

CONFIDENTIAL



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EX PARTE OR LATE FILED

REDACTED FOR PUBLIC INSPECTION

December 15, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St., SW, Room TWB-204
Washington, DC 20554

RECEIVED
DEC 15 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Notice of Ex Parte Contact
In the Matter of the Application by New York Telephone Company (d/b/a Bell Atlantic – New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Services in New York, CC Docket No. 99-295

Dear Ms. Salas:

On Friday December 3, 1999, the Commission issued a Public Notice in the aforementioned proceeding requesting Comment on the propriety of accepting post-filing date data submitted by both Bell Atlantic and the New York Public Service Commission into the record in this proceeding. Please find attached AT&T's Response to that Public Notice. A portion of this filing contains confidential information, and we are submitting both a public redacted version and a confidential version pursuant to the Commission's rules.

Two copies of this Notice are being submitted in accordance with Section 1.1206 of the Commission's rules.

Sincerely,



Robert W. Quinn

Attachments

No. of Copies rec'd 073
List ABCDE

cc: The Honorable Chairman William E. Kennard
Dorothy Attwood, Legal Adviser to Chairman Kennard
The Honorable Commissioner Tristani,
Sarah Whitesell, Legal Adviser to Commissioner Tristani
The Honorable Commissioner Ness
Jordan Goldstein, Legal Adviser to Commissioner Ness
The Honorable Commissioner Furchgott-Roth
Helgi Walker, Legal Adviser to Commissioner Furchgott-Roth
The Honorable Commissioner Powell
Kyle Dixon, Legal Adviser to Commissioner Powell
Lawrence Strickling, Common Carrier Bureau
Robert Atkinson, Common Carrier Bureau
Bill Bailey, Common Carrier Bureau
Carol Matthey, Common Carrier Bureau
Michele Carey, Common Carrier Bureau
Andrea Kearney, Attorney, Common Carrier Bureau

**COMMENTS OF AT&T CORP. IN RESPONSE
TO THE FCC'S REQUEST FOR *EX PARTE*
IN CONNECTION WITH BELL ATLANTIC'S
SECTION 271 APPLICATION FOR NEW YORK**

INTRODUCTION AND SUMMARY

AT&T respectfully submits these comments in response to the Commission's Public Notice of December 3, 1999¹, which requests responses to *ex parte* submissions in connection with Bell Atlantic's 271 Application for New York. In one sense, there is little need for comments. The new evidence submitted by Bell Atlantic and the New York Public Service Commission (New York PSC), though voluminous, is not only plainly barred by the Commission's rules, it does not begin to make up for the deficiencies in Bell Atlantic's initial attempt to demonstrate compliance with the requirements of section 271. The lack of advance notice that the Commission was even contemplating material changes to its long-established procedural rules, and the sheer volume of Bell Atlantic's submissions, preclude a comprehensive response to the new material. Despite these constraints, AT&T will respond herein substantively to as much of Bell Atlantic's new material as is possible under the circumstances.

These comments begin, however, with a more fundamental point. The Commission should and must adhere to its prior rules that bar it from giving evidentiary weight to this new material. Neither Bell Atlantic nor the State Commission has put on the record any reason for

¹ Public Notice, *Ex Partes* Requested In Connection With Bell Atlantic's Section 271 Application for New York," CC Docket No. 99-295, DA 99-2721 (rel. Dec. 3, 1999) ("Public Notice").

abandoning the “requirement that all BOC applications be complete when filed” (*Ameritech Michigan Order*, ¶ 56) and that “under no circumstance” will evidence that post-dates the filing of comments be given weight (*id.* ¶ 51). The reasons that supported the adoption of these requirements remain equally valid today; indeed, if anything, the record in this case amplifies their practical importance, both for this case and for future cases.

ARGUMENT

I. THE COMMISSION SHOULD NOT ABANDON ITS REQUIREMENT THAT ALL BOC 271 APPLICATIONS MUST BE COMPLETE WHEN FILED.

The Commission’s December 3rd Public Notice is notable more for what it omits than for what it says. The Public Notice acknowledges the Commission’s expectation that BOC 271 applications will be complete when filed, and states that the Commission retains discretion to accord new evidence no weight. The Public Notice observes that the Commission has “recently received” what it terms “supplemental evidence” from the State of New York and “has requested information from Bell Atlantic.” Without deciding whether it will accord that evidence any weight, the Notice requests further *ex parte* comment on it.

Considered in isolation, the Commission’s Public Notice would suggest that all that is at stake is the question whether, in this case, the Commission should exercise its discretion to give weight to new evidence or not. But that is not the case. The complete-when-filed *requirement*,²

² Although the Commission refers in its Public Notice to its “expectation” that a BOC’s application will be complete when filed, the Commission has repeatedly made clear that a complete application is not merely an aspiration but a “requirement” for every BOC. *See, e.g., Ameritech Michigan Order*, ¶ 49 (Commission “affirmed *this requirement* in our *Ameritech February 7th Order*”); *id.*, ¶ 50 (“we find it necessary to *emphasize once again the requirement* that a BOC’s section 271 application must be complete on the day it is filed”); *id.*, ¶ 56 (“enforcing *our requirement that all BOC* applications be complete when filed is fair”) (all emphases added).

until now, has been far more than a rule of “discretion.”³ As set forth in the *Ameritech Michigan Order*, the requirement stands as a complete bar to any consideration of virtually all of the material that Bell Atlantic and the New York PSC have “recently” submitted. That is because these recent submissions include evidence that post-dates October 19, 1999, which was the due-date for comments on Bell Atlantic’s application. In the *Ameritech Michigan Order*, the Commission stated categorically that “under no circumstance is a BOC permitted to counter any arguments with new factual evidence *post-dating* the filing of the comments. As indicated, *such evidence, if submitted, will not receive any weight.*” *Ameritech Michigan Order*, ¶ 51 (first emphasis in original). To foreclose any doubt about the proper course in the event a BOC nevertheless wished to have the Commission rely on such evidence, the Commission further spelled out the impact of its rule: “If, after the date of filing, the BOC concludes that additional information is necessary, or additional actions must be taken, in order to demonstrate compliance with the requirements of section 271, *then the BOC’s application is premature and must be withdrawn.*” *Id.*, ¶ 55 (emphasis added). That is clearly the case here.

The Commission’s *Ameritech Michigan Order* directly addresses, and dispositively resolves, what must be done with these new submissions. They must be disregarded. Either they are unnecessary to any showing of compliance with section 271 (and thus should be disregarded as tardy and irrelevant), or they are “necessary” to show compliance and therefore demonstrate that the application is “premature and must be withdrawn.” *Id.*, ¶ 55.

³ The *Ameritech Michigan Order* made clear that the Commission would exercise discretion to consider only that new evidence that is responsive to the comments of other parties “*provided the evidence covers only the period placed in dispute by the commenters and in no event post-dates the filing of those comments.*” *Ameritech Michigan Order*, ¶ 51 (emphasis in original). As discussed in the text, *infra*, the Order made clear that the Commission was not reserving any discretion at all to consider evidence that post-dates the filing of other parties’ comments.

The Notice makes no reference to any argument by Bell Atlantic, or to any explanation by the Commission, as to why its crystal-clear and well-established procedural rules -- which explicitly apply to all BOC Section 271 applications and which were re-affirmed by Public Notice on the eve of this application's filing -- should not apply to this one.⁴ Nevertheless, the Commission's December 3rd Public Notice indicates that, fewer than three weeks before its intended date for release of its written determination on Bell Atlantic's application, the Commission is considering whether to abandon its previously adopted, confirmed rules. The alternative, it would appear, is an approach that would give the Commission "discretion" to consider supplemental evidence at any stage of a section 271 proceeding. The Commission should not -- and consistent with the statute cannot -- take such a step.

All of the reasons that the Commission set forth when it initially explained the need for the complete-when-filed requirement remain compelling today. First, the Commission found "that allowing a BOC to supplement its application with new information at any time during the proceeding would be 'unfair to third parties . . .'" *Ameritech Michigan Order*, ¶ 52. That remains true. Since the reply comments were filed, Bell Atlantic alone has inundated the record with at least 50 *ex parte* submissions of new data and other material totaling more than 675 pages. These submissions arrive with no warning and in no predictable pattern as to timing or subject matter. Given the Commission's strict rules limiting *ex parte* submissions by CLECs to 20 pages and foreclosing reliance on new evidence, there was no point -- until the December 3rd notice -- for any third party even to attempt to develop responses to the new material.

⁴ Public Notice, Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act, DA-99-1994, at 7 (rel. Sept. 28, 1999).

Moreover, the Commission properly rejected the alternative of granting unlimited *ex parte* pages to all commenters. *Id.* It has been not only difficult for any third party to track Bell Atlantic's numerous and voluminous filings, but impossible to anticipate them, or to know when Bell Atlantic has definitively addressed one subject and moved to another. With a target that it is constantly moving, it is infeasible for a third party to develop and submit a sustained and coherent response. Were the Commission to open the door to unlimited responsive *ex parte* filings, it would "exacerbate the problem" (*id.*) by transforming the 20-day comment process into a 90-day comment process. Moreover, allowing other parties to file additional *ex partes* would encourage the BOCs "to game the system" by withholding critical evidence as long as possible in order to limit the opportunity for effective response by other parties. *Id.* These logistical and procedural problems deny third parties a fair opportunity to provide meaningful comment on a BOC's new evidence.

Second, permitting a BOC to submit new evidence at any time "would 'impair the ability of the state commission and of the Attorney General to meet their respective statutory obligations.'" *Ameritech Michigan Order*, ¶ 53. This consideration is particularly important because it is rooted in the statutory scheme that governs the Commission's consideration of section 271 applications. Under the statute, the Commission must give "substantial weight" to the views of the Attorney General. The Commission cannot do this if the Attorney General's evaluation precedes the submission of relevant evidence on which the Commission intends to rely.⁵

⁵ The statutory requirement that the Commission must give substantial weight to the Attorney General's review is but one aspect of the "unique scheme of accelerated and consultative agency review that Congress crafted for section 271" and that supports the Commission's complete-when-filed requirement. *Ameritech Michigan Order*, ¶ 50 (quoting

This application is a case-in-point. The Attorney General concluded, based on Bell Atlantic's initial application, and the comments submitted thereon, that Bell Atlantic had not met its obligations under section 271. The Attorney General went on to identify numerous specific deficiencies in Bell Atlantic's performance that warranted rejection of the application. The Commission simply cannot give substantial weight to these findings if it simultaneously concludes, based on evidence unavailable to the Department at the time it submitted its evaluation and on which the Department has expressed no views, that the new evidence responds to and resolves all of the Department's concerns. That is why the Commission previously and correctly concluded that "*it is essential* that these parties have the ability to evaluate a full and complete record." *Ameritech Michigan Order*, ¶ 53.

Third, if the BOC's never-ending submissions deny the Attorney General the opportunity to comment on a full record, it follows *a fortiori* that the Commission is thereby rendered unable to meet its statutory obligation to provide a written determination that gives substantial weight to the Attorney General's evaluation. 47 U.S.C. § 271(d)(2)(A). Indeed, the Commission previously found that it had "neither the time nor the resources to evaluate a record that is constantly evolving." *Ameritech Michigan Order*, ¶ 54. Certainly the time available to the Commission has not changed, and the Commission's resources will only be stretched more thinly once multiple applications are pending simultaneously. Indeed, the fact that the Commission has

AT&T Motion to Strike at 9). For example, the fact that the statute lets BOCs unilaterally control the timing of their applications, guarantees a written determination in 90 days, and permits withdrawal and refiling "without prejudice" underscores that BOCs are not subject to indefinite agency proceedings or dismissals with prejudice, and thus that the complete-when-filed requirement is fair. The need for a written determination by one agency that takes into account the views of two others, as well as substantive evidence from numerous third parties, underscores that the rule is vital to rational decisionmaking. *See Ameritech Michigan Order*, ¶ 56.

invited other parties to respond to Bell Atlantic's numerous post-application submissions only three weeks before the conclusion of the 90-day period for Commission review necessarily means that the Commission has left itself very little, if any, time to evaluate submissions by other interested parties and to take such belated submissions into account in its decision in a fair and meaningful manner. These circumstances vividly demonstrate why giving any weight to Bell Atlantic's recently submitted evidence "would undermine the Commission's ability to render a decision within the 90-day statutory period." *Ameritech Michigan Order*, ¶ 54.

Neither the State Commission nor Bell Atlantic has put on this record any argument why any of the foregoing three reasons supporting the complete-when-filed requirement is not as important and applicable to this application as it was to Ameritech's or BellSouth's applications. Nor has any party explained why the rules should not be applied equally to supplemental evidence submitted by a state commission. For example, the New York PSC submitted unaudited, unverified data reported to it by Bell Atlantic concerning its October performance under the Carrier-to-Carrier performance metrics. The fact that the state commission, and not Bell Atlantic, transmitted these data to this Commission does not make the data any more reliable than if Bell Atlantic had simply filed them with both Commissions simultaneously, and the implication that these data show compliance with section 271 is unfounded, as discussed further *infra*. Indeed, any late submission by a State Commission denies third parties a fair opportunity to comment on a complete record, undermines the ability of the Department of Justice to fulfill its consultative obligation, and impedes the ability of this Commission to issue a written determination that is comprehensive and fair. The complete-when-filed rule should therefore apply equally to the late submission of evidence by state commissions as well.

Moreover, there are today two additional, important reasons for adhering to the complete-when-filed requirement to which the Commission must give substantial weight. First, the Evaluation of the Department of Justice “strongly support[s] the Commission’s prior decisions limiting the ability of applicants to submit data concerning post-application performance in support of their application.” DOJ Eval. at 42. Although the Department did “not foreclose the possibility that the Commission may be able to approve this application at the culmination of these proceedings,” *id.* at 43, it made clear that any such conditional approval ought not be based on post-application, pre-decision information, but would need to be based on proof of compliance with “carefully crafted conditions” set forth in the Commission’s written decision, and with “mechanisms sufficient to enable the Commission to reach an informed judgment and ensure full compliance with any conditions.” *Id.* at 42-43. Allowing the post-filing data into the record at this point in the proceeding would directly contradict the Department’s recommendation.

Second, foregoing the complete-when-filed rule could open the floodgates to a series of applications that contain evidence of only partial compliance with the section 271 checklist with a myriad of promises of future performance and “quick fixes” for checklist shortfalls that will be monitored not by the Commission, but rather by state commissions – a concern echoed by the Department, which said that “conditional approval of this application might encourage future applications in states that are less open to competition than New York has been shown to be.” DOJ Eval. 43. Until now, the complete-when-filed rule has given the Department of Justice and state commissions substantial leverage to insist that a BOC demonstrate compliance with statutory obligations before it files its section 271 application. *See id.* 42 (“The Department of Justice starts with a strong presumption — based on the structure and terms of the statute, on the Commission’s prior decisions under Section 271, and on the Department’s own economic and

competitive analyses — that a BOC should be required to demonstrate that all important market opening measures have been completed *before* it may enter the long distance market.”) (emphasis in original). The Commission’s prior decisions are thus instrumental in the Department’s ability to insist that BOCs demonstrate compliance before they file their applications at the Commission.

Here, for example, Bell Atlantic believed that it fully complied with the requirements of section 271 years ago. Nevertheless, as Bell Atlantic notes in its application, the filing of its Section 271 application for New York followed “years of hard work by Bell Atlantic under the close supervision of the New York Public Service Commission and in cooperation with the Department of Justice” to develop and test the systems and service offerings required to enable Bell Atlantic to meet the checklist requirements. BA App. at 2-3. If the complete-when-filed rule becomes a dead letter, however, the incentive of Bell Atlantic and all other BOCs to comply with section 271 in advance of filing a section 271 application and to work through those issues with the Department of Justice will die with it. Any BOC unwilling to make the progress demanded by its state commission or by DOJ will have every incentive to file an application with this Commission, in the hope that the Commission’s open-ended, rolling review process will allow the BOC to sidestep certain requirements and negotiate better terms on others. Indeed, since no requirement could have been stated more unequivocally than the complete-when-filed requirement, the Commission’s decision to abandon it now would send an unmistakable invitation for every BOC to turn its section 271 into a *de novo* proceeding in which all prior Section 271 decisions are presumptively up for reconsideration without deference. No decision could do more than this to delay the development of local competition.

Moreover, permitting BOC applicants to rely on a constantly shifting record to meet their burden under section 271 is inconsistent with a BOC’s need to demonstrate that it can

consistently and reliably provide CLECs with nondiscriminatory access to OSS. Assertions that performance has improved only for a few weeks are inherently inadequate to prove that a BOC is capable of providing sustained non-discriminatory performance over time. Bell Atlantic's performance, which has varied significantly from month-to-month, is a case in point. Because a "rolling record" necessarily provides evidence of improvements that may prove to be only transitory, it does not provide a reliable basis for a finding that a BOC is providing nondiscriminatory access to OSS.

In sum, the reasons that originally justified the complete-when-filed requirement remain fully applicable and are now buttressed by the support and concerns of the Department of Justice. All of these reasons are grounded ultimately in the unique statutory scheme that Congress created for section 271. No reason has been advanced in this record which would support the argument that the Commission could or should abandon the categorical ban against giving weight to BOC factual submissions that post-date the filing of comments. The Commission therefore lacks any reasoned basis to abandon its prior decisions, and it should accord no weight to the "supplemental evidence" it has "recently received." Dec. 3rd Public Notice at 1.

II. BELL ATLANTIC'S SUPPLEMENTAL EVIDENCE FAILS TO CURE THE DEFICIENCIES IN BELL ATLANTIC'S ORIGINAL SUBMISSION

Bell Atlantic's application revealed significant failures in its ability to demonstrate compliance with section 271. The comments of AT&T and other third parties identified numerous deficiencies, and the Evaluation of the Department of Justice underscored their importance. Indeed, were any further confirmation needed that Bell Atlantic's initial application was deficient, it has been supplied several times over by the hundreds of pages of supplemental materials belatedly introduced by the New York PSC and by Bell Atlantic in an effort to show

that the deficiencies have been remedied. Such submissions serve presumptively to confirm the prematurity of the application. *Ameritech Michigan Order*, ¶ 56.

In any event, these *ex parte* submissions do not contain the evidence needed to support a finding that Bell Atlantic has met all of the requirements of Section 271. While the following pages identify the deficiencies in more detail, three examples are illustrative. First, even under the most optimistic reporting of its performance, Bell Atlantic has yet to demonstrate, either in its new *ex parte* submissions or elsewhere, that it can provision hot cut loops in a non-discriminatory manner. Even under the unreasonably restrictive view taken by the New York PSC as to what constitutes evidence of a customer outage caused by Bell Atlantic, the evidence shows that between 5 and 7 percent of new AT&T small- and medium-sized business customers lose their service for a significant amount of time due to Bell Atlantic's miscues in the hot-cut process. No "metric" has ever been adopted in New York or elsewhere that blesses such miserable performance. It is commercially intolerable, and it plainly denies AT&T and other CLECs nondiscriminatory access to unbundled loops.

Second, Bell Atlantic's new *ex parte* filings do nothing to bolster the record of inadequate performance with respect to directory listings. AT&T's detailed evidence that Bell Atlantic routinely drops 11-15 percent of AT&T's new UNE-L customers from its database remains un rebutted by anything save the promise of improved future performance. The loss of directory listings is particularly significant for many small- to medium-sized businesses that depend on telephone referrals, and Bell Atlantic's discriminatory provision of access to directory listings is yet another independent and significant aspect of checklist noncompliance that remains unanswered in the hundreds of supplemental pages filed to date.

Third, the *ex parte* submissions do not demonstrate that Bell Atlantic is providing nondiscriminatory access to its OSS for CLECs seeking to offer the UNE-platform. Not only has Bell Atlantic not yet met the benchmark requirements of nondiscriminatory access set by the performance measurements adopted by the state (which are themselves too lenient to establish nondiscriminatory performance), but the new data confirm that Bell Atlantic's systems lack the stability of performance that is essential to a finding of checklist compliance. Bell Atlantic's new data show, for example, that Bell Atlantic remains extraordinarily dependent on manual processing, that it continues to make errors on the orders it processes, and that its performance is deteriorating in several important respects as volumes have begun to grow. Equally important, despite filing hundreds of pages of new material, Bell Atlantic somehow neglected to inform the Commission of the outages of its pre-ordering interface that have repeatedly and recently occurred, that significantly disrupt the ability of competitors to sign up new customers, and that further illustrate the instability of Bell Atlantic's new systems. Until Bell Atlantic can demonstrate that its systems are as stable and reliable as the PIC-change systems that can quickly and easily switch long-distance carriers for millions of customers each year, its application is premature and should be denied.

A. Bell Atlantic Continues To Overstate Its Hot Cut Loop Provisioning Performance

Since November 8, Bell Atlantic has continued to submit *ex parte* information and declarations that relate to its hot cut provisioning performance for periods subsequent to its September 29 application date.⁶ For the reasons set forth above, this information should not be

⁶ In particular, Bell Atlantic submitted a November 12, 1999 *ex parte* letter from Dee May to Magalie Roman Salas that contains a presentation made to Commission personnel on loop unbundling issues (the "11/12 Loop Letter"). In addition, Messrs. Lacouture and Troy submitted

considered by the Commission in ruling on Bell Atlantic's Section 271 application. If however, the Commission were to decide to consider this information, it must also consider the following information that undercuts Bell Atlantic's claims about its hot cut loop provisioning performance and demonstrates that such provisioning is still not commercially reasonable.

1. Bell Atlantic's Hot Cut Provisioning Performance

In the Lacouture/Troy Supplemental Declaration, Bell Atlantic claims that its hot cut loop provisioning is excellent, citing its reported PR-6-02 metric ("I Codes") for recent months that allegedly show troubles reported within seven days at less than one percent. Lacouture/Troy Supp. Dec., ¶¶ 7-9, 17. These figures do not rebut Bell Atlantic's poor hot cut loop provisioning performance as demonstrated by AT&T and other CLECs in this proceeding. First of all, the I Code figures do not include hot cut provisioning failures that CLECs report within the first hour of the completed hot cut that are captured as part of the "missed appointment" metric (PR-4-06). As noted below, for an overall view of Bell Atlantic's provisioning failures, both types of customer service outages must be combined. The NYPSC Staff found that Bell Atlantic was putting between 4% and 6% of customers out of service when implementing a hot cut. Moreover, in response to the November 22, 1999 Meek Supplemental Affidavit accompanying the AT&T motion to strike, the NYPSC staff (a) concurred in an additional 7 provisioning failures identified by AT&T; (b) identified at least 5 other failures that Bell Atlantic was required to either acknowledge or disprove; and (c) identified other cases in which Bell Atlantic's failure to

a declaration with Bell Atlantic's response to AT&T's Motion to Strike (the "Lacouture/Troy Supp. Dec.") that addresses a number of hot cut provisioning issues. Finally, Bell Atlantic submitted an ex parte letter from Dee May to Ms. Salas dated November 22, 1999 addressing the issue of dropped directory listings for UNE-Loop customers (the "11/22 Directory Listings Letter").

carry out hot cuts correctly put the customer's Bell Atlantic lines out of service. Rubino Reply Aff. Collectively, the NYPSC findings -- which are very conservative -- show customer service outages in the 5-7% range. AT&T believes that the outages figure is significantly higher, but even outage levels of 5-7% preclude AT&T from competing effectively in the small-to-midsized business market. Mulligan Aff., ¶¶ 24-27, 38-44 (describing outages goal of less than 1 percent).

Second, the I Code figures reported by Bell Atlantic have never been audited or subject to third-party review. As noted in Mr. Meek's initial affidavit, Bell Atlantic can manipulate the reporting process for hot cut loops using its significant discretion over the scoring of hot cut loops. Meek Initial Aff., ¶¶ 16, 113-17.⁷ With this discretion, Bell Atlantic's opportunities for overstating its hot cut loop provisioning performance are obvious. For example, during the NYPSC's reconciliation of Bell Atlantic's July performance, even though the missed appointment metric (PR-4-06) was the focus of the reconciliation, the NYPSC Staff's findings showed that Bell Atlantic had underreported both its missed appointments and I Codes by over 100 percent. *Id.*, ¶ 126. It is important to note in this regard that there is no current check on Bell Atlantic's reporting performance; indeed, Bell Atlantic has never provided CLECs on a regular basis with a listing of the orders that it classified as I Codes for scoring purposes.

In light of the short time available, and the complexity of and length of time required to review hot cut loop provisioning orders, AT&T has not had the opportunity to review fully Bell Atlantic's hot cut provisioning performance for November. Based on a preliminary review,

⁷ As an example, after a CLEC reports a trouble to Bell Atlantic, Bell Atlantic dispatches a technician to investigate the problem. The customer's service will be restored at some point, but the technician may indicate that there was "no trouble found" and close the trouble ticket. In such cases, Bell Atlantic does not score the trouble ticket as an I Code. Similarly, if the technician attributes the trouble to customer equipment, no I Code is assigned.

however, it appears that Bell Atlantic's hot cut loop provisioning performance has not improved over the commercially unreasonable performance levels that AT&T has already documented fully. As order volumes have increased, Bell Atlantic continues to put too many AT&T customers out of service when it provisions hot cut loops. In short, Bell Atlantic-caused customer outages continue in the range that AT&T has previously reported.

In addition, it is clear from the preliminary analysis of November hot cut loop data that provisioning problems with respect to customers served by integrated digital loop carrier (IDLC) facilities not only continue but actually have gotten worse. Bell Atlantic has downplayed the importance of IDLC claiming that only 1% of hot cuts have involved IDLC facilities and that the agreed procedures are being followed. 11/12 Loop Letter at 8. Consistent with the problems described in the Meek Initial Affidavit (¶¶ 67-74), however, the November data show that Bell Atlantic still fails to provide timely notice of the existence of IDLC facilities, alerting AT&T on the due date rather than shortly after the submission of the LSR, and still makes provisioning errors that put IDLC customers out of service during the cutover. In addition, a new problem is Bell Atlantic outright failure to complete hot cut orders involving IDLC facilities. AT&T is continuing to investigate this issue.

Bell Atlantic's claim (Lacouture/Troy Supp. Dec., ¶ 8) that AT&T mixes "apples and oranges" by combining missed appointments under PR-4-06 and troubles reported within 7 days under PR-6-02 in evaluating Bell Atlantic's hot cut loop performance is plainly wrong. A trouble under PR-6-02 is often a service problem that would be scored as a missed appointment under PR-4-06 if reported to Bell Atlantic within one hour after Bell Atlantic's hot cut completion call to the CLEC. As such, both the missed appointments under PR-4-06 and the reported troubles under PR-6-02 reflect hot cut provisioning problems and are appropriately considered together.

The NYPSC agreed with this approach, noting in its Evaluation that information on I Codes “taken in conjunction with the hot-cut metrics, give a complete picture of the quality and timeliness of loop provisioning.” NYPSC Evaluation p. 91.

Bell Atlantic also claims that many of the problems associated with hot cut loop provisioning are "retail" problems that are not associated with the hot cut. Lacouture/Troy Supp. Dec., ¶ 8; see also NYPSC Response to AT&T Motion to Strike p. 8. This is not credible.⁸ In nearly all cases, AT&T UNE-L customers who incur service outages at the time of cutover by Bell Atlantic to AT&T would not have experienced a service disruption but for the hot cut. *See* Meek Reply Aff., Att. 3 (summary descriptions of service outages for period June 21-August 31). Indeed, when Bell Atlantic reviewed data on each of AT&T's 78 outages in August, its chart describing those outages identified only one of those events as a “retail” trouble. *See* Lacouture/Troy Reply Dec. Confidential Att. E.

2. Repairs

With respect to repairs of hot cut provisioning errors, Bell Atlantic continues to claim that AT&T is responsible for the delay in resolving hot cut loop provisioning problems, citing an alleged average figure of 56 hours for AT&T to report problems to Bell Atlantic. Lacouture/Troy Supp. Dec., ¶ 22; 11/12 Loop Letter at 9. This figure, derived from Confidential Att. E to the Lacouture/Troy Reply Declaration, is totally baseless and is taken from a chart that is filled with errors. For example, in three instances, Bell Atlantic erroneously claims that AT&T took over

⁸ Bell Atlantic's claim that such “retail” problems are the result of storms or severed lines caused by a contractor ignores the evidence presented by AT&T regarding hot cut provisioning problems. Meek Reply Aff., Att. 3. The relatively rare events cited by Bell Atlantic do not account for the 170 outages incurred by AT&T customers. Similarly, the NYPSC's suggestion (Rubino Reply Aff., ¶ 11) that it is a “retail” problem when a third line is mistakenly cut over with two other lines simply cannot be correct.

100 hours to report troubles. However, the service outage on order NYCY9907937 prompted a variety of calls from AT&T shortly after the frame due time and a service outage of 1 hour, not a trouble reported three weeks later, as Bell Atlantic claims. *See Meek Supp. Aff., Att. 1 p. 9* (description of NYCY9907937). A second order (NYCY9908725), for which Bell Atlantic claims an AT&T reporting delay of over 25 days, actually involved a customer who had canceled his AT&T order on August 13. The NYPSC Staff noted that "the customer was out of service on 8/27 because BA botched the snap-back [of the customer from AT&T to Bell Atlantic]." *Rubino Aff., Ex. 5, page 11*. AT&T reported this Bell Atlantic retail problem at that time because the customer called AT&T about his service problem. A third order (NYCY9909521) is listed by Bell Atlantic as being cut over on August 26, with the trouble reported by the customer to AT&T on August 29. However, both AT&T and the NYPSC Staff indicate that the hot cut took place on August 31. *Compare Rubino Aff., Ex. 5, p. 13 and Meek Supp. Aff., Att. 1 p. 17*. Many similar errors infect Bell Atlantic's data in support of its claim. Collectively, these errors totally undercut Bell Atlantic's assertion that AT&T delayed reporting troubles.

In addition, Bell Atlantic's repair times are plainly inadequate. AT&T's evidence on the duration of customer outages associated with Bell Atlantic hot cut loop provisioning errors showed that 61% of customers had outages of one day or longer. *Meek Initial Aff., ¶ 87 & Att. 11*. Bell Atlantic itself concedes that half of the service outages are not restored within one day, and one quarter of AT&T's customers are out of service for two days or more. *See 11/12 Loop Letter at 9*. Such service disruptions are intolerable.

3. Directory Listings

Bell Atlantic continues to downplay its problem with dropped directory listings experienced by UNE-L customers, emphasizing its record for UNE-Platform customers and asserting that the UNE-L problems were resolved. 11/22 Directory Listings Letter. In fact, those problems continued, and Bell Atlantic's attempts to resolve the problem with quality assurance teams and software fixes proved inadequate. Indeed, AT&T conducted two separate tests in August and September showing that 11-15% of directory listings of UNE-Loop customers were not in the directory listing database on the third day after the cutover. Callahan/Connolly Aff., ¶¶ 15-26. In each case, Bell Atlantic's quality assurance team failed to restore the directory listings on a timely basis. Bell Atlantic does not dispute these data. Instead, it makes excuses in each case -- too few personnel in one case, inadequately trained personnel in another. The bottom line is that the quality assurance teams and the software changes did not solve the problem.

As a result, Bell Atlantic is forced to rely on its commitment to "fix" its legacy systems that cause the dropped directory listings -- but not until February 2000. 11/22 Directory Listings Letter. This future promise, however, cannot satisfy Bell Atlantic's obligations with respect to this explicit checklist item.

B. Operations Support Systems

Notwithstanding the evidence of inadequate OSS systems presented by AT&T and other CLECs in this proceeding, Bell Atlantic asserts that "with the exception of a few specific items . . . , commenters have not questioned whether the access to OSS that Bell Atlantic provides to CLECs is at parity with what Bell Atlantic's retail operations have." 11/22 Letter at 1.⁹ This

⁹ The OSS issues addressed herein are discussed in the following *ex parte* letters submitted by Bell Atlantic: (1) letter dated November 5, 1999 from Dee May to Magalie Roman Salas,

assertion is as astonishing as it is false.¹⁰ AT&T's evidence demonstrated numerous respects in which Bell Atlantic fails to provide CLECs with the same access to OSS as that enjoyed by Bell Atlantic's own retail operations. Other commenters confirmed that Bell Atlantic is not yet providing nondiscriminatory access to its OSS in many areas.¹¹ Bell Atlantic's assertions in its *ex parte* letters do not change that reality.

As a threshold matter, Bell Atlantic has publicly claimed that AT&T's December 1, 1999, press announcement that it will begin offering local service statewide in New York is an admission

regarding Bell Atlantic's change management process and related information ("11/5 CM Letter"); (2) letter dated November 22, 1999 from Dee May to Joanna Mikes, responding to information requests ("11/22 Letter") (attached to letter dated November 22, 1999 from Dee May to Magalie Roman Salas); (3) letter dated November 24, 1999 from Dee May to Magalie Roman Salas responding to questions from Commission Staff regarding Bell Atlantic's OSS ("11/24 Response to Staff"); (4) letter dated November 24, 1999 from Dee May to Magalie Roman Salas that "responds to a number of OSS-related issues raised by commenters for the first time" ("11/24 Reply to CLECs"); (5) letter dated November 29, 1999 from Dee May to Magalie Roman Salas attaching Bell Atlantic's "response to questions regarding certain OSS-related issues raised in the above-captioned proceedings" ("11/29 Letter"); and (6) letter dated December 2, 1999 from Dee May to Joanna Mikes (attached to letter dated December 3, 1999 from Ms. May to Ms. Salas) ("12/2 Letter"); letter dated December 13, 1999 from Dee May to Magalie Roman Salas clarifying the time period covered by "the analysis contained in Attachment G" ("12/13 Letter").

¹⁰ As in its Application, Bell Atlantic once again suggests in its *ex parte* submissions that CLECs have superior access to the OSS because their queries and transactions "are automatically directed to the appropriate back-end system by the Bell Atlantic gateway systems," whereas Bell Atlantic retail representatives "must log in separately to each back-end OSS, must know which OSS contains the information they need, and must query the appropriate OSS individually." 11/22 Letter at 1-2. As AT&T has pointed out previously, these assertions are both incorrect and misleading. Crafton/Connolly Initial Aff., ¶ 95 n.52. Bell Atlantic's representatives log into the various OSS applications that they need at the start of each workday and use a "quick switch" sign-on that enables them later to access the individual system that they need. Thus, they do not need to query the appropriate OSS system individually. Moreover, unlike CLECs, Bell Atlantic representatives have direct access to Bell Atlantic's systems; their access is not through a gateway which, if not operational, would deny them access to the Bell Atlantic OSS. That difference is significant, since (as described below) Bell Atlantic's systems used for pre-ordering have been frequently unavailable to CLECs.

¹¹ See Reply Comments of AT&T filed November 8, 1999, at 20 & n.20 (listing parties whose comments confirmed Bell Atlantic's failure to provide parity of access to OSS).

that Bell Atlantic's OSS systems are sufficiently robust that they can handle AT&T's projected local service orders and thus justifies the grant of Bell Atlantic's request for section 271 relief.¹² AT&T's statement, however, is *not* a reflection on the readiness of Bell Atlantic's OSS systems. Indeed, as shown below, several major problems still trouble Bell Atlantic's OSS. AT&T actions are instead a recognition of several marketplace realities. First, AT&T's experience with its New York market trial indicated a strong demand for an alternative to Bell Atlantic as a local service provider. Thus, the recent announcement of an expanded AT&T marketing plan is designed to serve expressed consumer needs.

Second, AT&T is responding to the activities of its two main CLEC rivals in New York State. AT&T made its public announcement at this time because its principal competitors, MCI WorldCom ("MCI") and Sprint, already entered the New York local service market. Simply put, AT&T could not wait longer while these rivals continued to market actively – as MCI has for several months -- to provide local service.

Third, although not with this Section 271 application, Bell Atlantic will one day receive approval to offer in-region interLATA service. Once Bell Atlantic receives that approval, it will be able to enter the interLATA market quickly and switch customers to its long distance service using a simple PIC change process that has been refined and streamlined over many years. By contrast, CLECs seeking to provide local service alternatives to Bell Atlantic continue to be hampered by Bell Atlantic's inadequate OSS systems. Until Bell Atlantic's OSS systems permit a customer to switch its local service provider as easily as that customer can switch its long distance service provider, AT&T and other CLECs will be at a competitive disadvantage that they must try

¹² "AT&T Rides Ad Blitz to N.Y. Local Turf," Washington Post, p. E3 (12/2/99).

to overcome through active participation in the marketplace, even in the face of poor current operational support from Bell Atlantic.

Finally, AT&T's announcement describes AT&T's plan and its goal of offering local service on a statewide basis, but this plan can and will be scaled back if Bell Atlantic cannot handle the order volumes that AT&T would be submitting in a fully competitive market. AT&T must protect its brand name and market reputation with its customers, and it will cut back on its marketing and advertising if Bell Atlantic is not able to transfer customers to AT&T service in a seamless manner. The ability to scale back quickly is essential for, as the following discussion illustrates, Bell Atlantic has yet to demonstrate that its systems can be counted upon to provide nondiscriminatory access to each of the crucial OSS functions.

1. Pre-Ordering Issues

Bell Atlantic goes to considerable lengths in its *ex parte* submissions to show that any problems with pre-ordering cited by the CLECs are caused by the CLECs themselves. The facts, however, show otherwise. The instability in Bell Atlantic's pre-ordering systems, and the inability of CLECs to integrate their pre-ordering and ordering interfaces, are the fault of Bell Atlantic.

a. Stability of Pre-Ordering Systems. AT&T implemented CORBA, its electronic pre-ordering interface with Bell Atlantic, on August 23. Since that time, AT&T has experienced a series of Bell Atlantic - caused problems with access to Bell Atlantic's pre-ordering systems.

In late October and early November, as AT&T was ramping up its ordering volumes, AT&T service representatives began to experience a slow-down in response times, followed by

system outages, from Bell Atlantic's pre-ordering systems, particularly for address validations.¹³ When AT&T's systems personnel raised this problem with Bell Atlantic, they were informed — for the first time — that a single Bell Atlantic pre-ordering server connection could only handle a maximum of about 1,200 transactions per hour. If AT&T had been informed of this limitation earlier, it would not have designed its connectivity with Bell Atlantic so that it relied upon a single pre-ordering server connection. And Bell Atlantic should have engineered its process with sufficient “head room” or scalability. Nevertheless, in order to avoid the problems it was experiencing — problems that would have seriously slowed down AT&T's ability to process customer orders — AT&T worked diligently over the next few weeks to modify its support architecture to accommodate the new information it received about Bell Atlantic's system limitations. AT&T has now established ten pre-ordering server connections that are expandable in the future and should be sufficient to handle anticipated peak loads for 2000. This problem could have been completely avoided, however, if Bell Atlantic had provided the necessary

¹³ Address validations are critical, because the CLEC must identify the customer by name and service address, so that technicians are dispatched to the correct location for initial installation and for later repair. The service address is also the basis of the customer's directory listing unless or until the customer requests that the listing be modified. The CLEC must also know if bills are to be rendered to the service address or to a separate address for some reason to ensure billing integrity and prevent fraud. AT&T identified this outage problem in its Reply (*see* Crafton/Connolly Reply Aff., ¶ 34). Bell Atlantic has subsequently asserted that it had no prior knowledge or notice of these outages. *See* 11/24 Reply to CLECs, at 2. This assertion is false, and Bell Atlantic knows it. As stated in AT&T's affidavit, AT&T opened a separate trouble ticket with Bell Atlantic for each of the outages that was described.

Bell Atlantic's assertion that AT&T called Bell Atlantic on the day before the outages described in AT&T's reply evidence “to inform Bell Atlantic that AT&T was having problems with its own systems” is also false. *Id.* AT&T made no such calls. AT&T only called Bell Atlantic on the date when each such outage occurred, to report the outage and to open a trouble ticket. AT&T would not have stated on such calls that it was “having problems with its own systems.”

information about its system limitations earlier in the process of the joint work with AT&T to implement the CORBA pre-ordering interface.

More significantly, AT&T has been subjected to numerous outages in Bell Atlantic's pre-ordering systems over the past few weeks. Critically, these outages have been increasing in frequency since November 30, as AT&T's order volumes are moving toward commercial volumes. This problem is explained below.

AT&T's customer service processes are set up to enable AT&T representatives to take a customer's order and place that order with Bell Atlantic while they are still on the telephone with the customer. In order to do so, they need real-time access to Bell Atlantic's pre-ordering systems. However, the problems AT&T has experienced preclude AT&T representatives from performing in this manner. Instead, when the outages in Bell Atlantic's pre-order systems occur, they must take orders manually on paper forms (called "Down Time Forms" or "DTFs"), and these forms must be forwarded to a separate work center that processes them. This not only increases AT&T's costs, but it also reduces AT&T's ability to provide customers with timely service conversions. Indeed, when AT&T processes orders on an "off-line" basis, customers must be quoted extended due dates (typically 2 to 5 additional days) in order to reduce the likelihood that the customers' expectations for installation or initiation of AT&T service will not be met.¹⁴ Moreover, DTF orders are subjected to a greater risk of rejection, because the Bell Atlantic-caused outage forces AT&T to transcribe the order manually and to input it into its systems later.

¹⁴ It should be noted that AT&T's data on Bell Atlantic's provisioning of UNE-P orders (which AT&T included in its previous filings in this proceeding) do not take account of this problem.

It is critical to note that when the Bell Atlantic pre-ordering application fails, the time AT&T's processes are "off-line" is considerably longer than the time that Bell Atlantic's systems themselves are unavailable. In fact, even if Bell Atlantic's systems are only unavailable for a matter of minutes, AT&T's actual inability to use those systems extends for hours. The reason for this significant disparity is as follows.

When Bell Atlantic's pre-ordering processors go "off-line," AT&T usually does not learn of such events from Bell Atlantic.¹⁵ Instead, AT&T's systems personnel learn about them when they begin to receive reports from AT&T's service representatives who are unable to receive responses from Bell Atlantic's pre-ordering system.¹⁶ After receiving several such reports, AT&T's systems personnel first check to see if there is any internal (*i.e.*, AT&T-caused) problem. If they determine that there is no AT&T problem, they call Bell Atlantic's Help Desk to report the situation and open a trouble ticket. Most of the time, Bell Atlantic's Help Desk is unaware of a Bell Atlantic outage when it receives the call from AT&T. Thus, AT&T systems personnel must continue to stay in contact with Bell Atlantic until (1) they receive information from Bell Atlantic as to the cause of the problem (if any is provided) and (2) they receive confirmation that the problem is resolved.

¹⁵ In its October Carrier-to-Carrier Report Bell Atlantic, for the first time, reported on metric PO-5 that measures the average amount of time that elapses between Bell Atlantic's identification of an interface outage and Bell Atlantic's notification to CLECs of the existence of the outage. Although Bell Atlantic's own October data show that it failed to meet the absolute standards for notification of interface outages, its overall performance in this area is conceivably worse than reported, since the metric does not take into account those instances in which Bell Atlantic fails to provide any notice to CLECs of interface outages. *See* Bell Atlantic's Compliance Filing in NYPSC Case 97-C-0139 filed July 12, 1999, PO-5-01.

¹⁶ *See* Crafton/Connolly Initial Aff., ¶¶ 263-267; Crafton/Connolly Reply Aff., ¶¶ 89-93 (describing prior incidents). In such cases, AT&T service representatives' pre-ordering queries

AT&T's down-time does not end, however, merely because AT&T receives word that Bell Atlantic has fixed its problem. This is because, in the interim, a queue of unsent (and now useless) pre-ordering queries typically has built up in AT&T's systems and must be cleared before AT&T service representatives can resume normal operations and send real-time queries to Bell Atlantic's systems.¹⁷ AT&T service representatives must operate off-line every time there is a Bell Atlantic pre-ordering system outage, regardless of the amount of time that Bell Atlantic reports that its systems are "down" or unavailable. Based on the current number of AT&T service representatives at work and current AT&T order volumes, an outage can generate as many as 350 to 400 (or more) DTFs, all of which must be manually entered by other AT&T personnel at a later time and at additional cost.¹⁸

Disturbingly, these problems — which are attributable to Bell Atlantic — have accelerated in the last few weeks. AT&T was required to open separate trouble tickets to address pre-ordering system unavailability on November 30, December 1, December 2, December 7, December 8, December 9, December 11, December 13, and December 14. And on December 6 and 9, AT&T had to deal with two separate pre-ordering outages. Attachment 1 is a chart describing each of these trouble tickets that identifies the trouble ticket number, the dates the

"time out," which indicate that they cannot receive the requested information from Bell Atlantic's systems.

¹⁷ This situation occurs because the pre-ordering system protocol (for both AT&T and Bell Atlantic) is synchronous, which means that each query in a queue must receive a response before the system moves on to process the next query in the queue. If the queued queries sent by AT&T representatives during the down-time period (for orders that are already completed on DTFs) are not cleared out of the system, every one of those queries would have to be processed before new queries could be processed for current orders. Bell Atlantic's recent *ex partes* reference a similar process for its system. See 11/24 Reply to CLECs, at 1-2.

¹⁸ The frequency of pre-ordering system outages has also affected AT&T's ability to catch up in processing DTFs, because pre-ordering queries are necessary to process such orders.

trouble ticket was opened and closed, the reason (if any) given by Bell Atlantic for each trouble, the AT&T outage time related to each instance, and the impacted user minutes (the number of users affected by the down-time multiplied by the length of the down-time).

b. Integration. As in its previous filings, Bell Atlantic's continuing reliance on the KPMG testing to support its claim that the pre-ordering and ordering interfaces are integratable is misplaced — and misleading. Bell Atlantic, for example, states that “KPMG performed a limited number of integrated pre-order/order transactions where the information returned in the pre-order response was copied, without modification, into the order.” 11/24 Response to Staff, at 4. Bell Atlantic, however, conveniently omits the fact that KPMG copied the pre-ordering information *manually* into the orders — as the page of the KPMG Report cited by Bell Atlantic makes clear. *See* KPMG Report, p. IV-79. Although KPMG opined that a CLEC could build a “logical interface” to account for inconsistencies between pre-ordering information and order forms, that opinion was not based on actual experience, since KPMG never built such an interface. Crafton/Connolly Reply Aff., ¶ 30.

Bell Atlantic attempts to attribute the absence of fully integrated interfaces to sloth or “lack of readiness” on the part of the CLECs, “not to any failure on Bell Atlantic's part.” 11/24 Response to Staff, at 3-4. This assertion is untrue. Bell Atlantic does not deny that inconsistencies exist between pre-ordering and ordering transactions with respect to field names or formats. To the contrary, Bell Atlantic claims that it is “working” to eliminate these inconsistencies, with “further commonality” to be provided in February 2000 and mid-2000. *Id.* at 4-5.¹⁹ AT&T has requested that Bell Atlantic accelerate this schedule, but Bell Atlantic

¹⁹ Bell Atlantic's assertion that it has met its “merger commitments” to provide regionwide uniform interfaces is plainly wrong. *See* 11/24 Reply to CLECs, at 7. Bell Atlantic has not

responded that it was impossible to do so. If Bell Atlantic cannot eliminate these inconsistencies until at least mid-2000, it is illogical for Bell Atlantic to suggest that CLECs can currently do so.²⁰

2. Ordering and Provisioning Issues

AT&T's evidence showed that Bell Atlantic had not met its OSS obligations with respect to ordering and provisioning because, among other things: (1) the rates of manual processing and rejections of CLEC orders are unreasonably high by any standard; and (2) Bell Atlantic has failed to provide CLECs with the same real-time, electronic notification of jeopardies that Bell Atlantic experiences in serving its retail customers. Crafton/Connolly Initial Aff., ¶¶ 98-158; Crafton/Connolly Reply Aff., ¶¶ 42-75. Bell Atlantic's *ex parte* submissions deny neither of these facts, but simply attempt to excuse them.

a. **Rejection and Flow-Through Rates.** The arguments and data that Bell Atlantic presents in its *ex parte* submissions are simply an attempt to divert attention from the fact that rejection rates for CLEC orders are too high, and flow-through rates for CLEC

provided the uniformity needed to achieve integration of pre-ordering and ordering interfaces. Crafton/Connolly Initial Aff., ¶ 99 n.55; Crafton/Connolly Reply Aff., ¶ 55. Although Bell Atlantic asserts that its agreement to engage in a "uniformity collaborative" process with AT&T and MCI Worldcom (as part of a settlement of the complaint brought by these CLECs before the Commission) is not evidence of noncompliance with its merger obligations, it is implausible that Bell Atlantic would have agreed to such a process if it truly believed that it had fully satisfied its commitments.

²⁰ Bell Atlantic's assertion that "AT&T has been at least 20 days behind in testing" of CORBA each time Bell Atlantic has brought up a new transaction in production is highly misleading. 11/24 Response to Staff, at 5. The testing schedule to which Bell Atlantic refers was established by the NYPSC *only after* AT&T was forced to escalate the issue to the NYPSC, due to Bell Atlantic's lackadaisical responses to AT&T's requests to commence CORBA testing. AT&T was unable to meet dates in the NYPSC's schedule because: (1) the documentation provided by Bell Atlantic was incomplete and unclear, requiring AT&T to resolve issues with Bell Atlantic before it could proceed (and Bell Atlantic was constantly late in responding); and (2) when Bell Atlantic announced that it would implement LiveWire, AT&T was required to modify its systems before it could test address validations.

orders are too low. *See* 11/24 Response to Staff, at 1-2 & Att. 1; 11/29 Letter. In fact, Bell Atlantic's performance deteriorated in these areas in October (the most recent month for which Bell Atlantic has filed C2C Reports).

i. October Rejection and Flow-Through Rates. According to Bell Atlantic's Carrier-to-Carrier Report for October (attached to the NYPSC's November 30 *ex parte* letter), Bell Atlantic's rejection rates remain commercially unreasonable. In October, Bell Atlantic's systems rejected 27.05 percent of UNE orders, and 32.58 percent of resale orders. Although the October rejection rate for UNEs was approximately 5 percentage points below the September rate, the rejection rate for resale orders actually *increased* in October by 9 percentage points over September. *See ex parte* letter dated November 30, 1999, from Penny Rubin (NYPSC) to Magalie Roman Salas ("NYPSC November 30 Letter"), October C2C Report, at 3, 17; Crafton/Connolly Reply Aff., ¶ 66.²¹

More significantly, the flow-through rates for CLEC orders *decreased* — and the rate of manual processing increased — in October as compared to the September rates. In particular:

- Bell Atlantic's total flow through rate for UNE orders *declined* from 62.81% in September to 60.32% in October.
- Bell Atlantic's total flow through rate for Resale orders *declined* from 51.6% in September to 42.82% in October.
- Bell Atlantic's flow through rate for "simple" UNE orders *declined* from 64% in September to 61.46% in October.
- Bell Atlantic's flow through rate for "simple" Resale orders *declined* from 52.29% in September to 43.37% in October.

²¹ It must also be emphasized that Bell Atlantic's Carrier-to-Carrier Reports *understate* the percentages of rejected CLEC orders, because the Carrier-to-Carrier Guidelines *exclude* all orders that fail any front-end edits performed by Bell Atlantic's Direct Customer Access Systems. *See* Dowell/Canny Decl., Att. B, OR-2 (Reject Timeliness); Glossary.

- Bell Atlantic’s flow through rate for UNE Platform orders *declined* from 71.02% in September to 69.51% in October.
- Bell Atlantic’s flow through rate for UNE Loops *declined* from 17.35% in September to 16.25% in October.²²

In other words, nearly 40 percent of UNE orders, and more than 55 percent of resale orders, were manually processed by Bell Atlantic in October. Taken together, the rejection and flow-through rates mean that only 44 percent of total UNE orders, and 28.9 percent of total resale orders, flowed end-to-end through Bell Atlantic’s systems without rejection or manual processing. *See* Crafton/Connolly Reply Aff., ¶ 68 & n.34 (explaining methodology used to calculate rates).²³

The disaggregated October data that Bell Atlantic supplied to the NYPSC showing flow-through and rejection rates for UNE platform orders and UNE loop orders similarly show that flow-through rates for both types of orders have declined since September. In October, the flow-through rate for UNE platform orders was 69.51 percent — a decline from the 71.02 percent reported for September. *See* NYPSC November 30 Letter, table entitled “October 1999 — UNE-Platform”; Crafton/Connolly Reply Aff., ¶ 70. The October flow-through rate for UNE

²² *See* NYPSC November 30 Letter, October C2C Report at 3, 17, UNE-Platform, UNE-Loop tables; Crafton/Connolly Reply Aff., ¶¶ 67, 70.

²³ Bell Atlantic has criticized AT&T for presenting such percentages reflecting the combined effects of the rejection and flow-through rates, on the ground that it “not only penalizes Bell Atlantic for CLEC mistakes, but double counts those orders, which will be included in the denominator again when a corrected order is submitted.” Miller/Jordan/Zanfini Reply Decl., ¶ 32. This criticism is misplaced. Only by considering the rejection and flow-through rates together can a proper assessment of Bell Atlantic’s order processing capability be made, since the flow-through calculation itself does not take rejected orders into account. Moreover, Bell Atlantic’s argument assumes that the high rate of rejections are due entirely to CLEC errors (*see, e.g.,* Dowell/Canny Reply Decl., ¶ 31), even though (as discussed below) it has offered absolutely no evidence regarding the causes of rejections.

loops was only 16.25 percent — a decline from the already-abysmal September rate of 17.35 percent. *Id.*, table entitled “October 1999 — UNE-Loop”; Crafton/Connolly Reply Aff., ¶ 71.²⁴

Bell Atlantic’s C2C data for October further demonstrate that the problems of manual processing will not correspondingly decrease with increased flow-through capability. For October, the “achieved flow-through rate” — the flow-through rate for those orders that Bell Atlantic has designed to flow through — *decreased* from that for September. In the case of UNE orders, the achieved flow-through rate declined to 65.89 percent from the September rate of 69.65 percent (and the August rate of 73.06 percent). For resale orders, the achieved flow-through rate declined from 81.2 percent in September to 75.93 percent in October.²⁵ In other words, more than one-third of UNE orders, and nearly 25 percent of resale orders, purportedly designed to flow through nonetheless fell out for manual processing in October — as volumes of CLEC orders were increasing.

Bell Atlantic’s performance also continued to be deficient in the area of order accuracy — that is, the accuracy with which Bell Atlantic representatives type orders into its service order processor (“SOP”) when they fall out for manual processing. *See* Dowell/Canny Decl., ¶ 53. In

²⁴ In making these comparisons, AT&T assumed that the “UNE % Flow Through (no-combo)” rate in the October 1999 disaggregated data for loops is the same measurement as the “UNE % Flow Through Total” category in the September 1999 data. Even if they are different, however, the flow-through rate for “simple” UNE loop orders declined from 19.75 percent in September to 18.21 percent in October. *Compare* NYPSC November 30 Letter, table entitled “October 1999 -- UNE-Loop” *with* DOJ Evaluation, Ex. 3, p. 5.

²⁵ *See* Crafton/Connolly Reply Aff., ¶ 72; e-mail from Vincent DePasquale (Bell Atlantic) to Rochelle Jones, *et al.* (“Subject: BA-NY C2C Addendum”), dated December 6, 1999 (attached hereto as Attachment 2). Bell Atlantic’s achieved flow-through rates are well below the 99 percent performance standard originally established for this metric by the NYPSC, and even the recent revised standard of 95 percent. *See* Crafton/Connolly Initial Aff., ¶ 109; Order Establishing Additional Inter-Carrier Service Quality Guidelines and Granting In Part Petition for