

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 98-C-0690 - Proceeding on Motion of the Commission to  
Examine Methods by which Competitive Local  
Exchange Carriers can Obtain and Combine  
Unbundled Network Elements.

PROPOSED FINDINGS

OF

ADMINISTRATIVE LAW JUDGE ELEANOR STEIN

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APPEARANCES: See Appendix A.

ELEANOR STEIN, Administrative Law Judge:

BACKGROUND

The Telecommunications Act of 1996 (the Act) requires incumbent local exchange carriers to provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.<sup>1</sup>

In its October 14, 1997 decision, the United States Court of Appeals for the Eighth Circuit determined that, although this section could not be read by the Federal Communications Commission (FCC) to require incumbent local exchange carriers (LECs) to retain and supply existing combinations of elements, "the fact that the incumbent LECs object to this rule indicates to us that they would rather allow entrants access to their networks than have to rebundle the unbundled elements for them."<sup>2</sup>

The Bell Atlantic-New York Pre-filing

On April 6, 1998 Bell Atlantic-New York detailed additional commitments in connection with its application to

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<sup>1</sup> 47 U.S.C. §251(c)(3).

<sup>2</sup> *Iowa Utilities Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997).

provide in-region long distance service pursuant to the §271 of the Act.<sup>1</sup> The Pre-filing contains numerous milestones Bell Atlantic-New York undertook to comply with the requirements for §271 entry, and describes significant steps to further open the New York market to competition. With respect to the combination of network elements, in the Pre-filing Bell Atlantic-New York pledged that competitive LECs

will have the ability to recombine elements themselves through the use of smaller collocation cages, shared collocation cages, and through virtual collocation. In addition, Bell Atlantic-New York will demonstrate to the Public Service Commission that competing carriers will have reasonable and non-discriminatory access to unbundled elements in a manner that provides competing carriers with the practical and legal ability to combine unbundled elements. Among the issues to be discussed in Bell Atlantic-New York's demonstration is the feasibility of 'non-cage collocation'. Bell Atlantic-New York will continue its current, ubiquitous offering of the platform until such methods for permitting competitive LECs to recombine elements are demonstrated to the Commission. This commitment, when met, will permit competing carriers to purchase from Bell Atlantic-New York and connect all of the pieces of the network necessary to provide local exchange service to their customers.

In order to define the method or methods by which competing carriers will combine elements, the Commission instituted this proceeding.

#### The Instituting Order

By order issued May 6, 1998, the Commission directed Bell Atlantic-New York to file with the Commission a proposal describing the method or methods by which competitors could combine network elements and to illustrate how those methods meet Bell Atlantic-New York obligations under the Act and the Pre-filing, providing an opportunity for parties to comment and

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<sup>1</sup> Case 97-C-0271, Pre-filing Statement of Bell Atlantic-New York, filed April 6, 1998 (the Pre-filing), p. 10.

propose alternative methods for combining elements.<sup>1</sup> A May 14, 1998 ruling established a schedule for this proceeding and required that all proposals for a method of combining elements be fully developed, with sufficient explanation to allow parties and Department of Public Service Staff (Staff) to test the proposals. Parties were instructed to include statements as to why the proposed option met the criteria in §§251, 252, and 271 of the Act; an explanation of how the method would operate; examples of other jurisdictions, companies, or industries where the method is working; an explanation of how the proposed method could be implemented in a commercially reasonable time period; documentation of the cost of the method; and an analysis of the impact of adoption of the method upon end-use customer service. Subsequently, the parties were requested to demonstrate how the proposed option was susceptible to making the transition to a facilities-based competitive market strategy. Finally, in the schedule was included a period for collaborative working sessions, prior to presentation of these recommendations to the Commission.

#### Parties' Filings

This inquiry opened with Bell Atlantic-New York filing offerings of its proposed options for provision of network elements in such a way as to allow carriers to combine them. Other parties then filed comments and alternatives, some with expansive legal and policy discussion, others with a more

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<sup>1</sup> Case 98-C-0690, Combining Unbundled Elements, Order Initiating Proceeding (issued May 6, 1998).

technical bent.<sup>1</sup> From the filings, six distinct options were distilled, which were named and numbered to serve as the organizing principle for the mass of technical, financial, and policy data provided by the parties. From June 29, 1998 through July 1, 1998, an on-the-record technical conference was held, during which an advisory Staff team led a thorough examination of the offered proposals.<sup>2</sup> At the technical conference, parties presented six exhibits, and a transcript of 784 pages was compiled. Parties presented expert witnesses both to sponsor parties' own options, and to critique or support options sponsored by other parties. The six options are analyzed in some detail below. Following the technical conference, parties filed post-trial type memoranda.<sup>3</sup> Members of the advisory Staff team also met with vendors of various technologies and examined installations of offered options.

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<sup>1</sup> Parties filing comments, and in some cases proposing options, were: United States Department of Defense and all Federal Executive Agencies (DOD); Covad Communications Company (Covad); Metropolitan Telecommunications (Metropolitan); Cablevision Lightpath (Cablevision), NextLink New York, L.L.C. (Nextlink) and Association for Local Telecommunications Services (ALTS); AT&T Communications of New York, Inc. (AT&T); Time Warner Communications Holdings, Inc. (Time Warner); North American Telecom (North American); Hyperion Telecommunications, Inc. (Hyperion), LCI International Telecom Corp. (LCI); Sprint Communications Company, L.P. (Sprint); WorldCom Inc. (WorldCom); Telecommunications Resellers Association (TRA); USN Communications, Inc. (USN); MCI Telecommunications Corporation (MCI); Teleport Communications Group (TCG); Competitive Telecommunications Association (CompTel); Intermedia Communications, Inc. (Intermedia); RCN Telecom Services of New York, Inc. (RCN); and e.spire Communications, Inc. (e.spire).

<sup>2</sup> The advisory Staff team, coordinated by Andrew Klein and Margaret Rubino, included Scott Bohler, Christian Bonvin, Jonathan Crandell, Donna DeVito, Stacey Harwood, Jeffrey Hoagg, Kevin Higgins, Greg Pattenau, and Steven Sokal.

<sup>3</sup> Filing post-technical conference briefs were Worldcom; Teleport; RCN and USN Communications; AT&T; Bell Atlantic-New York; CompTel; MCI; e.spire; Time Warner; COVAD, LCI; Intermedia; Cablevision; and Sprint.

On May 27, 1998, Bell Atlantic-New York filed its Methods for Competitive LEC Combinations of Unbundled Network Elements (Bell Atlantic filing). In its filing, Bell Atlantic-New York asserted that the Act requires it to do no more than provide competitive LECs collocation as a means to obtain access to unbundled network elements. It offered what it termed "a variety of ways" to combine unbundled network elements which, in its view, went far beyond the legal requirement. First, Bell Atlantic-New York asserts, it voluntarily offered competitors pre-assembled combinations of elements, including the switch sub-platform and the enhanced extended loop. Second, Bell Atlantic-New York offered both physical and virtual collocation to access and combine the complete range of unbundled network elements, asserting it has increased the availability and lowered the cost of physical collocation with smaller cages and shared cages. Third, it offered competitive LECs the ability to combine voice grade unbundled elements in assembly rooms, in assembly points outside the central office, and in common collocation space.<sup>1</sup>

On June 23, 1998, Bell Atlantic-New York filed a supplemental document including service descriptions for its assembly room and assembly point offerings, and detailing the common space physical collocation, renamed Secured Collocation Open Physical Environment (SCOPE). The supplemental filing also included representative rates with preliminary cost support, to establish the relative cost to competitive LECs of combining elements using the various options, prior to the Bell Atlantic-New York filing of tariff rates with cost support by July 23, 1998. This filing responded to the request of parties, and my

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<sup>1</sup> In light of the expedited schedule for this proceeding, preliminary information concerning costs was necessary to address the statutory requirement of just, reasonable, and non-discriminatory rates. However, Bell Atlantic-New York's concern that this not become a rate case is a valid one. The rates at issue here are or will be under scrutiny in the network element proceeding (Case 95-C-0657) and pursuant to Bell Atlantic-New York's July 23, 1998 tariff filing.

express concern, that without at least preliminary cost information, the competitors had insufficient information upon which to base market choices. Where appropriate, Bell Atlantic-New York offers cost estimates based upon those filed in Phase 3 of the network element proceeding.

Two other parties offered proposals. COVAD proposed an identified space collocation option, calling for competitive LEC equipment to be placed alongside the incumbent's frames, as in a virtual collocation arrangement. Unlike virtual collocation, however, COVAD envisions the competitor installing and maintaining its equipment, employing some range of security measures to protect the incumbent's equipment.

Finally, AT&T proposed recent change capability, a software-based option in a preliminary stage of development, allowing competitors to connect disabled loops and ports to existing Bell Atlantic-New York customers without manual disconnects and reconnects.

#### OVERVIEW

##### Proposed Methods

The methods proposed by Bell Atlantic-New York share an underlying design, represented in that company's Exhibit 1 (Appendix B). They are all manual methods, and require a Bell Atlantic-New York technician to make a manual cross connection using jumper cable from Point A to Point F; run tie cables from F to G and from E to D; competitor personnel or their surrogates make the cross connection from G to E.<sup>1</sup> In contrast, providing service to an existing Bell Atlantic-New York customer requires

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<sup>1</sup> RCN's Brief, p. 3; WorldCom's Brief, p. 3.

connection of A to B.<sup>1</sup> Within this structure, Bell Atlantic-New York offers to make available a variety of mechanisms to realize these connections; competitors expressed interest in utilizing specific mechanisms, depending upon their own facilities and market entry plans; they also requested certain modifications. In addition, some competitors consider all the manual proposals technologically retrograde, unnecessarily expensive, and discriminatory, inasmuch as Bell Atlantic-New York makes a single cross connection on the MDF to connect a link and a port for its own customer.<sup>2</sup>

Generally, competitors criticize Bell Atlantic-New York's proposals for the dependence upon manual connections, with their potential for introducing human error;<sup>3</sup> many competitors see these proposals as a technological step backwards and discriminatory, in that Bell Atlantic-New York may connect its customers using digital methods. Bell Atlantic-New York indicates a generally lower installation trouble rate and shorter mean time to repair for competitors' lines than for its own retail installations. However, although failure rates are low,

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<sup>1</sup> Customers served by digital loops--now 7% but a growing proportion--are combined or multiplexed onto a digital carrier, typically Integrated Digital Loop Carrier (IDLC), and transmitted to a central office. These loops are not individually separated and cross connected at the Main Distribution Frame (MDF), but go through a digital cross connection directly into the switch. To employ any of the incumbent's methods may require replacing the digital loop with copper to allow a manual connection.

<sup>2</sup> WorldCom's Brief, p. 6.

<sup>3</sup> A Bell Atlantic-New York technician demonstrated a manual cross connect during the technical conference, using the gun-style tool used by the company's frame technicians (Tr. 310-312). In fact, the tool failed to complete the connection correctly on the first attempt; the failure was immediately identified and remedied. Parties are polarized as to the efficacy and error rates of these manual functions, some competitors asserting all manual connections are opportunities for failure, the incumbent asserting its tools and methods are essentially error-free.

it is difficult to draw a meaningful conclusion, because in absolute numbers the competitor lines represent a tiny proportion of Bell Atlantic-New York's loops: roughly one tenth of one percent.<sup>1</sup>

A second common concern of competitors is the potential for exhaustion of collocation space, both building space and MDF space. Of concern was Bell Atlantic-New York's inability to respond to questions concerning availability of space or the need for MDF expansion.<sup>2</sup> Moreover, facilities-based competitors that employ collocation for their own networks express concern that finite space resources will be used unnecessarily for competitor element combination purposes. Finally, perhaps of greatest import, competitors stressed the limitations to Bell Atlantic-New York's capacity to fill collocation orders. According to Bell Atlantic-New York, the interval for provision of physical collocation is 76 business days; for virtual collocation, 105 business days. According to the Pre-filing, at current capacity Bell Atlantic-New York can provision 15 to 20 new collocation arrangements monthly.<sup>3</sup> Although Bell Atlantic-New York charges that lack of competitor forecasting constrains its collocation scheduling, it only offers to attempt to smooth demand through negotiations with competitors: a proposal read by competitors as signalling longer intervals.<sup>4</sup>

Nor do the modified collocation proposals offer significant time savings. The various collocation proposals all require approximately the same intervals. Further, Bell Atlantic-New York's witness testified it could take from six to 18 months to augment an MDF if additional space were needed;<sup>5</sup>

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<sup>1</sup> Bell Atlantic-New York Response to Data Request 9S.

<sup>2</sup> See Bell Atlantic-New York Response to Data Request 15; Tr. 259-260.

<sup>3</sup> Bell Atlantic-New York Pre-filing, p. 23.

<sup>4</sup> TCG's Brief, p. 5.

<sup>5</sup> Tr. 276.

and the incumbent could not respond to a data request concerning any existing surveys of available MDF space statewide.<sup>1</sup> This collocation pace appears inadequate to meet mass market demand.<sup>2</sup> Bell Atlantic-New York claims that it can provision 300 lines a day in each of its 550 central offices, for a total of 41 million lines per year. However, this claim was illustrative of a theoretical maximum, rather than actual current capacity.<sup>3</sup> The incumbent's calculations of demand are premised upon current demand for cross connects and MDF space in central offices, rather than what is likely to be the demand in a genuinely competitive market, in which customers not only move to competitors and back to the incumbent, but between competitors.

#### Proposed General Findings

The ultimate issue in this proceeding is whether any, or some combination of, the options offered by Bell Atlantic-New York and other parties comply with the incumbent's §251(c)(3) duty to provide unbundled network elements in a manner that allows requesting competitive carriers to combine them in order to provide telecommunications service. This incumbent local exchange carrier obligation implies, at its core, that competitors have a method to combine elements that, while it need

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<sup>1</sup> Tr. 259; Bell Atlantic-New York Response to Data Request 15.

<sup>2</sup> An end-user party, DOD, for example, urges the Commission to give competing carriers the maximum flexibility to offer services in competition with Bell Atlantic-New York, and to increase the opportunities for competitors to provide innovative services. As an end-user, it attests that the development of competition has been slow outside of regions with a high concentration of business subscribers. DOD explains its need for reliability, redundancy, service quality and technical innovation. DOD urges the Commission to require Bell Atlantic-New York to demonstrate that competitors will be able to use elements efficiently and combine them in any technically reasonable configuration, holding the incumbent to the burden of proving that competitors can efficiently combine elements.

<sup>3</sup> Tr. 119; Bell Atlantic-New York Response to Data Request 11.

not be perfect, is commercially reasonable and nondiscriminatory with respect to ubiquity, cost, timely provision, service quality, and reliability. To its credit Bell Atlantic-New York has developed smaller-cage, shared, and collocation assembly options in accord with the Pre-filing. Several competitors have taken advantage of or indicated interest in these offers.

However, without reaching the issue of whether collocation, in the abstract, as a matter of law constitutes a nondiscriminatory form of obtaining and combining elements, as a matter of fact on this record and under these conditions, none of the methods or combinations of methods offered by Bell Atlantic-New York can be said to meet this test. The lack of a demonstrable software method or its equivalent means that a mass market entry competitor is unlikely to be able to obtain and combine loops and ports ubiquitously on a mass scale. At this time, the availability of network elements on the terms and conditions contained in the Pre-filing serves this purpose. This record indicates unequivocally that Bell Atlantic-New York's options alone, absent provision of the platform (or another electronic or otherwise seamless and ubiquitous method), are unacceptable to support combination of elements to serve residential and business customers on any scale that could be considered mass market entry. Given this record, at this time, absent the provision of the element platform pursuant to the Pre-filing, Bell Atlantic-New York would be in compliance neither with §251(c)(3) nor, consequently, §271(c)(2)(B)(ii).

With the Pre-filing in place, however, and assuming Commission resolution of the enhanced extended link issues, Bell Atlantic-New York's options provide adequate opportunity for market entrants to serve residential and business customers, including business customers in the New York City central offices in which at least two collocation cages are housed.

Based on the parties' filings, comments upon options, evidence adduced at and following the technical conference, post-conference briefs, the advisory Staff investigation, and review of the records in related pending Commission proceedings, my

overall recommendation is that the Commission approve a group or menu of options to be provided by Bell Atlantic-New York to offer unbundled network elements to its competitors so as to allow the requesting carriers to combine these elements to provide telecommunications service. To comply with the Act, this menu must include either the Pre-filing terms and conditions, or some comparably effective electronic or otherwise ubiquitous and timely interface for network element provisioning and combination.

#### THE LEGAL ISSUES

##### The Legal Obligations of the Incumbent

Bell Atlantic-New York asserts that its offerings exceed the requirements of the Act. In its view, its voluntary agreement to provide competitive LECs with certain combinations of elements, and its alternatives to traditional collocation, meet its obligation under §251(c)(3) of the Act. Because its Pre-filing offers certain combinations of network elements--the switch sub-platform and enhanced extended loop--Bell Atlantic-New York asserts it has reduced the competitive LECs' need to combine elements themselves to the combination of loop and port. Further, it asserts that its assembly room and assembly point offerings alleviate the need for central office conditioning, providing a more available and less expensive method to combine voice grade loops and ports.

AT&T asserts that Bell Atlantic-New York must demonstrate that competitive LECs can access unbundled network elements and combine them in accordance with §§251 and 252, in order to satisfy the requirements of §271(c)(2)(B)(ii). It asserts that Bell Atlantic-New York's options, which it characterizes as variations on the theme of manual attachment of jumper wires and mandatory collocation, are inadequate and discriminatory under §251 and the Eighth Circuit decision. AT&T asserts its software combination proposals satisfy the Act, and provide the sole basis for non-discriminatory and pro-competitive market entry.

Parsing §251(c)(3), AT&T asserts that the incumbent must first abide by the terms and conditions of its interconnection agreements, negotiated in good faith, arbitrated by state commissions, and approved by those commissions subject to federal judicial appeal.<sup>1</sup> AT&T therefore takes issue with Bell Atlantic-New York's statement of its legal obligations: that its voluntary agreement under the Pre-filing to provide competitive LECs with certain combinations and access to unbundled elements through methods other than collocation are beyond what is required by the Act, and therefore it meets its §251(c)(3) obligations with its voluntary Pre-filing. AT&T argues that no voluntary offer by Bell Atlantic-New York comports with the Act requirements. In addition, it asserts Bell Atlantic-New York's formulation deprives competitive LECs of their rights to good faith negotiation, arbitration, litigation over the approval of agreements and federal judicial appeal.

At present, this issue is under consideration by the Commission in the context of a petition for declaratory and other relief by AT&T and others.<sup>2</sup> The respective rights and obligations of the parties under tariff and interconnection agreements are the subject of negotiations and other proceedings as well. However, without reaching this legal issue here, as a matter of fact the recommended finding is that upon review of these offered options, the Pre-filing terms and conditions concerning provision of combined elements are a necessary component of Bell Atlantic-New York compliance with §§251(c)(3) and 271.

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<sup>1</sup> 47 U.S.C. §§251(c)(3), 251(c)(1)(3), 252(a)(b), 252(c)(1), and 251(e)(6).

<sup>2</sup> Case 97-C-0271, Application of Bell Atlantic-New York for In-Region InterLATA entry - Joint Motion for Declaratory Judgment and Stay of Proceedings.

The Asserted Requirement of  
Physical Separation and Reconnection

Bell Atlantic-New York asserts the Act and the Eighth Circuit decision require a physical separation or unbundling of network elements, and a concomitant physical recombination of these elements by competitors. In its view, AT&T's recent change proposal or, for that matter, any method not entailing physical, manual disconnection of the loop from the port, fails the Eighth Circuit test. It characterizes AT&T's recent change proposal as requiring merely the deactivation and reactivation of the loop, as customers were taken out of service and then restored, as a result of competitive LEC instructions to the incumbent's switch. Bell Atlantic-New York, supported by Time Warner, maintains that the functions carried out by a hypothetical recent change method would not constitute the unbundling of the loop and port by the incumbent and their recombination by the competitor within the meaning of §251(c)(3) of the Act, as interpreted by the Eighth Circuit. In other words, Bell Atlantic-New York rejects logical unbundling on the ground that only a physical disconnection, and physical reconnection of the loop and the port, conform to the Act and Eighth Circuit requirements.

AT&T replies that Bell Atlantic-New York's witnesses referred to the recent change process as disconnection; and that taking the customer out of service by electronic, as opposed to manual, means, complied with the Eighth Circuit requirements.<sup>1</sup>

While ubiquitous, timely recombination, consistent with mass market entry, is essential, that requirement is best fulfilled in New York at this time by the Pre-filing terms and conditions, in conjunction with Bell Atlantic-New York's other

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<sup>1</sup> In MCI's view, by contrast, neither the incumbent nor the AT&T options comply with the Act; MCI urges the Commission to hold that only by providing competitors with MCI's proposed forms of already-combined elements will Bell Atlantic-New York be consistent with §251(c)(3). As this proceeding was narrowly defined to consider options for competitor recombining of elements, MCI's proposals were not admitted at the technical conference.

offerings. The only electronic method under consideration for competitors to combine elements themselves, AT&T's recent change proposal, is insufficiently developed to be adopted at this time. However, further exploration of the development of this option in relation to the incumbent's existing or legacy systems is warranted.

As a threshold matter, the proposed finding is that if an electronic system functionally unbundles and recombines elements, in today's network, that complies with the Act.<sup>1</sup> As the Eighth Circuit held, a competitor need not have facilities of its own in order to obtain access to the incumbent's network elements.

#### The Standard of Review

While this proceeding was initiated by the Commission as an stand-alone inquiry, its genesis is in parallel proceedings pursuant to state law and §§251, 252, and 271 of the Act.<sup>2</sup> In examining options, criteria were adopted to evaluate compliance with (1) the Act; (2) the policies and precedent of this Commission; (3) current federal judicial case law; and (4) the Bell Atlantic-New York Pre-filing.<sup>3</sup> In order to meet these standards, an option must be universally available, and must be provided pursuant to interconnection agreements, as well as under tariff. In addition, to meet the "nondiscriminatory" requirement of §251(c)(3), there should be, if not identity, rough comparability between the burden Bell Atlantic-New York places upon its own retail operation to combine elements and provide them to customers, and that placed upon competitors to do the same.

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<sup>1</sup> The term "network element" includes "features, functions, and capabilities." See 47 U.S.C. §153(29).

<sup>2</sup> 47 U.S.C. §§251, 252, and 271.

<sup>3</sup> Case 97-C-0271, Pre-filing Statement of Bell Atlantic-New York, filed April 6, 1998 (the Pre-filing).

Components of this comparable burden include whether options are provided on a commercially reasonable, timely basis, and whether they function in such a way as to allow a competitor to obtain and combine network elements on a scale that is consistent with reasonable expectations of competitive volumes. Options were examined for ease of competitive entry, and for compatibility with the eventual development of facilities-based competition in New York. Options were examined as to their impact on the service to end-users, customers of both incumbent and competitor carriers; and their impact on the security and reliability of the network. Finally, options were analyzed for ease of customer migration to a competitor's own facilities, to another competitive LEC, or back to Bell Atlantic-New York.

These criteria were presented to the parties in rulings and at the Technical Conference. Parties were invited to comment on or add criteria; as none did, these are considered accepted as the relevant standards by which to measure the options. Parties ranked, in testimony and in brief, the options presented on a numerical scale from one to 10, in these categories.

The method employed is not based on the assumption that the goal is to recommend one panacea. In light of the diversity of market entry strategy, customer base, financial concerns, and timetable of the players in the New York competitive market, the goal is to present the Commission with a range of options, toward the end of ensuring that Bell Atlantic-New York provides its competitors a menu of choices that, as a totality, complies with these criteria. Indeed, competitors did not agree with each other as to which options were preferable, and evinced diverse strategies and needs. This heterogeneity invites a menu approach to produce a working model for element combination by competitors.

Bell Atlantic-New York's  
Enhanced Extended Link Offering

Although the purview of this proceeding was defined narrowly in the instituting order, at the technical conference a

considerable amount of effort was expended to clarify and define Bell Atlantic-New York's enhanced extended link offering, a Bell Atlantic-New York combination of elements. Its availability affects the utility of the other combination options. The extended link offering eliminates the need for physical collocation in every Bell Atlantic-New York central office, dramatically reducing costs and expanding the competitively reachable customer base. Facilities-based competitors see the potential, in this offering, of making competitive services available to smaller users and less densely populated areas. Facilities-based competitors indicated that the combination of loops with central office multiplexing functions and interoffice transport was of critical concern, as offering to promote the fullest deployment of new technologies and diverse services.<sup>1</sup> During the technical conference, however, it appeared that Bell Atlantic-New York indicated it would restrict the use of extended link to the provision of local exchange dial tone service.<sup>2</sup>

Facilities-based competitors argue this restriction violates the Act and the terms of the Pre-filing, and assert Bell Atlantic-New York would require competitors to downgrade their networks from their advanced DS1 and DS3 capabilities to Bell Atlantic-New York's DS0 architecture. Citing Bell Atlantic-New York promotions for free technology upgrades, competitors charge the restriction is "profoundly anti-competitive."<sup>3</sup> e.spire views enhanced extended link as the most attractive proposal advanced, and urges the Commission to define it as an unbundled network element and to ensure it is offered free of any

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<sup>1</sup> Intermedia's Brief, pp. 1-2. Also of concern to Intermedia was that Bell Atlantic-New York presented enhanced extended link as a voluntary offering; Intermedia and CompTel urge the Commission to define enhanced extended link as a network element and require Bell Atlantic-New York to provide it to competitors irrevocably and without restriction (Tr. 625).

<sup>2</sup> Tr. 764-767, 773.

<sup>3</sup> Intermedia's Brief, p.3.

restrictions.<sup>1</sup> Bell Atlantic-New York, following the technical conference, chose not to address these arguments, pending its expected tariff filing including this offering.<sup>2</sup> To avoid duplicative litigation, and because the tariff was filed subsequent to these parties' comments, issues related to enhanced extended link will be treated in the tariff review process, not here. However, Commission resolution of these issues is a component of §251(c)(3) compliance.

THE OPTIONS FOR NETWORK ELEMENT  
COMBINATION AND PROPOSED SPECIFIC FINDINGS

Grouping the numerous options sponsored by parties, there were six distinct methods proposed, with some different subsets within several of the options. The six options are: (1) physical collocation (traditional, small cage, and shared cage) (Bell Atlantic-New York); (2) SCOPE (Bell Atlantic-New York); (3) identified space collocation (Covad and Intermedia versions); (4) virtual collocation with robot (Bell Atlantic-New York); (5) assembly room/point (Bell Atlantic-New York); and (6) recent change memory (AT&T). Each option is analyzed below, taking into consideration the sponsors' initial filing and other parties' comments; the technical conference; subsequent responses to data requests; Staff conferences with parties and Staff investigation; the parties' post-technical conference briefs; and portions of the records and filings of related proceedings, where appropriate.

Option I -- Physical Collocation and Shared Cage

Traditional physical collocation generally allows a competitive LEC to place its equipment in an environmentally conditioned, secured area of Bell Atlantic-New York's central

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<sup>1</sup> e.spire's Brief, pp. 2-4.

<sup>2</sup> Bell Atlantic-New York's Summary Presentation, p. 2, n. 2.

office.<sup>1</sup> Specifically, Bell Atlantic-New York constructs a 100-square foot locked wire fenced-in area, or cage, in a segregated area of its central office building and the competitive LEC is allowed to place its transmission and multiplexing<sup>2</sup> equipment in the dedicated caged space. For combining elements, the competitive LEC installs a simple frame cross connect, and Bell Atlantic-New York runs tie cables from the switch and link sides of its MDF<sup>3</sup> to the competitive LEC frame in the cage. In addition, Bell Atlantic-New York would make cross connections at the MDF.

Bell Atlantic-New York has now offered to construct less costly 25-square foot cages to allow a competitive LEC that doesn't need the larger space for access to unbundled elements. In addition, the 25-square-foot cages may allow collocation in central offices lacking space for the larger cage.

Bell Atlantic-New York also offered to allow caged areas to be shared among competitive LECs. In this case, a collocated competitive LEC may host another competitive LEC. Bell Atlantic-New York anticipates no additional costs resulting from a shared cage. Bell Atlantic-New York would charge the host competitive LEC but accept orders from both the host and the subsequent occupants.

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<sup>1</sup> Tr. 64.

<sup>2</sup> A multiplexer allows two or more signals to pass over one communications circuit: a telephone line, microwave circuit, or television signal.

<sup>3</sup> The MDF is a wiring arrangement that connects the telephone lines coming from outside the central office, on one side, and the internal lines on the other. An MDF may also carry protective devices and function as a central testing point.

1. The Sponsor's Evaluation

Bell Atlantic-New York asserts the efficacy of these methods can be demonstrated easily and implemented quickly.<sup>1</sup> It currently has 61 central offices with physical collocation.<sup>2</sup> Bell Atlantic-New York also asserts that these methods adequately can handle anticipated volumes. It can complete 300 combinations per day per office, which it asserts is a reasonable volume.<sup>3</sup> As many as 10,000 combination pairs fit in the 25-square foot cage, while the capacity of the 100-square foot cage is virtually unlimited.

Bell Atlantic-New York admits, however, that if a competitive LEC does not intend to put in its own facilities, and simply wants to market combinations of loops and ports, physical collocation is not a viable method,<sup>4</sup> because it is not cost-effective unless the competitive LEC needs physical collocation to locate other equipment in order to provide service over its own facilities.

Bell Atlantic-New York states that physical collocation poses minimal adverse impact on end users and network facilities, since the unbundled network elements are being combined on facilities which, except for the competitive LEC cross connect frame, are still within its control.<sup>5</sup> In its estimation, a shared cage would have a slightly higher possibility of adverse impact because of commingling of equipment of several carriers.

Bell Atlantic-New York states that these physical collocation methods allow a competitive LEC easily to migrate a customer to its own facilities-based service, since the customer's loop is already terminated at the competitive LEC

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<sup>1</sup> Tr. 133-35.

<sup>2</sup> Response to Data Request #17.

<sup>3</sup> Tr. 133-35.

<sup>4</sup> Tr. 137.

<sup>5</sup> Tr. 140.

cross-connect frame.<sup>1</sup> The competitive LEC would have to add transmission equipment, if none were present. Further, Bell Atlantic-New York asserts these methods allow for a customer to easily migrate back to Bell Atlantic-New York or another competitive LEC.<sup>2</sup>

Bell Atlantic-New York assessed space availability in 100 of its 522 central offices; standard physical collocation is provided in 75 locations. Of those 100 offices, 89 offices could support additional traditional physical collocation. Eleven have no room to support additional 100-square foot cages. Eight of these can accommodate 25-square foot cages; two cannot. The capacity in the other 422 central offices is undetermined.<sup>3</sup>

While physical collocation assertedly makes simple the transfer of customers currently physically connected to Bell Atlantic-New York's switch, another step is required for the roughly seven percent of customers currently served by digital technology.<sup>4</sup> Links of customers served by Integrated Digital Loop Carrier (IDLC) could not be as easily unbundled. Bell Atlantic-New York notes that it would have to transfer the customers' service either to Universal Digital Loop Carrier (UDLC) or to an available copper pair,<sup>5</sup> before a competitor could combine the loop with either its own or a Bell Atlantic-New York port.

## 2. Other Parties' Evaluations

Some competitors, for example, e.spire, have found traditional physical collocation often unavailable, sometimes

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<sup>1</sup> Tr. 141.

<sup>2</sup> Tr. 142.

<sup>3</sup> Tr. 105; Bell Atlantic-New York Response to Data Request 16S.

<sup>4</sup> Bell Atlantic-New York Response to Data Request 4.5.

<sup>5</sup> Tr. 120.

technically unnecessary, and prohibitively costly.<sup>1</sup> e.spire does, however, support the 25-square foot cage alternative.

As to the impact on network reliability and end user service, AT&T states it wouldn't take advantage of collocation to combine Bell Atlantic-New York's loops and ports even if offered gratis, because of the potential customer harm, citing central office plant operating error as order volumes dramatically increase.<sup>2</sup> Intermedia also notes the additional test points that are inserted by this or any other physical method portend longer repair times.<sup>3</sup>

COVAD asserts that competitive LECs endure "retrograde, laboriously slow, costly, and non-ubiquitous methods of physical collocation."<sup>4</sup> It views Bell Atlantic-New York's proposals as impractical for efficient offering of innovative, high bandwidth services to residential and business neighborhoods in New York State. COVAD, which intends to deploy digital subscriber line (DSL) technologies,<sup>5</sup> asserts its business entry strategy depends upon collocation in Bell Atlantic-New York central offices on a "blanket-area basis."<sup>6</sup> Its concern is that a significant percentage of offices will, according to Bell Atlantic-New York's unilateral determination, have no space for collocation cages, and that the incumbent's collocation provisioning practices will not provide a swift, efficient, and ubiquitous coverage. In contrast, Bell Atlantic-New York asserts 28 standard collocation sites are about to be turned over to COVAD.

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<sup>1</sup> e.spire's Brief, p. 5.

<sup>2</sup> Tr. 195-96.

<sup>3</sup> Tr. 181.

<sup>4</sup> COVAD's Comments, p. 1.

<sup>5</sup> COVAD defines DSL to cover the range of digital technologies enabling the provision of high-speed data and basic voice transmission services over copper loops.

<sup>6</sup> COVAD's Comments, p. 3.

3. Discussion

Collocation was developed as a method for facilities-based competitive access or service providers to establish a point of presence at the incumbent local exchange carrier's central office, in order to route traffic to and from their own remote switches. In all of its variety of forms, it is well-established to serve that purpose. At issue is whether collocation is a nondiscriminatory offering for the purpose of allowing competitors to access and combine the incumbent's unbundled network elements.

On its face, physical collocation allows a competitive LEC that is currently collocated in a Bell Atlantic-New York central office to combine network elements. The possibility of shared space may also allow a competitive LEC not currently collocated to gain access in order to combine elements. However, the record gives cause for concern about space availability for new competitive LECs. The availability of space in over 400 offices is unknown. While the addition of the 25-square foot cage option might alleviate the space shortage, it is a limited solution. The record shows that the shared space might not provide for easy migration to facilities-based service if more space is needed for transmission equipment and the loops have to be moved to another location.<sup>1</sup> In addition, the smaller space was not shown to be sufficient for combining services other than POTS.<sup>2</sup>

The record also reveals that Bell Atlantic-New York can construct a limited number of cages in a month--15 to 20.<sup>3</sup> Combined with the 76- to 105-business-day-wait to build a cage--and that only if forecast by the competitive LEC--market inroads via combining elements will be tediously slow, insufficient to

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<sup>1</sup> Tr. 200.

<sup>2</sup> Tr. 212.

<sup>3</sup> Tr. 157.

handle possible ubiquitous mass market entry on a commercially reasonable schedule.<sup>1</sup>

Further, Bell Atlantic-New York concedes that the cost of collocation, if used strictly for combining unbundled elements, is not attractive.

#### 4. Proposed Finding

Traditional physical collocation is a commercially reasonable and highly effective method for competitive LECs to obtain and combine elements where the competitive LEC is already collocated or intends to collocate for additional purposes. Traditional physical collocation is not an economical choice solely for the purpose of combining Bell Atlantic-New York-provided loops and ports; nor has it been shown to be ubiquitously available statewide. Small-cage and shared-cage collocation mitigate the cost burden, but have capacity and security limitations.

#### Option II -- Secured Collocation Open Physical Environment (SCOPE) (Bell Atlantic-New York)

SCOPE is a physical collocation area located in a secured part of the central office, but without a cage enclosure around an individual competitive LEC's equipment. SCOPE entails a conditioned environment identical to a traditional physical collocation environment. The SCOPE is isolated and separated from Bell Atlantic-New York, central office environment, differentiating SCOPE from virtual collocation. Using SCOPE, the collocator is responsible for the installation and maintenance of its equipment. SCOPE uses a shared point of termination (SPOT) bay<sup>2</sup> that may be shared with other competitive LECs using SCOPE.

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<sup>1</sup> Tr. 180.

<sup>2</sup> A point of termination bay is a small distribution frame adjacent to a collocation area. It is used to cross connect ILEC cabling from an MDF to the competitive LEC cabling. A SPOT bay is used for multiple competitive LECs.

The collocator can place equipment in this arrangement and expand its capacity by adding increments to the frames on the SPOT. SCOPE requires substantially less space per competitive LEC than traditional physical collocation.

1. The Sponsor's Evaluation

Bell Atlantic-New York concludes that SCOPE is a workable method of collocation and that it has the capability to implement SCOPE now.<sup>1</sup> The interval for provisioning a SCOPE collocation arrangement is 76 business days, although if physical collocation already exists in an office, installing SCOPE may be faster. Adding a second competitive LEC to an already established SCOPE arrangement may reduce the required installation time. As to SCOPE's ability to handle anticipated volumes, Bell Atlantic-New York asserts SCOPE can meet any reasonable expected volume for combinations.

As to cost effectiveness, Bell Atlantic-New York and some competitive LECs agree that this is not the plan for a competitive LEC to use solely for loop and port combinations.<sup>2</sup> Bell Atlantic-New York asserts the allocation of cost for SCOPE space is reasonable. The cost is amortized based on proportional amount of floor space being used, which can be as little as 15 square feet.<sup>3</sup> SCOPE is less expensive than traditional physical collocation because the competitive LEC is buying only enough space for its equipment, rather than a larger portion of the central office.<sup>4</sup> In addition, service access charges may be less in a SCOPE arrangement because some POT bay elements are shared.<sup>5</sup> As to end user impact, the cageless environment

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<sup>1</sup> Tr. 332.

<sup>2</sup> Tr. 333.

<sup>3</sup> Tr. 439.

<sup>4</sup> Tr. 322.

<sup>5</sup> Tr. 378.

compromises the security of the system, because of the open access to all collocated competitive LECs. The installation of cabinets around the competitive LECs equipment in the SCOPE environment may minimize some of the security risk inherent in an open environment.<sup>1</sup>

## 2. Other Parties' Evaluations

All parties agree that SCOPE has been demonstrated to be a workable collocation arrangement. The facilities-based competitive LECs believe SCOPE is a viable alternative collocation option, but is unnecessary simply as a method to provide unbundled network elements. The facilities-based competitive LECs state that alternatives are positive and suggest that innovation should be encouraged.<sup>2</sup> Other competitive LECs agree that SCOPE works, but consider it altogether unnecessary.<sup>3</sup> Intermedia disagrees with Bell Atlantic-New York's calculation of the amount of space required, and the attendant cost.<sup>4</sup>

Competitors question how long it will take to provision SCOPE with a limited workforce, which also will affect Bell Atlantic-New York's ability to handle increasing volume.<sup>5</sup>

As to volume transactions, Intermedia believes that, once built, SCOPE can accommodate more competitors more quickly than other collocation methods.<sup>6</sup> There is support for the conclusion that SCOPE will be able to handle foreseeable volumes.

With regard to security arrangements, Intermedia states it has had no problem with security in a similar arrangement in Florida, in which entry is restricted by access cards with an

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<sup>1</sup> Tr. 319.

<sup>2</sup> Tr. 404, 414.

<sup>3</sup> Tr. 403, 413.

<sup>4</sup> Tr. 324.

<sup>5</sup> Tr. 397, 405.

<sup>6</sup> Tr. 327-328.

electronic log.<sup>1</sup> Bell Atlantic-New York counters that system-wide installation of central office card readers would be both ineffective and very expensive.<sup>2</sup> It also notes it has no universal policy on vendor access to its buildings: security ranges from the methods of procedures for specific jobs in New York City's manned buildings to those for unmanned central offices in rural upstate New York. In addition, there are different security standards for janitorial staff, vendors, and contractors,<sup>3</sup> driven by duration of a contract or relationship rather than type of service.<sup>4</sup> Bell Atlantic-New York has had some problems with theft, whereas Intermedia reports none in its Tampa and Atlanta offices even when equipment is left unsecured in the common area.<sup>5</sup>

As to migration of customers, AT&T asserts this method fails to provide parity with Bell Atlantic-New York because of the additional cross-connects required of competitors.<sup>6</sup> In addition, SCOPE is limited in that the competitor acquiring the customer must be collocated in the same central office.

Concerning the ability to provide SCOPE in a timely manner, issue was joined as to how many technicians can work on an MDF efficiently. Considering the pressure on central office space, Bell Atlantic-New York states that space demands for its own internal purposes are much greater than those from the competitive LECs.<sup>7</sup> Also troubling to competitors is the lack of information concerning Bell Atlantic-New York's ability to expand MDFs as necessary to accommodate collocation demand.

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<sup>1</sup> Tr. 444.

<sup>2</sup> Tr. 445.

<sup>3</sup> Tr. 364-366.

<sup>4</sup> Tr. 452-453.

<sup>5</sup> Tr. 347.

<sup>6</sup> Tr. 401.

<sup>7</sup> Tr. 256-257.

3. Discussion

As with other collocation methods, SCOPE adds cross-connects to the system, which adds human error to the equation of network security and end-user impact. Although several competitive LECs felt this was not an insurmountable problem, others felt this could degrade customer service and increase the possibility of customer outage.<sup>1</sup>

Some competitors were most concerned about SCOPE costs; aside from this, network security is the most troubling issue attending this option. Bell Atlantic-New York and the competitive LECs agree that the risk assumed by the competitive LECs using SCOPE is greater than in a secured traditional physical collocation environment. SCOPE does have a limited measure of security because it is located inside the central office building; however, competitive LECs would not have parity with the incumbents's security. Varying levels of security were requested by different competitors; competitors' collocation choices may depend on the number of customers and type of equipment. Diverse levels and methods of security to be maintained by Bell Atlantic-New York in the SCOPE environment were discussed, including limiting access and the use of keys or cards. The competitive LECs also have the flexibility to install cabinets around their equipment.

As to the ability to migrate facilities, SCOPE has definite strengths. There is no inherent problem with a migration of facilities to the incumbent or a competitor, with coordination. Some facilities-based carriers expressed that migration to a new carrier using the combination of SCOPE and extended link is what they need today.<sup>2</sup>

Concerning migration to other carriers, SCOPE's limitation is that the competitive LEC must be collocated in the same central office, and that extensive coordination may be

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<sup>1</sup> Tr. 329, 335, 396.

<sup>2</sup> Tr. 335.

necessary between the affected carriers. As Bell Atlantic-New York stated:

Relative to migration to other carriers, it rates a little lower because it will require extensive coordination between carriers flipping customers . . . it is going to require coordination beyond just Bell Atlantic in that you are going to flip a customer from your space to somebody else's and right now from a CLEC perspective we're probably not very good at doing that and that's an honest answer.<sup>1</sup>

SCOPE is advantageous to facilities-based competitive LECs, and they generally support it. Competitive LECs are able to maintain their own equipment and select their own vendors; however, some prefer the enhanced extended link option to be provided with SCOPE. SCOPE provides parity with Bell Atlantic-New York in the amount of time for installation of cabling and reduces costs, essential for competitors effectively to enter the market. On the other hand, installation of a SCOPE arrangement is a lengthy process--the interval is 76 business days, or approximately 60 business days if it is the second competitive LEC in an area where there is room in an established SCOPE area.

Finally, competitors request a modification of SCOPE to permit them to run cross-connects among their installations in a SCOPE configuration, currently not allowed by Bell Atlantic-New York.<sup>2</sup> Competitive LECs protest that Bell Atlantic-New York requires them to purchase either its tariffed dedicated cable support or dedicated transit service to connect their equipment in the SCOPE offering, while in a shared collocation cage competitive LECs are free to cross-connect among their installations without restriction. This issue should be explored by the parties during the collaborative session.

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<sup>1</sup> Tr. 329.

<sup>2</sup> See e.spire's Brief, p. 6; Tr. 269, 433; Bell Atlantic-New York Responses to Record Requests 15.5 and 19.

4. Proposed Finding

SCOPE can be made available in offices with limited or no traditional physical collocation space; it is an attractive alternative to some competitors. The greatest concerns are those of security and network reliability. To address these concerns, competitive LECs should be required to place locked cabinets around their equipment or institute such other security measures as can be determined through the scheduled collaborative discussions, subject to Commission approval. Also of concern are the installation intervals.

Option III -- Identified Space Collocation (COVAD)

Under this proposal a collocator would install and maintain its own equipment in a central office in a defined, finite, and separated space. Collocators' equipment, racks and shelves would not be commingled with those of the incumbent, but would be intermingled with that equipment throughout the central office where there is available space.<sup>1</sup> The equipment, installation and procedures involved would meet standard, non-discriminatory industry requirements. Collocators would pay pro-rata rental charges for the central office space utilized.

Since collocator personnel and equipment are not physically segregated from the incumbent's, alternative security arrangements are of particular significance in this proposal. An Intermedia variation is to allow competitive LEC personnel escorted by a Bell Atlantic-New York security escort into the incumbent's central office to access virtually collocated equipment.<sup>2</sup>

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<sup>1</sup> This distinction is made based on the fact that competitive LEC equipment would be placed in identified racks dedicated to particular collocators; in this sense it is segregated from Bell Atlantic-New York's equipment.

<sup>2</sup> Intermedia's Brief, p. 7.

1. The Sponsor's Evaluation

COVAD ranks this as the most desirable overall of the available collocation options, assigning it numerical scores in each category equal to, or higher than, all other collocation approaches.<sup>1</sup> COVAD asserts this approach has multiple advantages compared to all other collocation methods, and only one potential disadvantage. Moreover, this method makes the best use of all available central office space.

COVAD believes that potential network security issues have been overblown by Bell Atlantic-New York, and that security measures can be tailored to the circumstances of each central office. Under its interconnection agreement with US WEST, COVAD asserts it will install and maintain its own equipment in US WEST's premises without the use of a cage.<sup>2</sup> It is allotted a separate, identifiable central office floor space in a non-caged area of the central office, in single-frame bay increments. In that space, COVAD may install equipment on its own racks and shelves, not commingled with those of US WEST. Space is made available within 45 days, where space and power are available, and COVAD pays rent based on its pro-rata share of space. COVAD asserts that US WEST is making this form of physical collocation available throughout its 14-state region. COVAD asserts that Bell Atlantic-New York overstates the security risk, that competitive LECs have an incentive to minimize harm to the network, that cageless arrangements are common in the telecommunications industry, and that Bell Atlantic-New York currently permits third party contractors to install equipment on a non-caged basis pursuant to its methods of procedure. COVAD cites the FCC concerns that the construction cost of physical security arrangements could serve as a significant barrier to entry and that incumbents have an incentive and the capability to

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<sup>1</sup> COVAD's Brief, Table 1.

<sup>2</sup> COVAD has not yet completed any non-cage collocation arrangements in Washington. Tr. 492-493.

impose higher construction costs than the new entrant might need to incur.<sup>1</sup>

## 2. Other Parties' Evaluations

Some competitive LECs (e.spire and Intermedia) actively support this proposal. e.spire considers it "one of the most efficient and attractive options examined at the Technical Conference."<sup>2</sup> Intermedia supports Covad's arguments that security concerns can be resolved, offering its escort alternative. Cablevision maintains that cageless collocation is "necessary if competitive LECs are to be able to compete."<sup>3</sup>

Other competitive LECs, while supporting, or at least not opposing, this method of collocation, consider it to have the shortcomings of other types of collocation for the purpose of combining unbundled network elements. For example, AT&T points out that the collocation alternatives considered at the technical conference require the same manual work at the main distribution frame to recombine unbundled loops and switching.<sup>4</sup> In the view of these competitive LECs, this is the fatal flaw of any type of collocation as a method of combining network elements.

Bell Atlantic-New York adds this method would deny it the ability to maintain adequate security over its own network facilities. It considers the resulting risks to its network and customers to be simply unacceptable.<sup>5</sup> Bell Atlantic-New York emphasizes the large number of competing carriers that would have access to its secure facility areas. While Bell Atlantic-New York acknowledges that it agreed to discuss the feasibility of

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<sup>1</sup> First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15803 (Local Competition Order), ¶598.

<sup>2</sup> e.spire's Brief, p. 8.

<sup>3</sup> Cablevision's Brief, p. 10.

<sup>4</sup> AT&T's Brief, p. 2.

<sup>5</sup> Bell Atlantic-New York's Summary Presentation, p. 5.

cageless physical collocations in its Pre-filing, it considers this commingling proposal a radical departure from historical secure arrangements, and fears the risk of unacceptable interference by competitors. It points out that some New York central offices have as many as seven collocating carriers, warning that open access to competitive LEC and Bell Atlantic-New York equipment without any structure to avoid disruptions of service, would create network outage problems. Finally, it asserts that unsecured cageless collocation would impair Bell Atlantic-New York accountability for its own customer service, and rejects proposed security devices as naive.<sup>1</sup>

### 3. Discussion

The record establishes a number of desirable attributes of COVAD's option, although it should be noted that the option was developed for interconnection purposes and not for combination of incumbent's loops and ports. The network security issues are troubling, however, and on these issues the record is not adequate to support a recommendation that Bell Atlantic-New York be required to provide this option. There may be available security measures to provide adequate network protection; however, supporters have not demonstrated that adequate security measures can be implemented, what those would be under all circumstances, or that the method's economic and scheduling advantages would not be vitiated by implementation of such measures. These issues can productively be a subject of the scheduled collaboration.

### 4. Proposed Finding

Bell Atlantic-New York should not be required to provide this option immediately because of the lack of security

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<sup>1</sup> Bell Atlantic-New York cites the rejection of cageless collocation proposals by the FCC. Local Competition Order ¶1598.

protections; however, possible security measures should be explored in collaboration.

Option IV -- Virtual Collocation  
With Robot (Bell Atlantic-New York)

Bell Atlantic-New York currently offers virtual collocation, an arrangement by which the competitive LEC purchases equipment it wishes to use, and then sells the equipment to Bell Atlantic-New York for one dollar. Thereafter, Bell Atlantic-New York owns and maintains the equipment exclusively on the competitive LEC's behalf.

This arrangement could be used by a competitive LEC to recombine loops and ports through the use of a remotely controlled cross-connect device, or robot. Once the device is installed, Bell Atlantic-New York loops and ports could be terminated on the equipment and the competitive LEC could remotely recombine them. Bell Atlantic-New York would use its existing "hot cut" procedures in connecting its network to the device.<sup>1</sup>

1. The Sponsor's Evaluation

As to the demonstrability of this method, Bell Atlantic-New York rates it as highly as possible, citing the technical conference demonstration. Virtual collocation arrangements are, of course, already used, and Bell Atlantic-New York uses this type of cross-connect device in its network, albeit not for element recombination. Bell Atlantic-New York

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<sup>1</sup> Bell Atlantic-New York provided a demonstration at the technical conference of this device, produced by CON-X Corporation (CON-X). This device can be mounted in a standard equipment relay rack in a Bell Atlantic-New York central office. Using a robotics arm, the device places or removes connections as directed by the competitive LEC from a remote workstation. The CON-X robot can accommodate up to 1,400 loops, which it can connect to Bell Atlantic-New York and/or competitive LEC ports.

indicates that two competitive LECs are currently implementing these systems in New York.<sup>1</sup>

With respect to speed of implementation, Bell Atlantic-New York considers this method perfect. Its implementation period for virtual collocation is 105 business days; however, with only 12 robots in service, the ability of CON-X to manufacture sizable quantities has not been tested. That company has been able to deliver a robot within 60 days of order.<sup>2</sup>

As to this method's ability to handle foreseeable volumes of transactions, Bell Atlantic-New York is enthusiastic, again giving it the highest rating. As to cost effectiveness, however, Bell Atlantic-New York rates this method somewhat lower, although still highly, allowing that if all a competitive LEC wanted to do was reconnect loops and ports other options might be less expensive.

Concerning whether the method minimizes potential adverse impacts on either end users or the competitive LEC and incumbent networks, Bell Atlantic-New York rates this method as highly as its other collocation options. As to the ease of migration of customers to competitors' facilities-based service, Bell Atlantic-New York is very positive, rating it outstanding, inasmuch as the CON-X robot allows for the simultaneous connection of Bell Atlantic-New York and competitive LEC ports. Migrating a customer from a Bell Atlantic-New York port to a competitive LEC port can be done quickly and remotely with the robot. Regarding ease of migration of customers to a second competitive LEC or back to the incumbent, Bell Atlantic-New York considers this method excellent for migration back to its system, but slightly less so for migration to another competitive LEC, similar to its ratings for the other collocation methods.

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<sup>1</sup> Tr. 502.

<sup>2</sup> Tr. 512.

2. Other Parties' Evaluations

This method is rejected by all parties save Bell Atlantic-New York. Generally, competitors see it as adding another layer of expensive and trouble-producing equipment into the network for the recombiners. In particular, other parties rate the demonstrability of this method very low, asserting that the demonstration actually showed very little.

This method garnered considerable criticism from parties as to timeliness of provisioning. There is concern about the availability of enough robots and about the ability of competitive LECs to use the system without extensive training. Similarly, parties are unenthusiastic about this method's cost, stating that the system was really nothing more than an expensive pre-wired frame. Indeed, competitors see no advantage--and see considerable additional expense--in purchasing this equipment, as opposed to installing a pre-wired frame in a conventional virtual collocation arrangement.<sup>1</sup> WorldCom notes that where pre-wiring of cross connections would be critical, it is prohibited by Bell Atlantic-New York in favor of the robot, a retrograde and expensive alternative, in the competitor's view.

As to whether the method minimizes potential adverse impacts on either end users or the competitive LEC and incumbent networks, other parties rate it quite poorly, on the same grounds as they rate the other collocation options. Concerning ease of migration to facilities-based systems, other parties argue that once a competitive LEC had made the investment in this type of system to combine loops and ports, it would have a financial incentive to retain that arrangement and would be less inclined to move to offer a facilities-based service. On this ground, competitors give this method a fair or poor rating.<sup>2</sup>

Considering migration of customers to a second competitive LEC or back to the incumbent, parties again disagree

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<sup>1</sup> See, for example, Tr. 526-527.

<sup>2</sup> Tr. 536.

with the sponsor, rating this the method quite poor, because it would require coordination of three carriers.<sup>1</sup>

### 3. Discussion

The limited evidence indicates that this system apparently works, in the few instances where it has been used. Nationwide, there are 12 working robots in four systems.<sup>2</sup> There appear to be less expensive and quicker ways of combining elements. Bell Atlantic-New York's purported highlight of this method was the ability for a competitive LEC to move one of its customers from a Bell Atlantic-New York switch to its own. However, since this is done in a virtual collocation arrangement, the competitive LEC would not have the access it wants to the equipment; this would likely be unsatisfactory to most competitive LECs. In particular, most competitors requested the ability to use pre-wired frames rather than the robot and, in fact, CompTel contrasted the offering of an inexpensive pre-wired frame in a costly environment with an inexpensive virtual environment burdened by the costly robot.<sup>3</sup> Bell Atlantic-New York's explanation for its requirement that a robot make the link and port connection in a virtual environment while it will allow a pre-wired frame in all other situations was unconvincing. The collaborative phase of this case should examine how a pre-wired frame could be used in a virtual collocation environment to combine elements.

### 4. Proposed Finding

Bell Atlantic-New York's offering may be accepted by some competitors; however, it does not appear to meet their concerns and the robot requirement adds enormously to collocation costs without justification. The issue of allowing competitors

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<sup>1</sup> Tr. 537.

<sup>2</sup> Tr. 541.

<sup>3</sup> CompTel's Brief, p. 7, Tr. 608-610.

to provide pre-wired frames should be discussed in the scheduled collaborative sessions.

Option V -- Assembly Room and  
Assembly Point (Bell Atlantic-New York)

The assembly room and assembly point are innovative new options that Bell Atlantic-New York proposes to offer competitive LECs who seek to combine Bell Atlantic-New York links and ports. These options do not require the same conditioned space as traditional forms of collocation, and would therefore be less costly to competitive LECs not using any of their own elements. The assembly room would be located in an secure, unconditioned area of a Bell Atlantic-New York central office and could be shared by a number of competitive LECs.<sup>1</sup> The assembly point would be used in central offices where constructing an assembly room within the building is not feasible. The assembly point would offer competitive LECs the same technical means of combining Bell Atlantic-New York links and ports, but would either be mounted on the outside wall or pad mounted on the grounds of the central office.<sup>2</sup> The assembly room or point only provide voice grade loop and port combinations.

The assembly room or point would initially be subject to the same 76-business-day interval used for traditional physical collocation. Subsequent entrants would be able to obtain space in the assembly room or point more quickly.<sup>3</sup> Competitive LECs would be assigned a termination frame or portion of a termination frame, and could either pre-wire the frame or perform cross-connections as they acquire customers. The actual process of transferring a customer from Bell Atlantic-New York to

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<sup>1</sup> Tr. 553-554.

<sup>2</sup> Bell Atlantic-New York has indicated that it may in some cases place an assembly point in an unsecured location within its central offices (Tr. 558, 570).

<sup>3</sup> Bell Atlantic-New York's May 27, 1998 filing, p. 19.

the competitive LEC would be accomplished by Bell Atlantic-New York technicians performing a manual or hot cut.

1. The Sponsor's Evaluation

On the question of whether the assembly room/point could readily be demonstrated, Bell Atlantic-New York rates the assembly room/point extremely highly, stating that these were simply less complicated versions of traditional collocation.<sup>1</sup> While Bell Atlantic-New York has yet to construct an assembly room or point, the technology involved is not new or complicated and it would not be difficult for Bell Atlantic-New York to demonstrate its ability to deliver this service. Bell Atlantic-New York also rates the assembly room/point highly--although less highly--on how quickly the method could be implemented. The first of these is expected to be constructed by August 15, 1998.

Concerning whether the method can handle foreseeable volumes of transactions, Bell Atlantic-New York states that the assembly room/point could handle reasonably foreseeable volumes, and therefore rates the method very highly in that category.

Bell Atlantic-New York states that the assembly room/point was designed specifically for the combination of Bell Atlantic-New York loops and ports, and therefore rates it as highly as possible for cost efficiency.<sup>2</sup> Because the assembly room/point would not require conditioning, it would be less costly to a competitive LEC seeking to combine Bell Atlantic-New York voice grade loops and ports than other collocation options, according to Bell Atlantic-New York's preliminary cost estimates.<sup>3</sup>

Concerning whether the method minimized potential adverse impacts on end users, Bell Atlantic-New York notes that the assembly room/point offered a slightly less secure

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<sup>1</sup> Tr. 560.

<sup>2</sup> Tr. 561.

<sup>3</sup> Response to Data Request #22, as revised July 10, 1998.

environment than traditional collocation.<sup>1</sup> Bell Atlantic-New York notes that competitive LECs could install locking covers to be used within the assembly room for added security.<sup>2</sup> Because the assembly room/point uses the same hot cut procedure as other methods of combining elements, end users should not be adversely impacted if competitive LECs choose this method over others.

As to whether the method minimizes potential adverse impacts on the networks of the incumbent and the competitive LEC, Bell Atlantic-New York correctly notes that, under the assembly room/point scenario, the competitive LEC would not have its own network. In terms of this method's ability to minimize adverse impacts on its own network, Bell Atlantic-New York rates this method as highly as possible based on its similarity to traditional physical collocation.<sup>3</sup>

Regarding how easily a competitive LEC may migrate a customer from this method to its own facilities-based service, Bell Atlantic-New York notes that it would be more difficult to migrate a competitive LEC customer from elements combined via an assembly room/point to the competitive LEC's facilities-based service than with the more traditional collocation options, and therefore rates this method lower in that category.

On the issue of how easily a customer served using elements combined via an assembly room or point could be migrated back to Bell Atlantic-New York or to a competitive LEC using the Bell Atlantic-New York network, Bell Atlantic-New York rates the method very highly. For customers migrating to a facilities-based competitive LEC, Bell Atlantic-New York rates the method slightly lower, because the two competitive LECs would have to coordinate the cutover.<sup>4</sup> As with the question of moving a customer served by a competitive LEC via the assembly room/point

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<sup>1</sup> Tr. 561.

<sup>2</sup> Tr. 572.

<sup>3</sup> Tr. 562.

<sup>4</sup> Tr. 563.

to that competitive LEC's own facilities-based service, this transition could be difficult and has the potential to impact customer service.

2. Other Parties' Evaluations

As to timeliness of implementation, competitors assert that, in reality, this method of combining elements cannot be implemented quickly, particularly for the first competitive LEC in a given Bell Atlantic-New York central office. The interval for the initial competitive LEC would be 76 business days, and for subsequent competitive LECs or subsequent orders from the initial competitive LEC the interval would be 60 business days.<sup>1</sup> Further, the same Bell Atlantic-New York personnel now responsible for the construction of physical collocation arrangements would be responsible for assembly rooms/points, and Bell Atlantic-New York has committed to provision only 15 to 20 collocation arrangements per month.<sup>2</sup> Therefore, if all collocation requests were to cease, it would still take Bell Atlantic-New York more than two years to install an assembly room or point in each of its central offices.

According to CompTel, certain element combinations, for example, the loop and transport combination, would not be available using this method. Intermedia notes this option is unusable by it because it uses a T1 loop even to serve voice customers.<sup>3</sup>

AT&T correctly notes that this method would make it very difficult for competitive LECs to migrate customers to their own facilities, as a facilities-based competitive LEC would locate its equipment in conditioned space and the assembly room or point would be unconditioned space.<sup>4</sup> The competitive LEC

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<sup>1</sup> Tr. 556.

<sup>2</sup> Tr. 581-582.

<sup>3</sup> Tr. 590, 613; CompTel's Brief, p. 4.

<sup>4</sup> Tr. 600-601.

would therefore have to have each customer's loop terminations moved from the assembly room/point to the collocated space.

Parties note that the assembly room/point cannot meet reasonably foreseeable volumes of competitive LEC orders for such arrangements statewide because the initial construction is so time-consuming. Once an assembly room or point is constructed, it would likely be sufficient to handle foreseeable volumes of transactions within that office as customer conversions would be accomplished using the standard hot cut practice.<sup>1</sup>

### 3. Discussion

Overall, the assembly room/point concept is a creative, viable, economic way for competitive LECs to combine loops and ports in several central offices in the state. Because of the absence of any electronics in the assembly room/point,<sup>2</sup> this method probably has the least potential to adversely affect Bell Atlantic-New York's network of any of the collocation options. Because of the time delay associated with the installation of new assembly rooms or points, however, this would not be a feasible statewide entry strategy for even one competitive LEC. In fact, if competitive LECs were to attempt to use this method on a broad scale, Bell Atlantic-New York would be hampered in its ability to deliver traditional collocation arrangements to facilities-based competitive LECs. This possibility could delay provisioning to competitive LECs with facilities in place. Moreover, this offering is limited only to voice grade loop and port combinations.

### 4. Proposed Finding

Assembly room and assembly point are innovative and useful offerings for lower-cost collocation; several competitors indicate a strong interest in using them. However, their limited

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<sup>1</sup> Tr. 587-590.

<sup>2</sup> Tr. 576.

applicability and substantial provisioning intervals do not make them effective for statewide mass market entry.

Option VI -- Recent Change Capability (AT&T)

Recent change capability refers to software-based tools, comparable to those that allow a LEC to update and assign features and functions of its local switch. According to AT&T, the recent change capability is now used by incumbent LECs to disconnect a loop from the switch, that is, to sever service to a customer.<sup>1</sup> Recent change is also comparable to the services afforded a Centrex customer to sever, modify, add functions, or transfer service to an identified family of loops. AT&T's proposal is that Bell Atlantic-New York develop or purchase software to allow competitive LECs to employ recent change technology to combine existing loops and ports on the same basis that Bell Atlantic-New York now does. It is uncontested that recent change is only feasible for already existing loops, and for combination of loops and ports, not any other unbundled network elements.

1. The Sponsors' Evaluation

AT&T concedes that this option is not readily demonstrable, although it suggests that Bell Atlantic-New York Centrex customers employ this technology to add or sever lines, add services, or transfer numbers.<sup>2</sup> As to recent change's ability to handle volume, AT&T asserts this method would be able to handle volumes in a manner and on a scale comparable to how presubscribed long distance carrier changes--millions of transactions yearly--are now effected.<sup>3</sup> According to AT&T, the operation of recent change would be extremely cost effective, once developed, since it is an electronic rather than a manual

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<sup>1</sup> Falcone Affidavit, June 16, 1998, ¶¶105 et seq.

<sup>2</sup> Tr. 672.

<sup>3</sup> Tr. 678.

method of recombining elements.<sup>1</sup> Co-sponsor CompTel views recent change as the only nondiscriminatory method offered, and one which provides new entrants access to their customers with minimal interference from the incumbent.<sup>2</sup> In addition, CompTel asserts the recent change alternative is the only one compatible with IDLC.

AT&T asserts this method, because it minimizes manual loop manipulation, will minimize adverse impacts on end users.<sup>3</sup> As to protecting network security, the firewall proposed by AT&T is intended to protect the incumbent LEC by restricting competitor access to its customers and links.<sup>4</sup> AT&T describes its firewall security as standard: transactions are controlled based on the rights and privileges of the user logged into the firewall.

As to the ease of customer migration to facilities-based service, recent change is put forward as a critical bridge to reach a mass market, providing immediate, ubiquitous access to central offices that otherwise might not be economic for collocation.<sup>5</sup> Migration to another competitor or to the incumbent would be as simple as changing long distance providers as long as the other competitive LEC also has recent change access. Similarly, it would be simple to migrate back to the incumbent LEC.<sup>6</sup>

In a post-technical conference supplemental filing, CommTech, the vendor/developer of the software proposed by AT&T to implement recent change, explains that this new software would consist of a modification of its FastFlow system currently

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<sup>1</sup> Tr. 678-679.

<sup>2</sup> CompTel's Comments, pp. 20, 22.

<sup>3</sup> Tr. 680.

<sup>4</sup> Tr. 681-682.

<sup>5</sup> Tr. 683-684.

<sup>6</sup> Tr. 684-686.

employed by LECs to allow Centrex customers to access the recent change process in the LEC switch. Providing some detail as to the development process, CommTech explains that FastFlow manages provision of network elements, is compatible with legacy operation support systems, beginning provisioning with a service representative answering the initial customer call to the time the request is provisioned in the switch and updating necessary legacy systems.<sup>1</sup>

## 2. Other Parties' Evaluations

Bell Atlantic-New York acknowledges the capability of Centrex customers to make limited changes to the switch, using Macstar.<sup>2</sup> However, it estimates the development time required for this to be implemented on the scale contemplated here as "a number of years".<sup>3</sup> As to cost, Bell Atlantic-New York asserts that the front-end development costs for the firewall, as well as the CLEC interface, render recent change prohibitive.<sup>4</sup> Bell Atlantic-New York suggests that its legacy systems are complex, and difficult to modify,<sup>5</sup> listing the systems a firewall system would need to reference in order to effect the changes required to move a customer from the incumbent to a competitor, or between competitors. According to Bell Atlantic-New York, millions of lines of code would have to be written to realize the system modifications required for recent change.

In response to AT&T's supplemental filing concerning its recent change proposal, Bell Atlantic-New York asserts that recent change is inadequately documented, a far more ambitious and burdensome undertaking than AT&T indicates, and susceptible

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<sup>1</sup> CommTech Affidavit, ¶3.

<sup>2</sup> Tr. 747-748.

<sup>3</sup> Tr. 755.

<sup>4</sup> Bell Atlantic-New York's Summary Presentation, p. 13, n. 25.

<sup>5</sup> Albert Affidavit, July 10, 1998.

to unacceptable service outages. Considering the modifications to its own current "suspend and restore" protocol, Bell Atlantic-New York asserts neither the Bell Atlantic-New York nor the competitive LEC modifications to existing ordering, provisioning, or billing systems is addressed, notwithstanding requests for specifics concerning system requirements and implementation schedules and costs. Bell Atlantic-New York notes that the AT&T filing concedes that the existing Macstar system cannot be modified for this purpose, and that adaptation of FastFlow will require redefining system requirements, development of software enhancements, testing, and programming.

Bell Atlantic-New York also stresses AT&T's admission that this approach imposes a risk of significant customer outages, with some customer outages inevitable due to problems between the processing of suspend and restore messages.<sup>1</sup> Bell Atlantic-New York rejects AT&T's suggestion that end user suspends and restores should be performed between midnight and 5 A.M., as conflicting with ongoing switch maintenance. Finally, Bell Atlantic-New York notes that FastFlow does not operate with one of its switch models, the DMS-10. Because Bell Atlantic-New York's ordering, provisioning and switching systems are not capable of activating dial tone on demand in real time, disruptions would be inevitable without substantial software modifications to existing legacy system, requiring millions of lines of code.

Finally, Bell Atlantic-New York asserts that, inasmuch as the recent change proposal will, according to the vendor, work best if operated by Bell Atlantic-New York itself through its provisioning system, the proposal is little more than a loop and port combination provided by Bell Atlantic-New York.<sup>2</sup>

Time Warner considers recent change violative of parity between facilities-based competitors, such as itself, and those

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<sup>1</sup> Albert Affidavit, ¶9, quoting AT&T's Comments, p. 67.

<sup>2</sup> Albert Affidavit, ¶18, citing CommTech Affidavit, ¶8.

employing Bell Atlantic-New York's loops and ports.<sup>1</sup> Intermedia views recent change as an unacceptable expansion of the Pre-filing provisions.<sup>2</sup>

### 3. Discussion

While AT&T failed to present a convincingly detailed case for recent change, its fundamental assertion is well founded: an electronic method for obtaining and combining network elements, or a comparable substitute, appears essential for mass market competition. Because of the importance of exploring and developing software methods for competitors to obtain and combine unbundled network elements, the recent change proposal should not be rejected out of hand. Particularly for those customers--a growing group--served through IDLC technology, a reversion to a manual technology is inadvisable.

Finally, AT&T suggests Bell Atlantic-New York pursue regulatory cost recovery mechanisms for indemnification for the costs of development of recent change. There is no basis for passing these costs on to Bell Atlantic-New York's retail customers; they should be borne, at least in part, by the competitors at whose behest and for whose benefit this software will be developed.

### 4. Proposed Finding

The recent change option is insufficiently developed on this record to require Bell Atlantic-New York immediately to develop it. Because sufficient detail has been offered by AT&T to merit further exploration, however, the recommendation is that parties commence a collaborative exploration of the potential for this software solution to facilitate electronic element combination. Parties are requested to explore such discussions at the projected August 1998 collaborative session.

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<sup>1</sup> Tr. 726.

<sup>2</sup> Tr. 732.

THE TWO-COLLOCATION CENTRAL OFFICES

In its Pre-filing, Bell Atlantic-New York undertook to provide the complete unbundled element platform for the provision of residence and business POTS and ISDN service, subject to time and geographic restrictions. Specifically, the platform will be provided for a duration of 4 years in zone 1, and 6 years in zone 2,<sup>1</sup> except that, in central offices in New York City where two or more competitive LECs are collocated to provide local exchange service through unbundled links at the start of the duration period, the platform will not be available for business customers.<sup>2</sup>

According to the proposed tariff filed by Bell Atlantic-New York on July 23, 1998, if the duration period were to start immediately there would be eleven central offices excluded from the business platform offering. These are: Second Ave., Bridge St., Broad St., East 30th, 37th, and 56th Streets, West 18th, 36th, 42nd, and 50th Streets, and West Street.<sup>3</sup> While Bell Atlantic-New York's proposed methods for combining elements will clearly not be sufficient for competitors to provide service statewide, the provision of the platform in all but this limited number of offices gives competitors a viable market entry strategy. For the limited number of offices in which the platform will not be available for service to business customers, Bell Atlantic-New York's methods for combining elements will likely be sufficient for those carriers not already collocated in the affected offices. However, before Bell Atlantic-New York can be found to meet the practical and legal

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<sup>1</sup> Zone definitions are as established by the Commission in Cases 94-C-0095, 95-C-0657, and 91-C-1174.

<sup>2</sup> The duration periods start with the availability of certain operations support system upgrades to the satisfaction of the Commission.

<sup>3</sup> New York Telephone Company P.S.C. No. 916, Section 5, Appendix B, Original Page 1.

ability standard, it should demonstrate that the main distribution frames in each of the offices in which the platform will not be offered have sufficient capacity, or can be expanded in a timely manner, to handle reasonably foreseeable volumes of cross-connects. Bell Atlantic should also provide the Commission and the parties to this proceeding the specifications as to space constraints in each of those offices, and guarantees that there is sufficient space available for an acceptable range of recombination options.

#### CONCLUSION

These proposed findings of fact are based on an examination of the technologies, terms, and conditions of specific methods currently offered for obtaining and combining unbundled network elements. On balance, this record indicates that Bell Atlantic-New York's menu of options alone is unacceptable to support combination of elements to serve residential and business customers on a mass market basis, absent the provision of the platform or some comparably ubiquitous, timely, and economical method of element combination.

The recommendation is that Bell Atlantic-New York should be considered in compliance with the requirements of the Pre-filing that it demonstrate that competing carriers will have reasonable and nondiscriminatory access to unbundled elements in a manner that provides them the practical and legal ability to combine unbundled network elements based upon the following: (1) its provision of its offered forms of recombination; (2) the provision of the unbundled network element platform under the terms and conditions established in the Pre-filing or of a comparably ubiquitous, timely, and economical method of combination; and (3) upon resolution by this Commission of issues related to the provision of enhanced extended link.

Accordingly, upon compliance with these conditions, upon final review by this Commission of Bell Atlantic-New York's

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July 23, 1998 tariff filing, Bell Atlantic-New York may be relieved of its obligation to provide its current ubiquitous offering of the platform.

August 4, 1998

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