Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

# EVALUATION OF THE NEW YORK PUBLIC SERVICE COMMISSION --REPLY


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# EXECUTIVE SUMMARY

In the Evaluation filed October 19, 1999, the New York Public Service (NYPSC) Commission advised the Commission that, following two and a half years of review, testing, and process improvements, Bell Atlantic-NY had met the Checklist requirements of §271(c) of the Telecommunications Act of 1996 (the 1996 Act) in New York State. After review of the other parties' comments, we reiterate that conclusion.[1]

The commentors and opponents of entry raise essentially three questions. First, does Bell Atlantic-NY's current level of electronic processing satisfy §271(c)? For the reasons discussed below, the criticisms of Bell Atlantic-NY's electronic flow-through do not demonstrate a failure to meet the Checklist requirement for non-discriminatory access to unbundled network elements. Bell Atlantic-NY has continued to meet increasing CLEC orders and continues to increase its flow-through capability. In fact, Bell Atlantic-NY processed nearly 100,000 unbundled network element platform orders in August and September, which were submitted primarily by two large competitors that have successfully integrated their application-to-application order and pre-order interfaces.

Second, does Bell Atlantic-NY provide unbundled local loops in compliance with §271(c)? The evidence does not warrant a finding that Bell Atlantic-NY is discriminating in

[1] The United States Department of Justice (DOJ) has made an important contribution to this proceeding and we look forward to continued collaboration.

providing access to loops.[1] NYPSC Staff's analysis refutes AT&T's charge that defective hot cuts are causing substantial numbers of prolonged customer outages. NYPSC's order-by-order review of AT&T's documentation reveals that many of its claimed problems relate to loops that were accepted by AT&T as working, and on which troubles later were found that resemble the types of troubles experienced by Bell Atlantic-NY's own retail customers. Furthermore, our Staff's reconciliation of the AT&T and Bell Atlantic-NY hot cut performance data regarding on-time provisioning for July and August establishes that Bell Atlantic-NY's claims regarding on-time provisioning are more accurate than AT&T's, with on-time performance over 90% industry-wide.

Bell Atlantic-NY's performance in providing **x**DSL compatible loops must be improved, but improvements are being made. Bell Atlantic-NY has implemented a cooperative testing procedure, developed in cooperation with xDSL providers in the NYPSC's DSL collaborative. Preliminary data suggest that as that procedure is followed, performance improves. Further, the collaborative being facilitated by the NYPSC continues to refine provisioning processes and address remaining xDSL issues.

The final question raised is, does Bell Atlantic-NY's failure to meet each and every Performance Assurance Plan[1] standard evidence non-compliance with the Checklist? Those arguments made regarding the Performance Assurance Plan fail to recognize that the plan, as modified, will ensure a level of service quality beyond what is statutorily required for long distance entry. As we stressed in our Evaluation, the plan is not intended to define the level of

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[1] While there have been concerns raised about BA-NY's dropping of directory listings when transferring customers to competitors via loop hot cut**s,** the company has in place an adequate quality assurance process, and we are requiring immediate restoration of dropped listings.

service required to meet the competitive checklist, or to bridge an alleged gap between Bell Atlantic-NY's current level of performance and the level required to meet the Checklist requirement. Therefore, criticisms of Bell Atlantic-NY's performance under the plan have little bearing on Checklist compliance.

The record contains substantial proof that each Checklist item is being met, that Bell Atlantic-NY's systems are adequately handling the sharp increases in demand brought about by the introduction of mass-market competition, and that Bell Atlantic-NY's loop performance is adequate.

Based on that proof, we recommend the Commission verify that Bell Atlantic-NY has met the Checklist requirements.

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[1] Our discussion of the Performance Assurance Plan (PAP) is contained in the Appendix, at Exhibit 7.

BELL ATLANTIC-NY COMPLIANCE WITH §271(c)(2)(B)—
THE COMPETITIVE CHECKLIST

Checklist Item (i)--Interconnection in Accordance with the Requirements of §§251(c)(2) and 252(d)(1)

A. Trunking

1. Comments

In our evaluation, we concluded that Bell Atlantic-NY is in compliance with checklist item (i) because it is providing interconnection at all technically feasible points and it is providing trunking, at least equal in quality to what it provides itself, at reasonable and non-discriminatory rates. Further, we found that Bell Atlantic-NY had increased the availability of trunk installations to alleviate blocking and that the metrics indicated that there were virtually no failures for July and August.[1]

Several parties, including Prism, Allegiance, ALTS and CompTel, contend that Bell Atlantic-NY provisions interconnection trunks beyond the committed due date.[2] e.spire states that delay it experienced on account of trunks provisioned beyond the due date was exacerbated by Bell Atlantic-NY's initial failure to accept trunk orders until the necessary DS-3 circuits were first provisioned.[3] Teligent states that Bell Atlantic-NY can construe the metric in ways that purportedly show it to be in compliance when, in fact, Bell Atlantic-NY has caused additional delays by requesting further due date postponements (supplements, or "supps") of Access Service Requests (ASR). According to Teligent, Bell Atlantic-NY issues a Firm Order Commitment (FOC), which triggers the metric, only after it receives a clean ASR. The delays

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[1] NYPSC Evaluation, p. 19.

[2] Allegiance, p. 11; Prism p. 23; ALTS pp. 44-45, CompTel, p. 20.

[3] e.spire, pp. 16-21.

prior to the issuance of the FOC caused by the supps, posits Teligent, are not reported in the metrics. Teligent also states there were no provisioning intervals for large orders, which can only be filed as "projects" with "negotiated" intervals.[1]

Sprint contends that, in its interconnection agreement arbitration, Bell Atlantic-NY has insisted that it establish multiple interconnection points, in accord with Bell Atlantic-NY's geographically relevant interconnection point (GRIP) proposal. According to Sprint, Bell Atlantic-NY has not demonstrated that Sprint's more efficient interconnection proposal request is not feasible.[2]

2. Responses

Teligent's claim that there are no provisioning intervals for large orders is incorrect; in the NYPSC Carrier-to-Carrier proceeding, the parties agreed that the interval for orders for more than 384 trunks ("projects") would not exceed 120 days, except in extenuating circumstances. The CLECs and Bell Atlantic-NY also agreed to clarify the term "negotiated interval," to include a "mutual agreement on a delivery date of requested services . . . based on customer, CLEC and Bell Atlantic-New York requirements." The NYPSC adopted these understandings and directed Bell Atlantic-NY to reflect them in the carrier guidelines.[3]

Teligent's assertion that Bell Atlantic-NY circumvents the New York Performance Standards and Reports for timeliness of FOC issuance by inappropriately rejecting ASRs and requiring CLECs to issue supplemental ASRs does not appear valid. The specifications for submitting ASRs are spelled out in BA-NY's business rules documentation, and this information

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[1] Teligent, pp. 10-13.

[2] Sprint, pp. 6-7.

[3] Case 97-C-0139, Order Establishing Additional Inter-carrier Service Quality Guidelines (issued November 5, 1999).

is readily available to CLECs ("Bell Atlantic Access Service Request Business Rules").[1] We are not privy to the specific facts and circumstances surrounding the ASRs in question, and expect that BA-NY will address this matter more fully.

Allegiance claims that 65% of all interconnection trunks ordered were delivered late, but that figure includes misses that are caused by Allegiance as well as Bell Atlantic-NY. While the metrics further refine this information to assign responsibility for misses to either Bell Atlantic-NY or the CLEC, Allegiance does not distinguish responsibility for delaying provisioning and does not appear to raise any issue with Bell Atlantic-NY's assignment of responsibility as reported in the metrics. Our preliminary evaluation suggests that e.spire's trunks were provided within 16 to 47 business days and Prism's within one to 27 business days. Since these orders appear to have been "projects" – inasmuch as both parties ordered more than 384 trunks—the interval would have been negotiated. We have been unable to determine the negotiated due dates, and are continuing to examine this issue.

NYPSC has reviewed the information that is available to us concerning the allegations that Bell Atlantic-NY has not timely provisioned interconnection trunks. However, many factors impinge on the provisioning interval in the Product Interval Guide (e.g. the size of the orders, whether the trunk orders were forecasted, or whether these were new trunk groups). While we expect Bell Atlantic-NY to provide additional appropriate information and explanations regarding these allegations, the claims must be viewed in context. Bell Atlantic-NY provides interconnection service to approximately 37 competitive carriers in substantial quantities and, for the most part, without complaint.

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[1] If a CLEC believes BA-NY is rejecting ASRs without cause, it should attempt to resolve the matter with the company and may seek our assistance if that approach fails.

With respect to Sprint's claim, this issue and a number of others raised by Sprint are now the subject of an arbitration proceeding under Section 252.[1] It should be noted, however, that the NYPSC, in another context, has rejected the Bell Atlantic-NY GRIPs proposal,[2] but permitted it to be raised again in the Second Network Elements Proceeding.[3]

B. Collocation

1. Comments

In our Evaluation, we concluded that Bell Atlantic-NY is provisioning collocation in a timely manner and has adequately addressed collocation quality concerns. We also found that Bell Atlantic-NY is in compliance with the Commission's Advanced Services Order.[4]

Several parties claim that Bell Atlantic-NY's tariff is not in conformance with the Commission's Advanced Services Order, citing construction intervals, the need for a security escort, and 10-foot buffer zone requirements, among other issues.[5] Network Access Solution (NAS) claims Bell Atlantic-NY harms advanced service competition because, while it delivers collocation cages on time, it fails to provide special billing numbers or carrier facility assignments.[6] It also claims that Bell Atlantic-NY's tariff has failed to include the full cost of a cageless collocation arrangement.[7]

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[1] Case 99-C-1389, Petition of Sprint Communications Company, L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Bell Atlantic-New York.

[2] Case 99-C-0529, Reexamination of Reciprocal Compensation, Opinion No. 99-10 (issued August 26, 1999), p. 59.

[3] Case 98-C-1357, Second Network Elements Proceeding.

[4] NYPSC Evaluation, p. 24-25.

[2] DSL. net, pp. 7-8; ALTS, pp. 49-64; and Choice One, pp.10-11; TRA, p. 21.

[6] NAS, pp. 10-12.

[7] NAS, pp. 11-12.

@link Networks, Inc. contends it is premature to determine whether Bell Atlantic-NY is providing collocation consistent with the Act. Because the NYPSC ordered Bell Atlantic-NY to amend its tariff on August 31, 1999 to conform with the Commission's Advanced Services Order, @link Networks claims it will take several months, given the tariffed intervals for provisioning, before it can be determined whether Bell Atlantic-NY successfully implemented collocation.[1]

2. Responses

On August 31, 1999, the NYPSC directed Bell Atlantic-NY to amend its collocation tariff[2] in order to comport with the Commission's First Report and Order issued *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*.[3] The issues raised by the parties here have been addressed in the NYPSC Collocation Order. Among other things, the NYPSC directed Bell Atlantic-NY to: remove from the tariff the 10-foot space requirement and separate line up limitations (p. 5); provide tours to CLECs after denying requests for physical collocation (p. 6); reduce the installation interval for cageless collocation to 76 business days (p. 10); and provide CLECs with security escorts on the initial visit, but not on subsequent visits, consistent with its practice with third party vendors (p. 12).

Bell Atlantic-NY also stated that it proactively provides service billing numbers to every data CLEC whether or not it so requested.[4] Finally, with respect to cageless collocation rates,

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[1] @link Networks, pp. 5-6.

[2] Cases 99-C-0715 and 95-C-0657, *Cageless Collocation Open Environment*, Order Directing Tariff Revisions (issued August 31, 1999) (NYPSC Collocation Order), BA-NY Application, Appdx. 1, Vol. 3, Tab 19.

[3] *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 99-48 (issued March 31, 1999).

[4] BA-NY Brief, BA-NY Application, Vol. 61, Tab 941, p. 28.

the only placeholder rate in Bell Atlantic-NY's tariff is Cageless Collocation Security. At present, there is no charge. If Bell Atlantic-NY should consider such a charge, it would be subject to the review and approval of the NYPSC.

Also without merit is @link Networks' claim that the amendments to the tariff will materially affect Bell Atlantic-NY's provisioning performance. Bell Atlantic-NY has a sufficient record of provisioning collocation generally. Despite arguments raised here, the record establishes Bell Atlantic-NY has been adequately provisioning collocation, both physical and cageless, in New York. We do not think it is necessary to wait several additional months to demonstrate what Bell Atlantic-NY is, and has been, providing to CLECs.

We will continue to monitor Bell Atlantic-NY's interconnection provisioning to ensure continued compliance; however, we find that the issues raised by the parties here with respect to Checklist item (i) do not preclude a finding that Bell Atlantic-NY is in compliance with this Checklist item.

Checklist Item (ii) – Nondiscriminatory Access to Network Elements

In our Evaluation, we concluded that Bell Atlantic-NY is in compliance with checklist item (ii), including the obligation to provide nondiscriminatory access to its OSS. That conclusion was based on our examination of KPMG's comprehensive testing, CLEC issues raised during NYPSC's extensive investigation, and our analysis of Bell Atlantic-NY's actual commercial performance.

The OSS issues raised by parties in their initial comments are limited. The concerns center on the progress Bell Atlantic-NY has made in enhancing its flow-through rates for mass market orders. Concerns were also raised about the extent to which CLECs are actually able to use important pre-order functions to enable mass market entry, and about Bell Atlantic-NY's ability to manage changes to its OSS. Finally, several parties raised various concerns about specific areas of Bell Atlantic-NY's performance and specific performance measurements.

We address each of the concerns below. As a general matter, it is significant that, notwithstanding the concerns raised, volumes of orders are increasing at a dramatic pace in New York, and Bell Atlantic-NY is handling these volumes in a manner that demonstrates its ability to meet CLEC needs. While Bell Atlantic-NY's systems are not flawless, they are meeting the demand and continuing to improve.

A. Flow-Through

Parties raise concerns regarding Bell Atlantic-NY's level of electronic order processing and assert that higher levels of automation are necessary to satisfactorily meet the commercial volumes anticipated in the future. AT&T asserts, for example, that Bell Atlantic-NY's flow-

through rates demonstrate discriminatory access,[1] and that high levels of manual processing are incompatible with high-volume competition.[2] MCI WorldCom states that there is an "unacceptable level of manual processing."[3] And while DOJ believes that Bell Atlantic-NY's manual processing does not appear to be causing serious customer-affecting problems at current volumes, it sees a "significant risk" that problems will develop if volumes increase rapidly and substantially.[4]

While order flow through is one indicator of whether Bell Atlantic-NY can handle high volumes of orders, it is not the only measure of Bell Atlantic-NY's ability to process orders or to meet significant increases in demand. Bell Atlantic-NY's ability to handle high volumes of orders should be measured both by the scalability of its processes, and by its demonstrated performance in handling exponential increases in order volumes.

Bell Atlantic-NY's ability to process orders has kept pace with increases in demand. The fact is that Bell Atlantic-NY confirmed or rejected 97% of all UNE-P orders on time in August.[5]

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[1] AT&T Comments, p. 16.

[2] Id., p. 19, *referencing* Ameritech Michigan order.

[3] MCI WorldCom Comments, p. 11.

[4] Evaluation of the United States Department of Justice, November 1, 1999, (DOJ Evaluation), p. 32.

[5] Many commentors, including the U.S. Department of Justice, have stressed the need for flow-through to enable mass-market competition via UNE-P. Therefore this discussion is focused on UNE-P orders.

This level of performance approximates that delivered when volumes were significantly lower,[1] and it demonstrates that both the manual and automated processes are scalable.

The KPMG test determined that Bell Atlantic-NY has the ability to flow-through orders, and to do so at very high volumes.[2] The volumes tested by KPMG are greater than those being handled by Bell Atlantic-NY now and those projected for at least the next several months. This independent verification demonstrates that Bell Atlantic-NY possesses sufficient electronic system capability to handle current demand and meet projected increases in volumes.

Bell Atlantic-NY's metrics, to be sure, do not show the same level of flow-through as did the KPMG test, but the difference was anticipated and is easily explained. The KPMG evaluation was designed to simulate, as well as reasonably possible, a real world environment, but it necessarily remained a laboratory evaluation. For example, KPMG ensured that the LSRs were error-free prior to submission during the volume test and did not submit LSRs on accounts with pending orders, which meant that its flow-through rate was higher than that expected for the CLECs. In the real commercial environment, the flow-through rate is affected by such factors as ordering errors, pending orders, features not intended to flow through, and the market entry learning curve; and one therefore would expect it to be lower.[3] With CLECs entering the market,

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[1] August UNE-P volume was approximately 54,700 orders, while January's was 4,350. BA-NY also confirmed or rejected 77% of the more difficult UNE-Loop orders on time in August (89% in September). This was a significant increase over its performance in June and July, even though fact that loop orders increased by over 240% during that period, to 9,638. Of the 17,549 resale orders placed in August, BA-NY confirmed or rejected 97% of them on time.

[2] In its volume testing, KPMG found that over 99% of the UNE-Platform, UNE-Loop and Resale transactions that should have flowed through did in fact flow-through. Evaluation of the NYPSC, p. 45, *citing* criteria P7-1, 2 and 3, KPMG Final Report version 2.0 (August 6, 1999), BA-NY Application, Appdx. C, Vols. 60 a-c, Tab 916, p. IV-160.

[3] As discussed below, the NYPSC metrics are being refined to account for these factors and provide a more accurate picture of Bell Atlantic-NY's flow-through capability.

they are hiring and training new employees and learning how to interpret the OSS business rules as they go, and with Bell Atlantic-NY refining and clarifying its business rules, the flow-through will suffer.

Recent performance results also demonstrate that Bell Atlantic-NY has the capability to handle real-world increases in volume. During the first eight months of this year alone, UNE-P orders have increased twelve-fold.[1] Despite this very large increase, Bell Atlantic-NY achieved a 70% improvement in its UNE-P order flow-through, to the point that two-thirds of all UNE-P orders flowed through in August.[2] In addition, there has been a marked improvement in Bell Atlantic-NY's flow-through achieved, which was 70% in September for all UNEs. These simultaneous increases in volume and in flow-through demonstrate that Bell Atlantic-NY's systems are scalable and that flow-through levels can improve even as demand increases sharply. This is demonstrated graphically in NYPSC Exhibit 1.

Furthermore, Bell Atlantic-NY has undertaken to achieve further flow-through improvements.[3] AT&T, which acknowledges that Bell Atlantic-NY has committed to improve its flow-through and does not criticize the commitments or their timetable,[4] nevertheless, labels such commitments "paper promises," and argues that the perceived need for them precludes

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[1] August UNE-P volume was approximately 54,700 orders, while January's was 4,350.

[2] The 67% UNE-P flow-through figure is based on completed orders and is therefore different from DOJ's figure of 59%.

[3] BA-NY Joint October 8, 1999 Reply Affidavit of Messrs. Miller, Sullivan and Zanfini. (BA-NY Joint October Affidavit)

[4] AT&T Comments, p. 18.

approval of the application.[1] We disagree, for the dynamic nature of electronic and human processes means upgrades and changes will be continual.[2]

In the final analysis, Bell Atlantic-NY's performance during the KPMG test and in the real-world demonstrates that it has met the OSS requirements that are part of 271©(2)(B)(ii), yet we fully expect Bell Atlantic-NY will continue to improve its order flow-through. These performance improvements should be welcomed by competitors, as they have been by MCI WorldCom,[3] and Bell Atlantic-NY's undertaking to achieve them should not be mischaracterized as evidence of non-compliance. Bell Atlantic-NY's flow-through performance will continue to evolve and improve, promoted by continued regulatory oversight, Bell Atlantic-NY's own corporate self-interest, and significant monetary incentives. We briefly describe some steps taken in this regard.

First, by order issued November 5, 1999, the NYPSC has refined the flow-through metrics and changed the way Bell Atlantic-NY captures and reports its flow-through performance.[4] The Order adopts the Bell Atlantic-NY flow-through improvements set forth in the company's October 8, 1999 Joint Affidavit[5] and sets a deadline of May 1, 2000 for

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[1] Id.

[2] Further, arguments that the NYPSC's positive evaluation ignores needed performance improvements either relate to ongoing, routine, scalability adjustments or do not fully take into account the mutuality of the tasks required of both Bell Atlantic-NY and CLECs (See DOJ Evaluation, p. 37, n.100). The development of electronic interfaces and work force protocols has required and will require coordination, trial, error, correction, training, retesting, and market implementation for the foreseeable future.

[3] "MCI WorldCom welcomes these commitments." MCI WorldCom Comments, p. 11.

[4] Case 97-C-0139, Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies, Service Quality Order, (issued November 5, 1999).

[5] BA-NY Joint October Affidavit.

completion of the third and final phase of those upgrades.[1] These improvements include the implementation of additional flow-through capability for certain types of orders and order characteristics (e.g., orders on accounts that had been blocked), and more precise rejection of orders containing CLEC errors. Bell Atlantic-NY is also establishing workshops to reduce the number of errors in CLEC LSRs. In addition, Bell Atlantic-NY has been ordered to modify its measurement practices, to ensure that its measurement of flow-through achieved accurately portrays its performance.[2] These improvements will enable Bell Atlantic-NY to scale its operations and continue to improve performance.

Next, at its October 27, 1999 session, the NYPSC ordered the implementation of Bell Atlantic-NY's Performance Assurance Plan (PAP or Plan).[3] Significantly, the plan establishes $10 million flow-through incentive, to ensure improvement and continued performance thereafter.[4] Pursuant to this incentive, Bell Atlantic-NY in each quarter must flow through four out of every five orders, or 95% of competitors' orders that are designed to flow through (as determined by the PSC), or refund $2.5 million to its wholesale customers. In fact, $2.5 million in price reductions will be due on the day that Bell Atlantic enters the long distance market unless it reaches that level during the three months prior to entry.

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[1] NYPSC Service Quality Order, p. 8. All but one of the phase I changes have already been made, while phase II changes are to be made by the end of the year.

[2] As set forth in our Evaluation, two measures have been established to gauge Bell Atlantic-NY's flow-through performance: percent of overall flow-through, which includes orders not expected to flow-through, and percent of flow-through achieved, which measures only those types of orders designed to flow-through. NYPSC Evaluation, pp. 45-46.

[3] Cases 97-C-0271 and 99-C-0949, Order Adopting the Amended Performance Assurance Plan and Amended Change Control Assurance Plan (issued November 4, 1999).

[4] The flow-through achieved metric is also a component of the Mode of Entry part of the Plan and therefore additional dollars are at stake.

Finally, Bell Atlantic-NY's own corporate interest provides a tremendous incentive to increase its level of flow-through, since automated flow-through obviates the hiring and training of additional personnel to manually process orders. If Bell Atlantic-NY does not increase flow-through or provide for effective manual intervention, it will be subject to market adjustments of up to $269 million under the PAP, in addition to all of the other remedies available to the NYPSC to ensure that the company is adequately serving its wholesale customers,[1] and to the negative public exposure any of these measures entail.

In sum, Bell Atlantic-NY has demonstrated, in both a test environment and through commercial operation, its ability to satisfactorily process orders. Significant increases in demand have confirmed KPMG's conclusion that Bell Atlantic-NY's automated and manual processes are scalable. In addition, the NYPSC has put into place processes to ensure that Bell Atlantic-NY's positive performance trend will continue, even as volumes increase. None of the comments submitted by other parties undermines these conclusions.

B. Pre-Ordering

In our Evaluation, we noted that MCI WorldCom and AT&T have been able to integrate Customer Service Record (CSR) and Address Validation pre-order functionality.[2] AT&T acknowledges that it has deployed its CORBA pre-ordering interface for commercial production for two pre-ordering functions,[3] and MCI WorldCom states that in September 1999, it was able

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[1] The Commission can reallocate, on 15-day's notice, all of the financial incentives in Bell Atlantic's Performance Assurance Plan to any particular problem areas and can also institute penalty actions or resort to other remedial measures, including dividend restrictions, if Bell Atlantic-NY's service becomes problematic.

[2] NYPSC Evaluation, p. 48.

[3] AT&T Comments, p. 26.

to move a parsed CSR subfunction into production.[1] Nevertheless, MCI WorldCom seems to suggest that a critical subfunction of its application-to-application address validation pre-order is no longer available.[2] After discussions with MCI WorldCom and Bell Atlantic-NY, NYDPS concluded this function, though not essential, is useful. MCI WorldCom and Bell Atlantic-NY have agreed it will be restored, and NYDPS will monitor and intervene if necessary.

While AT&T claims that Bell Atlantic-NY has not shown that it has provided CLECs a fully functional fielded customer service record (CSR),[3] MCI WorldCom states that it moved the parsed CSR function into production in September, 1999.[4] MCI WorldCom is experiencing longer intervals for parsed CSRs than are Bell Atlantic-NY's retail representatives, but the NYPSC recently established parity-plus-ten seconds as the appropriate standard for Bell Atlantic-NY to provide parsed CSR responses.[5] The parsed CSR response times will be measured according to this new standard and will be included as a part of the pre-order response times under the Performance Assurance Plan. NYDPS has been working with MCI WorldCom and Bell Atlantic-NY to ensure that parsed CSR Reponses times remain consistent with these standards.

In sum, Bell Atlantic-NY has provided critical pre-order functionality to enable CLECs to mass market in New York.

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[1] MCI WorldCom Comments, p. 28.

[2] MCI WorldCom Comment, p. 31.

[3] AT&T Comments, p. 22.

[4] MCI WorldCom Comments, p. 28.

[5] Case 97-C-0139, Service Quality Order, p. 15.

C. Change Control

In our Evaluation, we noted problems with Bell Atlantic-NY change control procedures that KPMG had highlighted. Parties' comments reiterate many of the issues that KPMG recognized, but offer no new arguments. The parties center on the asserted inability of Bell Atlantic-NY to demonstrate that it can comply with its own change control rules.

Sprint, for example, complains that Bell Atlantic-NY has failed to manage software releases adequately, causing Sprint to waste resources by meeting interface specifications that have been superseded.[1] Additionally, Sprint says that Bell Atlantic-NY has ignored CLEC change requests (CR) and that the Change Control process is more unilateral than collaborative.[2] AT&T complains about the quality of the software releases, suggesting that virtually every release of Bell Atlantic-NY business rules and specifications has been riddled with errors, omissions, and inconsistencies.[3] TRA cites Bell Atlantic-NY's failure to distribute timely, consistent documentation as hindering competition.[4] The Department of Law (DOL), commenting on the timeliness of documentation to CLECs, notes that penalties would result from the CCAP plan using August 1999 data[5] and suggests the FCC review September 1999 data to determine if Bell Atlantic-NY performance has improved.[6] Finally, MCI WorldCom states that Bell Atlantic-NY has not demonstrated it can conduct carrier-to-carrier testing with CLECs;

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[1] Sprint Comments, p. 18.

[2] Id., p. 21.

[3] AT&T Comments, p. 28.

[4] TRA Comments, p. 11, n. 38.

[5] DOL Comments, p. 23.

[6] Id., p. 26.

and notes that it has not yet had the opportunity to complete a full cycle of testing, including moving the tested software into production.[1]

Bell Atlantic-NY's change control process improved substantially with the adoption in May 1998 of the change control procedures. The ability of KPMG and a number of competitors to successfully build application-to-application interfaces provide sufficient evidence that the documentation is commercially adequate. Further, an important feature of Bell Atlantic-NY's change control enhancements—the so-called permanent "September" solution, which provides CLECs a more robust testing environment—was successfully demonstrated in September 1999. Four CLECs used the new 30-day testing environment without any significant problems, and the new release was successfully moved into production on October 16, 1999.[2]

The concerns raised by the parties have been addressed by Bell Atlantic-NY, and several parties have acknowledged these improvements. For example, while Sprint complains that CLEC change requests have been ignored, MCI WorldCom notes that this had been a problem in the past, but that, with assistance from the NYDPS, a new procedure is now in place to prioritize change requests.[3] MCI WorldCom goes on to acknowledge that "there are some new signs that Bell Atlantic-NY is finally trying to address this [change management] problem.[4] A similar sentiment is expressed by the New York State Attorney General, who notes that the PAP and

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[1] MCI WorldCom Comments, p. 25.

[2] The test deck was executed in production on October 18, 1999. With one minor exception the results of the production run matched the results of the Quality Assurance run. We have been informed by BA-NY that the one exception, the absence of a billing telephone number (BTN) for a directory listing, has been corrected.

[3] MCI WorldCom Comments, p. 22.

[4] Id., p. 20.

CCAP are "very significant commitments" by Bell Atlantic-NY[1] and that Bell Atlantic-NY has made significant efforts to address change control.[2] Sprint itself concludes that given proper incentives, Bell Atlantic-NY should be able to clear up this problem in short order. [3]

As stated in our Evaluation, we are confident that Bell Atlantic-NY can adequately manage its software releases. The change control processes, along with the Change Control Assurance Plan and the escalation process, enable CLECs to build to Bell Atlantic-NY specifications and adapt to changes. Staff will continue to be available to monitor the change control releases as well as the testing environment.

D. Service Measurements

A number of parties complain that Bell Atlantic-NY's wholesale service measurements are incomplete or not properly defined. AT&T also claims that KPMG did not validate the accuracy of Bell Atlantic-NY's performance data.[1]

To be sure, of the more than 400 service measurements that have been established in the NYPSC carrier-to-carrier service quality proceeding, some remain (and some always may remain) subject to further refinement. It is simply wrong to suggest that there is insufficient data to evaluate Bell Atlantic-NY's performance. The NYPSC recently resolved a handful of outstanding issues that the parties had been working on to refine measurement definitions and practices, many of which are now part of the Performance Assurance Plan. In its November 1999 Service Quality Order, the NYPSC refined the flow-through definition and the loop hot cut definitions and trouble standards.

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[1] DOL Comments, p. 28.

[2] Id., p. 17

[3] Sprint Comments, p. 22

Regarding AT&T's complaint that retail data does not exist for confirmations and rejection notices are lacking, the parties, including AT&T, agreed in the inter-carrier service quality proceeding to absolute standards for these measures in recognition of the differences between wholesale and retail ordering processes. Indeed, in its interconnection agreement, AT&T agreed to utilize absolute standards for timeliness of order confirmation, reject notices, and completion notices. AT&T's complaint regarding jeopardy notices is similarly without merit. Although a standard for timeliness of installation jeopardy notices was established in the inter-carrier service quality proceeding, the parties agreed that reports would not be required for this performance measurement, because it could be tracked by CLECs and reviewed with Bell Atlantic-NY when necessary.

Finally, AT&T's claim that KPMG did not validate the accuracy of Bell Atlantic-NY's performance data is wrong. As we indicated in our initial comments, KPMG did verify the accuracy of Bell Atlantic-NY's metric calculations and reviewed the processes involved in gathering the data that are entered into metric calculation process.[2] KPMG also verified the reliability of the entire life cycle of a transaction by submitting orders and calculating performance results.

E. Legal Requirements

A number of parties, including the Competitive Telecommunication Association (Comptel) and AT&T, raise federal legal arguments regarding the NYPSC's restrictions on the enhanced extended link (EEL) and the unbundled network elements platform (UNEP).[3] These

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[1] AT&T Comments, p. 25.

[2] NYPSC Evaluation, p. 12.

[3] AT&T Comments, pp. 49-53; Comptel pp. 10-16.

arguments are based upon their interpretation of Commission's recent press release concerning the UNE Remand Order requirements. Although the FCC UNE Remand Order was released late Friday, November 5, 1999, we have not yet had the opportunity to analyze it. Bell Atlantic-NY stated that it will adjust its UNE-P obligations under the Pre-filing Statement to comply with the FCC's final rules, and the NYPSC has made clear that to the extent FCC rules mandate unrestricted access to EEL combinations at UNE prices, we will reexamine our requirements.[1]

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[1] BA-NY Application, p. 25.

Checklist Item (iii)--Access to Poles, Ducts, Conduits and Rights of Way

ALTS asserts that Bell Atlantic-NY must make a full evidentiary showing of its compliance with §224, based on ALTS' mistaken belief that the New York Commission has not exercised its authority under §224©(1) (ALTS Brief 45-46). The simple response is that the NYPSC does regulate access utility to poles, conduits and rights-of-way under New York Public Service Law §119-a, and has done so since 1978, as set forth in our initial comments. The 1996 Act Amendments to §224 do not create a regulatory gap between what the New York Commission oversees and what the 1999 Act requires.[1] Therefore, to the extent ALTS seeks reexamination of New York's policies regarding access to utility poles, ducts, and conduits, the Commission should refrain from doing so, pursuant to §224(c).

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[1] In response to RCN's concerns, the PSC Evaluation contained a statement provided by BA-NY regarding RCN's use of its own construction crew in Empire City Subway right-of-way (NYPSC Evaluation p. 73), BA-NY has notified us that there are some limitations on RCN and that it will provide a full explanation in its reply.

Checklist Item (iv)--Unbundled Local Loops

Commentors contend that Bell Atlantic-NY discriminates in the provision of unbundled loops using hot cuts.[1] They raise issues concerning the timeliness and quality of Bell Atlantic-NY's hot cut performance, including charges of serious outages. They also raise concerns about the timeliness and accuracy of Bell Atlantic-NY Local Service Request Confirmations (LSRCs) and, finally, Bell Atlantic-NY's ability to provide competitors xDSL-capable loops. These contentions are analyzed below, based on the New York record, the Affidavit of NYDPS Staff member Margaret D. Rubino (Exhibits 2-6), and the attached charts prepared by NYDPS Staff (Exhibit 1).

A. The Timeliness of Bell Atlantic-NY's Provision of Hot Cuts

Competitors assert that Bell Atlantic-NY missed appointments for hot cuts so frequently as to be discriminatory. AT&T asserts that in July and August 1999, one-fifth of hot cuts were not performed on time, including some early cutovers that resulted in customer outages.[2] AT&T and ALTS also assert that Bell Atlantic-NY routinely fails to perform the agreed procedures that are needed to ensure timely hot cuts—following the so-called hot cut checklist.[3]

Because of the often dramatic disparity between Bell Atlantic-NY's and AT&T's reported performance results and because of AT&T's substantial investment in and expressed commitment to mass market entry in New York, NYDPS Staff has been engaged in a rolling, continuous reconciliation of AT&T's and Bell Atlantic NY's performance results. This

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[1] AT&T Comments, pp. 29-44; *see* DOJ Evaluation, p. 14 .

[2] AT&T Meek Aff. ¶¶51, 84, 90; AT&T Comments, p. 33.

[3] These steps are the due date minus two (DD-2) dialtone check and call, the cutover minus one hour call, and the post-completion call.

reconciliation was based on an intensive, independent NYDPS Staff review of results filed by parties.[1]

In particular, NYDPS Staff carried out an exhaustive review of AT&T and Bell Atlantic-NY hot cut performance data. The first stage of this review concerned a group of orders (submitted by AT&T between June 21 and July 16) that AT&T selected and placed in issue at the Fourth Technical Conference in July. This review evaluated AT&T's challenge to Bell Atlantic-NY's claims as to its hot cut performance. Staff found that although AT&T had accurately identified six hot cuts that Bell Atlantic-NY had incorrectly scored as "met," AT&T was mistaken with respect to a far larger number of challenged hot cut orders. For 62 orders that AT&T had claimed were Bell Atlantic-NY provisioning errors, Bell Atlantic-NY's score was confirmed by Staff.[2] Staff's results were appended to the ALJ Ruling closing the technical conference process with respect to loop issues.[3]

For the first reconciliation, AT&T submitted 132 unique orders for review. Of that number, AT&T and Bell Atlantic-NY agreed on 50 orders that had been scored as either a miss or an I-code (trouble reported within seven days post-installation), and Staff therefore did not further examine these orders. Another five orders were either cancelled or excluded from the reconciliation because of issues related to retail service (such as suspension for non-payment). Staff identified 51 orders that were not completed, and therefore not reported, during the review period. Only 26 orders remained to be scored by Staff; 20 were scored as misses.

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[1] NYPSC Rubino Aff., Exh. 2, ¶3.

[2] These orders were supplemented, cancelled, or excluded.

[3] Case 97-C-0271, Letter/Ruling Accepting Staff Analysis and Closing the Technical Conference Process (issued August 16, 1999), BA-NY Application, Appdx. C, Vol. 61, Tab 925.

For July and August, AT&T calculated that at least one out of every five hot cuts that Bell Atlantic performed for it had not been done on time.[1] In contrast, Staff has determined that Bell Atlantic-NY 's on-time performance for AT&T was above 88% for July and above 90% for August.[2]

As to July 1999, AT&T submitted to NYDPS Staff its complete data concerning hot cut timeliness[3], and charged that only 72% of hot cuts performed during the month of July 1999 were timely. But in calculating timeliness of a large proportion of the hot cut orders analyzed, AT&T neglected to subtract the one hour allowed time from the total time required for each hot cut. Therefore, in most cases, AT&T overstated the perceived lateness by one hour. For example, where AT&T's checklist showed that BA-NY completed its work in one hour and four minutes, AT&T reported the order as one hour and four minutes late. Accordingly, AT&T erroneously scored as late numerous hot cuts that were, in fact, timely.[4] After a cursory review by Staff revealed this, AT&T filed a revised affidavit citing a 76% on-time rate.

NYDPS Staff reviewed a sample of Bell Atlantic-NY hot cut checklists[5] against its reported performance and found that, with very few exceptions, the checklists supported the data. In addition, Staff reviewed the Bell Atlantic-NY Work Force Administration (WFA) logs. Staff then reviewed AT&T's checklists against Bell Atlantic-NY's for the same orders, and found that some of the times recorded for calls did not match. The result of the July reconciliation was that

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[1] AT&T Comments, p. 33.

[2] NYPSC Rubino Aff., ¶10.

[3] A number of orders submitted by AT&T in the July 1999 reconciliation were also considered in the first reconciliation.

[4] NYPSC Rubino Aff., Exh. 2, ¶6.

[5] The hot cut checklist refers to the data collection form used by BA-NY technicians to record certain events in the hot cut process.

Staff adjusted the on-time percentage to 90.79% for the overall industry, and 88.34% for AT&T. The processes employed in this Staff investigation are detailed in the Rubino Affidavit, Exhibit 2. The outcome was that, again, the striking discrepancy between the AT&T data and the Bell Atlantic-NY data was explained primarily by AT&T errors or idiosyncratic operational definitions of measurement terms.[1]

For August 1999, NYDPS Staff determined that Bell Atlantic NY's on-time performance for AT&T orders exceeded 90%. The on-time performance measure counts as late both late and incorrectly provisioned hot cuts (those reported as not working within the one-hour testing window).[2]

There appears to be considerable confusion as to how hot cut timeliness is scored. Several parties charge that early hot cuts—which have the potential to put customers out of service, as the physical loop cutover and the software translation may be out of sync—are scored as on time.[3] In fact, early hot cuts are counted against Bell Atlantic-NY, and NYDPS Staff has verified that Bell Atlantic-NY scores early cuts as misses through its Bell Atlantic-NY/AT&T data reconciliation process. DOJ raises additional questions about how Bell Atlantic-NY hot cut timeliness is scored, asserting the 88% on-time figure is overstated because it does not account for supplemented orders caused by Bell Atlantic-NY, and because NYDPS applies definitions of "met" or "missed" overly favorable to Bell Atlantic-NY.[1] In fact, the NYDPS Staff measurement process, is discussed and refuted in detail in the Rubino Affidavit, ¶¶3-11. The

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[1] NYPSC Rubino Aff., Exh. 2, ¶¶7-9.

[2] Allegiance credits BA-NY with dramatic improvements in hot cut performance over the last year; although it still charges a 20% "failure" rate, it has also not brought complaints to NYDPS Staff and we are unable to determine the basis for this claim.

[3] *See* Intermedia Comments, p. 7, ALTS Comments, p. 30, Choice One Comments, p. 5.

data currently reported by Bell Atlantic-NY include as misses some Bell Atlantic-NY process failures that resulted in supplemented orders; the Staff reconciliation identified two other Bell Atlantic-NY failures that will be captured as misses in the future.[2] The on-time performance results adduced by DOJ and other parties themselves illustrate the central point: Bell Atlantic-NY's on-time provisioning of hot cut loops has been close to, at, or above 90% since July 1999. This performance level cannot, under any definition, be considered discriminatory.[3]

B. Accuracy of Bell Atlantic-NY Hot Cuts and Percentage of Service Outages

Competitors, in particular AT&T, allege that Bell Atlantic-NY hot cuts result in an unacceptable level of service problems for end-use customers, including outages. AT&T defines an outage as a customer out of service for more than five minutes or lacking inbound or all service upon hot cut completion. AT&T asserts that from June 21 to August 31, 1999, Bell Atlantic-NY put one out of every 10 new AT&T customers out of service;[4] that is, during this period 170 new AT&T business customers were adversely affected by Bell Atlantic-NY

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[1] DOJ Evaluation, p.19.

[2] A miss is reported in cases where BA-NY failed to work an order due to a problem with its internal service orders, or where BA-NY first discovered a problem with either CLEC or BA-NY dialtone at the frame due time. The specific "failures" that are not included are late or inaccurate LSRCs, and failures to notify the CLECs at DD-2 of a no dialtone condition. The LSRC problems should largely be addressed with the system improvements discussed below; although NYDPS Staff has concluded that in the future failure to notify the CLEC of dialtone loss at DD-2 will result in a miss regardless of its cause, Staff observes that dialtone failures requiring supplements of orders often reflect CLEC failure to have dialtone properly installed.

[3] DOJ considers it "noteworthy" that it takes BA-NY longer to provision CLEC UNE loop orders with dispatch than its own retail service (DOJ Evaluation, p. 19, n. 42). Its concern is based upon metrics PR-2-03, PR-2-04, and PR-2-05. Although DOJ cites these metrics in its discussion of hot cut loops, these metrics measure new loop installation, not hot cuts. As the metrics reflect, there is no retail analogue for a hot cut (*see* PR-2-01, BA-NY Canny Aff., Att. D, p. 80).

[4] AT&T Comments, p. 32.

provisioning problems.[1] Of these, AT&T asserts, 61%, or 105, were out of service for more than 24 hours; and 55 for more than three days.[2]

An independent review by NYDPS Staff indicates that AT&T charges of excessive outages are not supported; indeed, the proffered evidence refutes the AT&T conclusions.[3]

First, AT&T included supporting documentation only for August, although AT&T provided NYDPS Staff with June 21-July 31, 1999 results as well. Looking solely at August, however, the AT&T affidavit states that 76 of 674 customers went "out of service as a result of BA provisioning errors." AT&T's own data, however, contradict this conclusion. NYDPS Staff analyzed each of the 76 orders submitted, and determined that 36 clearly were *not* outages that resulted from a failure by Bell Atlantic-NY to follow the provisioning process. In many cases, these were hot cuts that were accepted as successful by AT&T, with a subsequent trouble report on the lines in question. For another 14 orders, Staff was unable to determine from AT&T's logs whether BA was at fault.[4] Further, where Bell Atlantic-NY was at fault, the outages for the vast majority of customers were measured in hours, not days or weeks as AT&T alleges. In addition, it is unclear whether the delay in restoring service should be laid at Bell Atlantic-NY's door or AT&T's. In many cases AT&T took longer to identify and report the problem to Bell Atlantic-

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[1] AT&T Meek Aff. ¶¶83-86. The AT&T Affidavit analyzes only data for August 2-31, 1999, and these data are only a subset of those provided in the NYPSC proceeding; in the NYPSC proceeding, moreover, AT&T did not document 170 orders.

[2] The standard, suggested by AT&T, but not a metric standard, is that no more than one in 100 should have outages greater than five minutes; virtually all outages should be fixed in less than one hour (AT&T Meek Aff. ¶88, AT&T Mulligan Aff. ¶¶29, 43; AT&T Comments, p. 33).

[3] NYPSC Rubino Aff., Exh. 2, ¶13, 14.

[4] Nevertheless, NYDPS Staff adjusted the 10% outage figure reported by AT&T to between 4 and 6%. See Rubino Aff., Exh. 2, ¶ 13.

NY than Bell Atlantic-NY took to fix it.[1] AT&T suggests that outages are "nothing short of disastrous" for small and medium-sized business customers,[2] yet Staff's review of AT&T's trouble logs shows that AT&T, unlike other carriers Staff observed, generally does not perform any mechanized line test when it accepts a hot cut. AT&T attempts to call its customer and, if it cannot reach its customer, it waits until the customer calls AT&T.

AT&T asserts that Staff confirmed that, for the period June 21 to July 16, all but five of the 54 outages reported by AT&T were due to faulty BA-NY provisioning.[3] NYDPS Staff, however, cannot identify any documentation to support this assertion. While AT&T attributes outages in one out of every ten of its hot cut orders to a Bell Atlantic-NY failure to follow the hot cut checklist procedures,[4] these service troubles could also be caused by a number of other factors, none of which reflects upon the accuracy of the hot cut. As ALTS notes, the Local Competition First Report and Order requires a loop provided to competitors to be of the same quality as the loop the BOC uses to provide service to its own customer.[5] Many of AT&T's charges concerning the quality of hot cut loops reflect the fact that the CLEC receives the same loop that Bell Atlantic-NY used; troubles with the line will go with it, and may be exacerbated by the additional distance to the CLEC switch.

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[1] *See* NYDPS Staff Analysis of AT&T Reported Service Outages--June 21-August 31, 1999, Exh. 5.

[2] AT&T Comments, p. 33.

[3] AT&T Meek Aff., ¶86; AT&T Comments, pp. 39-40.

[4] AT&T Meek Aff. ¶¶31-74; ALTS Comments, pp. 25-26.

[5] Local Competition First Report and Order, ¶¶312-316, ALTS Comments, p. 25.

In sum, the NYDPS Staff review of AT&T's evidence and the underlying documentation show that the service outage problem is nowhere near as severe or prolonged as AT&T asserts; moreover, it is not entirely attributable to Bell Atlantic-NY.

C. Confirmation Timeliness for UNE Loops

DOJ's Evaluation notes that Bell Atlantic-NY has had problems providing timely confirmations and rejections of hot cut orders, but acknowledges that, in September 1999, Bell Atlantic-NY improved its on-time performance for confirmations and rejections.[1] Bell Atlantic-NY's performance, includes both manual and flow-through orders. On a combined manual/flow-through basis, Bell Atlantic-NY's performance for both confirmations and rejects was 89% on time in September, which is up from 77% for August. This is a substantial improvement, attributable at least in part to improved operations, which automated practices previously performed manually. For example, Bell Atlantic-NY reps were formerly required to enter data manually multiple times; as of late August, they only do so once. Therefore, these process changes will enable Bell Atlantic-NY to sustain performance improvements. Regarding LSRC accuracy, we understand the parties are working to resolve problems on both sides of the interface.

D. Pre-Order Qualification and Provisioning of xDSL-capable Loops

Competitors providing Digital Subscriber Line services (xDSL) assert that Bell Atlantic-NY's current performance in pre-ordering, ordering, and provisioning xDSL-capable loops is discriminatory in comparison to its performance for voice services.

As currently configured—that is, absent a line-sharing requirement—ordering and provisioning xDSL-capable loops involve processes distinct from and more complex than

ordering voice loops. These processes have been agreed to by a collaborative group meeting regularly, facilitated by the NYPSC, to determine the most efficient methods for ordering, provisioning, and maintenance and repair. For new and innovative services, such as xDSL, that depend upon use of the incumbent's infrastructure and legacy systems, no one has yet devised a short cut to avoid the detailed, step-by-step work of merging new services with the incumbent's system. This work is currently being done by Bell Atlantic-NY and facilitated by the NYPSC. In addition, parties in the NYPSC carrier-to-carrier service quality proceeding are defining standards and metrics to accurately measure the level of Bell Atlantic-NY service for xDSL providers, and the NYPSC has stated its determination to include these measurements as critical measures under its Amended Performance Assurance Plan.[2]

1. Competitors' Access to Loop Qualification Information

Competitors providing xDSL service assert the need for additional information on loop length, number and location of analog load coils, bridged taps, presence and type of digital loop carrier (DLC), and central office location. Some also consider the Bell Atlantic-NY preorder process for xDSL-capable loops inadequate, noting that its mechanized loop qualification database provides only loop make-up information relevant to its own ADSL services, and is insufficient for CLECs providing broader or different xDSL services. Several competitors, including Northpoint, Covad, and MCI, urge Bell Atlantic-NY to make its internal database readable by CLECs, charging that the manual offerings are slow and costly.[3] As a result of the early collaborative meetings, Bell Atlantic-NY filed a tariff offering loop qualification

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[1] DOJ Evaluation, p. 16.

[2] Cases 97-C-0271 *et al.*, Order Adopting the Amended Performance Assurance Plan (issued November 3, 1999).

[3] MCI Comments, pp. 35-36.

information through a database and, in greater detail, through a manual search. The xDSL collaborative is currently meeting to determine what additional information or alternative methods the xDSL competitors want; failing a negotiated outcome, recommendations will be brought to the NYPSC.

DOJ expresses concern that DSL-capable loop orders do not flow through Bell Atlantic-NY's ordering systems, but must be manually processed. These orders are currently processed through a Web Graphical User Interface (GUI) system, similar to that used by the majority of CLECs for voice-grade loops.[1] Even at far greater xDSL volumes, however, it is unclear whether DSL providers are willing to shoulder the investment involved in developing an application-to-application system such as EDI to interface electronically with Bell Atlantic-NY's.

In sum, the concerns raised are being addressed in collaboration facilitated by the NYPSC and in formal tariff proceedings.

2. The Bell Atlantic-NY xDSL Provisioning Process

DSL competitors, echoed by DOJ, have raised serious concerns about Bell Atlantic-NY's provisioning of xDSL-capable loops. Covad asserts it has thousands of backlogged NY orders at this time.[2]

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[1] In addition, Bell Atlantic-NY provides daily electronic updates to CLECs on the status of each order five days after the firm order confirmation (FOC) date.

[2] Covad Conley/Poulicakos Decl ¶28. ALTS also cites the lack of performance metrics for xDSL-capable loops in New York; however, the NYPSC has ordered the inclusion of such metrics and the parties are in process of developing them. *See* NYPSC Cases 97-C-0271 *et al*., Order Adopting the Amended Performance Assurance Plan (issued November 3, 1999). ALTS, among others, also comments on Bell Atlantic-NY's ability or obligation to provide high capacity loops, dark fiber, or line-sharing (ALTS Comments, pp. 25-26). Because Bell Atlantic-NY has expressly undertaken to comply with any forthcoming FCC mandate, we see no reason to comment on these issues in this Reply. See also. Prism Comments, pp. 13-15.

NYDPS Staff's preliminary investigation of Covad's concerns paints a somewhat different picture.[1] As to the backlogged orders, Staff has identified approximately 100 orders that it considers genuinely backlogged; for most of these, facilities (loops) were lacking or inoperative, a condition that may not be quickly or easily corrected within the provisioning interval.[2] More generally, difficulties with respect to xDSL are being addressed in the collaborative facilitated by the NYDPS .

The xDSL collaborative process is designed to improve the Bell Atlantic-NY wholesale xDSL offering, by improving communications and agreeing to common practices among Bell Atlantic-NY and CLEC xDSL providers. Largely thanks to the remarkably frank and hands-on efforts of all participants, this collaborative is yielding results. For example, in the course of these discussions, shortcomings in Bell Atlantic-NY's methods for doing central office wiring for xDSL orders have come to light. Data collected by Bell Atlantic-NY, and test results tracked by CLECs, indicated a chronic problem in completing central office work on time. This prompted Bell Atlantic-NY to institute a process change to simplify DSL central office cross connections. Similarly, shortcomings in CLEC operations also came to light—for example, problems with customer contact leading to some significant proportion of the "no access" for Bell Atlantic-NY dispatches.

Competitors also raise concerns about the trouble ticket system for maintenance and repair.[3] Some competitors assert that Bell Atlantic-NY forbids xDSL providers to open trouble

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[1] Staff review is preliminary; for example, parties have not agreed to a common operational definition of "backlog."

[2] Of course, at all times there is a "backlog" of orders placed but not yet filled. In addition, Covad may refer to its own estimated potential demand for its DSL services; orders actually placed with Bell Atlantic-NY reflect no such magnitude.

[3] Prism Comments, pp. 15-17.

tickets within 24 hours following issuance of the Bell Atlantic-NY order completion notice.[1] This assertion implies that Bell Atlantic-NY stalls or refuses to fix problems during or immediately after CLEC completion of an xDSL order. The collaborative, however, is addressing the timing of installation problems. Parties have also demonstrated that the closer the operational coordination between Bell Atlantic-NY and the CLEC, the smoother the installation and the less likely it is to later be reported as a trouble. For example, as of October 27, 1999, competitive providers and Bell Atlantic-NY both provided data concerning the results of the new cooperative testing procedures. The data illustrated that when Bell Atlantic-NY carries out the cooperative test, orders tend to complete successfully.

Bell Atlantic-NY must continue to respond to the requirements of the xDSL providers in New York, within the scope of the 1996 Act, and orders of the Commission and NYPSC. Refinement of the methods for it to do so is in progress in the DSL collaborative, and will be assured by the Amended Performance Assurance Plan administered by the NYPSC.

E. Conclusion

As parties point out, the Commission has interpreted the Checklist to require the incumbent to provide unbundled loops "in a reasonable amount of time and with minimum service disruption."[2] Based on the detailed review by NYDPS Staff of the data underlying parties' allegations to the contrary, we reiterate our conclusion that Bell Atlantic-NY is in compliance with the requirements of Checklist item (iv).

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[1] Covad Comments, p. 31.

[2] AT&T Comments, p. 29, citing Second BellSouth Louisiana Order, ¶279.

Checklist Item (v)—Unbundled Local Transport

A. Comments

In our Evaluation, we found that Bell Atlantic-NY is providing transport in a non-discriminatory manner and is, therefore, in compliance with checklist item (v). Bell Atlantic-NY has improved its capacity to fill orders for unbundled transport since July 1999, including the construction of additional SONET rings, so backlog orders were reduced. We found that orders were filled at parity with Bell Atlantic-NY's own orders.[1]

Focal-NY states that it has experienced delays in the provisioning of extended local loops, which it orders out of Bell Atlantic-NY's interstate special access tariffs.[2] Allegiance also claims that it has encountered delays in the delivery of loop and transport facilities. Allegiance states that 46% of all DS-1 level loops (other than those ordered with interconnection trunks) were delivered by Bell Atlantic-NY after the FOC during the third quarter of this year. In the same period, 40% of DS-3 level transport facilities were not delivered on time.[3]

Choice One claims that the interval for installation for transport has ranged from 98-109 days.[4] ALTS states that several of its members experienced delays in the provisioning of DS-3 and T1 circuits. The four-month delay experienced by one CLEC resulted in a customer cancelling the orders.[5]

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[1] NYPSC Evaluation, pp. 102-03.

[2] Focal-NY, pp. 5-6.

[3] Allegiance, p. 12.

[4] Choice One, pp. 9-10

[5] ALTS, pp. 41-42

B. Response

Focal-NY and Allegiance order loop and transport from the special access tariff. However, special access is not within the parameters of this Checklist item, and, therefore, it is not a basis to find that Bell Atlantic-NY is not in compliance with this item. Our preliminary evaluation shows that Allegiance orders combinations of loop and transport from this tariff as well; hence, its claim is likewise not a basis for finding non-compliance with Checklist item (v).

The claims that Bell Atlantic-NY delivers trunks late are the subject of our Checklist item (i) inquiry. As in the case of interconnection trunks, many factors impinge on the provisioning interval in the Product Interval Guide. We expect Bell Atlantic-NY to fully explain the circumstances of each claim concerning its failure to timely provision transport facilities.

We find, therefore, that the issues raised by the parties here with respect to checklist item (v) do not preclude a finding that Bell Atlantic-NY is in compliance with this Checklist item. We will, however, continue to monitor this issue.

Checklist item (viii)--White Pages Directory Listings

Some competitors assert that Bell Atlantic-NY fails to provide accurate directory listings following migration from its own to competitors' service using unbundled loops. AT&T charges that this is the result of the Bell Atlantic-NY procedure that, first, issues an order to drop the customer's directory listing, and second, issues a subsequent order to restore it, a procedure not in use for UNE-P or resale customers.[1] AT&T reiterates that its tests, analyzed in the NYPSC Evaluation,[2] indicate its customers, particularly small and medium-sized business customers, receive unacceptably inferior service.[3] In particular, AT&T attaches and analyzes an affidavit Bell Atlantic-NY filed with the NYPSC that concedes an error rate of 13.5% for AT&T directory listing requests during the AT&T study period, August 26 to September 9, 1999.[4] Of these errors, 25 in all, 18 were properly identified as errors by the Bell Atlantic-NY quality review team.[5] As to the remaining seven orders, Bell Atlantic-NY modified its quality assurance search process to ensure that similar errors are identified and corrected in the future.[6]

Others note that Bell Atlantic-NY has addressed the directory listings problems;[7] and only one party reports one customer complaint of a dropped listing in connection with the thousands of hot cuts performed by Bell Atlantic-NY.[8] Following the KPMG identification of

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[1] AT&T Brief, pp. 42-44; AT&T Callahan/Connolly Aff. ¶¶4, 12.

[2] NYPSC Evaluation, pp. 119-121.

[3] AT&T Brief, p. 43.

[4] AT&T Callahan/Connolly Aff. ¶¶22-23 & Attachment 1.

[5] In addition, Bell Atlantic-NY states it increased the size of the review team in light of some delays in correcting these errors. BA-NY Stevens Aff.(October 12, 1999).

[6] Id.

[7] ALTS Brief, p. 17-18.

[8] Choice One Brief, p. 7.

this problem, however, Bell Atlantic-NY instituted a software modification as well as a manual quality assurance program, and KPMG approved these solutions, which in fact remedy the overwhelming majority of cases of dropped listings.[1]

We see no need to revisit the KPMG Report conclusion, and our own Staff findings, that this procedure is adequate when supplemented with rigorous personnel training and quality review. Bell Atlantic-NY has undertaken to provide NYDPS Staff with the report of the percentage of errors discovered two days after the due date (DD+2), four days after the due date (DD+4), and seven days after the due date (DD+7) for all transactions performed that require the porting of a telephone number.[2] In addition, Bell Atlantic-NY has committed itself to expeditious restoration of dropped directory listings. The NYPSC will monitor the provision of directory listings, using data provided by Bell Atlantic-NY and any provided by CLECs; at any demonstration that an extraordinary percentage of listings are dropping out or that Bell Atlantic-NY fails to restore dropped listings expeditiously, the NYPSC will take further action.

Based on Bell Atlantic-NY's overall performance, the quality assurance process in place, the Bell Atlantic-NY commitment to restore and report any dropped listings, and our continued oversight, we reiterate our conclusion that Bell Atlantic-NY is in compliance with the requirements of the 1996 Act with regard to Checklist item (viii).

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[1] KPMG Closure Report, Exception 56.

[2] Letter to NYPSC General Counsel Lawrence G. Malone from Randal S. Milch, Bell Atlantic-NY (dated November 4, 1999). Bell Atlantic-NY will report the results of the quality assurance teams efforts to the NYPSC. We also acknowledge AT&T's November 4 letter which offers to provide further improvements.

Checklist Item (xiv) – Resale

TRA, ALTS, and e.spire/Net 2000 argue that termination penalties imposed by Bell Atlantic-NY in its contracts constitute an unreasonable restriction on resale, precluding a finding of compliance with this checklist item.[1] Noting that Bell Atlantic-NY itself acknowledges that it subjects customers taking service under term contracts to such penalties in the event they change carriers,[2] they maintain Bell Atlantic-NY has not shown its termination penalties to be just and reasonable. They assert that the NYPSC, having found the penalties to be improper, concluded that Bell Atlantic-NY was obligated to avoid imposing unreasonable restrictions on resale through excessive termination penalties.[3]

The NYPSC did not determine that termination penalties are unreasonable *per se*. In the proceeding cited in the CLECs' comments, the New York Commission held, among other things, that termination penalties may not be assessed in instances where the transaction involves an assignment to the reseller of the customer's contract with Bell Atlantic-NY, and that Bell Atlantic-NY may not unreasonably bar such an assignment. But while the NYPSC expressed concern about the use of termination penalties, it did not find Bell Atlantic-NY's past actions to have been an attempt to protect market position, and it found no violations of 47 U.S.C. §251(b)(1) or §251(c)(4).[4] The FCC likewise noted concerns with respect to termination

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[1] TRA, pp. 23-27; ALTS, pp. 64-67; e.spire/Net 2000, pp.

[2] BA-NY's Application, p. 36.

[3] Case 98-C-0426, Complaint of CTC Communications Inc., Order Granting Petition (issued September 14, 1998), Order Denying Motion to Compel and for Sanctions and Clarifying the Order Granting Petition (issued February 1, 1999)(CTC Clarification Order).

[4] CTC Clarification Order, p. 5.

penalties, but it did not find them unreasonably restrictive *per se*.[1] It is of course possible that a particular termination charge may be unreasonable in its amount or in the manner in which it is assessed. In any such instances, CLECs may obtain redress through the NYPSC's complaint process. But the prospect of those situations arising provides no basis for finding a lack of compliance with this checklist item.

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[1] Application of BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, Memorandum Opinion and Order (rel. December 24, 1997), ¶222.

PRICING

AT&T contends that Bell Atlantic-NY "has completely failed to meet" the requirement of showing that its prices for unbundled network elements satisfy the applicable federal standards.[1] Several other parties raise more specific pricing issues, related primarily to charges for digital subscriber line (DSL) loops.[2]

In our Evaluation, we described in detail[3] our conclusion that "prices conforming to the FCC's requirements are in effect for resale, interconnection, and unbundled network elements provided by Bell Atlantic-NY."[4] We here respond to the allegations to the contrary.

AT&T contends that Bell Atlantic-NY's rates for unbundled loops and unbundled switching fail to reflect the FCC's TELRIC method and that Bell Atlantic-NY therefore could not have shown that its element prices are cost based and in compliance with the checklist standard.[5] For the reasons described below, AT&T's conclusions are wrong with respect to both elements. As a threshold matter, however, we urge the Commission not to entertain AT&T's collateral attack on the NYPSC's pricing decisions.

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[1] AT&T, pp. 53-64 (quoted wording at p. 54).

[2] MCI WorldCom, pp. 33-34; COVAD, p. 6; CoreComm, pp. 5-6; ALTS, pp. 36-37. ALTS also raises a concern regarding certain collocation charges. Id., pp. 62-63.

[3] NYPSC Evaluation, pp. 152-162.

[4] Id., p. 162.

[5] AT&T, p.58.

A. Threshold Legal Issues

If AT&T felt aggrieved by the NYPSC's pricing decisions, it should have pursued its putative remedy in federal court pursuant to the 1996 Act.[1] That statute sets forth explicitly the procedures whereby prices for unbundled network elements are determined by the state commissions in the first instance.[2] The statute provides for review via an action in federal district court.[3] In contrast to these explicit procedures, nothing in §271 authorizes use of its process as a forum in which belated objections to state pricing decisions may be pressed.[4] AT&T failed to avail itself of its ostensible statutory remedy in a timely fashion.[5]

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[1] 47 U.S.C. §252 (e) (6). Notably, MCI did bring such an action for review of aspects of the NYPSC's pricing decisions; it remains pending. MCI Telecommunications Corp., et al. V. New York Telephone Co. et al., No. 97-CV-1600 (N.D.N.Y., filed October 31, 1997).

[2] 47 U.S.C. sec. 252 (d)(1).

[3] 47 U.S.C. sec. 252 (e)(6). While we and other state commissions regard such federal district court review of state agency actions as contravening the Eleventh Amendment to the U.S. Constitution, there is no indication AT&T shares that concern. Indeed, it has availed itself of such federal court review in other instances.

[4] AT&T's reliance on the Ameritech Michigan order to find authority for independent review pursuant to section 271 (pp. 54-56 of its comments) fails to recognize that, at the time of the Ameritech Michigan review, the Commission had been denied the authority to require the use of the TELRIC method pursuant to §252, Iowa Utilities Board v. Federal Communications Commission, 135 F.3d 535 (8th Cir. 1998). The Supreme Court has reinstated that authority in AT&T Corp. v. Iowa Utilities Bd., 119 S.Ct. 721 (1999), 119 S. Ct. 1022 (1999), and in the subsequent vacatur of the mandate to enforce.

[5] Because there is no statute of limitations governing this particular action, a federal court would borrow from closely related limitation statutes, such as the 30 days under 47 U.S.C. §401(c), 60 days under 28 U.S.C. §2344, or four months for state court review of NYPSC action under New York Civil Practice Law & Rules §217. Regardless of the choice, a greater period of time has expired since the NYPSC established the pricing rules of which AT&T complains and incorporated them into AT&T's interconnection agreement.

Precluding AT&T from relitigating its failed arguments here is mandated as well by the common-law doctrine of collateral estoppel, which applies fully to administrative decisions.[1] The issue of whether Bell Atlantic-NY's loop and switching prices comply with the FCC's TELRIC guidelines, raised here, has been thoroughly and fairly litigated in New York,[2] with AT&T's full participation in evidentiary hearings and briefing.

To borrow the Supreme Court's term much favored by AT&T in its comments,[3] it is "surpassing strange" for AT&T to challenge at this time and in this forum decisions by the NYPSC that it declined to challenge in the manner contemplated by the 1996 Act. The Commission should not permit it to do so.

B. Loop Costs

AT&T disputes the NYPSC's determination that a proper TELRIC analysis of loop costs in New York presumes all-fiber feeder. It insists that for relatively short loops (below 9,000 feet or so; the precise "cross-over point" is the subject of debate), copper feeder will be less costly and more efficient, and that our premise of fiber inflates rates above costs by about 15%.[4] It

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[1] Astoria Fed. Sav. & Loan Ass'n v. Solimino, 501 U.S. 104, 107, 111 S.Ct. 2166, 2169 (1991); Callanan Road Improvement Co. v. United States, 345 U.S. 507, 512 (1953) (including ratemaking under the circumstances presented here), Allied Chemical v. Niagara Mohawk Power Corp., 72 N.Y.2d 271, 278 (1988); Long Island Lighting Co. v. IMO Industries, Inc., 6 F.3d 876, 886 (2d Cir. 1993).

[2] Case 95-C-0657 et al., First Network Elements Proceeding, Opinion No. 97-2 (issued April 1, 1997)(the Phase 1 Opinion), BA-NY Application, Appdx . G, Vol. 1, Tab 9; Opinion No. 97-14 (issued September 22, 1997)(the Phase 1 Rehearing Opinion), BA-NY Application, Appdx. G, Vol. 2, Tab 12.

[3] AT&T's Comments, pp. 55, 59.

[4] AT&T, p. 59.

characterizes our determination as unsupported and "idiosyncratic,"[1] and at odds with the conclusions reached in other jurisdictions.

The issue was hotly litigated in Phase 1 of the NYPSC's First Network Elements Proceeding, where AT&T took the same position it takes here, and the New York Commission fully explained the reasons for its conclusion to the contrary.[2] Among other things, the NYPSC noted the substantially lower installation costs of fiber per unit of capacity (particularly important in large metropolitan areas, where facilities are installed in conduits) and the substantially lower maintenance costs associated with fiber, suggesting that they had been inadequately taken into account in the Hatfield Model that AT&T had relied on in Phase 1 and that showed lower costs associated with copper. The New York Commission pointed as well to the savings achievable by provisioning customers through the addition of electronics rather than through additional cabling or network reconfiguration and to fiber's operational advantages in comparison with copper.[3] It was unpersuaded by arguments relying on fiber/copper crossover practice in other jurisdictions, finding they "fail[ed] to take account of special needs in New

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[1] Id., fn. 25.

[2] Phase 1 Opinion, pp. 82-84; Phase 1 Rehearing Opinion, pp. 22-29.

[3] In this regard, the NYPSC recently required BA-NY to reduce two UNE rates to reflect technological innovations that capture anticipated additional savings made possible by use of the fiber/digital loop carrier-feeder construct. (The rates are the non-recurring charge for central office cross-connections, reduced to reflect the premise those connections can be made electronically rather than by manually cross-connecting wires; and the rate for basic rate integrated services digital network (ISDN-BRI) loops, reduced to reflect the use of integrated, rather than universal, digital loop carrier technology.) (Cases 95-C-0657, supra, Order Directing Rate Reductions (issued October 21, 1999). The rates at issue had initially been set at the higher level because the new technology on which the lower rates are based, though foreseeable, was not likely to be available soon enough to be taken into account in the original TELRIC analysis. The recent reduction of these rates, in light of technological progress, demonstrates the New York Commission's commitment to forward-looking TELRIC principles.

York City, where fiber's additional reliability and flexibility may be more important than they are elsewhere."[1]

AT&T's comments here appear to be oblivious to the New York Commission's account of the rationale for its determination on fiber feeder.[2] Far from being "idiosyncratic," the determination rests on a TELRIC study that encompasses a well-founded skepticism about the Hatfield Model's recognition of all pertinent factors along with a willingness to recognize that conditions in New York differ from those elsewhere and may be unique. As AT&T's experts themselves recognize, the economics of copper vs. fiber depend not only on loop length but also on capacity.[3] In New York City, and especially in Manhattan, where population per square mile is uniquely high,[4] there is ample reason to believe that the economies afforded by fiber's greater capacity will be dispositive, even where distances are short. At a minimum, the contrary results reached elsewhere suggest not that the NYPSC erred or failed to adhere to TELRIC but only that it appropriately exercised its power to take account of conditions in New York.

C. Switching Costs

With respect to switching, AT&T argues that Bell Atlantic-NY's rates are inflated, and fail to comply with TELRIC, in that they fail to recognize the cost savings associated with steep

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[1] Phase 1 Rehearing Opinion, p. 27.

[2] For example, AT&T alleges undue reliance on a 1991 study not introduced into the record of the First Network Elements Proceeding. (Id.) But the New York Commission fully explained that its reliance on that study was both limited (Phase 1 Rehearing Opinion, p. 22) and proper (id. pp. 26-27).

[3] Affidavit of Richard N. Clarke and Catherine Petzinger, AT&T's Comments, Appendix D, Attachment 3, ¶2.

[4] United States Census Bureau data show Manhattan's population per square mile to be 59419.4; the next highest figure outside New York City's other boroughs is San Francisco County's 15502.1. The data are available on the Census Bureau's website, at <http://www.census.gov/population/censusdata/90den_stco.txt>

discounts on new switches that an efficient carrier would receive from its vendors. In the NYPSC's First Network Elements Proceeding, the New York Commission initially was persuaded by Bell Atlantic-NY's position that these discounts had been available only in unusual circumstances and would not continue to be realized; later, in light of newly adduced evidence, it saw a need to reexamine the issue.[1] That reexamination will take place in the Second Network Elements Proceeding. In AT&T's view, the ongoing examination of the issue betokens a failure to set TELRIC-compliant rates, and the "speculative" prospect of a true-up to the now-temporary rates once the process is complete does not remedy that failing.[2]

AT&T bases its conclusion on a selective reading of the NYPSC's treatment of the new evidence on switching discounts. In deciding to reexamine switching costs instead of simply reducing them immediately on the basis of new evidence, the New York Commission referred to "the web of interconnected effects [that] argue[d] strongly against making [a] selective modification."[3] AT&T contends that even if ripple effects mitigated the effect of reducing switch prices to reflect greater discounts, they would not eliminate the effect entirely. But the NYPSC contemplated not only ripple effects of the discount adjustment, but also other adjustments that might raise switching costs. It noted it had rejected Bell Atlantic-NY's upward

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[1] Phase 1 Opinion, p. 85, fn. 1; Phase 1 Rehearing Opinion, p. 40; Case 98-C-1357, Second Network Elements Proceeding, Order Denying Motion to Reopen Phase 1 and Instituting New Proceeding (issued September 30, 1998)(New Proceeding Order), BA-NY Application, Appdx. G, Vol. 2, Tab 18.

[2] AT&T's Comments, p. 63. Notwithstanding AT&T's professed concern on this account, it concurred in BA-NY's recent request to defer the hearing in which the reexamination of this issue is to take place. Case 98-C-1357, supra, Ruling Modifying Module 3 Schedule (issued October 25, 1999).

[3] New Proceeding Order, p. 11. These effects include, among others, possible modification to the installation factor adjustment used in the NYPSC's analysis of switching costs and various adjustments, advanced by Bell Atlantic-NY in its petition for rehearing of the Phase 1 Opinion, to the data used in that analysis. See Phase 1 Rehearing Order, pp. 38-39.

adjustments to switching costs, proffered in a petition for rehearing of the Phase 1 Opinion, in part on the grounds that adjustments tending in the opposite direction also had to be considered.[1]

More fundamentally, AT&T implicitly mischaracterizes the New York Commission's treatment of switching costs in Phase 1. The decision was grounded on an analysis undertaken by the NYPSC's Staff after recognizing the serious flaws in both Bell Atlantic-NY's study and the Hatfield Model proffered by AT&T and MCI WorldCom.[2] The result of that analysis was adopted "not as a mathematically precise calculation of switching costs"[3] but as a figure, well within the range of reason as established by the TELRIC-based record, that was more reliable than the widely differing results of the parties' flawed, competing studies.[4] Thus, AT&T's criticisms appear misdirected in two respects. First, as the NYPSC itself observed,[5] the decision reflects a complex analysis that does not lend itself to simple arithmetic correction through adjustment of a single input. Second, the switching rates now in effect should not be seen as mere "placeholders." They embody a reasonable calculation of pertinent costs, arrived at by the NYPSC Staff's application of forward-looking TELRIC analysis. The evidence cited by AT&T may imply need to refine those rates in one direction; but, contrary to AT&T's suggestion, not only the magnitude but even the direction of the overall body of refinements that may prove warranted cannot now be foreseen. The rates remain temporary pending those refinements, but they are no less TELRIC-compliant on that account.

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[1] New Proceeding Order, pp. 10-11.

[2] Phase 1 Opinion, pp. 84-85.

[3] New Proceeding Order, p. 10.

[4] Id.; Phase 1 Rehearing Opinion, pp. 39, 41.

[5] Id.

D. DSL-Capable Loop Non-Recurring Charges

Several parties express concern about Bell Atlantic-NY's rates for xDSL-capable loops, especially the non-recurring charges related to loop qualification and conditioning.[1] They note that these rates remain under review by the NYPSC and argue that because rates found to comply with TELRIC are not yet in effect for xDSL loops, Bell Atlantic-NY cannot be found in compliance with the checklist.

As reported in our Evaluation,[2] we are reviewing Bell Atlantic-NY's proposed xDSL non-recurring charges in an expedited proceeding scheduled for NYPSC decision in December 1999. Pending that review, the charges are in effect on a temporary basis, subject to refund. Consistent with the NYPSC's commitment to TELRIC principles and to setting prices that satisfy the requirements of the 1996 Act and the Commission, we can safely say that rates meeting those requirements will have been set before the end of the year.

E. Collocation Costs

ALTS contends that Bell Atlantic-NY's collocation tariff fails to provide for the proration of site preparation and related up-front costs among the CLECs that will benefit from the improvement. Instead, it contends, the tariff appears to assign all such costs to the first CLEC seeking collocation, in violation of applicable FCC and NYPSC orders.[3]

ALTS' concern is misplaced. In setting collocation rates, the NYPSC declined to treat room construction costs on the basis proposed by Bell Atlantic-NY, including up-front payment, and instead estimated them on a TELRIC basis and provided for their recovery through recurring

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[1] E.g., MCI WorldCom, pp. 33-34; COVAD, pp. 6-7; CoreComm, pp. 5-6; ALTS, pp. 36-37.

[2] Pp. 79-80.

[3] ALTS, pp. 62-64.

charges.[1] Those charges are calculated, like most rates, on the basis of reasonable estimates of the likely number of users, thereby obviating any possibility that the full cost would be imposed on the first CLEC. The only up-front charge set forth in the tariff sections cited by ALTS is the charge for Adjacent Structures, in §5.6.4(c). Each such structure, however, is designed to be used by a single CLEC, and proration of costs among users accordingly does not arise.

F. Conclusion

We reiterate our conclusion that Bell-Atlantic-NY has met pricing requirements under the 1996 Act.

CONCLUSION

For the reasons set forth in our Evaluation and in this Reply, Bell-Atlantic-NY complies with the requirements of the 1996 Telecommunications Act §271(c).

Respectfully Submitted

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_____
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[1] Case 95-C-0657, supra, Opinions Nos. 99-4 (issued February 22, 1999), 99-9 (issued July 26, 1999).