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July 28, 1998

BY HAND DELIVERY

Honorable John C. Crary
Secretary
New York State Public Service Commission
Three Empire State Plaza
19th Floor
Albany, NY 12223

Re: Cases 95-C-0657, 94-C-0095, 91-C-1174, and 96-C-0036

Dear Secretary Crary:

Attached please find an original and twenty-five copies of the public version of Bell Atlantic - New York's Initial Post-Hearing Brief on Costs and Proposed Rates for Physical and Virtual Collocation. The proprietary version contains AT&T confidential material and is being provided only to Judge Linsider, the Staff Advisory Team, and AT&T.

Respectfully submitted,



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cc: Honorable Joel A. Linsider
All Active Parties
Mr. Dennis Taratus
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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Joint Complaint of AT&T Communications of New York, Inc., MCI Telecommunications Corporation, WorldCom, Inc. d/b/a LDDS WorldCom and the Empire Association of Long Distance Telephone Companies, Inc. Against New York Telephone Company Concerning Wholesale Provisioning of Local Exchange Service By New York Telephone Company and Sections of New York Telephone's Tariff No. 900

Case 95-C-0657

Proceeding on Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market

Case 94-C-0095

Proceeding on Motion of the Commission Regarding Comparably Efficient Interconnection Arrangements for Residential and Business Links

Case 91-C-1174

Complaint of AT&T Communications of New York, Inc. Against New York Telephone Company Concerning AT&T's Request for Four Collocated "Cages" To Be Provided By New York Telephone Pursuant to Its Optical Transport Interconnection Service II ("OTIS-II") Tariff

Case 96-C-0036

**BELL ATLANTIC - NEW YORK'S
INITIAL POST-HEARING BRIEF ON COSTS AND
PROPOSED RATES FOR PHYSICAL AND VIRTUAL COLLOCATION**

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Dated: July 29, 1998

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**BELL ATLANTIC - NEW YORK'S
INITIAL POST-HEARING BRIEF ON COSTS AND
PROPOSED RATES FOR PHYSICAL AND VIRTUAL COLLOCATION**

INTRODUCTION

New York Telephone Company, d/b/a Bell Atlantic – New York (“BA-NY”), hereby submits its Initial Post-Hearing Brief on Costs and Proposed Rates for Physical and Virtual Collocation.¹ BA-NY is the only party in this proceeding to propose a rate structure that is reasonable and the only party to submit New York-specific costs which are consistent with a

¹ A general description of physical and virtual collocation is set forth in BA-NY's direct testimony. Tr. 6163-64, 6208-09.

TELRIC cost methodology. These costs are fully supported by vendor information and the opinions of experts involved in implementing collocation on a daily basis.² In stark contrast, AT&T and MCI – the only other parties to submit cost information in this case – have jointly proposed rates which are not New York-specific, and are based on unreasonable assumptions regarding collocation provisioning. Indeed, the AT&T/MCI Collocation Model (“Model”) relies on information obtained from consultants who have never implemented a specific collocation arrangement in New York or any other State and on quotes from vendors who do not even do business in New York. Even more important, the Model relies extensively on outdated, unreliable and completely unverifiable data. Remarkably, when asked to explain why AT&T/MCI did not verify certain facts before making representations to the Commission, AT&T/MCI witness Bissell’s only excuse was that AT&T/MCI would have had to pay money to obtain this information. AT&T/MCI have failed utterly to justify their proposed costs.

BA-NY’s proposed rates for physical and virtual collocation should be adopted.

ARGUMENT

I. THE COMMISSION HAS ALREADY REJECTED AT&T/MCI’S CLAIM THAT COLLOCATION COSTS SHOULD BE BASED ON THE COSTS ASSOCIATED WITH CONSTRUCTING AN IMAGINARY CENTRAL OFFICE

AT&T/MCI argue that forward-looking costing methodology requires that collocation costs be based on the costs associated with constructing a hypothetical central office, rather than the costs of provisioning collocation in BA-NY’s existing central offices. With respect to collocation room construction costs, their arguments essentially boil down to two points: (1) that BA-NY should bear the costs associated with room construction, including the costs of providing

² BA-NY fully explained in its direct testimony how its collocation cost studies are consistent with a TELRIC methodology. See Tr. 6162-64.

secure access, because such costs are inconsistent with a TELRIC construct; or, alternatively, (2) that BA-NY should be forced to provide an average room construction rate, rather than an individual case basis (“ICB”) rate structure, to prevent BA-NY from manipulating room construction costs.

The Commission has already rejected AT&T/MCI’s convoluted collocation pricing theory. On May 29, 1998, the Commission affirmed its earlier ruling that BA-NY is entitled to recover *all* of the costs associated with constructing a collocation room, holding that it was “neither reasonable nor equitable in the circumstance” to require BA-NY to bear some or all of the room construction costs.³ AT&T/MCI had adequate opportunity to present their collocation pricing theory prior to the Commission’s rulings on room construction costs. Indeed, MCI argued precisely the same point in its Petition for Reconsideration that it argues here:

Other types of special construction costs (e.g. major space renovations) are not [included in the AT&T/MCI Model] and should not be reflected in forward looking pricing, as required by the Act, because they involve paying [BA-NY] to retrofit its central offices to accommodate collocation, which is not the CLECs’ responsibility, and which costs would not be included in the forward looking cost of constructing a central office capable of efficiently providing collocation.⁴

The Commission rejected these arguments.

The Commission also plainly rejected AT&T/MCI’s contention that BA-NY should adopt an average room construction rate, rather than determine costs on an individual case basis.⁵

³ See Order Adopting the March 2, 1998 Order as a Permanent Rule and Denying Petitions for Rehearing (May 29, 1998), p.3.

⁴ Petition for Rehearing of MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. (April 1, 1998), pp. 3-4.

⁵ Despite their dire warnings (Tr. 6614-15), AT&T/MCI have failed to provide one shred of evidence that BA-NY has created artificial barriers to entry by manipulating room construction costs. Tr. 6316 (citing AT&T Response

Under the Commission's cost recovery mechanism, room construction costs will be determined on an individual case basis, with each collocator paying its share of these costs based on its assignable square footage of collocation space.⁶ (All unrecovered room construction costs will be recovered from all physical collocators in a geographic area.)

AT&T/MCI's arguments regarding room construction costs should therefore be disregarded. They have offered no reason why these decisions are not controlling, apparently hoping the Commission will simply ignore its prior rulings. The Commission should reject their attempts to relitigate this issue.

Even if the Commission had not already rejected AT&T/MCI's attempt to base collocation costs on an imaginary central office, their theory is fundamentally flawed and should be dismissed.⁷ BA-NY will provision collocation on a forward-looking basis using its existing central offices, not the imaginary central office used in the Model. Collocation costs should therefore be based on the forward-looking costs BA-NY will incur to provision collocation using its existing central offices.⁸

to NYT-ATT-399, MCI Response to NYT-MCI-97). Nor could they. BA-NY applies good faith and its best judgment regarding the appropriate room construction required to accommodate collocators. AT&T/MCI's claim that BA-NY's decision to place collocators in one collocation common area artificially increases room construction costs is similarly flawed. As BA-NY explained, it is generally more efficient to build one collocation room, sized to meet expected demand, than to build multiple rooms in the same central office. Tr. 6317-18. Moreover, BA-NY has asked the CLECs to provide forecasts so that it can determine demand and size collocation rooms accordingly. Most CLECs have not provided such forecasts, despite written requests to do so. Tr. 6317.

⁶ See Order Adopting the March 2, 1998 Order as a Permanent Rule and Denying Petitions for Rehearing (May 29, 1998), p. 3; see also Order Directing Tariff Changes for Non-Price Terms and Conditions for Collocation (March 2, 1998), pp. 10-11.

⁷ BA-NY's Responsive Testimony (Tr. 6258-69) and its Brief in Opposition to the Petitions for Rehearing dated April 23, 1998, fully set forth BA-NY's arguments in response to AT&T/MCI's claim that collocation costs should be based on an imaginary central office. BA-NY will not repeat those arguments here.

⁸ AT&T/MCI's claim that BA-NY should not be permitted to recover room construction costs because it would be equivalent to a landlord charging a market rental rate *and* charging to renovate the property is flawed. Tr. 6696-97. First, BA-NY does not charge the collocator a market rate to lease central office space. BA-NY's \$2.21 per

II. AT&T/MCI HAVE MISREPRESENTED THE RELIABILITY OF THE R.S. MEANS DATA USED IN THEIR MODEL

The AT&T/MCI Model improperly relies on R.S. Means building construction cost data to determine the costs of building a new central office.⁹ BA-NY has demonstrated that the fundamental premise of the Model – that the R.S. Means data reflects a new state-of-the-art central office – is grossly inaccurate. Indeed, Mr. Bissell admitted that he took virtually no steps to ensure that the R.S. Means data was what he represented it to be to this Commission. According to Mr. Bissell, in order to verify this information, he would have had to pay R.S. Means for access to the underlying data – money that AT&T/MCI apparently believed was not worth spending. Such a statement is shocking, particularly in light of the modest \$500 price tag R.S. Means charged BA-NY to obtain this data. As demonstrated below, the Model's per square foot building costs are unreliable, and must therefore be rejected. Furthermore, the unreliability of this evidence should cast further doubt on the remainder of AT&T/MCI's claims.

A. The Model's Developers Failed To Validate The R.S. Means Data Extensively Relied On In Their Model.

The Model relies extensively on R.S. Means building costs. R.S. Means data, however, provides only a basis for *estimating* construction costs. Indeed, there is no way of determining what is included in the R.S. Means building cost data. Representatives from R.S. Means told BA-

square foot floor space costs are based on data recorded in BA-NY real estate department database pertaining to investments for New York central offices (Tr. 6189-90), and do not reflect the market value of the property. (Included in this rate are the costs associated with the maintenance of the building, including heat, power for service outlets, lighting and janitorial services.) Second, many tenants do indeed pay their landlords to renovate property to make it suitable for use. Finally, the analogy to a traditional landlord/tenant relationship is misguided because most landlords make a profit leasing property or they would not be in the business. Therefore, they likely recover their costs (including site preparation) through rental rates, or they decide not to renovate the property – an option not available to BA-NY.

⁹ In addition to the problems with the cost data used to derive the per square foot building costs (discussed later), the design of AT&T/MCI's imaginary central office is flawed. Specifically, the Model has several significant design flaws such as the location of POT Bays and support columns which understate collocation space and further undermine the credibility of the Model. Tr. 6297-99.

NY that they rely on general contractor survey responses from various regions across the country to develop their average costs, and readily admit that they have no way of knowing what is included in the telecommunications building data.¹⁰ If R.S. Means cannot state with complete confidence exactly what is included in their building costs, it is hard to credit Mr. Bissell's claim that the R.S. Means building costs accurately capture the costs of building a new central office today.

In fact, R.S. Means warns that its square foot costs should only be used as a starting point for *informational* purposes in examining contractor bids, and advises that as soon as details are available, the "square foot approach should be discontinued and the project priced as to its particular components."¹¹ BA-NY's vendor pass through rate structure for room construction costs – which will assess costs based on real contractor invoices and real costs once the collocation room is completed – is just the type of reliable real data envisioned by R.S. Means.

Significantly, Mr. Bissell admitted during the hearings that he had no idea how R.S. Means validated the data included in the Model:

Q. Is it your understanding that RS Means gathers this data by sending out surveys to general contractors who had been involved in building certain buildings? Is that your general understanding?

A. (Bissell) My general understanding is that they get the information by getting surveys from contractors as well as people who have built buildings, in this case, other ILECs or possibly I know they have an affiliated company and they get information from them as well.

¹⁰ Tr. 6259. The R.S. Means Guide reports telecommunications building costs for only four categories: total project costs, plumbing, HVAC and electrical. *Id.*

¹¹ Exh. 346 (1997 R.S. Means Guide, p. 443).

Q. So is it your understanding that RS Means relies on the general contractors of these other people to fill out their surveys accurately?

A. (Bissell) *I don't know what follow-up they do.*¹²

BA-NY asked AT&T/MCI to produce all documentation obtained from R.S. Means regarding the data relied on in the Model, but was told that no documentation exists.¹³ This utter lack of documentation demonstrates that AT&T/MCI and the Model developers did little or no investigation into the information underlying the R.S. Means data – a fact that fatally undermines the validity of their own Model.

AT&T/MCI's complete failure to validate the information underlying the Model, or to ensure the accuracy of statements made to this Commission, became even more clear during Mr. Bissell's cross examination. Mr. Bissell admitted that the Model developers failed to validate the data underlying the R.S. Means building costs, apparently because of the associated cost of such an effort.¹⁴ Had AT&T/MCI done the necessary investigation, however, their case would have crumbled.

In stark contrast to AT&T/MCI's failure to validate their Model, BA-NY thoroughly investigated the R.S. Means building cost data to determine whether it supported the collocation costs provided in the Model. The results of BA-NY's investigation were quite surprising.

BA-NY witness Robert Grenier contacted R.S. Means representatives and asked them to describe the data on which they relied to develop the per square foot costs used in the Model.

¹² Tr. 6734-35 (emphasis added).

¹³ BA-NY also asked AT&T/MCI to identify all contacts they or the Model's developers have had with R.S. Means, and was informed that two of AT&T/MCI's consultants contacted R.S. Means, but failed to maintain a record of these contacts. Tr. 6260-61 (citing AT&T Response to NYT-ATT-453).

¹⁴ Tr. 6736, 6738-39.

R.S. Means informed him that there is no way to verify exactly what items are included within the various categories reported in their data, and that they rely on the general contractors to fill out the surveys correctly and to include all applicable costs.¹⁵

R.S. Means provided summary information for the 64 projects used to derive the per-square-foot costs.¹⁶ The information includes the State in which the project was located; the year of construction; the total cost of the construction; the cost of construction expressed in 1998 dollars; the total area; the original cost per square foot; the shape of the building; and the quality of the construction. Significantly, none of these projects was constructed in New York.¹⁷

BA-NY requested the underlying data and contractor surveys used to gather this information, but was informed that the original project reports had been destroyed about 3 years ago. Without the general contractor surveys it is impossible to verify the accuracy of the information used in the Model. Clearly, AT&T/MCI have not met their burden to justify the R.S. Means-dependent collocation rates they have proposed in this case.

Even if these surveys still existed, it is unlikely that BA-NY would be able precisely to determine the building items that are included in the data. It is therefore impossible to verify whether the R.S. Means data includes all of the costs of constructing a central office.

BA-NY, for example, is unable to determine whether the surveys included the following:

- BA-NY outside plant cabling and infrastructure¹⁸;

¹⁵ Tr. 6259.

¹⁶ R.S. Means charged Bell Atlantic \$500 for this data.

¹⁷ This information was produced to AT&T/MCI in response to a data request.

¹⁸ The building costs should include the cost of incoming underground telephone cable ducts, cable duct banks and gas venting chambers, and manhole structures at the street and/or at the building. Tr. 6267.

- additional site specific costs; and
- building construction “soft” costs.

AT&T/MCI simply assume that these costs are included in the costs reported by the contractors surveyed by R.S. Means; BA-NY believes, however, that it is likely that these costs are not included in this data. In any case, AT&T/MCI have provided absolutely no evidence that these costs are in fact included.

Moreover, R.S. means *explicitly* states that some site preparation costs are not included in its costs.¹⁹ These costs are significant and may include the following:

- storm water management devices (retention ponds, traps, vaults, and so forth);
- landscaping, building screening, and fencing, especially in residential zones;
- permit fees and transportation impact fees;
- soil borings;
- site surveys and environmental assessments;
- sewer connection fees;
- sidewalks and curbing;
- parking space; and
- site lighting.

R.S. Means also warns that its data does not generally include soft costs such as architectural fees or land costs.²⁰ If BA-NY were to build a brand new central office, it would

¹⁹ Exh. 346 (1997 R.S. Means Guide, p. 443). Mr. Bissell points out that the Model uses some input costs from the R.S. Means upper quartile, which according to R.S. Means, “*may* include . . . site work.” Tr. 6653 (citing Exh. 346, p. 443) (emphasis added). Mr. Bissell’s statement proves BA-NY’s point – that is, that it is impossible to determine whether the Model included all necessary building items.

²⁰ Exh. 346 (1997 R. S. Means Guide, p. 443).

undoubtedly incur these “soft costs,” which include architect, design, survey and engineering fees, and zoning-related costs such as expediting fees, special exception proceedings and legal fees. For example, the architectural fees for a recent addition to a BA-NY building on Long Island completed in late 1997 totaled approximately \$30,000 on a \$650,000 construction project.²¹ The Model fails to include these significant costs. Apparently, in developing the Model, AT&T/MCI have chosen to disregard this clear language in the R.S. Means guide.²²

B. The Model Does Not Reflect The Costs Of Building A New State-Of-The-Art Central Office.

BA-NY was able to determine from the summary information provided by R.S. Means that the most recent building included in the R.S. Means data used to derive the Model’s building costs was completed in 1989, almost ten years ago.²³ The next most recent projects include Arizona and Ohio projects completed in 1986. The remaining 61 projects were completed prior to 1985, and 10 projects were completed in 1976, more than 20 years ago.

Relying on building cost data that is so outdated and unreliable is highly inappropriate. In fact, R.S. Means explicitly states that data from “projects over ten years old are discarded.”²⁴ Its telephone exchange buildings costs therefore appear to be an exception to R.S. Means’ general practice of excluding old projects. Indeed, the R.S. Means representative contacted by BA-NY candidly admitted that they debated whether or not to even publish a 1998 per square foot cost for telecommunications buildings because of the staleness of the data.²⁵

²¹ Tr. 6269.

²² Tr. 6739-41.

²³ Tr. 6319-20.

²⁴ Exh. 346 (1997 R.S. Means Guide, p. 443).

²⁵ Tr. 6263.

R.S. Means confirmed that it does not “modernize” the building cost data to account for more modern amenities such as security card reader access, or to bring the building in compliance with more recent regulations. R.S. Means does apply a construction cost index, which expresses past costs in current dollars, but does not add costs that would be incurred today. The Model therefore does not reflect the costs of building a new state-of-the-art central office, despite AT&T/MCI’s claims.²⁶

Mr. Bissell, for example, implies that the R.S. Means data includes the costs of building a central office with all the environmental conditioning required to house digital switches.²⁷ Mr. Bissell is misrepresenting the facts. Given that the vast majority of buildings included in the R.S. Means data were constructed prior to 1983, it is unlikely that the R.S. Means telecommunications building cost per square foot contains cost data associated with the provisioning of a digital local switching environment. Digital switching was not deployed until late 1983, and was not widely deployed until several years later. Indeed, the first 5E digital switch in Bell Atlantic territory – installed in Massachusetts in December 1983 – was only the second in the country to be deployed. More importantly, little was known about the environmental requirements associated with digital local switching until relatively late in the 1980s (after the period covered by the R.S. Means cost data), when it was discovered that digital local switches were susceptible to severe damage from a combination of dust particle contamination and heat and humidity levels.

²⁶ As BA-NY explained in its responsive testimony, the Model also significantly understates the land costs associated with building a brand new central office in New York, particularly when compared to the assessed land values for the central offices currently with collocation. Tr. 6269. Interestingly, the Model developers concede that land values in the large urban areas in New York are higher than in other parts of the country. But instead of increasing land costs for New York, the Model actually decreases them by reducing the land-to-building ratio from 2:1 to 1.5:1. The Model’s land value, however, remained at \$20 per square foot, the same default value used throughout the country. Exh. 338 (BU# 18-NY). The Model’s land costs should therefore be rejected.

²⁷ Tr. 6625. See also Tr. 6588. AT&T/MCI have not indicated whether Mr. Bissell has withdrawn this claim in

Thus, only 9 of the 64 construction projects (1983-1989) were completed when digital local switching was being (sparingly) deployed. It is impossible, moreover, to determine whether any of these projects include the costs of providing a digital local switching environment. And, even if some of these projects included the conditioning required for a digital switching environment, these costs would have been significantly diluted by the costs for the 55 other projects completed prior to 1983 which do not include such conditioning.

Likewise, Mr. Bissell's initial claim that the Model incorporates the cost of providing complete state-of-the-art security identification card reader systems was plainly wrong.²⁸ Because the vast majority of central offices included in the R.S. Means data were constructed over 15 years ago, it is unlikely that the costs associated with installing an electronic security card system is included. In BA-NY's experience, card readers have been generally deployed only for the last ten years.²⁹ Simply assuming that these projects include these costs – as AT&T and MCI do – is inappropriate.

AT&T/MCI now apparently concede that the Model's per square foot costs do not include these security costs.³⁰ In an effort to correct this deficiency, AT&T/MCI presented late in this proceeding an analysis (with corresponding invoices) which purportedly demonstrates that a complete security system would only add a few dollars to the Model's per square foot costs. This belated attempt to introduce new costs into this proceeding should be rejected.

light of BA-NY's investigation of the R.S. Means information.

²⁸ Tr. 6589.

²⁹ Tr. 6320.

³⁰ Tr. 6647 (admitting that “[g]iven the dates of the original R.S. Means data for per square foot investment, a modern security system is not included in the per square foot CO investment figure.”).

AT&T/MCI's unsupported, unverifiable and untimely claim that the cost of building a new central office *may* actually be less than a central office built in the 1980s also should be dismissed.³¹ They hypothetically speculate that central offices today are smaller than older central offices and therefore (purportedly) less costly, but completely fail to discuss all of the other changes to the central office – including central office conditioning – which would likely increase the costs of building a new central office. AT&T/MCI's sheer speculation does not render their reliance on the outdated R.S. Means data appropriate; rather, it only proves BA-NY's point.

Finally, it is unlikely that the Model includes the costs of constructing a central office which is in full compliance with today's regulatory requirements. The R.S. Means data upon which the Model relies for building costs only includes data on telephone exchange buildings constructed up to 1989. It therefore is likely that buildings built to code at that time would not include compliance with all the regulatory requirements in 1998. The Americans with Disabilities Act, for example, did not become law until 1990.

C. Mr. Bissell's Belated Revelation That A Central Office In Canada Was Built At A Cost Similar To The Model Should Be Rejected As Unsupported And Untrustworthy.

Only after BA-NY raised serious questions about the R.S. Means data used in the Model and the representations made by AT&T/MCI regarding this data did Mr. Bissell reveal that the Model's per square foot costs were (coincidentally) consistent with what he "understood" were the final per square foot costs of a central office building constructed in Canada in the early 1990s.³² AT&T/MCI, however, refused to provide any information whatsoever to substantiate Mr. Bissell's claims, arguing that it was proprietary to Bell Canada.

³¹ Tr. 6647.

³² Tr. 6649.

Mr. Bissell's claim is unsupported and untrustworthy. Mr. Bissell has testified in numerous other States throughout the country since the Fall of 1997, and so far as BA-NY is aware, never once mentioned that he was familiar with a Canadian central office that had per square foot costs consistent with the Model. In fact, Mr. Bissell mentioned the existence of the Canadian central office for the first time on April 8, 1998 in hearings in Maryland, but alleged only that the layout was similar to the Model, not that the costs were consistent.³³ Moreover, Mr. Bissell specifically distinguished the Canadian central office from the Model in his Maryland testimony.³⁴ Now, Mr. Bissell wishes to associate the (all-purpose) Canadian central office with the Model's costs. The Commission should not tolerate such inconsistent positions.

Worse yet, Mr. Bissell admitted during cross examination that he was not in a position to review the invoices submitted in connection with the construction of the central office, nor was he responsible for paying any of them.³⁵ Mr. Bissell was a space planner, not a financial analyst. It is therefore doubtful that he was in a position to know the actual per square foot costs associated with constructing the Canadian central office. He also admitted that he has not spoken to anyone at Bell Canada regarding these costs.³⁶

Mr. Bissell's assertion therefore should be rejected, particularly in light of AT&T/MCI's refusal to provide supporting documentation. Not only is this naked assertion an insufficient basis

³³ Tr. 6744-45; *see also* Excerpts of Hearings before the Maryland Public Service Commission, Case No. 8766 (April 8, 1998) (attached at Exhibit A).

³⁴ Excerpts of Hearings before the Maryland Public Service Commission, Case No. 8766 (April 8, 1998) (Exhibit A), p. 747.

³⁵ Tr. 6742-43.

³⁶ *Id.*

on which to adopt the costs developed by the Model, it is also fundamentally unfair to permit AT&T/MCI to make such allegations, but to deny BA-NY's attempt to verify their claims.

III. BA-NY'S PROPOSED RATE STRUCTURE TO RECOVER CAGE CONSTRUCTION COSTS IS ENTIRELY REASONABLE AND ITS PROPOSED COSTS ARE FULLY SUPPORTED

A. BA-NY's Proposed Rate Structure Is Reasonable And Fair To All Parties.

The costs BA-NY incurs to provision a cage for the collocator are really quite simple to understand: the collocator asks for a cage, and BA-NY hires a vendor to build one. BA-NY's costs are equal to the costs charged by that vendor. (The costs BA-NY incurs to plan and implement the collocation project are charged separately and are discussed below.) BA-NY has therefore proposed two rate structures for recovering the costs associated with cage construction.

For cages to be placed in existing collocation space, BA-NY has proposed a specified rate. But for all other cages, BA-NY proposes to "pass through" the vendor costs for the cage construction.³⁷ That is, BA-NY will charge the CLEC the exact amount of the vendor's invoice for the costs associated with the dedicated cage construction.

BA-NY's proposal to simply pass on the vendor costs for cage construction to the collocator on a going-forward basis ensures that BA-NY recovers its costs and ensures that each collocator is paying only for those costs specific to its own cage construction. If BA-NY were required to have a specified rate for all future cage construction, it is likely that BA-NY would always under-recover its costs. That is, if the anticipated cage construction costs for a specific collocation request are more than that specified rate, then the collocator would likely choose BA-

³⁷ There appears to be some confusion regarding the application of the average cage construction costs included in BA-NY's cost study. The average cage construction charges proposed by BA-NY only apply to cages placed in the collocation locations existing today. All future collocation cages – even the second cage placed in a future collocation room – will be charged on a pass through basis. Any other rate structure would be difficult to administer. This clarification should alleviate Mr. Bissell's concern that CLECs will "pay an inflated average rate for supplementary cages which was developed in part based on initial cage installations." Tr. 6627.

NY to perform this work. On the other hand, when a particular cage construction project is anticipated to cost *less* than the average rate, then the collocator would likely contract directly with a vendor to perform this work at the lower cost.

Although BA-NY believes that a vendor pass through rate structure is the most appropriate method for recovering cage construction costs, it has calculated a specific rate for cages placed in existing collocation rooms as a means of transitioning to the new structure. Moreover, the costs for cages placed in existing rooms are unlikely to vary and therefore a specified rate is fair to all parties.

No party has presented a rational argument against BA-NY's proposed rate structure. Nor could they. BA-NY's approved vendors are chosen through a competitive bidding process. More important, collocators have the option of contracting directly with a BA-NY approved vendor for cage construction and thus can determine for themselves whether BA-NY has chosen a reasonably priced vendor.³⁸ And a CLEC may also recommend that a vendor be added to BA-NY's approved vendor list.

AT&T/MCI's general objections to the vendor pass through approach demonstrate plainly that AT&T/MCI hope to persuade the Commission to adopt rates which are lower than what BA-NY's actual costs will be. BA-NY's rate structure should be approved.

³⁸ AT&T/MCI claim that there is little or no advantage to BA-NY's proposal to permit collocators to hire their own BA-NY-approved contractors to build physical collocation cages because ultimate control over the placement of the cage (rightly) remains with BA-NY. Tr. 6626, 6706. But cage construction costs standing alone are unaffected by the location of the cage – wire mesh and padlocks will cost the same whether a cage is on the same floor or is 3 floors away from the main distributing frame. Moreover, while it is true that BA-NY must still be involved in the design and implementation – after all, this is construction in BA-NY's central office – the CLEC can and will surely reap the benefit of any lower cost it manages to negotiate for the construction of the cage. Tr. 6344.

B. BA-NY's Proposed Cage Costs For Cages Placed In Existing Collocation Rooms Are Fully Supported By Vendor Price Information.

To calculate the non-recurring costs of various cage sizes, BA-NY analyzed 12 recent general contractor invoices for the construction of 300 square foot cages in New York. The costs of the 100 and 25 square foot cages (and 20 square foot additions) are derived from these 300 square foot cage costs by determining the fixed and variable costs associated with cage construction.³⁹

AT&T/MCI have argued that BA-NY failed in its direct testimony to meet its burden of supporting these costs.⁴⁰ AT&T/MCI are incorrect. The record plainly demonstrates that BA-NY included in its direct testimony a complete explanation of how these costs were developed and attached detailed workpapers setting forth all the pertinent information from these invoices, including the location and price of the cage.⁴¹ And on April 23, 1998 – over two weeks before AT&T/MCI's responsive testimony was filed – BA-NY produced to AT&T the actual invoices.⁴²

AT&T/MCI argue, however, that BA-NY should have *attached* these invoices to its direct testimony. This claim cannot be sustained. AT&T/MCI had all the information needed from BA-

³⁹ Tr. 6172. Intermedia witness Davis criticizes BA-NY's failure to calculate different physical collocation cage costs for various locations within New York State. Tr. 6786-87. BA-NY's proposed pass-through rate structure, however, will capture any variance in costs across the State. For cages placed in current collocation rooms, BA-NY has proposed an average rate based only on costs obtained from the "Major Cities" density zone because that is where nearly all of existing collocation rooms are located.

⁴⁰ Tr. 6606-07; *see also* Tr. 6137-40.

⁴¹ Exh. 326 (Workpaper 1.0, Part A, Section 1, p. 1 of 5).

⁴² BA-NY also attached these invoices and other supporting documentation as an exhibit to its June 5, 1998 Rebuttal Testimony in response to Mr. Bissell's claim that BA-NY's studies lacked supporting documentation. Exh. 329P. It became clear that Mr. Bissell never reviewed this information prior to filing his May 8 testimony. AT&T/MCI have argued that because BA-NY requested confidential treatment of this information, they were unable to give this information to MCI and Mr. Bissell before May 8. This excuse is as convenient as it is absurd. All that was required was for MCI and Mr. Bissell to send a letter acknowledging the confidential nature of the exhibit. MCI did not provide an acknowledgment until after May 8.

NY's workpapers to analyze BA-NY's cage costs. The invoices were provided simply as a means to audit the information provided in the workpapers. BA-NY is not required to submit every piece of paper supporting its cost studies in order to make a prima facie case. A line must be drawn. Indeed, this Commission has a long history of litigating rate cases in which the costs of numerous rate components are analyzed. BA-NY's approach to this case is consistent with this well established process. To submit every conceivable page of documents would render the process and the record unmanageable.

AT&T/MCI's arguments on the merits of BA-NY's proposed costs are no more persuasive. They claim that BA-NY's cage construction costs are inflated because BA-NY treats each collocation request individually by, for example, providing separate conduit and wiring routed to the AC riser instead of an electrical panel.⁴³ AT&T/MCI have the facts wrong. BA-NY will provide an electrical panel for service outlets and lighting in or near the collocation area if the forecasted demand is for three or more collocation arrangements. If fewer than three collocation arrangements are forecasted, then it is more cost effective to provision electrical service on an individual basis.⁴⁴ Accurate forecasts from the CLECs therefore would alleviate AT&T/MCI's concerns. In the absence of these forecasts, however, the Commission should accept BA-NY's experienced judgment regarding collocation demand and provisioning requirements.

AT&T/MCI further claim that it is inappropriate to include transportation, site set-up and daily cleanup charges in the cage construction costs ignores reality.⁴⁵ General contractors must travel, set up the job site, and clean up the work site daily (or more often if necessary), costs

⁴³ Tr. 6627.

⁴⁴ Tr. 6346.

⁴⁵ Tr. 6628.

which the vendor passes on to BA-NY.⁴⁶ BA-NY should in turn be able to pass on those costs to the cost causer – the collocators. If AT&T and MCI are unhappy with such charges, then they are free to hire their own BA-NY approved contractors to build their cages on BA-NY premises, and negotiate these charges away.

AT&T/MCI also allege that the collocation cage projects utilized in BA-NY's cost study are unnecessarily costly and rely upon early or initial cage installations.⁴⁷ One of the cage projects included in the cost study is indeed an initial cage project at BA-NY's Elmhurst, Queens location. That project was included in the cost analysis because the costs were representative of cage construction, and, in fact, are lower than subsequent cage projects in other locations. Including this project therefore lowered the average cost of a 300 square foot cage in the BA-NY cost study.⁴⁸

Contrary to AT&T/MCI's claims, BA-NY has appropriately included the costs of cage roofs. While BA-NY believes it is prudent to place roofs on cages and has adopted such a policy across its footprint, BA-NY will not insist on this practice if the collocator decides to deploy less security for its equipment. Thus, if the collocator elects to contract directly with a vendor for

⁴⁶ Tr. 6346.

⁴⁷ Tr. 6673.

⁴⁸ Exh 329P; Exh. 327 (Workpaper 1.0, Part A, Section 1, p. 1 of 5). Mr. Bissell also points out in his rebuttal that two of the cage projects included in the cost study are actually for 240 and 202 square foot cages. Tr. 6675. There is one project included in the cost analysis that is 204 square feet (W 36th St.). This fact is meaningless. BA-NY contends the only variable cost associated with a collocation project consists of the cost of the cage material. By including the cage material for a smaller cage into the costs of developing the variable cost of a 300 square foot cage, BA-NY has understated costs. Moreover, the 240 square foot cage (E 38th St.) to which Mr. Bissell refers is actually a 300 square foot cage. Although the general contractor quotes the size of the cage as being 30 feet by 8 feet, it is clear from the floor plan associated with that invoice that the cage is 300 square feet. Exh. 329P (Attachment 1 to BA-NY Response to ATT-NYT-1217).

cage construction, it may choose not to place a roof on its cage and therefore will not bear any roof costs.⁴⁹

The brochure containing cage material costs obtained by AT&T/MCI from Wireway/Husky, a company located in Massachusetts, does not undermine BA-NY's proposed cage costs. AT&T/MCI suggest that if their Model is not adopted (which it should not be), then the Commission should adopt the "costs" indicated by this January 1997 price list (along with 16 hours of labor costs).⁵⁰ The costs allegedly contained in the Wireway/Husky brochure are ridiculously low, particularly given that BA-NY has produced actual vendor invoices to support its cage costs. More important, the Wireway/Husky quote is misleading because it contains only the price of the enclosure materials for a cage, not any labor or other miscellaneous costs. AT&T/MCI realized this deficiency and obtained a verbal estimate from Wireway/Husky of 16 hours to install the cage, although AT&T/MCI applied a labor rate that does not appear to be New York-specific.⁵¹

But partitioning materials and labor are not the only components of a cage construction. AT&T/MCI's cage "quote" appears to omit transportation of materials to the job site, site set-up, and clean-up following these work activities.⁵² The following components of cage construction are also omitted from AT&T/MCI's quote:

- HVAC duct work;

⁴⁹ BA-NY will also provision roofless cages for the collocator on a vendor pass through basis.

⁵⁰ Tr. 6628-29.

⁵¹ *Id.*

⁵² **[BEGIN AT&T PROPRIETARY]**
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- AC outlets;
- lighting in the general collocation area;
- an ionization detector; and
- cable holes in the cage mesh.

AT&T/MCI's "alternative" costs should therefore be rejected as unsupported. Instead, the Commission should adopt the costs developed meticulously by BA-NY on the basis of actual vendor invoices for actual collocation cage construction jobs.

In any event, if AT&T and MCI truly believe that Wireway/Husky would be an appropriate contractor for central office construction work, they may propose that Wireway/Husky be added to BA-NY's list of approved contractors, and once approved, may hire it to install a collocation cage at the price allegedly offered.

Finally, Intermedia's assertion that the fixed-cost/variable-cost method of determining the costs for physical collocation cage construction inflates the cost of constructing smaller cages is without merit.⁵³ BA-NY has determined the appropriate amount of fixed costs associated with constructing a collocation cage.⁵⁴ For example, the same electrical and lighting installation work will be required regardless of the cage size. In addition, while it is possible that there may be some additional labor costs associated with the larger cages compared with the smaller sizes, BA-

⁵³ Tr. 6785-86.

⁵⁴ AT&T/MCI's claim that if the cage material truly were the only variable cost, the invoices would be nearly identical misses the point. Tr. 6675. BA-NY identified several fixed costs – that is, the costs of performing activities that are required regardless of the size of the cage. But this does not mean that the amount of work done and the vendor costs for these activities are identical. If that were the case, BA-NY could have based its costs on a single vendor invoice. Instead, BA-NY calculated the fixed costs from 12 different projects to determine an average. The fact that some of the costs varied among various projects is meaningless.

NY believes that the cost differences in fixed costs (if they could be quantified) would be minimal.⁵⁵

Intermedia has offered no evidence that BA-NY's fixed/variable cost methodology is erroneous, and its vague and unsupported claims therefore should be rejected.

C. AT&T/MCI's Proposed Cage Costs Are Based On Flawed Assumptions And Lack New York-Specific Data.

As a threshold matter, the Commission should dismiss AT&T/MCI's proposed cage costs in their entirety in light of BA-NY's vendor pass through rate structure and given that AT&T/MCI may contract directly with a BA-NY-approved vendor for the cage construction. If AT&T/MCI truly believe that they have proposed reasonable cage construction costs, then they can and should hire contractors themselves at these rates to construct their cages on BA-NY's premises.

In any event, AT&T/MCI's proposed cage costs are plainly unreasonable. First, AT&T/MCI propose to recover cage costs through a recurring charge, rather than a non-recurring charge.⁵⁶ BA-NY, however, should be paid up-front by the collocator in the form of a non-recurring charge to ensure that BA-NY recovers the costs it incurs in constructing a cage for the collocator. If these cage costs were recovered through a recurring charge over 47 years – as proposed by AT&T/MCI – then BA-NY would bear the risk that the CLEC will abandon the cage sometime within 47 years and leave BA-NY with the stranded investment. Given the likelihood of this event, there is no rational justification for requiring BA-NY to bear this risk.

⁵⁵ Tr. 6347-48.

⁵⁶ Tr. 6558; Exh. 337 (Exhibit JCK-2A); *see also* Tr. 6787-88.

AT&T/MCI's argument that cage construction costs should be recovered on a recurring basis because a cage is reusable is unpersuasive.⁵⁷ Regardless of whether the cage is reusable, the costs for cage construction should be recovered through a non-recurring charge. This rate structure ensures that the cost causer – the requesting collocator – bears the responsibility of paying BA-NY for its out-of-pocket costs. In the event that the collocator vacates its cage and the cage is in fact reused by another collocator, BA-NY has agreed to collect reasonable cage costs from the second collocator and compensate the first collocator.⁵⁸ This provision makes far more sense than requiring BA-NY to bear the risk that no other collocator will occupy the vacated cage, leaving BA-NY with a stranded investment. In addition, a recurring rate structure would create a disincentive for the collocator to forecast its needs correctly because the collocator would not be held accountable for the bulk of cage construction costs.

Nor is charging the collocator up-front for cage construction a barrier to entry, as AT&T/MCI claim.⁵⁹ Facilities-based entry into the local exchange market is not cheap and requires a significant investment. The fact that collocation already exists in numerous BA-NY central offices proves that cage construction costs are not a barrier to entry. In addition, BA-NY has already filed with the Commission a non-recurring charge installment plan. Under this plan, CLECs with under \$2 billion dollars in annual telecommunications-related revenue are eligible to

⁵⁷ Mr. Davis's claim that "if a CLEC leaves collocated space, [BA-NY] keeps all collocation assets" is likewise unsound. Tr. 6788. BA-NY has no need to collocate on its own premises. Despite Mr. Davis's absurd claims, this vacant collocation space would be a stranded investment.

⁵⁸ New York Telephone Company, P.S.C. No. 914, Section 5.1.12(i), Page 1.25.

⁵⁹ Tr. 6557-58.

pay all non-recurring charges over an 18-month period.⁶⁰ This installment plan alleviates any burden on the smaller CLECs of paying non-recurring charges at one time.

Second, the Model inappropriately assumes that BA-NY will provision four collocation cages each time it receives an initial request to collocate, and therefore inappropriately spreads some planning and cage construction costs among all collocators, rather than charging the specific collocator causing the cost.⁶¹ For example, the Model installs one electrical panel for the four collocation cages regardless of the needs of each collocator. This structure (which is not severable from the Model as a whole) artificially dilutes the cage construction costs by spreading the cost for this particular component across all cages. The Model also proposes to recover the planning costs for the first collocation space request from the (potential) occupiers of the four collocation spaces.

The Model's assumption that BA-NY should provision four 100 square foot collocation cages each time it receives an initial request ignores reality. Although there are certainly a handful of popular BA-NY central offices – now primarily in Manhattan – that have multiple collocators, it is unlikely that four collocators will occupy each and every central office requested. As BA-NY explained in its Responsive Testimony, the most recent information available shows that 17 of the current 33 BA-NY central offices with collocation have two or fewer collocators. And 64% of the central offices have 3 or fewer collocators.⁶² The assumption that BA-NY should construct

⁶⁰ Tr. 6284-85.

⁶¹ Tr. 6555, 6580 (“the collocation area model layout assumes the construction of four 100 square foot equipment areas . . .”).

⁶² Tr. 6286-87.

four 100 square foot collocation cages each time it receives a collocation request is belied by the facts. There is no evidence to support this level of demand.

Even if four collocators eventually request collocation in the same central office, it is extremely unlikely that they will do so all at the same time. Thus, not all four cages will be fully occupied over the cost recovery period, leaving BA-NY with under-recovered investment. The Model's attempt to address this problem through the use of an occupancy factor is creative, but flawed. AT&T/MCI were unable to provide any support whatsoever for this factor.⁶³ BA-NY has no assurance that if it builds the four collocation cages to the first collocator's particular specifications, subsequent collocators will ever occupy the space or will accept those precise specifications.⁶⁴ Use of an occupancy factor would not only fail to recover these costs, but would also unfairly and unreasonably shift costs away from the cost causer.

Most important, it makes no sense to require BA-NY to build four 100 square foot cages every time it receives an initial collocation request because each collocator demands different requirements. For example, if BA-NY builds four 100 square foot cages, and a subsequent collocator wants a larger cage or a different layout, BA-NY would be required to tear down the

⁶³ The Model applies a user-adjustable occupancy factor to certain shared costs to recover collocation costs for periods during the year when there might not be full occupancy of all the space. This recovery is accomplished by dividing certain shared costs, such as cage preparation, by the occupancy factor, which then increases the cost of the occupied space. Tr. 6558-59. But there is no basis whatsoever for the Model's proposed 75% occupancy factor and it would be difficult to calculate such a factor to account sufficiently for all periods in which the cages would be unoccupied. Tr. 6288.

⁶⁴ Mr. Klick's assertion that this risk is no different than any business risk presented to a company is absurd. Tr. 6709. Business risk is not a relevant consideration if the company has no choice in the business decision. Here, BA-NY would be forced to bear the costs associated with the collocator's erroneous business decision to construct a cage in a particular central office. The risk is wholly created by the *collocator*; BA-NY has no choice but to construct the cage for collocator. Mr. Klick's claim that such a risk would give BA-NY the "incentive" to find another collocator is similarly flawed. *Id.* There is not a large supply of collocators willing to collocate, and certainly not willing to collocate in a particular central office simply because BA-NY needs a new collocator to cover the costs incurred by a prior collocator that has vacated. In fact, it is likely that the number of collocators in New York will continue to decrease as telecommunications companies continue to consolidate.

existing cages and rebuild according to the new collocator's specifications. Indeed, many collocators are requesting cages of up to 400 square feet.⁶⁵ The Model fails to capture the costs of tearing down and reconstructing cages, even though it is the Model's structure which would create these costs.

AT&T/MCI's belated protest that the Model does not insist that BA-NY build four 100 square foot cages and that BA-NY is free to build whatever it wants is fatally inconsistent.⁶⁶ By suggesting that cages can be provisioned on a staggered schedule, AT&T/MCI invalidate the Model's costs, which are based in part on economies of scale. AT&T/MCI cannot be permitted to make a provisioning assumption in its Model, and then suggest it be disregarded when the assumption is criticized – while at the same time insist that the Commission adopt costs based on this flawed assumption. The only way the Model works is if BA-NY provisions four 100 square foot cages at one time.⁶⁷ Because this fundamental assumption is invalid, the Model should be rejected.

IV. BA-NY'S POWER COSTS ARE FULLY SUPPORTED AND CONSISTENT WITH AT&T'S OWN POWER COSTS

A. BA-NY's Power Costs Are Well Documented.

BA-NY's power costs are fully supported by actual vendor data for power plant components in New York, and are based on assumptions made by BA-NY witness Lawrence

⁶⁵ In fact, only 43 of the current 101 cages in New York are 100 square feet. Moreover, in 1996 and 1997, most of the cages requested were for 200 square feet or larger. Tr. 6289. **[BEGIN AT&T PROPRIETARY]**

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⁶⁶ Tr. 6617.

⁶⁷ AT&T/MCI are correct that if the initial request is for a 400 square foot cage, then BA-NY would be required to build only the one cage. But it is just as likely that BA-NY will receive an initial request for a 100, 200 or 300 square foot cage. In that event, the Model's provisioning assumption would be unworkable.