

impose higher construction costs than the new entrant might need to incur.¹

2. Other Parties' Evaluations

Some competitive LECs (e.spire and Intermedia) actively support this proposal. e.spire considers it "one of the most efficient and attractive options examined at the Technical Conference."² Intermedia supports Covad's arguments that security concerns can be resolved, offering its escort alternative. Cablevision maintains that cageless collocation is "necessary if competitive LECs are to be able to compete."³

Other competitive LECs, while supporting, or at least not opposing, this method of collocation, consider it to have the shortcomings of other types of collocation for the purpose of combining unbundled network elements. For example, AT&T points out that the collocation alternatives considered at the technical conference require the same manual work at the main distribution frame to recombine unbundled loops and switching.⁴ In the view of these competitive LECs, this is the fatal flaw of any type of collocation as a method of combining network elements.

Bell Atlantic-New York adds this method would deny it the ability to maintain adequate security over its own network facilities. It considers the resulting risks to its network and customers to be simply unacceptable.⁵ Bell Atlantic-New York emphasizes the large number of competing carriers that would have access to its secure facility areas. While Bell Atlantic-New York acknowledges that it agreed to discuss the feasibility of

¹ First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15803 (Local Competition Order), ¶598.

² e.spire's Brief, p. 8.

³ Cablevision's Brief, p. 10.

⁴ AT&T's Brief, p. 2.

⁵ Bell Atlantic-New York's Summary Presentation, p. 5.

cageless physical collocations in its Pre-filing, it considers this commingling proposal a radical departure from historical secure arrangements, and fears the risk of unacceptable interference by competitors. It points out that some New York central offices have as many as seven collocating carriers, warning that open access to competitive LEC and Bell Atlantic-New York equipment without any structure to avoid disruptions of service, would create network outage problems. Finally, it asserts that unsecured cageless collocation would impair Bell Atlantic-New York accountability for its own customer service, and rejects proposed security devices as naive.¹

3. Discussion

The record establishes a number of desirable attributes of COVAD's option, although it should be noted that the option was developed for interconnection purposes and not for combination of incumbent's loops and ports. The network security issues are troubling, however, and on these issues the record is not adequate to support a recommendation that Bell Atlantic-New York be required to provide this option. There may be available security measures to provide adequate network protection; however, supporters have not demonstrated that adequate security measures can be implemented, what those would be under all circumstances, or that the method's economic and scheduling advantages would not be vitiated by implementation of such measures. These issues can productively be a subject of the scheduled collaboration.

4. Proposed Finding

Bell Atlantic-New York should not be required to provide this option immediately because of the lack of security

¹ Bell Atlantic-New York cites the rejection of cageless collocation proposals by the FCC. Local Competition Order ¶598.

protections; however, possible security measures should be explored in collaboration.

Option IV -- Virtual Collocation
With Robot (Bell Atlantic-New York)

Bell Atlantic-New York currently offers virtual collocation, an arrangement by which the competitive LEC purchases equipment it wishes to use, and then sells the equipment to Bell Atlantic-New York for one dollar. Thereafter, Bell Atlantic-New York owns and maintains the equipment exclusively on the competitive LEC's behalf.

This arrangement could be used by a competitive LEC to recombine loops and ports through the use of a remotely controlled cross-connect device, or robot. Once the device is installed, Bell Atlantic-New York loops and ports could be terminated on the equipment and the competitive LEC could remotely recombine them. Bell Atlantic-New York would use its existing "hot cut" procedures in connecting its network to the device.¹

1. The Sponsor's Evaluation

As to the demonstrability of this method, Bell Atlantic-New York rates it as highly as possible, citing the technical conference demonstration. Virtual collocation arrangements are, of course, already used, and Bell Atlantic-New York uses this type of cross-connect device in its network, albeit not for element recombination. Bell Atlantic-New York

Bell Atlantic-New York provided a demonstration at the technical conference of this device, produced by CON-X Corporation (CON-X). This device can be mounted in a standard equipment relay rack in a Bell Atlantic-New York central office. Using a robotics arm, the device places or removes connections as directed by the competitive LEC from a remote workstation. The CON-X robot can accommodate up to 1,400 loops, which it can connect to Bell Atlantic-New York and/or competitive LEC ports.

indicates that two competitive LECs are currently implementing these systems in New York.¹

With respect to speed of implementation, Bell Atlantic-New York considers this method perfect. Its implementation period for virtual collocation is 105 business days; however, with only 12 robots in service, the ability of CON-X to manufacture sizable quantities has not been tested. That company has been able to deliver a robot within 60 days of order.²

As to this method's ability to handle foreseeable volumes of transactions, Bell Atlantic-New York is enthusiastic, again giving it the highest rating. As to cost effectiveness, however, Bell Atlantic-New York rates this method somewhat lower, although still highly, allowing that if all a competitive LEC wanted to do was reconnect loops and ports other options might be less expensive.

Concerning whether the method minimizes potential adverse impacts on either end users or the competitive LEC and incumbent networks, Bell Atlantic-New York rates this method as highly as its other collocation options. As to the ease of migration of customers to competitors' facilities-based service, Bell Atlantic-New York is very positive, rating it outstanding, inasmuch as the CON-X robot allows for the simultaneous connection of Bell Atlantic-New York and competitive LEC ports. Migrating a customer from a Bell Atlantic-New York port to a competitive LEC port can be done quickly and remotely with the robot. Regarding ease of migration of customers to a second competitive LEC or back to the incumbent, Bell Atlantic-New York considers this method excellent for migration back to its system, but slightly less so for migration to another competitive LEC, similar to its ratings for the other collocation methods.

¹ Tr. 502.

² Tr. 512.

2. Other Parties' Evaluations

This method is rejected by all parties save Bell Atlantic-New York. Generally, competitors see it as adding another layer of expensive and trouble-producing equipment into the network for the recombiners. In particular, other parties rate the demonstrability of this method very low, asserting that the demonstration actually showed very little.

This method garnered considerable criticism from parties as to timeliness of provisioning. There is concern about the availability of enough robots and about the ability of competitive LECs to use the system without extensive training. Similarly, parties are unenthusiastic about this method's cost, stating that the system was really nothing more than an expensive pre-wired frame. Indeed, competitors see no advantage--and see considerable additional expense--in purchasing this equipment, as opposed to installing a pre-wired frame in a conventional virtual collocation arrangement.¹ WorldCom notes that where pre-wiring of cross connections would be critical, it is prohibited by Bell Atlantic-New York in favor of the robot, a retrograde and expensive alternative, in the competitor's view.

As to whether the method minimizes potential adverse impacts on either end users or the competitive LEC and incumbent networks, other parties rate it quite poorly, on the same grounds as they rate the other collocation options. Concerning ease of migration to facilities-based systems, other parties argue that once a competitive LEC had made the investment in this type of system to combine loops and ports, it would have a financial incentive to retain that arrangement and would be less inclined to move to offer a facilities-based service. On this ground, competitors give this method a fair or poor rating.²

Considering migration of customers to a second competitive LEC or back to the incumbent, parties again disagree

¹ See, for example, Tr. 526-527.

² Tr. 536.

with the sponsor, rating this the method quite poor, because it would require coordination of three carriers.¹

3. Discussion

The limited evidence indicates that this system apparently works, in the few instances where it has been used. Nationwide, there are 12 working robots in four systems.² There appear to be less expensive and quicker ways of combining elements. Bell Atlantic-New York's purported highlight of this method was the ability for a competitive LEC to move one of its customers from a Bell Atlantic-New York switch to its own. However, since this is done in a virtual collocation arrangement, the competitive LEC would not have the access it wants to the equipment; this would likely be unsatisfactory to most competitive LECs. In particular, most competitors requested the ability to use pre-wired frames rather than the robot and, in fact, CompTel contrasted the offering of an inexpensive pre-wired frame in a costly environment with an inexpensive virtual environment burdened by the costly robot.³ Bell Atlantic-New York's explanation for its requirement that a robot make the link and port connection in a virtual environment while it will allow a pre-wired frame in all other situations was unconvincing. The collaborative phase of this case should examine how a pre-wired frame could be used in a virtual collocation environment to combine elements.

4. Proposed Finding

Bell Atlantic-New York's offering may be accepted by some competitors; however, it does not appear to meet their concerns and the robot requirement adds enormously to collocation costs without justification. The issue of allowing competitors

¹ Tr. 537.

² Tr. 541.

³ CompTel's Brief, p. 7, Tr. 608-610.

to provide pre-wired frames should be discussed in the scheduled collaborative sessions.

Option V -- Assembly Room and
Assembly Point (Bell Atlantic-New York)

The assembly room and assembly point are innovative new options that Bell Atlantic-New York proposes to offer competitive LECs who seek to combine Bell Atlantic-New York links and ports. These options do not require the same conditioned space as traditional forms of collocation, and would therefore be less costly to competitive LECs not using any of their own elements. The assembly room would be located in an secure, unconditioned area of a Bell Atlantic-New York central office and could be shared by a number of competitive LECs.¹ The assembly point would be used in central offices where constructing an assembly room within the building is not feasible. The assembly point would offer competitive LECs the same technical means of combining Bell Atlantic-New York links and ports, but would either be mounted on the outside wall or pad mounted on the grounds of the central office.² The assembly room or point only provide voice grade loop and port combinations.

The assembly room or point would initially be subject to the same 76-business-day interval used for traditional physical collocation. Subsequent entrants would be able to obtain space in the assembly room or point more quickly.³ Competitive LECs would be assigned a termination frame or portion of a termination frame, and could either pre-wire the frame or perform cross-connections as they acquire customers. The actual process of transferring a customer from Bell Atlantic-New York to

¹ Tr. 553-554.

² Bell Atlantic-New York has indicated that it may in some cases place an assembly point in an unsecured location within its central offices (Tr. 558, 570).

³ Bell Atlantic-New York's May 27, 1998 filing, p. 19.

the competitive LEC would be accomplished by Bell Atlantic-New York technicians performing a manual or hot cut.

1. The Sponsor's Evaluation

On the question of whether the assembly room/point could readily be demonstrated, Bell Atlantic-New York rates the assembly room/point extremely highly, stating that these were simply less complicated versions of traditional collocation.¹ While Bell Atlantic-New York has yet to construct an assembly room or point, the technology involved is not new or complicated and it would not be difficult for Bell Atlantic-New York to demonstrate its ability to deliver this service. Bell Atlantic-New York also rates the assembly room/point highly--although less highly--on how quickly the method could be implemented. The first of these is expected to be constructed by August 15, 1998.

Concerning whether the method can handle foreseeable volumes of transactions, Bell Atlantic-New York states that the assembly room/point could handle reasonably foreseeable volumes, and therefore rates the method very highly in that category.

Bell Atlantic-New York states that the assembly room/point was designed specifically for the combination of Bell Atlantic-New York loops and ports, and therefore rates it as highly as possible for cost efficiency.² Because the assembly room/point would not require conditioning, it would be less costly to a competitive LEC seeking to combine Bell Atlantic-New York voice grade loops and ports than other collocation options, according to Bell Atlantic-New York's preliminary cost estimates.³

Concerning whether the method minimized potential adverse impacts on end users, Bell Atlantic-New York notes that the assembly room/point offered a slightly less secure

¹ Tr. 560.

² Tr. 561.

³ Response to Data Request #22, as revised July 10, 1998.

environment than traditional collocation.¹ Bell Atlantic-New York notes that competitive LECs could install locking covers to be used within the assembly room for added security.² Because the assembly room/point uses the same hot cut procedure as other methods of combining elements, end users should not be adversely impacted if competitive LECs choose this method over others.

As to whether the method minimizes potential adverse impacts on the networks of the incumbent and the competitive LEC, Bell Atlantic-New York correctly notes that, under the assembly room/point scenario, the competitive LEC would not have its own network. In terms of this method's ability to minimize adverse impacts on its own network, Bell Atlantic-New York rates this method as highly as possible based on its similarity to traditional physical collocation.³

Regarding how easily a competitive LEC may migrate a customer from this method to its own facilities-based service, Bell Atlantic-New York notes that it would be more difficult to migrate a competitive LEC customer from elements combined via an assembly room/point to the competitive LEC's facilities-based service than with the more traditional collocation options, and therefore rates this method lower in that category.

On the issue of how easily a customer served using elements combined via an assembly room or point could be migrated back to Bell Atlantic-New York or to a competitive LEC using the Bell Atlantic-New York network, Bell Atlantic-New York rates the method very highly. For customers migrating to a facilities-based competitive LEC, Bell Atlantic-New York rates the method slightly lower, because the two competitive LECs would have to coordinate the cutover.⁴ As with the question of moving a customer served by a competitive LEC via the assembly room/point

¹ Tr. 561.

² Tr. 572.

³ Tr. 562.

⁴ Tr. 563.

to that competitive LEC's own facilities-based service, this transition could be difficult and has the potential to impact customer service.

2. Other Parties' Evaluations

As to timeliness of implementation, competitors assert that, in reality, this method of combining elements cannot be implemented quickly, particularly for the first competitive LEC in a given Bell Atlantic-New York central office. The interval for the initial competitive LEC would be 76 business days, and for subsequent competitive LECs or subsequent orders from the initial competitive LEC the interval would be 60 business days.¹ Further, the same Bell Atlantic-New York personnel now responsible for the construction of physical collocation arrangements would be responsible for assembly rooms/points, and Bell Atlantic-New York has committed to provision only 15 to 20 collocation arrangements per month.² Therefore, if all collocation requests were to cease, it would still take Bell Atlantic-New York more than two years to install an assembly room or point in each of its central offices.

According to CompTel, certain element combinations, for example, the loop and transport combination, would not be available using this method. Intermedia notes this option is unusable by it because it uses a T1 loop even to serve voice customers.³

AT&T correctly notes that this method would make it very difficult for competitive LECs to migrate customers to their own facilities, as a facilities-based competitive LEC would locate its equipment in conditioned space and the assembly room or point would be unconditioned space.⁴ The competitive LEC

¹ Tr. 556.

² Tr. 581-582.

³ Tr. 590, 613; CompTel's Brief, p. 4.

⁴ Tr. 600-601.

would therefore have to have each customer's loop terminations moved from the assembly room/point to the collocated space.

Parties note that the assembly room/point cannot meet reasonably foreseeable volumes of competitive LEC orders for such arrangements statewide because the initial construction is so time-consuming. Once an assembly room or point is constructed, it would likely be sufficient to handle foreseeable volumes of transactions within that office as customer conversions would be accomplished using the standard hot cut practice.¹

3. Discussion

Overall, the assembly room/point concept is a creative, viable, economic way for competitive LECs to combine loops and ports in several central offices in the state. Because of the absence of any electronics in the assembly room/point,² this method probably has the least potential to adversely affect Bell Atlantic-New York's network of any of the collocation options. Because of the time delay associated with the installation of new assembly rooms or points, however, this would not be a feasible statewide entry strategy for even one competitive LEC. In fact, if competitive LECs were to attempt to use this method on a broad scale, Bell Atlantic-New York would be hampered in its ability to deliver traditional collocation arrangements to facilities-based competitive LECs. This possibility could delay provisioning to competitive LECs with facilities in place. Moreover, this offering is limited only to voice grade loop and port combinations.

4. Proposed Finding

Assembly room and assembly point are innovative and useful offerings for lower-cost collocation; several competitors indicate a strong interest in using them. However, their limited

¹ Tr. 587-590.

² Tr. 576.

applicability and substantial provisioning intervals do not make them effective for statewide mass market entry.

Option VI -- Recent Change Capability (AT&T)

Recent change capability refers to software-based tools, comparable to those that allow a LEC to update and assign features and functions of its local switch. According to AT&T, the recent change capability is now used by incumbent LECs to disconnect a loop from the switch, that is, to sever service to a customer.¹ Recent change is also comparable to the services afforded a Centrex customer to sever, modify, add functions, or transfer service to an identified family of loops. AT&T's proposal is that Bell Atlantic-New York develop or purchase software to allow competitive LECs to employ recent change technology to combine existing loops and ports on the same basis that Bell Atlantic-New York now does. It is uncontested that recent change is only feasible for already existing loops, and for combination of loops and ports, not any other unbundled network elements.

1. The Sponsors' Evaluation

AT&T concedes that this option is not readily demonstrable, although it suggests that Bell Atlantic-New York Centrex customers employ this technology to add or sever lines, add services, or transfer numbers.² As to recent change's ability to handle volume, AT&T asserts this method would be able to handle volumes in a manner and on a scale comparable to how presubscribed long distance carrier changes--millions of transactions yearly--are now effected.³ According to AT&T, the operation of recent change would be extremely cost effective, once developed, since it is an electronic rather than a manual

¹ Falcone Affidavit, June 16, 1998, ¶¶105 et seq.

² Tr. 672.

³ Tr. 678.

method of recombining elements.¹ Co-sponsor CompTel views recent change as the only nondiscriminatory method offered, and one which provides new entrants access to their customers with minimal interference from the incumbent.² In addition, CompTel asserts the recent change alternative is the only one compatible with IDLC.

AT&T asserts this method, because it minimizes manual loop manipulation, will minimize adverse impacts on end users.³ As to protecting network security, the firewall proposed by AT&T is intended to protect the incumbent LEC by restricting competitor access to its customers and links.⁴ AT&T describes its firewall security as standard: transactions are controlled based on the rights and privileges of the user logged into the firewall.

As to the ease of customer migration to facilities-based service, recent change is put forward as a critical bridge to reach a mass market, providing immediate, ubiquitous access to central offices that otherwise might not be economic for collocation.⁵ Migration to another competitor or to the incumbent would be as simple as changing long distance providers as long as the other competitive LEC also has recent change access. Similarly, it would be simple to migrate back to the incumbent LEC.⁶

In a post-technical conference supplemental filing, CommTech, the vendor/developer of the software proposed by AT&T to implement recent change, explains that this new software would consist of a modification of its FastFlow system currently

¹ Tr. 678-679.

² CompTel's Comments, pp. 20, 22.

³ Tr. 680.

⁴ Tr. 681-682.

⁵ Tr. 683-684.

⁶ Tr. 684-686.

employed by LECs to allow Centrex customers to access the recent change process in the LEC switch. Providing some detail as to the development process, CommTech explains that FastFlow manages provision of network elements, is compatible with legacy operation support systems, beginning provisioning with a service representative answering the initial customer call to the time the request is provisioned in the switch and updating necessary legacy systems.¹

2. Other Parties' Evaluations

Bell Atlantic-New York acknowledges the capability of Centrex customers to make limited changes to the switch, using Macstar.² However, it estimates the development time required for this to be implemented on the scale contemplated here as "a number of years".³ As to cost, Bell Atlantic-New York asserts that the front-end development costs for the firewall, as well as the CLEC interface, render recent change prohibitive.⁴ Bell Atlantic-New York suggests that its legacy systems are complex, and difficult to modify,⁵ listing the systems a firewall system would need to reference in order to effect the changes required to move a customer from the incumbent to a competitor, or between competitors. According to Bell Atlantic-New York, millions of lines of code would have to be written to realize the system modifications required for recent change.

In response to AT&T's supplemental filing concerning its recent change proposal, Bell Atlantic-New York asserts that recent change is inadequately documented, a far more ambitious and burdensome undertaking than AT&T indicates, and susceptible

¹ CommTech Affidavit, ¶3.

² Tr. 747-748.

³ Tr. 755.

⁴ Bell Atlantic-New York's Summary Presentation, p. 13, n. 25.

⁵ Albert Affidavit, July 10, 1998.

to unacceptable service outages. Considering the modifications to its own current "suspend and restore" protocol, Bell Atlantic-New York asserts neither the Bell Atlantic-New York nor the competitive LEC modifications to existing ordering, provisioning, or billing systems is addressed, notwithstanding requests for specifics concerning system requirements and implementation schedules and costs. Bell Atlantic-New York notes that the AT&T filing concedes that the existing Macstar system cannot be modified for this purpose, and that adaptation of FastFlow will require redefining system requirements, development of software enhancements, testing, and programming.

Bell Atlantic-New York also stresses AT&T's admission that this approach imposes a risk of significant customer outages, with some customer outages inevitable due to problems between the processing of suspend and restore messages.¹ Bell Atlantic-New York rejects AT&T's suggestion that end user suspends and restores should be performed between midnight and 5 A.M., as conflicting with ongoing switch maintenance. Finally, Bell Atlantic-New York notes that FastFlow does not operate with one of its switch models, the DMS-10. Because Bell Atlantic-New York's ordering, provisioning and switching systems are not capable of activating dial tone on demand in real time, disruptions would be inevitable without substantial software modifications to existing legacy system, requiring millions of lines of code.

Finally, Bell Atlantic-New York asserts that, inasmuch as the recent change proposal will, according to the vendor, work best if operated by Bell Atlantic-New York itself through its provisioning system, the proposal is little more than a loop and port combination provided by Bell Atlantic-New York.²

Time Warner considers recent change violative of parity between facilities-based competitors, such as itself, and those

¹ Albert Affidavit, ¶9, quoting AT&T's Comments, p. 67.

² Albert Affidavit, ¶18, citing CommTech Affidavit, ¶8.

employing Bell Atlantic-New York's loops and ports.¹ Intermedia views recent change as an unacceptable expansion of the Pre-filing provisions.²

3. Discussion

While AT&T failed to present a convincingly detailed case for recent change, its fundamental assertion is well founded: an electronic method for obtaining and combining network elements, or a comparable substitute, appears essential for mass market competition. Because of the importance of exploring and developing software methods for competitors to obtain and combine unbundled network elements, the recent change proposal should not be rejected out of hand. Particularly for those customers--a growing group--served through IDLC technology, a reversion to a manual technology is inadvisable.

Finally, AT&T suggests Bell Atlantic-New York pursue regulatory cost recovery mechanisms for indemnification for the costs of development of recent change. There is no basis for passing these costs on to Bell Atlantic-New York's retail customers; they should be borne, at least in part, by the competitors at whose behest and for whose benefit this software will be developed.

4. Proposed Finding

The recent change option is insufficiently developed on this record to require Bell Atlantic-New York immediately to develop it. Because sufficient detail has been offered by AT&T to merit further exploration, however, the recommendation is that parties commence a collaborative exploration of the potential for this software solution to facilitate electronic element combination. Parties are requested to explore such discussions at the projected August 1998 collaborative session.

¹ Tr. 726.

² Tr. 732.

THE TWO-COLLOCATION CENTRAL OFFICES

In its Pre-filing, Bell Atlantic-New York undertook to provide the complete unbundled element platform for the provision of residence and business POTS and ISDN service, subject to time and geographic restrictions. Specifically, the platform will be provided for a duration of 4 years in zone 1, and 6 years in zone 2,¹ except that, in central offices in New York City where two or more competitive LECs are collocated to provide local exchange service through unbundled links at the start of the duration period, the platform will not be available for business customers.²

According to the proposed tariff filed by Bell Atlantic-New York on July 23, 1998, if the duration period were to start immediately there would be eleven central offices excluded from the business platform offering. These are: Second Ave., Bridge St., Broad St., East 30th, 37th, and 56th Streets, West 18th, 36th, 42nd, and 50th Streets, and West Street.³ While Bell Atlantic-New York's proposed methods for combining elements will clearly not be sufficient for competitors to provide service statewide, the provision of the platform in all but this limited number of offices gives competitors a viable market entry strategy. For the limited number of offices in which the platform will not be available for service to business customers, Bell Atlantic-New York's methods for combining elements will likely be sufficient for those carriers not already collocated in the affected offices. However, before Bell Atlantic-New York can be found to meet the practical and legal ability standard, it

¹ Zone definitions are as established by the Commission in Cases 94-C-0095, 95-C-0657, and 91-C-1174.

² The duration periods start with the availability of certain operations support system upgrades to the satisfaction of the Commission.

³ New York Telephone Company P.S.C. No. 916, Section 5, Appendix B, Original Page 1.

should demonstrate that the main distribution frames in each of the offices in which the platform will not be offered have sufficient capacity, or can be expanded in a timely manner, to handle reasonably foreseeable volumes of cross-connects. Bell Atlantic should also provide the Commission and the parties to this proceeding the specifications as to space constraints in each of those offices, and guarantees that there is sufficient space available for an acceptable range of recombination options.

CONCLUSION

These proposed findings of fact are based on an examination of the technologies, terms, and conditions of specific methods currently offered for obtaining and combining unbundled network elements. On balance, this record indicates that Bell Atlantic-New York's menu of options alone is unacceptable to support combination of elements to serve residential and business customers on a mass market basis, absent the provision of the platform or some comparably ubiquitous, timely, and economical method of element combination.

The recommendation is that Bell Atlantic-New York should be considered in compliance with the requirements of the Pre-filing that it demonstrate that competing carriers will have reasonable and nondiscriminatory access to unbundled elements in a manner that provides them the practical and legal ability to combine unbundled network elements based upon the following: (1) its provision of its offered forms of recombination; (2) the provision of the unbundled network element platform under the terms and conditions established in the Pre-filing or of a comparably ubiquitous, timely, and economical method of combination; and (3) upon resolution by this Commission of issues related to the provision of enhanced extended link.

Accordingly, upon compliance with these conditions, upon final review by this Commission of Bell Atlantic-New York's

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July 23, 1998 tariff filing, Bell Atlantic-New York may be relieved of its obligation to provide its current ubiquitous offering of the platform.

August 4, 1998

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IN THE MATTER OF THE PETITIONS *
FOR APPROVAL OF AGREEMENTS AND *
ARBITRATION OF UNRESOLVED ISSUES *
ARISING UNDER SECTION 252 OF THE *
TELECOMMUNICATIONS ACT OF 1996. *

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 8731
PHASE II(c)

PROPOSED ORDER OF HEARING EXAMINER

Appearances:

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Cathy D. Thurston, for Sprint Communications Company, L.P.

Sheryl A. Butler, for the Department of the Army.

Theresa V. Czarski, for the Maryland People's Counsel.

Janice M. Flynn and Andrew S. Katz, for the Staff of the Public Service Commission of Maryland.

On November 18, 1997, AT&T Communications of Maryland ("AT&T") filed with the Commission a "Petition to Require that Bell Atlantic-Maryland Continue to Offer 'Combined' Network Elements Under Its Interconnection Agreement with AT&T and Under Maryland Law." The Petition noted that Bell Atlantic-Maryland,

Inc. ("Bell Atlantic" or "Bell") provided notice on October 27, 1997 that, following a ruling of the United States Court of Appeals for the Eighth Circuit,¹ Bell will no longer accept orders for unbundled elements in a combined status (referred to by AT&T as a "platform" of unbundled elements). Rather, Bell informed AT&T that the latter could order these same elements on an individual basis and utilize collocation facilities in Bell Atlantic's central offices to recombine the elements, or could use resale arrangements for the rebundled network elements purchased from Bell Atlantic. The letter from Bell Atlantic further indicated that orders for the combined platform would no longer be accepted effective November 27, 1997, and on December 29, 1997, Bell Atlantic would convert AT&T's rebundled network element customers to resale arrangements.²

In the Petition, AT&T further alleges that the existing interconnection agreement between AT&T and Bell Atlantic contains provisions which require Bell Atlantic to provide AT&T with the platform of unbundled elements, and the contract further provides for renegotiation in good faith with respect to changing the scope of the service arrangements, which Bell Atlantic has not adhered to. Furthermore, AT&T contends that while the Eighth Circuit Court decision struck down an FCC rule, it did not preclude this Commission from directing Bell Atlantic

¹ According to the Petition, the Court struck down a Federal Communications Commission ("FCC") rule that prohibits incumbent local exchange carriers ("ILECs") from separating already combined elements. *Iowa Utilities Bd. v. FCC*, 96-3321, et al. (Slip Op. 8th Cir., October 14, 1997) ("Rehearing Decision").

² In subsequent actions, Bell Atlantic has indicated it will stay the date by which it will no longer accept orders for rebundled network elements from the initially proposed November 27, 1997 date until March 4, 1998.

to offer a platform of combined unbundled elements. AT&T also alleges that the platform is the fastest, most efficient way to ensure that local competition will reach all Maryland consumers, and this Commission has clear authority under Maryland law to require Bell Atlantic to offer the platform of combined elements. Accordingly, AT&T requests the Commission preclude Bell Atlantic from withdrawing from ongoing testing of the platform of combined elements, direct Bell to continue to accept and process orders for the platform until further order of the Commission, preclude Bell Atlantic from unilaterally changing the terms and conditions of its interconnection agreement with AT&T, and direct that under broad authority of Maryland law Bell Atlantic must offer AT&T and other competitive local exchange companies ("CLECs") a platform of combined unbundled elements.

On November 26, 1997, the Commission delegated this matter to the Hearing Examiner Division and further requested that an expeditious hearing be held. A Notice of Prehearing Conference was then issued on December 1, 1997, which also requested that the parties refer to this specific dispute as "Phase II(c)" of Case No. 8731 in future correspondence or filings to distinguish the matters in this dispute from the other voluminous material contained in Case No. 8731.

On December 8, 1997, Bell Atlantic filed an "Opposition to AT&T's Petition to Require the Offer of Combined Network Elements," arguing that the Eighth Circuit decision struck down such a requirement as contrary to the

Telecommunications Act of 1996.³ Bell Atlantic alleges that the proposal to require Bell Atlantic to offer combined network elements is contrary to § 251(c)(3) of the Act, which provides that the incumbent local exchange carriers shall provide unbundled network elements in a manner that allows the requesting carrier to combine such elements rather than requiring the incumbent carrier to provide the combination platform. Bell further maintains that its interconnection agreement with AT&T specifically provides that the provision of network elements shall be combined only "where technically feasible and to the extent required by applicable law," and therefore it will no longer provide such combinations in light of the Eighth Circuit Rehearing Decision. Bell Atlantic also asserts that AT&T exaggerates the claims of problems that will result from the failure of Bell to provide the platform of combined elements, as AT&T can effectively purchase such combinations under resale pricing provisions if AT&T does not wish to perform the combining of functions itself. Bell Atlantic requests the Commission deny AT&T's Petition which seeks to require Bell Atlantic to offer combined network elements on a bundled, rather than on an unbundled, basis.

At the prehearing conference held on December 10, 1997, appearances were entered by the following parties in addition to Petitioner, AT&T, and Respondent, Bell Atlantic: MCI Telecommunications Corporation ("MCI"); Sprint Communications Company, L.P. ("Sprint"); RCN Telecom Services of

³ Telecommunications Act of 1996, Pub. LA No. 104-104, 110 Stat. 56 (1996) ("the Act").