The NYPSC has issued a series of orders to carry out its mandate. In 1997, it issued a comprehensive decision ("the Pole Attachment Decision") resolving a wide range of rate and operational issues related to pole attachments.[1] Among other things, it decided to adopt the FCC's model for setting pole attachment rates and to freeze rates at their then-existing levels until the new FCC method takes effect in 2001.[2] That decision, however, did not extend to rates for use of ducts, conduits, and rights-of-way, which the NYPSC has stated should be addressed as they arose.[3] In that context, the NYPSC has required Bell Atlantic to unbundle house and riser cable using TELRIC prices.[4] The pricing of ducts, conduits, and rights-of-way is now set for consideration in the NYPSC's 1999 reexamination of network element rates.[5]

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[1] Case 95-C-0341, Opinion No. 97-10 (June 17, 1997), BA-NY Application, Appdx. I, Vol. 2, Tab 15.

[2] Id., pp. 6, 17-18.

[3] Cases 95-C-0657 et al., Network Elements Proceeding, Order Denying Interlocutory Review (issued May 15, 1998), p. 5.

[4] Cases 95-C-0657, et al., Network Elements Proceeding, Opinion No. 97-19, Opinion and Order in Phase 2 (issued December 22, 1997), BA-NY Application, Appdx. G, Vol. 2, Tab 13.

[5] See e.g., Case 98-C-1357, Second Network Elements Proceeding, "Ruling on Scope and Schedule", (issued June 10, 1999).

II. The Record

A. Bell Atlantic-NY's Position

Bell Atlantic-NY asserts that it is providing access to poles, conduits, ducts, and rights of way in accord with the Act, and as of July 1999 provided over 818,000 pole attachments and 3.9 million feet of conduit.[1] Bell Atlantic-NY asserts that it provides access to poles, ducts, conduit and rights of way through standard licensing agreements.[2]

B. Competitors' Positions

There has been some limited controversy related to this checklist item.

First, AT&T's assertion, raised earlier in our proceeding, that Bell Atlantic-NY had not established "formal processes by which CLECs may obtain maps and other engineering information"[3] has been resolved. Bell Atlantic-NY stated that it has procedures on file including firm time commitments, and would respond to requests for engineering record searches and presurveys within a 45-day period, in accordance with its conduit licensing agreements.[4]

Second, RCN complained of delays in gaining access to conduit space in Manhattan from Empire City Subway, an affiliate of Bell Atlantic-NY. It asked that carriers be allowed

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[1] BA-NY Lacouture/Troy Declaration (September 21, 1999), BA-NY Application, Appdx. A, Vol. 1, Tab 1, ¶¶128, 130, 140-142.

[2] Id., ¶130

[3] AT&T Rowland Affidavit (September 24, 1998), BA-NY Application, Appdx. C, Vol. 35, Tab 523, ¶6.

[4] BA-NY Lacouture/Troy Declaration (September 21, 1999), BA-NY Application, Appdx. A., Vol. 1, ¶¶142-149.

to perform the work themselves using approved contractors.[1] RCN also claimed that Bell Atlantic-NY will not be able to meet the demand for pole attachments and that Bell Atlantic-NY has not made a showing that it can handle that demand.

Bell Atlantic-NY indicates that RCN may use its own construction crew provided it is an Empire City Subway-approved contractor. In addition, Bell Atlantic-NY states that its ability to meet demand is demonstrated by its current performance and by the fact that it has steadily increased its construction workforce since 1997 and now has the capacity to perform 180,000 pole attachments per year. It also states that Empire City Subway has likewise expanded its construction force and facilities (by some 40%) to meet increased demand.[2]

III. Findings

A. Legal Obligation to Provide Checklist Item

Bell Atlantic-NY asserts that it has entered into standard licensing agreements and binding interconnection agreements approved by the NYPSC under §252 to provide poles, ducts, conduits, or rights-of-way.[3] Those agreements establish its legal obligation to provide this checklist item.

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[1] RCN Brief (August 17, 1999), BA-NY Application, Appdx. C, Vol. 61, Tab 943.

[2] BA-NY Lacouture/Troy Declaration (September 21, 1999), BA-NY Application, Appdx. A, Vol. 1, ¶139.

[3] BA-NY Lacouture/Troy Declaration (September 21, 1999), BA-NY Application, Appdx. A., Vol. 1, ¶130.

B. Verification of Checklist Compliance

Bell Atlantic-NY has demonstrated that it is providing nondiscriminatory access to its poles, ducts, conduits, and rights-of-way at just and reasonable rates, terms, and conditions in accordance with the requirements of §224, and thus has satisfied the requirements of checklist item (iii). Specifically, Bell Atlantic-NY has shown that it has established nondiscriminatory procedures for: (1) evaluating facilities requests for access to poles, ducts, conduits, and rights-of-way, in accordance with §224 of the Act and Public Service Law §119-a; (2) allowing nondiscriminatory access to information on availability of facilities; (3) permitting competitors to use non-Bell Atlantic-NY workers to complete necessary work to attach facilities; and (4) complying with approved rates.[1]

Our review of Bell Atlantic-NY's compliance shows that Bell Atlantic-NY has a concrete and specific legal obligation to provide nondiscriminatory access to poles, ducts, conduits, and rights-of-way,[2] and Bell Atlantic-NY has demonstrated that it is fulfilling that commitment.

Evaluating Requests for Access. Bell Atlantic-NY's affidavit demonstrates that it is complying with §224 of the Act, §119-a of the Public Service Law, and all relevant NYPSC

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[1] See Second BellSouth Louisiana Order, ¶174.

[2] BA-NY Application p. 8 and Attachment A, Exh. 1; BA-NY Lacouture/Troy Declaration (September 21, 1999), BA-NY Application, Appdx. A, Vol. 1, ¶130 and Attachment L, pp. 22-105.

rules regarding the evaluation of facilities requests.[1] There is no evidence in the record claiming discriminatory access.

Access to Facilities Information. Bell Atlantic-NY has shown that it provides competitors with nondiscriminatory access to information concerning its facilities.[2] AT&T's complaint about access to engineering information has not been renewed.

Choice of Workforce. Bell Atlantic-NY satisfies its obligation to permit attaching parties to use the individual workers of their choice to perform work. The only limitation Bell Atlantic-NY appears to place on the use of CLEC contractors is related to work which is subject to labor contracts.[3]

Further, RCN's complaints regarding Empire City Subway have been persuasively refuted by Bell Atlantic-NY's Declaration.[4]

Rates. Bell Atlantic-NY has submitted evidence that its rates comport with the NYPSC requirements. No commenter states that Bell Atlantic-NY has not established just and reasonable rates as required by checklist item (iii).

* * *

For the foregoing reasons, we verify compliance with the requirements of Checklist item (iii).

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1 BA-NY Lacouture/Troy Declaration (September 21, 1999), BA-NY Application, Appdx. A, Vol. 1, ¶¶128-158.

2 Id., ¶142-148.

3 Id., ¶150.

4 Id., ¶¶154-158.

Checklist Item (iv): Unbundled Local Loops

I. Legal Standard

A. The 1996 Act

Section 271(c)(2)(B)(iv) of the Act requires that the BOC offer "[l]oop transmission from the central office to the customer's premises, unbundled from local switching or other services."[1]

B. The FCC Orders

The Commission defined the local loop as "a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC's central office, and the network interface device at the customer premises."[2] The definition includes a variety of loop types, including "two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide such services as ISDN, ADSL, HDSL, and DS-1 level signals."[3] As an unbundled network element, the local loop must be provided on a nondiscriminatory basis in accordance with §251(c)(3).[4] The Commission requires that the BOC be able to deliver loops, of the same quality as the loop that the BOC uses to provide service to its own retail operation, to its competitor within a

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[1] 47 U.S.C. §271(c)(2)(B)(iv).

[2] Local Competition First Report and Order, ¶380.

[3] Id., ISDN is Integrated Services Digital Network; ADSL is Asynchronous Digital Subscriber Links; and HDSL is High-bit-rate Digital Subscriber Line.

[4] See 47 U.S.C. §§271(c)(2)(B)(ii) and (iv).

reasonable time frame and with a minimum of service disruption.[1] It appears from the public notice that the recent Commission determination of Rule 319 upon remand reaffirms that the incumbent must provide unbundled loops as network elements and clarifies that Bell Atlantic-NY must provide access to xDSL-capable loops.

C. State Application of Legal Standards

New York required the incumbent to unbundle loops for sale to competitors under the authority of the New York Public Service Law long before the passage of the 1996 Act.[2] Specific requirements for loops in the §271 context are spelled out in the Pre-Filing Statement. The Pre-Filing Statement requirements, and the associated obligations it references, commit Bell Atlantic-NY to meet, if requested, specified standard provisioning intervals for loops at levels established in the NYPSC service quality proceeding.[3] The company also committed to provision, at Public Service Commission-established intervals, several "premium" loop types: 2-wire digital -ISDN qualified, 4-wire digital, 1.544 MBPS

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[1] 47 C.F.R. 51.311(b); 47 C.F.R. 51.313(b); Local Competition First Report and Order, ¶¶312-316.

[2] Case 91-C-1174, Comparably Efficient Interconnection Arrangements for Residential and Business Links, Order Making Link Rates Permanent (issued March 1, 1995); Order Directing the Filing of Tariffs (issued May 25, 1994).

[3] Pre-filing Statement, BA-NY Application, Appendix C, Vol. 28, Tab 403, p. 25. The stated intervals are:

Basic Link (SVGAL) - Hot Cut
5 Business days
Basic (analog) and Premium (digital) 2-wire-New
A) 1-5 lines Smarts Clock
B) 6-9 lines 10 business days
C) 10+ lines Negotiated

channel (DS-1), and 45 MBPS channel (DS-3).[1] Where a customer is served using Integrated Digital Loop Carrier (IDLC), Bell Atlantic-NY committed to assigning other existing plant or new facilities to provide requested unbundled loops, with the additional proviso that a change from IDLC to other plant would have no impact on the PSC-established interval.[2]

II. The PSC Record

A. Pricing and Geographical Rate Deaveraging[3]

In Phase 1 of its first network elements proceeding, the New York Commission set TELRIC rates for unbundled loops that were deaveraged into two geographic zones, but anticipated future movement toward further deaveraging.[4] At the time of the Phase 1 Decision, the FCC three-zone deaveraging rule was among those vacated by the Eighth Circuit Court of Appeals.[5] With the Supreme Court's recent reinstatement of the rule,[6] Bell Atlantic-NY filed its tariff amendment including cost-based interim unbundled loop rates providing for a Manhattan rate lower than the existing major cities rate. The NYPSC allowed

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[1] Id., pp. 25-26. The processes for verifying the availability of qualified loops for ISDN, 1.544 MBPS, and 45 MBPS loops are also specified.

[2] Pre-filing Statement, p. 26.

[3] For additional detail on pricing, see the pricing section, below.

[4] Cases 95-C-0657 et al., Network Elements Proceeding, Opinion No. 97-2 (issued April 1, 1999)(the Phase 1 Decision), BA-NY Application, Appdx. p. 130.

[5] 47 C.F.R. 51.507(f); Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997), aff'd in part, rev'd in part, AT&T v. Iowa Utilities Board, 525 U.S. 366 (1999).

[6] AT&T v. Iowa Utilities Board, 525 U.S. 366 (1999).

the filing to take effect, reducing Manhattan loop rates, pending final rate setting[1] notwithstanding the FCC stay order.[2]

Currently pending at the NYPSC is consideration of permanent rates pertaining to xDSL-capable loops. After proposing to recover interim recurring and non-recurring rates in amendments to CLEC interconnection agreements, on August 30, 1999, Bell Atlantic-NY filed a tariff seeking recurring and non-recurring charges related to xDSL loops. It proposed recurring charges to recover costs of conditioning longer xDSL loops and costs for mechanized and manual loop database queries. Bell Atlantic-NY agreed to offer ADSL and HDSL-capable loops at its monthly rate for standard 2-wire and 4-wire analog loops, respectively until permanent rates are set. Initially, it proposed a premium loop rate for xDSL loops. Competitors have filed comments contesting the Bell Atlantic-NY tariff filing's non-recurring loop conditioning charges, which they contend could be prohibitive for certain loops.[3] A separate, accelerated track is underway in the NYPSC network element rate proceeding, and a schedule has been set to complete the NYPSC permanent DSL rate inquiry

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[1] Case 98-C-1357, Rates for Unbundled Network Elements, Order Allowing Deaveraging Tariff Filing to Take Effect (issued May 28, 1999). The reduced Manhattan rates are not subject to refund or reparation.

[2] CC Docket No. 96-98, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 - Deaveraged Rate Zones for Unbundled Network Elements, Stay Order (released May 7, 1999).

[3] The non-recurring charges apply only to loops over 18,000 feet in length.

by December 1999.[1] In the interim, both the recurring and non-recurring charges proposed by Bell Atlantic-NY are temporary and subject to refund.

B. Non-pricing Loop Issues

In its Application, Bell Atlantic-NY asserts it has provided 44,000 loops unbundled from local switching through July 1999.[2] For purposes of analysis, issues concerning loops delivered as part of UNEP are analyzed in checklist item (ii); this section considers standard stand-alone loops, loops provisioned by hot cuts, including IDLC loops, and xDSL-capable loops.

Competitors, during and following the close of the fourth and final Technical Conference, held in July 1999, raised issues of concern for their provision of local exchange service. With respect to standard loops, the issues are the accuracy and timeliness of Bell Atlantic-NY confirmation notices; the hot-cut provisioning process (both Bell Atlantic-NY performance and its reporting of that performance); and the accuracy of Bell Atlantic-NY directory listings.[3] Regarding migration of IDLC loops to competitors, issues remained concerning timeliness and quality of service. With respect to xDSL-capable loops, issues remaining include loop qualification, prices and conditioning charges, and provisioning timeliness and quality.

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[1] Case 98-C-1357, New York Telephone Company-Rates for Unbundled Network Elements, Procedural Ruling Concerning DSL Charges (issued September 30, 1999).

[2] BA-NY Application, p. 16.

[3] The issues concerning accuracy of directory listings are analyzed in connection with checklist item (viii).

1. Standard Loops

a. Ordering: LSRC Accuracy and Timeliness

A hot cut[1] order is initiated by a CLEC Local Service Request (LSR), followed by a Bell Atlantic-NY Local Service Request Confirmation (LSRC). CLECs have asserted that the timely receipt and accuracy of LSRCs to verify that their orders will be filled as requested and on the due date. At the fourth Technical Conference, Bell Atlantic-NY's witness Maguire testified that "BA agrees that there are issues with the LSRCs. We believe the accuracy rate is hovering around the 60 to 70 range."[2] CLECs claimed that Bell Atlantic-NY provided inaccurate or incomplete LSRCs over 50% of the time from June 21 to July 31, 1999.[3] Bell Atlantic-NY contests some of the CLEC allegations of inaccuracies.

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[1] A hot cut is a manual process designed to move a loop that is in service from BA-NY's switch to the CLEC's switch. To meet the objective that no customer be out of service for more than five minutes, hot cut completion is scheduled for a one- to eight-hour window, depending upon the number of lines involved. The window includes both the manual process--prewiring a cross connect from the BA-NY main distribution frame to the CLEC collocation arrangement and testing for CLEC dial tone--and the associated software translations.

[2] Tr. 3956, BA-NY Application, Appdx. C, Vol. 59, Tab 890.

[3] AT&T Meek Affs. (July 27 and August 16, 1999), BA-NY Application, Appdx. C, Vol. 56 and 61, Tabs 881 and 926, respectively; AT&T Brief, pp. 9-10, Id., Vol. 61, Tab 941. Discrepancies between CLEC and Bell Atlantic-NY measurements of LSRC accuracy stem, at least in part, from disagreement as to what information is required in the LSRC. At Staff's suggestion, parties have now agreed that a LSRC should include the due date, the telephone number, the cable and pair, and the TXNU (Bell Atlantic-NY circuit identifier). Bell Atlantic-NY has stated it will provide the cable and pair information in December 1999.

Bell Atlantic asserts its overall LSRC performance exceeded the PSC standards for the first seven months of 1999.[1]

b. Provisioning: The Bell Atlantic-NY Procedure and its Implementation

Bell Atlantic-NY executes hot cuts for working loops to enable CLECs to reuse the existing local loop of a Bell Atlantic-NY POTS customer. The provision of a hot cut entails manual disconnection of the customer's loop in the Bell Atlantic-NY network and reconnection of the unbundled local loop to the CLEC collocation facility. Often attendant upon the hot cut is the coincident implementation of local number portability.

Recognizing that there is no analogue to a hot cut within Bell Atlantic-NY's own retail operation, the NYPSC adopted an absolute measure of on-time performance for carrier-to-carrier service quality purposes. The standard adopted was that 95% of hot cuts must be completed timely; a secondary target of 90% on time was established in the Performance Assurance Plan.[2] Bell Atlantic-NY asserted it completed 94% of its hot cuts on time for the four-week period between June 21 and July 16, 1999.[3] Bell Atlantic-NY further asserted that the record demonstrates that CLEC failures--in particular, AT&T's failure to provide dial tone--were responsible for considerable problems in achieving on-time hot cuts, citing the fourth Technical Conference record.

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[1] BA-NY Application, p. 40.

[2] Case 97-C-0139, Service Quality Standards, Order Adopting Intercarrier Guidelines (issued February 16, 1999).

[3] Bell Atlantic-NY Second July Upd. Aff. (July 22, 1999), ¶¶38-39, BA-NY Application, Appdx. C, Vol. 54, Tab 853); Bell Atlantic-NY Brief (August 17, 1999), p. 18, Id., Vol. 61, Tab 941.

The timeliness and quality of loop hot cuts were the subject of considerable competitor scrutiny; the actual marketplace provisioning of loop hot cuts was the subject of numerous affidavits, direct testimony, and questioning at the fourth Technical Conference.[1]

Effective April 1999, in cooperation with parties and NYDPS Staff, Bell Atlantic-NY adopted detailed operating methods and procedures to facilitate coordination between Bell Atlantic-NY and CLECs and standardize the hot cut process.[2] This procedure was a result of KPMG and Staff on- and off-site observations of each Bell Atlantic-NY and CLEC organization involved in the hot cut process. The steps in the process are identified in the Application.[3] The steps engendering the greatest controversy during the fourth Technical Conference, and subsequently in dispute by competitors, are (1) the pre-due date dial tone check; (2) the due date minus two notification call by Bell Atlantic-NY to the CLEC;[4] (3) the Go/No Go call from Bell Atlantic-NY to the CLEC during the hour immediately before the frame due time; and (4) the post-completion notification call.[5]

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[1] Only hot cut performance data subsequent to June 21, 1999 has been placed in evidence by Bell Atlantic-NY and accordingly is under discussion here.

[2] BA-NY Brief, pp. 16-17, BA-NY Application, Appdx. C, Vol. 61, Tab 941.

[3] Bell Atlantic-NY Application, Appendix A, Bell Atlantic-NY Lacouture/Troy Declaration, ¶70.

[4] Bell Atlantic calls the CLEC if it has tested and found no CLEC dial tone; no call is required if CLEC dial tone is in place.

[5] Bell Atlantic-NY Second July Update Canny, Dowell Aff. (July 22, 1999), BA-NY Application, Appdx. C, Vol. 54, Tab 853.

A tracking checklist was also adopted effective June 21, 1999.[1] In addition to identifying the steps to a hot cut, the procedure requires Bell Atlantic-NY technicians to complete a checklist noting when each step has been taken; the checklist is intended to serve as a basis for reporting on hot cut performance. KPMG retesting indicates that Bell Atlantic-NY's hot cut procedures, when followed, lead to timely and acceptable hot cuts.

Of the steps, competitors focused on the telephone call by Bell Atlantic-NY's Regional CLEC Coordination Center (RCCC) to the CLEC two days before the planned hot cut date--the due date minus two days (DD-2) call--intended to notify the CLEC where there is a problem with CLEC dial tone. This check for dial tone by frame technicians two days before the due date (DD-2) should flag this or any other problems sufficiently ahead of the planned hot cut date to allow the CLEC to remedy the shortcoming or, if the problem is on the Bell Atlantic-NY side, to allow time for a Bell Atlantic-NY fix.

Competitors assert that Bell Atlantic-NY fails to follow its procedures and that this results, among other things, in large numbers of orders being supplemented or postponed ("supped"). In the competitors' view, these supplemented orders are the responsibility of the incumbent and should not be counted as performed on-time when they are eventually filled.[2] Bell Atlantic-NY asserts that the rescheduled orders referred to by the CLECs are caused in large part by the CLECs themselves or CLEC end-user decisions, citing absence of CLEC

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[1] BA-NY Brief, BA-NY Application, Appdx. C, Vol. 61, Tab 941, p. 17.

[2] Supplementing or delaying completion of a hot cut may be advantageous to end users and to competitors, as delay may enable providers to locate and solve problems prior to the hot cut, thereby avoiding a flawed hot cut that might disrupt customer service.

dial tone, changes in cable pair assignments, and rescheduling. In addition, Bell Atlantic-NY responds that the results put forward by CLECs are misleading, in that they disregard the hot cut checklist procedure.[1]

AT&T challenged Bell Atlantic-NY's assertions of its market loop hot cut performance, relying on an extensive analysis by its Denver-based District Manager of Process Improvement for Hot Cut Loops. AT&T attempted to document hot cut performance during the four calendar weeks beginning June 21, 1999. AT&T charged Bell Atlantic-NY failed to provision coordinated hot cut loops in a commercially reasonable manner, estimating on-time performance at 72%. In particular, AT&T attempted to document that significant numbers of loops did not work, caused widespread degradation or loss of telephone service, or were supplemented on or just before the hot cut due date because of Bell Atlantic-NY's provisioning errors.[2] Among these errors loomed large Bell Atlantic-NY's failure to notify AT&T of problems with its dial tone two days prior to the hot cut due date (DD-2) and provision of faulty Local Service Request Confirmations (LSRCs) with missing or wrong telephone number, due date, or cable and pair information.[3]

At the fourth Technical Conference, AT&T put at issue 140 of its orders for Bell Atlantic-NY hot cuts. AT&T charged that this sample of orders demonstrated that Bell Atlantic-NY mis-scored its performance results as to AT&T hot cut orders; that it failed to

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[1] BA-NY Brief, BA-NY Application, Appdx. C, Vol. 61, Tab 941, p. 18.

[2] AT&T Meek Aff. (July 27, 1999), ¶3, Id., Vol. 56, Tab 881.

[3] Id., ¶1.

achieve anywhere near the 95% on-time hot cut standard; and that Bell Atlantic-NY was responsible for putting as many as 10-15% of AT&T's new customers out of service and deleting directory listings for as many as 10%.[1] Bell Atlantic-NY submitted the checklists and the underlying Work Force Administration (WFA)[2] logs for the challenged orders; AT&T documented its claim with its own computer record as to each order. This reconciliation addressed the sample of orders placed in issue by AT&T; it was not a complete reconciliation of Bell Atlantic-NY and CLEC results for July 1999.[3]

Overall for July 1999, Bell Atlantic-NY reported on time performance (metric PR 4-06) of 94.34% (% on time performance - hot cut). AT&T filed an affidavit stating that Bell Atlantic-NY's on time performance under the carrier-to-carrier metric for AT&T hot cuts in July was 76%.[4] Both AT&T and Bell Atlantic-NY asserted that their data had been reported consistent with the carrier-to-carrier guidelines.

NYDPS Staff reviewed AT&T's list of order numbers and requested that Bell Atlantic-NY identify how it scored each of these orders. That exercise resulted in a list of 119 disputed orders that Bell Atlantic-NY scored as "met" and AT&T scored as "missed".

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1 *See* discussion of Checklist item (viii).

2 Work Force Administration (WFA) logs contain the internal Bell Atlantic-NY records of procedures.

3 See BA-NY Application, p. 18, n.19; see Staff Memorandum to Administrative Law Judge concerning AT&T and Bell Atlantic-NY Hot Cut Data Reconciliation, appended to the Ruling Accepting Staff Analysis and Closing the Technical Conference Process (issued August 16, 1999), BA-NY Application, Appdx. C, Vol. 61, Tab 925.

4 AT&T supported its number with a list of each order completed by BA-NY in July, and the AT&T score for that order.

NYDPS Staff evaluated the respective claims for each of the disputed orders. A number of the differences in scoring result from different interpretations of the carrier-to-carrier guidelines, while other disputes involve the events surrounding the hot cut.

Because the carrier-to-carrier definitions for metric PR4-06 must be applied to a process that involves a high degree of carrier coordination within precisely defined intervals, their application to individual orders necessarily involves some judgment and interpretation. To assist in that process NYDPS Staff established a list of rules that would govern the scoring of certain categories of orders, and Staff applied those rules to the reconciliation.

Staff reviewed the list of 119 disputed orders and identified those orders that had already been scored in a previous data reconciliation. Staff applied the definition rules in scoring specific disputed orders, and reviewed appropriate documentation, including hot cut checklists, logs maintained by the technicians of both companies, local service requests, local service request confirmations, and trouble tickets. The NYDPS Staff scoring judgments were based on all the available data.

Staff determined that, based on prior reconciliations, Bell Atlantic-NY's data should reflect an additional 18 missed orders. Staff also identified 29 orders, not previously analyzed, that should have been scored as missed.[1] After adjusting for all of these factors, NYDPS determined Bell Atlantic-NY's on-time performance for July 1999 to be 90.79%.

Bell Atlantic-NY has also made additional process changes. Hot cut checklists are now completed for every order and filled out by RCCC technicians. Bell Atlantic-NY also

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[1] BA-NY improperly excluded one order from its July 1999 data and improperly included two orders.

asserts that 100 of its central office technicians have completed a frame technician certification process. In addition, a maintenance center team has been developed to deal with hot cuts, premature disconnects and post cut troubles. This team is designed to operate 24 hours a day, 7 days a week.[1]

The key step in the revised hot cut provisioning process is the Bell Atlantic-NY check for CLEC dial tone two days before the due date for the hot cut (DD-2). According to the procedure, this check is intended by all parties to confirm that dial tone is present on the line and, if not, to give both parties ample time to locate the problem and fix it. In addition, the DD-2 call allows the CLEC the opportunity to notify its customer of potential delay and, if necessary, postpone the due date.[2] CLECs, and other parties, consider this DD-2 notice of critical importance: perhaps the key step in the hot cut provisioning process which will almost guarantee a working and timely hot cut.[3]

The carrier-to-carrier metrics did not originally measure whether Bell Atlantic-NY carried out the DD-2 check. To minimize postponements of scheduled hot cuts and to provide a further incentive for Bell Atlantic-NY to make the DD-2 check, Bell Atlantic-NY has committed to modify the performance reporting upon its entry into the interLATA market.

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[1] Bell Atlantic-NY Maguire Aff. (July 22, 1999), BA-NY Application Appdx. C, Vol. 54, Tab 853.

[2] This postponement, like other types, would result in the creation of a supplemental order, or "supp" by Bell Atlantic-NY.

[3] See, for example, Tr. 4083, BA-NY Application, Appdx C, Vol. 59, Tab 890 (July 30, 1999 Minutes of Technical Conference); Brief of NY Attorney General, p. 9, Id., Vol. 62, Tab 961.

To address these concerns, in its Petition for Approval of the Amended Performance Assurance Plan filed on September 24, 1999, Bell Atlantic-NY specifies its procedures and commits that Bell Atlantic-NY will record an order as a miss, for measuring its performance, in any situation in which it fails to notify a CLEC of the absence of dial tone or fails to conduct the facilities check and related notification for Integrated Digital Link Carrier (IDLC) facilities by 2:30 p.m. two days before the due date (DD-2) and the CLEC supplements the order.[1]

KPMG Exception 54 concerned Bell Atlantic-NY problems in consistently following the established hot cut coordination procedures. KPMG's conclusion closing that exception, that Bell Atlantic-NY's loop provisioning was satisfied, with qualifications, notes that the incumbent was not strictly following the time line for pre-wiring and coordinating provisioning.[2] Although noting that the coordinated provisioning procedures were not consistently or reliably practiced in the field,[3] KPMG found that on the due date Bell Atlantic-NY placed 90% of the required phone calls before and after frame due time to CLECs in a timely fashion.[4]

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[1] Bell Atlantic-NY Petition to Amend Performance Assurance Plan (September 24, 1999), p. 5. BA-NY Application, Appdx. I, Vol. 3, Tab 24.

[2] KPMG Final Report, IV-60; Comments to Test Cross Reference P3-22, Id., Appdx C, Vols. 60 a-c, Tab 916.

[3] Id., KPMG Final Report, Test Cross-Reference P12-3. POP12iv293.

[4] Id., KPMG Final Report, POP 121V-291.

c. Disruption of Service

CLECs expressed concerns that their customers experienced service disruptions following loop provisioning; their related concern was that the performance metrics failed to measure the quality of the loop provided or the quality of the hot cut process, but only measured timeliness of provisioning.[1] Service disruptions, including loss of service entirely, may be caused by premature or defective cutovers, when coordination fails.

CLECs expressed concerns that the metrics fail to accurately depict an outcome of importance to them: whether their end user experiences a service disruption.[2] An investigation by NYDPS Staff did not yield evidence of widespread outages resulting from the hot cut process; indeed, many of the service disruptions reported by competitors were no greater than inconveniences such as static on the line, and were no more and no different from the disruptions Bell Atlantic-NY retail customers experienced.

Recognizing the potential service disruption problem, however, the NYPSC will consider several adjustments to the measurement process. First, Bell Atlantic-NY has proposed that the installation codes (I-codes), measuring troubles reported within seven days of installation, should be disaggregated to show hot cut troubles specifically. In addition, Bell Atlantic-NY proposes these measures be expanded to specify installation troubles for hot cut loops within seven days; bill credits will be due if Bell Atlantic-NY misses either on-time

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[1] NEXTLINK Brief, pp. 5-6. Bell Atlantic-NY Application, Appdx. C, Vol. 62, Tab 947,

[2] Id., NEXTLINK Brief, p. 6.

performance or the installation code for hot cuts in any one month.[1] These installation codes adequately capture installation-related service problems and, taken in conjunction with the hot-cut metrics, give a complete picture of the quality and timeliness of loop provisioning.

2. IDLC Loop Migration

The incumbent must provide competitors access to unbundled loops regardless of whether Bell Atlantic-NY used integrated digital loop carrier (IDLC) technology, and even if it must take affirmative steps to condition existing loop facilities to enable requesting carriers to provide services not currently provided over such facilities.[2] KPMG had flagged this issue in its Exception 44, identifying that Bell Atlantic-NY was unable to migrate subscriber loops currently served by integrated subscriber loop carrier systems (integrated SLCs) to CLEC-provided service.

KPMG closed Exception 44, concluding new methods and procedures allowed for a smoother migration of customers served by IDLC where alternative facilities are available. The procedures include (1) earlier determination of IDLC, (2) where new facilities were available, assignment of new Universal Digital Loop Carrier (UDLC) or copper

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[1] Bell Atlantic-NY Petition to Amend Performance Assurance Plan (September 24, 1999), p. 6, BA-NY Application, Appdx I, Vol. 3, Tab 24..

[2] Second BellSouth Louisiana Order, ¶187.

(3) coordination to ensure proper transfer before and during the hot cut, and (4) training of Bell Atlantic-NY RCCC coordinators.[1]

Some CLECs reported that customers were put out of service when replacement facilities were not timely available, and that on occasion these customers were returned to Bell Atlantic-NY.[2] Competitors complained of Bell Atlantic-NY's procedures for providing them access to unbundled local loops of customers served by Bell Atlantic-NY IDLC equipment. CLEC concerns include that neglect in checking for dial tone at DD-2 leads to failure to timely provide IDLC loops when Bell Atlantic-NY facilities turn out to be unavailable.[3]

The modified hot cut reporting proposed by Bell Atlantic-NY should resolve these CLEC problems.

3. xDSL-capable Loops

At the fourth technical conference held in July 1999, CLECs expressed extreme frustration with xDSL loop provisioning by Bell Atlantic-NY. In affidavits, competitors providing xDSL service alleged a significant number of late firm order commitments (FOCs) resulting in unproductive CLEC dispatches and other delays affecting their credibility with

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[1] Because there are so few IDLC migration orders, KPMG was unable to observe the new procedures at work. KPMG Closure Report (Exception 44), p. 2. Parties' estimates of how many BA-NY loops are served by IDLC range from 7% (Bell Atlantic-NY) to 10% (CLECs).

[2] NEXTLINK Brief, Bell Atlantic-NY Application, Appdx. C, Tab 947, pp. 9-10; Cablevision Maese/Dusten Aff. (April 28, 1999), Bell Atlantic-NY Application, Appdx. C, Vol. 44, Tab 674, ¶¶17-18.

[3] AT&T Brief, Bell Atlantic-NY Application, Appdx. C, Vol. 62, Tab 952, p. 11.

their customers. Consequently, a collaborative process involving Bell Atlantic-NY, NYDPS Staff, COVAD, NorthPoint, and all other competitors currently or potentially offering xDSL services, was convened by the NYDPS.[1] The collaborative was convened on August 10, 1999 and is meeting regularly. Before the collaborative are the central issues raised by xDSL providers in this proceeding. The collaborative is currently addressing loop qualification for ordering, loop provisioning and maintenance, and xDSL loop conditioning. It then will address spectrum management and line-sharing.

a. Loop Qualification

The Bell Atlantic-NY mechanized database information has been limited to loop length and xDSL capability. The xDSL collaborative has resulted in Bell Atlantic-NY filing tariffed rates for loop information queries, including a mechanized database query, manual query, and engineering record search.[2] Although CLECs dispute the proposed charges for this information, they agree that all the information required is available.[3]

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[1] Also participating in the collaborative are MCIWorldCom, AT&T, Prism, Rhythms, DSLNet, NAS, ACI, Choice One, CTE, Allegiance and Intermedia.

[2] In the pre-ordering stage, a CLEC can query BA-NY on a specific loop's DSL capability. The mechanized database query, which is Web GUI-based, informs the CLEC as to the loop's DSL capability and whether it is under 18,000 feet long. Within 48 hours, at a charge of $62, BA-NY will perform a manual query providing loop length, presence of load coils, and presence of DLC, through a mechanized loop test. Within 72 hours, for $123, BA-NY will provide all available information on a loop through an engineering record search: exact loop length, number and location of load coils, length and location of bridge taps, wire gauge and gauge changes and locations, and locations of DLC. In the order stage, BA-NY will check individual loops, initially determined not to be DSL-capable, for alternate copper facilities.

[3] The disputed charges are currently being examined in a formal proceeding calendared to reach the NYPSC in December 1999.

b. Loop Provisioning

Participants have crafted and agreed to an xDSL-capable loop provisioning process based on cooperative testing.[1] This process, in effect since September 15, 1999, is being closely monitored and evaluated by the collaborative. The process involves both individual and joint testing, sharing of test results, joint review of order status, and dialog between the parties on orders in jeopardy. Bell Atlantic-NY issued intra-company bulletins to provide detailed guidance to installation technicians. Certain agreed-upon provisioning milestones are being tracked to assist in improving the process. Adjustments to the process are being made as required and by consensus, based on feedback from CLECs and Bell Atlantic-NY. We are optimistic that the attention focused on xDSL provisioning will resolve many of the outstanding issues. Preliminary results indicate that where the cooperative testing is done, installation problems are reduced.

The xDSL collaborative is defining the provisioning methods; standards of performance are being developed in the carrier-to-carrier service quality proceeding; CLECs have offered a joint proposal on metrics. Recommendations to the NYPSC are expected in December for the adoption of xDSL-specific metrics to ensure that these services can be separately monitored to ensure provision at a commercially reasonable level of quality and

[1] Ordering and provisioning of xDSL-capable loops were not separately examined by KPMG during the bulk of the testing period; nor were measurements of wholesale provisioning of xDSL services considered separately in the original formulation of the carrier-to-carrier metrics. The xDSL collaborative and the carrier-to-carrier group are cooperating to craft metrics to measure provisioning of xDSL-capable loops, to which Bell Atlantic-NY has committed.

timeliness, subject to the PSC Performance Assurance Plan and given additional weight as critical measures.[1]

4. House and Riser Cable

Bell Atlantic-NY provides unbundled access to its house and riser facilities. House and riser facilities are tariffed at NYT PSC No. 916, Sect. 5, 5th Revised Page 1.4, Original Page 1.5.

One competitor, RCN, challenged Bell Atlantic-NY's provision of house and riser cable for service to multiple dwelling units. RCN asserts that Bell Atlantic-NY has erected a barrier to its local market entry because it denies RCN permission for RCN technicians to cross-connect between RCN's loop plant and Bell Atlantic-NY's house and rise cable serving multiple dwelling units. The exclusive reliance on Bell Atlantic-NY technicians creates a bottleneck, RCN asserts, adding the incumbent has failed to meet the due date for 60% of its individual orders, creating a backlog of several hundred orders.[2] In addition, RCN charges Bell Atlantic-NY has been unable to handle house and riser orders using its Graphical User Interface (GUI). Bell Atlantic-NY responds that in April 1999 it programmed the GUI to accept house and riser orders.[3]

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[1] In its Petition for Approval of the Amended Performance Assurance Plan, filed September 24, 1999, Bell Atlantic-NY proposed development of a critical measure for xDSL products' timeliness and installation quality.

[2] RCN Brief, pps. 4-6 BA-NY Application, Appdx C, Vol. 46, Tab 709; RCN Kuczma Aff. (July 26, 1999), ¶¶4, 5, Id., Vol. 56, Tab 874.

[3] Bell Atlantic-NY Albert, Canny Joint Supp. Reply Aff. (May 5, 1999), ¶¶61-62, BA-NY Application, Appdx C. Vol. 46, Tab 709..

RCN also complains that the existing provisioning process for house and riser cable is ineffective. Consequently, RCN seeks direct access to Bell Atlantic-NY house and riser facilities through a cross connect placed between RCN's loop plant and Bell Atlantic-NY's house and riser cable that services multiple dwelling units.

The CLECs did not press for the establishment of a separate performance metric for the provisioning of house and riser cable so there are no verifiable data to assess the company's performance. Nevertheless, we believe this is an area where the company can improve its performance and where a change in the provisioning process will enhance the CLEC's ability to deliver services to their customers. Consequently, the NYDPS has facilitated an effort between the two companies to agree on a trial that would allow RCN direct access to Bell Atlantic-NY house and riser facilities without the need to dispatch a Bell Atlantic-NY installer and significantly improve the timeliness of RCN's access to house and riser facilities. We have been informed by both companies that as a result of a meeting held on October 1, 1999 they have agreed in principle to such a trial; details were ironed out in a meeting held October 8, 1999. It is anticipated that a written agreement on the trial will be reached by the parties within the next few weeks.

III. Findings

A. Legal Obligation to Provide Checklist Item

Bell Atlantic-NY has binding legal obligations to provide unbundled local loops contained in interconnection agreements approved by the PSC pursuant to §252 of the 1996

Act, and Bell Atlantic-NY also has legally enforceable obligations to provide unbundled loops on a nondiscriminatory basis pursuant to its tariff.[1]

B. Verification of Compliance

Few other issues provoked as much controversy or litigation; few are as fundamental to some competitors' ability to enter the local exchange market, compete effectively, and retain customers. Accordingly, few issues received more concentrated and prolonged attention from Bell Atlantic-NY, the parties, and the NYDPS.

We have also evaluated Bell Atlantic-NY's loop performance as measured by our service standards, focusing primarily on on-time installation performance, network (trouble) performance and maintenance and repair performance. Overall, there are 17 measures in the Performance Assurance Plan related to loop performance. For August 1999, Bell Atlantic-NY passed 14 of the 17 measures.[2] The Company also passed 14 out of 17 in July.

For August 1999, Bell Atlantic-NY is meeting its wholesale installation appointments for new loops more often than it is meeting similar retail appointments.[3] As indicated above, Bell Atlantic-NY's on-time hot cut performance was above 90% for July based on the NYDPS review of disputed carrier-to-carrier scoring for hot cut orders. The quality of Bell Atlantic-

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[1] BA-NY Application, p. 8.

[2] Three of the 17 measures had no wholesale activity in August. On-time installation performance for hot cuts is being audited and our findings will be included in our Reply Brief.

[3] See metrics PR-4-04-3113 (% missed appointments-dispatch-new loops); PR-4-04-3300 (% missed appointments-dispatch-complex); PR-4-05-3300 (% missed appointments-non-dispatch-complex); and PR-4-01-3200 (% missed appointments-total-specials).

NY's hot cut performance is also satisfactory, with a trouble report rate of less than 2%, for August 1999.[1] This performance is above the secondary standard in the Performance Assurance Plan and will provide competitors a meaningful opportunity to compete. Bell Atlantic-NY's network performance for loops, measured by trouble report rates, is also at or better than parity for August 1999.[2]

One area where Bell Atlantic-NY's performance fell short was repair appointments. Our analysis indicates that this is due largely to complex orders which the company and the competitors are working in the collaborative to fix.[3] We believe that the improved DSL provisioning procedures will produce fewer provisioning problems in the first place as well as ameliorate repair problems.[4]

The Average Delay Days-Total-Complex metric which suggested inadequate performance, is being revised in the carrier-to-carrier proceeding to better reflect only delay caused by Bell Atlantic-NY rather than the delay caused by the competitor.

The detailed and extensive investigation by NYDPS Staff indicates that the improvements to the hot cut process, the revised record-keeping method using the checklist,

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[1] See PR-6-02-% Installation Troubles within 7 days-Hot Cuts, BA-NY Application, Decl. of Dowell/Canny, Appdx. A, Vol. 3, Att. D, p. 104.

[2] See MR-2-02 Network Trouble Report Rate-Loops, BA-NY Application, Decl. of Canny/Dowell. Appdx. A, Vol. 3, Tab D.

[3] The % Missed Repair Appointments-Loop measure is being refined to separately track retail and wholesale complex appointments. Although the company was able to identify wholesale complex appointments it was unable to identify retail complex orders for August.

[4] The improved DSL provisioning procedures should also result in improved mean-time-to repair-loop performance.

and the additional work force training remedy the chief shortcomings identified by Staff, KPMG, and competitors.[1]

Bell Atlantic-NY has demonstrated that it is providing unbundled local loop transmission from the central office to the customer's premises and thus has satisfied the requirements of checklist item (iv), as detailed above.

Generally, the conclusion from this examination is that the issues affecting competition have been resolved and on-time performance has been demonstrated. For concerns that remain, Bell Atlantic-NY has put in place the procedures and training to maximize effective loop ordering and provisioning, as ratified by KPMG, to provide xDSL-capable loops, and to minimize provisioning postponements and local service request confirmation delays and inaccuracies due to Bell Atlantic-NY process problems.

* * *

For the foregoing reasons, we verify compliance with Checklist item (iv).

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[1] In the July 1997 Ruling on the Status of the Record, the Judge found that Bell Atlantic-NY's ability "to provision loops on a mass market basis [was] questionable, and it [had] not carried its burden to demonstrate it could handle high volumes." The Judge found it unclear whether loops beyond basic analog, switched, voice grade access lines (SVGALs) were actually available. She also found that Bell Atlantic-NY had neither provided evidence of actual parity nor established systems and metrics to produce such evidence in the future. Ruling on Status (issued July 8, 1997), BA-NY Application, Appdx. C, pp. 16-17. These shortcomings have been addressed.

Checklist Item (v)--Unbundled Local Transport

I. Legal Standard

A. The 1996 Act

Checklist item (v) requires a BOC to provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services."[1] Access to local transport is to be offered on a non-discriminatory basis, in accordance with §§251(c)(3) and 252(d)(1).[2]

B. FCC Orders

The Commission defines interoffice transmission facilities to include both dedicated transport and shared transport and requires that transport be provided on an unbundled basis to requesting carriers in accordance with §251(c)(3).[3]

II. The NYPSC Record

A. Bell-Atlantic-NY's Position

Bell Atlantic-NY states that it has provided shared transport in connection with more than 152,000 unbundled local switching elements to CLECs through UNE-P.[4] Bell Atlantic-NY asserts that it has provided, for the months of June, July and August, 99% of its platform,

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1 47 U.S.C. §271(c)(2)(B)(v).

2 47 USC 271(c)(2)(b)(ii).

3 47 C.F.R. 51.319(d).

4 BA-NY Lacouture/Troy Declaration (September 21, 1999), BA-NY Application, Appdx. A, Tab 1, ¶113.

and hence shared transport, orders on time.[1] Bell Atlantic-NY also indicates it has provided CLECs with more than 325 dedicated interoffice facilities arrangements and that it is meeting the due dates for completion at a rate that exceeds the rate for meeting due dates for itself.[2] Bell Atlantic-NY concludes that it is providing local transport on a non-discriminatory basis.[3]

B. Competitors' Positions

Parties claim that Bell Atlantic-NY does not provision unbundled transport in a timely manner.[4] Northpoint and ACI further claim that Bell Atlantic-NY does not test its transport facilities to ensure that the transport facilities function.[5] Northpoint contends that Bell Atlantic-NY inappropriately places orders in "customer-not-ready" status, which hinders the CLEC's ability to provide service to its customers.[6] Northpoint claims that this inappropriate

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1 BA-NY Lacouture/Troy Declaration (September 21, 1999), BA-NY Application, Appdx. A, Tab 1, ¶68.

2 BA-NY Lacouture/Troy Declaration (September 21, 1999), BA-NY Application, Appdx. A, Tab 1, ¶¶108, 109.

3 BA-NY Lacouture/Troy Declaration (September 21, 1999), BA-NY Application, Appdx.A, Tab 1, ¶114.

4 Northpoint Brief (August 17, 1999), BA-NY Application, Appdx. C, Vol. 61, Tab 944, p. 7; ACI Brief (August 17, 1999), BA-NY Application, Appdx. C, Vol. 61, Tab 957, pp. 18, 19; ChoiceOne Brief (August 17, 1999), BA-NY Application, Appdx. C. Vol. 61, Tab 945, p. 5; RCN Brief (August 17, 1999), BA-NY Application, Appdx. C, Vol. 61, Tab 943, p. 9.

5 Northpoint Brief, supra, p. 7; ACI Brief, supra, p. 19.

6 Northpoint Brief, supra, p. 8.

status allows Bell Atlantic-NY to delay its provisioning without reporting its performance as late under the metrics.[1]

Finally, Northpoint states that Bell Atlantic-NY will not make unbundled transport facilities available to CLECs unless they are spare[2] and, therefore, CLECs must purchase special access, which is more costly.[3]

III. Findings

A. Legal Obligation to Provide Checklist Item

The company currently provides unbundled local transport pursuant to interconnection agreements and tariff.[4]

B. Verification of Checklist Compliance

We find that, for the following reasons, Bell Atlantic-NY is in compliance with this Checklist item. Although before July, Bell Atlantic-NY's on-time performance for interoffice facilities was hindered by a backlog in construction relative to demand, Bell Atlantic-NY now states that it currently has no backlog of transport orders because it has the capacity to fill them.[5] Bell Atlantic-NY has undertaken construction of an additional 230 SONET rings by

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1 Id.

2 Northpoint Brief, supra, p. 7.

3 Id.; ACI Brief, supra, at 18.

4 BA-NY Lacouture/Troy Declaration (September 21, 1999), BA-NY Application, Appdx. A, Tab 1, ¶106.

5 BA-NY Lacouture/Troy Declaration. (September 21, 1999), BA-NY Application, Appdx. A, Tab 1, ¶109.

the end of 1999, of which 100 were completed in the first half of 1999.[1] These efforts have borne fruit as Bell Atlantic-NY's on-time completion rate for unbundled transport in August of 87% exceeded its own completion rate of 82% for comparable retail orders.[2]. Therefore, we find that Bell Atlantic-NY is currently provisioning unbundled transport orders at parity.

Bell Atlantic-NY has addressed the claim, made by Northpoint and ACI, that it fails to test the transport facilities. It has recently initiated a new procedure for coordinated sectionalization testing of interoffice facilities (IOF) DS3 circuits. Bell Atlantic-NY also states that the same procedures are used for CLECS as its uses for its own facilities.[3] We find that Bell Atlantic-NY has adequately addressed this issue.

Bell Atlantic-NY has also addressed Northpoint's charge related to inappropriately placing CLEC orders in "customer-not-ready" status. Bell Atlantic-NY undertook an evaluation of those Northpoint orders that Northpoint claimed at the July technical conference were delayed. Some of those orders, according to Bell Atlantic-NY, were out-of-state orders. Based upon a reconciliation between Bell Atlantic-NY and Northpoint of the New York orders, the parties agreed that Bell Atlantic-NY's classification was correct.[4]

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1 BA-NY Lacouture/Troy Declaration (September 21, 1999), BA-NY Application, Appdx. A, Tab 1, ¶110.

2 BA-NY Lacouture/Troy Declaration (September 21, 1999), BA-NY Application, Appdx. A, Tab 1, ¶109, citing Carrier to Carrier Reports (Dowell and Canny Decl. Att. D).

3 BA-NY, Albert, et al. Joint Supplemental Affidavit Update (June 7, 1999), BA-NY Application, Appdx. C, Vol. 49, Tab 755, ¶45.

4 BA-NY, Albert, et al. Affidavit (July 1, 1999), BA-NY Application, Appdx. C, Vol. 53, Tab 819, ¶37.

With respect to ACI's and Northpoint's contention that Bell Atlantic-NY requires CLECs to purchase special access when there are no facilities available, we are satisfied that Bell Atlantic-NY is not provisioning transport in a discriminatory manner. The Commission has determined that the provision of unbundled interoffice facilities to CLECs by the incumbent LEC is limited to existing LEC facilities.[1] Although Bell Atlantic-NY need not construct new routes, in such instances where it has an existing route even though it has no spare facilities, Bell Atlantic-NY will provide interoffice facilities and will also provide a firm order commitment identifying the earliest date when the request can be fulfilled.[2]

Finally, Bell Atlantic-NY has also committed itself to modifying its unbundled transport offerings to provide "dark fiber" to CLECs as a form of unbundled transport once the Commission's order in Docket No. 96-98 is effective.[3]

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For the foregoing reasons, we verify compliance with the requirements of Checklist item (v).

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1 In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, (rel. August 8, 1996) (Local Competition First Report and Order) ¶451.

2 BA-NY, Albert, et al. Joint Supplemental Reply Affidavit (May 5, 1999), BA-NY Application, Appdx. C, Vol. 46, Tab 709, ¶116.

3 BA-NY Lacouture/Troy Declaration (September 21, 1999), BA-NY Application, Appdx. A, Tab 1, ¶107.