September 25, 1998

D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 3-E

Consolidated Petitions of New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts, Teleport Communications Group, Inc., Brooks Fiber Communications of Massachusetts, Inc., AT&T Communications of New England, Inc., MCI Telecommunications Company, and Sprint Communications Company, L.P., pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of interconnection agreements between Bell Atlantic-Massachusetts and the aforementioned companies.

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I. INTRODUCTION

This arbitration proceeding is held pursuant to the Telecommunications Act of 1996 ("the Act"). On December 4, 1996, the Department of Public Utilities, now the Department of Telecommunications and Energy ("Department"), issued an Order in this consolidated arbitration proceeding on future interconnection agreements between New England Telephone and Telegraph Company, d/b/a Bell Atlantic - Massachusetts ("Bell Atlantic"), the incumbent local exchange carrier ("ILEC"), and the competitive local exchange carriers ("CLECs") . Consolidated Arbitrations, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 3 (1996) ("Phase 3 Order"). On February 5, 1997, the Department denied a reconsideration motion from MCI Telecommunications Corporation ("MCI") on the issue of liquidated damages ("Phase 3-A Order").

The Phase 3 Order dealt with performance standards to be met by Bell Atlantic in serving the CLECs. Examples of such services include connecting customers to resold services, such as local exchange service, responding to repair calls, and processing of unbundled network elements ("UNEs") orders.[1] In its Phase 3 Order, the Department found that Bell Atlantic should provide services to CLECs at parity with services it provides to itself, and that the level of service Bell

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[1] A network element is "a facility or equipment used in the provision of a telecommunications service." 47 U.S.C. § 153 (29). An ILEC such as Bell Atlantic has a duty to provide these network elements on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service . Id. at § 251(c)(3). The term "unbundling" means offering discrete elements of the service to the CLECs. In the Phase 3-B Order, the Department required Bell Atlantic to propose maintenance and provisioning measurements for these unbundled network elements.

Atlantic currently provides to itself should be the minimal level of performance Bell Atlantic is required to provide in the future to CLECs. This standard was termed the "no-change-in-parity" standard. We also found that two levels of performance should be measured by Bell Atlantic. The first level, "the internal process standard" would ensure that there is parity with regard to Bell Atlantic's internal processes in handling CLEC requests for service.[2] The second level, "the retail process standard," would ensure that there is parity in the delivery of service to the retail customer.[3] In addition, we found that Bell Atlantic's internal process standard should be based on the level of service Bell Atlantic currently provides to its 100 largest business customers (at the time of the Order) and that Bell Atlantic should compare that service level with the service level offered to CLECs. Phase 3 Order at 20-24.

Another portion of the Phase 3 Order dealt with the remedies that would be available to CLECs if Bell Atlantic fails to meet the established performance standards. We found that performance payments[4] should be available to carriers in the event Bell Atlantic fails to achieve

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2 The Department defined the internal process standard as the time it takes for Bell Atlantic staff to begin to act on a request from a Bell Atlantic customer service representative compared with the time it takes for Bell Atlantic staff to begin to act on a similar request from a CLEC customer service representative. Phase 3 Order at 22.

3 The Department defined the retail process standard as the time it takes Bell Atlantic staff to complete a service call for a Bell Atlantic customer compared with the time it takes for Bell Atlantic staff to complete a similar service call for a CLEC customer. Phase 3 Order at 22-23.

4 In the Phase 3 Order, we determined that what we then called "liquidated damages" provisions in the interconnection agreements would provide a useful self-enforcement mechanism to provide incentives for Bell Atlantic to maintain parity. Phase 3 Order at 26. In the Phase 3-B Order, we defined the characteristics of the payments that would be
(continued...)

parity. Noting that the record in the Phase 3 proceeding did not provide support for a particular level of performance payments, we directed the parties to reconvene negotiations to determine an appropriate level of performance payments, and if they were unable to reach an agreement, to petition the arbitrator to determine appropriate levels based on a more complete record. Id. at 26-27.

On February 25, 1997, the parties to this proceeding reported back to the arbitrator, Paul F. Levy, that agreement on these issues could not be reached, and the arbitrator established a procedural schedule for the Department's resolution of the disputed matters (Tr. 12, at 61-65). The result of that portion of this consolidated arbitration was a subsequent Order[5] ("Phase 3-B Order"), issued on July 29, 1997, which set forth the Department's ruling with regard to the following issues:

> (1) Measurement. What measures should form the basis for the parity standard adopted by the Department? What standards should be adopted for those measures? Over what time periods and intervals should the measures be reviewed to determine compliance with those performance standards? What is the level of performance that Bell Atlantic is providing today?
> (2) Principles. What principles should be applied in establishing the level of liquidated damages? Should the Department consider the harm done to CLECs by Bell Atlantic's failure to meet performance standards, and if so, how should it evaluate or quantify that harm? How should the Department consider and evaluate

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4 (...continued)
required for failure to achieve parity. See footnote 6, below. In that Order, we also stated that an interconnection agreement is not a typical commercial contract. Phase 3-B Order at 21. Because the payments required under the interconnection agreements have features that are different from typical liquidated damages provisions, they are referred to in this Order as performance payments.

5 On February 5, 1997, the Department issued the Phase 3-A Order, in which we denied a Motion for Reconsideration filed by MCI.

> the incentive value of liquidated damages? Should CLECs have remedies beyond liquidated damages for Bell Atlantic's failure to meet performance standards set by the Department? If so, what should those remedies be?
> (3) Application of principles. Based on the principles set forth, what dollar amounts of liquidated damages are appropriate for Bell Atlantic's failure to meet the various standards adopted by the Department?[6]

Phase 3-B Order at 3-4.

On August 19, 1997, Bell Atlantic filed its proposal for internal process performance standards, as it was directed in the Phase 3 Order ("internal process performance standards proposal").[7] Bell Atlantic made a compliance filing in response to the Phase 3-C Order on January 22, 1998, that contained proposed performance measures and payment schedules ("retail process compliance filing"). A technical session among the parties was held on February 24, 1998. On March 13, 1998, AT&T Communications of New England, Inc. ("AT&T") filed comments in response to Bell Atlantic's retail process compliance filing and internal process performance standards proposal, and on March 16, 1998, Teleport Communications Group, Inc. ("TCG") submitted comments.

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[6] In defining the performance payments that would be available to the parties, the Department accepted an overall principle proposed by NYNEX, that performance payments should provide NYNEX with monetary incentive to ensure parity and to provide good service, while simultaneously supplying a certain, timely payment to carriers for possible damages incurred. Id. at 22. We also stated, however, that the performance payments, based on providing sufficient financial incentive to NYNEX, are not based on the possible damage suffered by the CLECs, and that the specific monetary remedies provided in the interconnection agreement should not be the sole damage remedy available. Id.

[7] A further Order ("Phase 3-C Order") was issued on December 17, 1997, in response to a Bell Atlantic motion for clarification and reconsideration and an MCI motion for reconsideration. In addition, on February 23, 1998, the Department issued the "Phase 3-D Order" concerning the schedule and terms of performance payments.

An evidentiary hearing was held on April 3, 1998. Julie A. Canny, managing director, process integration, testified on behalf of Bell Atlantic. TCG presented two witnesses, John F. Kelley, its New England Director of Operations, and Clark A. Mount-Campbell, Associate Professor of Industrial, Welding and Systems Engineering and Statistics at Ohio State University. AT&T presented Eileen Halloren, manager for AT&T's Northeast region local service operation. Briefs were submitted by the Bell Atlantic, AT&T, MCI, and TCG on April 24, 1998, and reply briefs were filed on May 8, 1998.[8]

Two issues are considered in this Order. The first issue is whether Bell Atlantic's retail process compliance filing conforms to the requirements of our previous Orders. The second issue is whether Bell Atlantic's proposed internal process performance standards are appropriate.

II. RETAIL PROCESS PERFORMANCE STANDARDS

A. Description of the Filing

Bell Atlantic's retail process compliance filing (Exhibit BA-PS-2) has three sections. Section I, performance monitoring reports, contains historic baseline data, where such data exist, to be used to apply to the no-change-in-parity standard, the standard that requires Bell Atlantic to make payments if its performance falls below historical levels for "Plain Old Telephone Service" ("POTS") and special services. Bell Atlantic used 1996 data where they were available and used 1997 data when 1996 could not be reported. For measures that have no historic information, Bell Atlantic proposes to use the first full year's data that are collected.

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[8] MCI chose not to file a reply brief.

Section II of the filing includes incident-based credit payment schedules for POTS and Special Services offered through resale and UNE, and for Interconnection Trunks. Section III includes the description of performance credits to be paid to CLECs for these same categories of services based on average actual performance in a calendar quarter period.[9] At the end of each calendar year, Bell Atlantic would calculate additional credits based on a comparison of actual annual performance to the baseline performance set forth in Section I, net of credits already paid during the calendar year. Bell Atlantic proposes to evaluate differences between the results of Bell Atlantic providing service to individual carriers and the results of Bell Atlantic providing service to its own end-users on a statistical basis. Its retail process compliance filing contains a detailed description of the statistical method Bell Atlantic proposes to use for determining parity (id. at Attachment A).

In Section III, Bell Atlantic included eight interconnection trunk performance measures and developed performance payments for provisioning and maintaining interconnection trunks based on the use and value of interconnection trunks compared with individual retail lines. Bell Atlantic determined that individual lines and DS0 interconnection trunks are comparable for purposes of applying performance payments; but it determined that the failure of a complete DS1 interconnection trunk should result in a payment 24 times that of a DS0 trunk because a DS1 trunk contains 24 DS0 trunks (id. at Section III, at 18). Bell Atlantic also proposed that, for a

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9 In the Phase 3-B Order, at 25-26, the Department approved two forms of payments for failure by Bell Atlantic to meet the no-change-in-parity standard. Incident-based payments are for failure to meet certain appointments. Performance payments are for failure to meet parity over a stated period of time. Id. at 25-30.

CLEC to be eligible for trunk provisioning payments, the CLEC must be participating in the trunk forecasting process outlined in guidelines set forth in New York Public Service Commission Case 97-C-0139 (id. at 17).

Finally, Section III also includes 15 proposed performance measures and payment credits for UNEs (id. at 19-20). Bell Atlantic proposes to report on the average interval for provisioning certain UNEs but not to compare them to retail product provisioning for purposes of establishing payment. Bell Atlantic states that it is inappropriate to use parity performance measures where a function provided as a UNE is performed only for competitors or is offered to competitors in a manner different from that performed for Bell Atlantic itself. However, Bell Atlantic does propose to include remedies for non-performance of other measures of performance for UNEs, mainly maintenance metrics (id. at 19).

At the hearing of April 3, 1998, the arbitrator asked the parties to brief the question whether the Bell Atlantic compliance filing is sufficient and conforms to the Department's requirements, as set forth in the Phase 3 Orders. In addition, the arbitrator asked the parties to brief the issue of the date upon which remedies should be effective (Tr. 31, at 95-96). The following issues have been raised by the parties: Whether the specific measures included by Bell Atlantic are correct; whether the statistical method proposed by Bell Atlantic for determining whether parity has been achieved is appropriate; whether the trunk forecasting requirement is appropriate; whether the baseline measurement for the no-change-in-parity standard should be changed; whether there should be additions and/or changes to the performance measures adopted in the Phase 3-B Order; whether the proposed performance measures and payment credits for

UNEs are adequate; and the appropriate effective date for assessment of remedies. We now turn to these issues.

B. Inclusion of Performance Measures

AT&T notes that Bell Atlantic has excluded from its retail process compliance filing a number of measurements required by the Phase 3-B Order. In that Order, the Department required that time to restore service intervals of four, eight, and sixteen hours be measured and reported when a technician must be dispatched to a site ("dispatch"); that time to restore intervals of two, three, and fours hours be reported when dispatch is not required; and that a time to restore interval of 24 hours be reported for all troubles (AT&T Brief at 5, citing Phase 3-B Order at 11). Bell Atlantic acknowledges this error and has agreed to include the omitted metrics (Bell Atlantic Brief at 9 n.7). We direct it to do so in its revised compliance filing (see Section IV., below).

TCG notes that there is an inconsistency between Bell Atlantic's initial brief, in which Bell Atlantic characterizes performance payments as payments "per line for all customers with missed appointments" and the retail process compliance filing, which contains reference to "credit per impacted order" (TCG Reply Brief at 1). TCG notes that the former characterization is consistent with the Phase 3-B Order. TCG argues that the implication of using per "order" credits versus per "line" credit is significant (id. at 2). The Department finds that TCG is correct on this point, that the performance payment should be per line: our Order specifically directed that the payments would be paid on a per-line basis. See Phase 3-B Order, at 29. We direct Bell Atlantic to make the requested change in its revised compliance filing.

C. Statistical Method for Determining Whether Parity has Been Achieved

1. Positions of the Parties

TCG, AT&T, and MCI all assert that Bell Atlantic's proposed statistical method to measure parity is inappropriate. TCG, for example, states that Bell Atlantic's proposal relies on untested statistical method, and is, in any event, improper and not timely. TCG asserts that the only purpose of imposing such a method at this point in the proceeding is to reduce Bell Atlantic's exposure to the performance payment provisions of the Department's orders and to add further delay to this proceeding. TCG argues that any such proposal should have been raised by Bell Atlantic at the outset of this proceeding (TCG Brief at 6). TCG further notes that Bell Atlantic had ample opportunity to address statistical issues in this proceeding and that, in fact, the Department did address one statistical issue in the Phase 3-B Order. In that Order, notes TCG, the Department found that if there are fewer than ten orders in a sample size for a given review period, performance payments will not be assessed for that period (id. at 7, citing Phase 3-B Order at 33-34) .

TCG further argues that there is no evidence in the record that would support a determination that a statistical estimation would better measure parity than the use of actual data. TCG asserts that, when every service order can be counted, a statistical estimation is unnecessary; and where it is not possible to report on all service orders, and therefore a sampling of orders is chosen, a statistical estimation may be necessary to determine whether the sample was statistically valid for reporting parity (id. at 7-8).

AT&T likewise supports this view and further notes that Dr. Mount-Campell's testimony indicated that under a statistical approach performance payments would need to be bigger to achieve the same negative incentive as small performance payments based on actual data (AT&T Brief at 2). MCI likewise states that, since the entire population of service orders will be evaluated, examination of this pool will be a more accurate determinant of parity than Bell Atlantic's statistical estimation proposal (MCI Brief at 3).

Bell Atlantic argues that a failure to use the statistical approach it has recommended will allow the potentially erroneous conclusion to be reached that disparate treatment exists where parity of service is indeed being provided to CLECs. Bell Atlantic explains that this type of erroneous conclusions is known as a "Type I" error and that its statistical model is designed to avoid this type of error (Bell Atlantic Brief at 13-14).[10] Bell Atlantic explains that in comparing the performance of Bell Atlantic for its own retail customers with the performance of Bell Atlantic for the CLECs, the data relating to Bell Atlantic's performance for the CLECs would be considered a sample of the entire Bell Atlantic population (which includes both Bell Atlantic end-users and CLEC end-users). Bell Atlantic defines the question as whether the probability that Bell Atlantic's end-user sample matches the total population is the same as the probability that the CLEC group matches the total population. By taking into consideration the concept of sampling error, Bell Atlantic's statistical analysis is intended to account for the probability that the CLEC results, even though they appear to indicate a lower level of performance for CLECs compared to

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10 Bell Atlantic argues that Type I error occurs because there is a probability that the CLEC sample is not properly representative of the total population (Bell Atlantic Reply Brief at 4).

the total population, actually represent the same or even superior performance for CLECs compared to all of Bell Atlantic's end-users (id. at 15-16; Bell Atlantic Reply Brief at 2-5).

Bell Atlantic further asserts that it would be unfair to penalize the company for statistical aberrations that have no statistical significance. Bell Atlantic states that, absent a statistical analysis, even a random deviation that shows worse performance would cause a payment by Bell Atlantic. Bell Atlantic notes that the asymmetry of the payment scheme (where Bell Atlantic pays penalties for worse performance but does not receive credit for better performance) would provide no offsetting payment to Bell Atlantic for a situation in which the random variation of the data indicates better performance for CLECs. Bell Atlantic concludes that the statistical tests are designed only to reduce the amount of unfair payment resulting from statistically insignificant deviations in the data that would lead to the erroneous conclusion that Bell Atlantic had violated the no-change-in-parity standard (Bell Atlantic Brief at 16-17; Bell Atlantic Reply Brief at 2-5).

Finally, Bell Atlantic argues that its testimony in the earlier proceedings indicated its intent to use a statistical test of parity (Bell Atlantic Reply Brief at 5, citing Tr. 13, at 21). Bell Atlantic also asserts that the Department implicitly gave approval for this approach by stating in the Phase 3-B Order that the Bell Atlantic proposals that were not explicitly discussed by the Department in that Order should be deemed as approved (Bell Atlantic Reply Brief at 5-6).

2. Analysis and Findings

Bell Atlantic's proposed use of a statistical method for determining if parity has been met raises procedural and substantive issues. We start with the procedural issue.

The statistical method offered by Bell Atlantic represents a significant change from its earlier proposals to the Department regarding the method that would be used to determine parity. The Department, in the Phase 3-B Order, relied in great measure upon Bell Atlantic's evidence in setting the level of performance payments for failure to meet parity over a stated period of time. We reviewed the proposed level of payments. Equally important, we reviewed the schedule provided by Bell Atlantic under which the payments would be applied, i.e., the increments of deviation between the quality of service provided to a CLEC and the service quality provided to Bell Atlantic's own end-user customers. Phase 3-B Order at 29. In the face of arguments from the CLECs requesting higher payments, we adopted Bell Atlantic's arguments in that case that such payments would "provide sufficient monetary incentive . . . to achieve service parity." Id. at 38.

We acknowledge that, on two occasions in the record, Bell Atlantic stated that differences between individual carrier results and the results of Bell Atlantic to itself would be evaluated statistically (PS-RR-1; Tr. 13, at 21). However, Bell Atlantic never developed an evidentiary record on this point, nor did it ever propose a particular statistical method. For example, in contrast to the tables included in its retail process compliance filing, Bell Atlantic's exhibits during the Phase 3 hearing in which the performance payments were proposed never included the word "statistically" (compare Exh. NYNEX-LD-2 with Exh. BA-PS-2, at Section III). In addition, in Bell Atlantic's discussion of the derivation of the increments of quality deviation, there was never an indication that they were based in any way on a statistical estimation as opposed to actual data (see, e.g., Tr. 13, at 88-89). Bell Atlantic did not propose whether to manipulate the performance data, or how to manipulate the data, until its compliance filing.

Indeed, the only disputed item in the Phase 3 proceeding that might be viewed as related to this issue was the question of the minimum number of service requests that would be required for eligibility for performance payments. The context for that discussion, however, was whether there should be more performance measurements than proposed by Bell Atlantic, not whether a statistical representation of parity would be used. Bell Atlantic argued against the inclusion of certain service elements because there would be limited sample sizes and because disaggregated data might measure the same service element. We considered this argument and in some instances agreed with Bell Atlantic and in others disagreed. We also adopted a rule that performance payments would not be assessed if there were fewer than ten orders in a sample size for a given measure in a given review period. We reaffirmed the minimum sample size in an Order on Bell Atlantic's Motion for Reconsideration on this issue. Phase 3-B Order, at 32-34; Phase 3-C Order, at 12-13.

In light of the record established during the evidentiary portion of these hearings, it would have been reasonable for all parties and the Department to conclude that parity would be judged based on the actual data collected by Bell Atlantic. If Bell Atlantic had presented its evidence otherwise, we might have seen the arguments now raised by the CLECs earlier, and, at a minimum, would have explored the issue before now. It is doubtful, too, that the Department's Phase 3-B Order determination that Bell Atlantic's proposed schedule of performance payments "provide[s] sufficient monetary incentive . . . to achieve service parity" would have been unaffected by consideration of statistical analysis of performance data. As Dr. Mount-Campbell testified, "[i]f you use the statistical approach, you're probably giving a lot more leeway. And so when you violate that one, there ought to be a bigger penalty" (Tr. 31, at 91-92). Bell Atlantic correctly notes that there is no record here to determine the degree to which the penalties might be affected by statistical analysis (Tr. 31, at 92-93), but likewise, as noted earlier, there was an insufficient record in the earlier part of this proceeding to support the inclusion of such a statistical method in the compliance filing.[11] Bell Atlantic's proposal to use such a statistical estimation amounts to an improper and untimely attempt to relitigate or reargue matters fully considered in the initial case. We find that Bell Atlantic's retail process compliance filing does not conform to the requirements of our previous Orders, in that the compliance filing uses a statistical estimation to determine whether parity has been achieved. Accordingly, on these procedural grounds, Bell Atlantic's proposal is not accepted.

In light of this conclusion, we do not engage in an extensive substantive review of Bell Atlantic's proposal to use a statistical method or of the particular method it has proposed. We do, however, point to the testimony of Dr. Mount-Campbell who, in our mind, has raised significant, and unrebutted, arguments that the particular method chosen by Bell Atlantic is biased (Exh. TCG-PS-2, at 2-4 and Attachment I). If we were to investigate this issue further, those concerns would have to be addressed more fully; however, that is not our intent. We also note

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[11] We note that our finding in the Phase 3-B Order at 8 that Bell Atlantic's proposals not explicitly discussed in that Order should be deemed as approved related to the great variety of terms and conditions which received a proper administrative review. Our Order certainly cannot be read as applying to a provision first introduced in a compliance filing.

that in the Phase 3-B Order at 6, we stated that we would not order NYNEX to collect data on service functions that it does not currently monitor to measure performance to its own customers, absent a determination that the information is essential to ensure parity. Bell Atlantic does not propose to collect less data in its statistical approach. Therefore, our requirement for Bell Atlantic to use actual data (i.e., data already collected) to determine performance payments will not impose an additional data collection burden. Bell Atlantic is directed to modify its retail process compliance filing to use actual data -- rather than statistically-derived estimations -- to determine the application of performance payments.

D. Trunk Forecasting Requirement

As discussed above, Bell Atlantic's retail process compliance filing contains a condition that CLECs participate in a trunk forecasting process as a prerequisite to receiving performance payments (Exh. BA-PS-2, at Section III, at 17). MCI argues that such a requirement was not envisioned in the Department's previous orders and that, in any event, Bell Atlantic has provided no basis for linking CLEC trunk forecasting to eligibility for receipt of performance payments. Therefore, says MCI, this requirement should be stricken (MCI Brief at 2). Bell Atlantic says that it is reasonable and fair that the CLECs, who previously participated in the development of the forecasting guidelines during a collaborative process in New York, should be required to employ those guidelines as a condition of receiving interconnection trunk provisioning credits (Bell Atlantic Brief at 10 n.9).

In the Phase 3-B Order, we directed Bell Atlantic to propose a performance payment schedule for interconnection trunks in its compliance filing, along with associated support for its calculation.[12] Phase 3-B Order at 39-40. Given the nature of trunk -- as opposed to single-line -- provisioning[13] and the fact that interoffice trunks must be capable of handling both ILEC and CLEC traffic, it is reasonable to assign some responsibility to both Bell Atlantic and the CLECs relative to the provisioning of interconnection trunks. In addition, MCI has provided no reason why participating in the trunk forecasting process would be unduly burdensome. We find that Bell Atlantic's proposal is reasonable because trunk forecasting is a mutual responsibility and participation in the forecasting process is not unduly burdensome, and therefore accept it.

E. Baseline Measurement for Determination of Parity

As noted above, in providing data on the baseline measurement for the no-change-in-parity standard, Bell Atlantic uses data for the year 1996 for some measures and 1997 for others (Exh. BA-PS-2, at 1). TCG argues that because a complete year of 1996 data is not available, 1997 should be the baseline year for the standard. Otherwise, says TCG, allowing Bell Atlantic to choose baseline time periods most beneficial to it is arbitrary and inconsistent with what the standard is designed to accomplish (TCG Brief at 10-11).

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12 In the Phase 3-B Order, at 39, we noted that a different level of payments is appropriate for failure to meet parity with regard to provisioning and maintaining interconnection trunks, that each trunk has important commercial value, and that we need to provide greater incentive to meet parity for trunks.

13 According to Bell Atlantic, trunk forecasts from other carriers are combined with Bell Atlantic's forecast to allow Bell Atlantic to plan its network and equipment construction projects such that facilities are in place before anticipated demand materializes (Exh. BA-PS-2, at 17). Bell Atlantic states that a significant factor in reducing the interval needed to provision interconnection trunks is mutual responsibility for trunk forecasting (id.).

Bell Atlantic notes that its retail process compliance filing is in accordance with the proposal it made during the earlier stages of this proceeding (Bell Atlantic Brief at 9-10 n.8), and that TCG's request is inconsistent with the language of the Phase 3 Order (Bell Atlantic Reply Brief at 8). We agree. Our intent in adopting the no-change-in-parity standard was to respond to the concerns raised by TCG in the Phase 3 hearings that Bell Atlantic might permit its service quality to diminish in certain services of lesser importance to it but of continuing importance to the CLECs. Phase 3 Order at 24. We specifically directed the use of the baseline periods that are contained in Bell Atlantic's compliance filings. Phase 3-B Order at 29, 34-37. TCG's request asks us to reconsider our decisions in the Phase 3 and Phase 3-B Orders, and it is therefore denied.

F. Additions and/or Changes to the Performance Measures

Two parties, TCG and MCI, request additions and/or changes to the performance measures adopted in the Phase 3-B Order. In that Order, we stated:

> If, after at least six months of experience, there is an indication that more or fewer measures are necessary to support the [no-change-in-] parity standard, either as informational items or as measures subject to performance payments, parties may petition the Department to that effect. However, the Department will only consider changes to the standards adopted here if parties can show a compelling reason why such changes are necessary.

Phase 3-B Order at 34.

TCG acknowledges that although there have not been six months of experience with the performance standards in Massachusetts (which it attributes to “Bell Atlantic delaying tactics”), experience in other jurisdictions and the Federal Communications Commission constitutes a strong basis for making certain modifications (TCG Brief at 8-9). TCG argues that there are certain situations where the proposed payment system would not properly provide incentives to Bell Atlantic. TCG gives an example from Massachusetts in which a customer ordered two T-1 circuits, one from TCG and, subsequently, one from Bell Atlantic. The customer received the Bell Atlantic order before the TCG order even though the TCG order had been requested earlier. TCG notes that such an incident would have no resultant incident-based payment penalty as long as Bell Atlantic did not miss an appointment, but it would put TCG at a competitive disadvantage in that situation by undermining a customer's confidence in TCG's ability to provide service (id. at 9).

TCG also states that the performance-based penalties for special services are not reasonable and provide insufficient incentive to Bell Atlantic. According to TCG, a missed installation date or lines out of service to telecommunications-intensive business customers that order special services can have a "devastating" impact on their business, yet the performance credit for special services is the same as for POTS. Noting the relative carrying capacity of the two types of circuits, TCG argues that a penalty for failing to meet a T-1 installation should be 24 times the penalty for Bell Atlantic's failure to meet a POTS installation because a T-1 represents 24 DS0 circuits (id. at 9-10). Likewise, TCG argues that treatment of interconnection trunks as DS0s is inadequate. A failure to turn up such a trunk, says TCG, would affect many customers, but the penalties proposed would require Bell Atlantic to compensate TCG as though only a single customer was affected (id. at 10).

Bell Atlantic responds that the retail process compliance filing should not provide an opportunity for parties to revisit the performance standards and remedies that have already been decided by the Department. Bell Atlantic asserts that TCG's proposal represents an inappropriate effort to revisit such issues and should be rejected (Bell Atlantic Brief at 22; Bell Atlantic Reply Brief at 9).

The Phase 3 Order set forth the underlying purpose of the performance standards. Phase 3 Order at 20-24. Our purpose was not to be involved in the individual circumstances of the delivery of service to a specific customer; rather, we seek to monitor Bell Atlantic's overall performance in provisioning and maintaining service. Thus, while TCG's T-1 specific example may have caused it commercial embarrassment or worse, our performance standards are designed to monitor overall patterns of discriminatory treatment, which will show up in the monthly service reports.

Likewise, TCG's complaint about the relative level of penalties for special services and interconnection trunks seeks to relate the performance penalty to the impact on TCG of nonperformance. As we discussed at length in the Phase 3-B Order, our goal in setting performance credits was not to compensate CLECs or their customers for nonperformance; it was to provide a financial incentive for Bell Atlantic to achieve and maintain parity. Phase 3-B Order at 22-24, 27-29, 37-38. TCG's argument here amounts to an attempt to reargue that point, and we do not accept it.

MCI makes a number of proposals with regard to additional performance measures, both for the retail process standards that are the subject of this section of this Order and for internal process standards that we will review below. See Section III, below. On the retail process standards, MCI proposes two additional measures which, it notes, have been agreed to by Bell

Atlantic in New York (MCI Brief at 3-4). The performance measures are: (1) percent "missed appointments (facilities)," which reports on service orders not completed for a specified period of time, usually 30 days, due to lack of network facilities; and (2) "response time Operational Support Systems interface (maintenance)," which measures the percentage of trouble reports cleared after the promised appointment (id. at 7). MCI argues that because Bell Atlantic has agreed to provide these measurements in New York and must provide them to the FCC, Bell Atlantic would not incur any additional hardship in providing them to the Department and to Massachusetts CLECs, and that the Department should require Bell Atlantic to provide these measurements in Massachusetts (id. at 8). MCI also recommends that the Department adopt two billing performance measures. Those measures are: timeliness of the daily usage feed, which measures the percentage of billing records received on time; and timeliness of carrier bill, which measures the percentage of wholesale billing records received on time (MCI Brief at 7-8).

Bell Atlantic responds that New York's standards are irrelevant here, where the company's retail process compliance filing is intended solely to implement the Department's earlier decisions (Bell Atlantic Brief at 22) and also reiterates the points it has raised with regard to TCG's proposals (Bell Atlantic Reply Brief at 11).

As noted above, the Phase 3-B Order provides an opportunity for parties to petition the Department to require Bell Atlantic to report on additional performance measures, either for informational purposes or as measures subject to performance payments. Phase 3-B Order at 34. MCI's request is, first, untimely, in that six months of experience are not yet in place and, second, unsupported by a "compelling reason why such changes are necessary" as required by the Phase

3-B Order. In addition, in this proceeding we are reviewing a filing on compliance with earlier decisions of the Department. Therefore, we agree with Bell Atlantic that it would not be appropriate for us to revisit the performance measures and remedies that have already been decided by the Department. Accordingly, MCI's request is denied. However, our refusal to adopt MCI's recommendation on procedural grounds does not mean that we disagree with MCI's contention that performance measures adopted by Bell Atlantic in other jurisdictions should be considered in Massachusetts. It could very well be reasonable to include such measures in Massachusetts, because it may not be burdensome for Bell Atlantic to provide measures in Massachusetts that it has agreed to provide elsewhere. Once they have accumulated six months of experience, the parties may petition the Department to increase the number of measures, subject to the terms of the Phase 3-B Order. However, we encourage the parties first to seek agreement among themselves, particularly with regard to measures already provided in other jurisdictions.

With specific reference to MCI's request for a number of measures with regard to the timeliness, accuracy, and completeness of end-use billing records and wholesale bills, we note that this issue was specifically addressed in the Phase 3-B Order, where we denied such a request. Phase 3-B Order, at 6. We deny it again for the reasons given above.

G. Performance Measures and Payment Credits for UNEs

Bell Atlantic has proposed to report performance and provide performance credits for 15 UNE-related provisioning and maintenance measures (Exh. BA-PS-2 at Section III at 19-20.) We restate these indicators, along with the proposed baseline measurement (in parentheses):

POTS UNE Provisioning:

! Average interval completed for 1-5 lines, with dispatch (5.88 days);

! Percent missed appointment, with dispatch (19.7%);

! Percent missed appointment, no dispatch (0.35%);

! Percent installation troubles within 30 days (12.87%).

POTS UNE Maintenance:

! Percent missed repair appointments, for loop repairs (25.8%);

! Percent missed repair appointments, for central office repairs (25.8%);

! Mean time to repair for loops (34.09 hours);

! Mean time to repair for central office (14.30 hours);

! Percent out of service ("OOS") over 24 hours (unstated);

! Percent repeat reports within 30 days (11.9%).

Special Services UNE Provisioning:

! Percent missed appointments, total (5.07%);

! Percent of installation troubles within 30 days (10.58%).

Special Services UNE Maintenance:

! Mean time to repair, total (unstated);

! Percent out of service over 24 hours (unstated);

! Percent repeat reports within 30 days (16.97%).

Exh. BA-PS-2, at 3-4, 20-25.

As noted above, Bell Atlantic has argued that, where a function provided as a UNE is performed only for competitors, or is performed for competitors in a manner sufficiently different from that performed for itself, it is inappropriate to use parity performance measures to assess automatic performance payments for nonperformance. Bell Atlantic states that the provisioning of many UNEs falls into this category. Therefore, Bell Atlantic has proposed to report the average provisioning interval for UNEs but not to compare them to retail products for purposes of establishing payments (id. at Section III at 19 and at Section I at 3-4).

AT&T argues that Bell Atlantic has severely limited the number of UNE-provisioning and maintenance measurements subject to parity payments. AT&T disagrees with Bell Atlantic's assertion that there is no Bell Atlantic retail service comparable to UNE services, and notes that in New York Bell Atlantic acknowledged that comparisons between POTS retail services and UNE provisioning and maintenance elements were appropriate. Accordingly, noting that Bell Atlantic has committed to report performance data on these measures, AT&T proposes a list of additional measurements that would be subject to performance payments (AT&T Brief at 5-6).

Bell Atlantic replies that these additional measures are not appropriate. Bell Atlantic notes, for example, that there is a lack of comparable measures in its average provisioning interval (no dispatch) for UNEs because Bell Atlantic uses a fixed five-day interval for all such "hot cuts" on its system and this interval would have the effect of distorting the provisioning comparisons (Bell Atlantic Brief at 12). Bell Atlantic also notes that many of the measures proposed by AT&T are used in New York only as interim guidelines for performance reporting through 1998 and are not the basis for financial payments or remedies (Bell Atlantic Reply Brief at 10). Bell Atlantic asserts that the parties in this proceeding are simply selecting certain portions of the New York plan to increase the burden on Bell Atlantic, while excluding other portions of that plan, and have failed to show how the measurements proposed for Massachusetts are incomplete or inadequate to achieve the Department's objective (id. at 11).

We have reviewed Bell Atlantic's argument that the provisioning of UNE loop and central office functions is offered in a manner different from that performed for itself. We remain unpersuaded on this record that the "different manner" that Bell Atlantic ascribes to UNEs is in fact so different from provisioning of service to its retail customers that a parity-based performance measure should not apply.[14] For example, while there may be one or another additional function involved in provisioning an uncombined fiber feeder to a collocation cage (Tr. 22, at 36-37), there is not a significant difference in the provisioning of an uncombined copper loop, which represents the vast majority of current installations (Tr. 22, at 29-30). Likewise, we find no persuasive record evidence that central office UNE provisioning involves a substantially different amount of time from central office retail provisioning.

In addition, we see no substantial difference in maintenance between UNEs and retail services. Indeed, Bell Atlantic's proposal to ascribe its 1996 retail experience as the baseline for mean time to repair UNE loops and UNE central office problems, as well as for the percent of UNE repeat trouble reports within 30 days, supports the conclusion that there is not substantial

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14 We deal here only with the issue of uncombined UNEs, pursuant to Bell Atlantic's current policy of not offering combinations of UNEs to CLECs. Absent that policy, the installation of a UNE loop and central office combination, for example, would occur in a manner virtually identical to that used to provide retail service to a Bell Atlantic customer (Tr. 22, at 31-33).

difference between UNE and retail maintenance because Bell Atlantic is using retail data to establish UNE measure elsewhere (Exh. BA-PS-2, at Section I, at 3).

Accordingly, we adopt UNE measures that are subject to performance payments that parallel, in great measure, those previously adopted for resale service. In addition, having reviewed Bell Atlantic and CLEC proposals, we have modified, in the list that follows, a few of the other measures proposed by Bell Atlantic to offer a greater degree of disaggregation of measurements to reflect a range of commercially important service quality concerns. Where resale performance measures include separate baseline figures for residence and business service, we apply the business service baseline figures because it is more likely that UNEs will be used for business customers. Next to each measure, we have given the performance standard that is indicated in this record (Exh. BA-PS-2, at Section I, at 1-4). Where no standard is clearly given, Bell Atlantic is directed to provide the appropriate figure in its compliance filing.

The UNE provisioning and maintenance performance measures that are subject to performance payments follow. As in the case of resale, Bell Atlantic should also report, for informational purposes, on the other UNE measures it has included in Exhibit BA-PS-2.

POTS UNE Provisioning:

- Average interval completed for 1-5 lines, with dispatch (5.88 days);
- Percent completed within one day, no dispatch (72.9%);
- Percent completed within three days, with dispatch (41.77%);
- Percent completed within five days, no dispatch (88.78%);
- Percent completed within five days, dispatch (62.34%);

- Percent missed appointment, with dispatch (19.7%);
- Percent missed appointment, no dispatch (0.35%);
- Percent installation troubles within seven days (7.55%);
- Percent installation troubles within 30 days (12.87%).

POTS UNE Maintenance:

- Percent missed repair appointments, for loop repairs (25.8%);
- Percent missed repair appointments, for central office repairs (25.8%);
- Mean time to repair for loops (34.09 hours);
- Mean time to repair for central office (14.30 hours);
- Percent OOS over 4 hours;
- Percent OOS over 12 hours;
- Percent OOS over 24 hours;
- Percent repeat reports within 30 days (11.9%).

Special Services UNE Provisioning:

- Percent missed appointments, dispatch (6.32%)
- Percent missed appointments, no dispatch (3.36%);
- Percent completed within one day, no dispatch (20.19%);
- Percent completed within three days, dispatch (7.80%);
- Percent of installation troubles within 7 days;
- Percent of installation troubles within 30 days (10.58%).

Special Services UNE Maintenance:

- Mean time to repair, total;
- Percent OOS over 4 hours;
- Percent out of service over 24 hours;
- Percent repeat reports within 30 days (16.97%).

H. Effective Date

1. Positions of the Parties

Bell Atlantic proposes that the applicable remedies that are approved by the Department in this case should be applied beginning on the effective date of the Department's approval of the applicable interconnection agreement between Bell Atlantic and the CLEC which incorporates such remedies into its terms (Bell Atlantic Brief at 17-18). TCG disagrees, stating that remedies for Bell Atlantic's failure to meet the parity standard should be assessed effective January 1, 1997, but no later than August 1, 1997 (TCG Brief at 2). TCG supports the January 1, 1997, date by noting that the Phase 3 Order setting forth Bell Atlantic's obligation to meet parity was issued on December 4, 1996, and asserts that the Order provided Bell Atlantic with direct notice of what would be measured to determine whether service is being provided at parity and when penalties would be imposed. This notice was adequate, says TCG, to make Bell Atlantic liable for the first complete month after the issuance of the Order (id. at 3-4).

TCG further argues that the Phase 3-B Order, issued on July 29, 1997, provided even greater detail on the specific metrics related to the parity standard, set forth the remedy framework of incident and performance payments, and specifically listed over 35 measures that are subject to performance payments. TCG asserts that this Order provided all the necessary information and detail for Bell Atlantic to understand its data collection obligations and its liability for failure to provide service at parity (id. at 4). AT&T joins in this argument as well and further notes that it should not be held hostage to the fact that Bell Atlantic has been refusing to sign its interconnection agreement for many months (AT&T Reply Brief at 3).

TCG also notes that, since January 1, 1997, it has ordered significant quantities of interconnection services subject to the parity requirements and the performance penalties. TCG claims that a "grave injustice" would occur if Bell Atlantic were able to escape liability for its failure to provide TCG service at parity for the intervening period. TCG further argues that failure to set an early onset date for the performance payments provides an unintended incentive for Bell Atlantic to delay in providing necessary information to the Department (TCG Brief at 5).

2. Analysis and Findings

From the beginning of this arbitration process, the parties have engaged in commercial relationships with the understanding that final rules relating to pricing and other terms of service would ultimately be memorialized in interconnection agreements. Indeed, the negotiated and filed interconnection agreements have contained place-holders for the arbitration awards as those awards are issued by the Department. As of what date, then, should Bell Atlantic be held financially responsible for its parity obligations under the Act, given that it provided service to and received payment from CLECs throughout 1997? We agree with TCG that Bell Atlantic was provided notice of general parity requirements in our December 4, 1996, Phase 3 Order. Nonetheless, there remained substantial disagreement among the parties as to the applicability of that standard, and it would be reasonable for Bell Atlantic to be uncertain as to its specific responsibilities. In our view, those disagreements and the uncertainty they created were substantively resolved by the Phase 3-B Order, issued on July 29, 1997. As TCG notes, it that order, we clearly set forth Bell Atlantic's obligations with regard to retail process standards. Any possible doubts as to Bell Atlantic's responsibilities in that arena were certainly resolved by the issuance of the Phase 3-C Order, on December 17, 1997, which dealt with Bell Atlantic's request for clarification and reconsideration. Accordingly, we conclude that performance payments related to compliance with retail process performance standards should be effective for the period starting January 1, 1998. Based on the commercial relationship between Bell Atlantic and each CLEC, which derives from the interconnection obligations of Section 251 of the Act, which have been known and in effect since February 8, 1996, this effective date will apply notwithstanding the particular status of a given CLEC's interconnection agreement on January 1, 1998.

III. INTERNAL PROCESS PERFORMANCE STANDARDS

A. Bell Atlantic's Proposals

Bell Atlantic's internal process performance standard proposal divides the company's internal processes into three general categories that reflect the time Bell Atlantic begins to act on a service request: (1) pre-ordering; (2) ordering; and (3) trouble reporting (Exh. BA-PS-1, at 2). Bell Atlantic states that its objective is to assess how Bell Atlantic provides these functions to itself and to compare this with how comparable functions are provided to CLECs when they obtain UNEs and resold services from Bell Atlantic (Bell Atlantic Brief at 19).

Pre-ordering includes gaining access to information such as customer service records, product and service availability, address validation requests, telephone number availability and reservation, and available due date. While both Bell Atlantic and CLEC personnel have access to this information, the access is available through different systems. CLECs are able to gain access electronically through the Direct Customer Access System ("DCAS") interface, using either a Web graphical user interface ("GUI") or an application-to-application system. In contrast, Bell Atlantic personnel gain access to the same information through "dumb" terminals that log into the applicable three operational support systems ("OSS") (Exh. BA-PS-1, at 2-3).

Bell Atlantic explains that the differences in the systems make direct comparison of the system response retrieval times difficult because there is a difference in the human response and decision-making time inherent in the two systems. Therefore, Bell Atlantic's proposal for pre-ordering would establish a parity standard reflecting a differential between the two systems' data retrieval response times (id. at 3).

In the area of ordering processes, Bell Atlantic has proposed minimum performance levels, rather than parity metrics, noting that there are no comparable activities performed by its personnel (id., at 2). Bell Atlantic proposes five measures: (1) the acknowledgment that an order has been received; (2) providing the CLEC with an order confirmation, including an order number and an appointment commitment; (3) rejection of an order; (4) notice of completion of an order; and (5) notice that an order commitment will be missed (id.).

In the area of trouble reports, Bell Atlantic again notes differences between the system established for CLECs and its own system. However, Bell Atlantic asserts that preliminary comparisons indicate that the Repair Trouble Administration System ("RETAS") interface developed for CLECs is faster in total time than the comparable system used by Bell Atlantic personnel. Bell Atlantic is conducting a time and motion study of its existing systems to confirm its preliminary results. Bell Atlantic asks that, if this differential is verified, that it not be required to report performance for its own system, which would require continuous, costly and unnecessary time and motion studies (id. at 3-4).

B. Positions of the Parties

None of the parties contest the overall framework for Bell Atlantic's proposed pre-ordering, ordering, and trouble reporting internal process standards, nor do they contest Bell Atlantic's assertions concerning the differences in the manner in which these service must be ordered by the CLECs. The Department has reviewed Bell Atlantic's submission and finds that it generally conforms with the intent of the Phase 3 Order.

MCI, however, has requested that six additional pre-ordering and ordering metrics be included as performance measures. MCI notes that they have been agreed to by Bell Atlantic in New York, and MCI cites testimony by a Department of Justice witness in a Southwestern Bell case in support of the additional metrics (MCI Brief at 4-5). They are listed in the following section (Section III.B.1-III.B.2), with MCI's rationale for each (see MCI Brief at 5-6). Rather than offering specific comments on each proposal, Bell Atlantic has made the general argument that MCI's pre-ordering metrics are not practical because of technical differences between the human response and decision-making time inherent in the two information systems used. Bell Atlantic also asserts that MCI's proposed ordering metrics are unreasonable because Bell Atlantic does not provide comparable services to itself (Bell Atlantic Reply Brief at 12).

1. Pre-Ordering Metrics

a. Response Time OSS (Pre-ordering) Interface

This metric is the time, measured in seconds, that elapses from the submission of a query request to the receipt of a response by the requesting carrier. MCI states that this metric is important because customer perceptions of service are affected by the speed and efficiency of the customer's service center contact.

b. Average Offered Interval

This measure is defined as the average number of business days between order application date and committed due date. MCI asserts that this metric is important because customer perceptions of service are affected by a CLEC's ability to provide service by the date service is requested or promised to be delivered.

2. Ordering Metrics

a. Order Confirmation Timeliness

This metric is defined as the time elapsed in hours between receipt of a valid order request and a distribution of a service order confirmation. This and each of the following three measures is important, says MCI, because it helps depict whether CLEC service orders are treated in a manner which leads to overall provisioning interval parity.

b. Reject Notice Timeliness

This metric would measure the amount of time elapsed in hours between receipt of an order request and rejection of an incomplete service order or one containing errors.

c. Timeliness of Completion Notification

This would measure the percent of completion notices sent on time. This metric would be measured from the notice to the Bell Atlantic billing system to the distribution of the order completion notification.

d. Percent Flow Through

This metric would measure the percentage of service orders that flow from the Bell Atlantic gateway to completion queue without manual intervention.

C. Analysis and Findings

With the exceptions noted below, the Department has reviewed Bell Atlantic's proposed internal process performance standards and finds them to be in conformance with the Phase 3 Order. Accordingly, we adopt all of the measures proposed by Bell Atlantic and direct it to file a compliance filing in which those measures are presented with accompanying proposed monitoring reports and proposed performance payments for deviations from the standards presented.

We have considered the requests made by MCI with regard to additional internal process standards and, in the case of one pre-ordering metric -- Response Time OSS (Pre-ordering) Interface -- concur with Bell Atlantic that the comparison sought by MCI would not take into account the different types of information systems serving the incumbent and the CLECs. In the case of the second pre-ordering metric -- Average Offered Interval -- we fail to see the value offered by compiling this measure, in that it effectively duplicates the intent of many of the retail measures we have previously adopted. Accordingly, we will not require that the proposed pre-ordering measures be adopted.

Likewise, with regard to the ordering metrics, we agree with Bell Atlantic's assertion that it does not provide comparable services to itself, and we accept its statement that it does not have the ability to measure some of the proposed metrics. The one exception relates to the percentage of orders which flow through the Bell Atlantic OSS without manual intervention. This metric is clearly measurable and useful, indicating the extent to which Bell Atlantic is offering comparable order treatment between itself and the CLECs. Accordingly, we direct Bell Atlantic to include this measure in its compliance filing, along with proposed monitoring reports and proposed performance payments for deviations from the standards presented.

D. Effective Date

Because the record on internal process standards was not as developed as the record for retail process standards until this portion of the proceeding, and because we herein adopt additional measures beyond those proposed by Bell Atlantic, the performance payments related to internal process performance standards will take effect as of the quarter beginning October 1, 1998.

IV. ORDER

Accordingly, after notice, hearing, and consideration, it is

ORDERED: That the issues under consideration in this Phase 3-E Order be determined as set forth above; and it is

FURTHER ORDERED: That the performance standards compliance filings made by New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts on August 19, 1997 and January 22, 1998 are hereby approved in part and denied in part; and it is

FURTHER ORDERED: That New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts make a compliance filing on the issues decided herein within 21 days of the date of this Order; and it is

FURTHER ORDERED: That the parties incorporate these determinations into final interconnection agreements, setting forth both negotiated and arbitrated terms and conditions, to be filed with the Department pursuant to Section 252(e)(1) of the Act; and it is

FURTHER ORDERED: That performance payments related to compliance with retail process performance standards shall be effective for the period starting January 1, 1998; and it is

FURTHER ORDERED: That performance payments related to compliance with internal process performance standards shall be effective for the period starting October 1, 1998; and it is

FURTHER ORDERED: That the parties comply with all other directives contained herein.

By Order of the Department,

Janet Gail Besser, Chair

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner