

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

DA 95-1928

| | | |
|--|---|---------------------------|
| In the Matter of |) | |
| |) | |
| Bell Atlantic Telephone Companies |) | Transmittal Nos. 741, 786 |
| |) | |
| Revisions to Tariff F.C.C.No. 10 |) | CC Docket No. 95-145 |
| |) | |
| Rates, Terms, and Regulations for Video Dialtone Service in Dover Township, New Jersey |) | |

ORDER DESIGNATING ISSUES FOR INVESTIGATION

Adopted: September 8, 1995;

Released: September 8, 1995

Filing Schedule:

| | |
|-----------------------|-------------------|
| Direct Case: | October 26, 1995 |
| Oppositions/Comments: | November 30, 1995 |
| Rebuttal: | December 20, 1995 |

By the Chief, Common Carrier Bureau:

TABLE OF CONTENTS

| | Para. No. |
|---|-----------|
| I. INTRODUCTION | 1 |
| II. BACKGROUND | 2 |
| III. ISSUES DESIGNATED FOR INVESTIGATION | 5 |
| A. Cost and Rate Issues | 6 |
| 1. Identification of Dedicated Costs | 11 |
| 2. Incremental Costs Associated with Shared Primary Plant | 15 |
| 3. Allocation of Non-incremental Shared Primary Plant Costs | 20 |
| 4. Identification of Reasonably Identifiable Non-Primary Plant Costs | 28 |
| 5. Overhead Loadings | 33 |
| 6. Calculation of a Channel Utilization Factor | 37 |

| | |
|--|----|
| 7. Other Cost and Rate Issues | 40 |
| B. Tariff Term Issues | 44 |
| 1. Volume and Term Discounts | 44 |
| 2. Termination Liability | 47 |
| 3. Interest Rate | 52 |
| 4. Minimum Service Requirement | 55 |
| 5. Correction of Service Problems | 58 |
| IV. PROCEDURAL MATTERS | 61 |
| A. Filing Schedules and Procedures | 61 |
| B. <i>Ex Parte</i> Requirements | 65 |
| C. Paperwork Reduction Act | 66 |
| V. ORDERING CLAUSES | 67 |

I. INTRODUCTION

1. On June 9, 1995, the Common Carrier Bureau (Bureau) released an Order which, *inter alia*, suspended for one day the video dialtone (VDT) tariff filed by Bell Atlantic for service in Dover Township, New Jersey, initiated an investigation into the lawfulness of the tariff, and imposed an accounting order.¹ In that Order the Bureau stated that we would investigate Bell Atlantic's video dialtone tariff for Dover Township to determine whether the rates Bell Atlantic proposes to charge programmers will cover the costs of the video dialtone system and whether the terms and conditions of the tariff are reasonable.² In this Order, the Common Carrier Bureau designates issues in an investigation of the rates, terms, and regulations of Transmittal Nos. 741 and 786 for the provision of video dialtone service in Dover Township, New Jersey. By addressing the issues designated in this Order, the Bureau generally seeks information to resolve in this investigation the following two questions: (1) whether the rates in the Dover Township video dialtone tariff are adequately justified and (2) whether the terms in the Dover Township video dialtone tariff are reasonable.

1 Bell Atlantic Telephone Cos. Revisions to Tariff F.C.C. No. 10 Rates, Terms, and Regulations, *Order*, DA 95-1285 (released June 9, 1995)(*Suspension Order*).

2 *Id.* at ¶ 4.

II. BACKGROUND

2. On January 27, 1995, Bell Atlantic filed Transmittal No. 741, later revised by Transmittal No. 786, which introduced the first tariff for a commercial video dialtone service offering. The video dialtone offering provides access to Bell Atlantic's broadband network for the transmission of video programming and other services offered by video programming and information providers (programmers).³ When deployed and operational, the video dialtone system will transport video signals of programmers on a common carrier, nondiscriminatory basis to the potential end-user subscribers' premises in the service area.⁴ The Dover Township video dialtone system consists of fiber optic transport facilities, using fiber-to-the-curb architecture, and associated signal processing equipment. This system will also use copper and coaxial cables for the final link to the end-users' premises.⁵ The system is capable of delivering up to 384 channels of video capacity at 6 Megabits per second per channel.⁶

3. Petitions to reject or, in the alternative, suspend and investigate were filed against the rates, terms, and conditions of Transmittal No. 741 by ten parties.⁷ Many petitioners claim that Bell Atlantic failed to provide sufficient cost information to (1) satisfy the requirements of the

3 The Bell Atlantic Telephone Cos. Transmittal No. 741, Description and Justification at 1-1 (filed January 27, 1995)("Trans. 741 D&J").

4 *Id.*

5 *Id.*

6 *Id.* at 1-1, 1-2. One Megabit is the equivalent of one million bits. As a comparison to the 6 Megabits per second transmission speed offered by Bell Atlantic's fiber-to-the-curb video dialtone architecture in Dover Township, Bell Atlantic transmits at a rate of 1.5 Megabits per second using Asymmetric Digital Subscriber Line (ADSL) technology transmitting on copper twisted pair wiring in its video dialtone trial in Fairfax, Virginia. The Bell Atlantic Telephone Cos. Transmittal No. 742, Description and Justification at 1-2 (filed January 27, 1995) ("Bell Atlantic Arlington Video Dialtone D&J").

7 Petitions were filed by the Atlantic Cable Coalition (ACC); AT&T Corporation (AT&T); Cablevision Systems Corporation (Cablevision); Adelphia Communications Corporation, Comcast Cable Communications, Inc., Cox Enterprises, Inc., and Jones Intercable, Inc. (Joint Petitioners); Viacom Inc. (Viacom); the National Cable Television Association (NCTA); Lenfest West, Inc., LenComm, Inc., and Suburban Cable TV Co., Inc. (Lenfest); MCI Telecommunications Corporation (MCI); Association of America's Public Television Stations (APTS); and the New Jersey Cable Telephone Association (NJCTA). Broadband Technologies, Inc. (Broadband) filed in support of the Bell Atlantic Transmittal No. 741.

*Video Dialtone Reconsideration Order*⁸ and (2) to enable a proper analysis of the proposed rates.⁹ Petitioners also claim that Bell Atlantic did not reasonably assign either the direct costs of video dialtone or a reasonable proportion of overhead costs as directed in the *Video Dialtone Reconsideration Order* for the purpose of setting video dialtone rates.¹⁰ Petitioners also contend that many of the terms and conditions of Bell Atlantic's tariff for video dialtone service in Dover Township, New Jersey, are unreasonable and discriminatory.¹¹ For example, several petitioners claim that the volume and term discounts and the termination liability terms of the tariff favor affiliate programmers at the expense of other potential programmers.¹²

4. Based on an analysis of the substantial record developed during the initial review of Bell Atlantic's Transmittal Nos. 741 and 786, the Bureau concluded that the proposed video dialtone tariff did not warrant rejection because it is not patently unlawful.¹³ The Bureau further concluded, however, that Bell Atlantic's tariff does raise questions of lawfulness with respect to its cost allocation methods, rate levels, and various terms and conditions governing its provision of video dialtone service significant enough to warrant a one day suspension of the Transmittals, imposition of an accounting order, and commencement of an investigation.¹⁴ Specifically, the Bureau held that the Commission will determine through the investigation whether: (1) Bell Atlantic's proposed cost allocation method properly assigns the cost of its facilities between wholly dedicated video dialtone costs, wholly dedicated telephony costs, and shared costs;¹⁵ (2) Bell Atlantic has accurately assigned the incremental costs associated with shared plant that were

8 Telephone Company-Cable Television Cross-Ownership Rules, Section 63.54-63.58, CC Docket No. 87-266, *Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking*, 10 FCC Rcd 244, 343-46 (1994) (¶¶ 214-20) (*Video Dialtone Reconsideration Order*).

9 ACC Petition at 5-8; Cablevision Petition at 8-10; NCTA Petition at 9-10; Joint Petition at 8; Joint Petition, filed May 15, 1995, at 3; MCI Petition at 6; AT&T Petition at 4-10.

10 *Suspension Order* at ¶¶ 25-49, citing *Video Dialtone Reconsideration Order* at 345-46 (¶¶ 217-20).

11 *Suspension Order* at ¶¶ 50-78.

12 *Id.* at ¶¶ 60-67.

13 *Id.* at ¶ 4.

14 *Id.*

15 *Id.* at ¶ 24. Wholly dedicated video dialtone costs refer to investment and expense related exclusively to providing video dialtone service. Shared costs refer to investment and expense related to providing video dialtone and other services on a joint or common basis.

incurred to provide video dialtone service;¹⁶ (3) Bell Atlantic reasonably allocated the shared plant costs not attributable as incremental to telephony or video (unidentified shared plant costs), (4) Bell Atlantic accurately identified other reasonably identifiable costs of video dialtone;¹⁷ (5) Bell Atlantic's overhead loading factor is sufficient to allow video dialtone to recover a reasonable proportion of overhead costs;¹⁸ and (6) the terms and conditions of the tariff are reasonable and nondiscriminatory.¹⁹

III. ISSUES DESIGNATED FOR INVESTIGATION

5. We hereby designate the following issues for investigation and request the following specific items of information:

A. Cost and Rate Issues

6. Background. In the *Video Dialtone Reconsideration Order*, the Commission stated that video dialtone tariff rates would be examined under the local exchange carrier (LEC) price cap "new services test."²⁰ The Commission made clear that LECs would be required "to submit with their video dialtone tariffs a more detailed and complete identification of direct costs" than they would otherwise submit for new service filings.²¹ This more stringent showing was established, in part, due to the incentive that LECs may have to understate the direct costs of video dialtone service.

7. In the Bureau's initial analysis of Bell Atlantic's cost support, we raised the issue of whether Bell Atlantic's rates would cover the direct costs of video dialtone.²² In the *Suspension Order*, we stated that "[t]he material submitted by Bell Atlantic on the record is sufficient to permit the Commission to determine that the cost allocation methodology proposed by Bell Atlantic has been followed" and that the tariff filing does not appear to be patently unlawful.²³

16 *Id.* at ¶ 27.

17 *Id.* at ¶¶ 33, 44.

18 *Id.* at ¶¶ 48-49.

19 *Id.* at ¶¶ 60-78.

20 *Video Dialtone Reconsideration Order*, 10 FCC Rcd at 340 (¶ 206).

21 *Id.* at 344-45 (¶ 216).

22 *Suspension Order* at ¶ 21.

23 *Id.* at ¶ 24.

The Bureau, however, also stated that an investigation was necessary to determine whether Bell Atlantic's cost assignment methodology was itself reasonable.

8. Bell Atlantic's assignment of costs between telephony and video dialtone service is relevant and important despite the fact that Bell Atlantic is under price cap regulation because there are situations where an improper cost assignment to telephony services could affect the rates charged for those services.²⁴ Although under a system of pure price caps that had no residual rate-of-return features, carriers' costs of providing a service would not affect rate levels, the Commission has not adopted a pure price caps regime for all LECs at this time.²⁵ Under the interim price caps plan adopted by the Commission this year, LECs were permitted to choose from three options. Two of those options would require LECs to share part or all of their earnings above specified rate-of-return benchmarks and would permit them to increase their interstate rates if their earnings fell below the specified benchmark.²⁶ Although Bell Atlantic

-
- 24 The price cap method of regulation differs significantly from the more traditional rate-of-return regulation. A rate-of-return system limits the profit carriers can earn on their investment. A pure price caps regime, instead, regulates the price that carriers may charge for their services. This regulatory regime encourages carriers to increase their productivity and thereby maximize their profits. In the Matter of Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, *First Report and Order*, FCC 95-132 at ¶¶ 1-7 (rel. April 7, 1995)(*LEC Interim Price Cap Performance Review*).
- 25 Under a pure price caps regulatory system, rates for services are set based on historic prices, inflation, exogenous costs (costs outside the control of the carrier), and an X factor that reflects reductions in unit costs relative to inflation, without regard to any particular carrier's costs in providing the service. Thus, if a carrier increased its efficiency by reducing the cost of providing the service and thereby increased its profits, a pure price caps regime would allow the carrier to keep 100 percent of the increased profits.
- 26 Under the price caps system as implemented by the Commission, unless a carrier has selected the highest X factor of 5.3 percent, the carrier must share with ratepayers a portion of its profits above a certain benchmark and share all profits above another benchmark. At present, LECs selecting the lowest X factor of 4.0 percent will be required to share 50 percent of their earnings from 12.25 percent up to 13.25 percent and to share 100 percent of their earnings above 13.25 percent. LECs selecting the middle option X factor of 4.7 percent will be required to share 50 percent of their earnings from 12.25 percent up to 16.25 percent and 100 percent of their earnings above 16.25 percent. LECs selecting either of the two lower X factors are also permitted to make a low-end adjustment if their earnings fall below 10.25 percent in a year. This allows LECs earning below 10.25 percent rate-of-return to raise their price cap indices and thus grants them further flexibility to raise their rates. LECs selecting the 5.3 percent X factor option have no sharing obligations and are not entitled to a low-end adjustment. *LEC Interim Price Cap Performance Review* at ¶ 20.

chose the no-sharing option under the Commission's interim plan,²⁷ the Commission has not yet adopted a long-term plan.

9. In the *Video Dialtone Reconsideration Order*, the Commission tentatively concluded that to further protect interstate telephone ratepayers from improper cross-subsidization a separate price cap basket for video dialtone services may be necessary.²⁸ The Commission stated that this would prevent local telephone companies from offsetting a price reduction for video dialtone service with an increase in rates for other regulated interstate services.²⁹ On February 15, 1995, the Commission released a Notice of Proposed Rulemaking (NPRM) to address the treatment of video dialtone services under the Commission's price caps system of regulation.³⁰ In the NPRM the Commission requested comment on whether a separate basket should be created for video dialtone services.

10. Information Request. We direct Bell Atlantic to provide the Commission all of the material that was redacted from Bell Atlantic's May 5, 1995 cost study material.³¹ In addition, Bell Atlantic must provide the remaining projected costs that will be incurred in completing and operating the system. Such projections should cover, at a minimum, from now until the time in which demand for the service is projected to mature. Further, Bell Atlantic must provide its forecasts of demand for video dialtone services under the tariff for the same time period. Bell Atlantic must also provide the dollar amounts of the investment expenses, taxes and other costs and cost components associated with the video dialtone service and explain the methodology used to derive these amounts. Pursuant to the Commission's *Video Dialtone Reconsideration Order*, Bell Atlantic is required to record its video dialtone costs in subsidiary Part 32 accounting records.³² The booked portion of the video dialtone costs should be readily available from these records.

27 Bell Atlantic Telephone Cos. 1995 Annual Price Cap Filing, Transmittal No. 777, Description and Justification at 2-2 (filed May 9, 1995).

28 *Video Dialtone Reconsideration Order*, 10 FCC Rcd at 323-24, 347 (¶¶ 167, 222-23).

29 *Id.*

30 In the Matter of Price Cap Performance Review for Local Exchange Carriers; Treatment of Video Dialtone Services Under Price Cap Regulation, CC Docket No. 94-1, *Notice of Proposed Rulemaking*, 10 FCC Rcd 3141 (1995).

31 The Bell Atlantic Telephone Cos. Transmittal No. 741 - Amended (filed May 5, 1995)("Trans. 741-Amended").

32 *Video Dialtone Reconsideration Order*, 10 FCC Rcd at 325-26 (¶¶ 172 - 73); see also Responsible Accounting Officer Letter 25 (RAO 25), 60 Fed. Reg. 19,591 (April 19, 1995).

1. Identification of Dedicated Costs

11. **Background.** In the *Suspension Order*, the Bureau stated that an investigation would permit a determination as to whether "Bell Atlantic properly assigns the cost of its facilities among dedicated video dialtone, dedicated telephony, and shared plant."³³ In order to evaluate properly Bell Atlantic's cost assignment methodology, the Bureau needs to conduct an in-depth financial and technical analysis of Bell Atlantic's video dialtone system.

Issue A: Has Bell Atlantic reasonably assigned the costs associated with primary plant among wholly dedicated video dialtone costs, wholly dedicated telephony costs, and shared costs?

12. **Information Request.** We thus direct Bell Atlantic to provide the dollar amounts of the dedicated video dialtone investment, dedicated telephony investment, and shared investment for the Dover Township service offering, including related capital costs and cost components. Bell Atlantic must also provide the total dollar amount of projected plant construction and related capital costs and cost components that will be dedicated to video or telephony or shared.

13. We also direct Bell Atlantic to provide a block diagram detailing the major hardware components and buildings involved in the video dialtone system from the programmer's premises to the end-user customer. This diagram should include: the signal generator and lines, fiber and coaxial lines, super trunk transmitter, supertrunk receiver, lightguided terminating equipment, digital cross-connects, multiplexers, serving wire center (SWC), video serving office, video distribution office (VDO), and host digital terminal (HDT). Bell Atlantic shall also provide a detailed map of the video dialtone service area that shows the locations of the remote HDT units and provides distance measurements between the various major equipment pieces. For each item of this list, Bell Atlantic should include the unit investment, number of units, and the resultant investment, as well as capital costs and cost components. This information will aid the Commission in determining whether Bell Atlantic has accurately and reasonably identified the dedicated costs of video dialtone service, the dedicated costs of telephony, and shared plant costs.

14. Bell Atlantic should also show what the effects on dedicated cost calculations would be if facilities that only incurred *de minimis* use by a second service were considered to be totally dedicated to the primary service. Specifically, we direct Bell Atlantic to consider equipment which has 10 percent or less of its total usage, as measured by minutes of use, from a secondary service to be wholly dedicated to the primary service.³⁴ To assist the Commission

33 *Suspension Order* at ¶ 24.

34 The Commission has previously held that joint use facilities may be treated as dedicated to one service if all but one of the multiple services using that facility make only *de minimis* use of it. Specifically, in 1989, the Commission held that special access lines carrying both state and interstate traffic should be regulated as intrastate facilities if the

in analyzing the 10 percent minimum usage assignment scheme, Bell Atlantic shall provide an estimation of the breakdown of minutes of use of shared equipment between telephony and video dialtone services. This minimum usage assignment technique would essentially modify the standard definition of shared equipment, which would "exclude from [the shared category] costs that are clearly *de minimis* or costs related to plant that will have only occasional common use."³⁵ The proposed methodology would result in a service carrying the entire costs of equipment in which that service dominates the usage. Bell Atlantic may also discuss why such a methodology based on minutes of use of shared equipment by telephony and video dialtone services is inappropriate for assigning equipment costs and why equipment, incurring only a *de minimis* use by a second service, should still be classified as shared investment.

2. Incremental Costs Associated with Shared Primary Plant

15. Background. In the *Video Dialtone Reconsideration Order*, the Commission held that the direct costs of video dialtone must include "any incremental costs that are associated with shared plant used to provide video dialtone and other services, that is, costs of shared plant that are caused by the carrier's decision to offer video dialtone service."³⁶ The Commission also stated that "we will scrutinize the basis on which those costs are identified and included in the proposed charges for video dialtone service."³⁷

16. In the *Suspension Order*, we stated that it would be incorrect to categorize all changes to the present telephony system as incremental to video dialtone because the telephone network is constantly being upgraded, and Bell Atlantic may have undertaken some or most of these improvements even if it had not decided to deploy video dialtone.³⁸ We seek here to determine the improvements to shared primary plant that are attributable to Bell Atlantic's decision to provide video dialtone.

amount of the interstate traffic was only *de minimis*. The Commission held that interstate traffic was deemed to be *de minimis* when it amounted to 10 percent or less of the total traffic on a special access line. In the Matter of MTS and WATS Market Structure, Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, *Decision and Order*, 4 FCC Rcd 5660 (1989).

35 In the Matter of Separation of costs of regulated telephone service from costs of nonregulated activities. Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to provide for nonregulated activities and to provide for transactions between telephone companies and their affiliates, CC Docket No. 86-111, *Report and Order*, 2 FCC Rcd. 1298, 1339, n.. 499 (1987).

36 *Video Dialtone Reconsideration Order*, 10 FCC Rcd 345 (¶ 217).

37 *Id.*

38 *Suspension Order* at ¶ 27.

Issue B: Do Bell Atlantic's rates reflect the incremental costs of shared primary plant caused by its decision to offer video dialtone service in Dover Township, New Jersey?

17. Information Request. To assist the Commission in evaluating Bell Atlantic's allocation of shared investment, Bell Atlantic submit the following information. First, it must submit the dollar amount of the shared investment used to provide video dialtone and telephony services on a joint or common basis in Dover Township, as well as related capital costs and cost components. Second, Bell Atlantic must submit the projected shared costs that will be incurred in completing and operating the system, as well as related capital costs and cost components. Third, Bell Atlantic must submit this information the signal generator and lines, fiber and coaxial lines, super trunk transmitter, supertrunk receiver, lightguided terminating equipment, digital cross-connects, multiplexers, SWC, video serving office, VDO, and HDT, including the resultant total costs. Bell Atlantic should explain the methodology used to derive these amounts. As noted above, the booked portion of the shared investment should appear in subsidiary accounting records at the Part 32 level.³⁹

18. Bell Atlantic must also show what portion of these shared cost and cost components are (1) incrementally caused by the provision of video dialtone service, (2) incrementally caused by the provision of telephony service, or (3) unidentifiable as either (1) or (2).

19. Further, to assist the Commission in determining what, if any, costs of the broadband network in Dover Township are incremental to the provision of video dialtone service, Bell Atlantic should provide a technical and detailed functional description of the broadband network that would be deployed without the video dialtone system.⁴⁰ In particular, Bell Atlantic should provide the costs of a HDT, an optical network unit (ONU), drop facilities (loop facilities between the ONU and the end-user premises), and quad current limiter, for such a broadband system without video dialtone capabilities. Bell Atlantic should also describe the differences, if any, between the equipment used in the broadband network deployed in Dover Township and a broadband network without video dialtone service and the effect of such differences on cost.

39 *Video Dialtone Reconsideration Order*, 10 FCC Rcd at 325-26 (¶¶ 172-73); see also RAO 25.

40 Bell Atlantic claims that it is "required by [New Jersey] state regulatory commitments to upgrade its network to be capable of providing both advanced voice and new broadband services" throughout the state of New Jersey. Bell Atlantic Reply, filed March 6, 1995, at 11.

3. Allocation of Non-incremental Shared Primary Plant Costs

20. Background. In the *Video Dialtone Reconsideration Order*, the Commission identified three primary goals of its video dialtone policies: (1) facilitating competition in the provision of video services, (2) promoting efficient investment in the national telecommunications infrastructure, and (3) fostering the availability to the American public of new and diverse sources of video programming.⁴¹ The Commission also stated that LECs were expected to include in direct costs a *reasonable* allocation of shared primary plant costs that could not be directly or solely attributed to video dialtone. The Commission held that it would carefully examine the basis on which those costs are identified.⁴² The Commission also stated that LECs would bear the burden of justifying any extremely low allocation of unidentified shared primary plant costs (*i.e.*, not identified as incremental to telephony or video dialtone service) to video dialtone and that it would likely not accept a zero percent allocation as reasonable.⁴³ In reviewing the reasonableness of Bell Atlantic's allocation of the non-incremental shared primary plant costs to video dialtone, as well as alternative approaches other parties may advance, we will assess their relative effectiveness in advancing the Commission's goals.

21. Bell Atlantic computed a percentage factor for allocating non-incremental plant investment between video dialtone and telephony based on the relative incremental plant costs incurred to provide telephony and video dialtone services from the HDT to the end-user customers' residence. This allocation technique ignored the costs of the dedicated telephony and dedicated video networks prior to connection to the HDT. Specifically, Bell Atlantic isolated the incremental costs of video (V), the incremental costs of telephony (T), and the non-incremental costs of the shared plant installed between the HDT and the end-user customers' premises. Bell Atlantic then calculated the ratio of the proportion of incremental video costs to total incremental costs of shared plant ($V/(V+T)$), and used this ratio to determine the non-incremental costs of shared plant to be assigned to video services. This methodology yielded an allocation of approximately 28 percent of the non-incremental costs of shared plant investment to video dialtone and approximately 72 percent to telephony.

22. In their petition, the Joint Petitioners suggest that the allocation method used by Bell Atlantic is flawed and does not appropriately allocate video dialtone costs. The Joint Petitioners argue that, in determining what they characterize as "common costs" to be allocated to video dialtone, Bell Atlantic uses the cost of system components that it has identified as dedicated to video or telephony. The Joint Petitioners claim that this technique is totally dependent upon the specific design of the system and does not form a rational basis for the allocation of what the

41 *Video Dialtone Reconsideration Order*, 10 FCC Rcd at 248 (¶ 3).

42 *Id.* at 345 (¶ 218).

43 *Id.*

petitioners characterize as "common costs."⁴⁴ Citing a study conducted by Dr. David Reed which found that 43 percent of the direct costs of an integrated telephone/video dialtone network are attributable to the provision of video services, the Joint Petitioners argue that a 50/50 allocation of common costs between video and telephony is the bare minimum necessary for Bell Atlantic to recover the direct costs of video dialtone service.⁴⁵

23. In the *Suspension Order*, the Bureau observed that Bell Atlantic's allocator of non-incremental shared costs to video dialtone service is based on only a small portion of direct costs. We held that although the allocation methodology chosen by Bell Atlantic was not patently unlawful, any technique that relies so heavily on such a small portion of the network to calculate a ratio for allocating all non-incremental shared costs for the entire integrated system, requires investigation.⁴⁶ In this case, changing the classification of only a few pieces of equipment to or from the incremental telephony or video categories would have resulted in dramatic shifts in the allocation of shared non-incremental costs. This demonstrates the significant impact of the assignment of a relatively small number of pieces of equipment on the calculation of the allocator and thus requires investigation of the reasonableness of this allocation scheme as outlined below.

Issue C: Is Bell Atlantic's method of computing a ratio to allocate the costs of non-incremental shared primary plant costs of the Dover Township integrated system reasonable and does it advance the Commission's video dialtone goals?

24. Information Request. To assist the Commission in evaluating Bell Atlantic's allocation methodology, we require that Bell Atlantic provide calculations using other allocators and also provide the underlying cost components of those calculations. First, we direct Bell Atlantic to provide the cost figures and calculations using an allocator based on the ratio of the sum of all dedicated and incremental costs of video dialtone service in Dover Township to the sum of all dedicated and incremental costs of telephony and video dialtone services in Dover Township. (These costs will have been provided by Bell Atlantic in response to Issues A and B, discussed previously.) Since this allocator is based upon the dedicated costs and incremental costs of the entire network, the impact of any individual equipment assignment decisions on the value of the allocation ratio should be lessened. This allocator differs from Bell Atlantic's allocation methodology because the allocator is calculated based on the costs of the entire network instead of focusing solely on the shared portion of the network.

44 Joint Petition, filed May 15, 1995, Attachment A at 3-4.

45 Joint Petition, filed May 15, 1995, at 4, n. 10, citing David P. Reed, Residential Fiber Optic Networks. An Engineering and Economic Analysis (Artec House, 1992).

46 *Suspension Order* at ¶ 33.

25. Second, Bell Atlantic must provide cost and rate figures and calculations based on a scheme that allocates 50 percent of non-incremental shared primary plant costs to video dialtone and 50 percent to telephony, as suggested by some parties. This allocation technique would require the services that benefit from the non-incremental portion of the shared network to recover equally the costs of that portion of the facility.

26. The costs of non-incremental shared primary plant, by definition, cannot be allocated between the two services based on cost-causative principles. In the *Video Dialtone Reconsideration Order*, the Commission authorized the Bureau to consider the effect of price changes on video dialtone demand in determining the allocation of the costs of shared plant and overheads.⁴⁷ We thus direct Bell Atlantic to include in its direct case its best estimates of the effects on rates and the resulting demand for video dialtone services of increasing the allocation of non-incremental shared primary plant costs to video dialtone along a range from the 28 percent it has proposed up to and including the 50 percent allocation proposed by the Joint Petitioners. Bell Atlantic should also show the effects on rates and demand for video dialtone service of using the allocator discussed in paragraph 24, above.

27. Along with the two required demonstrations of allocator methodologies, Bell Atlantic may submit analysis for any other technique that Bell Atlantic believes would assist the Commission. Bell Atlantic should also explain why its allocation methodology results in a more reasonable allocation of non-incremental shared primary plant costs than do the other allocation methods. Bell Atlantic may also include any studies that show how an increase in price would affect the demand for video dialtone services, or how each allocator is likely to affect the anticipated overall revenue generated by video dialtone. Such showings could also demonstrate how different allocators may affect the competitiveness of video dialtone with other video services.

4. Identification of Reasonably Identifiable Non-Primary Plant Costs

28. Background. In the *Video Dialtone Reconsideration Order*, the Commission stated that, in calculating the direct costs of video dialtone service, carriers must include costs in accounts which may traditionally have been included in overhead if those costs are reasonably identifiable as incremental costs of video dialtone service.⁴⁸ As illustrative examples of such accounts, the Commission listed "land, buildings, network administration, testing, engineering, plant operations administration, product management, sales, advertising, customer services, and legal."⁴⁹

47 *Video Dialtone Reconsideration Order*, 10 FCC Rcd at 346 (¶ 220).

48 *Id.*

49 *Id.*

29. We stated in the *Suspension Order* that, despite this clear direction by the Commission, Bell Atlantic did not identify any of the costs in many of the listed accounts as direct costs of video dialtone. We held at that time that we could not reject as patently unreasonable Bell Atlantic's contention that certain costs were unidentifiable as incremental to video dialtone or that it would be unreasonable to allocate such costs as incremental to video dialtone.⁵⁰ We stated, however, that an investigation of these assertions is warranted.⁵¹

Issue D: Has Bell Atlantic identified as direct costs of video dialtone all costs in other accounts (other than primary plant accounts) that are reasonably identifiable as incremental costs of video dialtone service?

30. Information Request. We direct Bell Atlantic to identify as accurately as possible the video dialtone component of the following direct costs: network operations expenses; network administration expenses; testing expenses (as opposed to component testing which should already be part of component costs); plant operations; administration expenses; engineering expenses; customer operations expenses;⁵² and corporate operations expenses.⁵³ Bell Atlantic must identify the direct costs for those support functions that utilize time reporting tracking mechanisms and show the effect of allocating cost to video dialtone based on these mechanisms. When the cost of support functions cannot be reasonably identified as direct costs of video dialtone or telephony, they should be clearly identified as shared and allocated as overhead, as discussed in Section 5, "Overhead Loadings," below.

31. Further, Bell Atlantic must provide the costs of the preliminary planning for video dialtone and the development expenses incurred prior to the approval of the Dover Township Section 214 authorization. Bell Atlantic must also identify those preliminary planning and development expenses that were incurred only for the Dover Township service and separate them from those that benefit all of Bell Atlantic's video dialtone service offerings. Of those preliminary expenses that benefit more than just the Dover Township offering, Bell Atlantic should identify the amounts and explain the methodology used to assign a portion of these costs to the Dover Township offering.

50 *Suspension Order* at ¶ 44.

51 *Id.*

52 Customer operations expenses should be separately identified as marketing, product management, sales, product advertising, and customer services.

53 Corporate operations expenses should be separately identified as legal, accounting and finance, executive and planning, procurement, research and development, information management, and other general and administrative.

32. Also, to the extent that Bell Atlantic believes that it cannot isolate all video dialtone start-up costs, it should explain in detail how its failure to do so, nonetheless, is consistent with the Commission's directions in the *Video Dialtone Reconsideration Order*.⁵⁴

5. Overhead Loadings

33. Background. In the context of video dialtone, the Commission is concerned that LECs may have an incentive to apply unreasonably low overhead loadings. Thus, in the *Video Dialtone Reconsideration Order*, the Commission stated that it would require a strong justification from carriers for extremely low overhead allocations and would not likely accept a zero percent allocation as reasonable.⁵⁵ Although the Commission required carriers to obtain a reasonable contribution to overhead costs from video dialtone services, it also did not intend to burden the new service with such high overhead loadings as to make the service non-competitive in the marketplace. The Commission thus allowed carriers to submit claims and projections of demand that would support lower overhead contributions.⁵⁶ An adequate contribution to overhead is necessary to assure that video dialtone rates satisfy the requirements of the *Video Dialtone Reconsideration Order*.⁵⁷

34. In the *Suspension Order*, the Bureau stated that the overall overhead loading factor⁵⁸ of 1.2 that Bell Atlantic used for the Dover Township video dialtone service was not patently unlawful because the rates for the service were above the direct costs.⁵⁹ We also stated that although not patently unlawful, an overhead loading factor of 1.2 was low enough to warrant investigation. While we recognize that volume and term discounts are common business practice, the Bureau found particularly questionable the 1.06 overhead loading factor that Bell Atlantic applied to its discounted rates for programmers purchasing 24 channels on a five year term. We held that this low overhead particularly required an investigation into the reasonableness of the rate.⁶⁰

54 *Video Dialtone Reconsideration Order*, 10 FCC Rcd at 345 (¶ 219).

55 *Id.* at 346 (¶ 220).

56 *Id.*

57 *Id.*

58 The overhead loading factor is used to inflate the direct costs (which do not include overhead costs) of a service to the fully allocated costs (which do include overhead costs) of a service.

59 *Suspension Order* at ¶ 48.

60 *Id.* at ¶ 49.

Issue E: Is the overall overhead loading factor used by Bell Atlantic for the video dialtone service in Dover Township, New Jersey reasonable?

35. Information Request. In order to determine the reasonableness of Bell Atlantic's overhead loading, we require Bell Atlantic to provide comparisons of the video dialtone overhead loading with that of other new services. Bell Atlantic may also provide, as suggested in the *Video Dialtone Reconsideration Order*, claims and projections of demand in conjunction with the proposed rates, that support the conclusion that a higher overhead loading factor would weaken the competitive viability of the video dialtone service.⁶¹

Issue F: Is Bell Atlantic's overhead loading factor for volume and term discounts reasonable?

36. Information Request. We also concluded in the *Suspension Order* that the 1.06 overhead loading for the 24-channel, 5-year term discount appeared low and warranted investigation. We thus require Bell Atlantic to provide information that would justify such a discount from the standard rate. The information should identify any lower costs of providing a longer term or larger volume service or otherwise establish why the discount is warranted by comparison to other circumstances where such discounts are offered. The estimated effect of such discounts on demand and marketability should also be provided.

6. Calculation of a Channel Utilization Factor

37. Background. Bell Atlantic's Section 214 Authorization for Dover Township requires it to provide at least 384 channels for video dialtone service.⁶² Bell Atlantic stated in the Section 214 proceeding that it planned to offer three types of video dialtone service over the system: multicast, narrowcast, and pointcast services.⁶³ This tariff introduces multicast and narrowcast services. Bell Atlantic plans to offer pointcast services within a year, when the necessary

61 *Video Dialtone Reconsideration Order*, 10 FCC Rcd at 346 (¶ 220).

62 *New Jersey Bell Telephone Company*, File No. W-P-C 6840, 9 FCC Rcd 3677, 3690 (1994) (¶ 72(d)) (*Dover 214 Order*).

63 *See Dover 214 Order*, 9 FCC Rcd at 3679, n 9 (¶ 5). Multicast service provides programming to all homes passed by the system (defined as "broadcast" in this tariff). Narrowcast service provides programming to all homes passed in selected geographic areas within the system (termed as "cells" in this tariff). Pointcast service provides specific programming to a specific end-user subscriber (this is sometimes defined as "on-demand" services). *Id.*

equipment is available.⁶⁴ In this tariff, Bell Atlantic used capacity costing to allocate the costs of the network among the various services that will be deployed over the facilities.⁶⁵ Bell Atlantic divided the cost of the network by 383⁶⁶ to calculate the cost per channel and then multiplied the result by the number of channels Bell Atlantic estimated would be necessary to provide the tariffed service (304 channels).⁶⁷ Bell Atlantic claims that future pointcast services will provide the additional revenue needed to recover the cost of the remaining 79 channels.⁶⁸

38. We held in the *Suspension Order* that Bell Atlantic's revenue projections may be reasonable, given the need for new technology prior to the delivery of pointcast services, but that an investigation was necessary to complete an evaluation of Bell Atlantic's cost recovery plans. We also stated that "[w]hen system demand is expected to be a function of several services, it is incumbent upon the carrier to provide the Commission with more than just a listing of the kinds of services that are expected to occupy the current capacity."⁶⁹ Carriers must provide demand projections for the future services, estimates of rates that may be charged, available business plans, and estimates of the costs associated with the provision of the services.⁷⁰

64 See Letter from Joseph J. Mulieri, Bell Atlantic Director - FCC Relations, to David Nall, Deputy Chief, Tariff Division, Common Carrier Bureau, May 16, 1995, at 5, n. 6 (*Mulieri Letter*); Bell Atlantic Reply to the NJCTA Petition, filed May 25, 1995, Attachment A.

65 According to Bell Atlantic, "capacity costing is normally equivalent to long run incremental cost - the accepted measure of cost for capital equipment." Bell Atlantic claims that when equipment is expected to have multiple uses, capacity costing avoids charging the first service for costs of the entire system. Capacity costing instead spreads the costs over all the users of the facilities based on actual use. *Mulieri Letter* at 3.

66 The cost of the gateway channel, which is a common channel to all programmers, is recovered through the rates for the other 383 channels on the system and thus it is not included in the calculation.

67 Bell Atlantic Reply, filed May 19, 1995, at Attachment B.

68 Bell Atlantic Reply to the NJCTA Petition, filed May 25, 1995, Attachment A at 1. Bell Atlantic claims that its business plans call for deployment of asynchronous transfer mode (ATM) equipment necessary for pointcast service in 1996 and expansion of such services in 1997. *Id.*

69 *Suspension Order* at ¶ 38.

70 *Id.*

Issue G: Is Bell Atlantic's channel utilization factor reasonable to use to isolate the costs for the services presently being tariffed from costs associated with other video dialtone services that may be provided in the future over the same facilities?

39. Information Request. In determining the channel utilization factor's reasonableness we must evaluate cost and revenue estimates for future services that will use that capacity. Without such estimates it is unclear whether such services reasonably can be expected to recover the costs of the remaining channels of capacity. Thus, in order to determine if Bell Atlantic's capacity costing is appropriate, we require Bell Atlantic to provide specific information on how it plans to use the remaining 79 channels available after deployment of broadcast and narrowcast services. We therefore require Bell Atlantic to provide an estimate of revenues from these unallocated channels, the projected costs associated with the deployment of pointcast services, and the anticipated rates for pointcast services. These estimates should be accompanied by an appropriately detailed explanation of the basis for the projections.

7. Other Cost and Rate Issues

40. Background. In the *Suspension Order*, the Bureau held that several other cost issues also required further investigation. First, we stated that the rate Bell Atlantic imputed to itself for use of the poles and conduit should not be lower than that charged to third parties. We held that since the regulated rates are not supposed to be less than the additional costs of providing pole attachments, allowing Bell Atlantic to impute a lower charge could have anticompetitive effects and result in unreasonable discrimination and subsidization of the video dialtone service.⁷¹ Second, we stated that although the functional differences between DS3 service and video dialtone access link service may justify the rate disparities, an investigation would allow the Commission to conduct a more detailed assessment of the impact of the technical differences on rates.⁷² Third, the Bureau held that although Bell Atlantic has unbundled interconnection to the video dialtone platform to the extent required under the *Dover Part 69 Waiver Order*,⁷³ due to the complexity of the issues, the rates for such interconnection still require investigation as to their reasonableness.⁷⁴

71 *Suspension Order* at ¶ 57.

72 *Id.* at ¶ 56.

73 The Bell Atlantic Telephone Cos., Petition for Expedited Waiver of Part 69 of the Commission's Rules to Offer Video Dialtone Service in Dover Township, New Jersey, DA 95-1282 (Com. Car. Bur. rel. June 9, 1995) (*Dover Part 69 Waiver Order*).

74 *Suspension Order* at ¶ 98.

Issue H: Is Bell Atlantic's imputed charge for use of poles and conduit reasonable?

41. Information Request. As we stated in the *Suspension Order*,⁷⁵ the rate imputed by Bell Atlantic to itself for its pole and conduit use should not be lower than that charged to third parties, since the regulated rates for use of poles and conduit are supposed to be not less than the additional costs of providing pole attachments.⁷⁶ The rates should also not exceed "an amount determined by multiplying the percentage of total usable space, or the percentage of total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way."⁷⁷ Allowing Bell Atlantic to impute to itself charges that are lower than those charged to competitors would result in video dialtone not recovering the full costs of the service offering. Thus, in order to allow the Commission to determine whether Bell Atlantic has properly imputed to itself charges for use of the poles and conduit, we require Bell Atlantic to state the rates that it charges other firms for use of those facilities as well as the rates that it has imputed to itself for the provision of video dialtone. Bell Atlantic may also submit any justification that it might have for differences between those rates.

Issue I: Is the difference between Bell Atlantic's rates for DS3 service and video dialtone access link service reasonable?

42. Information Request. The video dialtone access link provides a programmer with a connection from its point of presence within the service area to the Bell Atlantic video distribution office.⁷⁸ Although the functional differences stated by Bell Atlantic between video dialtone access link service and DS3 service may indeed justify differences in rates, the cost basis for the specific rates charged for video dialtone access link service must still be explained. We therefore require Bell Atlantic to provide a comparison between the costs of DS3 service and that of the video dialtone access link and describe material technical differences between the two services and the specific cost savings that result from use of a video dialtone access link rather than a DS3 service.

75 *Id.* at ¶ 57.

76 *Id.*, citing 47 U.S.C. § 224.

77 *Id.*

78 Bell Atlantic D&J at 1-2.

Issue J: Are Bell Atlantic's rates for interconnection reasonable?

43. Information Request. Unbundling the rates for the access link element of the video dialtone service affords other access service providers an opportunity to compete with Bell Atlantic for the provision of this service. Fair competition can only occur if Bell Atlantic's rates reflect its costs. Otherwise, competition for access services would be illusory because Bell Atlantic could subsidize its access services with higher rates for non-competitive network offerings. Bell Atlantic offers programmers three types of access link services: (1) from the programmers' point of presence to the VDO, (2) from the SWC to the VDO, or (3) interconnection directly at the VDO (no access link service).⁷⁹ Programmers purchasing either access link service (2) or (3) are charged a collocation interconnection charge. In order to allow the Commission to determine the reasonableness of the rates for interconnection, we require Bell Atlantic to provide cost information justifying the collocated interconnection charge for interconnection at the SWC and the monthly virtual collocation interconnection charge for interconnection at the VDO.⁸⁰

B. Tariff Term Issues

1. Volume and Term Discounts

44. Background. Volume and term discounts are common business tools and generally recognized to be in the public interest. In the video dialtone context, however, such offerings can be unreasonable if they are used to discriminate unduly against certain programmers. For example, if a LEC were to offer discounts that only one programmer was capable of utilizing, such discounts could be used to favor one programmer over others.

45. In the *Suspension Order*, we concluded, based on the record, that volume and term discounts were in the public interest to the extent that such discounts were reasonable. The Bureau also held that an investigation of the volume and term discounts was warranted to ensure that they are not used to discriminate among programmers.⁸¹

79 *Id.* at 1-2 - 1-4.

80 *Id.* at 1-1 - 1-4.

81 *Suspension Order* at ¶¶ 62,63.

Issue K: Are Bell Atlantic's volume and term discounts for video dialtone service in Dover Township, New Jersey, unreasonably discriminatory?

46. Information Request. We thus require that Bell Atlantic demonstrate that its volume and term discounts are not unduly discriminatory and do not unreasonably favor certain programmers. Bell Atlantic should also explain why it has offered only a five year term discount and not terms of shorter duration that might be more attractive to a wider group of programmers.

2. Termination Liability

47. Background. Termination liability provisions raise concern because they may be used to discriminate against certain programmers. In particular, severe termination liabilities could render it virtually impossible for many programmers to utilize the volume and term discounts. These risks have special importance in the video dialtone context because the offering is new and untested and there is a greater possibility of programmers suffering business failure.⁸²

48. In the *Suspension Order*, we held that Bell Atlantic's liability terms for early termination of video dialtone service agreements appeared to be unduly restrictive and required investigation into their reasonableness. The terms raising particular concern for the Bureau were the 100 percent liability for early termination, the limitation on the ability of programmers to cancel service if Bell Atlantic failed to deliver adequate service, and the 90 day limit for programmers to find replacement programmers and mitigate the damage to Bell Atlantic.

Issue L: Are Bell Atlantic's liability provisions for early termination of service agreements reasonable?

49. Information Request. We direct Bell Atlantic to justify why each of the above terms is reasonable. Specifically, we require that Bell Atlantic provide a detailed showing of why a term imposing liability for 100 percent of the remaining contract amount is reasonable. Bell Atlantic should provide examples of tariffs or contracts, for other services, in which such 100 percent liability is a condition of the offering.

82 Many petitioners claim that, since video dialtone is a new and unproven technology, the five year term is a very risky business proposition that can only be exercised by an affiliate programmer of Bell Atlantic. An affiliate is able to accept the risk because any liability terms imposed for early termination would merely result in imputed charges to the affiliate. These imputed charges would arguably be cost-less transactions to the affiliate because they may result in only accounting changes rather than the actual transfer or loss of money. *Id.* at ¶ 64.

50. Bell Atlantic should also explain why, especially for a new and untested service like video dialtone, it is reasonable to limit termination without liability for inadequate service to situations where Bell Atlantic fails to deliver service to more than 5 percent of the programmer's subscribers for more than one hour per day for more than 30 days in any 90 day period, or there is a continual outage of more than 5 days affecting more than 5 percent of the programmer's subscribers, and the programmer gives Bell Atlantic written notice within 30 days of such failure.⁸³ Also, Bell Atlantic should explain why early termination without liability in situations where programmers lose a specified percentage of subscribers due to Bell Atlantic's service problems, is unreasonable to implement.

51. Bell Atlantic also shall justify why a 90 day limit on finding a replacement programmer is reasonable and why mitigation is permitted only if the programmer, not Bell Atlantic or someone else, finds a replacement. It appears that under the present liability conditions, a programmer terminating its service prior to expiration of its contract would be liable for 100 percent of the charges remaining under the agreement. If Bell Atlantic was able to fill 100 percent of the channel capacity of the system, and thus eliminate the argument that future customers would have merely taken the remaining unused capacity, then Bell Atlantic would be receiving double recovery for the channels that were left unused by the terminating programmer and subsequently leased by a new programmer. Since Bell Atlantic has only 79 available channels remaining on its system, reaching 100 percent capacity does not appear to be unrealistic. Thus, Bell Atlantic must explain why double recovery is not likely and why certain protections against double recovery, at least in situations where 100 percent of channel capacity has been filled, are not necessary.

3. Interest Rate

52. Background. The Bureau held, in the *Suspension Order*, that it was concerned about Bell Atlantic's proposed interest rate not in terms of the specific rate proposed (0.937 percent per month for late payments), but rather that Bell Atlantic was charging different interest rates to customers of different services without adequate justification. We held that Bell Atlantic's rationale behind this difference in interest rate charges -- that it reflected current costs of capital -- required investigation.⁸⁴ Also, the Bureau stated in the *Suspension Order* that, the Channel Reservation Deposit (CRD) section of Bell Atlantic's video dialtone tariff made no provision for payment of interest on the deposits Bell Atlantic holds. We held that an investigation is required into the reasonableness of the interest rate provisions in this tariff.⁸⁵

83 The Bell Atlantic Telephone Cos. Transmittal No. 786, at 2nd Revised Page 16 (filed June 8, 1995) ("Trans. 786").

84 *Suspension Order* at ¶ 72.

85 *Id.*

Issue M: Is the difference in the interest rate for late payments Bell Atlantic charges video dialtone service customers and access service customers reasonable?

53. Information Request. Bell Atlantic charges its access tariff customers a nine percent interest rate for late charges, while video dialtone customers would be required to pay 11.25 percent for late payments. This disparity in rates raises questions of preferential treatment by Bell Atlantic of access customers at the expense of video dialtone customers. Consequently, we direct Bell Atlantic to justify why it is reasonable to charge access service customers less for late payments than video dialtone customers.

Issue N: Is it reasonable for Bell Atlantic not to pay interest on deposits it holds under the Channel Reservation Deposit?

54. Information Request. Bell Atlantic, in the Channel Reservation Deposit portion of Transmittal 741, required that all programmers reserving channel capacity on the Dover Township video dialtone system pay a deposit of \$1,800 per channel to Bell Atlantic.⁸⁶ Bell Atlantic has not paid any of the programmers interest on the money that Bell Atlantic holds under the CRD. Bell Atlantic must explain to the Commission why it is reasonable for Bell Atlantic to hold over \$500,000 from programmers, interest free, for what may be as long as 8-9 months.⁸⁷ Bell Atlantic should also explain why, if the interest free provision is reasonable for the CRD, such a provision is not equally reasonable for late payments from programmers to Bell Atlantic.

4. Minimum Service Requirement

55. Background. In the *Suspension Order*, the Bureau stated that one of the goals of the Commission's video dialtone policies is to increase the diversity of video programming available to the public.⁸⁸ We have in the past expressed concern that minimum service requirements do not further these goals. In the *Ameritech Video Dialtone 214 Order*, we held that "[t]he ability of programmer-customers to provide programming on a less than full-time basis

86 The Bell Atlantic Telephone Companies Tariff F.C.C. No. 10, Channel Reservation Deposit, DA 95-470 (rel. March 10, 1995).

87 Bell Atlantic has received channel reservation deposits for 304 channels resulting in a total of \$547,200 in deposits. Bell Atlantic received a large portion of this money in April of 1995 at the time programmers could first reserve channel capacity. Bell Atlantic has also announced that it will begin to bill all programmers in January of 1996 (unless programmers begin to deliver service prior to that time). Thus, Bell Atlantic will be holding the deposits between March 1995 and January 1996 without paying interest to the programmers. *Id.*

88 *Suspension Order* at ¶ 75, citing *Second Report and Order*, 7 FCC Rcd at 5781 (¶ 1).

... is an essential means of achieving that goal."⁸⁹ Although Ameritech argued that a one-year minimum service commitment was necessary to prevent market churn, we did not find that argument persuasive.⁹⁰

56. Despite that fact that Bell Atlantic seeks to require only a 3-month minimum service commitment and not a full year, as Ameritech had proposed, the harm to part-time or one-time users remains the same. The three-month service commitment, although less onerous than longer service requirements, still places a significant burden upon part-time and one-time users. In fact, almost any minimum service requirement virtually eliminates the ability of such users from being assured carriage on the platform. They must instead rely on the potential development of a resale market, which does not have common carrier requirements, to provide adequate capacity.

Issue O: Do the Commission's video dialtone policies require Bell Atlantic to serve part-time or one-time users and, if so, what are reasonable rates, terms, and conditions for part-time or one-time use of the video dialtone system?

57. Information Request. We require that Bell Atlantic justify why a 3-month minimum service agreement is necessary and reasonable. Bell Atlantic should also explain why the public would not benefit from providing part-time and one-time users with access to the video dialtone platform, even if such users are required to pay a higher rate for such access in order to compensate Bell Atlantic for any added costs incurred.

5. Correction of Service Problems

58. Background. In the *Suspension Order*, the Bureau stated that Bell Atlantic has not adequately explained why a refund liability policy for outages less than four hours in duration is not reasonable. We held that an investigation is necessary to evaluate the reasonableness of the proposed outage time prior to refund liability.⁹¹

59. We believe that service outages have the potential to undermine the business relationships between programmers and their end-user customers. A shorter minimum outage period for refund liability would give programmers the double benefit of refunding end-users for their losses, while imposing a greater incentive on Bell Atlantic to restore service at the earliest possible time. Also, Bell Atlantic's requirement that programmers notify it of outage problems before beginning the clock instituting refund liability obligations appears to be unreasonable.

89 Ameritech Operating Companies, Order and Authorization, WPC-6926-6930, 10 FCC Rcd 4101, 4118 at (¶ 30) (1995).

90 *Id.*

91 *Suspension Order* at ¶ 78.

Issue P: Is Bell Atlantic's four-hour minimum outage period prior to issuing a service credit reasonable? Is it reasonable to require programmers to notify Bell Atlantic of service problems before the four-hour time limit begins to run?

60. Information Request. We direct Bell Atlantic to justify why a four-hour minimum outage prior to refund liability is reasonable. Bell Atlantic should explain why, when it is aware of a problem that it knows it has a duty to resolve, the four-hour clock should not begin to run from the time Bell Atlantic is cognizant of the problem.

IV. PROCEDURAL MATTERS

A. Filing Schedules and Procedures

61. This investigation will be conducted as a notice and comment proceeding to which the procedures set forth in this Order shall apply. Bell Atlantic must file its direct case addressing each issue designated above no later than **October 26, 1995**.

62. Pleadings responding to the direct case may be filed no later than **November 30, 1995** and must be captioned "Opposition to Direct Case" or "Comments on Direct Case." Bell Atlantic may file a "Rebuttal" to oppositions or comments no later than **December 20, 1995**.

63. An original and seven copies of all pleadings must be filed with the Secretary of the Commission. In addition, one copy must be delivered to the Commission's commercial copying firm, International Transcription Service, Room 246, 1919 M Street, N.W., Washington, D.C. 20054. Also, one copy must be delivered to the Tariff Division, Room 518, 1919 M Street, N.W., Washington, D.C. 20554. Members of the general public who wish to express their views in an informal manner regarding the issues in this investigation may do so by submitting one copy of their comments to the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Such comments should specify the docket number of this investigation.

64. All relevant and timely pleadings will be considered by the Commission. In reaching a decision, the Commission may take into account information and ideas not contained in the pleadings, provided such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of reliance on such information is noted in the order.

B. Ex Parte Requirements

65. *Ex parte* contacts (*i.e.*, written or oral communications that address the procedural or substantive merits of the proceeding which are directed to any member, officer, or employee of the Commission who may reasonably be expected to be involved in the decisional process in this proceeding) are permitted in this proceeding until the commencement of the Sunshine Agenda period. The Sunshine Agenda period terminates when a final Order is released and the final Order is issued. Written *ex parte* contacts and memoranda summarizing oral *ex parte* contacts must be filed on the day of the presentation with the Secretary and Commission employees receiving each presentation. For other requirements, see generally Section 1.1200 *et seq.* of the Commission's Rules, 47 C.F.R. §§ 1.1200 *et seq.*

C. Paperwork Reduction Act

66. The collection of information in this Designation Order is not subject to the provisions of Section 3507 of the Paperwork Reduction Act of 1995, as amended.

V. ORDERING CLAUSES

67. IT IS ORDERED that, pursuant to Sections 4(i), 4(j), 201(b), 203(c), 204(a), 205, and 403 of the Act, 47 U.S.C. §§ 154(i), 154(j), 201(b), 203(c), 204(a), 205, and 403, the issues set forth in this Order ARE DESIGNATED FOR INVESTIGATION.

68. IT IS FURTHER ORDERED that the Bell Atlantic Telephone Cos. SHALL BE a party to this proceeding.

69. IT IS FURTHER ORDERED that the Bell Atlantic Telephone Cos. SHALL INCLUDE, in its direct case, a response to each request for information that it is required to answer in this Order.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen M.H. Wallman
Chief, Common Carrier Bureau