

APPENDIX

PERFORMANCE ASSURANCE PLAN¹

Overview

The intent of the Performance Assurance Plan (PAP , or Plan) is to ensure that the local exchange market will remain open to competition following Bell Atlantic-NY's long distance authorization. It does so by providing assurance that Bell Atlantic-NY have every incentive to achieve the NYPSC's service standards.

In creating the Plan, the New York Commission built upon its prior experience in establishing performance-based plans backed by financial incentives. In 1994, for example, the New York Commission established two service quality improvement plans for New York Telephone, which respectively placed \$90 million and \$31 million at stake. New York Telephone incurred \$50 million in penalties under the first, and refunded an additional \$12.6 million under the second. The NYPSC then established the Performance Regulatory Plan (PRP) for New York Telephone, which took effect in 1995. The PRP contains a series of monthly and annual targets, which trigger penalties when they are not achieved. In the first year of the plan, New York Telephone failed to achieve many of the targets, and \$72.3 million in penalties was levied by the NYPSC and refunded to end-users. New York Telephone's performance thereupon improved, with resultant decreases in the penalties to \$5.3 million in year two and \$3.7 million in year three.

¹ BA-NY Application, Dowell/Canny Declaration, Appdx. A, Volume 3, pages 46-66 and Attachment C; BA-NY Application, Appdx. C, Tab 838.

The Performance Assurance Plan (PAP) was developed by NYDPS Staff, Bell Atlantic-NY, and the U.S. Department of Justice, in consultation with competitors, and was filed by Bell Atlantic-NY as part of its Pre-Filing Statement in April of 1998. The plan then went through many refinements consistent with the framework established in the Pre-Filing Statement, to take into account, among other things, changes to the metrics in the NYPSC's ongoing carrier-to-carrier proceeding.

Following several rounds of written comments and many meetings with the parties, Bell Atlantic-NY in July 1999 filed with the New York Commission a petition for approval of the Performance Assurance Plan. This filing was followed by a round of comments and reply comments from the parties; and a Notice of Proposed Rulemaking outlining the terms and conditions of the proposed plan was adopted by the NYPSC at its August session. Following additional discussions with NYDPS staff, Bell Atlantic-NY filed a supplemental petition on September 24, 1999, to further strengthen the PAP. The PAP is expected to be presented to the NYPSC for final adoption at its October 27, 1999 session,¹ following termination of the public notice period mandated by the New York State Administrative Procedure Act.

In the aggregate, the Plan subjects Bell Atlantic-NY to annual market adjustments (bill credits to competitors) totaling \$269 million.² Most significantly, however, the NYPSC has

¹ The PAP will be enforceable as a New York Commission order once approved. Failure to comply with an order of the NYPSC may subject the non-compliant company to a penalty in the amount of \$100,000/day. New York Public Service Law, §25.

² In addition, \$39 million of the annual maximum is at risk twice, under separate provisions of the Plan. In other words, there are separate market adjustment triggers for \$39 million of the Plan. The dollar amounts are referred to as "market adjustments" since they are paid directly to CLECs, and thereby inure to the benefit of those who are

the authority to reallocate the market adjustments among the provisions of the Plan.¹ Thus, the NYPSA may dramatically increase Bell Atlantic-NY's incentives to maintain or improve service in particular areas.

Plan Components

The Performance Assurance Plan comprises four components²:

1. The Mode of Entry component, which measures Bell Atlantic-NY's performance, on an industry-wide basis, with respect to each of the methods by which competitors can enter the local exchange market.
2. The Critical Measures component, which measures Bell Atlantic-New York's performance in the areas that collectively are most important to competition.
3. A Change Control Performance Plan, which measures Bell Atlantic-New York's performance in implementing changes to its operations support systems, or OSS.
4. Special Provisions, which attach market adjustments to specific performance areas.

In the Mode of Entry component, Bell Atlantic-New York's performance is measured on a market-wide basis, with respect to each of four modes of entry:

1. Purchases of unbundled network elements.

in the market.

¹ BA-NY Application, Dowell/Canny Declaration, Appdx. A, Volume 3, page 48, and Attachment C, Exhibit 1.

² The Change Control Performance Plan is considered as one part of the overall PAP.

2. Resale.
3. Facilities-based interconnection.
4. Collocation.¹

Each mode of entry is assessed through a group of metrics² related to it. Performance in each one of these methods or Modes of Entry will be measured on an industry-wide basis, and substandard performance in any one will result in "market adjustments," i.e., bill credits, to competitors purchasing those types of services from Bell Atlantic-New York.³ \$75 million per year is at risk under this component of the Plan, which will be doubled should substandard performance continue at a level worse than the mid-point of the market adjustment range for three consecutive months.⁴

In the Critical Measures component, Bell Atlantic-New York's performance will be measured by 11 specific metric categories, with substandard performance under any one category or sub-category triggering a market adjustment. Unlike the Mode of Entry component, however, the market adjustments will inure solely to the benefit of those

¹ While collocation is not necessarily a method of entry, it was separated for measurement and market adjustment purposes.

² The metrics have been established by the NYPSC as part of its carrier-to-carrier service quality proceeding, Case 97-C-0139.

³ Market adjustments will be returned to CLECs based on lines in service, minutes of use and collocation cages due.

⁴ The market adjustment amounts incurred for those three months will double, and all Mode of Entry market adjustments incurred in future months will also be doubled, until BA-NY's performance improves to one-fourth of the market adjustment range.

competitors that received substandard performance in the subject month. The Critical Measures component places an additional \$75 million per year at risk.

The Change Control component measures Bell Atlantic-New York's performance on several metrics related solely to the company's performance in implementing OSS upgrades. Substandard performance under these metrics will result in market adjustments to all CLECs. Under this component, \$10 million is at risk annually, plus an additional \$15 million, which will be taken from the Mode of Entry component, if necessary.

The Special Provisions add specific incentives in flow through, order processing, and hot cuts. Bell Atlantic-NY must achieve at least one of two flow through targets, or pay market adjustments of \$2.5 million quarterly. Bell Atlantic-NY must also provide at least 90% of Local Service Request (LSR) confirmations and rejections on time, in each of four categories, or pay \$500,000 per month for each one missed. Those CLECs that received untimely LSR responses will share in the market adjustment. An additional \$24 million per year is at stake to ensure that hot cuts are completed timely and accurately. Should Bell Atlantic-NY fail to achieve the targets established, it will incur up to \$2 million per month in market adjustments, which will be provided to those CLECs who received service below the target levels.

Market Adjustment Scale

Bell Atlantic-NY had proposed that maximum price reductions be based on poor performance in the key "Order Confirmation Measures" and the Critical Measure metrics, and suggested that 10% of the monthly maximum be levied at the first point on the market adjustment scale. The parties asserted in their comments that the maximum limit should be

set closer to zero, and that a greater amount of the maximum should be levied at the outset. The NYPSC NOPR set the maximum limits at -.67, -.67, -1 and -1.2 for the UNE, Resale, Interconnection and Collocation Modes of Entry, somewhat closer to zero than those proposed by Bell Atlantic-NY. The NYPSC also determined that 20% of the maximum monthly adjustment should be levied at the first point on the scale, to deter Bell Atlantic-NY from entering into the market adjustment range at all. As indicated, the NYPSC will take final action on or after October 27, 1999.

Monthly Market Adjustment Mechanism

1. Mode of Entry

On the 25th of each month, Bell Atlantic-NY files and distributes its carrier-to-carrier performance results for the preceding month.¹ This report contains approximately 500 service quality measures, which are reported in several formats: industry-wide and CLEC-specific, statewide and geographically disaggregated. Each measure in the Mode of Entry category has an assigned weight relative to its importance in keeping that Mode of Entry open to

¹ Several steps ensure that the metrics reported by Bell Atlantic-NY are calculated in accordance with the carrier-to-carrier definitions. First, beginning in November of 1998, NYPSC staff worked with KPMG to ensure that the underlying data used to calculate the metrics was collected from the appropriate sources, and was processed with adequate internal controls. (KPMG OSS Evaluation Project, Final Report, Verion 2.0, August 6, 1999, BA-NY Application, Appdx. C, Vol. 60a-c, Tab 916, at p. IV-174) Next, KPMG and staff developed algorithms based on the carrier-to-carrier definitions to verify that Bell Atlantic-NY's reported results conform to those definitions. This verification has been completed for January-July 1999, and is almost completed for the August results. Where errors have been discovered, Bell Atlantic-NY has submitted revised reports with corrected results. NYPSC staff has committed to continue to verify the metrics for at least six months following a grant of interLATA authority, and may audit specific results once it is determined that verification of each metric is no longer required.

competition. Each metric is then scored as "parity met," "parity in question" or "out of parity."

The weighted scores are then totaled. If the threshold is exceeded, a market adjustment is automatically triggered. The market adjustments work on a linear scale, with an increasing level of payment for poorer performance, beginning with an initial increment of 20% of the maximum monthly dollar amount. In addition, each Mode of Entry is evaluated to determine whether failures in performance are concentrated in any one of the four domains: pre-ordering, ordering, provisioning, and maintenance & repair. If the score in any one of these individual domains is 75% of the maximum score for that domain, an overall market adjustment will automatically be triggered at the level indicated.¹

2. Critical Measures

The critical measures are more focused on performance in specific areas and with respect to individual CLECs. There are only 11 critical measures, and they are not aggregated. Since there is no aggregation of metrics, there is no threshold before payment is due. Performance below a specified level in any one of these individual measures will produce a market adjustment.

Bell Atlantic-NY's performance will first be analyzed on an industry-wide basis for each measure. If Bell Atlantic's score indicates that a market adjustment is due, only those

¹ If, for example, Bell Atlantic's performance in UNE ordering measures indicates that it missed 90% of the total potential score, 90% of the total UNE mode-of-entry market adjustments will be paid to the CLECs, notwithstanding that Bell Atlantic may have provided satisfactory service in all other pre-order, provisioning, and maintenance and repair measures. In the pre-order domain, a failure of just the pre-order response time metrics will also trigger 75% of the mode-of-entry adjustment.

CLECs receiving sub-par service will receive the adjustment. If no market adjustment is due based on the industry-wide analysis, Bell Atlantic's performance to each individual CLEC will be evaluated, to prevent targeted discrimination. If an individual CLEC receives sub-par service for two consecutive months, that CLEC receives a market adjustment, even if Bell Atlantic's performance is satisfactory to the industry as a whole.

3. Change Control

Bell Atlantic-NY's change control performance is measured with several specific measures, each of which can trigger a market adjustment, which is then payable to the industry as a whole. The Change Control plan differs from the mode-of-entry and critical measures plans in that there is no limit to the monthly market adjustments, although there is an annual limit.¹

Conclusion

Bell Atlantic's performance in the post-approval environment will be monitored through the performance plan in several complementary areas. The Modes of Entry review overall market performance to the CLECs, including a measure to prevent concentrated discrimination in individual domains. The Critical Measures component reviews the most important measures on a CLEC-aggregate basis, returns monies to those CLECs receiving sub-par service, and adds a measure to detect discrimination on a CLEC-specific basis. The Change Control Plan focuses on the ability of Bell Atlantic to support and maintain quality OSS, while the Special Provisions focus Bell Atlantic-NY attention on specific, significant

¹ As discussed above, the NYPSC may order reallocations of the market adjustments.

areas. In addition, performance incentives contained in individual interconnection agreements add their own set of remedies, which reflect the business strategies of individual CLECs.

For all these reasons, we are confident that Bell Atlantic-NY, once having earned §271 approval, has the proper incentive to continue to meet its commitments.

CC Docket No. 99-295: Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996 and Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996.

CERTIFICATE OF SERVICE

I, Anne Ruth, hereby certify that an original and six (6) copies of comments in the above-captioned proceeding were sent via Federal Express to Magalie Roman Salas, Secretary of the Federal Communications Commission. In addition, copies were sent by First Class Mail, postage prepaid, to all parties on the attached service list.

A handwritten signature in cursive script, reading "Anne Ruth", is written over a horizontal line.

Dated: October 18, 1999
Albany, New York

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