

CHAPTER 8

POSITIONS OF THE PARTIES

Technical Issues

Access to 9-1-1

According to AT&T, during tests in Maryland, Bell Atlantic caused customers names and addresses to be deleted from the 9-1-1 data base when customers were switched to AT&T using unbundled network elements (UNEs). (TR. Vol. 1 at 221, L-24; at 222, L-4). Bell Atlantic New Jersey's witness, Mr. Albert in his testimony (Albert prefiled testimony at 1, L 17-22), maintained that Bell Atlantic New Jersey has taken all the required technical and operational actions to comply with the Telecommunications Act of 1996 as well as other commitments to the FCC as part of the merger with the former NYNEX companies. Bell Atlantic New Jersey maintained it has already provided, among other things; interconnection of CLEC facilities which includes installation of over 14,000 interconnection trunks for six competing carriers and has also provided interconnection to Enhanced 9-1-1 services for five CLECs. (*Id.* at 2, L 6-7). AT&T's witness later states that, "... Bell's President now says it doesn't delete customer data from the [9-1-1] database. ..." (Langhauser, TR. Vol. 1 at 222, L 16-19). Bell Atlantic New Jersey witness Albert states that "the interconnection provided by Bell Atlantic New Jersey is equal in quality to that provided to other carriers and to itself and its affiliates." (Albert prefiled testimony at 4, L 1-2).

According to Bell Atlantic New Jersey, during testing conducted in Maryland of the UNE platform a few glitches were encountered affecting records used in the test. (TR. Vol. 1 at 221, L

17; at 222, L 2-22). A process was being developed that would always leave those records in place but it didn't work completely. According to Bell Atlantic New Jersey, the process has been corrected.

AT&T witness, Mr. Langhauser claimed that Bell Atlantic New Jersey procedures for 9-1-1 information updating have been burdensome and unnecessary, and that attempts to resolve these problems using a third party vendor pose a greater risk of loss of customers' data and increased expense to AT&T. (Langhauser prefiled testimony at 32-33).

ITS witness Richard Garrigan stated that access to 9-1-1 can be a problem for ITS customers (Garrigan prefiled Testimony at 7, L 23-29 and TR. Vol. 3 at 482, L 8; at 483, L 2-4). ITS orders access lines in advance and would have to pay a \$26 charge for updating a record once a customer moves into an apartment because when ordering the line, ITS does not know the apartment number and won't know until the customer moves in. ITS does not do this to avoid the charge and the 9-1-1 system is not updated to show the apartment. (Ibid.).

An additional 9-1-1 concern was raised by TCG witness Kouroupas, who suggested that Bell Atlantic is unable to provide non-discriminatory access to 9-1-1 for callers who dial "0" in an emergency situation instead of dialing 9-1-1. According to TCG, Bell Atlantic New Jersey customers dialing "0" in an emergency can be connected to the 9-1-1 network with a one button transfer function. (Kouroupas prefiled testimony at 16, L 7-10). TCG, which has contracted with Bell Atlantic New Jersey for operator services, cannot get the same one button transfer capability for TCG customers and therefore believes its access to 9-1-1 is discriminatory. TCG acknowledged, however, that it has investigated and found that Bell could not provide this function and that Bell

Atlantic New Jersey is working on a software solution. (Id. L 10-12).

Number Portability

According to AT&T, Bell Atlantic New Jersey is refusing to port fewer than 20 numbers at a time. (Langhauser prefiled testimony at 16, L 24-25 and TR. Vol. 2 at 281, L 24; at 283, L 2-8). AT&T suggested that when an order is sent to Bell Atlantic to port numbers, Bell Atlantic New Jersey will only accept the order in twenty number blocks. The problem is, that when there is an order for a residential customer, for example, AT&T would have to wait for nineteen more before porting that one.

Bell Atlantic New Jersey witness Albert stated in his testimony that "Bell Atlantic New Jersey offers local number portability on an interim basis through Remote Call Forwarding or Direct Inward Dial Trunks ("Flex-DID") if requested by a competing carrier, or through full NXX code migration when a customer that uses all of an NXX moves from one carrier to another." (Albert prefiled testimony at 5, L 7-10). According to Bell Atlantic New Jersey, the twenty number requirement mentioned by AT&T only applies to Private Branch Exchange Direct Inward Dial ("PBX-DID") numbers. Those numbers are used exclusively for business customers. Bell Atlantic New Jersey has systems limitations and their tariffs prevent the assignments of DID numbers for business customers in blocks that are less than twenty. Bell Atlantic New Jersey does accept individual porting requests for residential and business lines one at a time. (Albert, TR. 1023).

MCI witness Martinez indicated that MCI has had difficulty in coordinating number portability with Bell Atlantic New Jersey. (Martinez prefiled testimony at 6-7). This witness, while giving an example of a problem with INP lines, gives an example of problems incurred by an

existing customers, not a new customer, the area in which MCI claims to have problems. (Id.).

Operator and Directory Assistance Call Routing using Specialized Routing Nodes

According to AT&T, the basic method Bell Atlantic was going to use to route operator and directory assistance (i.e., "0" and "411") calls was Advanced Intelligent Network ("AIN") services. However, for some types of calls and some switches it may be necessary to install a specialized routing node. It has been found since then that the specialized routing node is not always needed. Yet, pricing is still being set as if the node is being used. (Langhauser, TR. Vol. 2 at 285. L 21-25).

Pole and Conduit Attachments

Attachment to poles and supporting structures is arduous and slow according to TCG. (Testimony at 14, L 1-15 and TR. Vol. 3 at 320, L 4-25). "TCG estimates that its network extensions have been delayed by Bell Atlantic New Jersey for an extra three to six months." (Kouroupas prefiled testimony at 14, L 17-18). A long "make-ready" or installation period can cause loss of business to competitors. If it takes too long, a potential CLEC customer would have the alternative to go to another service provider. Bell Atlantic New Jersey witness Mr. Albert asserted that Bell Atlantic New Jersey provides "non-discriminatory access . . . at just and reasonable rates as required by the Act." (Albert prefiled testimony at 8, L 13-20).

According to Bell Atlantic New Jersey, the process for pole attachments and conduit leasing occurs in two phases; the application phase and the make ready phase. The application phase takes 45 days and involves essentially a field survey of the desired route facilities to determine what is available and what additions or make ready work is required for the competing carrier to be able to attach to a pole or enter a conduit. A cost estimate is then provided to the CLEC for Bell Atlantic

New Jersey's make ready work. (Albert, TR. Vol. 5 at 1056, L 15-17). At that point, the requesting carrier can request the work be done or explore other options. If the carrier requests that the work be done, then the actual plant make ready work phase begins, and Bell Atlantic New Jersey coordinates as required with the power and cable TV firms that may also be on the poles or in the conduit. According to Bell Atlantic New Jersey, the scheduling of construction crews to do the make ready work for the CLEC is done using the same process as for Bell Atlantic New Jersey's own work. (TR. Vol. 5 at 1056, L 2-10). In sum, a pole attachment request takes 45 days to process plus the time it takes construction crews to make the plant physically ready for use by the CLEC. Upon completion of the make ready phase, the CLEC will begin installation of its cable plant using Bell Atlantic New Jersey poles and/or conduit. This process is similar to that used for cable TV company requests to attach to Bell Atlantic New Jersey poles.

Reciprocal Compensation For Internet Service Provider Traffic

MCI stated that Bell Atlantic New Jersey is required by the Act to pay reciprocal compensation for transport and termination of traffic on MCI's local network. However, Bell Atlantic New Jersey refuses to pay local interconnection charges for traffic terminating to Internet Service Providers ("ISPs") insisting that the reciprocal compensation requirement does not apply to such traffic. Bell Atlantic New Jersey bases this refusal on its contention that calls to ISPs are interstate in nature, because the Internet connects with sites located in other states and even other countries. According to MCI, Bell Atlantic New Jersey is incorrect, that traffic terminating to ISPs is not local. Although Internet traffic carried over the provider's Internet network might indeed cross the country or the world, the call from the end user to the provider is generally a local call. The

customer is not calling a number in another state or country, but rather a number in the same local calling area. That is local traffic, regardless of what the ISP does with the call after it receives it. MCI concluded that Bell Atlantic New Jersey is violating the Telecommunications Act so long as it continues to withhold the proper compensation due to MCI for transport and termination of traffic to ISPs. (Martinez prefiled testimony at 12-13).

TCG makes a similar complaint and argued that Bell Atlantic New Jersey is violating its Interconnection Agreement by refusing to pay such compensation. (Kouroupas prefiled testimony at 12, L 7-16). In describing this behavior by Bell Atlantic New Jersey as one of many obstacles to competition empaled by ILECs, Mr. Kouroupas stated the problem as follows:

"One of the more recent episodes which is particularly troublesome and has not yet come to the attention of the Board as TCG has been operating as a Local Exchange Carrier, one of the customer classes that we have been successful in competing for are the Internet Service providers, a very rapidly growing business segment of the marketplace, which for whatever reasons desire to take service from TCG and other CLECs rather than Bell Atlantic. The result is that a lot of Bell Atlantic customers are placing calls to TCG customers using these Internet Service providers creating an imbalance of traffic, sort of contrary to what the conventional wisdom was a year ago, two years ago, when we were arbitrating our reciprocal compensation arrangements so that Bell Atlantic is now faced with having to pay large sums of money to CLECs for the transport and termination of traffic. Bell Atlantic unilaterally elected to withhold all payments for that traffic and reinterpret the

interconnection agreement and has held TCG's money hostage for over 15 months now and refused to pay us. Now the problem with that, aside from the obvious, is that it robs us of cash flow which is necessary to continue our investment in the state." (TR. Vol. 3, at 318, L 12-25; at 319, L 2-20).

Mr. Kouroupas confirmed that the calls in question are local calls by stating customers dial a "seven-digit local call billed by Bell Atlantic as a standard call." (*Ibid.* at 355, L 9-11).

In response to the Board's Prehearing Order, question 13, Hyperion Telecommunications of N.J. made a similar argument stating that Bell Atlantic has unilaterally (and without support) taken the position recently that traffic terminated to ISPs is not subject to the reciprocal compensation obligation of the 1996 Act and the FCC's rules and has threatened to withhold payment of reciprocal compensation of these calls. The New York, Maryland, and Virginia public utility commissions have already considered this issue and have each ordered Bell Atlantic to pay reciprocal compensation for ISP traffic.

Public Rights-of-Way

Three parties, Hyperion, RCN and TCG, have raised the issue of access to the public rights-of-way as a barrier to local market entry. According to Hyperion and RCN, the Board must address the unreasonable regulatory and financial burdens imposed on new entrants in New Jersey through franchise requirements and rates charged for the use of public rights-of-way. Without Board intervention, franchise requirements such as excessive or discriminatory fees, duplicative regulation, or required waivers of rights and remedies will undoubtedly thwart and may even prohibit the ability of new entrants to enter the local exchange market. If true local competition is to develop, the Board

must promulgate rules definitively addressing the rights of new entrants with respect to building access. Specifically, the Board must expressly clarify that Section 224(f)(1) of the 1996 Act includes the right to non-discriminatory private building access. Until building owners allow competitive carriers into buildings on the same terms and conditions afforded incumbent providers, ubiquitous local competition cannot and will not develop. (Livengood prefiled testimony at 13, L 16-31; Kahl prefiled testimony at 12, L 15-29).

Similarly, TCG argues that this issue creates an additional barrier to entry. TCG suggests that it has encountered numerous difficulties obtaining access to public rights of way. While municipalities do have the right to manage their public rights of way, the Telecommunications Act of 1996 prohibits municipalities from discriminating among carriers. TCG states, however, that is precisely what many municipalities do. TCG has encountered many instances where municipalities attempt to extract compensation from CLECs far beyond what is necessary to reimburse the municipality for its efforts in managing the rights of way. According to TCG, it is not uncommon for a municipality to seek to extract 3% of a carrier's revenue in exchange for use of the public right of way, yet these same municipalities do not seek similar compensation from the largest occupant of their rights of way -- the ILEC, which enjoys advantageous legacy agreements. (Kouroupas prefiled testimony at 22, L 7-17). TCG therefore concludes that the municipalities impose a "tax" on CLECs which the ILECs do not face. This makes it extremely difficult to remain price competitive with the ILEC. (*Id.* at 23, L 1-2).

TCG goes on to argue that, just as municipalities delay TCG's ability to deploy its infrastructure (and sometimes effectively prohibit it), landlords and building owners oftentimes

obstruct TCG. Many landlords and building owners prevent TCG from gaining access to consumers resident in the building unless TCG agrees to pay some sort of fee similar to what the municipalities seek from TCG. Again, TCG suggests that Bell Atlantic New Jersey does not pay a similar fee. (*Id.* at 23, L 17-20; at 24, L 1-2). TCG recommends that the Board support state legislation which would prohibit municipalities, landlords, and building owners from discriminating between CLECs and ILECs. (*Id.* at 25, L 14-15).

CHAPTER 9
POSITIONS OF THE PARTIES

Pricing Issues

According to AT&T, the UNE rates set by the Board in the Local Order are not forward-looking economic cost-based rates and they constitute a barrier to entry. In contrast, the AT&T/Bell Atlantic New Jersey arbitrator established rates based on forward-looking economic costs. A comparison of the two sets of rates for critical UNEs illustrates the negative impact of the Board's decision, which was to force AT&T to pay substantially more to use UNEs than it otherwise should and would have. (Moska prefiled testimony at 21).

Attached to the testimony of witness Mosca (as Exhibit 2) are three charts that set forth the costs to serve residential customers using UNEs and a revenue profile that AT&T believes is representative of revenues received from existing customers. These charts show not one of the three density zones currently provides a reasonable business opportunity for a CLEC desiring to enter the local market. This analysis only considered non-recurring costs ("NRCs"). The impact of the NRCs on any CLEC business plans is substantial. AT&T argues that the NRCs are unreasonably high and are not based on forward-looking economic costs, and that they create another barrier to entry.

In considering whether or not it is economically prudent to enter the local market, a carrier must take into account all costs that will be incurred and that need to be recovered, according to AT&T. For UNEs, this means that three categories of costs must be analyzed: (1) monthly recurring rates for each element; (2) one-time charges or NRCs associated with each element; and (3) retail

costs. The first two costs are imposed by Bell Atlantic New Jersey and must be forward-looking economic cost-based rates. If either set of costs is not properly cost-based then the CLEC is at a competitive disadvantage. (*Id.* at 22).

According to AT&T, the one-time costs that Bell Atlantic New Jersey charges and that the Board ordered, are substantial, costing AT&T approximately \$45 for a single change in the customer record from Bell Atlantic New Jersey to AT&T. AT&T suggests that one of the consequences of this is that it will take longer for AT&T or other CLECs to recover their costs and there is great uncertainty as to how much turnover or churn there will be in the local market. If customers change carriers frequently, these one-time costs will never be fully recovered according to AT&T. (*Id.* at 23).

In setting the NRCs the Board adopted Bell Atlantic New Jersey's cost model and refused to consider any of the well-founded criticisms and adjustments to Bell Atlantic New Jersey's proposed NRC's provided by other parties, according to Mr. Moska. The analysis of the Bell Atlantic New Jersey cost model established that the forward-looking economic cost of performing the applicable functions was many times less than what Bell Atlantic New Jersey sought to impose. By ignoring relevant analysis according to AT&T, the Board acted in a manner that was detrimental to competition since it now imposes costs on new entrants that Bell Atlantic-New Jersey does not incur. (*Ibid.*).

A second AT&T witness, John Lynott submitted written testimony that, as he described, is to help this Board understand why the non-recurring charges in New Jersey are too high, why they are a barrier to entry for CLECs' entering the local market, and what the proper methodology should

be for determining the forward-looking economic cost-based NRC rates. (Lynott prefiled testimony at 2-3). The testimony contains what are described as the results of an AT&T/MCI non-recurring cost model however, the model itself was not submitted. More importantly the model was not made available to parties or the Board Staff for analysis of its assumptions and cost methods. The witness believes that the prices for NRCs developed by the AT&T/MCI Non-Recurring Cost Model appropriately use forward-looking technologies and efficient OSS process to produce cost based rates. The comparison of rates produced by the AT&T model to the rates proposed by Bell Atlantic-New Jersey and approved by the Board show a significant discrepancy. It's therefore AT&T's conclusion that the Bell Atlantic New Jersey rates are excessive and serve to prohibit local competition in this state. (Id. at 15).

Finally, AT&T has suggested that the current residential local exchange rate in New Jersey -- on average \$7.85 with Bell Atlantic New Jersey's highest flat rate of \$8.19 -- is an "inhibitor" to competition. (TR. Vol. 1 at 68, L 17-23). This conclusion is based on the fact that AT&T's analysis of local revenues does not, according to AT&T, cover local expenses. Therefore profitable entry is not possible.

MCI, the second largest inter-exchange carrier ("IXC") and an authorized CLEC in New Jersey makes similar arguments suggesting that the reasons for the lack of wide-scale local competition in New Jersey, particularly in the residential market, is that the service delivery methods available in New Jersey are unprofitable, based on the rates established by the Board last December. MCI wants to market local service offerings in the state but current pricing structures prevent a broad market entry strategy. Unbundled network element prices (both recurring and non-recurring)

produce costs for competitors that are higher than the revenue competitors can expect to receive for the complete service. Until these issues are resolved, competition will not develop at a rapid pace across the state, according to MCI. (Kudtarkar prefiled testimony at 1).

While the intent of resale is to allow MCI to build up a customer base before expending the dollars for facilities, MCI states that it cannot afford to enter the resale market. As a result, MCI has announced that it will no longer pursue a resale strategy. (*Id.* at 2). Under resale MCI contended that the average customer generates about \$21.39 per line. This includes intraLATA toll revenue and features revenue that MCI expects to get from the customer. MCI pays Bell Atlantic New Jersey \$22.05 which leaves a net negative margin of 66 cents to each customer before MCI can start to recover any of its own costs of sales and marketing, billing for customer service sales, and so on. MCI suggests therefore that it loses money using resale. (TR. Vol. 3, at 374, L 2-14).

The second delivery method MCI considered was a combination of elements. If all the elements are combined to create a new finished service, service is immediately available to serve residential and small business customers, according to MCI. The average revenue from a residential customer would increase to \$29.22 because MCI would now also get the access revenue and subscriber line charge that goes with that line. However, MCI claimed it would end up paying \$37 to Bell Atlantic New Jersey, which leaves a negative margin of almost \$8.00 (*Id.* at 375). Again, an unprofitable situation arises.

MCI suggested that the Board needs to reexamine the unbundled rates that were set in December. The local market is immensely profitable. There is no reason for new entrants to break into this market and have to lose money. MCI believes the unbundled rates, if they are set on a

forward-looking cost basis, should be able to drive at least some small profits to the new entrants. (*Id.* at 378). In addition to the high unbundled elements rates, MCI suggested that the non-recurring charges are high and they need to be reexamined, as well, because if true costs based on an efficient process are used, non-recurring charges should be low enough to enable MCI to earn a profit. (*Id.* at 379).

Sprint, arguing in the role of a CLEC, did not list price as one of its three critical issues (its three were articulated as the unbundled network platform; non-discriminatory electronic OSS; and the implementation of performance measurement standards). Sprint witness Prohoniak stated on the record, "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 it could then, that would significantly change the economics in the marketplace, to at least give us a chance to come in and start competing. Right now the prices by themselves, UNE prices and their resale prices by themselves will not sustain competitive entry and that is my belief why you haven't seen a whole lot of competition." (TR. Vol. 5 at 1001-1002).

Further in his testimony, where he is critical of a cost/revenue analysis by Bell Atlantic New Jersey, Mr. Prohoniak concluded, "If Sprint, as a CLEC or any CLEC for that matter, looked at resale, given the discount in place today, looked at unbundled network elements in the State of New Jersey, if there was a margin there, if we thought we could make money, you would see more

aggressive activity in the marketplace." (Id. at 1011, L 10-18).

Conectiv, also known as CCI, which is part of the competitive arm of Delmarva Power and Light Company and an authorized local exchange carrier in New Jersey, also raised the issue of price and its ability to provide statewide telecommunications services. According to its responses to the Board (at page 3, response to question 2C), Conectiv planned to make the services contained in the tariffs Conectiv has filed with the Board available statewide to all classes of customers, subject to the approval of such tariffs by the Board. However, the current approved rates for unbundled network elements are much higher than CCI expected when making its New Jersey business plan. Moreover, the wholesale discount rate is lower than CCI anticipated. Consequently, CCI will be critically examining market segments in New Jersey by customer class and geographic location to determine the method(s) it will use to provide services (i.e., resale versus facilities-based) and operate profitably.

In response to question 2 G, CCI stated that initially, it will be providing service to end-user customers on a resale basis in New Jersey. However, CCI does not plan to compete on a resale basis. The provision of service through resale has demonstrated itself to be an exercise and a tool to establish presence in a market, but not a profitable business venture. The expensive service order process for acquiring customers combined with the currently approved non-recurring charges and wholesale discounts have made total service resale a financially unattractive business for CCI. While CCI naturally anticipated start-up costs relating to the winning of customers from the ILEC, CCI projections regarding the impact of such costs on its ability to operate profitably assumed a rate structure more conducive to competition than that currently approved by the Board. CCI further

suggested that, in some cases, the combined monthly lease rates and non-recurring charges for the unbundled elements that CCI would require to connect its facilities with Bell Atlantic New Jersey's are so high that providing the intended service will not allow CCI to earn a return on the investment CCI has made in its own facilities. The expected return from offering the service is crowded out by the considerable expense to be incurred from the purchase of unbundled network elements at the current prices. Even a reasonable monthly lease price for a network element is exacerbated by the high non-recurring charges that accompany each particular element. (See Conectiv response to question 2 G). Thus, CCI concluded that its ability to compete for all services in all markets in New Jersey is impeded by, among other things, the purchase price for unbundled network elements. (Ibid.).

Finally on the topic of the level of rates for interconnection, two other witnesses made general statements about such rates. Assemblyman Wisniewski, in his oral remarks touched on this issue by stating that if permanent rates are not based on forward-looking efficient costs, and are not consistent with the requirements of the Telecommunications Act, new entrants would be subsidizing Bell Atlantic and perpetuate a monopoly. (TR. Vol. 3, at 471 - 472). In addition, the testimony of Bruce Egan, on behalf of the Ratepayer Advocate (the "Advocate" or "RPA") suggested that prices for public switched network access and interconnection include substantial mark-ups for contribution to the incumbent carrier's shared and common costs and universal service obligations. If this situation is to be rectified in an equitable (competitively neutral) fashion, the Board should: (1) implement reductions in per minute charges for network access and interconnection down to long run incremental cost ("LRIC") levels and (2) simultaneously implement the new contribution charge

mechanism to offset the reductions in per minute contribution.

Dr. Egan concluded that if the prices of network access and interconnection are much higher than LRIC, then it will be impossible for retail service prices to reflect their underlying costs, preventing the least-cost firm from being the least-price firm. (Egan prefiled testimony at 1-2). The RPA, in its position paper, went on to state that it is clear that without the proper pricing levels for UNEs, competitive market entry cannot be expected on a major scale for residential customers, because CLECs will be unable to enter this market. The RPA therefore urged the Board to reevaluate the current UNE rates and specifically whether they are truly forward looking rates which are reflective of actual incremental costs. (RPA position paper at 4).

CHAPTER 10
POSITIONS OF THE PARTIES
Dispute Resolution

Several parties stated that it is critical to resolve disputes between carriers in an expeditious manner so that local exchange entry is not stifled. AT&T in its testimony, applauded the Board for recognizing the need for dispute resolution procedures geared to resolving the problems of local entry. However, AT&T argued that the Board's procedures, as they were set out in the Local Order, were inadequate. First, by requiring Board Staff to attempt to mediate disputes for 60 days prior to a party's seeking Board resolution of a dispute, the Board's procedures will unduly and unnecessarily delay resolution. (Langhauser prefiled testimony at 45). According to AT&T, the present relationship between Bell Atlantic New Jersey and a CLEC is not a typical commercial arrangement. Normally, parties enter typical business relationships voluntarily. They may often have disputes, but they each benefit from the relationship and so generally have a strong incentive to resolve the disputes so that the relationship can continue. In the case of Bell Atlantic New Jersey and a CLEC, the relationship is very different; it is one of an incumbent monopoly that has been dragged kicking and screaming into a relationship with a competitor. In this case Bell Atlantic New Jersey has no business incentive to resolve the dispute, because resolution of the dispute may allow its competitor to proceed to attempt to capture some of Bell Atlantic New Jersey's customers. Thus, there is little likelihood that mediation - for 6 days, 60 days, or 600 days -- will bring about a resolution of many of the CLECs' complaints about ILEC practices, according to AT&T. (Id.). Any delays in resolution

of these types of complaints will postpone the development of effective local competition.

Moreover, where a dispute is service-affecting (e.g., where the level of service being provided to a CLEC by Bell Atlantic New Jersey is not the same level of service Bell Atlantic New Jersey provides to its own customers), customers may be harmed by the parties' inability to resolve their dispute and the Board must step in quickly to protect consumers. Accordingly, while it makes sense to offer parties the opportunity for Board Staff mediation prior to bringing a dispute to the Board, Staff mediation should not be a condition precedent to the Board's consideration of the dispute, according to AT&T. (*Ibid.* at 46).

The critical need for prompt resolution of ILEC/CLEC disputes also requires the Board to adhere to a timetable for decisions. The current dispute resolution rule imposes no timetable on Board resolution of disputes. Thriving competition will not develop and customers will suffer if the Board does not resolve disputes quickly. AT&T now proposes that the Board resolve all service-affecting disputes between an ILEC and CLEC within 7 business days or, alternatively, establish an arbitration procedure that would do so and resolve all other disputes within 60 days. (*Ibid.*).

TCG believes there are four critical steps the Board can take to accelerate and broaden the benefits of local exchange competition. First on TCG's list is to provide a rapid and definitive process for addressing inter-carrier complaints. (Kouroupas prefiled testimony at 25, L 7-9). TCG suggested that Bell Atlantic New Jersey has strong economic incentives to frustrate and undermine CLECs. After Bell Atlantic New Jersey gains authority to enter the long distance or interLATA market, TCG is very concerned that Bell Atlantic New Jersey will have lost what little incentive it had to fulfill its statutory duties. Without the carrot of Section 271, only the Board's stick will

remain. (*Ibid.* L 17-20).

In order for local competition to develop the Board must be prepared to dispense "swift justice" to those who would act as an obstacle. In this rapidly moving environment, justice delayed is justice denied. Therefore, the Board should establish streamlined procedures for resolving interconnection disputes in an expeditious manner. (*Ibid.* at 26, L 1-5). In its Local Order, the Board adopted a three step Dispute Resolution process: (1) 30 days of negotiations between the parties; (2) after 30 days, a party may file a petition to the Board to mediate the dispute, with Staff acting as mediator, and, (3) if the dispute is not resolved within 60 days, a petition may be filed with the Board to investigate the dispute. TCG does not believe that this process is able to resolve interconnection disputes as quickly as is necessary to promote competitive interests. (*Id.* at 26 L 1-14).

TCG states that a mandatory 60 day mediation process may not be helpful in all instances, and may in fact delay the resolution of relatively simple disputes, and delay on such matters directly harms the interests of competitors and potential competitors in the market. (*Id.* at 17-20).

MCI witness, Ryan Clark, made a similar argument, suggesting that the Board needs to streamline its dispute resolution procedures so that MCI can bring contract enforcement matters, like those mentioned in his testimony, to the Board for speedy resolution. This improvement will help competition move forward without allowing Bell Atlantic New Jersey to control the pace and progress of competitors' entries. (Clark prefiled testimony at 7).

In describing TCG as a proponent of changing the dispute resolution process, Mr. Kouroupas testified that other states have faster resolution processes than New Jersey. According to his testimony some other states have only sixty day processes, and with the option of going to 90 days,

if the parties feel it is necessary and that's very important. "Quick speed is very important . . . because justice delayed is justice denied in a lot of instances." (TR. Vol. 3, at 340, L 9-16).

Although AT&T does propose a Board determination in as little as 7 days, in further testimony, Mr. Langhauser did concede his company could be flexible. When asked by President Tate, "So if there were going to be some revision in the dispute resolution, your seven day requirement wouldn't necessarily meet every issue?" Mr. Langhauser responded, "That's correct; that's fair." (TR. Vol. 2, at 245 L 2-3).

Further, clarification was given when the witness was asked about an alternative in his testimony, which was to establish an arbitration procedure. He was asked if AT&T would be satisfied with a 60-day arbitration procedure as opposed to a seven-day fast track procedure. Mr. Langhauser responded, "We will be very flexible on the precise procedure. We are looking for something that, given your limited resources, given everyone's resources, simply gets disputes resolved quickly." (TR. Vol.2 at 304, L 3-18).

Two other parties, ITS and RPA, indicated their agreement with AT&T, MCI and TCG in that the Board should modify its dispute resolution procedures in a manner that allows for quick and prompt resolution for parties seeking relief. (ITS position at 7; RPA position at 13).

CHAPTER 11

POSITIONS OF THE PARTIES

The Level of Competition in New Jersey

AT&T spent a great deal of time at the first day of hearings discussing the current level of local exchange competition in New Jersey. AT&T testified that there is no real competition for local exchange service in New Jersey today. According to AT&T, Bell Atlantic New Jersey's local revenues are about \$1.4 billion compared with the CLEC revenues of \$8.3 million. If you do the math, that's about 99.9 percent or so of the revenues that Bell Atlantic New Jersey retains today. (TR. Vol. 1 at 17, L 6-25). According to an Atlantic ACM study, Bell Atlantic New Jersey has over 99 percent of the access lines in its territory. The study shows that Bell Atlantic New Jersey in 1997 had slightly over 5.9 million access lines. All new entrants, all the CLECs together, had about 18,000 access lines. Thus, Bell Atlantic New Jersey has well over 99.7 percent. (*Ibid.*). Also, Bell Atlantic New Jersey is growing lines at an annual rate of about 284,000. The new entrant penetration equals slightly over 6 percent, or about 6.4 percent of Bell Atlantic New Jersey's growth. AT&T therefore suggests that Bell Atlantic New Jersey retains its entire embedded base and continues to grow at about 94 percent of all new lines. (*Ibid.* at 18, L 12-23).

Local usage, the minutes that actually go over local lines, also may indicate the level of local competition. AT&T stated that Bell Atlantic New Jersey has pointed out that the CLECs have about 65 million minutes of local service here in New Jersey today. However, Bell Atlantic New Jersey's local usage is approximately 60 billion minutes or about 99.99 percent of all the usage that flows

over the lines. In short, AT&T concludes that Bell Atlantic New Jersey owns almost all the lines, the minutes that travel over those lines, and the revenue that flows from those lines. It takes a real monopolist to call anything like that thriving competition, according to AT&T, yet those terms have been used by Bell Atlantic New Jersey before this Board. (*Ibid.* at 19, L 2-20). Finally, AT&T noted that even if you look at business alone, even in the business market, Bell Atlantic has well over 99 percent of all the lines, revenues and usage. (*Ibid.* at 21, L 8-11). The Atlantic ACM study referred to by AT&T is a survey of CLECs in the Bell Atlantic South region. All of the active CLEC participants in this proceeding responded to the survey with one exception - Hyperion. The results of the study are attached to Mr. Moska's prefiled testimony as Exhibit 1.

The only party to take an opposing view of the AT&T position was Bell Atlantic New Jersey. Len Lauer, then President of Bell Atlantic New Jersey, disputed the AT&T data suggesting that, what it does not reflect, in addition to the unbundled loops and the resold lines that you can count, are thousands of other equivalent access lines provided by Bell Atlantic New Jersey's SONET connections and direct fiber connections to retail and office complexes. There are services like AT&T's Digital Link, which use lines that can carry local with long distance in a way that is a direct replacement for the access lines that you are familiar with. According to Bell Atlantic New Jersey, thousands upon thousands of business end users complete all of their calls, local, toll, international, voice, data and internet over these same facilities. They are a bundle of competitive access lines, no different than the pair of wires from your home to the central office that serves you. (TR. Vol. 5, at 833, L 3-24).

Bell Atlantic New Jersey then made a calculation of the number of equivalent access lines

in the local exchange market based on publicly-available sources that Bell Atlantic New Jersey has access to. First, Bell Atlantic New Jersey considered the number of interconnection trunks which have been ordered from Bell Atlantic to complete local calls at Bell Atlantic New Jersey end offices. The CLECs order and pay for those trunks to terminate local calls, both voice and data, on Bell Atlantic-New Jersey's local network. Bell Atlantic New Jersey used what it describes as a "conservative" ten-to-one trunk to line ratio to determine what the equivalent access lines would be for which these trunks are being used. (*Id.* at 835, L 2-16).

Second, Bell Atlantic New Jersey looked at the number of access lines displaced when SONET connections serve a group of large customers. Using data available regarding these two mechanisms which are used for local interconnection, Bell Atlantic New Jersey calculated that there should be a minimum of 380,000 lines. (*Id.* L 17-24). This, according to Bell Atlantic New Jersey, represents 16% of business access lines in New Jersey and is far different than the 18,000 access lines shown by AT&T.

Bell Atlantic New Jersey concludes that, for business customers, there is already significant evidence of competition, and it is growing fast. Finally, Mr. Lauer referred to the testimony that Bell Atlantic New Jersey prefiled, wherein it stated that there were roughly 7,000 resold lines in the State. In the month since the filing, that number has grown to over 11,000 resold lines. This tends to confirm significant positive competitive growth, according to Bell Atlantic New Jersey. (*Ibid.* at 838, L 3-14).

CHAPTER 12

ACTION PLAN

The Board finds the following action steps to be necessary to address the major barriers to local land line competition and the impediments to local land line competition identified herein (all days listed below are approximate calendar days "rounded" to the next following Board agenda meeting):

1. The Board has pending before it three (3) remaining motions for reconsideration regarding the Local Order. The three motions address: (1) two way trunking and traffic measurements; (2) OSS issues; (3) service quality and performance measurements; (4) reciprocal compensation; (5) technical corrections to the Local Order; and (6) collocation related issues. Like the issues set forth herein for resolution by the Technical Solutions Facilitation Team (the "TSFT"), some of these issues i.e. two way trunking and traffic measurements, reciprocal compensation, collocation and OSS issues will be addressed, informally, at first, by the TSFT. On the other hand, issues including: (1) whether the Board has the legal authority to order combinations of UNEs (discussed more fully in the UNE chapter of this report and in the action steps below) and (2) service quality and performance measurements will be resolved through a formal proceeding before the Board or its designee. The Board will set a schedule within the next thirty (30) days to resolve, within seventy-five (75) days, the issues of (1) whether the Board has the legal authority to order combinations of UNEs and (2) service quality and performance measurements. Regarding the issues

identified above for informal resolution, the Board directs the TSFT (after its establishment as set forth herein) to commence a resolution of those issues within the next three (3) to nine (9) months.

2. The Board also has several arbitration petitions pending before it, and the Board will act on them within the time frames prescribed in the Telco Act. The arbitration decisions will be rendered, in part, on an interim basis because portions of the arbitration petitions raise broad policy and generic issues including, for example, OSS, access to UNEs, performance measurements, and "cageless collocation." The Board reserves its prerogative to decide those and other generic issues in separate proceedings and thereafter to apply its generic decisions to the previously arbitrated resolutions.
3. The Board also has pending before it nine (9) tariffs to provide local telephone service. Tariff approval is usually the last step (certification to provide local service and interconnection agreement approval are the first two steps) in a three step process for a CLEC to enter the New Jersey market on a land line facilities basis for either the residential or business markets. The Board finds that in order to spur land line facilities based competition in the residential market, the tariffs of all CLECs that target the facilities based land line residential market, including, for example the tariff of RCN, shall be given top priority by Board Staff since its primary focus is on the land line residential market. The Board commits to act on the RCN tariff within 45 days from the date of this report. The Board commits to act on the other tariffs within 120 days from the date of this report, if and only if, the Board Staff confirms that the tariffs are fully documented, complete and meet all

statutory and regulatory requirements. In connection with this commitment, the Board directs Staff to notify tariff filers within sixty (60) days of the date of this report whether their tariff filings are complete or deficient. If Staff determines that the tariff is incomplete or deficient, the time for review of same shall toll until Staff determines that a complete and non-deficient tariff is filed. If Staff determines that a tariff filing is deficient, it shall state the reasons therefore, with specificity, when it gives notice of the deficiency.

4. The Board notes that twenty-five (25) new resale agreements have been filed with the Board. The Board commits to act on these agreements within 90 days from the date of this report.
5. The Board will act on fully documented, complete new tariff filings to provide local service (not tariff changes) that meet all statutory and regulatory requirements within 120 days from the date that Staff determines the filing is complete and not deficient. The Board finds that in order to spur land line facilities based competition in the residential market, the tariffs of all CLECs that target the facilities based land line residential market shall be given top priority by Board Staff. In connection with this commitment, the Board directs Staff to notify tariff filers within sixty (60) days of the date of filing whether a tariff filing is complete or deficient. If Staff determines that the tariff is incomplete or deficient the time for review of same shall toll until Staff determines that a complete and non-deficient tariff is filed. If Staff determines that a tariff filing is deficient, it shall state the reasons therefore, with specificity, when it gives notice of the deficiency. Currently, the Board is not subject to any deadline for the approval of new tariff filings to provide local service.
6. The Board commits to act on certifications for local authority within 60 days from the date

of filing at the Board, if the certifications meet all statutory and regulatory requirements. Currently, the Board is not subject to any deadline for the approval of certifications to provide local service.

7. The Board will direct its Staff to form and train a Technical Solutions Facilitation Team, (the "TSFT") discussed herein, within 45 days from the date of this report. This TSFT will serve as an impartial forum for CLECs, ILECs and others to brief technical issues of a generic type and to bring such issues to the attention of the industry or Board Staff for resolution. The intent is for this TSFT to resolve generic issues in a collaborative, efficient and effective manner.
8. The Board directs the TSFT to develop a resolution to the OSS issue, at least on an interim basis, until national standards are available. This resolution should include the scope and type of testing to be done in New Jersey. In addition, the TSFT will act as a neutral third party to address OSS issues as they occur. The process developed should be one that is collaborative in nature as well as efficient and prompt. Should a resolution not be reached or testing not agreed to, the Board will intervene to resolve such issues. The OSS process shall begin after the 45 days needed to form and train the TSFT. Negotiations are to take place for the next following 180 days.
9. If the negotiations referred to in action step number eight above do not result in the implementation of an interim (or permanent) OSS solution, the Board directs the TSFT to bring interim OSS solutions to the Board for action in no more than 255 days from the date of this report (that is 45 days to establish the TSFT and 180 days to negotiate a proposed

interim OSS resolution and 30 days to bring a proposed Staff resolution of the OSS issue to the Board if a negotiated resolution cannot be reached). This development and implementation schedule will be shortened if agreeable national, regional or state specific standards are adopted and ready for wide-scale implementation earlier.

10. The Board directs its Staff to establish OSS solutions in accordance with national guidelines or TSFT guidelines.
11. The Board will address, within seventy-five (75) days from the date of this report, the legal issue of whether it has jurisdiction and authority, as a state agency, to order UNE-P. Whether UNE-Ps or collocation should be implemented in New Jersey will be directed to the TSFT for negotiations with the parties as outlined in action step 12 below.
12. After the Board rules on the jurisdictional issue described in action step 11 above, the TSFT is directed to attempt to negotiate the implementation of the Board's decision over the ninety (90) days next following Board action on the UNE-P jurisdictional issue. If no resolution is reached, the Board will act on pending applications concerning access to UNEs within thirty (30) days of the conclusion of discussions.
13. Except as expressly provided herein to the contrary, the Board directs the TSFT within 10 days from the establishment of the TSFT (i.e. 55 days from the issuance of this report), to meet with interested parties to resolve the UNE testing dispute addressed in AT&T's motion at Docket Nos. TO96070519 and TX95120631. Should negotiations fail, the Board will act on the issue within 35 days from the date of the parties' first meeting with the TSFT.
14. The Board directs the TSFT to address the technical issues identified herein (and those that

may be brought to the TSFT in writing in the near future) over the next 12 months. The Board recognizes that resolution of OSS and UNE must be the TSFT's top priority. The Board equally recognizes that certain of these technical issues are of prime importance to individual CLECs. In recognition of this fact the Board finds that the dispute resolution process may be an appropriate forum to address individual items. Generic issues should be directed to the TSFT. Issues will be screened to determine whether they should be addressed by the full TSFT or through accelerated dispute resolution.

CONCLUSION

Through these proceedings, the Board found two (2) major barriers to local land line telephone competition in New Jersey. The Board found that (1) inadequate OSS and (2) access to UNEs are the two "major barriers" to local land line residential market competition, and that (3) a variety of technical issues are "impediments" to competition, and that all three issues need to be addressed. Both the "major barriers to competition" and the "impediments" to competition will be the focus of a Board Staff Technical Solutions Facilitation Team ("TSFT") which is more fully described in the "action plans" chapter of this report.

Those are the Board's findings as a result of this proceeding. The parties raised other issues. The State's policy is to keep basic residential service rates affordable and the rates are capped between \$4.40 and \$8.19 for a majority of the State's residents. The major CLECs have alleged in this proceeding that New Jersey's current rates are an "inhibitor" to greater competition in the local residential market. The cap on this rate is set to expire with Bell Atlantic New Jersey's Plan for an Alternative form of Regulation, in December 1999.

The CLECs have also alleged that New Jersey's generic rates for loop and UNE pricing are an impediment to competition. The issue of pricing is currently on appeal to the Federal District Court. The Board maintains that it set generic rates on an appropriate forward looking basis and that nothing has been presented in connection with this proceeding or in connection with the motions for reconsideration that warrants a change in that decision. Moreover, as demonstrated above, loop rates established around the country that were as low as \$3.72 have not spawned local residential

competition on a facilities basis. The Board finds that OSS and UNE access are of such significance that no other issue can be argued to affect mass market entry in the local land line market until OSS and UNE issues are resolved.

ATTACHMENT A

State	Statewide average loop rate	Interim - Permanent - Other	PUC Approval? Y/N	SGAT? PROCEEDING? ARBITRATION? OTHER?	Range of rates	# of Density Cells	Port Charge	Local Switch		Reciprocal Comp		Resale Discount	
								Orig.	Term.	Tandem	EO	with ILEC operator	without ILEC operator
<i>The Bell Atlantic Region</i>													
Delaware	\$12.03	Final	Y	SGAT	\$10.07-\$16.67	3	\$2.23	\$0.03634	\$0.01927	\$0.01957	\$0.01082	16.0%	20.0%
Maine	\$17.53	Interim	N	Arbitration	\$17.53	1	\$2.00	\$0.03234 \$0.07283	\$0.03234 \$0.07283	\$0.05010 \$0.020157	\$0.03234 \$0.08432	Bus. 23.76% Res. 19.80%	Bus. 25.74% Res. 23.03%
Maryland	n/a	Interim	Y	Consolidated Arbitration	\$11.87-\$19.38	4	\$1.19/\$1.02	\$0.003	\$0.003	\$0.005	\$0.003	19.87% ¹	19.87%
Massachusetts	\$14.98	Interim	Y	Consolidated Arbitration	\$7.54-\$20.04	4	\$3.95-\$6.96	\$0.008689	\$0.004565	\$0.021076 \$0.008103	\$0.010654 \$0.005001	Bus. 24.99% Res. 24.99%	Bus. 29.47% Res. 29.47%
New Hampshire	\$17.53	Interim	N	SGAT ²	\$17.53	1	\$2.00	\$0.03234 \$0.07283	\$0.03234 \$0.07283	\$0.05010 \$0.020157	\$0.03234 \$0.08432	Bus. 18.78% Res. 17.30%	Bus. 20.25% Res. 19.04%
New Jersey	\$16.21	Final	Y	Proceeding	\$11.95-\$20.98	3	\$1.90	\$0.005418	\$0.003207	\$0.003738	\$0.001846	17.04%	20.03%
New York	\$14.52	Final	Y	Proceeding	\$12.49-\$19.24	2	\$2.50	\$0.001508 \$0.003806	\$0.001508 \$0.003806	\$0.002810 \$0.010876	\$0.001682 \$0.004764	19.10%	21.70%
Pennsylvania	\$16.78	Final	Y	Proceeding	\$11.52-\$23.11	4	\$2.67	\$0.011067	\$0.006143	\$0.002902	\$0.001864	18.43%	20.69%
Rhode Island	\$17.53	Interim	N	Arbitration	\$17.53	1	\$2.00	\$0.03234 \$0.07283	\$0.03234 \$0.07283	\$0.05010 \$0.020157	\$0.03234 \$0.08432	Bus. 18.78% Res. 17.30%	Bus. 20.25% Res. 19.04%
Vermont	\$30.21	Interim	N	SGAT ³	\$30.21	1	\$3.04	\$0.014916	\$0.014916	\$0.029116	\$0.016684	Bus. 26.01% Res. 18.20%	Bus. 27.66% Res. 20.43%
Virginia	\$14.12	Interim	Y	Arbitration	\$9.52-\$19.54	3	\$1.55	\$0.003	\$0.003	\$0.005	\$0.003	18.50%	21.30%
Washington, DC	\$10.81	Interim	Y	Arbitration	\$10.81	1	\$1.55	\$0.003	\$0.003	B&K	B&K	via contract	24.7%
West Virginia	\$24.58	Final	Y	Arbitration/SGAT	\$14.49-\$43.44	3	\$1.60	\$0.013897	\$0.005653	\$0.008579	\$0.002379	15.05%	17.84%

¹ PSC required tariff: Res. DA and verification services available at retail rates (no disc.) - no call allowance for DA. Bus. DA retail less above discount

² SGAT effective by operation of law 10/20/97. SGAT undergoing continuing review

ATTACHMENT A

State	Statewide average loop rate	Interim - Permanent - Other	PUC Approval? Y/N	SGAT? PROCEEDING? ARBITRATION? OTHER?	Range of rates	# of Density Cells	Port Charge	Local Switch		Reciprocal Comp		Resale Discount	
								Orig.	Term.	Tandem	EO	with ILEC operator	without ILEC operator
<i>The Ameritech Region</i>													
Illinois	n/a	Interim	Y	Arbitration	\$3.72-\$11.53	3	\$6.41	\$0.002962	\$0.002962	\$0.000956	\$0.005000	see note ¹	see note 1
Indiana	\$12.19	Interim	Y	Arbitration	\$12.19	3	\$1.61	\$0.004	\$0.004	\$0.003700	\$0.003000	21.0%	21.0%
Michigan	n/a	Final	Y	Proceeding	\$9.43-\$14.86	3	\$2.27	\$0.003164	\$0.003164	\$0.000698	\$0.004053	19.96%	21.55%
Ohio	n/a	Final	Y	Proceeding ²	\$5.93-\$9.52	3	\$5.23	\$0.003224	\$0.003224	\$0.000659	\$0.003813	20.29%	20.29%
Wisconsin	\$10.90	Final	Y	SGAT	\$10.90	3	Bus-\$6.25 Res-\$3.71	\$0.003451	\$0.003451	\$0.000704	\$0.004241	see note ³	see note 3
<i>The SNET Region</i>													
Connecticut	n/a	Final	Y	Proceeding	\$9.34-\$19.71	4	\$1.73	\$0.0062	\$0.0062	\$0.0057	\$0.00309	17.8%	17.8%

¹ Final discount developed on a per rate element basis ranging from 8% - 68%:

² Rates may change slightly. Will supplant every contract rate once finalized.

³ Discount varies by area, family, & class of service

ATTACHMENT A

State	Statewide average loop rate	Interim - Permanent - Other	PUC Approval? Y/N	SGAT? PROCEEDING? ARBITRATION? OTHER?	Range of rates	# of Density Cells	Port Charge	Local Switch		Reciprocal Comp		Resale Discount	
								Orig.	Term.	Tandem	EO	with ILEC operator	without ILEC operator
<i>The Bell South Region</i>													
Alabama	\$18.00	Interim	Y	Arbitration	\$18.00	1	\$2.50	\$0.017	\$0.017	\$0.015	\$0.017	16.3%	16.3%
Florida	\$17.00	Final	Y	Arbitration	\$17.00	1	\$2.00	\$0.175	\$0.0500	\$0.0125	\$0.0200	Bus 16.81% Res 21.83%	Bus 16.81% Res 21.83%
Georgia	\$16.51	Final	Y	271 Proceeding	\$16.51	1	\$1.85	\$0.017897	\$0.017897	\$0.008883	\$0.017897	Bus 17.3% Res 20.3%	Bus 17.3% Res 20.3%
Kentucky	\$20.00	Interim ¹	Y	Arbitration	\$20.00	1	\$2.61	\$0.02562	\$0.02562	\$0.01096	\$0.02562	Bus 15.54% Res 16.79%	Bus 15.54% Res 16.79%
Louisiana	\$19.35	Final	Y	Proceeding	\$19.35	1	\$2.20 ² \$8.28 ³	\$0.021 ⁴ \$0.0538 ⁵	\$0.021 ⁶ \$0.0538 ⁷	\$0.011	\$0.023	20.72%	20.72%
Mississippi	\$25.24	Interim	Y	Arbitration	\$25.24	1	\$1.99	\$0.0221	\$0.0221	\$0.0083	\$0.0026	15.75%	15.75%
North Carolina	\$16.71	Interim	Y	Arbitration	\$16.71	1	\$2.00	\$0.04	\$0.04	\$0.015	\$0.04	Bus 17.6% Res 21.5%	Bus 17.6% Res 21.5%
South Carolina	\$18.00	Interim	Y	Arbitration	\$18.00	1	\$1.99	\$0.04	\$0.04	\$0.015	\$0.04	14.8%	14.8%
Tennessee	\$18.00	Interim	Y	Arbitration	\$18.00	1	\$1.90	\$0.019	\$0.019	\$0.005	\$0.004	16.0%	21.56%

¹ Two years

² Without features

³ With features

⁴ Intraoffice

⁵ Interoffice within five mile (common transport)

ATTACHMENT A

State	Statewide average loop rate	Interim - Permanent - Other	PUC Approval? Y/N	SGAT? PROCEEDING? ARBITRATION? OTHER?	Range of rates	# of Density Cells	Port Charge	Local Switch		Reciprocal Comp		Resale Discount	
								Orig.	Term.	Tandem	EO	with ILEC operator	without ILEC operator
<i>The Cincinnati Bell Telephone Region</i>													
Kentucky	n/a	Interim	Y	Proceeding	\$17.44-\$25.84	3	\$2.97	\$0.003782	\$0.003782	\$0.006357	\$0.003782	11.92% ¹	12.62% see note 1
Ohio	n/a	Interim	Y	Arbitration	\$17.44-\$25.44	3	\$2.97	\$0.003782	\$0.003782	\$0.006357	\$0.003782	11.92%	12.62%
<i>The GTE Region</i>													
Alabama	\$28.13	Interim	N	Arbitration	\$28.13	1	\$1.89	\$0.0036	\$0.0036	\$0.0092	\$0.0036	23%	23%
Arkansas	n/a	Interim	Y	Neg. Agreement	\$43.61 - \$46.21	2	\$3.60 - \$3.70	\$0.0015	\$0.0015	\$0.0015	\$0.0015-\$0.0164712	n/a	n/a
California	\$16.81	Interim	Y	Arbitration	\$16.81	1	\$4.58	\$0.0036286	\$0.0036286	\$0.0015	\$0.0036286	12%	12%
Florida	n/a	Interim	Y	Arbitration	\$20.00-\$33.08	3	\$4.75-\$6.60	\$0.004-\$0.0089	\$0.00375-\$0.0089	\$0.00125-\$0.0009512	\$0.0025-\$0.0089	13.04%	13.04%
Hawaii	n/a	Interim	Y	Arbitration	\$14.64-\$138.29	7	\$5.74-\$8.00	\$0.0081433-\$0.0112827	\$0.0080252-\$0.0112827	\$0.006140-\$0.0006190	\$0.0081433 (orig) \$0.00800252	12.8%-15%	12.8%-15%
Illinois	\$30.00	n/a	n/a	Arbitration	\$30.00	1	n/a	n/a	n/a	n/a	B&K	17.5%	17.5%
Indiana	\$14.63	n/a	n/a	Arbitration	\$14.63	1	n/a	n/a	n/a	n/a	n/a	17%	17%
Iowa	n/a	Interim	Y	Arbitration/Agreement	\$28.12-\$38.50	2	\$2.59-\$3.10	\$0.0063087-\$0.007	\$0.0063087-\$0.007	\$0.013-\$0.0029220	B&K or \$0.007613	16.34%-17.09%	16.34%-17.09%
Kentucky	n/a	Interim	Y	Arbitration/Agreement	\$19.65-\$30.00	2	\$4.02-\$5.10	\$0.0036192-\$0.0043571	\$0.0032276-\$0.004357	\$0.0008209-\$0.0043571	\$0.0032276-\$0.0043571	18.81%	18.81%
Michigan	n/a	Interim	Y	Arbitration	\$7.53-\$10.37	3	\$1.59	\$0.0065 (init) \$0.0022 (add'l)	\$0.0065 (init) \$0.0022 (add'l)	\$0.026	\$0.026	25%	25%
Minnesota	\$28.60	Interim	Y	Arbitration	\$28.60	1	\$2.20	\$0.0052	\$0.0052	B&K	B&K	24.9%	24.9%

ATTACHMENT A

State	Statewide average loop rate	Interim - Permanent - Other	PUC Approval? Y/N	SGAT? PROCEEDING? ARBITRATION? OTHER?	Range of rates	# of Density Cells	Port Charge	Local Switch		Reciprocal Comp		Resale Discount	
								Orig.	Term.	Tandem	EO	with ILEC operator	without ILEC operator
<i>The GTE Region</i>													
Missouri	n/a	Interim/Final	Y	Arbitration	\$14.71-\$53.84	4	\$1.86-\$3.74	\$.0025591-\$.0033912	\$.0025591-\$.0033912	\$.0015535 or B&K	\$.003912 or B&K	25.4%-26.93%	25.4%-26.93%
Nebraska	n/a	Interim	Y	Arbitration	\$23.06-\$30.00	1	\$1.89-\$4.60	\$.0047933-\$.0052	\$.0047933-\$.0052	\$.0011571 or B&K	\$.0193623 or B&K	20.14%-21.53%	20.14%-21.53%
New Mexico	\$30.00	Interim	Y	Arbitration	\$30.00	1	\$4.00	\$.005	\$.005	B&K	B&K	16.76%	16.76%
North Carolina	n/a	Interim	Y	Arbitration/Agreement	\$17.05-\$30.00	1	\$2.00-\$5.70	\$.0032652-\$.004	\$.0032652-\$.004	\$.0015-\$.0131569	\$.00135-\$.004	11.66%-19.97%	11.66%-19.97%
Ohio	\$15.73	Interim	N	Arbitration	\$15.73	1	\$2.30	\$.004	\$.004	B&K	B&K	12.16%	16.41%
Oklahoma	n/a	Interim	Y	Arbitration	\$17.63-\$34.00	1	\$1.55-\$6.20	\$.003-\$.0056564	\$.003-\$.0056564	\$.006351-\$.0015	\$.0056564-\$.0136	16.1%	16.1%
Oregon	n/a	Interim/Final	Y	Arbitration	\$15.00-\$16.00	1	\$1.14	\$.0014630-\$.005	\$.0013300-\$.005	B&K	B&K	15.9%-21.0%	15.9%-21.0%
Pennsylvania	n/a	Interim	Y	Arbitration/Agreement	\$12.29-\$27.17	1	\$7.20	\$.003-\$.0041551	\$.003-\$.0041551	\$.0045	\$.003-\$.0041551	22.8%	22.8%
South Carolina	n/a	Interim	Y	Arbitration/Agreement	\$18.00-\$26.50	1	\$6.50	\$.0048975-\$.003	\$.0048975-\$.003	\$.0015-\$.0037769	\$.003-\$.0048975	11.02%-18.66%	11.02%-18.66%
Texas	n/a	Interim	Y	Arbitration/Agreement	\$25.49-\$30.00	1	\$3.65-\$6.50	\$.0051986	\$.0051986	\$.00101118-\$.002	\$.0142333	22.99%	22.99%
Virginia	n/a	Interim	Y	Arbitration/Agreement	\$19.16-\$36.00	1	\$1.67-\$3.40	\$.0017689-\$.0029	\$.0017689-\$.0029	\$.0017689-\$.0019	\$.00546-\$.0029	12.97%-20.6%	12.97%-23.4%
Washington	n/a	Interim	Y	Arbitration	\$13.82-\$17.50	1	\$1.25-\$3.50	\$.0030-\$.0151497	\$.0030-\$.0151497	\$.001066-\$.0091 or B&K	\$.0053214-\$.0032 or B&K	13.84%-18.81%	13.84%-18.81%
Wisconsin	n/a	Interim	Y	Arbitration	\$20.31-\$26.00	1	\$8.00	\$.0049039	\$.0049039	\$.0030953 or B&K	\$.0049039 or B&K	18.45%	18.45%

ATTACHMENT A

State	Statewide average loop rate	Interim - Permanent - Other	PUC Approval? Y/N	SGAT? PROCEEDING? ARBITRATION? OTHER?	Range of rates	# of Density Cells	Port Charge	Local Switch		Reciprocal Comp		Resale Discount	
								Orig.	Term.	Tandem	EO	with ILEC operator	without ILEC operator
The Southwestern Bell Corporation Region (The Southwestern Bell Region)													
Arkansas	n/a	Final	Y	Arbitration	\$20.60-\$79.90	3	\$6.70	\$0.02352-\$0.06137	\$0.02352-\$0.06137	\$0.02822	\$0.007598	14.5%	14.5%
Kansas	n/a	Interim	Y	Arbitration	\$19.65-\$70.30	3	\$1.48	\$0.0028	\$0.0028	\$0.02822	\$0.007598	21.6%	21.6%
Missouri	n/a	Final	Y	Arbitration	\$12.71-\$33.29	4	\$1.74-\$2.47	\$0.001988-\$0.003444	\$0.001988-\$0.003444	\$0.002822	\$0.007598	19.2%	19.2%
Oklahoma	n/a	Interim	Y	Arbitration	\$20.70-\$49.30	3	\$3.00	\$0.005775-\$0.007598	\$0.005775-\$0.007598	\$0.002822	\$0.007598	19.8%	19.8%
Texas	\$14.15	Final	Y	Arbitration	\$12.14-\$18.98	3	\$2.90 ¹	\$0.0011973-\$0.0021160	\$0.0011973-\$0.0021160	\$0.000794	\$0.001507	21.6%	21.6%
The Southwestern Bell Corporation Region (Formerly The Pacific Telesis Region)													
California	\$12.92	Interim	Y	Arbitration	\$12.92	1	\$3.49	\$0.006863 ² -\$0.000875	\$0.007006 ³ -\$0.0009	B&K	B&K	17%	17%
Nevada	n/a	Interim	N	SGAT	\$13.55-\$34.55	3	\$2.80-\$5.65	\$0.002491-\$0.003091	\$0.002491-\$0.003091	B&K	B&K	10.37%-13.51%	10.37%-13.51%

¹ Statewide average

² Per attempt

DISPUTE RESOLUTION GUIDELINES

1. General

- (a) The Dispute Resolution process shall in general be limited to consideration of petitions by any telecommunications entity related to "service-affecting" issues and assertions of anti-competitive conduct.
- (b) The terms "party" or "parties," as used herein, shall mean either or both the petitioner and respondent.
- (c) A "service-affecting" issue is one which directly affects the ability of a party to offer a specific service or group of related services to its customers.
- (d) Specific controversies may be either included in or excluded from the Dispute Resolution process described herein at the discretion of the Secretary of the Board.
- (e) Counterclaims and cross-claims will not be permitted, but will require the filing of a separate petition.
- (f) At no time during the Dispute Resolution process shall ex parte communications with Staff or the Office of the Attorney General be permitted, either verbally or in writing. Neither the petitioner, respondent nor the Advocate shall submit arguments directly to the Board. A conference of the parties, the Division of the Ratepayer Advocate (Advocate) and Staff may be requested through the office of the Secretary of the Board.
- (g) All filings must be accompanied by a certificate of service.
- (h) For purposes of this Dispute Resolution process, a filing shall be considered timely if filed with the Board on Monday through Friday between the hours of 9 a.m. and 4 p.m.

DISPUTE RESOLUTION GUIDELINES

2. The Petition

- (a) A party shall file an original and six (6) conformed copies of a verified petition with the Secretary of the Board for resolution of a "service-affecting" issue or assertion of anti-competitive conduct.
- (b) The petition shall be certified to be true based upon personal knowledge of the facts stated therein and must:
 - (1) as a precondition to eligibility for Dispute Resolution, include documentation demonstrating that the petitioning party has engaged in good faith negotiations on the specific issue or issues in dispute for a minimum of thirty (30) days. Such documentation of negotiations shall include, but not be limited to, documentation of the specific dates, times and places that negotiations occurred, the topics discussed at each negotiation, and name, title and decision-making authority of the each team member representing the petitioning party that participated in the negotiations;
 - (2) include a statement as to whether the issue in controversy is the subject of any other action pending in any federal or State court or administrative agency; and if so, the statement shall identify such actions and all parties thereto;
 - (3) state clearly the issue or issues in dispute in separately numbered paragraphs, including a specific description of an action or inaction which is considered to be anti-competitive, or which affects a party's ability to offer a specific service or group of related services, identifying with particularity how the party's service to its customers is affected;
 - (4) state clearly the resolution sought by petitioner, including the complete factual and legal basis for the proposed resolution;

DISPUTE RESOLUTION GUIDELINES

- (5) include a form of order setting forth the proposed resolution;
 - (6) concurrently or prior to filing with the Board, be delivered, in-hand, to the respondent, to the Ratepayer Advocate, to the Attorney General's Office and to Staff.
- (c) Following receipt of the petition, the Secretary's Office shall issue a scheduling order by facsimile.

3. The Answer

- (a) Notwithstanding receipt of the scheduling order referenced in paragraph 2(c) above, within five (5) business days of service of the petition, the respondent shall file with the Secretary of the Board an original and six (6) conformed copies of a verified answer to the petition.
- (b) The answer shall be certified to be true based upon personal knowledge of the facts stated therein and must:
 - (1) include documentation demonstrating that the answering party has engaged in good faith negotiations on the specific issue or issues in dispute for a minimum of thirty (30) days. Such documentation of negotiations shall include, but not be limited to, documentation of the specific dates, times and places that negotiations occurred, the topics discussed at each negotiation, and the name, title and decision-making authority of each team member representing the answering party that participated in the negotiations;
 - (2) deny or admit in numbered paragraphs each assertion in the petition. If a party is without knowledge or information sufficient to form a belief as to the truth of a statement, the party shall so state and this has the effect of a denial. Statements not denied are considered admitted.

DISPUTE RESOLUTION GUIDELINES

- (3) state clearly the resolution sought, including the complete factual and legal basis for the proposed resolution;
- (4) include a form of order setting forth the proposed resolution;
- (5) concurrently or prior to filing the answer with the Board, be delivered, in-hand, to the petitioner, to the Advocate, to the Attorney General's Office and to Staff.

4. Comments of the Advocate

- (a) The Advocate shall have the right to file comments on the petition and answer.
- (b) If deemed appropriate by the Advocate, within seven (7) business days of service of the petition, the Advocate shall file with the Secretary of the Board an original and six (6) conformed copies of comments to both the petition and answer.
- (c) The comments shall be certified to be true based upon personal knowledge of the facts stated therein and must:
 - (1) state clearly the resolution which the Advocate believes to be appropriate, including the complete factual and legal basis for the proposed resolution;
 - (2) include a form of order setting forth the proposed resolution;
 - (3) concurrently or prior to filing the comments with the Board, be delivered, in-hand, to the the parties, to the Attorney General's Office and to Staff.

5. Dispute Resolution Meeting #1

- (a) A Dispute Resolution meeting shall be held three (3) business days after the date required for the filing of the answer.

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- (b) Staff shall provide notice of the time and place of the meeting by facsimile and/or electronic mail to the petitioner, respondent and Advocate.
- (c) The petitioner shall provide a court reporter to transcribe each Dispute Resolution meeting at its own cost and expense.
- (d) The purpose of the meeting is to:
 - (1) afford the parties and the Advocate an opportunity to explain their filings to one another and to Staff; and,
 - (2) provide an opportunity to the parties to attempt to settle the matter with Staff as neutral mediator.
- (e) Staff may request from the petitioner, respondent or Advocate any additional information it believes is necessary to resolve any issue in dispute. Within three (3) business days, the requested information shall be filed with the Secretary of the Board in writing and submitted to Staff. A copy thereof shall be concurrently provided to the parties, the Advocate and the Attorney General's Office.
- (f) Following submission of the petition, answer and comments of the Advocate, should either the petitioner or respondent assert that there are material facts in dispute, the party making such assertion shall, at Dispute Resolution Meeting #1, submit the following to the other party, to the Advocate and to Staff:
 - (1) a statement of such facts in dispute;
 - (2) a recommended finding as to each fact in dispute; and,
 - (3) all documentary and other evidence which supports each such finding.
- (g) Should either the petitioner or respondent allege that there are material facts in dispute, within three (3) business days of Dispute Resolution Meeting #1, the other party and the Advocate shall

DISPUTE RESOLUTION GUIDELINES

submit a responsive recommended finding as to each
disputed fact accompanied by all documentary and
other evidence which supports each such finding.

DISPUTE RESOLUTION GUIDELINES

6. Dispute Resolution Meeting #2

- (a) A second and final Dispute Resolution meeting shall be held seven (7) business days after the first Dispute Resolution meeting.
- (b) Staff shall provide notice of the time and place of the meeting by facsimile and/or electronic mail to the petitioner, respondent and Advocate.
- (c) The petitioner shall provide a court reporter to transcribe each Dispute Resolution meeting at its own cost and expense.
- (d) The purpose of the meeting is to:
 - (1) afford the parties and the Advocate a final opportunity to explain their positions on all issues to each other and to Staff;
 - (2) provide a final opportunity to the parties to attempt to settle the matter with Staff as neutral mediator; and,
 - (3) allow Staff an opportunity to announce a proposed resolution of the issues in dispute.
- (e) Should mediation fail, and after a period of deliberation, Staff shall announce to the petitioner, respondent and Advocate a proposed resolution of all issues in dispute.

7. Form of Order

- (a) Within five (5) business days of the second and final Dispute Resolution meeting, the petitioner shall incorporate into a draft Form of Order the proposed Staff resolution of all issues in dispute, and submit same to Staff with a copy to the respondent, the Advocate and the Attorney General's Office. The proposed Form of Order shall include a recitation of the issues in dispute, the positions of the petitioner, respondent and Advocate, Staff's analysis of the issues, and Staff's proposed findings of fact, with complete citations to the record and legal authority.

DISPUTE RESOLUTION GUIDELINES

- (b) The draft Form of Order shall be submitted to Staff both in writing and in an electronic format specified by Staff.
 - (c) Should Staff determine that the draft Form of Order is not consistent with its proposed resolution, Staff shall direct the petitioner to revise the Form of Order accordingly. The petitioner shall submit the final revised Form of Order to Staff within three (3) business days after being directed to do so by Staff with a copy to the respondent, Advocate and the Attorney General's Office. Petitioner shall also provide a copy of the final revised Form of Order to Staff in an electronic format specified by Staff.
8. Comments on the Form of Order
- (a) Within five (5) business days of receipt of the draft Form of Order, the petitioner, respondent and Advocate shall file with the Secretary of the Board comments, if any, on the proposed draft Form of Order and the proposed Staff resolution. Comments may include a revised proposed Form of Order showing deletions in brackets [thus] and new text underlined, thus. Such filing may not be by facsimile. Comments on the proposed Form of Order shall be limited to the consistency of the draft Form of Order with Staff's proposed resolution, and no party shall submit new argument at this time. Comments on the proposed Staff resolution shall not rely on facts or argument not previously presented, shall specify the findings of fact, conclusions of law or dispositions upon which comments are made, shall set out specific findings of fact, conclusions of law or dispositions proposed in lieu of or in addition to those proposed by Staff, and shall set forth supporting reasons with full citation to the record and supporting legal authority.
 - (b) A copy of all comments filed with the Board shall concurrently with or prior to the filing of such comments with the Board, be delivered in-hand, to the parties, the Advocate, the Attorney General's Office and to Staff.

DISPUTE RESOLUTION GUIDELINES

- (c) Staff shall review the draft Form of Order and all comments submitted for consistency with its proposed resolution within five (5) business days.

9. Submission to the Board

- (a) Staff shall, upon finalization of the draft Form of Order, submit the full Dispute Resolution record to the Board for consideration.
- (b) The Board shall render its decision based solely upon the record.
- (c) The record which the Board shall rely upon for resolution of the dispute shall contain all submissions of the petitioner, respondent and the Advocate, and the transcripts of the Dispute Resolution. The Board may take official notice of judicially noticeable facts pursuant to N.J.A.C. 1:1-15.2 and Evid. R. 201.
- (c) The Board may either:
 - (1) issue a decision as to the law and facts;
 - (2) set the matter down for further Board action;
or
 - (3) take such other action as the interests of justice require.

DISPUTE RESOLUTION GUIDELINES

Time line:

Day 1	-----	Petition filed to resolve dispute and assigned to Dispute Resolution.
Day 7 (5 business days)	-----	Answer filed.
Day 9 (7 business days)	-----	Comments of Advocate filed.
Day 10 (3 business days)	-----	Dispute Resolution meeting #1 held.
Day 19 (7 business days)	-----	Dispute Resolution meeting #2 held. Staff's proposed resolution announced.
Day 26 (5 business days)	-----	Petitioner submits a draft Form of Order to Staff.
Day 33 (5 business days)	-----	Parties and Advocate submit comments on Form of Order.