HOGAN & HARTSON
L.L.P.

LINDA L. OLIVER
PARTNER
DIRECT DIAL (202) 637-6527

COLUMBIA SQUARE
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1109
TEL (202) 637-5600
FAX (202) 637-5910

April 10, 1998

BY HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket Nos. 97-208, 97-231, 97-121, 97-137 and 96-98

Dear Ms. Salas:

Yesterday, on behalf of LCI International Telecom Corp. ("LCI"), and the Competitive Telecommunications Association ("CompTel"), I of Hogan and Hartson L.L.P., Genevieve Morelli, Executive Vice President and General Counsel, CompTel, and Joseph Gillan of Gillan Associates, met with Pat DeGraba, Jordan Goldstein, Jake Jennings, Melissa Newman, and Katherine Schroder, all of the Common Carrier Bureau. The purpose of the meeting was to discuss legal and technical issues that have been raised regarding combination of network elements. The attached document titled "Combining Network Elements" summarizes the points made in the meeting. We also have enclosed relevant filings from the New York Public Service Commission Section 271 proceeding.

I have hereby submitted two copies of this notice to the Secretary, as required by the Commission's rules. Please return a date-stamped copy of the enclosed (copy provided).

Please contact the undersigned if you have any questions.

Respectfully submitted,

Linda L. Oliver
Counsel for LCI International Telecom Corp. and the Competitive Telecommunications Association

Enclosures

cc: Pat DeGraba
Jordan Goldstein
Jake Jennings
Melissa Newman
Katherine Schroder

Combining Network Elements

I. Electronic access must be the standard to combine network elements in order for entrants to have a meaningful opportunity to compete with a Bell Operating Company offering local and interLATA services.

A. No manual process will ever handle volumes comparable to the PIC-change process.

1. BellSouth standard intervals:[1]

a. Loops 5-7 days/Ports 3-4 days

b. PIC Change: Same day if in by 3:00pm/otherwise next day.

2. Bell Atlantic has admitted that *"[t]here is no forward-looking technology that will enable the Company to automatically provide unbundled access to individual loops."*[2]

a. Region-wide, NYNEX processed more than 4.1 million PIC-changes last year, or roughly 22.6% of the installed base of lines.[3]

b. NYNEX only converted 5,194 loops through November of last year[4] -- in comparison to roughly 2.25 million PIC-changes during the same period.[5]

---

[1] BellSouth Ex Parte in CC Docket 97-208, et al, February 25, 1998.

[2] Petition of Bell Atlantic-New York for Limited Rehearing of Opinion No. 97-19, filed February 19, 1998, page 2.

[3] On the record request, Transcript page 1059, lines 1-11, sponsored by J. Smith, filed December 12, 1997.

[4] Initial Brief of Bell Atlantic-New York, Case 97-C-0271, filed January 6, 1998, page 38.

[5] BANY projects that the demand for unbundled loops will total only 2%of the POTS loop provisioning that it performed in 1997. Initial Brief of Bell Atlantic-New York, page 38.

B. Manual processes will always have a higher outage and error rate than an electronic process. See the attached evaluation of NYNEX's OSS systems supporting individual network elements and combinations.

C. ILEC network systems are designed for keystroke-to-dial-tone provisioning. Software-defined arrangements (including recent change) are used by ILECs to establish/disconnect services and facilities to their own end-users.

II. Incumbent LECs do not have the authority to decide how others will compete by refusing to provide the most efficient access to combine network elements.

A. Section 251(c)(3) imposes on incumbent LECs the *duty* to provide access to network elements at the *request* of the entrant. This general duty includes access to network elements individually, as well as the access requested by entrants to combine elements. ILECs no more have the right to choose how network elements will be combined than they do to decide that a requested network element will not be provided. In either case, the ILEC *must* provide the requested access/network element, unless the access is either technically infeasible or, in limited circumstances, it is proprietary.

B. The Act's specific requirement to allow entrants to collocate facilities in incumbent LEC central offices under 251(c)(6) does not limit the entrant to only this form of access. Rather, the Act imposes a general duty on the ILECs to provide entrants access to network elements at any technically feasible point under 251(c)(3).

C. There are several network elements which cannot be accessed through collocation, including the NID, signalling networks and call-related databases. Access to these network elements would not be possible if collocation were the only form of access required by the Act, as BellSouth claims.

III. The most efficient form of electronic combination uses the ILEC "recent-change" process.

A. Entrants are already entitled to access the recent change process for their customers, because the unbundled local switching network element includes access to all features, functions and capabilities of the switch, including databases.

B. ILECs can today provide mediated access to the recent change process by coordinating and screening recent change commands. This mediated access is an acceptable approach while the additional software changes necessary to implement a firewall system is developed.

C. Software-defined UNE separations and recombinations are just as real as physical circuit disconnections and would satisfy the Eight Circuit's decision that ILECs are not required (by the federal Act) to offer preassembled combinations of network elements.

D. Software-defined separation and recombination are most consistent with the use of IDLC technology currently being deployed by the ILECs.

Filed
11/24/97

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of

Petition of New York Telephone Company for Approval of the Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996 and Draft Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of New York	)	Case 97-C-0271

AFFIDAVIT OF JOSEPH GILLAN
ON BEHALF OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION (COMPTEL)

STATE of Florida)
COUNTY of Volusia)

Joseph Gillan, being first duly sworn upon oath, do hereby depose and state as follows:

1. My name is Joseph Gillan. I am a consulting economist with a practice specializing in the telecommunications industry. My clients span a range of interests and have included state public utility commissions, consumer advocate organizations, local exchange carriers, competitive access providers and long distance companies.

2. I am a graduate of the University of Wyoming where I received B.A. and M.A. degrees in economics. From 1980 to 1985, I served on the staff of the Illinois Commerce Commission where I had responsibility for policy analysis relating to the emergence of competition in regulated markets, in particular the telecommunications industry. While on the staff of the Commission, I served on the staff subcommittee for the NARUC Communications Committee and was appointed to the Research Advisory Council overseeing NARUC's research arm, the National Regulatory Research Institute.

3. In 1985 I left the Commission to join U.S. Switch, a venture firm organized to develop interexchange access networks in partnership with independent local telephone companies. At the end of 1986, I resigned my position of Vice President-Marketing/Strategic Planning to begin a consulting practice. I have testified extensively before several dozen state

public utility commissions, four state legislatures, the Federal-State Joint Board on Separations Reform, and the Commerce Committee of the United States Senate. I currently serve on the Advisory Council to New Mexico State University's Center for Regulation.

4. The purpose of my affidavit is to address Bell Atlantic-New York's (BA-NY) claim that it has implemented the operational support systems to provision unbundled network elements (UNEs) at a level sufficient to meet projected demands.[1] As a threshold matter, BA-NY's claim is premised on a dramatically reduced projection -- a reduction of more than 67% -- of competitive activity for 1998.[2] Thus, BA-NY appears to have adopted the age-old solution to performance below expectation -- lower the expectation to fit the performance.

5. A closer examination of the documentation "supporting" BA-NY's claim that its OSS systems are capable of handling commercial UNE volumes reveals a starker truth -- BA-NY's claim is based almost entirely on the platform combination that it no longer will offer.[3] The evidence that BA-NY offers is an "end-to-end" analysis performed by Coopers and Lybrand.[4] Significantly, more than *98%* of the UNE orders tested by Coopers and Lybrand were *platform* orders -- even though BA-NY now refuses to offer this arrangement.[5]

6. Overall, BA-NY's affidavits demonstrate the inherent discrimination embedded in its decision to deny carriers access to network element combinations. These affidavits demonstrate that BA-NY's position (if allowed by the Commission) would introduce substantial delay in transferring customers to competitors, increase provisioning errors, dramatically reduce BA-NY's ability to support competition and unnecessarily increase its costs -- costs which it would undoubtedly attempt to impose on its competitors.

7. BA-NY's position that any platform order should be separated and provisioned as though it were a request for an unbundled loop is inherently discriminatory. Importantly, the Coopers and Lybrand analysis documents this discrimination by demonstrating that BA-NY is unable to provision and support unbundled loops in the same time frames, and at the same

---

1 Affidavit of Gary Butler on behalf of Bell Atlantic - New York , page 4.

2 BA-NY's original projection for UNE-based competition contained in Jonathan Smith's Exhibit 1 indicated 135,884 links and 203,819 combinations for a total of 339,703 UNE-based arrangements. BA-NY's revised projection (Exhibit 2 to Smith's Affidavit), however, expects only 85,244 links and 24,205 ports by year-end 1998.

3 I would note that CompTel does not believe that BA-NY can withdraw its offer of platform combinations as presumed by its Affidavits.

4 The "end-to-end" testing methodology and results are presented in Affidavit of Gerard Mulcahy on behalf of Bell Atlantic (Mulcahy Affidavit).

5 For instance, of the 1,236 "peak day" orders tested by Coopers and Lybrand, 1,223 orders were platform orders. Only 13 orders were for unbundled loops obtained individually. Exhibit E-6 (page E-30), Attachment 1, Mulcahy Affidavit.

capacity levels, as platform orders. Exhibit 1 to this affidavit compares the service intervals and capacity levels for the UNE platform and individual orders documented by BA-NY's affidavits.

8. Although the Examiner's Ruling Concerning the Status of the Record did not specifically request comment on BA-NY's provisioning of network element combinations,[6] BA-NY's revised position raises new and important issues that must be addressed before BA-NY can be authorized to provide in-region interLATA services. Although the decision of the Eighth Circuit vacated the FCC's requirement that BA-NY *combine* the network elements themselves, this Commission has not excused BA-NY from a comparable obligation under state law, nor has BA-NY adequately explained how it intends to provide entrants non-discriminatory access to combine elements in the BA-NY network.[7]

9. BA-NY's policy to deny entrants access to network element combinations creates a number of significant barriers to competition. In practical terms, BA-NY's position is that if an entrant is requesting a loop and port, and the loop and port are already connected, BA-NY intends to first disconnect these facilities before providing them to the entrant. This physical disruption to network elements will have four principal effects:

* an additional delay transferring customers to new local providers (caused by the time that it takes to disconnect and reconnect network elements),

* an otherwise avoidable service outage when a customer changes local carriers,

* an increased probability of human error caused by the insertion of unnecessary manual activities (such as disconnecting and reconnecting network elements), and

* finally, the additional cost to separate network elements into individual components and then reconnect them.

10. Denying access to the platform combinations will have a serious impact on the development of local competition in New York. BA-NY's own projections *had been* that the platform would represent 60% of its network element competition by 2001.[8] Network element-based competition is crucial to local competition because it fosters price competition and brings

---

6 Ruling Concerning the Status of the Record, Case 97-C-0271, issued July 8, 1997.

7 BA-NY's proposal to deliver network elements to an entrant's collocation cage *does not* provide non-discriminatory access to the BA-NY network as assumed by the Eighth Circuit.

8 BA-NY Exhibit Smith-1, attached to Affidavit of Jonathan B. Smith, page 1.

competitive activity to the switched access market.[9]

11. Residential (and small business) competition is particularly sensitive to achieving non-discriminatory access to platform combinations. To compete for smaller customers, entrants must be able to easily and routinely use network elements to offer services -- a task made far easier when network elements can be obtained in a platform configuration.[10] BA-NY's data shows that 90% of the platform orders to date are used to serve residential customers, while essentially all unbundled loop orders serve business customers.[11] Residential competition is dependent upon the continued availability of the platform.

12. In 1995, more than 42 million customers changed their long distance carrier, many within 24 hours of making the decision.[12] If most consumers prefer one stop shopping, then the level of competition for the compulsory service in the package -- local phone service -- will affect competition in all related markets. In this sense, local service competition will become the "pace car" for the competitive market of the future. Eliminate local competition for residential (and small business) consumers and BA-NY will enjoy a dramatic advantage among these customers for interLATA services as well.[13]

13. The gratuitous disruption of network elements not only precludes competition, it significantly impacts other important policies as well. Both the FCC's access reform and universal service decisions presume that network elements can be used by entrants to rapidly and broadly serve residents and small businesses. In its access reform decision, the FCC assumed that entrants would be able to use network elements to offer access services in competition with the incumbent and that, therefore, access prices need not be prescribed by the FCC. Similarly, the FCC's universal service system assumes that consumers will have a choice between an incumbent and competitor, with either qualifying for subsidy if the network cost in a particular area is unacceptably high. Both assumptions are nullified by any action which significantly

---

9 Resale-based competition will not constrain BA-NY's retail prices because the reseller's costs rise in parallel with any retail price increase implemented by BA-NY. Furthermore, service-resale promotes BA-NY's access monopoly because BA-NY continues to provide access service to the service-resellers' customers.

10 BA-NY admits that its outside contractor was able to hire and train "in just a few weeks" a group of people to handle simple platform orders. Attachment 1 to Mulcahy Affidavit, page 5.

11 Attachment 1 to Mulcahy Affidavit, page 5.

12 Peter K. Pitsch, The Long Distance Market is Competitive, PITSCH COMMUNICATIONS, September 3, 1996, page 2.

13 Merrill Lynch as reported that residential and small/medium size business customers generate more than 70% of the interLATA long distance revenues. Merrill Lynch Telecom Services Bulletin, May 14, 1996, Appendix 2 (previously published on March 21, 1996). Consequently, if BA-NY succeeds in gaining an artificial advantage in this market segment, it would enjoy a substantial competitive advantage in the interLATA market overall.

limits the commercial usefulness of network elements.

14. It makes no sense to create an environment where each time a customer changes local telephone companies, a technician from the customers' *old* local telephone company begins disconnecting facilities to the customer's home or business -- followed on its heels by a technician from the customer's *new* local telephone company, reconnecting these same facilities to reestablish phone service. Yet, this is precisely the environment that BA-NY apparently demands. The inevitable result is discrimination and market domination -- outcomes which the New York Commission should reject.

15. In conclusion, BA-NY currently cannot meet checklist item (ii) requiring that it provide competitors with nondiscriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1) of the 1996 Telecommunications Act. Moreover, BA-NY will be further from compliance with this checklist item when it no longer provides network elements in combination for competitors.

16. This concludes my affidavit.

Exhibit 1

The Discrimination Created by Denying Entrants Access to Network Element Combinations

Measure	Platform Combination	Loop and Port As Separated Elements
Customer Mix	90% Residential[a]	100% Business[a]
Expected 1998 Demand	203,819 lines[b]	24,205 line ports[c]
Expected 2001 Demand	1,475,107 lines[b]	418,053 line ports[c]
Customer outage when changing carriers	Imperceptible	5 minutes[d]
BA-NY daily order capacity[e]	1,773	255
Order Rejection Rate[f]	0.6%	23.0%
Order Confirmation Timeliness (hours:minutes)[g]	1:28	33:00
Order Confirmation: Target Timeliness[h]	24 hrs	48 hrs
Order Confirmation: Percent within Target[h]	100%	70%
Order Reject Timeliness (hours:minutes)[i]	2:56	40:00
Order Reject: Target Timeliness[j]	24 hrs	48 hrs
Order Reject: Percent with Target[j]	100%	67%

a. Attachment 1 to Affidavit of Gerard Mulcahy, page 5.

b. Smith Affidavit, Exhibit 1.

c. Smith Affidavit, Exhibit 2.

d. Butler Affidavit, page 8.

e. Mulcahy Affidavit, Attachment 1, page 11.

f. Mulcahy Affidavit, Exhibit E-7, page E-31.

g. Mulcahy Affidavit, Exhibit E-7, page E-31.

h. Mulcahy Affidavit, Exhibit E-7a, page E-32. Percent within target for unbundled loops is the 3 day average of the test.

i. Mulcahy Affidavit, Exhibit E-7, page E-31.

j. Mulcahy Affidavit, Exhibit E-7a, page E-32. Percent within target for unbundled loops is the 3 day average of the test.

I hereby swear, under penalty of perjury, that the foregoing is true and correct, to the best of my knowledge, information and belief.

Joseph Gillan

Judith L. Cleghorn

Judith L. Cleghorn
MY COMMISSION # CC690558 EXPIRES
January 4, 2002
BONDED THRU TROY FAIN INSURANCE, INC.

STATE OF NEW YORK
BEFORE THE PUBLIC SERVICE COMMISSION

Petition of New York Telephone Company	)	
for Approval of its Statement of Generally	)	
Available Terms and Conditions Pursuant	)	
to Section 252 of the Telecommunications	)	Case 97-C-0271
Act of 1996 and Draft Filing of Petition for	)	
InterLATA Entry Pursuant to Section 271	)	
of the Telecommunications Act of 1996	)	

COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

Genevieve Morelli
Executive Vice President
and General Counsel
CompTel
1900 M Street, N.W., Suite 800
Washington, D.C. 20036
Phone: (202) 296-6650

Linda L. Oliver
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
Phone: (202) 637-5600

Counsel for CompTel

March 23, 1998

TABLE OF CONTENTS

Page

I. THE COMMISSION'S PROCEDURES ARE FATALLY FLAWED.....1

II. THE STAFF PROPOSAL FAILS TO SATISFY THE COMPETITIVE CHECKLIST AND WOULD DEPRIVE MOST BUSINESS AND RESIDENTIAL CONSUMERS OF CHOICE, TODAY AND IN THE FUTURE.....2

A. Bell Atlantic's Wholesale Service.....2

B. Combination Of Network Elements.....2

1. Restricting Availability Of Combined Network Elements (The "Platform") Would Leave Many Customers Without Options.....2

2. Restrictions On Une-P Availability Violate The Act.....6

3. The Provisions For Combinations Short Of The Platform Are Vague And Undetermined.....8

C. Interconnection/Collocation/Unes.....8

D. Operations Support Systems (Oss).....8

E. Incentives To Avoid Backsliding.....9

CONCLUSION.....9

STATE OF NEW YORK
BEFORE THE PUBLIC SERVICE COMMISSION

Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996 and Draft Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996	)	Case 97-C-0271

COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel") hereby respectfully files its comments in response to the March 17 draft "Prefiling Statement."

These comments in no way attempt to address every possible defect in the staff's proposal, or to fully brief and provide evidence with regard to those issues CompTel does address. The time frame and page limits make that impossible. We therefore have focused only on the most serious and obvious defects of the proposal. The staff draft fails to meet Sections 251 and 252 of the Act and is otherwise vague and incomplete. The proposal, if adopted, would have the real-world effect of confining the benefits of competition in the local market to the limited number of business and residential customers for whom "handcrafted" telephone service makes economic sense.

I. THE COMMISSION'S PROCEDURES ARE FATALLY FLAWED.

CompTel strenuously objects to the process being used in this case. First, allowing parties less than three business days to prepare comments on a proposal that had never before been made public, and that defines Bell Atlantic's obligations on many competitive checklist items, violates due process. Second, severely limiting the number of pages for comment on such numerous and novel issues also violates due process. Third, the staff's proposal rests upon factual assumptions that are seriously in error. The failure to allow the opportunity for development of a factual record therefore is unlawful.

Fourth, the staff proposal does not resolve a number of highly contested legal issues involving the obligations of Bell Atlantic to provide network elements in a manner that permits requesting carriers to combine them, under Section 251(c)(3). Fifth, the staff proposal is vague, incomplete, or silent on many aspects of Bell Atlantic's obligations, making even this limited opportunity for comment meaningless.

II. THE STAFF PROPOSAL FAILS TO SATISFY THE COMPETITIVE CHECKLIST AND WOULD DEPRIVE MOST BUSINESS AND RESIDENTIAL CONSUMERS OF CHOICE, TODAY AND IN THE FUTURE.

A. Bell Atlantic's Wholesale Service

Significant unsettled issues and unresolved problems still plague CompTel members' efforts to resell Bell Atlantic's local exchange services. The draft provisions addressing account management do not begin address those issues. The fact that it appears necessary for the Commission to specify such details as requiring Bell Atlantic's account managers to return calls shows that Bell Atlantic's carrier's-carrier operations do not yet function like a real business, where the customers' needs are paramount. The strongest incentive the Commission can provide is to withhold interLATA entry until Bell Atlantic's resale (and other carrier's-carrier) operations are working smoothly across the board.

B. Combination of Network Elements

1. Restricting Availability of Combined Network Elements (the "Platform") Would Leave Many Customers Without Options.

The network element platform is necessary for serving (and converting or switching) large numbers of customers, for ensuring that entry barriers to the local market remain low, and for ensuring that all consumers (regardless of size or location) will have competitive choice. The collocated facilities model requires "handcrafting" of local exchange service (because there are manual conversions

for each customer), and therefore cannot accommodate large numbers of change orders. 1/ It also requires competitors to establish facilities in every central office in order to use network elements at all.

The staff recognizes this by making the UNE-P option available for residential customers (and for some business customers). The staff proposal's restrictions, however, will inevitably deprive large customer groups of the benefit of competitive choice, will chill entry, and will lead to unwanted market distortions and customer disruptions.

Glue charges. Any "glue charge" to compensate the ILECs for doing the combining of network elements for the requesting carrier must be cost-based and nondiscriminatory under the Act. Glue charges that are set based on other considerations (such as making service to a particular customer constituency appear profitable) not only would violate the Act, but they will also harm competition and seriously distort investment incentives. Here, the glue charges go on indefinitely, even though the act of combining (which they are ostensibly intended to compensate) is a one-time event, and the differentials (and the fact that they can be as low as zero) show that they actually are a tax, and not a cost-based rate for network elements.

Glue charges that are set with the goal of "engineering" competition are likely to backfire in the end anyway, because conditions (including ILEC retail price structures) inevitably change over time. A glue charge that is set to make UNE-P profitable today may make it unprofitable tomorrow. Smaller (and many larger) businesses also are not necessarily any more economic to serve via collocated facilities than are residential customers.

The sunset provisions. Any "sunset" of the right to the UNE platform would, as a practical matter, deny widespread competitive choice both now and in the future. It also fails the

---

1/ See, e.g., Affidavit of Gerard Mulcahy, filed on behalf of Bell Atlantic in Case No. 97-C-0271, Attachment 1, at 16-17 (stating the largest number of loop-switch combination orders that a BOC could provision in a single large central office per day is 143).

Department of Justice's "irreversibly open to competition" standard for Section 271 approval. No rational business will enter a market and sell service to customers that it knows it must dump at the end of three (or five) years. Resale will be no more profitable at the end of that period than it is today, and facilities-based competition will have all the limitations that it has today (barring a technological breakthrough of unanticipated proportions).

At a minimum, the Commission should guarantee that any customers served by UNE-P during the 3-5 year period may continue to be served by UNE-P after that period, and at the same rates.

Post-sunset rates. The staff proposal allows customers to continue to be served by UNE-P after the sunset, but prescribes a transition to resale rates for that function. But resale prices do not correspond to a network element offering -- resale and network elements are two different products entirely. With resale, the price is set by discounting the ILEC's retail services -- but the carrier using UNE-P is not reoffering the ILEC's retail services, rather it is creating its own retail and exchange access services based on the functionalities available through the switch. The proposal violates Sections 251(c)(3) and 252(d)(2) and is unworkable.

The exclusion of New York City. The staff proposal to "redline" New York City for platform availability is based on the apparent assumption that the economics of local entry are different there than elsewhere. A close look at the extent of collocation in central offices there shows that investment in competitive facilities and in central office collocation has been clustered in limited, highly concentrated areas. Many business customers in the City cannot economically be served using the collocated facilities approach, for the same reason that collocation will not work to serve such customers elsewhere in the state. If a potential business customer is not served by the right central office, or does not have the right volume characteristics, or does not happen to be located near a competitor's fiber ring, then that potential customer may not be profitable to serve, even for carriers that already are collocated

and have their own local switches. New entrants, companies that serve broad geographic areas, or that target smaller businesses (such as many CompTel members) also would find it difficult to justify serving business customers in New York City via collocated facilities.

Proposed alternatives for New York City. The staff proposal suggests that something "more favorable" than Bell Atlantic's current physical collocation offering might be available in New York City (and after the sunset), without details. Draft Statement at 11. The options of a smaller collocation cage, sharing of cages, and "non-cage physical collocation" still have all the liabilities of any collocated facilities requirement (necessity for facilities installation, unnecessary expense, manual conversions, limitations on volume, risk of customer outage, necessity for facilities in every central office, and so on). The "reasonable recombination of elements through virtual collocation" is a mystifying term that has no meaning in the industry, to our knowledge.

The recent change process. The Staff's proposal overlooks alternatives that would satisfy the Eighth Circuit decision in Iowa Utilities Board, 120 F.3d 753 (8th Cir. 1997), cert. granted, ("Iowa"), while providing a meaningful opportunity for competition across all market segments. The most obvious one is the recent change process.

Recent change administration is used by the ILECs to suspend, discontinue and initiate service. Use of recent change process would electronically separate loop and local switching in a manner consistent with Iowa, and allow entrants to recombine those network elements and restore service to the customer. Combining network elements using the recent change process is non-discriminatory, compatible with large volume, commercial-scale, competition, and would be able to satisfy customer expectations regarding provisioning intervals, carrier-transfer and expected outages. The Act obligates the Commission to explain what mechanism -- whether recent change or some other mechanism (other

than a collocated facilities requirement, which is unlawful) -- will be available to requesting carriers to enable them to combine network elements.

Reliance on Other CLEC Facilities. Competitors cannot be expected to rely on lease of CLEC collocation and switching facilities in order to avoid reliance on the platform. First, few central offices are served with collocated facilities and competitive switches. Second, customers still must be converted line by line, generally a manual process that limits the rate of customer switchover and increases the chances of error (unlike the platform). Third, CLECs have no obligation to allow competitors to lease their facilities, and there is no evidence that they will be any more likely to welcome this activity than the ILECs have been.

The Extended Link Option. The extended link option is not likely to be a profitable means of providing competitive local exchange service to customers served by distant BOC end offices. If combining elements via collocation is cost-prohibitive when the customer is served by that end office, it will be even more cost-prohibitive when the customer is served by another central office and the cost of hauling the loop a long distance is factored in. This option also has all the other disadvantages of "handcrafted" telephone service that use of collocated facilities entails.

2. Restrictions on UNE-P Availability Violate the Act.

The Staff proposal denies combinations to carriers requesting the elements to serve business customers in New York City, thus violating the part of Section 251(c)(3) that gives the right to obtain network elements (and to combine them all) to *any requesting carrier*. The proposal provides that a carrier cannot provide *business* local exchange services using network element combinations, even though that same carrier can use network elements to provide *residential* local exchange services, thus violating the clause that allows requesting carriers to provide *any telecommunications service*. A restriction on the availability of network element combinations in a geographic area (here, New York City) and by customer class (denied to business customers) also violates the Section 251(c)(3)

requirement that carriers are entitled to *nondiscriminatory access* to network elements on *terms and conditions* that are *just, reasonable and nondiscriminatory*.

As noted above, the "glue charges" proposed here have no basis in cost. They are recurring and indefinite, even though the act of combining is a one-time event. The charges are zero for some customers and six dollars for others, with no difference in the function (if any) performed by Bell Atlantic. Therefore they do not satisfy the cost-based pricing and nondiscriminations standards of Section 252(d)(2). The "glue charges" also are discriminatory in violation of Sections 251(c)(3) and 252(d)(2) because carriers pay different amounts not because the underlying costs are different, but rather because the *identity and location of the end users served* are different. 2/

The sunset and New York City provisions are blatantly illegal because they deny completely the right to purchase network elements in combination without owning collocated facilities. 3/ The proposals for smaller cages, sharing cages, and "non-cage physical collocation" do not avoid the facilities requirement. The Commission is required to explore options such as the recent change process in order to satisfy the requirements of the Act and the Eighth Circuit. 4/ Until then, Bell Atlantic's Section 271 application cannot be deemed to comply with the checklist.

2/ The proposal violates the Act's pricing requirements for another reason: after the three or five year period is up, prices for network elements (if they are made available) will be based not on cost, as required by Section 251(d)(2), but on the retail (wholesale) rates set forth in Section 252(d)(4).

3/ The Eighth Circuit held that a requesting carrier is not required "to own or control some portion of a telecommunications network before being able to purchase unbundled elements." Iowa Utilities Board, 120 F.3d 753, 814 (8th Cir. 1997), cert. granted. The Massachusetts DPU recently rejected collocation as a lawful prerequisite for combining network elements. Massachusetts DPU/DTE 96-73/74, 96-75, 96-80/81, 96-83, 96-94, Phase 4-E, March 13, 1998, at 13-14.

4/ Section 251(c)(3) and the Eighth Circuit also require that ILECs provide requesting carriers the *access* necessary to combine the elements themselves on just, reasonable, and nondiscriminatory terms, at any technically feasible point. In requiring entrants to do the combining of network elements, the Iowa court observed that "the fact that the incumbent LECs object to this rule indicates to us that they would rather allow entrants *access to their networks* than have to rebundle the unbundled elements for

3. The Provisions for Combinations Short of the Platform are Vague and Undetermined.

The staff proposal provides that Bell Atlantic will combine network elements (short of the platform) for requesting carriers, but it allows Bell Atlantic to levy an as yet unspecified charge for this function. Staff Draft at 11. The proposal also provides for offering of network element "functionality" through a retail service priced no higher than network element rates, and that extended loop offerings will contain a retail-based price for the multiplexer. These provisions must be fully explained and quantified before the parties can even comment on their lawfulness.

C. Interconnection/Collocation/UNEs

CompTel members that rely upon interconnection with New York Telephone's facilities and that are using (or attempting to use) collocation as a means to interconnect with unbundled elements have had many operational and other difficulties. The staff proposal attempts to address some of these difficulties, and the measures included in the draft may be helpful in some cases. In the short time provided for comment, however, CompTel has been unable to poll its members to determine in detail to what extent the staff proposal would be helpful and to what extent it falls short or leaves problems unaddressed. It is clear, however, that the staff proposal cannot possibly form the basis for even a conditional Section 271 approval, because too much is dependent on future performance by New York Telephone. Commitments are meaningless; what counts is the record at the time Bell Atlantic files its 271 application.

D. Operations Support Systems (OSS)

Even though nothing is more important to the actual (as opposed to theoretical) success of the Act, the staff proposal regarding OSS consists of little more than platitudes about nondiscrimination and promises of technical support. CompTel approves in principle the staff proposal's

---

them." Iowa, 120 F.3d at 813. The staff proposal does not address what *access* carriers will have *to enable them to combine elements*, as required by the Eighth Circuit's decision.

endorsement of performance standards (CompTel has sought such relief at the FCC in a petition filed last year), but cannot evaluate its adequacy in this short time. Staff Draft at 29.

CompTel does not object in principle to third party testing of the network element platform, although the outlines of that test still are not sufficiently clear for CompTel to support it as proposed. Any such test cannot substitute for the experience of real CLECs attempting to employ the platform on a commercial scale in the marketplace, which must be evaluated critically -- as must OSS for all entry methods -- before Section 271 approval.

E. Incentives to Avoid Backsliding

The staff proposal correctly recognizes the need to ensure against backsliding, and performance measures and close monitoring are of course critical. The corrective action proposed -- a reduction in wholesale prices -- is weak, however. Staff Draft at 33. Reduction in UNE prices, upon which most competitors are likely to depend, is far more effective and appropriate. Other measures doubtless are required.

CONCLUSION

The Commission should reject this approach, and instead should devote its efforts to determining what the Act actually requires, particularly in the case of combining of network elements, and to continuing its efforts to improve Bell Atlantic's progress on OSS and performance standards.

Respectfully submitted,

Linda L. Oliver
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
Phone: (202) 637-5600

Counsel for CompTel

Genevieve Morelli
Executive Vice President
and General Counsel
CompTel
1900 M Street, N.W., Suite 800
Washington, D.C. 20036
Phone: (202) 296-6650
March 23, 1998

CERTIFICATE OF SERVICE

Linda L. Oliver, an attorney for the Competitive Telecommunications Association, hereby certifies that on the 23rd day of March, 1998, she caused to be served the foregoing Comments of the Competitive Telecommunications Association in Docket No. 97-C-0271 on the attached active party list by overnight delivery (where indicated) or by U.S. Mail.

Linda L. Oliver

Active Party List
Docket No. 97-C-0271

Donald Russell, Chief*
U.S. Department of Justice
Telecommunications Task Force
1401 H Street, N.W.
8th Floor
Washington, D.C. 20005

Deobroah Maisel, Esq.*
U.S. Department of Justice
Telecommunications Task Force
1401 H Street, N.W.
8th Floor
Washington, D.C. 20005

Phil Weiser*
Special Counsel
U.S. Department of Justice
Antitrust Division
10th & Constitution Ave., N.W.
3rd Floor
Washington, D.C. 20530

Lawrence G. Malone, General Counsel*
New York Public Service Commission
Three Empire State Plaza
Albany, NY 12223

Janet H. Deixler*
New York Public Service Commission
Three Empire State Plaza
Albany, NY 12223

Andrew M. Klein*
New York Public Service Commission
Three Empire State Plaza
Albany, NY 12223

Peter F. Parrinello, President
ARC Networks
160 Broadway, Suite 908
New York, NY 10038

Harry M. Davidow
Clifford Williams
AT&T
32 Avenue of the Americas
Room 2700
New York, NY 10013

*indicates by overnight delivery
\\\DC - 65427/10 - 0420345.01

Gary M. Cohen, Esq.
Christy C. Kunin, Esq.
Blumenfeld & Cohen
1615 M Street, N. W., Suite 700
Washington, D. C. 20036

Leo Maese
Director of Regulatory Planning
Cablevision Lightpath, Inc.
111 New South Road
Hicksville, NY 11801

Richard Kirsch
Citizen Action of Albany
94 Central Avenue
Albany, NY 12206

Scott McMahon
LCI International Telecom Corp.
8180 Greensboro Drive
McLean, VA 22102

Fran Martens
WorldCom, Inc.
300 Ocean Avenue, 4th Floor
Revere, MA 02151

Henry D. Levine
Laura McDonald
Levine, Blaszak, Block & Boothby
1300 Connecticut Ave., N.W., Suite 500
Washington, D. C. 20036-1703

Richard C. Fipphen
MCI Telecommunications Corp.
Five International Drive
Rye Brook, NY 10573-1095

Cherie R. Kiser
Gina Spade
Mintz, Levin, Cohen, Ferris, Glovsky and
Popeo, P.C.
701 Pennsylvania Avenue, N. W.
Suite 900
Washington, D. C. 20004

Timothy S. Carey
Chairman and Executive Director
NYS Consumer Protection Board
5 Empire State Plaza
Suite 2101
Albany, NY 12223-1556

Keith J. Roland
Roland, Fogel, Koblenz & Carr, L.L.P.
One Columbia Place
Albany, NY 12207

Craig D. Dingwall, Director
State Regulatory Affairs/East
Sprint Communications Company, L.P.
1850 M Street, N. W., Suite 1100
Washington, D. C. 20036

Russel M. Blau
Swidler & Berlin
3000 K Street, N. W., Suite 300
Washington, D. C. 20037-5116

Andrew D. Lipman
Swidler & Berlin
3000 K Street, N. W., Suite 300
Washington, D. C. 20007-5116

Anthony Petrilla
Swidler & Berlin
3000 K Street, N. W., Suite 300
Washington, D. C. 20037-5116

Andrew O. Isar
Telecommunications Resellers Assn.
P. O. Box 2461
Gig Harbor, WA 98335

Paul Kouroupas, V. President
Regulatory & External Affairs
Teleport Communications Group
2 Lafayette Center, Suite 400
1133 21st Street, N. W.,
Washington, D. C. 20036

Benjamin Lipschitz
Elaine Reiss
Agency Attorney
City of New York Dept. of Information,
Technology and Telecommunications
NYC Technology Center
11 MetroTech Center
Brooklyn, NY 11201

Ellen C. Craig
Regulatory Affairs
USN Communications
10 S. Riverside Plaza, Suite 401
Chicago, IL 60606

*indicates by overnight delivery