \$8.33 is if you want to call from Nutley to Union, New

Jersey. That's going to be the \$8.33. If you want to call from Nutley to Jersey City, it's going to be in the \$8.33. That's the competitive piece that was opened up in 1997, which said, Bell Atlantic, you no longer have that as your market area. It's now open to competition, so we now compete.

SENATOR CARDINALE: But I can buy that from you, or I can buy it from someone else.

MR. FREEMAN: That's correct.

SENATOR CARDINALE: Thank you.

MR. FREEMAN: I'm sorry if I confused you.

SENATOR CARDINALE: No, I confused it. It's that the numbers were so close together, I just thought that somebody was averaging it different.

MR. FREEMAN: It's a sneaky business. (laughter)

SENATOR CARDINALE: Yes.

If there are no other questions we will--

Thank you very much.

MR. FREEMAN: Thank you.

SENATOR CARDINALE: Heikki Leesment.

**HEIKKI LEESMENT, ESQ.:** Mr. Chairman, my name is Heikki Leesment. I'm the managing attorney for telecommunications in the employee of the Ratepayer Advocate's Office. I'm here to present the remarks of Blossom Peretz, the Director of our office, who was unable to attend today. And she also thought that since I am the managing attorney for telecommunications, I might be in a better position to answer any technical questions the Committee may have.

First of all, we'd like to thank the Chairman and the Committee for providing this forum. It's important that both our office, the Ratepayer Advocate, and all stakeholders be able to submit their views respecting--

SENATOR CARDINALE: By the way, I'm sorry to interrupt you. But just for everyone's-- After this witness, we are going to break for about a half hour for lunch and then we will be back.

Go ahead.

MR. LEESMENT: --for all parties who identify both the goals and strategies that the State of New Jersey should pursue to foster vigorous competition in the telecommunications market. While all State officials, and each of the several telecommunications carriers operating in New Jersey, have voiced the identical interest in realizing a fully competitive marketplace, there is going to be a substantial amount of disagreement on how to achieve that vision.

It will be up to policy makers such as yourselves and the Board of Public of Utilities to wade through the competing claims and conflicting assertions and decide on what policies will ultimately serve the public interest. We hope that our presentation here today will assist you in that effort.

SENATOR CARDINALE: It is your intention to read the statement?

MR. LEESMENT: Pretty much paraphrase the statement and--

SENATOR CARDINALE: It would be a lot more useful to the Committee if you would give your impressions of-- You've heard these various representatives, I guess, telephone companies, talk about their aspects. Would

you tell us from your perspective the same kind of thing? Just reading the statement is--

SENATOR SINGER: Mr. Chairman, can I just ask a question to him on that basis?

SENATOR CARDINALE: Sure.

SENATOR SINGER: The kind of help I look to -- and I'm sorry that the Advocate is not here to-- The kind of questions that I'm looking to understand is when we looked at the pie chart that said that 29 percent of Bell Atlantic was their share of market, and 61 percent was the other long-distance carriers. What Bell Atlantic didn't say to us was the 29 percent is all them. The 61 percent represents 500 companies. How do we, as a whole, get it so that the 29 percent represents 500 companies as well as the 61 percent? In essence, how do we open up the market to be a competitive market to get to truthfully, on both sides, where the long-distance carrier gets into the local market, and from Bell Atlantic's side, how they get to that position where they get into the long-distance market?

What do we-- In other words, my concern is and why I'm happier today is we're doing-- I think Senator Furnari really set the tone on what he said. We are attempting to do something that a regulatory agency should be doing, and this should only come about if they don't do their job. What we need the Advocate to do is to tell us when they're not doing their job also. That's just my opinion, but that's kind of setting the stations.

MR. LEESMENT: Well, Senator, first of all, I think our written remarks that we have submitted to you address what we feel are the major initiatives that should be pursued on a statewide basis to promote competition.

Some of those are, I think, clearly are in the jurisdiction of the Board of Public Utilities as it's currently constituted. Some of them may lend themselves to legislative initiatives in Trenton as well. But let me--

SENATOR CARDINALE: It's been said here that we are not really lagging behind other states, and then it's been said by another side that we are lagging behind other states. That New York is about to do something -- they are on the verge of doing something -- and Pennsylvania was ahead of us. And the other side says, "Well, that's not really true." What's your take on it?

MR. LEESMENT: Well, I think that we're not obviously in the forefront, clearly. There are other states that are ahead of the efforts. New York started the collaborative process involving all the carriers way before New Jersey did. I think New Jersey followed on New York's lead. It's been widely reported by Bell Atlantic that they expect it to make their first Section 271 filing with the FCC for the State of New York. Now, within the past week, Bell Atlantic has announced filing a 271 petition for the State of Massachusetts. And if you follow developments in Pennsylvania, it seems that Pennsylvania will be implementing specific mandates to open up the marketplace in Pennsylvania and perhaps in New Jersey as well. Those are perhaps the three most obvious states that can be referenced as being probably the head of the process as compared to New Jersey.

SENATOR CARDINALE: If we, in fact, lag behind, will you see that as a minor annoyance? Would you see it as a quality-of-life issue in New Jersey, or would you see it as a major competitive economic disadvantage?

MR. LEESMENT: It is our view, I think, that telecommunications is a very important fundamental industry for economic development. If we lag

considerably behind other states, we believe it would be an impediment for economic development in New Jersey. We don't believe that that would be good for the state.

SENATOR CARDINALE: Is it your belief -- and you interact with the BPU all the time -- that they are really not proceeding as quickly as they can, that they are not in a position to proceed any more quickly than they are currently proceeding?

MR. LEESMENT: Well, I don't know that I'm in the best position to express an opinion on how quickly the Board could be proceeding. Obviously the Board deals with a lot of other issues than telecommunications, and the developments in opening up competition--

SENATOR CARDINALE: We're not asking-- I'm not asking you to be pejorative.

MR. LEESMENT: No, I understand that.

SENATOR CARDINALE: I'm only looking for an assessment of what is the reality of what's going on.

MR. LEESMENT: I believe that New Jersey is trying to follow the lead of some of these other states that have plans in place and deadlines in place for opening up their local markets for competition. I can't be more specific about specifically whether New Jersey could be doing more.

SENATOR CARDINALE: Is it a practical thought to suggest that perhaps, rather than reinvent the wheel, our BPU could do whatever New York State does. When New York State does its bottom line, could we just say, "Hey, that's a good idea, we're going to adopt it here, too." We don't need to have lengthy hearings, we don't need to have-- I've read some of the stuff that



goes on at the BPU. I can't believe that anybody subjects themselves to that on a regular basis. (laughter)

MR. LEESMENT: Some of us are addicted to the industry, maybe, after awhile. To answer your question, not every issue lends itself exactly to cookie-cutter kind of responses to what other states have done.

Let me take one specific illustration. You heard this morning about the need for long-distance carriers such as AT&T and MCI to access the computer networks and the computer software of Bell Atlantic in order to process its customer orders and connect its customers to the Bell Atlantic network. The processing of customer orders, the connection of those customers to the network, building a colocation for those customers, trouble reports, customer inquiries, all of those are handled by what they call OSS, Operational Support Systems.

The Operational Support System in New Jersey for Bell Atlantic-New Jersey is different than it is for Bell Atlantic-New York. It is closer to what Bell Atlantic-Pennsylvania has, but it's not exactly the same. The Legacy System here in New Jersey is different. As a result, the computer interfaces that have to be established between carriers and Bell Atlantic have to be unique and, as a result, the testing that needs to take place of those interfaces and the functionality of Bell Atlantic-New Jersey's OSS system has to be done really on a New Jersey wide basis alone.

SENATOR SINGER: Well, you know, again, I'm sorry that you can't comment whether you feel that we're moving on a fast enough pace. What I'm concerned about is one other question that maybe you can answer to us, or maybe you can't.

Bell Atlantic's allegation is that, if they open up the markets, that the long-distance companies will not come into it to prevent them from going to the long-distance lines. Is that a valid concern, or is that not a valid concern?

MR. LEESMENT: Again, I'm not privy to the strategies of, obviously, AT&T and MCI and the long-distance carriers. But our concern is that the conditions be created that will allow and permit and entice the long-distance carriers to pursue economic opportunities in New Jersey. We think that there are a couple of imperatives in order for that to be realized, one of which is cost-based rates, one of which is functional and electronic access to operational support systems. We think that there needs to be rules in place for prompt dispute resolution when issues about violations of interconnection agreements or requirements of the Board or other issues are raised.

Those are the major themes that our testimony here, filed with the Committee, have proposed and have laid out that we think are the platform that needs to be established that will permit, that will encourage long-distance carriers to come into the marketplace. Their personal strategy in doing it and how they pursue it is something that we're not privy to.

SENATOR SINGER: I understand that. But certainly you have a better viewpoint than we do. We heard that MCI is moving into the New York market and local calls on a major basis, based on 70,000 customers. That would, in my mind, immediately negate the fact that New York Bell, whatever it is--

MR. LEESMENT: Bell Atlantic-New York.

SENATOR SINGER: New York can now compete in long-distance lines, and they show major carriers now doing that.

MR. LEESMENT: Well, not yet. MCI has made the first inroads to competition in New York as a result of that. And once the test of the operational support system in New York is completed, we expect Bell Atlantic-New York will be filing a petition, 271 application, to get into long-distance business in New York. We are not close to that realization in New Jersey yet.

SENATOR SINGER: But what I don't understand is-- Again, the President made the statement that in New Jersey the fear is that when you opened up the market, they wouldn't go into it. Well, if MCI is going into it in New York--

MR. LEESMENT: Yes.

SENATOR SINGER: --why wouldn't they want to go into it in New Jersey?

MR. LEESMENT: I'm sure they would want to go into New Jersey, assuming that the predicates for a competitive entry are in existence.

SENATOR SINGER: I'm just trying to-- We're hearing testimony, we're trying to find-- We don't have the expertise, as you do, to understand the validity of what is being said. Because it was very clearly said that fear was that they would make them open up their markets but not come into that market. And I couldn't understand why they would go through this scenario if they are doing it in New York, which is just a neighboring--

MR. LEESMENT: Well, Senator, you've heard the time line that has been related, in this hearing record already, that New York has been testing -- for instance, the operational support systems, by an outside vendor, by a

KMPG Pete Marwick. Since last -- I believe it's last October or November, those tests are still going on. Those tests are expected to conclude very soon. New Jersey hasn't even started the test yet.

SENATOR SINGER: We're going to hire through to the smart card New Jersey, they'll do it.

SENATOR CARDINALE: The question of-- I know the Ratepayer Advocate has had a basic predilection for the thought that we should have universal access to telephone, by keeping that rate subsidized, as a social policy. I have been trying to quantify what that would be, because I understand that since whatever rates have been set, there have been technological advances, and I know that this is not a labor driven cost, but it's a technology driven cost and a capital driven cost. Have we overcome the subsidy, by technology, since 1992, when we saw that all of these profit margins were going up? My next question will be to ask you to comment on that chart, and are those profit margins, in fact, going up?

MR. LEESMENT: Well, again, I didn't see the chart exactly. That was AT&T's chart. Is that the one that you are referring to?

SENATOR CARDINALE: They showed Bell Atlantic going from about 20 percent in '92 -- profit margins -- to approaching 40 percent. I think it's about 30-some-odd percent now. Here is the chart.

MR. LEESMENT: This is AT&T's chart.

SENATOR CARDINALE: It's MCI's chart.

MR. LEESMENT: It's MCI's chart, I'm sorry.

SENATOR SINGER: On Bell Atlantic's stand. (laughter)

SENATOR CARDINALE: But before we get to that, are we proceeding, from your basic knowledge, to a point where the subsidies are no longer needed or are less needed?

MR. LEESMENT: Again, I think it's important to focus on what is being subsidized. I've heard remarks here today to suggest that the average bill for in-state services for local subscriber line charge for local toll is -- I'm just adding these up quickly -- like \$33 a month. I don't know if that is just residential or if that is all customers. I have also seen other figures and other proceedings at the Board of Public Utilities suggesting that the average and monthly bill for residential customers for New Jersey jurisdictional revenues, in other words, not interstate revenues -- is something in the neighborhood of \$30 per month.

You've heard Mr. Freeman, I think, just relate that the stand alone cost of basic service is something in the neighborhood of \$15 to \$20 a month. We believe that if there is a subsidy to local exchange for flat rate local exchange service, we believe that that residence customer as a class, subsidizes him and herself. In other words, we think that residence and consumers, by their use of toll, about their purchase of vertical services, and by their generation of other revenue streams, more than offset the difference in what basic exchange costs them and what basic exchange is priced at and what the true price of the service -- the cost of services to the company. In other words, we don't believe that residence customers are being subsidized by any other class of customers first of all.

SENATOR CARDINALE: And do you mean by that, if the access fee were really cost based, that it would not -- currently cost based -- that that would not impact on--

MR. LEESMENT: On that--

SENATOR CARDINALE: --that residential flat rate.

MR. LEESMENT: I think we need to exactly explore those issues. As a matter of basic sort of orientation to the question, we believe that in a competitive marketplace, all prices have to be cost based. We believe that the Federal Telecommunications Act says that all implicit subsidies must be removed over time. Implicit subsidies must be made explicit. We think that there will be a continuing need for explicit subsidies of some kind, certainly for low-income and fixed income subscribers. But how that subsidy is created and funded and where it's collected and to what extent are, I think, manageable issues.

Right now what we have is a series of implicit subsidies that are really uncontrolled and unregulated in a competitive marketplace. We think that prices should be driven to cost and an explicit subsidy mechanism created for those that need assistance.

SENATOR CARDINALE: It's been suggested in some of the materials that were submitted to the Committee, but had not been testified to, that some other state have sort of messed around with the access fees in an attempt to address the same concerns that are being expressed here. And the result was huge increases in that flat rate. Is that correct?

MR. LEESMENT: There are other jurisdictions that have gone through what they call rate rebalancing as an exercise of shifting revenues from

one service stream to another. I can think of some of the U.S. states -- I believe Colorado is one that did it recently -- reduced taxes and increased basic exchange, that's correct.

SENATOR CARDINALE: And how would your group look upon that?

MR. LEESMENT: Well, again, we feel that access should be ultimately reduced somewhere in line with its actual cost. We believe that -- obviously that that will create a need to offset revenues elsewhere. I don't know that that necessarily means that basic exchange needs to be increased or increased substantially. Or if it does need to be increased, that lifeline programs and assistance for low income and fixed-income subscribers couldn't be maintained. We think it's well manageable.

When access charges were first created, there were two components. There was what they call the traffic sensitive and the nontraffic sensitive component. Even the nontraffic sensitive component, which was intended to recover the assignable portion of the local loop -- a pair of wires that go to every customer's premise, which is considered a fixed cost, a nontraffic sensitive cost -- even that was recovered on a traffic sensitive basis.

What you have seen over the years is, as the volumes of calls have gone up the total dollars generated in support of the local loop, supposedly a fixed cost, has also gone up enormously. One of the things that we possibly should consider is whether or not support for the local loop to keep rates affordable should be recovered on a flat rate basis, since it's a fixed cost, and since supposedly it should not increase with calling volumes. That is one of the problems that I think AT&T addressed to you. What you have seen is, the

revenues of Bell Atlantic have gone up substantially with increase in usage.

The other problem with access is the fact that three-quarters of what AT&T pays -- recovers, I should say -- from its subscriber for toll calls is paid to Bell Atlantic in the nature of access fees. And what AT&T is saying is that we are essentially going to be subsidizing our competitor in a fully competitive environment, which is just unrealistic. And that's one of the reasons why we think access should be reduced.

SENATOR CARDINALE: Well, I heard what AT&T was saying. That seemed to not be really applicable when I looked at the bar chart -- the pie chart. The pie chart seemed to indicate that there was \$200 million of revenues from the access fees that Bell Atlantic is receiving, totally, out of about \$5 billion in total costs. And that didn't seem to me to be anywhere near 50 percent, or 60 percent, or 40 percent. That seemed to be a very small amount in terms of when you express in dollars as for-- And you have repeated Bell Atlantic -- the AT&T scenario -- and I'm confused by looking at it in dollars, and maybe I'm not seeing something.

MR. LEESMENT: I didn't see the pie chart. Unfortunately, it was turned away so I can't comment on it. But I believe that \$200 million was, as Mr. Freeman explained it, total access charges both intraLATA and interLATA that are jurisdictionally New Jersey charges. That includes the local toll, and that includes toll crossing boundaries.

SENATOR CARDINALE: So do we have a long-distance market of \$5 billion?

MR. LEESMENT: But, again, are they talking about long distance, both interstate and intrastate?



SENATOR CARDINALE: I don't know.

MR. LEESMENT: Yes, I don't know either.

SENATOR CARDINALE: We have it, good. (referring to pie chart)

MR. LEESMENT: As toll is contained on this pie chart it is referenced as both intrastate and interstate, both. The \$200 million that was referred to you is just New Jersey jurisdictional. That means just intrastate, New Jersey only, both interLATA and intraLATA, but just access.

SENATOR CARDINALE: So then there is an additional access charge with respect to the out-of-state calls.

MR. LEESMENT: Yes, there is a Federal-- There is an interstate access charge that is administered by the FCC that applies to interstate toll calls, that's correct.

SENATOR CARDINALE: And that revenue would go to Bell Atlantic.

MR. LEESMENT: Bell Atlantic collects that revenue, that's correct.

SENATOR CARDINALE: Thank you. That's been very useful to me. (laughter)

Do you have any questions?

SENATOR FURNARI: I'm a little confused here. What is the difference between an implicit and an explicit subsidy?

MR. LEESMENT: I'm sorry, Senator, what was the first part of your question?

SENATOR FURNARI: The difference between an implicit subsidy and an explicit subsidy.

MR. LEESMENT: Well, as Mr. Freeman indicated, right now there are maybe a series of implicit subsidies. Implicit in the sense that they are monies recovered in excess of cost for a particular service, and they implicitly support something else, assuming that a different service is being priced under its relevant cost. However, there is not a direct tie of X number of dollars from this service going directly to support something else.

What the Federal Communications Act says is that all implicit subsidies should be removed over time.

SENATOR FURNARI: And what's an explicit?

MR. LEESMENT: And they should be made explicit, that's correct. We should identify what service needs assistance from other revenue streams. We should identify the amount of that subsidy that is needed to be generated, and then we should identify where that subsidy is to be collected. It will be explicitly recovered from specific revenue streams. It will be explicitly dedicated to support of specific services.

SENATOR FURNARI: Okay, now Mr. Freeman testified that it's there, and we need to rework everything for these implicit subsidies before we start to reduce the access fees. You seem to be suggesting that that was not a true statement, that your belief is that there are not subsidies. Is that correct?

MR. LEESMENT: Excuse me, that I'm saying there are no subsidies?

SENATOR FURNARI: Yes, that there are no subsidies built that are being funded by -- for want of a better word -- the access fees.

MR. LEESMENT: No, I'm sorry, Senator. Maybe you misunderstood me. I never meant to say that there are no subsidies. What I did intend to say is that we don't believe, for instance, that the residential customer, as a class, is being subsidized by any other class. We think that the residential customer, through his or her purchase of vertical services and toll services, is generating more than enough income -- more than enough revenue -- to offset the low cost of basic exchange to the residential customers as a class. So what we're saying is there is a no subsidy from another class. We don't think that business customers are subsidizing residential customers, for instance.

SENATOR FURNARI: Well, the access fees are not distinguishable, are they, from residential--

MR. LEESMENT: No, that's correct. Access fees are uniform for all classes.

SENATOR FURNARI: So if the money is there, is in fact-- I'll try it again. If the subsidies are contained in the access fees, then by their very nature they have to be. Now it seems to me that your definition is that they are generating, because they are buying enough of other services, that they are generating enough income to offset the subsidies, let's say with caller-ID, etc.

MR. LEESMENT: Well, caller-ID and toll. Yes, I agree. Access charges, we think, are priced over cost, and they do provide a revenue stream back to the company in excess of cost. We think that access is one of those implicit subsidies that perhaps goes to support basic exchange for the residential customer.

But I repeat, we believe that the residential customer, through the purchase of toll, recovers that subsidy to itself as a class. In other words, it's not another class of customers that is providing the subsidy.

SENATOR FURNARI: Okay, now do you believe that the BPU has failed to undertake an examination of all of these issues in a sufficient period of time so that we should take back that authority and move forward on a bill?

MR. LEESMENT: Well, I'm not suggesting that authority needs to be taken away necessarily from anybody, but I do think it's important for policy makers such as yourselves, and also important for policy makers such as the Board, to focus in on where New Jersey is and what New Jersey requires at a point in time.

Remember, since divestiture, since 1984, when AT&T was broken up in the aftermath of the anti-trust suit, there has been one rate case in New Jersey for Bell Atlantic-New Jersey. That was in 1985, when rates were last looked at. There had been no other rate proceedings in New Jersey in which all the rates and all the charges of Bell Atlantic had been looked at on a broad based basis. As a result, what you have today is a price structure that has been left over largely from 1985. We think that all those prices should be looked at.

SENATOR FURNARI: Can you comment on Mr. Freeman's testimony that we need to have the market open completely, so that Bell Atlantic can adequately participate in long-distance competition, and should these matters be handled at once rather than our focus here seems to be simply towards allowing the long-distance carriers to compete locally.

MR. LEESMENT: Well, my first observation in that respect is that decisions about opening the marketplace are really going to be invaded by the FCC. They don't really-- They are not within your purview here to decide. We promote competition. We like competition. We would like to see more of it. And obviously for Bell Atlantic to be permitted into the long-distance business, it knows what it has to do as far as the Telecommunication Act of 1996 requires for opening up this local exchange marketplace.

SENATOR FURNARI: So if I can paraphrase your statement to my questions, do you think that the Board has not moved along quickly enough? Your answer is, yes, you feel they haven't, and we should act.

MR. LEESMENT: I'm not suggesting that you should be taking certain authority away from the Board. As I mentioned earlier, New Jersey is perhaps not as far along as Pennsylvania, as New York, and as Massachusetts, which are the three examples that I think the trade press will indicate as being further along. I think we are further along than many other states which have no interest, apparently, in pursuing competition.

SENATOR FURNARI: So your answer is no. You think that the Board handles it and we shouldn't move forward and consider these bills.

MR. LEESMENT: I think that there are initiatives that you could pursue which would perhaps stimulate the Board. There is not a specific piece of legislation before you now that I am prepared to comment on, not that I am aware of.

But New Jersey is a very dynamic state. New Jersey has an awful lot of economic development here we think telecommunications is central to, and we think that New Jersey can benefit from competition in many ways that

many other states, many more rural states, could not. We think it would be in New Jersey's interest to do so.

SENATOR SINGER: Through the Chair, maybe we should set a time line when we expect something to happen from the BPU, and if it doesn't happen we can act. I just got a lawyer's answer. Maybe you can understand that better than I can. (laughter)

SENATOR CARDINALE: I'm going to just question that lawyer's answer to one extent. You say that there are some initiatives you think we should adopt. What would those initiatives be?

MR. LEESMENT: Well, our testimony, I think, contains five major thrusts of what we think is necessary for a competitive marketplace. First, we think that there should be cost-based rates. We think that some of the rates that the Board has implemented for competitors to connect are substantially too high. We are in Federal Court litigating that issue. There is going to be oral argument on those motions for summary judgement on the 15th of June, and obviously, the Court's decision will largely determine the future course of it.

But I think it's important to note that there are other states which have reduced their unbundled network element charges even despite, or even without Federal litigation. Pennsylvania used to have an unbundled network element charge for the local loop, which was higher than New Jersey. Bell Atlantic just proposed, a month or two ago, to substantially reduce that rate from almost \$17 down to \$14.04. It's part of a settlement to promote competition. That \$14.04 rate would bring Pennsylvania \$2.15 below that, which New Jersey currently requires as part of the Boards' decision. New

Jersey is a very low-cost state. We are the most densely populated state in the country. That alone means that it should be very efficient and low cost to build network type facilities. And we don't think that the current rates that the Board has implemented reflect those economies.

Secondly, there have been a number of carriers that have appealed to the Board claiming that interconnection agreements are not being lived up to. We think that the Board should be required to adjudicate those issues and address them and provide a forum for prompt and efficient dispute resolution of those kind of claims to promote competition.

We also think that it's important for the Board, as well as for this Committee, and certainly for the Legislature, to look at competitive entry in other states and gauge how competition is proceeding there as compared to New Jersey. Right now there is not a lot of track record to look at. The three states that I have referenced, Pennsylvania, New York, and Massachusetts are probably the only three. But in the following months, in succeeding months, to see where, for instance, digital subscriber line technology is being deployed and where it's not being deployed, and are there technologies being deployed elsewhere that carriers are not bringing into New Jersey, and then ask the question why? What is it in the regulatory environment, or what is it in the statutory environment, that is an impediment or disincentive to enter the marketplace? Look at the issue and do something immediately to encourage competition in New Jersey.

As I said, since New Jersey is so densely populated, since it is very relatively low cost to build network facilities, we think New Jersey should be a very attractive marketplace for competition.

SENATOR FURNARI: Would you agree that the -- some threshold -- the issue with the personal tax only being on Bell Atlantic, when another company could put their switch right next door and they don't have to, that's not fair?

MR. LEESMENT: Yes, I agree with you, it's not fair.

SENATOR FURNARI: The issue that-- And, of course, you have heard my concerns about local property taxation and that issue aside, would you agree that if there were any reduction in the access fees, that there ought to be at least a dollar for dollar making whole back to Bell Atlantic on that paid for by those other people who are using with access?

MR. LEESMENT: What I understand Bell Atlantic has said is the following. That if we get relief from this tax, we will reduce our access charges, dollar for dollar, to reflect that savings.

SENATOR FURNARI: Right.

MR. LEESMENT: And what's your question about that?

SENATOR FURNARI: Well, that's their position as relief from the tax. As an alternative we've, or I, have been suggesting a local access fund -- a subsidy fund -- where all of those carriers that are using a line would, in fact, contribute into it so that there would be a dollar for dollar exchange to taxes that are being paid to Bell -- that Bell Atlantic is paying.

MR. LEESMENT: Right.

SENATOR FURNARI: No elimination of the tax, but rather that a company pays -- all the rest of the companies pay the amount of money so that when we are looking at those, any reduction of the access fee, it be



essentially a pass through for them, for the percentage that those companies are using.

MR. LEESMENT: That Bell Atlantic switch.

SENATOR FURNARI: Yes.

MR. LEESMENT: I guess that could be one approach. I mean, even now Bell Atlantic is paying the tax, but I'm sure it's passing the cost onto its customers, either to its residential customers or to its access customers. So, I mean, it's not like it's a cost that's not being passed on already. I personally think that it might be better to do away with the tax all together.

Right now I understand that sales tax is being applied to telephone calls, and obviously as the volume of telephone calls go up, that the revenues that the state derives from the application of the sales tax to it also goes up. And I believe that was the thrust of one of the legislative proposals is to phase down the personal property tax in realization of the fact that the increased revenues to the state from application of sales tax to growing volumes of calls will more than compensate.

SENATOR FURNARI: While that may generate tax, it doesn't help the local property taxpayer, and that's the problem on the other side. We may be shifting costs from areas -- as you referred to the more densely populated areas of the state -- that happen to be sharing a higher burden on taxes than those--

MR. LEESMENT: But maybe the mechanism would be to identify the local property tax lost to municipalities by the discontinuance of this personal property tax on telecommunications, and allocating an

appropriate amount from the sales tax to compensate. It's almost like the graphed tax.

SENATOR FURNARI: But we lost-- We were shorted when that came through, so that's not going to work.

Let me ask you just another question that you kind of raised about a densely populated state and the issues that all of-- Senator Singer certainly noticed that before about having-- Have you pushed for larger local calling areas? That's a real problem for the ratepayer.

MR. LEESMENT: Sure.

Again, the issue about calling areas is an issue that is usually customer litigated in any base rate proceeding. As I said, there has been only one base-rate case since divestiture, since Bell Atlantic was created, and that was back in 1985. There has not been a forum for raising issues about calling areas and extended area service and so forth. Obviously, the Ratepayer Advocate and our predecessor, Rate Counsel's Office, in the past has pushed for extended area service to large calling areas. But there has not been a forum for it since 1985 really. Obviously, that is something that, again, is subject to and could be the subject of legislative response really from Trenton.

SENATOR FURNARI: That's all I have.

SENATOR CARDINALE: Thank you very much.

MR. LEESMENT: Thank you, Mr. Chairman.

I have left, with our remarks, some of the brochures that our office has generated from time to time. They are attached to our remarks. I'd be happy if you have any follow-up questions to certainly respond to the Committee or the members individually if you--

SENATOR CARDINALE: Thank you very much.

MR. LEESMENT: Thank you.

SENATOR CARDINALE: It's now about five of one. We will be back here at 1:30.

**(RECESS)**

**AFTER RECESS:**

SENATOR CARDINALE: If anyone can find Senator Furnari, we will begin.

Oh, here he is.

Before we begin I would-- We've allowed, as we typically do, the first several witnesses to go on at great length. I would encourage people at this point, who have something new to add, to certainly give us those remarks, but to try to summarize, especially if the information that you have is ground that already has been covered.

Dr. Lee Selwyn-- Because we are going to try to get to all the witnesses today.

Dr. Selwyn would you-- I see that you have a long statement, but if you would--

**L E E L. S E L W Y N:** Actually, if it pleases the Committee, what I thought might be more productive of my time and your time is for me to address some of the specific issues that were raised this morning, and leave my written statement for the record.

SENATOR CARDINALE: We would love that.

MR. SELWYN: First, I'd like to thank you for giving me the opportunity to appear here, and I hope that I can help to clarify some of the discussion this morning that seems to be raising some questions. I had hoped that we would still have Bell's pie chart, but apparently we don't, so I'll have to do some of this from notes and some of it from memory.

I wanted to first address questions that came up this morning with respect what it is that we are talking about when we talk about a subsidy and what constitutes a subsidy. Related to that, the question that was raised as to if you eliminate the above cost component of access charges, does that require that rates that were basic residential service be increased?

We have completed a study -- my firm completed a study -- at the request of AT&T several months ago, specifically to address the financial impact on Bell Atlantic of S-1556. In the event that, in fact, access charges were reduced to cost and the property taxes were reduced by \$100 million, which, as I understand it, is the essence of that legislation.

And when we effectively simulated the effects of that legislation as if it had occurred three years ago, and looking at three years worth of data, we concluded that it would not have had a material financial impact on Bell Atlantic. They would still be looking at rates of return on equity in the 30 percent range. And, consequently, there is no basis to expect that there would be any need for any increase in basic residential rates. And the very last chart on the last page of my written statement summarizes the results of that financial forecast.

Now Mr. Freeman suggested to you that the policy of setting access charges above costs was historically based and was designed as a social policy, in effect, to ensure that basic monthly rates were kept as low as possible to provide, explicitly, a subsidy flowing from access services to the basic dial tone line. And Mr. Freeman is correct about that on a historical basis.

In fact, access charges which came into effect in 1984, or after the break-up of the Bell system, replaced the toll rates, long-distance rates, that had predated the break-up and provided that those long-distance rates, in fact, provide even more of a subsidy to keep basic rates low, and at that time, below cost.

But there have been several very significant changes, both in the structure of regulation as well as in the underlying technology of the way local telephone and long-distance services are provided that makes that historic context of access charges no longer applicable.

Probably the single most important of these is the fact that at the time that access charges were established and that public policy framework that set access charges deliberately above cost was established, Bell Atlantic and all of the other local exchange carriers in this country were subject to a form of regulation that is known as rate-of-return regulation. And under rate-of-return regulation, the state regulators and the FCC, as the case may be, would establish a so-called revenue requirement. That's a certain fixed dollar amount of money that the telephone company would be entitled to collect through the services that it provides in order to reimburse it for its ongoing out-of-pocket expenses, and also permitted to recover its investment, to depreciate its

investment, and earn a fair return, so-called competitive rate of return, on the net value of its plan.

Now what that meant was that if you charged more for one thing, you've got to charge less for something else, because you are always looking at a pie of a fixed size. So if access charges were set above cost, that meant something else could be set below cost. And the policy framework was that by setting long-distance rates and access charges above cost that would capture, recover, a sufficiently large amount of the total revenue requirement that it would then be possible to set basic residential rates below cost.

Also included in revenue requirement at that time, and was part and parcel of the total amount involved, were profits from the Yellow Page business. In fact, in the litigation that led up to the final break-up of the Bell system, there was a dispute between the regional Bell's and AT&T as to who was going to get the Yellow Page business. Judge Harold Green, the Federal judge who was presiding over the break-up, eventually awarded the Yellow Pages business to the Bell companies specifically because -- and this is contained in his rulings -- specifically because the Yellow Pages were a source of subsidy to local service. So when we look at where we were at that time, that's why the policy of pricing access charges of cost was established and that's how it worked.

Now, in 1992, this body enacted legislation that permitted the BPU to replace rate-of-return regulation with an alternate form of regulation that was not tied to the company's cost of doing business. That is, it was not based on a revenue requirement. Instead what happened was that the price was set when the current so-called opportunity in New Jersey, Alternative

Regulation Plan, was adopted. The price of basic residential service and other prices were set at that time and were frozen. They were not allowed to be increased, but the linkage between those rates and costs disappeared.

If we were still on the rate-of-return regulation today -- and I'm not suggesting that we should be -- but if we were, then the growth in access charge revenues that has occurred since 1993 would have been used to flow back to the basic residential rate, and either of the access charges could have been reduced, or the basic residential rate could have been reduced, because the size of the revenue requirement would have been fixed. But since we are no longer on the rate-of-return regulation, the size of the company's revenues is permitted to grow.

And, as a result, as Bell collects more access charge revenues, those additional amounts are no longer flowed to subsidize anything. They are, in fact, flowed directly into dividends that are paid to Bell's parent. So the notion that there is a subsidy flowing from access charges to basic service that was true at one time is not true anymore. In fact, what our analysis demonstrates is that if you eliminated that above-cost component of the access price in its entirety, Bell would still be earning revenues that would be more, by a substantial amount, than the revenues would be authorized under rate-of-return regulation, that is on the basis of a traditional revenue requirement type of analysis.

So the first proposition I would advance to you is that basic theory in which the access charge as set is no longer applicable, because only half of the rule is being maintained; that is, the above-cost pricing is being maintained, but the purpose of the above-cost pricing has gone away, or at

least the mechanism by which the profit from access flowed back to support basic dial tone is no longer in effect.

Now Bell also transferred to a corporate affiliate the Yellow Page business. This took effect as of the beginning of 1998. And when that happened, all of the profit from the Yellow Page business, which is a fairly substantial amount of money each year, which had in the past, again, served as a source of subsidy, went away; that is, it went to another part of Bell.

So when Mr. Freeman tells you that Bell is not earning enough to be required to share excess earnings, the reason for that is because Bell has stripped off some of the highest profit elements of its revenues, of its service mix, and has removed them from regulation, leaving only the costs and not any of the revenues.

For example, he mentioned this morning that toll was no longer a regulated service and, therefore, toll revenues in excess of access charges are not counted as part of the calculation of earnings that Bell Atlantic reports to the Board. What he didn't discuss, which I believe to be the case, is that although the company imputes access charges -- that is that it does include as part of its reporting the access charges -- it does not make an imputation for other services that are provided by the regulated part of Bell Atlantic to the deregulated part of Bell Atlantic.

For example, the billing services that Bell uses to bill its deregulated toll calls to its basic service customers, I do not believe that any portion, or any significant portion, of those billing costs are assigned to the long-distance business. Certainly, if there is any assignment, I feel certain that



it is well below what Bell charges its competitors to bill long-distance calls for them.

Now there was some interest expressed in the pie chart -- and I have it in front of me -- and I have some comments about it that I think are important. Senator Cardinale, you correctly observed that the toll portion of this total revenue pie includes payments that long-distance carriers are required to make to Bell Atlantic. So, in fact, this roughly half, or almost half, of these toll revenues in some manner are actually not revenues to the long-distance company, but is simply flow throughs from the long-distance company's customers to Bell Atlantic.

So the size of the -- we might call the contestable market, that is the portion of the market that represents competitive long-distance service, is a good deal less than this pink area at the bottom of the chart. In addition, a portion of this also includes roughly, I believe, in the range of \$.8 billion, includes in-state, inLATA toll, that is what has been referred to this morning as local toll calls. These are calls that Bell Atlantic does handle. This is that \$8.33 a month worth of calling that the average New Jersey residential customer pays are paid to Bell Atlantic.

So when you start stripping off the portion of the long-distance carrier's pay in access charges, and you strip off the portion of this toll market that is actually Bell Atlantic's to begin with, what you find is that the amount of this total pie that represents Bell Atlantic's share gets a lot bigger, and the part that represents other carriers' share gets a lot smaller. And, of course, by including wireless on this chart, we've kind of made everything else look smaller, but wireless is really sort of a separate issue at this point.

With respect to the discussion about what the stand alone cost would be and how that compares with the average revenue, I was intrigued by the fact that Mr. Freeman said that the stand alone cost of a dial tone line would be in the range of \$15 to \$20. And I agree that that is probably roughly the right range for that number. Now, he also told you that exclusive of access charges, Bell was collecting about \$25 a month -- I think it was a little more than \$25 a month -- from the average residential customer. Now let's see what that consists of.

It consists of -- and I'm doing this from memory now -- but I think it was \$8.19 for the dial tone rate, \$8.33 for the intraLATA local toll calls -- so now we are up to about \$16.50 -- \$3.50 was the Federal subscriber line charge which, while it is described as something the FCC imposed, it's simply a rate like anything else and it's (indiscernible) to Bell Atlantic, it's not a Federal tax of any sort, it's Bell's revenue. It's just that that happens to be the way that they require to collect it. So now we are up to about \$20. And the difference between that \$20 and \$25 and some change is probably accounted for by vertical services, things like touch tone, call waiting, caller-ID, and other services of that type, which, incidentally, cost Bell almost nothing to provide. It doesn't cost Bell anything to provide touch tone. It doesn't cost Bell anything to provide call waiting. It doesn't cost them anything to provide caller-ID. But these services produce very significant amounts of revenues, and they are what is really doing -- they and the inLATA toll is what is doing the subsidy. So far we haven't even counted access.

So by his own admission before you this morning, Mr. Freeman told you that he is collecting \$25 of revenue for something that costs him

between \$15 and \$20. And that revenue does not include in-state access charges. So we don't even have to look at my analysis, we can look at Mr. Freeman's analysis and reach exactly the same conclusion. It's one of the few situations I think he and I are in agreement.

There was some discussion this morning about competition and how much competition there is. And I believe Mr. Freeman referred to the long-distance carriers as an oligopoly suggesting somehow that without Bell's involvement there was not sufficient competition in the long-distance side where the largest long-distance carrier has less than 50 percent share of the market. Whereas, there is plenty of competition on the local side where the largest participant in the market has 98-plus percent. I find that to be a rather incredible statement.

But let me give you some other statistics that I find to be very interesting. We can sort of trace the history of telecommunications competition, or at least the policy change in the regulatory theory of telecommunications competition, to approximately 1969, about 30 years ago, when the FCC issued in that year or the following year two landmark decisions; one that opened up the telephone handset and equipment market to competition, and another that opened up the long distance market to competition, although on a very limited basis at that time.

In 1969 a three-minute coast-to-coast long-distance call cost about \$2.00. Today it costs the average consumer something in the range of 30 cents, assuming the consumer is signed up for one of the 10 cent a minute plans, and those are generally available without having to make a very large

commitment. So we have a reduction from \$2.00 to 30 cents in nominal dollars, and an even larger reduction when you consider inflationary effects.

In fact, we did a calculation recently suggesting that since about that same 1969 period, the real price of long-distance calls has dropped by 93 percent. There was discussion this morning about whether the long-distance carriers would flow through access charge reductions to their customers, and I can tell you that all of the evidence suggests that since access charge reductions began to take place in 1984, long-distance carriers have been flowing, have been more than flowing, their access reduction through to customers. For the first five years or so, until the subscriber line charge was set at \$3.50, AT&T was actually required by FCC rules to flow reductions through. But after that point in time that requirement went away, and yet it has still been taking place because the market is forcing it to take place.

Now we have-- Senator Singer, I think you mentioned that you had experienced a reduction from \$450 to \$95 a month, you said, on your wireless bill.

SENATOR CARDINALE: Senator Singer is not here right now.

MR. SELWYN: I'm sorry.

SENATOR CARDINALE: He did say that.

MR. SELWYN: He did say that, and that's another demonstration of the effects of competition. For the first 15 years of the existence of the wireless industry, there were only two carriers allowed in each market. And the two carriers behaved as a profit maximizing duopoly which is the way we would expect them to behave. They were not subject to rate regulation, at least since 1993 and, as a result, they brought the price point for

a minute of cellular calls to about 50 cents, plus long-distance charges on top of that, if it was a long-distance call involved. Today the price point has dropped to about a dime and often includes long-distance calling at no additional charge.

So we see just in a few years, just because of the entry of two, three, four more facilities-based wireless carriers, we see a dramatic change in the effects of competition -- in price as a direct and undeniable effect of competition. And that's the kind of thing that we can expect to see in the local market. We can expect to see that difference between that \$25 price and that \$15 to \$20 cost that Bell is incurring, as beginning to disappear. We can begin to expect to see more aggressive pricing plans that include services that Bell charges large premiums for that don't actually cost anything. Wireless carriers already include all of those features, typically, in their basic service without additional charges.

And I think that if you allow competition to develop in this state, the kind of benefits that have been experienced on the long-distance side and on the local side will come to pass. I'm sorry, long distance and wireless will come into existence and benefit this state with respect to local competition. Now we are not even remotely close to having a competitive local exchange marketplace because of the continuing intranscience on the part of Bell Atlantic in opening up its market.

Now without going through all the gory details I just want to highlight a few things and then I'll complete my opening statement. Last year there was something on the order of 50 million changes of long-distance carriers in the United States; that is, customers changing their long-distance

carrier. Virtually all of those required processing by the local Bell company, the local telephone company. They are accomplished, in almost every case, seamlessly.

Here in New Jersey -- just extrapolating from the national statistics -- we are probably looking at between a million and a million and a half long-distance carriers changed per year. Which means that we are looking at this occurring on a weekly rate of something between 20,000 or 25,000. Now what you were hearing this morning -- and there was some discussion about operation support systems, the computer systems that Bell uses in order to provide local service and that are necessary for Bell to offer, to make available its network to competitors -- we were hearing numbers that were a lot smaller than that. I think there was some discussion-- Mr. Langhauser talked about 37 orders processed in a one-week period, of which 14 were successful.

But think about this. If Bell is allowed into the long-distance business, it has the capacity in its existing systems here in New Jersey to convert, to change over, something between 20,000 and 30,000 customers per week to its own long-distance offering. If its marketing efforts would support that pace of conversion, it could handle it. If all of the local carriers combined spent all the money in the world to market their local services, and Bell can only handle a few hundred per week, Bell could take all of the toll market away from the long-distance carriers long before the local carriers could take any appreciable segment of the local market away from Bell.

And that is an example, it's not the sole reason, but it is an example of why in enacting the Telecom Act, Congress requires the local

market be opened up before Bell is allowed into long distance. Because without that requirement, there is nothing to force Bell to open up its market.

In fact, Section 271 of the Telecom Act imposes the so-called competitive checklist -- these are the things that the Bell companies have to do to be allowed into long distance. The Sections 251 and 252 of the Act require pretty much the same things anyway. In other words, all of the things that the Bell companies are required to do to get into long-distance business under Section 271, they are also required to do as an absolute matter in Sections 251 and 252. And the purpose of Section 271 was to provide this additional inducement to comply with a law that they are supposed to comply with even without that inducement, and yet they don't do it.

There was a little bit-- Let me just close with one personal anecdote. There was discussion this morning about the idea that Massachusetts, among other places, was ahead of New Jersey in opening up its market to local competition. I'm from Massachusetts. My firm is located in downtown Boston in the financial district in a relatively new office building that one would think would have competing facilities coming into it. A month ago we switched our local telephone service at our office to AT&T. AT&T does not have facilities servicing our building, so AT&T had to obtain a loop from Bell Atlantic in order to provide our service. In addition, because we wanted to keep our telephone number, an order had to be given to Bell Atlantic to port our number, to transfer our number, over to AT&T.

Bell Atlantic returned the favor to us for switching to AT&T by disconnecting our service before AT&T was supposed to cut it over. And if

you dialed our number what you got was an intercept message that said that the number had been disconnected and there was no forwarding number.

Now, how many businesses are going to be willing to put up with the world thinking that they have ceased to exist merely for the privilege of changing their local phone company. And as a firm, we theoretically understand this industry and should have been able to avoid this problem. What about people who don't understand this industry? If Bell Atlantic in Massachusetts is ahead of Bell Atlantic in New Jersey, then New Jersey is really in trouble. (laughter)

SENATOR CARDINALE: Thank you very much.

Are there questions from members of the Committee?

SENATOR FURNARI: Just on some of the bills that we have here before us, your position is what? Your position is that--

MR. SELWYN: On 1556 I think that-- I agree with the notion of creating an equitable tax structure for all competitors, and I think 1556 would do that. At the same time, I think that this is the correct opportunity to right this wrong, to eliminate the ability for Bell Atlantic to continue to increase its competitors' cost of competing with Bell and get rid of this unnecessary and inappropriate excessive charge for access. Access services should be priced at cost, as Mr. Langhauser said this morning, and I completely agree with him. There is no difference between the switching functions that are provided in connection with long-distance access verses local call terminations. They are exactly the same thing, and yet one is priced at two-tenths of a cent per end or four-tenths of a cent for a two ended call, and the other is priced at 3.7 to 6.2 cents.



SENATOR FURNARI: Do you think that Bell Atlantic -- the tax should be removed?

MR. SELWYN: I believe that the tax should be removed, and I think that there are alternate sources of tax revenue, including things like sales tax, that will easily make up the gap. One of the benefits of competition in this industry is, I think it will stimulate growth in all sectors of the industry and that will increase tax revenues -- other forms of tax revenues.

SENATOR FURNARI: With all due respect, that helps tax, that produces dollars, but it does not necessarily make its way back to property tax relief. I don't know about Massachusetts, but one of the greatest crises in New Jersey is property tax. And in this thing we try to keep our thoughts about competitive markets and competitive companies, but we really also want to think back to the local property taxpayer who is paying a tax to live, not necessarily to use a telephone.

The suggestion that I made before, do you have any comments about that rather than there being a tax, rather than having all the companies-- As part of the reduction of an access fee, have all companies sharing in a fund to ensure that Bell Atlantic doesn't take an unreasonable hit on the taxes while not making up for it with the access fee.

MR. SELWYN: Well, I'm not sure if I understand what you mean by a fund. You mean a fund that will subsidize Bell Atlantic's payment of taxes?

SENATOR FURNARI: Yes -- no, subsidize the rate. What it's doing is paying them back for paying those taxes.

MR. SELWYN: Well, no I don't think that's appropriate for a lot of reasons. One of the reasons I think it is appropriate to get rid of an ad valorem tax on plant is because, as a consequence of telecom competition, there are a variety of technologies involved in delivery of telephone service, and some of them use more fixed plant than others and may-- Therefore, if you impose an asset based tax, you can have the effect of distorting the economic tradeoffs among alternative technologies. A revenue based tax such as a sales tax, which I understand you already have, basically resolves that problem. It simply establishes the revenue source as a function of the value of the services that are provided as reflected in the prices that the market pays for those services. So I believe that an appropriate solution is to substitute some sort of a revenue based tax, and if you already have a revenue based tax in effect, recognize the salutary effects of increased competition and growth in the industry generally is replacing that revenue.

I mean, I think this is a matter that is sort of between the treasury and the municipalities. The revenues are undoubtedly there, and it's a matter of assuring that they can flow through. I don't think it would be appropriate, for example, for a firm that is investing in technology that does not require the kind of asset base that Bell uses to then help Bell defray its tax payments.

SENATOR FURNARI: One second. And with all due respect to you, while that may be very true, we should tax people on the basis of the amount of money they make. In New Jersey, we tax property taxpayers on where they live and not on their income. And it would be great if we could do it all together like you suggested. I think that's probably a great idea, and if Senator Cardinale was willing to sponsor that bill with me (laughter) I'd be

more than willing to do so. But I don't think that -- that it's unfair for a senior citizen, living in a house, to have to afford the property tax. It doesn't strike me as being so peculiar to have to deal with industry in that same manner.

So thank you for your comments.

MR. SELWYN: Senator, there is a Beatles song called Tax Man, and if I can paraphrase one of the lines in there. If you ride, I'll tax the street. If you walk, I'll tax your feet. (laughter)

SENATOR CARDINALE: Thank you very much, doctor.

Our next witness is Michael Maloney of NEXTLINK, and I'd like to repeat my prior admonition, and perhaps put some sort of time lines to it. I hope that we can have the witnesses try to keep their remarks to about 10 minutes or so.

**MICHAEL MALONEY:** I will certainly try and do that, thank you.

Chairman Cardinale, members of the Committee, thanks for the kind invitation today to talk at this important hearing on telecommunications competition here in New Jersey. My name is Michael Maloney. I am a Vice President and General Manager with NEXTLINK New Jersey, Incorporated. With me today is Rick Hix, who is the legal and regulatory counsel for NEXTLINK Northeast.

NEXTLINK was certified by the New Jersey Bureau of Public Utilities to provide local telephone service on July 30, 1998. We are also a member of the New Jersey Coalition for Local Telephone Competition, which is a group of New Jersey businesses, communities, and consumers that are actually very interested in seeing competition opened up in this state.

As a competitive local exchange carrier, or CLEC as you commonly hear us referred to, we established our regional headquarters for the Northeastern United States in Paramus, New Jersey, and we also have an operational office in Pennsauken serving southern New Jersey.

It's been quite interesting today to hear the prior testimony of the industry giants, if you will, relating an awful lot to the long-distance business. I think there is tremendous opportunity to learn from the history of that business. There is a lot of parallel that comes possibly related to long-distance competition.

I started in the very-- I've been in this business for about 17 years. I started in the very early days of long-distance competition. I worked for a company that, at the time, was known as Southern Pacific Communications, a small regional network out West along railroad right-of-ways. We had one product. The product name was Sprint. And some 17 years later, we now know that after many mergers and acquisitions you know the company as Sprint, as one of the big three, as they refer to in the long-distance business.

My point for mentioning that is one of the underlying, one of the primary reasons, why competition -- and believe me, there is open and highly competitive industry in long distance. One of the reasons is infrastructure, technology, and the networks that they have built. And I think one of the things we need to look towards as we talk about opening up local phone competition, the lesson learned being that that same investment in infrastructure really is of underlying importance to this local competition as well.

I'll talk about three things, really trying to be brief. I'll let you know a little bit about NEXTLINK. I'll talk about some of the -- our opinions on the state of competition, and then kind of close with three recommendations that we think might be of interest.

NEXTLINK New Jersey is a subsidiary of NEXTLINK Communications. That company was founded in 1994 by Craig McCaw, a name that may be familiar to many of you, to provide facilities-based telecommunications services. Our national headquarters is out in Bellevue, Washington. We operate, today, 23 facilities-based networks in 38 markets across 14 states. We provide switch local and long-distance service. Our target market is primarily small to medium sized business users of anywhere between 5 to 100 business lines.

We operate high capacity fiber optic networks to serve each market, and we also will be deploying LMDS wireless spectrum to provide a local loop alternative to today's marketplace. We currently connect to customers directly through our network through use of our own facilities, or using other carrier's special access service or for purchasing what's termed unbundled loops from the incumbent local exchange carrier.

In southern New Jersey, we have about 350 customers representing approximately 5000 local lines in Camden, Burlington, and Gloucester County. We are in the process of getting ready to launch operations in northern New Jersey with a switch location in Newark and fiber optic networks that serve that community as well.

As I understand one of the desires of the Committee here is to get some insight into the growth of competition and local telecommunications in

that marketplace. My experience is pretty straightforward as I stated. Is there real local telecommunications competition in New Jersey? The answer in a word, no. Is there potential for true competition in New Jersey? Absolutely.

The clearest equation I can think of to explain this is really to talk about competition as market share plus independence from the market leader. I mean, you've heard earlier some testimony about market share percentages and how the industry is broken down, or the segments are broken down, today. I won't go into a lot of detail about the numbers. We did, however, sponsor the Atlantic ACM study that you have heard referred to, along with AT&T, MCI WorldCom, and Sprint, and some others. And probably the most objective use is that less than 2 percent has changed hands at this point.

Bell Atlantic, right now, still sits with over 8,365,000 access lines in the states. All of the "competitors" combined have a little over 108,000 lines. I want to explore that 108,000 just a bit. More than 85 percent of those access lines that CLECs, or competitors, have in New Jersey are still dependent on Bell's service. Thirty-nine percent of those fall under the category that we call total service resale. It simply means -- and this is really a personal definition or opinion -- those lines have moved from one distribution channel with Bell Atlantic to another. They were formally retail customers. Today they are still entirely on the Bell Atlantic network. They are wholesale customers of Bell Atlantic.

Thirty-seven percent, over 37 percent, relates to other facilities still leased from Bell Atlantic. And 10.5 percent relates to unbundled loops from Bell Atlantic again. So these facts demonstrate that CLECs are not yet able to operate independent from Bell Atlantic in New Jersey, the market leader.

With more than 85 percent of the lines dependent on services from Bell, we are really limited in our ability to provide innovative products and pricing, really the result of the fact that Bell Atlantic controls two essential features affecting our growth, that's product and price -- resales, not facilities-based competition, and, in fact, really only offers limited price reductions to current B e l l p r o d u c t s .

To use an analogy from the automobile industry, which would create a stronger competitive environment, one auto manufacturer with many dealers all selling the same car at different prices, or many auto manufacturers with many dealers selling many cars with different performance standards and features, as well as different pricing? If you agree that the latter is substantially better and necessary for competitive advantages to be created, then I hope you also agree it's necessary to create an environment where infrastructure, that is, switching and transport systems, is encouraged and supported.

Until the CLEC market share increases significantly and the current dependence upon Bell Atlantic to provide service to New Jersey customers has changed, New Jersey customers will be unable to experience the rewards of competition, including lower prices, greater choices, all that was envisioned really by the Telecom Act of 1996.

Competition is good for the State of New Jersey because it will result in better infrastructure, more advanced and higher capacity applications, increased business opportunities, and in the end, lower cost to consumers. But it's not going to happen without the direct participation and involvement of the Legislature, without stiff penalties for noncompliance, or without the active participation and involvement of the Board of Public Utilities.

So, we need your help. What can you do? If the Legislature wants to create an atmosphere for development of true competition, one in which competitors can offer differentiating products, features, packaging, and pricing, then it is the wisdom of the FCC and the opinion of NEXTLINK that facilities-based competition must be developed and encouraged.

We have some recommendations specifically directed at that. First, the Legislature should support and immediately encourage the Board of Public Utilities to hire and deploy sufficient personnel to process and review telecommunications tariffs and filings on a timely basis. The Board has some good and conscientious people working on telco issues; however, they are simply overwhelmed at this point with the activity generated by the new entrants in this competitive marketplace.

Offer case in point: NEXTLINK New Jersey, Inc. filed its original petition for certification with the Board on January 6, 1998, along with tariffs outlining the services we intended to offer. On May 1, we filed revisions to our tariffs, and on July 30, six months after our original filing, NEXTLINK's certification was approved. In that order, NEXTLINK was specifically instructed not to provide service until our tariffs were approved. After several subsequent discussions with the BPU staff, and subsequent filing revisions, NEXTLINK's local service tariffs were finally approved 11 months after the initial filing on December 2, 1998. One of our tariffs filed in January has yet to be approved.

In sharp contrast, we filed in Pennsylvania on January 12, 1996 and we were approved and authorized to sell four months later. In Delaware, we filed on February 26, 1998 and were approved four months later. One of



the significant differences between New Jersey and some of the surrounding states is that New Jersey is attempting to conduct a thorough review of filings before authorizing any activity by companies. While it is an admirable approach, they are not able to conduct such reviews timely. The result is that they are becoming an impediment as opposed to a promoter of competition.

A second recommendation. Bell Atlantic must be held accountable for treating CLECs as customers, as well as carriers. Given the significant number of CLECs who utilize Bell services to service New Jersey customers, the New Jersey Board of Public Utilities must be encouraged to embrace pro-competitive policies and performance standards like those adopted in states like New York and Texas. Why should New Jersey residents settle for something less than Bell Atlantic has already agreed to in New York?

Third, and perhaps more directly in the span of control of the Legislature, a plan must be legislated which gives CLECs the right to serve customers economically and efficiently. To extend our networks to customers requires us to access poles, buildings, business campuses, and residential communities. Since there are no clear-cut, right-of-way procedures, every attempt requires extensive negotiation with unguaranteed results. For example, there is existing legislation in Ohio, New York, California, Michigan, and other states, which regulates the prices and availability of pole access.

NEXTLINK encourages this Committee and the Legislature to consider these areas for legislative initiatives as a vehicle for speeding up the process to bring competition on an infrastructure basis to New Jersey.

In closing, Senator Cardinale, members of the Committee, we stand ready to assist in any way we can, and I'd be happy to answer any questions that we can at this time.

SENATOR CARDINALE: Thank you very much.

I have no questions.

Senator Furnari.

SENATOR FURNARI: I used mine up.

SENATOR CARDINALE: Thank you.

Jerry Bowyer from the Allegheny Institute. (no response)

We lost him.

Tom Allibone, from LTC Consulting.

**THOMAS ALLIBONE:** I'll try to keep my comments as short as possible.

Good afternoon, Chairman Cardinale and members of the Senate Commerce Committee. My name is Tom Allibone, President of LTC Consulting and a member of the Coalition for Local Telephone Competition. I just want to briefly mention the members of the coalition, and then I'll go right to and summarize the three issues that we see as being important issues. So I won't take up too much more time.

Basically, the Coalition for Local Telephone Competition was founded in 1997 to work towards a full implementation of the Telecommunications Act of 1996 in our State. Our members include the New Jersey Retail Merchants Association, National Federation of Independent Business New Jersey, the New Jersey Black Ministers Council, AT&T, NEXTLINK, LTC Consulting, COOLNET, New Jersey Fuel and Merchants

Association, and the New Jersey Public Interest Research Group. Through its membership, the CLTC represents tens of thousands of businesses and consumers who rely on telecommunications services every day.

Basically, today I'm here based upon my years of experience. I have been in the business of telecommunications for over 28 years, and have developed a reputation in the state as being one of the leading advocates for New Jersey small businesses. And since 1989, my company has worked with over 1000 small businesses throughout the state and have recovered over \$10 million in overcharges for these different companies. So I know earlier there was a comment about being confused about your phone bills. I can actually help you. So if there is any interest in having your phone bills explained to you, I'm your man.

It's been three years, as you know, since Congress passed landmark telecommunications legislation, and yet we still don't have a choice for local phone service. I think the most important question the panel can ask is can the consumer pick up their telephone and switch their local phone service? And the answer is no, you cannot. Still, today, Bell Atlantic controls 99 percent of the marketplace. And I think the earlier speakers really illustrated those issues, so I won't go into any more detail.

What I'd like to try to do, though, is go into the three issues that I believe the coalition would like to bring to your attention and to see action taken. Basically, number one, access to the Bell Atlantic platform network known as the UNI. The Telecommunications Act of 1996 required Bell Atlantic to make pieces of its network available for purchase by new competitors. And the U.S. Supreme Court has upheld this order without

restriction. However, the BPU proposal that's on the table today restricts that choice, and they are trying to apply it to consumers and small businesses with less than 10 phone lines. We feel very strongly that that is illegal and is arbitrary and ambiguous to the Telecom Act.

We would like to see a plan written that clearly allows for all the benefits from competition, not just a select few. In New Jersey, in fact, 90 percent of businesses are categorized as small businesses, and yet they will be excluded from the plan that has been put forth before the Board as far as this UNI plan.

Number two, security of phone service choice. There has been a lot of discussion about the OSS, which is what I'm getting into now. I can't overstate enough that a consumer must have confidence that they will not lose service or access to emergency services when switching carriers for competition to work. Bell Atlantic's operational support systems should be independently tested in New Jersey. Every state is different. There has been discussions earlier today about New York and Pennsylvania, but the billing systems in New Jersey are truly unique to New Jersey. And I'd like to just talk about some personal experiences here, because as a billing expert I think it goes to the heart of what I'm trying to express to you here today.

From my own experience, I can tell you that the systems that they use today -- the current billing systems for their own internal use -- are extremely inefficient and prone to billing errors. Based upon research that I have put together, having audited literally thousands of companies throughout New Jersey, we are finding that approximately 50 percent of the phone bills that we take a look at contain billing errors or outdated service charges that

remain hidden on the phone bill for years and years after the service has been allegedly removed. So think about that.

The bottom line is that the OSS issue is a very complex issue. And before a new OSS system can be adequately designed and tested, I'm here to tell you today that the current OSS system is already broken. We're not even at the gate yet. Because it's the same systems that are generating the incorrect service orders that translate into incorrect phone bills down the road. I see these every day in my line of work.

And I'd like to cite a very specific example. You may be familiar with National Exchange Carrier Association. NECA was formed by the Federal Communications Commission to oversee universal service implementation. And most of the independent telephone companies around the country are members of NECA. Unfortunately, NECA discovered that over \$15,000 in overcharges had been incurred by them for services that were never disconnected, including some data and centrex lines. I have to ask you the question today, if NECA can't protect itself from getting ripped off, how is the average customer going to avoid the same trap?

My firm has audited also over 200 small oil companies throughout the State of New Jersey and found over \$300,000 in billing errors on the individual phone bills. This is very disturbing. I don't think a lot of people realize how bad the current billing systems really are, which translates into higher costs. Some of these charges can remain on phone bills literally for 20 or 30 years. They go unnoticed because they are truly hidden on the phone bill.

The third issue that I wanted to talk about is the access fee reduction. There has been a lot talked about that already today. We feel that close to 60 percent of the cost of the long-distance call is actually what Bell charges long-distance providers to connect to its network. We are in support of Senate Bill 1556, and would strongly encourage you to consider that.

Those are the three main areas that the coalition would like to see addressed by the Board of Public Utilities, the Governor, and the Legislature for competition to flourish in New Jersey.

Those are pretty much my structured remarks that I wanted to cover, but I'd like to bring up another issue from a personal point of view, speaking as Tom Allibone, President of LTC Consulting. I have to believe that the Board of Public Utilities has not done their job. As an independent consultant who represents literally thousands of customers, I go before the Board. I raise issues to the Board regarding complaints. I make formal complaints before the Board, and I found them to be totally unresponsive.

Earlier today the Ratepayers Advocates Office seemed to be reluctant to go out a little bit and comment. But my feeling is that the current hearings that are underway, in many respects, have locked the public out. The public really has not had a chance to comment, and I think that is outrageous. And I also know that firsthand that the Ratepayer Advocates Office has had difficulty as well.

The BPU has absolutely been unresponsive. There was a comment earlier about staffing, I believe, by the last speaker from NEXTLINK. I can tell you on a personal note that I have tried calling their office and there have been times when the phone rings for over half an hour and nobody answers the

phone. If you try to reach them via the Internet and access their website -- I don't know if anybody has ever tried to look at their website. It hasn't been updated in years. It truly is broken.

So you can't call them and you can't E-mail them because the E-mail addresses don't work. The electronic complaint form doesn't work. The only way I have been able to communicate with the Board of Public Utilities is to go to Governor Whitman and ask the Governor to contact the BPU to return my phone calls. I think it's an outrage, considering what is going on here with deregulation. And some of the most meaningful things in the history of telecommunications are happening right now, and we have a very unresponsive Board of Public Utilities. So I'm very concerned about that.

At this point I really would like to open up to any questions you might have. As I said, I am an expert in the billing system, so now is a chance to pick my brain if you have any questions about your phone bill. I'll be happy to take care of the confusion issue.

SENATOR CARDINALE: Just see that you leave you address with the committee aide. I want to have you look over my phone bill.  
(laughter)

SENATOR FURNARI: Could I ask one question?

SENATOR CARDINALE: Sure.

SENATOR FURNARI: Why doesn't 1604 accomplish all of the goals? Why do you say 1556 is the answer? And does 1604 accomplish anything that you suggest?

MR. ALLIBONE: Well, I can't really comment too much on any more detail at this point, other than to say that the Coalition's consensus is

that we feel that this is the better way to go. It's not an area that I have a great deal of expertise in.

SENATOR FURNARI: Thank you.

SENATOR CARDINALE: Thank you very much.

MR. ALLIBONE: Thank you.

SENATOR CARDINALE: Nancy Becker.

Again, Nancy, I'm sure you heard the comments, if you could summarize.

**NANCY BECKER:** I will be brief.

SENATOR CARDINALE: It's getting to the time of day where--

MS. BECKER: I will try not to be repetitive.

I am speaking on behalf of Advantage New Jersey. It's a coalition of long-distance, cable television, and competitive local exchange companies which are all seeking to offer local telephone service in New Jersey. We have provided you with a list, which I think is pretty impressive, in terms of the depth and the breath of those companies involved.

We were organized in 1995, building on the competitive promise of the Governor's Economic Master Plan, which highlighted telecommunications as one of the industries to foster in New Jersey for prosperity in our State. It also came about as a result of what was going on in Washington with the consideration of the Telecommunications Act, which was eventually passed in 1996. Since then, both as a coalition and as individual members, the member companies of Advantage have sat on numerous task forces, testified before the BPU and legislative committees dozens of times, and we have submitted thousands of pages of briefs and comments.



Government has taken some action. The Telecommunications Act was passed three years ago in 1996, and the BPU has undertaken a variety of proceedings. The most recent one was their study of July 1998, which looked into whether competition was taking place or not. In their study they said there is no local telephone competition in New Jersey. We knew that. And there is still no local competition in New Jersey.

I have submitted a copy, also, of the ACM study, so I'm not going to go into it, but I would tell you that the results of the ACM study are not a surprise to the members of Advantage either. We are hopeful that when regulators and legislators see the numbers in black and white, though, they will realize that the state's current policy direction regarding local competition is simply not working.

What is interesting is the number of competitive local exchange carriers that have been certified have increased from 7 to 37 in two years. That's very positive. But it also revealed that the local telephone market is growing, and you've heard that all day. The only provider benefiting from that now is Bell Atlantic. From our perspective, it only underscores the failure of current policy. Certifying competitors is one thing, creating an environment where they can actually compete is quite another.

SENATOR CARDINALE: Nancy, may I ask a question on that point?

MS. BECKER: Yes.

SENATOR CARDINALE: I suppose I should know the answer to this, but I don't. If anyone in this room wanted to go into the business, and had the funding and so forth to do so, and wanted to put poles in the ground

and run wires and start their own, what we call, facilities-based telephone company in New Jersey to compete for local service, is there an impediment now in the law or in BPU regulations that stops them from doing that?

MS. BECKER: I don't believe that there is any legal impediment to--

SENATOR CARDINALE: So the impediments that we hear Bell Atlantic putting in the way, with respect to this reselling type stuff--

MS. BECKER: It's with respect to leasing parts of their network to get access to customers so that there can be a seamless interface.

SENATOR CARDINALE: Right.

MS. BECKER: And in terms of poles and access to buildings--

SENATOR CARDINALE: Is that a technological problem? Is it that the equipment is not in place and the computers are not in place to do an adequate job of that, or is there some other--

MS. BECKER: I need one of my technical people to answer the question.

**MICHAEL CLANCY:** I'll answer that question. It has nothing to do-- My name is Michael Clancy. I'm from Covad Communications. It has nothing to do with anything technological that's not in place. It has everything to do with Bell Atlantic's willingness to be supportive in opening up the marketplace, and being a willing partner in delivering service to end users.

SENATOR CARDINALE: Now if I'm calling New Jersey from California, and let's say I'm placing that call -- my carrier is Sprint. There is no lack of access to the end user here, but what you're telling me is if I were a customer of XYZ new telephone company that established itself in Camden

and had a little thing in Camden, and I wanted to now make a call outside their little local service area and to somebody who was a customer of Bell Atlantic, Bell Atlantic would not facilitate that call. Is that what the problem is that we are dealing with?

MR. CLANCY: The issue-- Access to the end user is that the group distribution plant is owned by Bell Atlantic. It has been built over more than a 100 years using ratepayer money to build it. Mr. Freeman talked about a free ride before. I would say that the only one getting a free ride is Bell Atlantic.

SENATOR CARDINALE: All of those are not--

MR. CLANCY: The access to the end user is controlled by a group distribution plant.

SENATOR CARDINALE: And they--

MR. CLANCY: And I can only get access to a group distribution plant by collocating in a Bell Atlantic facility using their rules to collocate, which are onerous to meet, and then access their network through cross wiring in their central office to get to the end user. So I can build my own backbone facility nationwide, locally, whatever. What it comes down to is the last mile to get to that end user they control and they will always control.

SENATOR CARDINALE: And how does AT&T overcome that when they are placing the long-distance call that comes from California?

MR. CLANCY: When AT&T places a long-distance call, they pay an access charge to Bell Atlantic to get access to that loop. They have to go through Bell Atlantic's network to get to the end user. So the whole reason

and premise of access charges is to pay for that connection and get to the end user.

SENATOR CARDINALE: So that the only way that that Camden company could get through that loop today on a practical basis is either to have some very expensive equipment located all around the state, which would duplicate the Bell equipment, or to pay an access charge.

MR. CLANCY: Well the way AT&T is looking to get around that access bottleneck is -- since they have deeper pockets than my company does -- they are buying cable companies. So they get access to the end user on cables that are already there built by the cable companies.

SENATOR CARDINALE: Okay, thank you very much.

UNIDENTIFIED SPEAKER FROM AUDIENCE: You have to remember that XYZ's customers may be placing calls from XYZ's facilities, but the person they want to reach may also be a Bell Atlantic customer.

SENATOR CARDINALE: No, that was my point.

MR. CLANCY: The essence of Bell Atlantic's monopoly is they own the distribution plant.

SENATOR CARDINALE: Thank you.

Were you completed?

MS. BECKER: No.

I thank you for the technical support.

Others before me have given examples about how other states have worked, and I will not talk about New York, because that has been talked about already. I did want to talk about Illinois, though. Illinois is served by Ameritech, another of the Bell operating companies. Illinois, in its annual

report -- and Illinois has clearly been a bellwether in competition -- has local number of portability very, very necessary for competition. Close to 100,000 numbers have already had number portability.

Number two, their interconnection agreements for-- There are 22 interconnection agreements between Ameritech and local exchange carriers, and an annual update of Ameritech's price cap similar to what we have in New Jersey for Bell Atlantic. Cost of reduction in rates this year, or last year, of \$19 million. The total decrease in rates so far for Illinois customers has been \$237 million.

The overall comment of Advantage New Jersey is, again, to emphasize that one of the most important things government leaders can do is to be involved and demonstrate a competitive mind-set in state government. The mind-set is critical because it really will make a difference between going through the motions and establishing competition in New Jersey. Every possible opportunity must be taken advantage of, and I would call to your attention the coalition was disappointed very recently when Bell's plan for alternative regulation was up for reconsideration and Bell asked that it just be delayed a year. All the members of Advantage asked to testify during that hearing. We were denied that opportunity to do it. Their alternative plan was renewed for another year. It was an opportunity to look at rates and to look at how competition could occur.

In conclusion, we, again, say that we would like you to be engaged in the local competition discussion. It is critical for New Jersey's economy and New Jersey consumers for telecommunications to be a truly competitive environment in New Jersey. If we don't establish a truly competitive

marketplace, capital dollars will continue to go to other states. Competition will bring research to the state and development dollars, new jobs, and advanced telecommunications services, and better prices. New Jersey can't afford to wait if we are truly to become a telecommunications mecca.

And I'd be happy to answer any questions, but not really technical ones. (laughter)

SENATOR CARDINALE: Thank you very much.

I don't have any questions.

Senator.

SENATOR FURNARI: Does 1604 accomplish those goals?

MS. BECKER: Advantage New Jersey has not taken a position on that legislation.

SENATOR FURNARI: And has it taken a position on 15--

MS. BECKER: We've taken a position on the bill that was introduced by Senator Inverso and Assemblyman Bagger on making competition another standard for looking at competition. There are new bills that have recently been introduced.

SENATOR FURNARI: Thank you.

Just one last thing. So the BPU has not done its job, is that right?

MS. BECKER: We would certainly like the BPU to be more engaged in the competitive environment and to be working to facilitate that in a quicker way.

SENATOR CARDINALE: Bridget Devane, New Jersey Citizen Action.

**BRIDGET DEVANE:** Good afternoon. My name is Bridget Devane. I'm from New Jersey Citizen Action. New Jersey Citizen Action is the state's largest consumer watchdog organization, with 60,000 family members and 80 affiliate organizations.

Consumers are calling for lower rates, and behind the buzz words like competition, New Jersey citizens ultimately want and need a price break from inflated telecommunication prices, especially in the famously high cost of living state. The typical American family spends over \$1000 per year on local phone, long distance, and cable services, more than the average cost of auto insurance in the state. Consumers want competition only as a means to provide rate relief.

The Telecommunications Act of 1996 has failed to deliver on the promise of more choice and lower rates. The residential ratepayer simply does not have a choice for local phone service and has not seen the rate reductions or other benefits promised from the Act. In the wake of the Telecoms Act passage, the only major change has been the extra coins needed to use a pay phone.

Prices should be going down, not up. Even though technological advances are continually lowering the costs of providing telecommunications services, consumers have yet to see their bills go down. We estimate New Jersey citizens could save over \$10 a month on their phone bill if there was a vigorous and competitive marketplace. Hundreds of millions of dollars of the consumer savings are at stake in the deliberations at the BPU and here at the New Jersey Legislature.

Yet the signs are not encouraging. The BPU just recently granted a one-year price cap extension to Bell Atlantic without considering whether this rate set earlier in the debate should be lowered due to the economics of this declining cost industry. The BPU didn't even look to see if Bell fulfilled its commitments to invest in the infrastructure of the state under the Opportunity New Jersey Plan. It postponed the hearing for later this year and closed the proceeding from interested parties.

More dangerous was that Bell asked for the extension, under the argument that it could be totally freed from rate regulation in one year. It is highly unlikely that consumers will actually see competition in such a short time, especially given the current pace. But the argument makes no sense since the competition is supposed to lower prices, and so a new price cap instituted now or in a year should not hinder Bell's ability to compete.

The state can make a real difference in the cost of living and quality of life for New Jersey citizens through good telecommunication policies. Here are some things that we think the Committee and New Jersey policy makers in general should consider.

Number one, New Jersey should send a clear signal to Bell Atlantic that they will not be deregulated until there is real competition. This means until residential ratepayers get more choices and lower rates for local phone service, Bell Atlantic should not be removed from rate regulation as they have recently argued for. And without real competition, Bell Atlantic should not be allowed to enter the lucrative long-distance market, especially since that entry would be unwittingly subsidized by the inflated rates of captive ratepayers.



Number two, New Jersey should not be treated as a second-class state. After confirming the obvious fact that local competition was nonexistent, the BPU has spent a year to negotiate new policies to spur consumer choice. In just the past couple of weeks, the BPU has made some promising, yet tentative, steps in the right direction. The BPU could speed the process up by borrowing from the work in New York, where Bell Atlantic agreed to a whole set of policies to foster competition. But right across the Hudson River, Bell won't agree to those same conditions here in New Jersey. The BPU should follow and even go beyond the New York policies from opening up the market, especially lowering pricing policies so that the consumers can be offered competitive rates.

Three, the BPU should implement much delayed universal service policies. Also coming out of the Telecommunications Act, this proceeding has been pending for well over a year, yet could open up opportunities for low-income, senior, and working families. The phone is more valuable when it can reach more people, yet one in four households in Camden does not have a phone. The BPU's decision could not only help citizens get lifeline services, but also helps schools and libraries get wired and connected to advanced services for the 21st century.

Four, the Legislature should lower the bills of long-distance customers through access rate reform. Up to 40 percent of long-distance charges go to the local phone company to begin and end calls. As a gatekeeper to our phones, Bell Atlantic leverages its local monopoly to charge inflated rates for immense profit, a powerful incentive to stall the competition. The Telecommunications Tax and Rate Relief Act, S-1556, sponsored by Senators

Inverso and Kenny, would reduce these rates, and by more than other bills now pending. We believe the reductions in this bill are necessary and appropriate, and they should not and must not raise the cost of local basic service. Such a bill would provide needed savings in long distance and spur competition all around.

Finally, we need to put the public back into the Board of Public Utilities. The debate over electric deregulation exposed the problem of an overextended BPU, considering so many important issues that affect New Jersey citizens. We wholeheartedly support and ask you to co-sponsor S-1846 backed by Senator Connors and Assemblymen DiGaetano and Doria, which would increase the BPU from three to five members, including one representing consumer issues, and one having significant expertise on these regulated areas. We need a beefed-up BPU to confront the new challenge of fostering competition to achieve choice and rate savings for consumers.

Last year Citizen Action unveiled 1000 postcards addressed to the BPU spelled out with one message: Lower rates. New Jersey policy makers can make important steps to reach this goal.

Thank you.

SENATOR CARDINALE: Thank you very much.

Any questions. (no response)

Thank you very much.

MS. DEVANE: Thank you.

SENATOR CARDINALE: Karen Alexander. And it's unclear on my list, are you together with Cablevision, with Tom Wolfsohn of Cablevision, or are you separate?

**K A R E N   D.   A L E X A N D E R:** Actually I am pleased to share the table with him, but our testimony is separate.

**SENATOR CARDINALE:** Okay, then we will do you one at a time.

**MS. ALEXANDER:** Good afternoon, Mr. Chairman, and members of the Committee. I'm Karen Alexander, President of the New Jersey Cable Telecommunications Association, the trade association for cable industry in New Jersey, which, until recently, was thought by most people to be principally a provider of video television services. The cable industry has increasingly become a provider of other electronic advanced services, such as voice and data Internet services, and we very strongly support efforts on behalf of the state to provide competition in the local telephone market.

We share the concerns that many of the witnesses have expressed earlier today, that not enough is happening in New Jersey to open up the markets, and would encourage this Committee and the Legislature to take whatever action is necessary to ensure that New Jersey is not left behind.

The Cable Association is not new in this debate. We participated in the development of the state's Telecommunications Act in the 1990s, and we are a founding member of Advantage New Jersey, the organization that Nancy Becker was just speaking on behalf of.

State and Federal law is very clear on the issue of competition. There is to be competition in all aspects of telecommunication, whether you are talking about local, long-distance, or video. Competition does not happen over night, we all know that. It took quite a while in the long-distance area. It's taking a little while, although I can honestly tell you that it is here in the

video marketplace with the advent of direct broadcast satellite, as well as open video services. And we are seeing more and more competition in the video market, but it is lagging severely in New Jersey in the local telephone marketplace.

The cable industry holds the greatest potential for an alternative facilities-based approach for providing local telephone service. And as the gentleman that was providing some technical commentary indicated before, that potential is there inasmuch as we have access to many residential homes in the state. Unfortunately, the cable industry and the cable plant cannot separately provide those services in the local telephone market. In order for a consumer who would opt to have telephone service through the cable plant to talk to someone who was relying on a Bell Atlantic system, we would have to have agreements between the cable operators and Bell Atlantic in order to make that interconnect.

We run into the same kinds of difficulties in working out agreements that you have heard from some of the other witnesses here today. But we do think that there is a great promise for New Jersey in the local telecommunications area. We just would hope that this body would soon act to make sure that that takes place.

I thank you and I will be able to take any questions you might have.

SENATOR FURNARI: I have some.

SENATOR CARDINALE: Just one second.

What would we need to do to make that work? It would seem to me that if I were Bell Atlantic, I might be very afraid that this competition,

unlike some of the others, would have the potential to put me out of business because you've got a lot of customers already. How does the Legislature make you work with them and them work with you where you are going to-- I can understand that if you are going to take-- If I'm a Cablevision customer and I want to call another Cablevision customer, let's say anywhere else in New Jersey, that doesn't create a problem once you have phone capable services. But if I am a Cablevision customer and I want to call somebody who is a customer of -- who doesn't have cable television, he's got a satellite dish, or he doesn't have a television set, but he's got a telephone, what do we need to do legislatively to force Bell to take your call and you to take Bell's call?

MS. ALEXANDER: I'm not sure that it's legislation, per se, that's needed, but perhaps oversight in the manner that you are doing here today to ensure that there is an aggressive approach taken by the Board of Public Utilities in terms of the activities that they are undertaking with Bell Atlantic and others who are looking to compete in the local market to ensure that true progress is made in those negotiations, so that Bell feels compelled to come to the table and negotiate in good faith, and those opportunities are provided.

And perhaps what some of the other witnesses offered earlier by taking a look at what's happened in New York, although it may not be perfect, or Pennsylvania or some of the other states might serve as a good model. I think that the authority to make this happen is there. The issue is how do we go about making it happen at a good pace.

SENATOR CARDINALE: You seem to be suggesting -- and I'm maybe reading this into what you're saying, and I just want to find out where you're going -- that we perhaps should have some sort of time lines that we tell

them, because we've had complaints that the applications take a long time. That if an application comes in for this kind of proposal that you have to act within 30 days or 60 days on such a proposal that comes before you. Is that the kind of thing you're talking about?

MS. ALEXANDER: It might be one of the kinds of things you would want to look at. I don't have the expertise to know the specifics of some of the applications that come before the Board. I wouldn't want to presume that I know how long it should take for them to review any one particular piece of that.

What I would suggest is that there is probably a need to look at all the different components that people have mentioned here today, whether it's the collocation issues or access to the platform or the actual rates that are paid or access fees. There are a number of components of this whole competition issue that need to be unraveled and attacked one by one, and it may very well be-- And I suspect that some of what the Board had undertaken already is a step in that direction, that this body perhaps might say, "Well, we want to see some very clear progress made by X date." I don't know that going into the micro-management of, "you must approve an application within a month" is necessarily what's needed. But I think some better sense of--

For those who are interested in investing in the local market, you are more likely to invest your money where you know there is some regulatory certainty than where there is none. And I think you are finding some reluctance on the part of companies in the cable industry to really make the plunge here, because there is no guarantee that at the end of the day, after sitting at the negotiating table, that they are going to make progress.

SENATOR CARDINALE: Thank you.

MS. ALEXANDER: Thank you.

SENATOR CARDINALE: Senator.

SENATOR FURNARI: I have a few questions.

SENATOR CARDINALE: Wait.

MS. ALEXANDER: I'm sorry.

SENATOR FURNARI: We've heard testimony here that the access to Bell Atlantic's lines ought to be based upon a cost basis of access rather than on the charges that they are billing. Would you agree that Bell Atlantic should have that same basis with you with the telecommunications industry, you know the cable access, on that same kind of basis.

In other words, if they decided-- If, in keeping with the competition, if they are going to compete, if they decide to use your lines, as well as any of the other phone companies, that any access to your lines would be based on the same basis of a cost basis.

MS. ALEXANDER: Well there is a fundamental difference. Although Bell Atlantic has exclusive ownership to their existing plant, it was not built with private dollars only, unlike the cable plant which was built with private dollars only. And so the issue of access is really one of equity. In the instance of the bills that you have been discussing today, our industry has not taken a clear-cut position on that. But I don't think that there would be any desire on the part of Bell Atlantic to access, for example, the cable plant to provide telephone service, because they already have their own facilities.

SENATOR FURNARI: For other competitors, as well, who may want to utilize it. In other words, the more that we've gone through this

process, and there has been divergent testimony here in the same issue, on the same amount of money, and it seems, and rightfully so, you try to be competitive and it's the twist that we put on it. But I think there are sometimes these ironic twists.

We have Bell Atlantic, we're saying now that Bell Atlantic built it on ratepayers dollars, but your industry didn't. But yet all of the people who -- For example, the latest increase that we have now as part of the deregulation-- All of the ratepayers, or all the people who have access to cable television in my community are going to experience a very large increase, the largest that they have had in a long time. One might argue that, in fact, that the rates that have paid have provided this assistance along with you, even though you say that it was done by private dollars and investment. I'm just making an argument that I would imagine that Bell Atlantic might make that same argument back.

And as we talk about these very thorny issues, again, that are probably are best, and that's why you create an agency, probably best decided there. I just want to see if everybody is truly willing to make it an even playing field. If AT&T is going to get into this industry by accessing lines of the cable companies, or by owning them, then the access that your competitors may want on those lines ought to be the same, it seems to me, as what Bell Atlantic is facing.

MS. ALEXANDER: Well, the cable plant has access into individuals' homes. We do not have the extensive network that allows for the communication from one home to the next. That is only the property of Bell Atlantic at this time. So there really isn't a comparable thing. Bell Atlantic, for example, competes head to head with the cable industry in providing video



services by partnering with direct broadcast satellite providers, and offering DBS as a video alternative to cable. Companies can come in to communities and offer cable services if they choose to.

SENATOR FURNARI: Then we get to that taxation. Isn't there a separate taxation issue that applies to sales tax with regard to telephone? You see, the more I open this up, the more we start talking about different issues -- and I'm not sure how Bell Atlantic got there, because it seems that they got there over many, many years. But there seems to be tax issues that start to give rise. Is it true that telephone access through Cablevision would not be subject to sales tax?

MS. ALEXANDER: I don't honestly know the answer to that question. There may be other people here that may--

SENATOR FURNARI: And I think that it is-- And I think that it is when it comes to Bell telephone.

You see, those are many of these issues that make it very difficult for us as legislators to deal with these thorny questions.

MS. ALEXANDER: I think if we looked at it in its simplest form, at bottom, the question is, "Do consumers have a choice in who they get their local phone service through?"

SENATOR FURNARI: Thank you.

SENATOR CARDINALE: Thank you very much.

Tom Wolfsohn, from Cablevision.

**THOMAS E. WOLFSOHN:** Mr. Chairman and Members of the Committee, Cablevision is a proud member of the New Jersey Cable

Telecommunications Association, but I am here today to represent Cablevision Systems Corporation.

As you can see from my prepared statement, Cablevision is in a number of telecommunications and entertainment businesses: cable television operations, programming networks, arenas, sports, consumer electronics, and movie theaters. I am here today, however, to talk about Cablevision Lightpath, which is a facilities-based, competitive local exchange carrier, or CLEC; the facilities being the fiber optic coaxial cable hybrid network, which currently delivers cable television service all over the country, as well as here in New Jersey.

Lightpath operates right now in southern Connecticut and on Long Island, competing with both Bell Atlantic and Southern New England Telephone for telephone service. And here in New Jersey, Lightpath has been certified by the Board of Public Utilities and has entered into an interconnection agreement with Bell Atlantic-New Jersey. Right now we are ramping up to start immediately serving businesses, and then eventually homes, in the state.

My purpose in being here today really is just to urge you as you consider S-1556 and S-1604, both of which reflect the concerns of the incumbent local exchange carrier of Bell Atlantic and the long-distance carriers. As you debate the merits of those bills, give the CLECs a seat at the table. Because I think, really, we hold the promise in the fairly short term for truly vigorous competition in the local telephone market and the promise of better service, higher quality, and lower prices for consumers in New Jersey.

We think that there are three elements which are critical to the CLEC's ability to compete. Those are, one, performance standards backed by meaningful financial penalties; two, speedy dispute resolution; and, three, permissive detariffing of CLEC services.

What we are talking about here is interconnection to the public switch network. Currently, in our view at least, Bell Atlantic's only meaningful incentive to provide reliable interconnection services in a timely manner to CLEC is the promise of long-distance entry. And we think that it's essential for New Jersey to act now to ensure that once Bell Atlantic is allowed into long distance that there is a meaningful enforcement scheme in place that will continue to incent Bell Atlantic to provide reliable interconnection services to the public switch network.

Such an enforcement scheme should include, at a minimum, a set of specific performance standards for Bell Atlantic to meet. I'll give you an example, the number of days within which Bell Atlantic must fill orders for new interconnection trunks for a CLEC. And these standards ought to be backed by self-executing liquidated damages that are triggered on an incident by incident basis. These are referred in the commercial world as incident based liquidated damages. Only an incentive to perform that exists in the commercial world is really going to make this happen.

In addition, in our view again, the self-executing nature of these damages would save considerable resources of the Board of Public Utilities. I'd like to point out to you that the Board of Pubic Utilities, when it arbitrated our interconnection agreement with Bell Atlantic, adopted these performance

standards which we are suggesting, but only on an interim basis. So that may be one of the reasons that I'm here today.

In addition, for disputes over performance standards, an effective enforcement scheme should include a speedy dispute resolution mechanism at the BPU that provides for quick resolution of these disputes. It's a fact of life that CLECs are always going to need Bell Atlantic a lot more than Bell Atlantic is going to need CLECs. So it's always going to be in Bell Atlantic's interest to drag out disputes and thereby interfere with CLECs ongoing ability to compete.

I would also point out that in the State of Connecticut, which is a little further along on the time line here than New Jersey in deregulating the telephone market, drafted legislation which is working its way through the State Legislature contains provisions that cover both of these issues that I have just discussed.

The third point, quickly, and I know it's getting late, is permissive detariffing of CLEC services. As we've seen in the long-distance context at the Federal level, the FCC concluded that tariff requirements really only make sense for monopoly providers, since monopolies have strong incentives to raise prices above approved levels and deliver service below required levels. Therefore, enforcement mechanisms like tariffs are necessary. But for CLECs, the marketplace is going to provide the discipline that is necessary. If we can't go out and compete on price, on the quality of the service, and on the responsiveness to our customers -- if we can't compete on those levels with Bell Atlantic, we are going to go out of business.

Again, the market provides all the discipline that is necessary, just as it does in all commercial markets. Tariff requirements really don't make a lot of sense, and they also impose serious administrative and competitive costs on CLECs. And finally, they preclude CLECs from responding quickly and dynamically to change in market conditions.

That's my message. When you consider these two bills, please leave a seat, at least at the end of the table, for the CLECs.

Thank you.

SENATOR CARDINALE: Let me just comment briefly, but then I have a question for you. There seems to be a presumption, and it's not just directed to you, that we are going to consider one or both of those bills. If that were the case, we probably would have put them on the agenda just for discussion. That they have been introduced probably is one of the reasons for the hearing. And we may very well consider one or both of those bills, but there is no guarantee that we are going to consider either one of them. We may, out of this hearing, derive some thoughts that would lead us down a totally different path. So I just want to set that record straight.

Now, you raise a number of questions in my mind with the very fact that an entity that is hooked up already to many homes might enter the telephone business. And I'm not sure exactly how that would work if it developed. Would I take-- If I chose to go with you, I looked up your proposal and I said, "Gee, I'd like to provide my telephone service through this entity," would I take this telephone instrument out of my home? Would I throw that in the garbage, or would I just hook that to a different wire? What would happen? Walk us through that process a little bit, if you can.

MR. WOLFSOHN: Well, if we are doing our job right, it will just be transparent. You're going to just hook it into a different place. You're going to hook it in to your cable T.V. connection, rather than your connection to the public switch network.

SENATOR CARDINALE: Okay, so then if I want to call then the fellow down the block from me, who also has Cablevision -- we're both Cablevision customers. I can foresee that that would be no problem, as long as he has already done the same thing that I've done.

MR. WOLFSOHN: Just go through our switch.

SENATOR CARDINALE: But suppose he hasn't. Now he is going through-- You want access to Bell Atlantic's switch, and that is going to occur. Now you are going to take a certain percentage of Bell Atlantic's business away. Are they not going to have to continue to have enough revenue to maintain all of these lines and switches and so forth? How does that get balanced? We can't expect a company that has costs to undertake, to continue to provide the basis on which you are going to provide a service to your customer using them. How does that get balanced out? Are you going to give them a piece of your revenue, a piece of the bill that I'm paying to you, in order to get that access?

MR. WOLFSOHN: Yes, we are going to pay them for access.

SENATOR CARDINALE: You're going to pay them for access.

And then are they going to pay you for access?

MR. WOLFSOHN: Yes.

SENATOR CARDINALE: So there is going to be a back and forth access charge?

MR. WOLFSOHN: Back and forth.

SENATOR CARDINALE: And how would that relate to the access charges that are currently in place that we've been talking about?

MR. WOLFSOHN: I'm not sure. I think those are long-distance access.

SENATOR CARDINALE: Well the long-distance companies are required to pay them an access charge. Is this going to be less than those access charges? Are these going to be a minuscule amount, by comparison, with those access charges?

MR. WOLFSOHN: You know, I'm not really sure. I was going to have one of our telephone people with me today, but he was unable to make it.

SENATOR CARDINALE: What would be the problem of-- Let me just restate that. Any of the people who want to provide alternate local service would then be pretty much in the same boat that you are, wouldn't they? If they need to hook up to the grid or platform or somehow get into this -- into some kind of switch?

MR. WOLFSOHN: Yes, they are all going to require interconnection agreements, clearly.

SENATOR CARDINALE: So that if what we legislated was simply that -- something to do with the terms of interconnection agreements, some basis for interconnection agreements so that everybody would be on the same page, and Bell Atlantic couldn't refuse interconnection agreements, but neither could people refuse to give them interconnection agreements. Is that pretty much what you're driving for?

MR. WOLFSOHN: What we're driving for is really mechanisms that are going to make these interconnection agreements work practically.

SENATOR CARDINALE: Now, are these working anywhere in the country at the present time that you're aware of?

MR. WOLFSOHN: In our experience, yes, they are. They are working in New York. In that instance we negotiated an interconnection agreement with Bell Atlantic's predecessor company there, Nynex, and have been in the business now for four or five years.

SENATOR CARDINALE: What percentage of the market, if you know, has-- What percentage of your customers, for instance, have decided to use you for their telephone service, rather than stay with the Bell system?

MR. WOLFSOHN: Well, I don't have any specific numbers. It's just been very recently, the latter part of last year, that we began to offer residential service, so I really don't think the numbers in that case are really going to be meaningful. However, I can tell you that on Long Island, over the course of the last four or five years, we've developed a commercial customer base of about 1300 different businesses, institutions, hospitals, and so forth.

SENATOR CARDINALE: And what is the motivating factor that brings them to you? Are you offering service at a lower price?

MR. WOLFSOHN: I think it's three elements. I think it's price and good quality and response to customer service.

SENATOR CARDINALE: Thank you.

Senator, do you have any questions?

SENATOR FURNARI: I have no questions.

SENATOR CARDINALE: Thank you very much.



MR. WOLFSOHN: Thank you, Mr. Chairman.

SENATOR CARDINALE: Mike Clancy.

**JAMES H. LASKEY, ESQ.:** Good afternoon, Mr. Chairman, my name is James Laskey, and I am an attorney with the law firm of Norris, McLaughlin & Marcus. I think you have already had an informal introduction to Mr. Mike Clancy already, but I will allow him to continue from here.

Thank you.

MR. CLANCY: Good afternoon. I'm Michael Clancy. I am an Operations Director for Covad Communications. And the area that I am responsible for is the New York, Tri-State Region of Covad.

I am going to summarize my testimony because I believe it's been submitted, and then I would like the opportunity to refute some of the statements that were made earlier by Mr. Freeman from Bell Atlantic.

I think it's essential to explain what business Covad is in. Covad is a venture capital funded DSL provider. We are what Mr. Freeman referred to as a data CLEC. What we do is we collocate in a telephone company central office to get access to the local loops, and we provide high speed digital access to end users on the copper that is used for voice services. We do not provide voice services at the current time. We simply provide packet-based data at speeds that are much higher than the 56 kilobits that you can currently get over the voice network using an analog modem.

We sell services in speeds that range from 144 kilobits per second, up to and including 1.5 megabits per second, to residences that are high-end users of the Internet, to small and medium-sized businesses, and to employees

of corporations who want to work at home. That's essentially our business. It's different than any other business that was represented here today.

SENATOR CARDINALE: Are you an Internet service provider?

MR. CLANCY: We do not provide Internet services. Internet service providers connect to our network on the backbone side of our network, as well as corporations. So a corporate information technology department would buy a broad band pipe into our network, like a DS3 or a DS1, or an ISP, an Internet Service Provider, would similarly connect to our network. And what they get is access to the end users through our network.

So Covad stands for Copper Value Added. Essentially we add value to the existing copper that's in the local distribution plant.

SENATOR CARDINALE: But you would also-- You would directly service an end user without going through an ISP?

MR. CLANCY: We are what's called a layer two provider. We provide physical interconnection. There is a model called the OSI model that talks about information technology and information transfer, and there is different layers. Our network delivers a layer 2 topology. In other words, we deliver a physical infrastructure that gives higher end service providers, like an Internet service provider or a corporate data network, access to users. As far as providing information over that network, the ISP does that, providing IP addressing. The ISP corporation would do that. We provide physical connectivity. So we connect the end user--

SENATOR CARDINALE: I'll pretend that I understand you, and let you go on.

MR. CLANCY: --to the information provider.

It's a completely new business.

If you use the Internet at home, if you use a dial-up service like AOL, for example, you are making a telephone call through the existing telephone network using a modem. And all the modem does is take the digital signals that come out of your PC and make them analog so that they will fit in the telephone network. The telephone network then takes those analog signals and makes them digital again so they can go into the digital network that Bell Atlantic has built. But they then use the trunking network that exists to get to wherever AOL has their server.

So instead of using the trunking network, in our facility they use higher speed access. There is no switching, there is no holding time, it's an always on service. It's not usage sensitive. We don't bill by the minute. It's billed based on a fixed service charge to the ISP, who then negotiates a contract with an end user, including our costs and their costs and providing a service to the end user.

SENATOR CARDINALE: So you're one of these people who puts a piece of machinery in Bell's place.

MR. CLANCY: Yes.

SENATOR CARDINALE: And doesn't pay taxes on it. (laughter)

MR. CLANCY: Okay, to that point.

And since you brought that point up, I have to buy more than I want, so I don't want to pay taxes on all that I have to get. But I will pay my fair share of taxes. It only makes sense.

As far as the DSL service and-- It's just high speed access to the Internet. We collocate, as discussed, in Bell Atlantic Facilities, spending more money that we would like to to do that.

And some of the key issues that are in the testimony. Bell Atlantic has refused to pre-qualify the loops that we buy from them to see if they can carry Covad's digital signal. In fact, the only places they will do that is where Bell Atlantic itself is ready to provide DSL services. Where they want to get into the market, they will pre-qualify loops. If they don't want to get into the market, it's tough luck for us.

Bell Atlantic has refused, with no justification, to provide Covad with loops that are longer than a certain length, leaving Covad no access to many potential customers.

Bell Atlantic has sought to charge Covad thousands of dollars in so-called conditioning costs for certain loops that BA provides to its own retail customers, and conditions for its own retail customers, without the charges.

Bell Atlantic has, in some cases, kept Covad waiting months before providing Covad loops. When loops are provided, they are frequently defective. In April I did some measurements, and more than 50 percent of the time Bell Atlantic loops were either not at the location, the end users location when I get out there, or they were defective.

Moreover, when we report trouble, Bell Atlantic has not taken the same steps to clear those troubles on our loops that they would take to clear troubles on their own loops. Instead, they try to hide behind arcane technical references, a tactic that they would never use on their own retail customers.

There are numerous other examples where Bell Atlantic has acted, or failed to act, in order to thwart Covad's roll-out of services, some of which involve highly technical issues that I do not care to burden this Committee with. But the point is, so long as Bell Atlantic is allowed to dictate the pace of roll-out of new services by competitors, New Jersey residents and businesses will continue to be deprived of innovations and lower prices that the Telecom Act was supposed to achieve.

Covad is ready, willing, and able to bring an exciting new service to New Jersey, and it will continue in its efforts to do so. But it's facing hurdles that have nothing to do with quality of its technology, its service, or its willingness to devote resources to the New Jersey market.

Specifically, in some of the issues that Mr. Freeman raised -- first of all, I'm honored that he mentioned Covad in the list of more grander and larger companies, and said that we are being successful in the stock market. We are right now very successful on the market, and as long as Bell Atlantic's performance continues the way it is, we probably won't be, and we'll probably be a company that used to exist.

He talked about market cap and market share in his presentation. If I might make an indulgence. If any of you have ever been horseback riding, and you're following in line of horses, and you look at the horse in front of you, we are like a fly on the hind-quarters of the horse known as Bell Atlantic that's getting swatted by its tail in terms of market cap and market share.

Mr. Freeman discussed new markets and new technologies that are data driven. That's exactly the business we are in. He discussed BA as the last prisoner. I would assert they are the last jailer. He suggests that we are getting

a free ride on the existing telephone plant that's been built over more than 100 years. It's been paid for by ratepayers over that time, and I would question who is getting the free ride, the plant that was built by ratepayers, or the plant that is built by risk-taking investors that invested in Covad?

Bell Atlantic has used opportunity in New Jersey to invest in new loop plant that actually excludes the market for DSL technology. They are overbuilding their network using a topology that's driven by something called the full service network, which is broad banded distribution plant that's designed to deliver voice, video, and data to end users.

Their initial foray into broad banded deployment was to actually use DSL. At some point in time, I believe in 1994, Mr. Smith and Mr. Sidenburg (phonetic spelling) got enamored of Hollywood, went out to visit with Michael Lovits and a couple of other people. And at that time Bell Atlantic was actually going to buy TCI. They turned around and bought Nynex instead. And now the topology they are deploying would limit the bandwidth on a single line to 144 kilobits per second, rather than the more expansive service we are trying to provide.

Mr. Freeman said their strategy is to fully implement the 14 points set out by the FCC. From my own experience with Bell Atlantic, I say they are aggressively pursuing compliance with the letter of the law, but not with the spirit of that act. They have set up CLEC, customer support centers, and Mr. Freeman said actually at below cost. My experience with their performance proves that it is definitely below cost that they've set those up.

Mr. Freeman claimed that there were few, if any, restrictions placed in front of Covad to compete. I defer that we have been delayed in

gaining cages to get access to the central offices. We have had to meet a requirement on the size of the cage where we had to buy 100 square feet when we only need 200 square feet (*sic*). The cost to build that is passed along to us meets their internal needs and not necessarily an economic marketplace. They build outside stairways because I think people who work for CLECs have leprosy or something, and they might come in contact with people who work for Bell Atlantic, so we have to come through a separate entrance, which if I had any employees who had disabilities they would have to walk up stairs rather than use the elevator in the front door of their central offices.

There have been delays on the delivery of the transport facilities that we use to interconnect our cages and to get -- provide access for the high speed Internet companies and for corporations. Yes, there has been a chilling economic effect based on those practices. I agree with Mr. Freeman on that. There definitely has been a chilling economic effect on Covad's ability to do business in New Jersey.

He discussed choices. Unfortunately, we have no choice. We have to collocate. We must collocate in a Bell Atlantic facility in order to get access to the Bell Atlantic loops. It was interesting to me that the representative from the Board of Public Utilities stated that no money has flowed back from opportunity in New Jersey, even though there was a continuing increase in profits that were experienced by Bell Atlantic.

The question I have then is where are the piles of money that Mr. Freeman referred to, and how were they used by Bell Atlantic, and how were they invested by Bell Atlantic to provide clean copper loops so I can provide broad band access to end users in the State of New Jersey?

Mr. Freeman claimed that they could not predict the Internet. It's interesting to me -- it was written in books by Nicholas Negropotty, Peter Drucker, Charles Handy (phonetic spellings), and others, and their own engineers were complaining about how much usage, how many times they are using up their backbone facilities to provide high speed data pipes and they needed more investment in those facilities.

BA did make a choice. They chose to invest to meet regulatory incentives and not pro-actively respond to customer demand. Mr. Freeman spoke of no presence in a marketplace as being a hindrance to Bell Atlantic. I assert that Bell Atlantic is stonewalling and creating false barriers to enter markets in New Jersey via their collocation policies, and their operating principles inhibit our ability to deliver good loops to our end users. I would say that I agree with Mr. Freeman that not being present of the marketplace is a hindrance to doing business. And that is the experience that Covad has in New Jersey.

Mr. Freeman spoke of investing in ATM switching. Bell Atlantic is building a data backbone that they have received some regulatory relief from the FCC on, and I would like to understand where the money to build that came from. And my question is, did it come from the New Jersey ratepayers?

He discussed subsidies. If Covad is paying the same amount of money for a loop in Essex County as it does in Hunterdon County, I would suggest that Covad is paying a subsidy to Bell Atlantic, since the loop in Hunterdon County is more costly to build and maintain than the one in Essex County just by dense populations and the fact that there is more economies of scale in a dense operating environment.



That's all I have to contribute at this time. If you have any questions I will be willing to answer them.

SENATOR CARDINALE: Yes, I want to go back to trying to understand how your system works. You put your machine -- whatever that is -- and you hook it up to the users phone line -- hooks up to your machine somehow through this loop. A signal goes into your machine. Where does it go from there? Does it go into another Bell line, or does it go into your own lines?

MR. CLANCY: Okay, the signal starts at the customers house. It comes into a Bell Atlantic facility called the central office. We're collocated in that central office. We cable our equipment out to meet Bell Atlantic, and Bell Atlantic cross connects our access point to their access point. It then goes into a piece of equipment called a digital subscriber line access multiplexer. It aggregates all of these signals that are coming in into a DS3, and that DS3 goes to a HUB location where we have a bigger machine to aggregate all--

SENATOR CARDINALE: Now how does it go, over your wire?

MR. CLANCY: No, we lease that facility either from Bell Atlantic or from another carrier, or from a combination of Bell Atlantic and another carrier, depending on where the central office is. In most cases, it's directly from Bell Atlantic that we pay them for that high speed line.

SENATOR CARDINALE: So it goes from a Bell Atlantic line to your machine, then to a Bell Atlantic line again, then to your HUB.

MR. CLANCY: To my HUB, yes.

And then my HUBs are interconnected, so that--

SENATOR CARDINALE: Now you pay Bell Atlantic a fee on both ends of that.

MR. CLANCY: I pay Bell Atlantic for the unbundled network element called a loop. I pay Bell Atlantic for the space on a billed out basis, a one time basis, and then also on a monthly recurring basis. I pay them for the space and the power and everything else that I'm using in that facility. So I'm a tenant, not an owner, and they would pay the taxes then. I then buy from Bell Atlantic a high speed line that I pay a monthly facility charge -- I pay a one time charge -- and then a monthly recurring charge for that facility to connect to another central office that I am collocated with Bell Atlantic that is usually a facility HUB within their network so I can get to other places.

SENATOR CARDINALE: In your testimony, one of your complaints was -- and I just want to correct this. It's a minor point, I'm sure. You said something about you are forced to rent 100 feet when you only need 200 feet. Was that you were forced to rent--

MR. CLANCY: I buy a facility thats-- I'm sorry, 100 square feet when I only need 20. Thank you.

SENATOR CARDINALE: When you need 20.

So you have a number of complaints with how you interrelate with Bell Atlantic.

MR. CLANCY: Yes.

SENATOR CARDINALE: And you believe that there are unfair business practices here.

Now, who regulates that? Is there any regulation through the Board of Public Utilities of this interrelationship between you and Bell Atlantic?

MR. CLANCY: Yes, we have a collocation agreement with Bell Atlantic that describes our business relationship, and when we have problems with them we do go to the Board of Public Utilities or any other regulatory body that we need to go to to get relief.

SENATOR CARDINALE: Okay. And your complaint before us is then that body, that regulatory body, is not taking your side of those issues, or is not dealing with them in an expeditious fashion?

MR. CLANCY: Well, I would suggest that they are more of a laissez-faire Board than an active Board -- like, children go away and resolve your differences.

SENATOR CARDINALE: Do they have a legal responsibility to police this agreement?

MR. CLANCY: At some juncture they do, yes.

SENATOR CARDINALE: Well, do they approve the agreement before it's entered?

MR. LASKEY: Actually the procedure is that after the contract is signed between the two parties, it is then submitted to the BPU for approval, and the BPU, under the Federal Act, is supposed to approve that within 90 days. Although, in the case of Covad the agreement has been pending since last October and has not yet received approval. However, the parties are acting between themselves as if the contract had been approved.

But I think the Committee needs to understand that in the operations between the two carriers there could be 25 complaints every day, and it's not practical to pick up the phone every half an hour and call the BPU and say, "They did it again."

What we're hoping for from the BPU is a strong message back to the incumbent local exchange carrier that all of these complaints have to be resolved. We have this 14-point checklist. We need there to be not only technical compliance with the 14-point checklist, but total compliance, and we need to see you addressing the concerns of the competitors who are trying to enter the market in New Jersey.

So we're not suggesting that we really want to be picking up the phone every time there is a complaint between Covad and the incumbent. What we're hoping is that the incumbent receives the message that there are too many of these types of complaints, and they need to get resolved, and if they do not get resolved Bell Atlantic would not be allowed into the long-distance market, which is the last carrot that they have.

SENATOR CARDINALE: What I'm trying to understand is what the nature of this agreement is. Is it-- Is Bell Atlantic required by some law or some standard to enter into an agreement with you?

MR. LASKEY: Yes, under the Federal Telecom Act, they are obligated.

SENATOR CARDINALE: So that this is not a free transaction? They are supposed to do this?

MR. LASKEY: Yes.

SENATOR CARDINALE: And are the terms, the basic economic terms, of that transaction set forth by that regulatory body, or are you free to negotiate whatever terms you want?

MR. LASKEY: You are able to work something out. If you are unable to resolve matters, there is an arbitration provision in the Federal Act. What happened in the case of Covad is that Covad filed an arbitration in New Jersey, and then while that arbitration was pending, Covad and Bell Atlantic worked out an amicable arrangement.

SENATOR CARDINALE: So you are in a shotgun wedding with Bell Atlantic?

MR. LASKEY: Yes.

SENATOR CARDINALE: Okay.

And you believe that they are putting little stumbling blocks in your way to make your operation less successful?

MR. CLANCY: Well, my belief -- and the reason that I am presenting here today, and I'm very happy to be here -- is that I'm a telephone operations guy. I'm not a lawyer. I'm not a public relations person. I'm a person who is trying to deliver service to customers, and day-in and day-out, I run into difficulty or roadblocks or, in my view, outright barriers to doing that. And when I heard that this was an opportunity to present my view of what open competition is really like in New Jersey, I jumped on it because my experience has been that there is no open competition.

The fact is Bell Atlantic tells me that they are going to deliver a loop on a particular date -- it's called a firm order commitment. Forty percent of the time they don't deliver on that day, and I tested the day after that. So

40 percent of the time their meaning of the word commitment is maybe that day, and I can't operate like that.

The other 60 percent of the time I get loops that, when I actually do a truckroll, and a truckroll costs me about \$150 each time I do it, I get out to the location and there is no facility present there. So that is increasing the cost of doing business because I do have to go back out there when Bell Atlantic does say they really did deliver the loop. And many times it's two or three times before they actually do deliver a loop.

And I just started to track it in April because it was becoming increasingly frustrating to do business. We started doing business in this area in December. We finally got cages in New Jersey opened up to us in February, so I had pent up demand of customers in February who had ordered service in December, and I wasn't able to deliver to them.

And then when these other things happened, it just became increasingly frustrating for myself, for my partners in the Internet service provider business and in corporations, and also for the end users. And believe me, I deal with end users every single day on the telephone. They are not happy, and I am responsible to them. So I am kind of like a buffer to Bell Atlantic.

SENATOR CARDINALE: I have just one more question. Does Bell Atlantic also provide to the end user a service that is the same as yours?

MR. CLANCY: In certain areas they have limited roll out to areas where they think they are going to have a marketplace. What was interesting -- and this was not a particular central office in New Jersey, it was a particular central office in New York, for example, that Bell Atlantic said they had

absolutely no space for me to collocate in, yet they are going to offer DSL service in that market, in that central office. So, I can't be there but they can.

DSL-- This technology, by the way, is cross elastic with their very high margin services like T1. So they will offer it where they don't encroach on their own marketplaces. They don't eat their young, so to speak. And those are the markets that we're trying to get into.

The fact that they won't pre-qualify loops in those markets that they don't want to get into makes it more difficult for me to do businesses in those markets, even though eventually they will eat their young because this will drive down the cost of T1 services, because it's competitive. And they will go into those markets as well, and then they might pre-qualify loops for me.

SENATOR CARDINALE: Thank you very much.

MR. LASKEY: Thank you.

MR. CLANCY: Thank you.

SENATOR CARDINALE: John Spinnanger.

**J O H N   S P I N N A N G E R:** Mr. Chairman, why do I feel like a psychiatrist?

SENATOR CARDINALE: I thought you were going to say you needed one at this point.

MR. SPINNANGER: Mr. Chairman, members of the Committee, thank you very much. I have one little distribution.

This has been a very interesting day. It's been said in detective work and in the IRS and in public policy, follow the money. And what I have just distributed to you, sir, is a list of the personal property tax payments in the 39th district. Now you asked a very insightful question when you said the

collocated equipment in the cage is not subject to the personal property tax. That is correct.

And if you look, there are several municipalities in your district--

SENATOR CARDINALE: Why does Gloucester get so much more than Demarest?

MR. SPINNANGER: I don't know, good question.

But I also provided a copy for Senator Furnari. It's of particular interest to Senator Furnari, because he is also the Mayor of Nutley, as you know. So he is very interested in issues like property tax payments to his municipality.

Senator, I'd like to go back to the purpose of the hearing. "The Public Hearing will be held on what actions," and I put in, "the Legislature could take to foster competition in a telecommunications market." And I'd like to very quickly direct your attention to yesterday's *Bergen Evening Record*, which says, "Cablevision is going to raise its rates \$2 a month on July 1." Now they are going to do that for a very, very important and valid reason. The higher fees were due to increased programming costs and an expensive upgrade of the systems for the new digital offerings such as fast Internet and local phone service. So they are improving their infrastructure so that they can offer local phone service to 215,000 people in Bergen, Hudson, and Passaic County.

May 19th, just a couple of days ago, headline, "Curtain rises on stronger AT&T." And I'll just read a couple of lines here. "In less than a year, AT&T came in from zero subscribers in cable T.V. to number one. Buying the cable wires is the equivalent of building a big wide highway with no tolls that AT&T can ride straight to a customers home. AT&T will offer a bushel of new



digital services, from local phone calls to speedy Internet connections and so on.”

This one is May 20th, just less than a week ago. “Good news bearer AT&T chief sees better profit picture. The company began selling local phone service over its cable T.V. network in California two days ago. They have been testing the service with hundreds of employees for the past few months. Mr. Armstrong, who is the Chairman, said that he expects to have thousands of customers signed up this month. AT&T plans to bundle the local services with cable T.V., long distance, and other services.” This is the part you will find very interesting. “The company plans to sell additional phone lines to a home for \$3 to \$5, compared with about \$17 that local phone companies currently charge.” Of course not in New Jersey.

“AT&T stressing promise and fulfilment. A customer who orders two lines and five hours of free long-distance service would pay \$44.25 per month, with additional long-distance service for eight cents a minute. The price includes extras including: caller-ID, call forwarding, and three way calling”-- \$44.25 a month. And as far as how big is the market? When you approach the telephone market through cable television infrastructure, the question is how big is the market?

This one has to do with MediaOne. “Comcast has also agreed to offer AT&T telephone offerings in all of its markets on an expedited basis, and this will give AT&T access to 60 percent of American homes with cable.”

That’s a very vast market. And I will just cut right to the chase here if I can. Connectiv, the former Atlantic Electric company in our State in south Jersey. Connectiv provides telephone service to 23,000 customers and

is aiming to boost that by 100,000 a year over the next five years. These comments usually don't sound to me -- this is all within the last month -- certainly doesn't sound to me like New Jersey is a second-class, third-world state in terms of technology or in terms of the exciting things that are happening in telecommunications.

And the last one is this. This is from *USA Today*, a letter to the editor from Dick Martin, who is Executive Vice President of AT&T. "AT&T acquired TCI and is acquiring MediaOne primarily to provide choice to consumers of local phone service. Consumer groups have long recognized the need for competition and local phone markets now dominated by Bell. AT&T is investing \$100 billion to provide that competition."

Mr. Chairman, follow the money. There is clearly a huge amount of investment being made by a variety of industries in the area of telecommunications -- very, very valid investments. We're excited about it, and you should be as well.

You point out the issue of the tax question, should Bell's equipment be subject to a personal property tax and no one else's? And Senator Furnari asked a very interesting question, and I don't have an answer to it so I will just ask it since he is not here. And that is will telephone services that are made available in the State of New Jersey over a cable television facilities be subject to the State's sales tax? Now that's a policy question that your Committee ought to really look at and pretty fast.

I thank you.

SENATOR CARDINALE: Do you have any retort to the last witnesses' comments with respect-- You're required under various regulations

to provide them space and to provide them certain levels of service. I can understand that there is really no motivation for you to want to do that, but there is a law that you have a responsibility to obey. Why are all of these problems existing from your perspective?

MR. SPINNANGER: I think the question could best be answered by one of the two ladies sitting right behind me, if I might be so bold.

SENATOR CARDINALE: Sure, thank you.

MR. SPINNANGER: We have Colleen McCloskey with us, who is one of our Senior Vice Presidents of Bell Atlantic.

Colleen, could you try that one?

**COLLEEN A. McCLOSKEY:** Good afternoon, Senator. I think the question that you asked had to do with some of the problems that Covad detailed, and many of the examples, I believe, that they pointed to had to do with this phenomenon of collocation. And the one thing that was not mentioned that I think is a serious omission is the fact that there has been considerable change in the regulations that are going to apply to collocation. And indeed, there has been considerable change in terms of Bell Atlantic's offerings in terms of collocation alternatives.

So that the situation, for example, that the gentleman outlined of being required to take a minimum 100 square foot cage when he didn't need that much space has been superseded by offering that have been volunteered by Bell Atlantic and volunteered in New Jersey before the Board of Public Utilities in the proceedings that they have been holding of the past several months to offer something as small as a single bay worth of equipment. And also to engage in the opportunity to have things like flat rate pricing, rather

than have any particular competitor bare the up-front conditioning costs to make that space available.

Furthermore, there has been a fairly recent order from the Federal Communications Commission which also details quite a bit of change in terms of the requirements on collocation, which have also addressed various concerns of competitors and also has addressed some of the concerns of the incumbent companies like Bell Atlantic nationwide, as well. And there will be implementation now of those regulations, as well.

I think also that many of the assertions that were made without the details -- I couldn't go point by point with you, Senator. But clearly there are a number of challenges that Bell Atlantic faces, also in terms of making space available. And we certainly do have requirements that are already set that we have been meeting that were set by the Board quite some time ago, in terms of the intervals by which we have to provide collocation space. Often times there is the requirement, for example, to provide what's called conditioned space. This involves making sure that there is powering available, air conditioning, etc., in spaces where perhaps it hadn't formally been provided. And that does require the hiring of contractors to come in to do the renovation work and so forth. In some cases it may not be required. It really is a case-by-case basis, and clearly we have been both on a learning curve and an experience curve as well. And I think, in general, right now in New Jersey, I believe we have only one central office that does not currently have space for competitors, and that space is going to be provided later this year when we upgrade one of our switches from an analog to a digital switch, and we are able to pull out the old equipment and make more space available.

So the collocation points that were raised-- I think the fundamental thing to keep in mind is that all of those issues have been addressed both by Federal and State regulators here in New Jersey and in other states as well.

SENATOR CARDINALE: The issue that -- you've answered it, but I don't think you answered what I was looking for. The case that I pinned down to was a contract gets signed by both parties, and you negotiate that contract, and apparently that contract gets subsequent approval but it's put in place. It's a contract that two parties have entered to do X. And what they say is that having entered that contract you don't do X. And I think the implication is you are their competitor and there is really no incentive for you to do X, except that there is a regulatory body somewhere that has said you must do it and that you have signed a contract to do it.

Now I can understand all of these things that are changing, and so forth and so on, but that's not the issue we are talking about here. We're talking about you've agreed to do something, and they say you don't do it after you agree to it.

MR. SPINNANGER: We would have to have the specifics, Senator. But the one example that I wanted to give to you was that I just recently visited the Passaic central office with your colleague from the Assembly, Paul DiGaetano. And in that building we were taking what was the employees break room and turning it into a collocation facility, because that was the only room left in the building that, as Colleen pointed out, had air-conditioning.

Now, I'm sure there were competitors who would have liked it if they could have moved in the day they wanted to move in, but we had to take -- physically rebuild what was a break room for employees to make it a collocation facility. We'd really have to see the specifics.

SENATOR CARDINALE: Well then, I'm going to ask that we get an answer to that, because it will bear on--

And, Mr. Clancy, would you provide us with the specifics where a contract was signed, not a million other things, but where the contract was signed and agreement was made to perform on a specific time, specific place, and transmit them both to the Committee and to Mr. Spinnager--

MR. SPINNANGER: As it relates to collocation.

SENATOR CARDINALE: As it relates to collocated facilities.

MR. CLANCY: Including the service issues that I have raised before.

MR. SPINNANGER: No, collocation.

SENATOR CARDINALE: I don't understand. You talked about loops not being available when they were supposed to be available. There was an agreement that a loop would be available. I don't even know what a loop is really. (laughter)

MR. SPINNANGER: Senator, we're trying to avoid a list of service order problems. We would prefer at this point to--

SENATOR CARDINALE: You say that this happens 14 times in a day. I'd like to have one day where it occurred 14 times, and I'd like Mr. Spinnanger to get an opportunity to retort. I'm not looking for an exhaustive

list of complaints between the two of you, but I'd like to get to the bottom of whether this kind of problem exists, is being exaggerated, is--

When I call Bell Atlantic, I'm pretty happy with the service. I have to say that. Now, they have an incentive to treat me well, and maybe they don't have an incentive to treat you well. I want to know if there is a different standard.

MS. McCLOSKEY: Senator, can I address that one last point, and that has to do with the incentives to treat our competitors well. You've heard many people testifying here today in terms of the extent to which they are building their own networks. In the longer term, it actually is in our best interest to also serve them well, so that they do use our facilities.

I think you gave an example earlier with the gentleman from Cablevision where perhaps we have a customer today, but tomorrow they may take their phone and plug it into the coaxial cable instead. But we still have the facilities there, in which case they are not being used at all. That's not necessarily a good outcome for Bell Atlantic. So in truth, we actually have incentives, as well, to be good providers of service to our wholesale customers, to our competitors as well.

I'm not saying it's easy or that anybody has been able to just flip a switch and make one type of business become another one overnight. And the rules of the road clearly keep being defined not only, as I said, at the State level, but also at the Federal level, and we are very much trying to keep up with all of those. But we do have incentives and we are very respectful of those incentives to, in fact, have a vibrant wholesale business as well as a retail business.

Thank you.

SENATOR CARDINALE: Thank you.

I don't have any other questions for you.

Thank you very much for all of you coming.

**(HEARING CONCLUDED)**