CHAPTER 1

OPERATIONS SUPPORT SYSTEMS ("OSS")

The Board finds that "Operations Support Systems" ("OSS") are the single most important "major barrier to competition" affecting New Jersey's local land line residential and small business markets. The Board also finds, at this time, that regardless of the loop rates set in states around the nation, without effective CLEC access to the ILEC's OSS large volumes of residential customers cannot be switched to CLECs quickly enough to allow for mass marketing by CLECs. The Board's review of loop rates nationally shows loop rates ranging from $3.72 to $79.90 per loop per month.[27] Despite this disparity of rates around the country and rates as low as $3.72, facilities based competition at the residential level has been limited to less than one percent (1%) of the total residential market, to date.[28] Nationwide, loop rates are both significantly higher and lower than the $10.92 rate requested by AT&T in New Jersey. The major CLECs including AT&T and MCI have not entered the residential market in any other state on a facilities basis even though loop rates have been set lower than the $10.92 requested by AT&T in New Jersey. The wide variety of loop rates set nationally and the fact that there has been virtually no entry into the local residential land line market on a facilities basis, leads the Board to conclude at this time that another reason exists which

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[27]See, supra, pages 12 to 14 of this report (discussing the Board's review of loop rates and facilities based competition around the country).

[28]See, supra, footnotes 1 & 2 at page 2 of this report (discussing the Board's findings regarding facilities based competition in the residential market).

explains the inability of the CLECs to mass market to residential and small business customers.

The significance of OSS as a major barrier to competition is underscored by the fact that the FCC has rejected each ILEC's petition for 271 approval, citing , among other things, the inadequacy of the ILEC's OSS procedures for CLECs to mass market to customers and switch them to their service from the ILEC's service. The FCC found that all four ILECs that applied for long distance authorization could not provide adequate OSS.[29] The section "271" long distance filings were made by SBC in Oklahoma, Ameritech in Michigan, Bell South in South Carolina and Bell South in Louisiana. Specifically, the FCC concluded that Ameritech had not demonstrated that it could provide to CLECs a functional OSS with access equivalent to the access that it provides to itself, and that Ameritech failed to provide the empirical data (i.e. testing results) necessary to analyze whether Ameritech was providing non-discriminatory access to OSS as required by the Act. Similarly, in Oklahoma, South Carolina and Louisiana, the ILEC long distance applicants did not demonstrate and support, with empirical data, the assertion that the OSS they would provide to CLECs was equivalent to the OSS that they provided to themselves.

In this proceeding, every CLEC cited inadequate OSS processes in the Bell Atlantic region as an impediment to the mass marketing of local service to residential customers. OSS was so significant an issue to CLECs that a special OSS panel to testify at the Board's hearing was

[29]The "271" approval process is to assure that ILECs open their markets to local competition and provide parity of OSS between CLECs and ILECs before the ILEC receives long distance authority. The entire section 271 process incorporates a fourteen point checklist of items that must be met before long distance entry can occur for an ILEC. Within these checklist items is a functional OSS requirement and a requirement for facilities based competition.

assembled. At this writing, the Board is unaware of any properly functioning OSS anywhere in the nation.

Further, fully functional OSS interfaces between CLECs and ILECs are not being implemented or tested in New Jersey at this time. In the Bell Atlantic South region of which New Jersey is a part, OSS was most recently tested in Maryland. The testing of Maryland's OSS system and the parameters of the Maryland test were the subject of criticism at these proceedings. The criticisms by CLECs alleged that: (1) OSS was not ready, therefore, orders were required to be processed manually, i.e., electronic testing was not done; and (2) previously identified Bell Atlantic testing problems were not corrected.

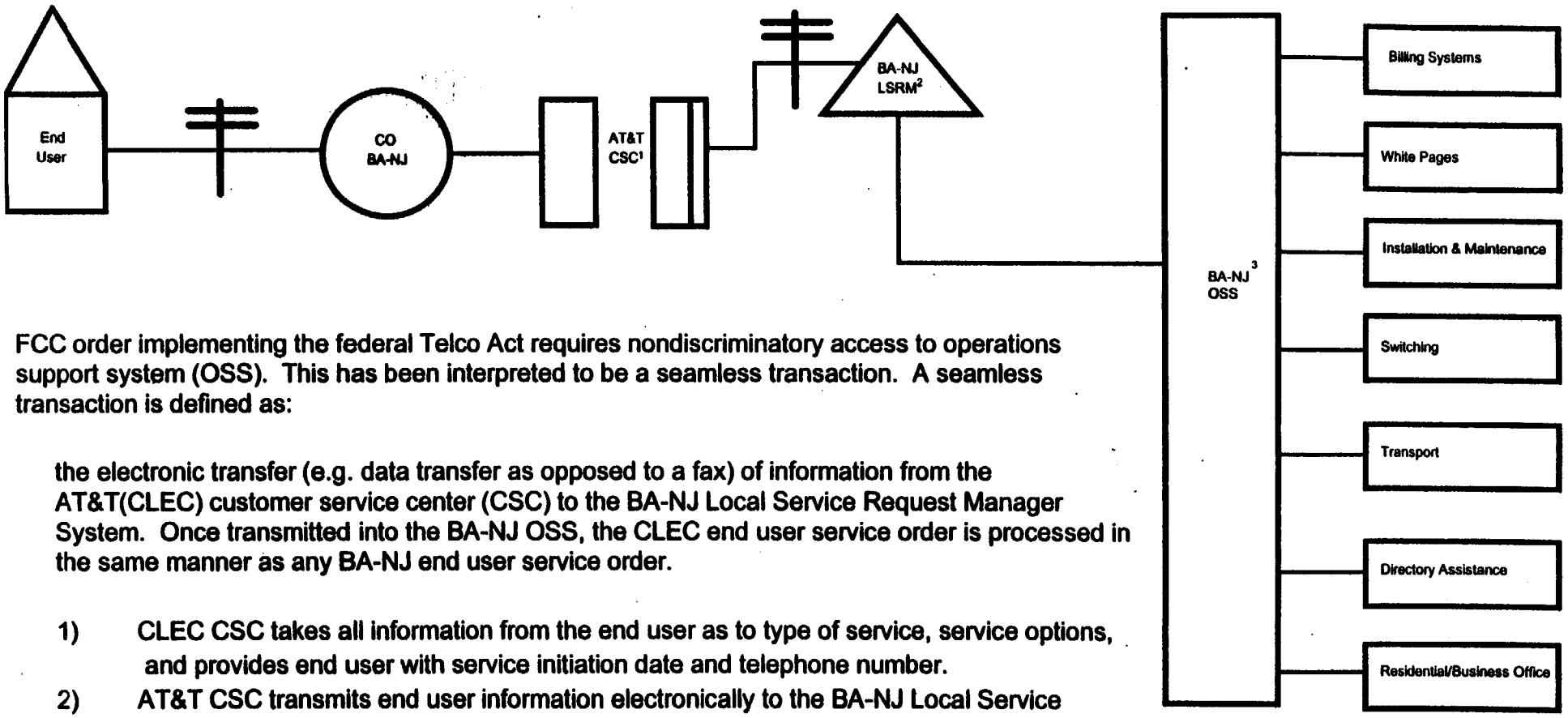
The Board does not have sufficient information regarding the Maryland testing of OSS to draw any conclusions about the validity or outcome of the testing process. What the Board has found is that typically Bell Atlantic New Jersey can provision for itself new residential lines to an existing customer or residential home within 2-3 days after the order is taken. In this proceeding, the Board heard testimony from CLECs claiming that the time it takes to switch a customer from Bell Atlantic to a CLEC might take up to eight (8) weeks in some cases. Since the time from pre-ordering to provisioning (i.e. the actual switching of service) is not being tested in New Jersey, the Board cannot make any firm conclusions regarding the CLECs' claims. However, the record indicates that under current OSS procedures Bell Atlantic takes substantially more time to switch over or provision a significant volume of customers for CLECs than it takes Bell Atlantic to do so for itself.

The Board finds that "OSS" are the computer-based systems and databases that

telecommunications carriers use to provide five essential customer and business support functions. These functions are: (1) pre-ordering (e.g., accessing customer service records, determining the availability of services and features, address verifications, telephone number selection and reservation, ascertaining the need for a site visit, and determining the due date for service installation); (2) ordering (e.g., establishing customer accounts and service installation); (3) provisioning (e.g., handling the installation of orders and tracking the status of install); (4) maintenance and repair; and (5) billing for the sale or resale of telecommunications services. Without access to OSS, the ILEC's information and systems that are needed to obtain and service new customers are not available to CLECs.

OSS are the processes that come into play right after a customer agrees to switch to a CLEC. OSS are the electronic and manual procedures used by BA that make it possible for a CLEC to get its new customer switched over by going through the steps identified above as: (1) pre-ordering; (2) ordering; (3) provisioning; and (5) billing above. When this process takes too long, is subject to errors, or fails to have proper follow-up, CLECs claim that the process hurts their ability to complete orders and provision service for mass marketing to residential customers. The chart on the next page shows all the steps which must be completed to provision a CLEC line.

For example, a customer calls a CLEC to switch service from the ILEC to the CLEC. The customer tells the CLEC's customer service representative what services he or she wants e.g., local, local toll, Call Waiting, Caller ID, etc. The CLEC customer service representative then electronically transmits the service order to the ILEC's proprietary Local Service Request Manager ("LSRM") which is a computer system used by the ILEC to provision services to its customers. The



FCC order implementing the federal Telco Act requires nondiscriminatory access to operations support system (OSS). This has been interpreted to be a seamless transaction. A seamless transaction is defined as:

> the electronic transfer (e.g. data transfer as opposed to a fax) of information from the AT&T(CLEC) customer service center (CSC) to the BA-NJ Local Service Request Manager System. Once transmitted into the BA-NJ OSS, the CLEC end user service order is processed in the same manner as any BA-NJ end user service order.

1) CLEC CSC takes all information from the end user as to type of service, service options, and provides end user with service initiation date and telephone number.
2) AT&T CSC transmits end user information electronically to the BA-NJ Local Service Request Manager (LSRM).
3) Information received electronically from the AT&T CSC goes through the BA-NJ LSRM and is transmitted without manual intervention into BA-NJ's customer service ordering system.

ILEC's LSRM then electronically generates a work order for an ILEC service technician to make necessary installations and connections. The LSRM also electronically activates the billing function that will provide the information needed for the CLEC to bill its new customer. If any one of these functions fails, a competitive offering is just not possible.

The Board finds that a seamless and effective OSS interface between ILECs and CLECs may not be attainable until national standards are in place, including performance measurements and hardware/software standards for each of the five OSS steps of pre-ordering, ordering, provisioning, maintenance and repair, and billing. The Board anticipates that a Board Staff Technical Solutions Facilitations Team ("TSFT") will determine the scope and type of testing needed to move local telephone competition forward in New Jersey. An additional responsibility of this TSFT will be to assist both ILECs and CLECs by providing the parties a forum to address OSS concerns as the transition from a monopoly market to a competitive market unfolds, and customers begin switching carriers.

A petition is before the FCC for an expedited OSS rulemaking which recommends that the FCC adopt a set of service quality performance measures for OSS. (I/M/O Implementation of the Local Competitive Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Petition For Expedited Rulemaking, LCI International Telecom Corp. and the Competitive Telecommunications Association 9 ("CompTel") filed 5/30/97). The performance measures, termed Service Quality Measures ("SQMs"), were developed and proposed by the Local Competition Users Group ("LCUG") whose membership includes AT&T, Sprint, MCI, WorldCom and LCI International Telecom Corporation. The aforementioned petition led to an FCC OSS rulemaking

proceeding to develop consistent national guidelines for ILEC "service quality performance measurements." (I/M/O Performance Measurements and Reporting Requirements for OSS, Interconnection, Operator Services and Directory Assistance, CC Docket No. 98-56, RM-9101, Notice of Proposed Rulemaking, FCC 98-72, Adopted 4/16/98 and Released 4/17/98). Bell Atlantic is a party to this rulemaking proceeding and has urged the FCC to reject the proposed LCUG rules and instead to adopt a set of service quality performance measures developed by Bell Atlantic and NYNEX and accepted by the FCC as part of the BA/NYNEX merger approval. A decision in this case is expected to result in national OSS "service quality performance measurement guidelines" perhaps as soon as the end of 1998. The "guidelines" will establish OSS and service quality performance measurements. The "guidelines" will include performance measures for OSS (i.e., pre-ordering, ordering and provisioning, repair and maintenance, billing) as well as for other issues such as interconnection, operator services and directory assistance and can establish a template, or model, from which performance measurements will be defined to assess objectively the quality of the services that ILECs supply to themselves as compared to the services supplied to CLECs.

The Board recognizes that the target for OSS should be "parity." Therefore, the need for national standards so that all systems in the country can have consistent computer interfaces to communicate to each other is equally important if wide-scale competitive residential service at the local level is to be reached. National standards are necessary for the various state systems to be able to share information. Integration of the coming national OSS guidelines and the coming national industry OSS hardware and software standards in 1999 should result in final closure of the OSS issue, with implementation projected for the year 2000.

Even if the FCC's OSS national performance measurement guidelines are released in 1998 as expected, and the technical hardware and software standards for OSS interfaces are developed by the industry groups as expected in 1999, there is still near and short-term work to be accomplished. The Board realizes that "parity" in full electronic application-to-application processing may not be available until 2000 and the electronic and manual solutions available in the interim are consistent with current ILEC operations. The task for the Technical Solutions Facilitations Team ("TSFT") will be to help craft interim OSS processes to promote mass marketing of local service while being cognizant of emerging regional OSS solutions. The Board also is fully cognizant that New Jersey OSS may be required to fit within the technical functions of the other 13 states in the Bell Atlantic region as well as the national standard OSS interfaces that will be arriving. Therefore, the TSFT must: (1) facilitate interim measures (developed in cooperation with the industry); (2) establish regional approaches; and (3) implement the national guidelines.

The major CLECs and ILECs are the driving force in the setting of the OSS standards needed to meet the FCC requirements for the opening of the local residential markets. In the interim, the Board will make available the TSFT to identify OSS issues that impede competitive market entry and expedite solutions using a collaborative approach as well as an expedited dispute resolution process to put interim measures into place.

The Board views the interim technologies used for OSS interfacing, before the industry standard is defined and approved for the nation by the FCC, as evolutionary steps toward facilitating CLEC entry into the residential market. The Board understands that the interfaces (Electronic Data Interexchange, Graphic Unit Interface, Electronic Communications Gateway, etc.) will evolve as

competition moves forward. However, the Board finds that this evolution should not be unilateral and should be coordinated by the industry participants in the New Jersey market with the assistance of the TSFT. While development of adequate OSS interfaces is an ILEC and CLEC responsibility, it will be overseen by the TSFT.

The industry has been working on OSS interface standards since the release of the FCC Competition Order on August 8, 1996. The goal of the industry is to develop uniform OSS standards. Separately, LCI and CompTel petitioned the FCC for an expedited OSS rulemaking on May 30, 1997, and urged the FCC to adopt the model rules developed by LCUG. The LCI petition led to the FCC Notice of Proposed Rulemaking issued April 17, 1998. The intent of the rulemaking is to establish national OSS guidelines for the states to consider and possibly adopt.

Bell Atlantic, as a party to the FCC proceeding, urged the FCC to adopt standards developed by Bell Atlantic for the Bell Atlantic region. Also, as part of its merger agreement with the FCC, Bell Atlantic agreed as a condition of the merger to develop and implement uniform OSS interfaces throughout the Bell Atlantic region by November 1998.

As discussed above, final FCC OSS guidelines from this rulemaking proceeding are to be established by the end of 1998. Industry OSS interface standards for hardware and software to implement the FCC guidelines are anticipated in 1999, with the required equipment becoming available for ILEC and CLEC purchase in 2000. Furthermore, as another condition of the Bell Atlantic merger, Bell Atlantic agreed to implement the industry hardware and software OSS interface standards no later than 6 months after industry adoption.

The Board recognizes the benefit of national service quality performance measurements

standards. CLECs stressed the need for national guidelines to address "the application to application electronic interfaces" needed for CLECs such that customers of CLECs or ILECs who are ordering service would see no difference. It is critical that the five steps (pre-ordering, ordering, provisioning maintenance and repair and billing) are available in a standardized fashion and with parity between the ILECs and CLECs. Should any step in the application to application electronic process fail, customers will not get service. In short, should OSS fail, a customer will not receive the services requested.

It is clear to the Board that total, or full, electronic interfacing for all five (5) OSS functions is the ultimate goal. However, in the interim, to get local residential competition "jump started" in New Jersey, the TSFT will work with the industry to establish electronic and manual procedures and the type of testing and performance measures that should be implemented in New Jersey The TSFT's work will also include developing the use of manual and electronic systems and the need to continue manual interfaces (in addition to electronic interfaces) as discussed by some CLECs. As noted earlier, until industry standard electronic interfaces are available, which may be as late as the year 2000, the Board must employ interim measures.

In conclusion, the development of OSS procedures is an evolutionary process toward a standardized, full electronic interface between ILEC and CLEC OSS. Until OSS development is accomplished and national standards are in place to mitigate the obstacles to mass marketing to residential customers, the TSFT will address OSS solutions and help develop both manual and interim electronic interfaces.

CHAPTER 2

UNBUNDLED NETWORK ELEMENTS

The need for a seamless and effective OSS is the most significant barrier to local land line residential telephone competition and affects the entire competitive land line telecommunications landscape. The Board finds that the availability of unbundled network elements ("UNEs") is the second most significant barrier to competition raised in this proceeding. UNEs are the physical facilities of the network together with the features, functions, and capabilities associated with those facilities that connect land line telephone customers to each other and to wireless customers. The Board specified seven individual unbundled network elements which the ILECs must provide to the CLECs[30]. There are two ways that UNEs are made available to CLECs. The first scenario involves collocation and makes UNEs available to CLECs as pieces with the CLEC recombining the pieces, either in total or with parts of its own network, to form a complete service. CLEC recombination of UNEs often will occur within the ILECs central office and, therefore, requires the CLEC to construct its own facilities within the ILEC's central office, hence the term "collocation."

The second form in which UNEs are made available is by the ILECs' offering combined elements in one package called a "platform." UNE-Ps (or "platforms") are UNEs combined together

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[30] In the Board's December 2, 1997 Local Order, the Board defined the following as unbundled network elements: (1) Local loops; (2) Local and Tandem Switching; (3) Interoffice Transmission Facilities; (4) Network Interface Device; (5) Signaling and Call Related Database; (6) Operations Support Systems; and (7) Operator & Directory Assistance. IMO The Investigation Regarding Local Exchange Competition For Telecommunications Services, TX 95120631 (December 2, 1997) (the "Local Order").

such that a complete service can be offered to a customer without the need for the CLEC to recombine elements at a collocated central office. The UNE-P makes available any combination and/or all UNEs in a custom package requested by the CLEC. The availability of the UNE-P has taken on additional importance as the larger facilities based carriers have abandoned their resale strategies for entrance into the local land line market. Of the three possible market entry strategies, referenced in the introduction, the utilization of the UNEs could allow CLECs immediate access to the entire land line customer base of the ILECs at much lower costs than resale and in less time than needed to connect through collocation or facilities based entry.

The collocation scenario, while technically feasible, raises other potential problems for the CLECs. To implement "the collocation scenario," CLECs argue that they will incur substantial additional costs and substantial additional time will be required to collocate CLEC equipment to allow a CLEC to serve its customers throughout the entire state or in regions of the state. At the hearings one CLEC estimated that it would take nine (9) to fifteen (15) months per carrier to collocate depending on the number of central offices in which the carrier wishes to collocate. Collocation could take over two (2) years to implement just for the two major CLECs, AT&T and MCI.

CLECs estimate that the cost to construct a collocation cage (which is usually a 10' x 10' area) ranges between $70,000 to $80,000 per cage per central office. There are 203 central offices in the BA-NJ's region. In addition to these construction costs, CLECs argue that each CLEC would be required to install equipment which is estimated to cost approximately $100,000 to $120,000 per central office in order to have the capability of recombining the individual elements. According to

the CLECs, these costs multiplied by the total number of central offices in New Jersey result in costs for collocation as high as $40 million if a CLEC wishes to market statewide in all 203 central offices.

Second, the CLECs argue that the amount of time it would take the ILEC to construct and equip a collocation cage for each CLEC (currently there are 19 certified facilities based carriers) in the necessary central offices in a timely fashion is a potential barrier to competition. Requests for space in the ILECs' central offices may cause substantial delay for competitors to enter these targeted markets and may forestall competition. As noted above, some CLECs have stated that for an ILEC to equip just one CLEC's collocation cage in every central office could take a minimum of nine (9) to fifteen (15) months. CLECs have stated that they could not begin to mass market to residential customers since these costs and delays in time will substantially inhibit their entry into the residential market. These constraints would also inhibit CLEC entry into the small to medium size business market. Some major CLECs have stated that even if the rates for loops were reduced to requested levels and access charges were reduced, the requirement of collocation would prevent wide-scale residential competition.

The second scenario which requires ILECs to provide the various network elements on a "UNE-P" basis allegedly is substantially cheaper for CLECs to purchase from ILECs and does not require substantial construction time. A policy issue regarding UNE-P is whether the ILEC should be compensated, either on a recurring or non-recurring basis for providing the platform.

The question of which party is legally or contractually obligated to combine or recombine

these elements is the subject of motions before the Board and federal litigation.[31] Certain ILECs, including Bell Atlantic New Jersey, interpret an October 14, 1997 decision of the United States Court of Appeals for the Eighth Circuit not to require ILECs to recombine unbundled elements as requested by CLECs. Consequently, ILECs have unilaterally changed the implementation of the negotiated facilities based agreements based upon the Eighth Circuit decision. Certain ILECs have appealed state commission decisions which have ruled contrary to the Eighth Circuit decision. At least five states have issued decisions on the issue of combined network elements: Colorado, Texas, Maryland, Michigan and Ohio. The Board was advised during this proceeding that Bell Atlantic New Jersey notified AT&T and MCI that in accordance with its interpretation of the Eighth Circuit

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[31]By order dated December 22, 1997 the Board approved the terms of the negotiated interconnection agreement between Bell Atlantic New Jersey ("BA-NJ") and AT&T. In this agreement, BA-NJ agreed to provide the UNE-P to AT&T, where technically feasible and as required by applicable law. The Agreement provides in attachment 2, page 2, Section 2.4 "BA shall offer each Network Element individually and in combinations where technically feasible and to the extent required by Applicable Law, solely in order to permit AT&T to provide telephone exchange and/or exchange access Telecommunications Services to its subscribers." [emphasis added].

By Order dated November 20, 1997 in Docket No. T096080621 the Board approved the terms of the negotiated interconnection agreement between BA-NJ and MCI. In this agreement BA-NJ [voluntarily] agreed to provide the UNE-P to MCI. The Agreement provides in Part A, Section 1.2, "Bell Atlantic shall provide the services in any Technically Feasible Combination requested by MCI, pursuant to the terms of this Agreement and in accordance with the requirements of Applicable Law, or where appropriate, the Bona Fide Request ("BFR") process set forth in Section 25 (BFR Process for Further Unbundling) of Part A, except that Local Resale shall be provided pursuant to Attachment II. Neither Party shall discontinue or refuse to provide any service provided or required hereunder, except in accordance with the terms hereof, without the other Party's written agreement. Bell Atlantic shall not reconfigure, re-engineer or otherwise redeploy its network in a manner which would impair MCI's ability to offer Telecommunications Services in the manner contemplated by this Agreement, the Act or the FCC's Rules and Regulations without providing notice of Network Changes in accordance with the Act and FCC Rules and Regulations." [emphasis added].

decision, it would no longer combine unbundled network elements after November 27, 1997. A consequence of Bell Atlantic New Jersey's pronouncement, according to MCI and AT&T testimony, is that collocated space in each of Bell Atlantic-New Jersey's 203 central offices would have to be obtained by CLECs to combine unbundled network elements themselves, thus imposing substantial increased time delays and significantly increased costs on CLECs' provisioning of service to their residential and business customers. Certain major CLECs, such as AT&T and MCI, that negotiated interconnection agreements with Bell Atlantic New Jersey claim they have a contractual right to require Bell Atlantic New Jersey to recombine these network elements pursuant to their negotiated agreements approved by the Board prior to the Eighth Circuit decision. Bell Atlantic New Jersey claims the Eighth Circuit decision gives it the unilateral right not to grant that request. The major CLECs also state that even if Bell Atlantic New Jersey is right, Bell Atlantic New Jersey has an obligation to negotiate the effect of the change in law brought by the Eighth Circuit's decision. According to the CLECs, Bell Atlantic New Jersey has not negotiated with them on these issues.

Bell Atlantic New Jersey states that the CLECs' failure to serve to the residential market will not change if the UNE rates and access rates are reduced or if the UNE-P is required. Bell Atlantic New Jersey has further stated that CLECs will market to high volume business customers and, as market demand determines, they will move down the "market-chain," eventually competing for residential consumers.

While Bell Atlantic New Jersey has notified AT&T and MCI that it will no longer voluntarily provide the UNE-P in New Jersey, Bell Atlantic-New York ("BA-NY"), on April 6, 1998, voluntarily filed an agreement with the New York Public Service Commission committing to

provide combinations of network elements to CLECs for their residential customers for 4 and 6 year durations for density Zone 1 and density Zone 2, respectively. Additional charges are not contemplated by BA-NY to provide this service to CLECs.

The UNE-P will also be provided for most business customers in these Zones except that Zone 1 business customers served from New York City central offices where two or more CLECs may be collocated will not be provided with UNE-P. UNE-P will be available to CLECs in Zone 1 for a duration of 4 years with a $6.00 monthly charge. UNE-P will be available to CLECs in Zone 2 for 6 years with a $2.00 monthly charge. By the conclusion of these time frames, the CLECs will be required to combine the unbundled elements themselves or if the CLEC does not wish to perform the recombinations, additional charges which will be determined at a later date, will begin to be phased in over a two year period to raise the cost of the recombined platform to a level which approximates the charges for resale.

It appears that the New York Commission limited the duration of the availability of the UNE-P as a bridge to allow CLECs immediate access to the local land line residential market in addition to the necessary time to build out their infrastructures to compete on a land line facilities basis.

CHAPTER 3

TECHNICAL ISSUES

There are numerous examples of technical issues (listed below) that would likely be more speedily resolved if the Board were to create a Board Staff Technical Solutions Facilitation Team ("TSFT") and a process aimed at cooperative resolution. Failing cooperative resolution, technical issues may be quickly moved to the dispute resolution process described below. The significant technical issues raised in these proceedings are described below with a brief outline of an action plan to resolve each.

Access To 9-1-1

It is state law that all carriers providing telephone service in the state must provide enhanced 9-1-1 service. Since 1995, the state's enhanced 9-1-1 emergency telephone system allows anyone needing emergency assistance to dial 9-1-1 from anywhere in the State. The enhanced 9-1-1 system automatically connects the caller to the appropriate public safety answering and dispatch points along with the callers' critical information such as telephone number, address, and respective emergency services. This enhanced system saves precious time needed during an emergency where any delays could result in catastrophic losses. In recognizing the vital nature of 9-1-1 emergency service, the Act, among other things, requires that all competing carriers be given non-discriminatory access to 9-1-1 services for use by all subscribers.

The Board was concerned that certain 9-1-1 information was deleted during the service ordering process for subscribers changing to competing carriers. The Board has since learned that

this information was deleted erroneously during initial testing of support processes and that the processes have been corrected to prevent this from occurring.

The Board finds that the ability for subscribers to change carriers because of competition should not affect the provisioning, continuity or quality of enhanced 9-1-1 service and hereby notifies all carriers that it expects them to take appropriate measures to ensure that 9-1-1 information is accurate and is not removed from the database due to carrier changes.

Any technical or policy issues that affect non-discriminatory access to or quality of 9-1-1 services should be resolved by the carriers or referred to the TSFT established as a result of this proceeding.

Number Portability

Number portability is an important element for competition to exist in the local competitive market. It allows subscribers to change their local telephone service provider without the need to change their telephone number(s). The Act requires that all local telephone companies provide number portability, at first through currently available interim arrangements and later through a database method of providing portability service consistent with the requirements adopted by the FCC.

The FCC scheduled a date certain for the availability of permanent number portability in the 100 largest Metropolitan Statistical Areas ("MSAs") in the country and included procedures for obtaining portability in the remaining MSAs. Six of these markets are located in New Jersey and are on schedule for implementation. The Philadelphia MSA was completed earlier this year and as a result permanent number portability is available in Burlington, Camden, Gloucester and Salem

counties.

Number portability deployment in the major MSAs of the state started in the 4th quarter of 1997 and is scheduled for completion by December 1998. After December 1998 any remaining area will be provided with number portability within six months of a request by a carrier. Number portability deployment is proceeding as scheduled, and problems have not been identified with respect to its availability. It is noted, however, that some concerns have been brought to the Board's attention regarding coordination and tariff requirements for porting numbers on certain services and their effect on marketing efforts. These issues will be addressed by the TSFT established as a result of this proceeding.

Operator and Directory Assistance - Call Routing using Specialized Routing Nodes

Operator services and directory assistance services are ancillary services that subscribers traditionally expect to be available as part of telephone service. The ability of CLECs to offer seamless operator services and directory assistance is essential for competition in the local service market. In addressing the need for these ancillary services at parity with those offered by the ILEC, the Act requires that CLECs be given non-discriminatory access to incumbent operator and directory assistance services.

Concerns brought to the Board's attention focus on using specialized routing nodes and pricing considerations made during the negotiation of interconnection agreements. Limited use of specialized routing nodes was contemplated during interconnection negotiations and later found unnecessary. The parties dispute whether price relief is warranted. The issues arising therefrom are resolvable through further discussion among the respective parties with the assistance of the TSFT

established as a result of this proceeding.

Pole and Conduit Attachments

As new local service provider firms extend telephone plant to individual subscribers and to business or residence clusters, the need for more space on existing poles and conduit facilities will result. Traditionally, these supporting structures were built for shared use typically by one telephone company, one electric company and one cable television company. The advent of competition is making use of these facilities essential to certain CLECs. However, immediate availability is difficult to provide because it requires plant work. As more firms seek direct access to subscribers, it becomes necessary to rearrange, modify and sometimes replace these supporting structures. This increased need for plant changes results in more time and effort being required to build or rearrange existing plant. Providing these facilities requires a two-phase approach, first an application and survey phase and, second, a make-ready phase. Both phases are subject to competing priorities and work scheduling.

The pole attachment process and its companion for underground conduit, have been issues of contention between ILECs, Cable TV companies and CLECs, with the former arguing that new entrants want faster services than ILECs provide themselves while the latter argues frustration with ILEC schedules. The addition of CLECs to the telecommunications environment did not generate this disparity of views but did exacerbate it, if only because more carriers are involved. In the event that specific CLECs have unique needs in this area that are not clearly addressed in the Interconnection and/or Resale Agreements with ILECs, the TSFT established as a result of this proceeding should be consulted.

Internet Service Provider Traffic

Reciprocal compensation is paid from one carrier (Carrier A) to another (Carrier B) when Carrier A's customer makes a call to a customer of Carrier B. This payment reflects compensation for the use of the other carrier's network. In this proceeding it was alleged that Bell Atlantic New Jersey has withheld payment of reciprocal compensation for the exchange of traffic that terminates to Internet Service Providers ("ISPs"). This issue had not been raised before the Board prior to this proceeding. The Board shall resolve these disputes, if, as and when a CLEC brings the matter within the Board's jurisdiction.

Other Issues

A segment of the industry describes the regulatory process as slow and burdensome and an impediment to its timely entry into the local exchange market in New Jersey. The Board has an obligation to the ratepayers of New Jersey to assess whether new entrants to New Jersey's telecommunications marketplace have the financial, technical and managerial resources necessary to provide service in the state. The Board must approve the terms and conditions of service; i.e., tariff language and provisions that are consistent with the statutes and regulations that govern telecommunications services. The Board's goal is to continue to promote the entry of capable competitors in the local telephone market, recognizing that competitors with the requisite technical, financial and managerial resources are beneficial to ratepayers in New Jersey. The Board seeks to attract competitors to the New Jersey marketplace as quickly as it is able.

Rights of Way Access

The use of rights-of-way are necessary for facilities based CLECs to build their infrastructure

to compete. This issue is, unfortunately, not under the jurisdiction of the Board. This is a legislative matter and the Board will review any state legislation pertaining to this issue and may submit comments to the Legislature thereon.

CHAPTER 4

PRICING ISSUES

Seamless and effective OSS has been found by the Board to be the critical and overriding issue affecting local residential competitors. Access to UNEs has been identified as the only other barrier to wide-scale local land line residential competition. On December 2, 1997, the Board issued an extensive Order regarding the generic rates to be charged for unbundled network elements (the "Local Order").[32] The Local Order also includes the Board's findings and determinations with regard to wholesale discounted rates for resale of ILEC services. The Local Order is based on an extensive record developed in an evidentiary proceeding that included 29 days of hearings, 62 expert witnesses, 93 pieces of written testimony, 300 exhibits and over 5,000 pages of transcripts.

The Local Order is the subject of two lawsuits currently pending before the United States District Court for the District of New Jersey, in Newark. Plaintiffs AT&T (Civil Action No. 97-5762 (JAG)) and MCI (Civil Action No. 98-0109 (JAG)) filed (in AT&T's case, amended) their complaints against BA-NJ, the Board and the two sitting Commissioners following the issuance of the Board's Local Order. Among other issues, both complaints allege that the rates contained in the Local Order violate of the Telco Act and FCC regulations. Since those matters are pending, the merits of the arguments raised by the parties in the above-cited complaints are not discussed herein.

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[32] IMO The Investigation Regarding Local Exchange Competition For Telecommunications Services, TX 95120631 (December 2, 1997) (the "Local Order"). The Local Order formalized the actions taken by the Board at its public agenda meetings on July 17, 1997, and on September 9, 1997.

Only the general question of whether the rates as currently constructed are a barrier to wide-scale entry to the local exchange market is addressed because only that question is a proper subject for this report. However, the Board does note that no new information was developed within this proceeding which challenged or attempted to alter the Board's methodology of weighting the cost models presented in the generic proceeding, i.e. the Board's determination to utilize a 60% BA-NJ/40% Hatfield weighting or the 50/50 split for Sprint's territory. In addition, at this point, no individual cost model has been accepted by the FCC to establish forward looking costs in its universal service proceeding.

The Board's review of the submissions, including the responses to the Board's Prehearing Order, the pre-filed testimony and the transcripts from the oral testimony revealed that neither the rates set for UNEs nor the wholesale discount have been proven to create a barrier to wide-scale local exchange entry in New Jersey. Several states have set UNE rates at levels significantly lower than those established in New Jersey, for example, Illinois (with a loop rate of $3.72); Virginia (with loop rates of $9.52 to $19.54); Texas (with a loop rate of $14.15); Michigan (with loop rates of $9.43 to $14.86); and Ohio (with loop rates of $5.95 to $9.52). Yet CLECs have not served any residential customers on a facilities basis in those states with these lower loop rates. Rates and wholesale discounts are therefore not an impediment CLECs face -- effective OSS and access to UNEs are.

Actual experience in other states where CLECs have different loop rates, higher local exchange rates, and UNE-P does not show wide-scale local exchange competition. The analysis submitted by CLECs in this proceeding using New Jersey specific data does nothing to convince the Board that lower interconnection rates in New Jersey would facilitate immediate wide-scale

residential local exchange competition here, absent Board action on OSS and UNEs. In fact, CLECs have identified OSS and access to UNEs as barriers that prevent competition even if loop rates were adjusted. In addition, the Board's analysis of the submissions by the parties shows that there are sufficient revenue opportunities to enable CLECs to operate profitably in New Jersey.

The Board has found that OSS is the single most significant barrier to competition. UNEs are the second most significant barrier. Regardless of the local loop prices set in New Jersey or nationally, without a functioning OSS for CLEC use, local residential competition will not occur. The Board has set loop, port, and switch rates based on appropriate "forward looking" cost models. The Board, therefore, concludes that as long as rates are based on forward-looking costs, as required by the Act, loop and port pricing should not be a barrier to entry.

The CLECs have also indicated in this proceeding that New Jersey's state policy to keep basic residential service rates affordable has resulted in rates that are an "inhibitor" to competition in the local land line residential market for both resale and facilities based market entry strategies. The rates are currently capped between $4.40 and $8.19 for a majority of the State's residents. The cap on these rate is set to expire with Bell Atlantic New Jersey's Plan for an Alternative Form of Regulation, in December 1999. Since 1985, the rate for Bell Atlantic New Jersey's basic residential service has been no higher than $8.19, which is now the second lowest rate in the country. The major CLECs' testimony on New Jersey's basic service rate indicates that the major CLECs may have a business reason for the limited amount of land line residential competition in New Jersey that could be incongruous with the public policy of this State, which has been to cap the price of basic residential service at the current low and affordable rates. As mentioned above, the cap on New

Jersey's low basic service rate likely will be reviewed by the Board beginning in January 1999 because the cap is set to expire, pursuant to the terms of Bell Atlantic's Plan for Alternative Regulation, in December 1999. However, as noted previously, the Board finds that until OSS and UNE issues have been addressed and are no longer "barriers to competition," the Board cannot determine that either pricing issue (i.e. ,UNE rates and the capped local service rates) raised in this proceeding is a "barrier to competition." The Board further finds that OSS and UNE access are of such significance that no other issue can be argued to affect mass local market entry in the residential market until OSS and UNE issues are resolved.

CHAPTER 5

DISPUTE RESOLUTION

In its Local Order, the Board recognized that "a procedure is necessary to resolve disputes between parties as expeditiously as possible." (Local Order at 128). The Board adopted, with one exception, the dispute resolution proposal of the Division of the Ratepayer Advocate (the "RPA" or "Advocate") that provided for 30 days of negotiations between the parties, followed by a 60 day period of mediation by Board Staff, and then a petition to the Board with a Board resolution within 60 days. The Board modified the Advocate's proposal only by removing the limitation on the amount of time for Board resolution of the petition. (Ibid.).

The Board reconsidered the mandatory 60 day mediation period in order to move issues to the Board more quickly. The Board has adopted a revised Dispute Resolution Process which provides for Board action on certain disputes within a shorter period of time after the filing of a petition with the Board. The new procedure is two months shorter than the original time line.

The modified Dispute Resolution Process ("DRP") is limited to those petitions which complain of disputes that involve action or inaction of a telecommunications entity that allegedly affects the ability of an entity to provide a telecommunications service or group of related services to its customers or which is allegedly anti-competitive. For example, Dispute Resolution can be used for specific, individual, case-by-case OSS and UNE issues as they occur. Before such a petition is referred to the Dispute Resolution Process, the petitioning party must provide detailed evidence, as part of the petition, that it has engaged in good faith negotiations with the answering party for at

least thirty (30) days. Such evidence must include documentation of the dates, times and places of such negotiations, the topics discussed at each negotiation and the names, titles and decision-making authority of the participants representing the petitioner. Similar information is required of the answering party. In this way, the Board seeks to achieve a compromise between the desirability of negotiated resolutions of disputes without Board involvement and the need to begin the Board sanctioned Dispute Resolution Process in a timely fashion if negotiated resolution seems unlikely to the petitioning party.

While the Dispute Resolution Process first approved by the Board provided for a process which might take as much as 150 days, including: (1) 30 days of negotiations; (2) 60 days of Staff mediation; and (3) a 60 day Board deliberation period, the modified process shortens this time period by at least 60 days, and, under the new process, disputes will be ready for Board action 40 days after the date on which the petition was filed with the Board.

The newly approved Dispute Resolution Process requires 30 days of documented "good faith" negotiations, followed by the filing of a petition which triggers a period of 40 days in which an answer is filed, comments by the Advocate, if any, are filed and two Dispute Resolution meetings are convened and conducted by Staff. If the Parties have still not resolved their differences, Staff will recommend a resolution which will be incorporated into a proposed form of order by the petitioner. The parties will thereafter have an opportunity to comment on the proposed form of order and Staff's proposed resolution. The record upon which the Board will deliberate will include the petition, answer, comments of the Advocate, the transcribed record of the Dispute Resolution meetings, the proposed form of order and the comments thereon.

Therefore, the Board finds that the expedited Dispute Resolution Process adopted in the context of the Motions for Reconsideration of the Local Order in Docket No. TX95120631 as contained in Attachment B to this report, appropriately address the dispute resolution concerns raised by the parties to this proceeding.

CHAPTER 6

POSITIONS OF THE PARTIES

Operations Support Systems

Bell Atlantic New Jersey, the state's largest ILEC believes it has done what is necessary to comply with the Act's requirements to provide for non-discriminatory access to its OSS. Bell Atlantic New Jersey provided witnesses Donald E. Albert, who attested to Bell Atlantic New Jersey's operational and technical compliance with the Act; Stuart Miller, who attested and discussed specific actions taken by Bell Atlantic New Jersey to provide non-discriminatory access to each OSS function; and Stuart McIntosh, a principal in the Telecommunications and Media Practice of Coopers and Lybrand, L.L.P. ("C&L"), who presented additional explanation of the test results in Mr. Stuart Miller's March 2, 1998 testimony.

CLECs, on the other hand, believe that Bell Atlantic New Jersey has failed to comply with the Act's requirements for non-discriminatory access to OSS. The CLECs maintained that the interfaces of the OSS provided by Bell Atlantic New Jersey are being changed without notice, are essentially untested in a multi-carrier market environment and even the selective testing conducted by Bell Atlantic or its consultant, Coopers & Lybrand, resulted in problem areas. AT&T witness, Robert J. Kirchberger, testified to the failure of Bell Atlantic New Jersey to provide non-discriminatory access to OSS, delays in implementation of OSS systems, flaws with the OSS offered by Bell Atlantic New Jersey, as well as test results that reveal Bell Atlantic New Jersey's OSS are not in a state of operational readiness. MCI witness, Rodney Sampson, testified to the problems of

each specific OSS function that are preventing CLECs from entering the local service market.

Operational Compliance with the Act

Donald E. Albert, for Bell Atlantic Network Services Inc., provided testimony that Bell Atlantic New Jersey has taken all the necessary technical and operational actions to comply with the Act (Sections 251(a), 251(b), and 251(c)) and has made other commitments to the FCC as part of the merger with the former NYNEX companies. Mr. Albert testified that Bell Atlantic New Jersey's compliance with the Act is demonstrated in that it already provides interconnection of CLEC facilities which includes the installation of over 14,000 interconnection trunks for six competing carriers; interconnection to unbundled network elements through physical and virtual collocation; interconnection to Enhanced 9-1-1 services for five CLECs; resale agreements providing over 7,000 resold lines to at least 12 carriers operating in New Jersey; dialing parity by allowing CLEC subscribers non-discriminatory access to exchange services, operator services, directory assistance services and directory listing services without dialing delays; pre-subscription for intraLATA toll calling since 1997 using 2-PIC methodology; and access to rights of way and carrier to carrier testing of interfaces and operations support systems. (Albert prefiled testimony at 14).

Mr. Robert J. Kirchberger for AT&T, presented testimony to address the failure of Bell Atlantic New Jersey to provide non-discriminatory access to its OSS as required by the Act and the Local Order. According to AT&T, Bell Atlantic New Jersey's failure to provide non-discriminatory access to its OSS is one of the principal obstacles preventing AT&T's full entry into the local market. AT&T is of the view that the development of interfaces between CLEC and ILEC OSS requires a showing that CLECs are actually able to use the interfaces to obtain the necessary information and

functionalities. (Kirchberger prefiled testimony at 6).

According to AT&T. Bell Atlantic New Jersey has delayed access to its OSS by refusing to test on a timely basis and by changing OSS interfaces unilaterally. When AT&T sought to begin systems testing in November 1996, Bell Atlantic New Jersey announced that it was not prepared to test UNE systems and would test resale only. Bell Atlantic New Jersey opted to start testing at that time. not with AT&T, but using USN Communications as a testing partner. USN Communications is a small business reseller that had no customers in Bell Atlantic New Jersey's territory. AT&T claims that even with the limited scope of the test, its results showed problems with Bell Atlantic New Jersey's systems; orders were rejected, calls were billed to the wrong number and the system did not accept customer trouble reports. (Id. at 17).

AT&T also maintained that unilateral changes to OSS interfaces by Bell Atlantic New Jersey have also prevented access to OSS functions. AT&T provided an example that in December 1997, Bell Atlantic informed AT&T that it was abandoning its existing interface in use for pre-ordering (the "Electronic Communications Gateway" or "ECG") and moving to a new pre-ordering system in the second quarter of 1998. ECG is a terminal emulation interface (an application allowing an intelligent computing device, for example a PC, to mimic the operation of a terminal for communications with a mainframe computer). ECG serves as an interface between Bell Atlantic New Jersey's systems and the CLECs' networks and allows CLECs to access information necessary to negotiate service for their end user (pre-ordering information) and to submit trouble reports. AT&T pointed out that there had been no discussion with AT&T and no negotiation of or planning for the necessary inter-system testing and implementation of this new interfacing protocol. (Id. at

18). Further, no specifications had been provided to AT&T of the new protocol.

AT&T further maintained that there are basic structural problems with the type of access offered by Bell Atlantic New Jersey to its OSS that makes the access discriminatory. AT&T argued that, unlike its own process, Bell Atlantic has put in place a manual process for the ordering and provisioning of UNE-P orders. Orders submitted by AT&T electronically are routed to a printer for manual processing, increasing the likelihood of error and additional delays. Furthermore, according to AT&T, Bell Atlantic New Jersey has refused to comply with the portions of the Board's Local Order that require Bell Atlantic New Jersey to establish a schedule for complete and seamless automation of permanent OSS. (Id. at 22-25). AT&T testified that its tests have shown that Bell Atlantic New Jersey OSS is not in a state of readiness. Bell Atlantic New Jersey has been unable to process AT&T resale orders on either a timely or accurate basis. AT&T's orders have not been provisioned within the time promised by Bell Atlantic New Jersey, and its orders have been provisioned inaccurately. Bell Atlantic New Jersey responded that the performance on firm order confirmations from the business and residence tests were actually higher than that reported by AT&T. Bell Atlantic New Jersey went on to say, however, that the results could have been better and are improving. Bell Atlantic New Jersey also responded that problems with AT&T's system and AT&T's follow up negotiations with customers also made results seem worse. AT&T's system would occasionally lose orders and notices and AT&T refused to negotiate access with customers for the purpose of service installation. (Albert, TR. Vol. 4 at 695).

It is AT&T's position that Bell Atlantic New Jersey has failed to show it has actually deployed fully tested, operationally ready interfaces for all OSS functions for both resale services

and unbundled network elements. (Kirchberger prefiled testimony at 63). Furthermore, according to AT&T. Bell Atlantic New Jersey has not demonstrated that it has adequate OSS capacity to meet CLEC requirements in a multi-carrier competitive local exchange market. AT&T stated that the record would show the history of why OSS is needed to further competition. However, AT&T further stated that carrier to carrier testing is needed to make the interfacing effective for customer applications. (Kirchberger TR. Vol. 4 at 710).

Technical factors affecting OSS function

Stuart Miller, for Bell Atlantic, provided testimony on the company's OSS system which it provides to competing carriers. Miller avers that the system effectively supports both resale and unbundled network elements and that the interfaces are consistent with industry standards where such standards exist. He further argues that the interfaces currently have the capacity to handle many times the number of orders that the company currently receives from CLECs and several times the volume the company expects to receive in 1998. As such, CLECs are capable of providing local service in substantially the same time and manner as Bell Atlantic New Jersey. (Miller prefiled testimony at 1).

Stuart McIntosh of C&L, Bell Atlantic's consultant, presented additional explanation of the test results in Stuart Miller's March 2, 1998 testimony. According to Mr. McIntosh, the purpose of the testing was to determine the ability of Bell Atlantic's OSS interfaces to handle CLEC order volumes substantially and equal to or exceeding projections for 1998. Further, Mr. McIntosh stated that the test order volumes and order mix were designed to utilize the company's OSS and all relevant manual processes. At page 2 of his prefiled testimony, Mr McIntosh stated that ". . . Over

10,000 orders were processed during the peak day of the test for the region as a whole (approximately 2,800 in New Jersey). The testing showed that the OSS interfaces could provide significant levels of electronic flow-through, with 76% of total resale orders and 70% of resale and unbundled network element orders flowing through during the test." On the basis of its review of the test, C&L concluded that Bell Atlantic New Jersey has the systems and related support infrastructure in place to receive and process CLEC orders on a scale which is in excess of service order projections for 1998. (Id. at 5).

MCI's Witness, Rodney Sampson, discussed Bell Atlantic New Jersey's failure to implement OSS that are adequate to fulfill its obligation under the Telco Act of 1996 resulting in an impediment to the development of local exchange competition in the State. Mr. Sampson concluded that Bell Atlantic New Jersey's current OSS cannot provide interconnection, unbundled network elements, or resale in a timely, reliable, and non-discriminatory manner, and in quantities that may be reasonably requested. (Sampson prefiled testimony at 2).

Mr. Sampson testified that Bell Atlantic New Jersey's existing OSS system must be revised to support the new competitive market model that exists in the State. (Id. at 4). He suggested that the Board examine whether the interfaces, back end systems, business processes, and training that Bell Atlantic employs is non-discriminatory and adequate to fulfill competitive needs of CLECs.

In his testimony, Mr. Sampson broke down the types of available interfaces into two categories: manual interfaces and automated access. A manual interface would require intervention on the part of the ILEC when processing an order, slowing the process and placing CLECs at a competitive disadvantage. Automated access enables information to be exchanged between the

CLEC and the ILEC via computers without manual intervention on the part of the ILEC. While several automated access systems are available, no single industry standard has been agreed to at this time[33]. ILECs should not be permitted to adopt a non-standard solution while the industry is in the process of developing an industry-wide standard.(Id. at 9-10).

Mr. Sampson argued that in order for OSS systems to support local competition properly, three conditions must exist:

(1) if an industry standard is established, Bell Atlantic New Jersey must be required to adopt that standard;

(2) if an industry standard does not exist, Bell Atlantic New Jersey must enter into a binding contractual commitment to comply with industry standards when available and implement an interim solution that provides the same level of functionality as Bell Atlantic New Jersey currently enjoys, and

(3) Bell Atlantic New Jersey must identify and submit definitive plans for migration to the current industry standards in an open and interactive planning process with the CLEC. (Id. at 10).

While OSS standardization is a necessary condition for the development of local competition, Mr. Sampson testified that it is far from sufficient. Once the ILEC receives a CLEC order request, internal systems must be in place so that the order is properly and efficiently processed. In order to

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[33]Sampson cited four principal groups that have each established differing standards: OBF of the Carrier Liaison Committee; Telco Committee; Telecommunications Industry Forum, and Electronic Communications Implementation Committee.

ensure proper and efficient order processing, the OSS must be linked to the downstream systems, adequate training and support must be provided to competing carriers to enable them to make appropriate use of the interfaces and the OSS interfaces must be standardized throughout the ILEC's regional territory. (Id. at 11).

Bell Atlantic currently supports two different OSS systems (one in the northern region and the other in its southern region) making it substantially more expensive to do business with Bell Atlantic because a CLEC must support and train employees on the two systems. (Ibid.).

Additionally, Mr. Sampson requested that the Board require Bell Atlantic New Jersey to provide adequate training and assistance to competitors that use the Bell Atlantic system and provide manuals and on-screen help menus to assist users. (Id. at 14). Furthermore, Mr. Sampson testified that Bell Atlantic New Jersey should be required to provide adequate notice to CLECs whenever it changes the electronic forms that are used in the system so that CLECs will not be caught off guard. Integrated testing of the OSS system should be conducted to ensure that it works properly and to minimize initial problems that might develop during its use. Once the system is in actual use, Mr. Sampson advocated continued trouble-shooting and system modification, if necessary, as operating flaws are discovered. (Ibid.).

Bell Atlantic New Jersey's "OSS capabilities are nowhere near sufficient to support local competition." (Id. at 16). In support of this position, Mr. Sampson stated he does not believe that Bell Atlantic New Jersey has "the necessary systems and personnel in place to provide sufficient access to each of the necessary OSS functions and is not adequately providing MCI with information sufficient to understand how to implement those functions." (Ibid.).

Mr. Sampson also described, in detail, what is lacking from the Bell Atlantic New Jersey system. Bell Atlantic New Jersey did not provided industry standard specifications or application-to-application interfaces with true flow-through capability for the vast majority of OSS functions from pre-ordering to billing. (Ibid.). While the Board's recent Order in the Interconnection Phase of the local competition proceeding requires that CLECs have available to them the same level of automation as the ILEC provides to itself, the Bell Atlantic New Jersey system, in Mr. Sampson's opinion, falls short of that goal. (Id. at 17).

Position on each specific OSS function

The following discussion includes: (1) Bell Atlantic New Jersey's position and description of the functionality of each of the OSS systems utilized by CLECs and (2) the shortcomings as seen by MCI's witnesses, Rodney Sampson and Ryan Clark. Starting with the pre-ordering function, MCI evaluated each element of the Bell Atlantic New Jersey OSS interface and identified what MCI perceives as its shortcomings.

Pre-Ordering

Bell Atlantic New Jersey maintained that both CLEC and Bell Atlantic New Jersey service representatives obtain the same pre-ordering information from the same OSS which consists of the Customer Service Records ("CAR") and the data associated with the customer including billing name, address, central office designation and the customer's presubscribed interLATA and intraLATA carriers. They also have the ability to determine the availability of features and functions and long distance carriers and selected due dates for customer orders while they are on the line with an end user. (Miller prefiled testimony at 1-2).

Access to the pre-ordering system is through Bell Atlantic New Jersey's ECG and is available through either a dial-up arrangement or via a dedicated private line. ECG serves as an interface between Bell Atlantic New Jersey's systems and the CLECs' networks and allows CLECs to access information necessary to negotiate service for their end user (pre-ordering information) and to submit trouble reports. Currently, there is no industry standard for the pre-ordering function. However, Bell Atlantic has initiated work on a pre-ordering interface which it believes may be selected as the industry standard. (Id. at 2).

The ECG interface is the same interface that the Company uses throughout the mid-Atlantic states. The system of Bell Atlantic New Jersey, according to witness Miller, currently has the capacity to process many times the volume of pre-ordering transactions it is actually receiving and many times the volume of pre-ordering transactions it expects to receive in 1998. (Id. at 3).

The access Bell Atlantic New Jersey provides to its pre-ordering OSS allows CLECs to perform pre-ordering functions in substantially the same time and manner that Bell Atlantic-New Jersey provides to itself. Based upon the average response time for December, Mr. Miller reported that it took CLECs under four seconds to retrieve a customer service record and less than six seconds to retrieve other pre-ordering information, less than the time it took BA representatives to retrieve the same data. Bell Atlantic reported response time of one-half second to retrieve its own customer service records and over six seconds for other pre-ordering transactions. (Id. at 3).

Mr. Miller calculated the total time it takes to process a residential request for a new line at 25 minutes for a Bell Atlantic representative. Assuming a CLEC spends the same 25 minutes on the telephone with a customer, he calculated the total difference in time resulting from a CLEC's use of

Bell Atlantic's interface would be less than two seconds out of the twenty-five minutes. (Id. at 4).

Regarding the availability of the system, the ECG is scheduled to be available from 7:00 a.m. to 10:00 p.m. Monday through Friday and 7:00 a.m. to 8:00 p.m. on Saturday. However, according to Mr. Miller the system is available 24 hours per day, seven days a week unless there are scheduled or unscheduled outages. In the fourth quarter of 1997, the ECG experienced no unscheduled down time. (Id. at 4).

Bell Atlantic New Jersey's OSS provides electronic access to the OSS functions through ECG. ECG is a proprietary interface developed and implemented by Bell Atlantic New Jersey. According to Sampson, ECG is less sophisticated than other types of automatic access and cannot communicate with MCI's systems. (Sampson prefiled testimony at 17).

In addition, ECG does not support all the pre-order functions that are currently being included in the standards that are being developed by the industry groups referenced earlier. (Ibid.). While national standards for electronic interfaces for pre-ordering have not been developed, the industry agreed in February 1997, through consensus in the Electronic Communications Implementation Committee ("EPIC") of the Alliance for Telecommunications Industry Solutions (an industry standards body, known as "AT"), that Electronic Data Interface ("EDI") via Telecommunications Protocol/Interconnection Protocol ("TCP/IP") is the appropriate interim interface for pre-ordering. EDI provides electronic data interchange of Local Service Requests ("LSRs"). EDI is an "application-to-application" interface that allows the data systems of different companies to interconnect and exchange business forms and data automatically. EDI is the interface of choice for many larger carriers. Bell Atlantic also offers PC-EDI, a PC-based interface to its EDI

for CLECs who choose not to incur the system's development and support costs associated with an application-to-application interface. It is noted that TCP/IP is a software protocol that enables secured data transactions by encrypting data. While the industry has not released the EDI TCP/IP specifications, they should be completed no later than June. Mr. Sampson testified that the EDI TCP/IP solution is appropriate. (Id. at 18).

For three pre-ordering functions (street address verification, feature availability, and primary interexchange availability) the current industry proposal is that ILECs should provide CLECs with batch downloads containing this information. While Bell Atlantic has provided one time downloads of information on primary interexchange carrier availability, it has, according to MCI, refused to provide information updates. (Id. at 19). Further, Bell Atlantic New Jersey's current system which utilizes ECG is not sufficient in a competitive environment. In addition to being proprietary, it does not permit carriers to connect directly to Bell Atlantic New Jersey's systems, creating a situation where MCI and other CLECs may need to have customer data typed into two or more systems when processing an order, something that Bell Atlantic New Jersey does not need to do because Bell Atlantic-New Jersey's internal system allows it to flow through data. (Ibid.).

Mr. Sampson also pointed to several other shortcomings of the current Bell Atlantic New Jersey system. First the system does not have a search function to search customer service records making it difficult to locate customer service records. Furthermore, MCI and other CLECs are limited in their marketing strategies to Bell Atlantic New Jersey hours of operations because Bell Atlantic New Jersey has control over the availability of the ECG. (Id. at 23).

Ordering/Provisioning

Bell Atlantic New Jersey utilizes the EDI for its ordering interface with CLECs. EDI is expected to be adopted as the industry standard in the near future. EDI provides what is known as an application-to-application interface which permits data systems of different companies to interconnect and exchange data automatically via EDI-PC-based software that has been developed to permit carriers to submit orders via the EDI without incurring significant start-up costs. (Miller prefiled testimony at 4-5).

Mr. Miller also described in his testimony Bell Atlantic's efforts to develop what is known as a Web Graphical User Interface (the "Web GUI") in New Jersey and other mid-Atlantic states. The Web GUI allows CLECs to submit orders electronically even if they choose not to undertake the development costs associated with using an application-to-application interface or PC-EDI product on their desk-top computers. The Web GUI is expected to be available in New Jersey sometime in 1998. Web GUI is an interface using "point and click" graphics and navigation functionally that connects to Bell Atlantic's internet. The Web GUI currently enables CLECs to submit orders to Bell Atlantic. The capability to obtain pre-ordering information and submit trouble reports will be added later in 1998. The Web GUI provides another choice for CLECs who choose not to incur the systems development and support costs associated with an application-to-application interface. (Id. at 5).

Bell Atlantic's experience and tests with the EDI system have resulted in 76% of all resale orders and 70% of total orders flowing through the electronic system without manual intervention. However, Mr. Miller noted that certain types of orders, such as new lines, changes in class of service,

additional lines, and orders for complex services like ISDN and Centrex must be handled manually. (Id. at 6).

EDI is the approved industry solution for transmitting orders and should, in Mr. Sampson's opinion, be used by all ILECs. (Sampson prefiled testimony at 23). While Sampson supported the use of EDI, he faulted the depth and quality of the documentation that Bell Atlantic New Jersey has provided to MCI. In addition, Bell Atlantic New Jersey has not adopted a change management system within the system. For example, when a change is made to the system which affects a CLEC, Bell Atlantic New Jersey should be required to notify the CLEC so that it may make the appropriate changes to its end of the system to ensure continued communications between the systems. (Id. at 26).

While MCI supported the EDI approach, it still did not believe that the Bell Atlantic New Jersey system is sufficient to support local competition because it is not fully automated and requires manual intervention for many basic orders, putting CLECs at a competitive disadvantage. (Id. at 28). According to MCI, provisioning involves the exchange of information between carriers where one carrier executes a request for a set of products or services from the other with attendant acknowledgments and status reports. The acknowledgments and status reports are critical to CLECs because they provide feedback on the status of an order and whether an error has been detected. (Id. at 31).

Provisioning utilizes the same EDI interface as the ordering function. As such it is susceptible to the same deficiencies as in ordering, i.e., if an order requires manual intervention acknowledgments and status reports will be exchanged the same way. This process of manual

intervention hampers MCI's ability to compete. (Id. at 34). Furthermore, MCI claimed that Bell Atlantic New Jersey's processing of orders and notification to CLECs is entirely too long. In fact, discriminatory practices are alleged which place customer migration from Bell Atlantic New Jersey to MCI at 3 - 5 business days, while migration back to Bell Atlantic New Jersey occurs in 2 business days and in some instances in 1 business day. (Id. at 35).

While Bell Atlantic New Jersey submitted certain performance data to MCI, this data, according to MCI, are alarming and contain errors which understate the time it takes to process MCI orders. MCI traced the errors to Bell Atlantic New Jersey's measurement practice which fails to recognize an order until after the Firm Order Confirmation ("FOC") is sent out which can be days after the order is actually transmitted to Bell Atlantic New Jersey. Additionally, the data reveals a surprising disparity in the time it took to process live orders as opposed to test orders. (See Attachment 1 B of Sampson prefiled testimony). Four unbundled network element FOC notices were received in 4 hours 21 minutes while live orders took 14 hours and 5 minutes. (Id. at 37). The above is just one example of the limitations of Bell Atlantic New Jersey's current ordering system which have delayed competition. Mr. Sampson provides more examples. (Id. at 38-39).

Maintenance and Trouble Reporting

Bell Atlantic New Jersey breaks down maintenance and repair processing into two separate components, trouble reporting (front end system) and trouble resolution (back end system). Both CLEC trouble reports and Bell Atlantic New Jersey retail trouble reports, according to Mr. Miller of Bell Atlantic New Jersey, are resolved using the same back end systems. (Miller prefiled testimony at 7).

CLECs have the option however, of submitting trouble reports electronically using either the ECG (pre-ordering) system or through the Open System Interconnection which is the industry standard also known as the "Electronic Bonding" system, which is a data protocol. Electronic Bonding is a framework of standards that allows automatic communication between different systems made by different vendors. Bell Atlantic offers industry standard Electronic Bonding Open System Interconnection ("EB-OSI") to access customers for the submission of trouble reports and has held meetings with MCI to discuss EB-OSI for the submission of local trouble reports. However, Miller reported that in 1997 fewer than 300 trouble reports were received using the EDI and most were submitted manually. (Id. at 7-8).

Bell Atlantic New Jersey currently uses its ECG proprietary interface for the maintenance and repair function. Since this is the same ECG used in the pre-ordering function Mr. Sampson states that the same deficiencies apply here. EB-OSI is the industry standard, and it is currently offered on the access side, but Bell Atlantic New Jersey has not indicated whether it will adapt the interface for local service. (Sampson prefiled testimony at 40).

Billing

Bell Atlantic New Jersey employs the industry standard Billing Output Specification ("BOS") Version 28 for billing information. Billing information is available to CLECs in BOS format by a variety of means, including the Network Data Movers ("NDM"), a data transfer mover similar to E-mail, CD-ROM or magnetic tape, all at the carrier's option. (Miller prefiled testimony at 8). According to Mr. Miller, billing information is delivered in a timely fashion. In December the company reported that 99% of usage data was provided to CLECs within three business days and

100% of wholesale bills within ten business days. (Ibid.).

At this point in time MCI's experience with Bell Atlantic New Jersey's billing system only involves resale and meet point billing. MCI gets daily billing information via the NDM which provides all the information necessary for MCI to bill its customers. For meet point billing, MCI receives a magnetic tape from Bell Atlantic New Jersey which allows it to bill its customers. MCI has requested automated connectivity via the NDM. To date, Bell Atlantic New Jersey has not provided a contact to get this request underway. (Sampson prefiled testimony at 43).

In addition, MCI has experienced several billing problems with Bell Atlantic New Jersey. Until recently MCI has been unable to bill interexchange carriers for access because Bell Atlantic New Jersey's system did not possess the ability to track such data resulting in the loss of access revenue to MCI. Additionally, MCI has experienced numerous billing problems when resale customers migrate to MCI, but still receive a bill from Bell Atlantic New Jersey resulting in double billing of the customer. Mr. Sampson believes that this is just another example of the failure of Bell Atlantic New Jersey's systems which are not yet ready to support local competition. (Id. at 44). Mr. Sampson concluded that carriers must have automated, efficient well-tested and functioning systems and processes. Without such systems in place competition will be slow to develop. (Id. at 46).

Regionalization

Both AT&T and Bell Atlantic New Jersey view OSS in a regional rather than in a state by state jurisdictional manner. "We have conducted tests in different states. I think one point I need to make is the location almost doesn't matter. Even Bell Atlantic concedes in its testimony its interfaces are the same throughout it's Southern States." (Langhauser TR. at 266, L 3-11). President

Tate observed that AT&T has a "region-wide negotiating process, a process that isn't state specific" (Ibid. at 291, L 20-22). To which AT&T responded, "[w]e negotiate region-wide, but when we need regulatory intervention we have to do it on a state specific basis." (Ibid. at 292, L 8-11). Further, AT&T testified "basically we have the same issues in every state" (Ibid. at 293, L 7-8) and "[r]ight now we have to go to every individual state and ask for help." (Ibid. at 293, L 22-23). President Tate also inquired of AT&T, "do you envision a region-wide system that is multi state where you process these orders; in other words, if you had it your way with the customer contact and the interface, is this a regional center or is this one that's in each and every state?" AT&T responded that "AT&T would envision a regional center. If we were in multiple states in the Mid Atlantic Region." (OSS Panel at 710, L 18-25; 711, L 2-4).

Bell Atlantic New Jersey commented on its OSS strategy, in part, as "a common means of access to OSS" (Miller, TR. at 661, L 6-7) and "the common interface we have put in place." (Ibid., TR. at 670, L 10-11). Further, "we have spent the resources to make our systems talk in one common language" (Ibid., TR. at 670, L 12-14). Finally, Bell Atlantic New Jersey stated definitively "Bell Atlantic has committed that it will offer uniform interfaces throughout the post-merger Bell Atlantic region by November 15, 1998." (Testimony of Stuart Miller at 9, L 3-5).

Testing, Training and Assistance

Mr. Miller testified that Bell Atlantic has provided specifications for each of its interfaces and has provided all the necessary business rules, including the ordering codes needed to submit orders to Bell Atlantic. Bell Atlantic has scheduled approximately 20 additional CLEC training sessions for 1998. In addition, Bell Atlantic stated that it provides on-going support to CLECs on

an as-needed basis. (Miller prefiled testimony at 9).

Bell Atlantic indicated that it has conducted a number of carrier-to-carrier tests of its systems to ensure that they are capable of performing as designed. Witness Albert discussed these tests in his testimony. (Albert prefiled testimony at 13). However, in addition to these tests, BA contracted with Coopers & Lybrand, L.L.P. to monitor an extensive high volume test of its pre-ordering, ordering and provisioning systems. (Miller prefiled testimony at 10).

Based upon the test results, Bell Atlantic concluded that its OSS interfaces are capable of handling volumes that are several times higher than the current level of demand. No audited test data were included with Mr. Miller's testimony to support this claim. In response to a question posed by Commissioner Armenti, Mr. Miller testified that Bell Atlantic New Jersey was then processing approximately 100 orders a day. (TR. Vol. at 604).

Ryan Clark, for MCI, provided testimony on the results of MCI's testing of Bell Atlantic's provisioning of local exchange service. MCI indicated that it is vital to test Bell Atlantic's ability to process orders and provision local service to determine if service delivery methods are capable of providing service through CLECs. According to Mr. Clark, MCI is testing or has tested the service delivery methods of resale, recombined elements and unbundled network elements. (Clark prefiled testimony at 2). The goal of the testing program was to uncover any difficulties with the processes and to work to fix the problems prior to any roll out of a particular type of service. Overall MCI has not been satisfied with the test results. Many problems uncovered during early testing remain despite efforts to address the issues with Bell Atlantic New Jersey employees and despite Bell Atlantic's commitment to fix the problems. The problems found were late or omitted FOCs,

installation intervals, customer service and poor quality service order processing. According to Mr. Clark, since July of 1997, MCI has communicated these problems through an escalation process with Bell Atlantic New Jersey but they are yet to be resolved. (Id. at 7).

Supplemental testimony on testing

Mr. Kirchberger filed supplemental testimony on April 3, 1998 to address matters presented in the testimony of Stuart McIntosh, submitted March 25, 1998 on behalf of Bell Atlantic New Jersey. Mr. Kirchberger stated that the C&L report does not establish that Bell Atlantic New Jersey's OSS are operationally ready for CLEC use. The C&L report that is the subject of Mr. McIntosh's testimony fails to assess critical aspects of Bell Atlantic New Jersey's OSS performance, including: (1) the quality and timeliness of all OSS; (2) the capabilities of Bell Atlantic New Jersey's OSS Legacy systems; and (3) Bell Atlantic New Jersey's lack of a change control process. (Kirchberger Supplemental testimony at 3). Mr. Kirchberger emphasized that, notwithstanding the claims made with regard to the Bell Atlantic New Jersey's OSS ability to handle large volumes, Mr. McIntosh found that Bell Atlantic New Jersey does not consistently meet its own performance targets for order processing and must manually process 25% to 30% of all orders submitted. Furthermore, according to Mr. Kirchberger, with the limited information available on these tests, it appears that Bell Atlantic New Jersey's self-test relied predominantly on sending computer generated orders as opposed to sending orders for actual working lines and thus did not mirror the way in which CLECs must actually use the interfaces and OSS. (Id. at 4).

Mr. Kirchberger commented that the C&L test was narrowly focused on 1998 forecasts only and did not test for other OSS such as maintenance and repair or billing, Further Mr. Kirchberger

stated that no consideration was given to accuracy or timeliness. Finally, the lack of detail in the C&L study makes it impossible to verify C&L's processes and analysis, especially since the test plan used was not provided to affected parties. (Id. at 6). Mr. Kirchberger testified that the Bell Atlantic New Jersey self test does not reflect the fact that proper provisioning of unbundled network elements is critical to local competition. Mr. Kirchberger went on to say that the C&L test does not establish that orders for unbundled elements can be handled at commercial volumes. The test, according to Mr. Kirchberger, shows that fewer than 200,000 orders could be provisioned annually in the entire Bell Atlantic South region. According to Mr. Kirchberger, Bell Atlantic New Jersey's annual new line growth alone is greater than 200,000 new lines. As result, local competition will not develop with such capacity constraints of Bell Atlantic New Jersey's OSS. (Id. at 12).

CHAPTER 7

POSITIONS OF THE PARTIES

Unbundled Network Elements

During the prefiling and hearing phases of this investigation, various commentators raised the issue of the availability of unbundled network elements in a combined form and Bell Atlantic New Jersey's requirement to collocate in each and every end office to access and combine elements. In addition, Bell Atlantic New Jersey witnesses defended their positions and policies regarding collocation and the provision of the platform. Below is an analysis of the positions of each of the parties who addressed these issues, specifically AT&T, TCG, MCI, Lightpath, Sprint CLEC, and Bell Atlantic New Jersey.

AT&T's position is that the UNE platform is the only effective way for CLECs to offer competitive telecommunications services to a broad range of customers, especially residential and small business customers. (Falcone Prefiled Testimony at 3). AT&T also strongly objects to notification it received from Bell Atlantic New Jersey that Bell Atlantic New Jersey intends to rip apart physically elements that are already combined, require AT&T to order the same elements individually, and then require AT&T to collocate facilities in each and every Bell Atlantic New Jersey central office so that AT&T can recombine the elements itself. (Id. at 5). According to Mr. Falcone, Bell Atlantic New Jersey's policy of requiring AT&T to collocate and recombine network elements itself creates four serious obstacles to competition:

(a) it requires that the customer's line be taken completely out of service and creates a

substantial risk of an extended outage;

(b) it will prevent CLECs from using the loop/switch combination: (1) to service any customers soon; (2) to ever serve significant numbers of customers; and (3) to serve some customers (e.g., those on IDLC) at all;

(c) it will impose service provisioning and quality standards on CLEC customers that are inferior to what Bell Atlantic New Jersey customers receive; and

(d) it will impose excessive and entirely unnecessary costs that would alone effectively foreclose competition via loop/switch combinations for most, if not all customers. (Id. at 17).

During his oral testimony, Mr. Falcone summarized other major concerns that were raised in his prefiled testimony. Specifically, the platform allows CLECs to compete on a more level playing field, but not without greater cost, risk and return. AT&T is willing to subject itself to that risk and that cost to avail itself of those additional revenue opportunities. (TR. Vol. 1, at 130). Since the Eighth Circuit decision is currently under appeal, Bell Atlantic New Jersey is obligated by the terms of the interconnection agreement to leave the network elements combined and not engage in "spiteful pulling apart" simply to have somebody come behind them to put them back together again. The terms of the agreement also state that should there be a change in law, the parties will negotiate what is going to be required as a result of that change.

Mr. Falcone continued to attack Bell Atlantic New Jersey's policy requiring AT&T to collocate in each Bell Atlantic New Jersey central office, maintaining that the policy also imposes delays and costs that will make it impossible for CLECs to serve customers. It will take AT&T

between 11 and 14 months just to establish the collocation space it needs before it can even begin competing. Secondly, Bell Atlantic's policy creates unnecessary customer outage for the CLECs. (Id. at 141). In concluding his opening remarks Mr. Falcone stated the only thing that Bell Atlantic's policy does is effectively keep competition out while allowing Bell Atlantic New Jersey to maintain their monopoly position.

Upon questioning by Commissioner Armenti, Mr. Falcone stated, "I'll go on record to say no platform, no competition on a meaningful scale. There is no way that anybody could build the infrastructure; resale is a loser, we've made that clear, our Company has made it clear, MCI has made it clear. It's a fool's errand. We're not going to go down the resale road." (Id. at 193). Pursuant to a question from President Tate regarding which issue is of the most importance for competition, Mr. Falcone stated, "collocation stops the show. That's . . . [the] number one issue." (Id. at 198). Mr. Falcone continued, "this is a show stopper, non-starter, party's over." (Id. at 199).

John J. Langhauser of AT&T, responded to Commissioner Armenti that to do the job, the big three issues need to be resolved. Right after the arbitration, there were rates; they weren't our rates, but they were workable. We had negotiated the platform with Bell Atlantic. We had two out of the three. The only thing we had missing were the OSS. But then the rates changed in July and then the Eighth Circuit acted in September and, unfortunately, right now we are sitting there, and we have gone from having two out of three to having none of the three. (TR, Vol. 2, at 277).

MCI policy witness, Chet Kudtarkar, prefiled testimony regarding the pricing and provisioning of UNEs and stated that: "Using combined network elements to serve residential markets would be attractive to MCI if the pricing of UNE's allowed this service delivery method to

be profitable and the combined elements could be provisioned in a timely manner and in their already combined state. Provision of combined UNE's could allow for wide-scale residential competition in the relatively near future if they were made available by Bell Atlantic." (Kudtarkar prefiled testimony at 3).

MCI went on to suggest that Bell Atlantic New Jersey's refusal to provide combined UNEs, except when requiring collocation, is extreme. In contrast, if combined UNEs were provided without a collocation requirement and if UNE prices were set at cost, combined UNEs could be used to provide wide-scale competition. (Ibid.). However, even if MCI is to use its own switch but needs to purchase the loop from Bell Atlantic, it becomes unprofitable for MCI to serve the customer based on the loop rates set by the Board. (Id. at 4).

Bell Atlantic has estimated the cost of a typical collocation at $78,000. To make the collocation arrangement operational will require installation of additional equipment by MCI, resulting in an overall investment by MCI of $200,000 per location. ($130,000 of MCI equipment and $70,000 collocation costs). Given more than 200 central offices in the state, MCI would need to spend $40 million dollars just to be able to serve all customers through UNE combinations. (Id. at 3).

At the hearings, President Tate posed a hypothetical scenario to Mr. Kudtarkar as follows: "If the Board of Public Utilities [were] able to lower the loop rate to what MCI requested, $10.40, drop access fees to 0.4 cents, and to deliver non-recurring charges in the way that you would think they would be the most fair, would MCI be able to compete for residential customers if collocation [were] still prescribed the way it's been by Bell Atlantic and given the current state of OSS,

Operational Support Systems?" (TR. Vol. 3 at 399). Mr. Kudtarkar responded that it would still leave the issue of the combination of elements and the needless efforts required to connect those and create points of failure that would affect our end user customer, and then that would further dovetail into some of the operational issues and the process issues. (Id. at 400).

Continuing, President Tate restated the scenario if the loop rates were dropped to $10.40, access fees were down to 0.4 cents, and non-recurring charges were altered to a level that MCI viewed as fair, could MCI live with collocation? Mr. Kudtarkar responded that it's certainly worth considering and I think we can take a close look at that and see if that can work for us. "I can tell you that the entry into the market using such a strategy would take a long time because we still have to go ahead and make the $40 million investment, and it takes Bell Atlantic a long time to deliver those collocations to us." (Id. at 402). In concluding his response, Mr. Kudtarkar agreed with President Tate that MCI could not begin to mass market to residential customers if the Board reduced loop rates, reduced access charges and altered non-recurring charges until the resolution of physical collocation and OSS issues. (Ibid.).

While Sprint CLEC did not prefile testimony, its responses to the Board's questions posed in the Pre-hearing Order addressed the issue of unbundled network elements. According to Sprint, the current set of circumstances renders utilization of UNEs in the provision of competitive local exchange service both economically inefficient and commercially problematic. (Responses to Pre-hearing Order, p. 2) (TR, Vol. 5, at 992).

Continuing on this topic during hearings, Mr. Prohoniak of Sprint CLEC, stated that the Board should address three significant areas to jump start local competition in the State. "Those

three items are as follows, and they're listed in order of importance: number one, adopt a policy which requires Bell Atlantic New Jersey to furnish an unbundled network element platform or UNE-P to CLECs. Number two, adopt a requirement for Bell Atlantic New Jersey to provide CLECs non-discriminatory electronic operational support systems at parity with those that Bell Atlantic New Jersey uses itself. Number three, implement a set of performance measurement standards to monitor and which requires Bell Atlantic New Jersey to report monthly on the quality of service, which it delivers to CLECs versus its own internal performance." (Id. at 996).

Upon questioning regarding the price of unbundled elements as a critical point, Mr. Prohoniak responded: "more important to us, we feel, is that the UNE-P, that is being able to package the unbundled network elements that are out there today into a package without collocation, without the $78,000 per end office collocation expense that was referenced this morning, and without any kind of re-gluing charges that the ILECs like to throw in there, we believe that if you were to take the existing UNE prices in Bell Atlantic's territory, require UNE-P, Sprint believes that would significantly change the economics in the marketplace to at least give us a chance to come in and start competing." (Id. at 1001).

Leo Maese, the Director of Regulatory Planning for Lightpath stated that his company's biggest impediment to market entry is the access to elements, whether it be interconnection or dealing with the incumbent company. (TR. Vol. 3, at 525).

Regarding the issue of UNE prices and the availability of the UNE platform on the effect of competition in New Jersey, Colleen McCloskey of Bell Atlantic New Jersey, presented the opposing viewpoint from the previous witnesses. Bell Atlantic New Jersey argued that the economics that

favor competition in the business market over the residential market do not change if the UNE rates and access rates are reduced or if the wholesale discount is greatly increased by using rebundled UNEs as just another form of resale. (TR. Vol. 5, at 850).

According to Bell Atlantic New Jersey, the only certain way to ensure the full development of local competition for both residential and business customers is to facilitate its entry into long distance. Once that occurs, the long distance company will be driven to compete for every consumer to protect and grow their share of each customer's overall telecommunications budget. (Id. at 851). "Further, regarding the Board's ability to order, under state law, the incumbent carrier to provide the platform, is not the intent of the Telco Act and the Eighth Circuit Decision, which is the law of the land. It is a policy that's been made by Congress. We briefed this issue to the Board in the two complaints that are already before you . . . you will find not one mention of rebundling in the law and the Court has also made it crystal clear that any regulatory requirement to rebundle would be inconsistent with Congressional intent and, therefore, not permitted." (Id. at 855).

Regarding the interconnection agreements with AT&T and MCI, Ms. McCloskey stated, "the agreements did say that we could do rebundling, but they also said that we would do so only, and I quote 'in accordance with the applicable law.'" That phrase 'applicable law' did not find its way onto the page by some mere coincidence. At the very time that these agreements were being negotiated, this entire issue of platform resale was up on appeal at the Eighth Circuit Court. We directly and specifically talked to the parties about our unwillingness to do the platform unless the FCC rules were upheld in the Court. They were not." Ibid.

Upon questioning of then President Len Lauer of Bell Atlantic New Jersey, President Tate

requested an overview of a recent agreement reached by Bell Atlantic New York and the New York Public Service Commission. Mr. Lauer stated the agreement is the result of a lot of work between Bell Atlantic New York and the Commission and a number of CLECs. On the combination of the unbundled network elements where Bell Atlantic is agreeing to go forward and recombine network elements, it is done on a different basis depending on where the marketplace is. For example, we have agreed to do it for all residential customers in the State of New York without a charge, a rebundling charge. We have agreed to do it for business customers not in the New York City area, I don't know if that includes the five Boroughs. The rebundling is not required there because over 20 percent of the business market is competitive. So it didn't think there was a need to do this and based on this, we agreed, as you know, they have two different zones where they came out with their pricing, an urban zone and a suburban zone. We agreed to rebundle for business customers at a charge in zone one for a period of four years and in zone two, in the rural area, for six years. And there are charges for doing this. And it sunsets after that. (Id. at 900).

William Deatherage of Bear, Stearns addressed various issues on behalf of Bell Atlantic New Jersey. Mr. Deatherage believes the UNE-P works best, (a) in the business market and (b) in the high end residential market. Total Service Resale ("TSR"), Mr. Deatherage argued, is still really the only option in the mid-part to the lower-part of the residential market. Mr. Deatherage stated there are really only two ways to go after residential customers. One is TSR and in places where it may become available, the UNE-P platform. (Id. at 944). Mr. Deatherage further qualified this statement by explaining the use of the UNE-P is an alternative and, to the extent, the big long distance carriers will make investment in facilities, they will make them probably in states that don't make the UNE-P

available. (Id. at 946). Continuing, Mr Deatherage stated that "when there is an attempt to create competition artificially which I believe is the foundation for the UNE-P, you throw the potential competitors into further disarray."

Upon questioning by Mr. Gallagher regarding which scenarios investors would consider appropriate investment opportunities, Mr. Deatherage responded "if you had the option of both TSR and UNE-P and you would move customers back and forth between them at will, that is clearly preferred to only having a TSR option or only having a UNE-P option. There are cases where you're worse off with UNE-P for typical types of residential customers than you are with TSR." So the best of all worlds is to have both options available, look at the profile of the customer and pick the optimum. (Id. at 969). Regarding TSR, on a stand alone basis, Mr. Deatherage testified that "it's an overstatement to say that any significant number of customers would be profitable on a TSR basis because the modeling tends to come up in around that zero to $3.00 range per month loss." (Id. at 972).