

and Order, In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (Aug. 8, 1996) (the "First Report and Order") on August 8, 1996.

30. The allegations in Paragraph 30 set forth conclusions of law regarding the Act and no response is required. BA-NJ states that the Act, in its entirety, speaks for itself.

31. The allegations in Paragraph 31 set forth conclusions of law regarding the Act and attempts to characterize and interpret its Congressional intent and no response is required. BA-NJ states that the Act, in its entirety, speaks for itself.

32. The allegations in Paragraph 32 set forth conclusions of law regarding the Act and no response is required. BA-NJ states that the Act, in its entirety, speaks for itself.

33. The allegations in Paragraph 33 set forth conclusions of law regarding the Act and no response is required. BA-NJ states that the Act, in its entirety, speaks for itself.

34. BA-NJ admits the allegations in Paragraph 34.

35. The allegations in Paragraph 35 attempt to characterize and interpret the Board's June 20, 1996 Order in New Jersey Board of Public Utilities Docket No. TX95120631 and no response is required. BA-NJ states that the Board's June 20, 1996 Order, together with subsequent related Orders issued by the Board including the Board's comprehensive written order In The Matter of the Investigation Regarding Local Exchange Competition For Telecommunication Services, Docket No. TX95120631, December 2, 1997 ("the Board's Decision and Order"), speak for themselves.

36. BA-NJ admits the allegations in Paragraph 36.

37. BA-NJ admits that on August 9, 1996 it filed a response to AT&T's arbitration petition through the filing of a request for arbitration. To the extent the remainder of the allegations in Paragraph 37 characterize and interpret the responsive pleading filed by BA-NJ, no response is required. BA-NJ states that its responsive pleading, in its entirety, speaks for itself.

38. The allegations in Paragraph 38 attempt to characterize and interpret the Board's August 15, 1996 Order and no response is required. BA-NJ states that the August 15, 1996 Order, in its entirety, speaks for itself. BA-NJ admits that the Board appointed a retired Superior Court Judge, Paul Thompson, to conduct the AT&T/Bell Atlantic arbitration.

39. BA-NJ admits that on or about August 27, 1996, AT&T moved for discovery and that BA-NJ responded on August 30, 1996 to that request. The remaining allegations attempt to characterize and interpret that letter and no response is required. BA-NJ admits that after the August 27, 1996 discovery request, it advised that, rather than rely upon the cost studies it prepared prior to the FCC's adoption of the TELRIC methodology in its First Report and Order, it would rely on the FCC default rates that the FCC established for the purpose of providing states with interim rates pending the development and review of cost studies compliant with that Order. BA-NJ states that the August 30, 1997 letter, in its entirety, speaks for itself.

40. BA-NJ admits that a conference was conducted on September 4, 1996. To the extent that the allegations in Paragraph 40 attempted to characterize the positions

taken at the conference, no response is required. BA-NJ states that the transcript of the conference, in its entirety, speaks for itself.

41. BA-NJ admits the allegations in Paragraph 41.

42. BA-NJ admits that a conference was conducted on September 12, 1996. BA-NJ denies the allegations in Paragraph 42, except that it admits that BA-NJ advised the arbitrator that, rather than rely upon the cost studies it prepared prior to the FCC's adoption of the TELRIC methodology in its First Report and Order, it would rely for interim rates on the FCC default rates that the FCC established for the purpose of providing states with interim rates pending the development and review of costs studies compliant with the First Report and Order.

43. BA-NJ admits the allegations of the first four sentences of Paragraph 43. It denies sentences 5 and 6 except to admit that it relied on the FCC default rates on an interim basis pending completion of the cost study revisions conducted to comply with the FCC Order, and that BA-NJ participated in the arbitration to the extent that it was able to do so without having completed its revised cost studies, and that it vigorously challenged AT&T's cost models. BA-NJ does not have information or knowledge sufficient to form a belief as to the truth of the allegations in the last sentence of Paragraph 43.

44. Paragraph 44 sets forth conclusions of law regarding the Eighth Circuit Decision and no response is required. BA-NJ states that the Eighth Circuit Decision, in its entirety, speaks for itself.

45. BA-NJ admits the allegations in Paragraph 45, except that to the extent that Paragraph 45 characterizes and interprets the briefs, no response is required. BA-NJ states that the briefs, in their entirety, ~~speaks for themselves.~~

46. BA-NJ admits that it filed comments on October 28, 1996 with the Board. To the extent that the allegations in Paragraph 46 attempt to characterize BA-NJ's comments, no response is required. BA-NJ states that its comments filed with the Board, in their entirety, speak for themselves.

47. BA-NJ admits that on November 1, 1996, counsel to the Board issued a letter to the parties. The remainder of the allegations in Paragraph 47 consist of a characterization of that letter, and no response is required. BA-NJ states that the letter from counsel to the Board, in its entirety, speaks for itself.

48. BA-NJ admits that on November 8, 1996 the arbitrator issued an "opinion." To the extent that the remainder of the allegations characterize and interpret that opinion, no response is required and BA-NJ states that the opinion, in its entirety, speaks for itself. BA-NJ admits that the parties proceeded to negotiate a detailed interconnection agreement. To the extent that the remainder of the allegations characterize and interpret the agreement, no response is required. BA-NJ states that the agreement, in its entirety, speaks for itself.

49. BA-NJ admits that on November 19, 1996, it filed a motion with the Board concerning the status of the opinion of the arbitrator. To the extent that the remainder of the allegations characterize and interpret the motion, no response is required. BA-NJ states that the motion, in its entirety, speaks for itself.

50. BA-NJ admits the allegations in Paragraph 50.

51. BA-NJ admits that hearings on rate issues in the Generic Proceeding began in November 1996 and ended in January 1997 and that AT&T and BA-NJ participated in those proceedings. BA-NJ admits that on January 16, 1997 the Board requested comments regarding the impact of the Generic Proceeding on the arbitrations and admits that both AT&T and Bell Atlantic filed comments in response to the Board's request. BA-NJ denies the remaining allegations in Paragraph 51.

52. BA-NJ denies the allegations in Paragraph 52.

53. BA-NJ admits that on July 17, 1997, the Board announced its decision establishing rates in the Generic Proceeding (the "Decision and Order"). The remainder of the allegations in Paragraph 53 attempt to characterize and interpret the Board's Decision and Order, and no response is required. BA-NJ states that the Board's Decision and Order, in its entirety, speaks for itself.

54. BA-NJ admits that on July 23 and 25, 1997, in accordance with the Board's determination of the rates in the Generic Proceeding (in the course of which the Board reviewed the cost studies of both AT&T and BA-NJ), BA-NJ advised AT&T that the rates set in the Generic Proceeding should be used in the AT&T/Bell Atlantic Interconnection Agreement. To the extent that the remaining allegations of Paragraph 54 attempt to characterize and interpret those letters, no response is required. BA-NJ states that the letters, in their entirety, speak for themselves.

55. BA-NJ admits the execution and submission of the interconnection agreements. To the extent that Paragraph 55 attempts to characterize and interpret those agreements, no response is required. BA-NJ states that the agreements, in their entirety, speak for themselves.

56. BA-NJ admits the allegations in Paragraph 56.

57. The allegations in Paragraph 57 attempt to characterize and interpret the Board's September 9, 1997 ruling and the Board's September 18, 1997 Order and no response is required. BA-NJ relies upon the transcript of the Board's September 18, 1997 Order and states that these documents, in their entirety, speak for themselves.

58. BA-NJ admits the allegations in Paragraph 58, except that to the extent that the plaintiff characterizes the letters submitted by AT&T to the Board, no response is required and BA-NJ states that the letters, in their entirety, speak for themselves.

59. To the extent that the allegations of Paragraph 59 attempt to characterize the Board's October 8, 1997 Order, no response is required. BA-NJ relies upon the transcript of the Board's October 8, 1997 Decision and the Board's Decision and Order and states that those documents, in their entirety, speak for themselves.

60. BA-NJ admits the filing of a Complaint on November 24, 1997. The remaining allegations in Paragraph 60 set forth a conclusion of law and no response is required.

61. To the extent that the allegations of Paragraph 61 attempt to characterize Board's Decision and Order, no response is required. BA-NJ states that the Board's Decision and Order, in its entirety, speaks for itself.

62. BA-NJ admits the allegations in Paragraph 62.

63. BA-NJ denies the allegations in Paragraph 63.

**Allegations of Unlawful Network
Element Rates**

64. BA-NJ denies the allegations in the first sentence of Paragraph 64. BA-NJ does not have knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 64 except to admit that AT&T participated in arbitration proceedings with Bell Atlantic. BA-NJ admits that the arbitrator rendered an opinion on November 8, 1996, but denies the remaining allegations in the third sentence in Paragraph 64. To the extent that the allegations characterize and interpret the November 8, 1996 opinion, no response is required. BA-NJ states that the opinion speaks for itself.

65. BA-NJ admits that the Board announced its decision on July 17, 1997 and September 9, 1997 and reiterated that decision on October 8, 1997. BA-NJ states that the transcripts of those proceedings, in their entirety, speak for themselves.

66. BA-NJ denies the allegations in Paragraph 66.

67. BA-NJ denies the allegations in Paragraph 67.

68. To the extent that that the allegations of Paragraph 68 set forth conclusions of law regarding the Act and the Board's Decision and Order, no response is required. BA-NJ states that the Act and the Board's Decision and Order, in their entirety, speak for themselves. BA-NJ denies the remainder of the allegations in Paragraph 68.

69. BA-NJ denies the allegations in Paragraph 69.

70. BA-NJ denies the allegations in Paragraph 70.

71. BA-NJ denies the allegations in Paragraph 71.

72. BA-NJ admits that the Board adopted the non-recurring charges proposed by BA-NJ, but denies the remainder of the allegations in Paragraph 72. To the extent that the allegations of Paragraph 72 attempt to characterize and interpret the Board's Decision

and Order, no response is required. BA-NJ states that the Decision and Order speaks for itself.

73. BA-NJ denies the allegations in Paragraph 73, except to admit that inputs used in the cost models, which included such items as cost of capital, have a substantial impact on costs calculated by both Bell Atlantic and AT&T models, and that the Board utilized depreciation rates previously utilized in connection with a state proceeding.

74. BA-NJ denies the allegations in Paragraph 74.

75. BA-NJ denies the allegations in Paragraph 75.

**Allegations of Unlawful Resale Restrictions
And Violation Of Resale Pricing**

76. To the extent that Paragraph 76 sets forth conclusions of law regarding the Act and the FCC regulations, no response is required. BA-NJ states that the Act and the FCC regulations, in their entirety, speak for themselves. BA-NJ denies the remainder of the allegations of Paragraph 76.

77. To the extent that Paragraph 77 sets forth conclusions of law regarding the Act and the FCC regulations, no response is required. BA-NJ states that the Act and the FCC regulations, in their entirety, speak for themselves. BA-NJ denies the remainder of the allegations of Paragraph 77. To the extent that Paragraph 77 sets forth allegations of fact, BA-NJ denies them.

78. To the extent that Paragraph 78 sets forth conclusions of law regarding the Act and the FCC Order, no response is required. BA-NJ states that the Act and the FCC Order, in their entirety, speak for themselves. BA-NJ denies the remainder of the allegations of Paragraph 78.

**Allegations Of Unlawful
Interconnection Point Limitation**

79. BA-NJ denies the allegations in Paragraph 79.

80. Paragraph 80 sets forth conclusions of law regarding the Act and no response is required. BA-NJ states that the Act, in its entirety, speaks for itself.

81. To the extent that Paragraph 81 sets forth conclusion of law regarding the Act and the FCC regulations, no response is required. BA-NJ states that the Act and the FCC regulations, in their entirety, speak for themselves.

82. To the extent that Paragraph 82 sets forth conclusions of law regarding the Act, no response is required. BA-NJ states that the Act, in its entirety, speaks for itself. To the extent that Paragraph 82 attempts to characterize and interpret the Board's Decision and Order, no response is required. BA-NJ states that the Decision and Order, in its entirety, speaks for itself. As to the allegations in the third sentence of Paragraph 82, BA-NJ states that MCI advocated the one point per LATA restriction. To the extent that the allegations are based on a conclusion of law regarding the need for a showing that additional interconnection points per LATA were technically infeasible, no response is required.

83. BA-NJ denies the allegations in Paragraph 83.

**Allegations Of Unlawful Failure To Provide
Directory Assistance Database Access**

84. To the extent that Paragraph 84 sets forth conclusions of law regarding the Act and the FCC regulations, no response is required. BA-NJ states that the Act and the FCC regulations, in their entirety, speak for themselves. BA-NJ states that on May 15,

1998, the Board issued an Order On Reconsideration, the terms of which speak for themselves. BA-NJ denies the remainder of the allegations in Paragraph 84.

85. To the extent that Paragraph 85 sets forth conclusions of law regarding the Act and the agreement, no response is required. BA-NJ states that the Act and the agreement, in their entirety, speak for themselves. BA-NJ denies the remainder of the allegations of Paragraph 85.

86. To the extent that Paragraph 86 sets forth conclusions of law regarding the Act and the Second Report and Order and Memorandum Opinion and Order, In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98 (FCC Aug. 8, 1996) ("Second Report and Order"), no response is required. BA-NJ states that the Act and the Second Report and Order, in their entirety, speak for themselves. BA-NJ denies the remainder of the allegations of Paragraph 86.

87. To the extent that Paragraph 87 sets forth conclusions of law regarding the Act and the FCC regulations, no response is required. BA-NJ states that the Act and the FCC regulations, in their entirety, speak for themselves. BA-NJ denies the remainder of the allegations of Paragraph 87.

**Allegations Of Unlawful Failure To Provide
Route Indexing For Interim Number Portability**

88. BA-NJ denies the allegations of Paragraph 88.

89. BA-NJ admits that number portability is a functionality that allows a subscriber to retain its existing telephone number when it changes its telecommunications provider and that permanent number portability is a subject of In Re Telephone Number

Portability, CC Docket No. 95-116 (FCC July 2, 1996) (the “Number Portability Order”).

BA-NJ denies the allegations of fact and/or characterizations of the remainder of Paragraph 89, except to admit that ~~until a permanent solution~~ is resolved, interim solutions have been implemented to facilitate local competition.

90. BA-NJ denies the allegations in Paragraph 90, except that it admits that the Board found, as did the FCC, that Remote Call Forwarding and Direct Inward Dialing were appropriate interim number portability solutions. To the extent that the allegations in Paragraph 90 otherwise characterize the Board’s Decision and Order, BA-NJ denies the allegations and states that the Board’s Decision and Order in its entirety, speaks for itself.

91. To the extent that Paragraph 91 sets forth conclusions of law regarding the Act and the FCC regulations, no response is required. BA-NJ states that the Act and the FCC regulations, in their entirety, speak for themselves. BA-NJ denies the remainder of the allegations of Paragraph 91.

92. BA-NJ denies the allegations of Paragraph 92.

**Allegations Of Failure To Allocate Costs
Of Interim Number Portability In A
Competitively Neutral Manner**

93. BA-NJ denies the allegations in Paragraph 93.

94. Paragraph 94 sets forth conclusions of law regarding the Act and the FCC regulations, and no response is required. BA-NJ states that the Act, the FCC regulations, the FCC Order and the Number Portability Order, in their entirety, speak for themselves.

95. BA-NJ states that the transcript of July 17, 1997, together with the Board's Decision and Order, considered in their entirety, speak for themselves. BA-NJ further states that to the extent that Paragraph ~~95 sets forth conclusions~~ regarding the Board's intent, it requires no response and that the Board's Order, considered in its entirety, speaks for itself. BA-NJ does not have knowledge or information sufficient to form a belief as to the truth of the allegations of the third sentence in Paragraph 95. BA-NJ denies the allegations of the fourth sentence in Paragraph 95.

96. To the extent that Paragraph 96 sets forth conclusions of law regarding the Number Portability Order, no response is required. BA-NJ states that the Number Portability Order, in its entirety, speaks for itself.

**Allegations Of Unlawful
Two-Way Trunking Restrictions**

97. BA-NJ denies the allegations of Paragraph 97.

98. To the extent that Paragraph 98 sets forth conclusions of law regarding the FCC regulations, no response is required. BA-NJ states that the FCC regulations, in their entirety, speak for themselves.

99. To the extent that Paragraph 99 sets forth conclusions of law regarding the Act, no response is required. BA-NJ states that the Act, considered in its entirety, speaks for itself.

100. BA-NJ denies the allegation of Paragraph 100.

COUNT ONE

101. BA-NJ repeats its answers to the allegations in Paragraphs 1-100 as if fully set forth at length herein.

102. BA-NJ denies the allegations of Paragraph 102.

103. BA-NJ denies the allegations of Paragraph 103.

104. BA-NJ denies the allegations of Paragraph 104.

105. BA-NJ denies the allegations of Paragraph 105.

106. BA-NJ denies the allegations of Paragraph 106.

107. BA-NJ denies the allegations of Paragraph 107.

COUNT TWO

108. BA-NJ repeats its answers to the allegations in Paragraphs 1 through 107 as fully set forth at length herein.

109. BA-NJ denies the allegations in Paragraph 109.

110. BA-NJ denies the allegations in Paragraph 110.

111. BA-NJ denies the allegations in Paragraph 111.

112. BA-NJ denies the allegations in Paragraph 112.

COUNT THREE

113. BA-NJ repeats its answers to the allegations in Paragraphs 1 through 112 as if set forth at length herein.

114. BA-NJ denies the allegations in Paragraph 114.

115. BA-NJ denies the allegations in Paragraph 115.

116. BA-NJ denies the allegations in Paragraph 116.

117. BA-NJ denies the allegations in Paragraph 117.

COUNT FOUR

118. BA-NJ repeats its answers to the allegations in Paragraphs 1 through 117 as if set forth at length herein.

119. BA-NJ denies the allegations in Paragraph 119.

120. BA-NJ denies the allegations in Paragraph 120.

121. BA-NJ denies the ~~allegations in Paragraph 121.~~

122. BA-NJ denies the allegations in Paragraph 122.

COUNT FIVE

123. BA-NJ repeats its answers to Paragraphs 1 through 122 as if set forth at length herein.

124. BA-NJ denies the allegations in Paragraph 124.

125. BA-NJ denies the allegations in Paragraph 125.

126. BA-NJ denies the allegations in Paragraph 126.

127. BA-NJ denies the allegations in Paragraph 127.

COUNT SIX

128. BA-NJ repeats its answers to Paragraphs 1 through 127 above as if set forth at length herein.

129. BA-NJ denies the allegations in Paragraph 129.

130. BA-NJ denies the allegations in Paragraph 130.

131. BA-NJ denies the allegations in Paragraph 131.

132. BA-NJ denies the allegations in Paragraph 132.

COUNT SEVEN

133. BA-NJ repeats its answers to the allegations in Paragraphs 1 through 132 as if fully set forth at length herein.

134. BA-NJ denies the allegations in Paragraph 134.

135. BA-NJ denies the allegations in Paragraph 135.

136. BA-NJ denies the allegations in Paragraph 136.

137. BA-NJ denies the allegations in Paragraph 137.

AFFIRMATIVE DEFENSES

138. The Amended Complaint fails to state a claim upon which relief can be granted.

139. The claims in the Amended Complaint are barred by waiver, laches and estoppel.

140. The claims in Count Two are barred because plaintiff is able to pursue its claims for discounts as to particular customer specific pricing arrangements before the Board, and, accordingly, plaintiff has failed to exhaust its administrative remedies and its claim is not ripe.

141. The claims in Count Four of the Amended Complaint are barred as moot.

142. The claims in Count Six are barred because the Board's imposition of interim number portability charges is a temporary remedy, subject to future consideration by the Board when permanent number portability is in place. Accordingly, plaintiff has failed to exhaust its administrative remedies and its claim is not ripe.

143. Except as set forth in the Counterclaim and Crossclaim below, the Board's action is entirely consistent with the Act and the FCC regulations.

COUNTERCLAIM AND CROSSCLAIM

144. BA-NJ, by way of Counterclaim against Plaintiff AT&T Communications of New Jersey, Inc. ("AT&T"), and by way of Crossclaim against Defendants the New Jersey Board of Public Utilities ("Board"), and Herbert H. Tate and Carmen J. Armenti, in their official capacities as Commissioners of the Board, states:

JURISDICTION, VENUE, AND PARTIES

145. Jurisdiction and venue over this Counterclaim and Crossclaim are proper in this Court, as set forth in the Amended Complaint, and admitted in Paragraphs 21 through 23 of BA-NJ's Answer. The Parties to this Counterclaim and Crossclaim are identified in the Amended Complaint, to the extent admitted in Paragraphs 1(a) through 1(d) of BA-NJ's Answer.

BACKGROUND AND SUMMARY

146. The provisions of the Act that aim to expand local telephone service competition do not impose limitless burdens on incumbent local telephone companies like BA-NJ. Instead, the Act carefully limits and balances the obligations the incumbents must meet, for example, by limiting how they must make portions of their networks available for use by competitors. This balance underscores the pro-competition, not pro-competitor, purpose of the Act.

147. Although the Board properly resolved the majority of the issues in this case, it erred in deciding the manner and scope of BA-NJ's obligation to provide access to its directory assistance database by failing to properly apply the Act's protections for incumbent local exchange telephone companies.

148. The Board initially appropriately interpreted the Act and the FCC's implementing orders regarding BA-NJ's directory assistance database obligations. The Board later, however, on reconsideration changed its earlier determination and in so doing misinterpreted the requirement of Section 251(c)(3) of the Act and the FCC's implementing orders that an incumbent provide competitors "access to" its directory assistance database as an unbundled network element. Instead of requiring BA-NJ to

provide AT&T the same access to read and use the database that BA-NJ provides to its own directory assistance operators, the Board required BA-NJ to relinquish its entire database to AT&T by way of a “data dump.” In The Matter Of The Investigation Regarding Local Exchange Competition For Telecommunications Services, Docket No. TX95120631, In the Matter Of The Petition For Arbitration Of Unresolved Issues Pursuant To Section 252(e) Of The Telecommunications Act Of 1996, Docket No. TO96080621, Order on Reconsideration (N.J.B.P.U. May 15, 1998) pp. 1, 11. That Board requirement affords AT&T more than “access to” the database, which the Act requires BA-NJ to provide; instead, BA-NJ was required by the Board to give AT&T *possession* of the database -- which is not required by the Act.

COUNTERCLAIM

149. BA-NJ incorporates Paragraphs 144-148 of this Counterclaim and Crossclaim.

150. Section 251(c)(3) of the Act requires BA-NJ to provide “nondiscriminatory *access to* network elements on an unbundled basis.” (Emphasis added). The FCC has determined that directory assistance -- the ability to ask an operator to look up a telephone number -- is a network element to which such access should be provided: “An incumbent LEC shall provide *access to* operator service and directory assistance facilities where technically feasible.” 47 C.F.R. § 51.319(g) (emphasis added).

151. The FCC has determined that “an incumbent LEC’s duty to provide ‘access’ constitutes a duty to *provide a connection* to a network element,” and that “access to” a database means the provision of a connection that allows database “query and database response” to the competitor. First Report and Order, ¶¶ 268-69, n. 573, ¶

484, n. 1127 (emphasis added). In the particular case of directory assistance databases, the FCC concluded:

[I]ncumbent LECs ~~must provide access to databases as unbundled network elements~~. We find the databases used in the provision of ...directory assistance must be unbundled by incumbent LECs upon a request for access by a competing provider. In particular, *the directory assistance database must be unbundled for access by requesting carriers. Such access must include* both entry of the requesting carrier's customer information into the database, and *the ability to read such a database, so as to enable requesting carriers to provide operator services and directory assistance* concerning incumbent LEC customer information.

First Report and Order, ¶ 538 (emphasis added; footnote omitted). The FCC confirmed this analysis in its Second Report and Order, which found that a "highly effective way to accomplish nondiscriminatory access to directory assistance ... is to allow competing providers to obtain *read-only access* to the directory assistance databases of the LEC providing access." Second Report and Order, ¶ 143 (1996) (emphasis added).

152. In In The Matter Of Investigation Regarding Local Exchange Competition For Telecommunications Services, Docket No. TX95120631, BA-NJ proposed to provide AT&T access to query and use the same directory assistance database that BA-NJ's own operators use, in exactly the same manner that they use it. The access that BA-NJ proposed is the same access that is being used by other telephone companies today and that has been accepted as complying with the requirements of the Act by other state commissions.

153. The Board initially adopted BA-NJ's proposal; but later, in response to MCI's motion for reconsideration, the Board erroneously required BA-NJ to create and

relinquish to AT&T's possession and control the directory assistance database by way of a "database dump," and to update that database for AT&T daily. In so doing, the Board violated the requirements of the Act and the FCC Orders that BA-NJ need only provide "access to," not possession of, its directory assistance database.

154. BA-NJ is entitled to a judgment under 28 U.S.C. § 2201(a) declaring that the Board's requirement that BA-NJ turn over and regularly update its directory assistance database violates Section 251(d)(3) of the Act and the FCC's implementing orders.

CROSSCLAIM

155. BA-NJ incorporates Paragraphs 144-154 of this Counterclaim and Crossclaim.

156. Bell Atlantic requests a declaration that the Board's Reconsideration Decision on the issue of BA-NJ's directory assistance database obligations is invalid and violates the Act, and also requests an injunction against enforcement of this Decision by any Party to this proceeding.

PRAYER FOR RELIEF

WHEREFORE, BA-NJ prays that this Court grant it the following relief:

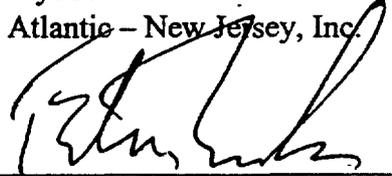
- a) dismiss the Amended Complaint or enter judgment on it in favor of BA-NJ and against AT&T;
- b) enter judgment in favor of BA-NJ declaring that the Board has required BA-NJ to give AT&T BA-NJ's directory assistance database in violation of Section 251 of the Act;

- c) permanently enjoin any party, including the Board, from enforcing against BA-NJ any provisions of the Reconsideration Decision which the Court declares are in violation of the Act;
- d) require reformation of the agreement between BA-NJ and AT&T to reflect the judgment entered by this Court; and
- e) grant such other relief as the Court deems just and proper.

Respectfully submitted,

WILENTZ, GOLDMAN & SPITZER, P.C.

Attorneys for Defendant
Bell Atlantic - New Jersey, Inc.

By: 
FREDERIC K. BECKER
ANNE S. BABINEAU

Of Counsel
Barry S. Abrams, Esq.
Michael D. Lowe, Esq.
John M. Walker, Esq.
Bell Atlantic-New Jersey, Inc.
540 Broad Street
Newark, New Jersey 07101
(973) 649-2656

Dated: July 10, 1998

PETER VERNIERO
Attorney General of New Jersey

By: Eugene P. Provost (EPP-9258)
Deputy Attorney General
Division of Law - 5th Fl.
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101
(973) 648-3709

Attorney for Defendants
New Jersey Board of Public Utilities, and
Herbert H. Tate and Carmen J. Armenti,
Commissioners

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF NEWARK

AT&T COMMUNICATIONS)	CIVIL ACTION NO. 97-5762
OF NEW JERSEY, INC., and)	
NEW JERSEY DIVISION OF THE)	HON. JOSEPH A. GREENAWAY, JR.
RATEPAYER ADVOCATE,)	
)	
Plaintiffs,)	
)	
v.)	ANSWER OF THE NEW JERSEY BOARD
)	OF PUBLIC UTILITIES, and
BELL ATLANTIC-NEW JERSEY, INC.)	HERBERT H. TATE and CARMEN J.
and THE NEW JERSEY BOARD OF)	ARMENTI, COMMISSIONERS
PUBLIC UTILITIES, and)	
HERBERT H. TATE and CARMEN J.)	
ARMENTI, in their official)	
capacities as Commissioners of)	
the Board of Public Utilities,)	
)	
Defendants.)	

Defendants New Jersey Board of Public Utilities
(hereinafter, the "Board"), Herbert H. Tate and Carmen J.
Armenti, in their official capacities as Commissioners of the
Board of Public Utilities (hereinafter, collectively, the
"Defendants"), by way of Answer to the Amended Complaint of AT&T

Communications of New Jersey, Inc. (hereinafter, "AT&T") say as follows:

PARTIES

1(a). Defendants are without knowledge or information sufficient to form a belief as to the allegations contained in sentences 1 through 4 of Paragraph 1(a) and leave Plaintiffs to their proofs. Regarding sentence 5, Defendants admit that the Board has authorized AT&T to provide long distance and other telecommunications services in New Jersey. Regarding sentence 6, the Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56 (codified in scattered sections of 47 U.S.C. §151 et seq.) (hereinafter, the "Telecommunications Act of 1996") speaks for itself.

1(b). Defendants are without knowledge or information sufficient to form a belief as to the allegations contained in sentence 1 of Paragraph 1(b) and leave Plaintiffs to their proofs. The balance of Paragraph 1(b) is a legal conclusion to which no response is required.

1(c). Defendant Board admits that it is a Board constituted in, but not of, the Department of the Treasury of the State of New Jersey, and is headquartered in Newark, New Jersey. The balance of Paragraph 1(c) is a legal conclusion to which no response is required.

1(d). Admitted.

INTRODUCTION

2. Defendants are without knowledge or information

sufficient to form a belief as to the allegations contained in sentence 2 and leave Plaintiffs to their proofs, except that Defendants admit that AT&T competes with Bell Atlantic-New Jersey, Inc. (hereinafter, "BA-NJ") for the provision of local telephone services in New Jersey.

3. Regarding sentence 1 of Paragraph 3, Defendants admit that BA-NJ provides both local exchange and exchange access services in most of the State of New Jersey. Admitted as to the second and third sentences.

4. Paragraph 4 expresses legal conclusions to which no response is required. In addition, the Telecommunications Act of 1996 speaks for itself.

5. Paragraph 5 expresses legal conclusions to which no response is required. In addition, the Telecommunications Act of 1996 speaks for itself.

6. Paragraph 6 expresses legal conclusions to which no response is required. In addition, the Telecommunications Act of 1996 speaks for itself. However, Defendants admit that the Board has adopted rules to govern the conduct of arbitrations required by the Telecommunications Act of 1996, and to govern the submission of arbitrated interconnection agreements to the Board for approval or rejection. See Order, I/M/O the Board's Consideration of Procedures for the Implementation of Section 252 of the Telecommunications Act of 1996, Docket No. TX96070540 (August 15, 1996) (hereinafter, the "Arbitration Procedures Order").

7. Defendants admit that, in general, interconnection agreements contain the terms and conditions pursuant to which the parties to such agreements interconnect with and utilize each other's networks and facilities. The balance of Paragraph 7 expresses legal conclusions to which no response is required. In addition, the Telecommunications Act of 1996 speaks for itself.

8. Paragraph 8 expresses legal conclusions to which no response is required. In addition, the Telecommunications Act of 1996 speaks for itself.

9. Admitted that the Amended Complaint seeks review of an interconnection agreement between AT&T and BA-NJ (hereinafter, the "Agreement") approved by the Board. Admitted that the Board approved the Agreement by Order Approving Interconnection Agreement, I/M/O Interconnection Filing of AT&T Communications of New Jersey Inc. and I/M/O Interconnection Filing of Bell Atlantic-New Jersey Inc., Docket Nos. TO96070519 and TO96070523 (December 22, 1997) (hereinafter, the "Interconnection Order"). The Board's Interconnection Order speaks for itself. Denied as to the balance of Paragraph 9.

10. Denied.

11. Denied.

12. The Board admits that it set generic interconnection and resale rates. See Decision and Order, I/M/O the Investigation Regarding Local Exchange Competition for Telecommunications Services, Docket No. TX95120631 (December 2, 1997) (hereinafter, the "Generic Decision and Order"). The

Board's Generic Decision and Order speaks for itself. In all other respects, Paragraph 12 is denied.

13. Denied. In addition, Paragraph 13 expresses legal conclusions to which no response is required. Finally, the Telecommunications Act of 1996 speaks for itself.

14. Denied. In addition, Paragraph 14 expresses legal conclusions to which no response is required. Finally, the Telecommunications Act of 1996 speaks for itself.

15. Denied. In addition, Paragraph 15 expresses legal conclusions to which no response is required. Finally, the Telecommunications Act of 1996 speaks for itself.

16. Admitted that the Board's Generic Decision and Order did not grant to AT&T the access to BA-NJ's directory assistance database which it sought. The Board's Generic Decision and Order speaks for itself. However, Defendants note that by Order on Reconsideration, I/M/O the Investigation Regarding Local Exchange Competition for Telecommunications Services and I/M/O the Petition for Arbitration of Unresolved Issues Pursuant to Section 252(e) of the Telecommunications Act of 1996, Docket Nos. TX95120631 and TO96080621 (May 15, 1998) (hereinafter, "Order on Reconsideration"), the Board discussed access to BA-NJ's directory assistance database at length, and reconsidered its decision regarding directory assistance database access. The Board's May 15, 1998 Order on Reconsideration speaks for itself. The balance of Paragraph 16 expresses legal conclusions to which no response is required. The referenced section of the Code of