

D.T.E. 98-85

Petition of MCI WorldCom Telecommunications Corporation to require New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts to implement intraLATA presubscription in Massachusetts no later than February 8, 1999.

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ORDER

I. INTRODUCTION

On August 5, 1998, MCI Telecommunications Corporation, now MCI WorldCom, Inc. ("MCI WorldCom"), filed a petition with the Massachusetts Department of Telecommunications and Energy ("Department") requesting that New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts ("Bell Atlantic") implement intraLATA⁽¹⁾ presubscription ("ILP") in Massachusetts no later than February 8, 1999. ILP, also known as "dialing parity," permits customers to access their intraLATA toll call provider simply by dialing 1+ the phone number. Currently, toll calls placed by Bell Atlantic customers within the Eastern or Western LATA made by dialing 1+ the number are automatically routed to Bell Atlantic's network. Customers using a competing intraLATA toll carrier must dial a carrier access code before dialing the telephone number to place a call (e.g., 10+10+222+1+ the number, for MCI WorldCom, or 10+10+288+1+ the number, for AT&T). AT&T and other intervenors support MCI WorldCom's position and, together with MCI WorldCom, are referred to herein as "Competitive Carriers."⁽²⁾

Bell Atlantic opposed MCI WorldCom's petition and contends that ILP should be implemented at the same time Bell Atlantic is granted access to the interLATA market (long distance) by satisfying the requirements specified in 47 U.S.C. § 271 of the Telecommunications Act of 1996 ("Act").⁽³⁾ Bell Atlantic estimates that it will receive all state and federal approvals to enter the interLATA market by November 1999, so long as delays are not caused by the Department, other parties to the proceedings, or the Federal Communications Commission ("FCC") (Bell Atlantic Brief at 12, DTE-BA-RR-7).

II. PROCEDURAL HISTORY

On February 8, 1996, the Telecommunications Act of 1996 was enacted, which included a time schedule for implementation of ILP contained in sections codified as 47 U.S.C. §§ 251(b) and 271(e)(2). On August 8, 1996, the FCC issued an order ("Second Report and Order")⁽⁴⁾ requiring local exchange carriers like Bell Atlantic to provide dialing parity no later than February 8, 1999. On October 30, 1996, Bell Atlantic filed with the Department

a proposed Implementation Plan for ILP in Massachusetts. On May 28, 1997, the Department issued an Order approving in part and denying in part the proposed Implementation Plan of Bell Atlantic to introduce ILP in Massachusetts coincident with interLATA entry. NYNEX ILP, D.P.U./D.T.E. 96-106 (1997) ("D.P.U./D.T.E. 96-106"). In that Order, the Department required Bell Atlantic to make a compliance filing to correct certain deficiencies in its ILP implementation plan and to submit a revised plan and revised tariffs. Id. at 65. Regarding the timing of ILP implementation, the Department stated that "Since Massachusetts is a multi-LATA state and the Department did not issue an ILP order before December 19, 1995, Bell Atlantic is not required to offer toll dialing parity before Bell Atlantic has been granted authority to offer interLATA services, or before three years after the date of enactment of the Act,⁽⁵⁾ whichever is earlier." Id. at 5, 6.

On August 18, 1997, Bell Atlantic submitted its compliance filing, including a revised ILP implementation plan with supporting documentation, and revisions to tariffs M.D.P.U. Nos. 10 and 15.⁽⁶⁾ The tariffs were filed for effect October 10, 1997, and were proposed to be implemented coincident with Bell Atlantic's entry into the interLATA long distance market in Massachusetts. On October 9, 1997, the Department suspended the effective date of the tariffs until April 10, 1998 and provided for a review of Bell Atlantic's compliance filing in Docket Number D.P.U. 96-106-A. On April 9, 1998, the Department approved in part and denied in part Bell Atlantic's August 18, 1997, implementation plan, supporting documentation, and related tariff filing.

On May 8, 1998, Bell Atlantic filed a second ILP Compliance Filing as required in D.P.U./D.T.E. 96-106-A (1998). On August 5, 1998, MCI WorldCom filed a petition with the Department requesting that Bell Atlantic be required to implement ILP no later than February 8, 1999, rather than upon Bell Atlantic's entry into the long distance market. On August 28, 1998, the Department approved Bell Atlantic's compliance filing and reminded Bell Atlantic that the Department has the authority to order implementation of ILP starting February 8, 1999, if Bell Atlantic had not been granted interLATA authority by that date. IntraLATA Presubscription Compliance Filing, D.P.U./D.T.E. 96-106-A (August 28, 1998) Letter Order at 1, 2.

On October 7, 1998, the Department conducted a public hearing and procedural conference in this docket, at which time Bell Atlantic advised the Department that Bell Atlantic would be unable to meet a February 8, 1999, ILP implementation date (Tr. 1 at 13). On October 16, 1998, AT&T filed a Motion for Preliminary Relief, requesting that the Department order Bell Atlantic to commence immediately all steps necessary to implement ILP by February 8, 1999 (AT&T Motion at 1). Bell Atlantic opposed this motion, contending that the Act does not require Bell Atlantic to implement ILP until Bell Atlantic is authorized to enter the interLATA market (Bell Atlantic Opposition at 1).

On November 3, 1998, the Hearing Officer granted AT&T's Motion for Preliminary Relief, which required Bell Atlantic to "commence immediately all steps necessary to be prepared to implement intraLATA presubscription by February 8, 1999," in the event the Department determined in the final order in this docket that Bell Atlantic must implement

ILP by that date ("Hearing Officer Ruling" or "Ruling" at 7-8, 11). On November 5, 1998, Bell Atlantic filed a Motion to Stay the Hearing Officer Ruling until the Department ruled on Bell Atlantic's appeal.⁽⁷⁾ On November 6, 1998, Bell Atlantic filed a Petition to Appeal the Ruling. On November 12 and 13, 1998, the Department conducted evidentiary hearings on the MCI WorldCom Petition.

On November 20, 1998, the Department issued an Order ("Interlocutory Order") denying Bell Atlantic's Motion to Stay and the Petition to Appeal the Hearing Officer Ruling of November 3, 1998. The Department upheld the Hearing Officer Ruling with one modification: Bell Atlantic was directed to commence immediately all steps necessary to be prepared to implement ILP on April 20, 1999, rather than February 8, 1999 (Interlocutory Order at 8). On November 23, 1998, the Department received initial briefs from AT&T, MCI WorldCom, Bell Atlantic, the Attorney General, MediaOne, and TRA. On November 30, 1998, the Department received reply briefs from AT&T, MCI WorldCom, and Bell Atlantic.

III. STANDARD OF REVIEW

The Department's standard to determine whether to grant or deny MCI WorldCom's Petition must be considered against the backdrop of relevant federal and state statutes, the Department's procedures, and previous relevant orders.

The Act, in the provision codified as 47 U.S.C. § 251(b), requires every local exchange carrier to provide toll dialing parity in a nondiscriminatory framework as follows:

Each local exchange carrier has the following duties: . . .

(3) Dialing parity.--The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays."

47 U.S.C. § 251(b)(3).

Section 271(e)(2)(A) of the Act requires Bell Atlantic to offer ILP to other carriers no later than the time that Bell Atlantic is authorized to provide interLATA (long distance) toll service within Massachusetts. Section 271(e)(2)(B) of the Act allows the Department to require Bell Atlantic to offer ILP by February 8, 1999, regardless of whether Bell Atlantic has entered the interLATA market:

(A) PROVISION REQUIRED.--a Bell operating company granted authority to provide interLATA services under subsection (d) shall provide intraLATA toll dialing parity throughout that State coincident with its exercise of that authority.

(B) LIMITATION.--Except for single-LATA States and States that have issued an order by December 19, 1995, requiring a Bell operating company to implement intraLATA toll dialing parity, a State may not require a Bell operating company to implement intraLATA toll dialing parity in that State before a Bell operating company has been granted authority under this section to provide interLATA services originating in that State or before 3 years after the date of enactment of the Telecommunications Act of 1996, whichever is earlier. Nothing in this subparagraph precludes a State from issuing an order requiring intraLATA toll dialing parity in that State prior to either such date so long as such order does not take effect until after the earlier of either such dates.

47 U.S.C. § 271(e)(2).

Under Massachusetts state law, the appropriate standard to determine whether the Department should order Bell Atlantic to implement ILP on February 8, 1999, is found in G.L. c. 159, § 16. Section 16 states, in pertinent part:

If the [D]epartment is of opinion, after a hearing had upon its own motion or upon complaint, that the regulations, practices, equipment, appliances or service of any common carrier are unjust, unreasonable, unsafe, improper or inadequate, the [D]epartment shall determine the just, reasonable, safe, adequate and proper regulations and practices thereafter to be in force and to be observed, and the equipment, appliances and service thereafter to be used, and shall fix and prescribe the same by order to be served upon every common carrier to be bound thereby. . . . Before making such order, the [D]epartment shall consider the relative importance and necessity of the changes . . . which may be brought to its attention in the course of the hearing, the financial ability of the carrier to comply with the requirements of the order, and the effect of the carrier's compliance therewith, upon its financial ability to make such other changes, if any, as may be deemed by the [D]epartment of equal or greater importance and necessity in the performance of the service which the carrier has professed to render to the public.

If the Department finds that Bell Atlantic's timing for implementation is unreasonable, unsafe, improper or inadequate, then the Department must determine the just, reasonable, safe, adequate and proper method for implementing the ILP plan. While there are timing limitations imposed by the Act, Massachusetts law is consistent with federal law on this point.

IV. ISSUES

A. Department's Authority to Order ILP Implementation

1. Overview

The first issue the Department must address is the extent of the Department's authority to order ILP implementation. On May 28, 1997, the Department adopted, in part, an ILP plan that would allow Bell Atlantic to implement dialing parity on a date coincident with its entry into the interLATA long-distance market in Massachusetts (D.P.U./D.T.E. 96-106). At that time, Bell Atlantic anticipated that such entry would be in the third quarter of 1997 (*id.* at 12). As noted by MCI WorldCom, the Order did not indicate when Bell Atlantic should provide ILP in Massachusetts, absent interLATA authority (MCI WorldCom Petition at 1).

Given that Bell Atlantic has not yet entered the interLATA market,⁽⁸⁾ MCI WorldCom maintains that it is up to the Department to decide whether Bell Atlantic will be required to provide dialing parity on or after February 8, 1999 (*id.* at 4).

2. Positions of the Parties

a. Competitive Carriers

With the exception of AT&T, the Competitive Carriers maintain that the Department has the discretion to require Bell Atlantic to provide dialing parity once three years have passed from the enactment of the 1996 Act, regardless of whether Bell Atlantic has entered into the interLATA market (*i.e.*, on or after February 8, 1999) (MCI WorldCom Brief at 2-3, 4; Attorney General Brief at 3; TRA Brief at 5). MediaOne and TRA also point out that the Eighth Circuit decision (described in note 4 of this Order) neither alters the date by which ILP should be implemented, nor does it affect the Department's authority to adopt February 8, 1999, as an ILP implementation date (MediaOne Brief at 7; TRA Brief at 7).

AT&T argues, however, that Bell Atlantic is required by the Act to implement ILP by February 8, 1999, or by the date of approval for in-region interLATA toll service, whichever occurs first (AT&T Brief at 2, 4). AT&T and TRA add that even assuming *arguendo* that the Act does not mandate ILP by February 8, 1999, it is clearly within the Department's authority to order ILP as of that date (*id.* at 8, TRA Brief at 8).

b. Bell Atlantic

Bell Atlantic counters AT&T's argument that under the Act, Bell Atlantic must offer ILP by February 8, 1999 (Bell Atlantic Brief at 3). According to Bell Atlantic, such a reading of the Act is erroneous and is not supported even by MCI WorldCom in this case (*id.*). Bell Atlantic contends that Section 271(e)(2)(B) is the only provision of the Act that governs the timing of ILP, and nothing in this provision mandates that Bell Atlantic implement ILP on February 8, 1999, if it is not authorized by then to provide interLATA services (*id.* at 4). Bell Atlantic asserts, rather, that the Department has the discretion to require ILP implementation in Massachusetts beginning on that date (*id.*). Bell Atlantic states that the Department exercised this discretion in its November 20, 1998, Interlocutory Order. The Department determined that ILP implementation on February 8, 1999, in Massachusetts would have adverse affects on customers and competing carriers because of the steps required by Bell Atlantic to complete remaining work; consequently, the Department found that Bell Atlantic should be given until April 20, 1999, to complete the preparations for ILP (*id.* at 5). Thus, Bell Atlantic argues that there is no legal or regulatory support for AT&T's claim that Bell Atlantic is obligated to implement ILP on February 8, 1999 (*id.*).

3. Analysis and Findings

We disagree with AT&T's reading of Section 271(e)(2)(B) as requiring that the Department order Bell Atlantic to implement ILP on February 8, 1999. The Department's authority arises upon the earlier occurrence of one or the other of two conditions: either Bell Atlantic's entry into the interLATA market (an event) or on February 8, 1999 (a date). See IntraLATA Presubscription Compliance Filing, D.P.U./D.T.E. 96-106-A (1998) August 28, 1998, Letter Order ("Approval of Bell Atlantic's compliance filing does not limit the Department's ability to direct Bell Atlantic to implement intraLATA presubscription any time after February 8, 1999."). This interpretation of the Act underlays the Department's November 20, 1998, Interlocutory Order in this case, in which we required that Bell Atlantic "commence immediately all steps necessary to be prepared to implement ILP on April 20, 1999, should the Department determine in [this Order] that such an implementation date is in the public interest." MCI WorldCom Petition re: Bell Atlantic ILP Implementation, D.T.E. 98-85 (November 20, 1998, Interlocutory Order at 8).

B. Public Policy Issues

1. Overview

The second issue the Department must address is whether implementation of ILP by Bell Atlantic as soon as possible is in the public interest and whether implementation of ILP prior to Bell Atlantic's Section 271 authorization to provide in-region interLATA services is consistent with previous Department orders.

2. Positions of the Parties

a. Competitive Carriers

The Competitive Carriers maintain that it is in the public interest to require implementation of Bell Atlantic's ILP plan no later than February 8, 1999 (MCI WorldCom Brief at 5; MediaOne Brief at 15; AT&T Brief at 5; Attorney General Brief at 3). AT&T argues that any further delay in implementing ILP would continue to deny consumers the benefits of competition in the form of a choice of intraLATA toll providers, lower services, and new service offerings, which all would be encouraged by dialing parity (AT&T Brief at 5). AT&T and MCI WorldCom maintain there is no sound public policy reason to delay implementation until such time as Bell Atlantic is granted interLATA relief (AT&T Brief at 4; MCI WorldCom Brief at 8).⁽⁹⁾

Moreover, TRA takes issue with Bell Atlantic's position that implementation of ILP prior to the time that Bell Atlantic is allowed into the interLATA market may be contrary to the public interest, as it could lead to higher costs and lower economic efficiency for Massachusetts customers (TRA Brief at 15). TRA argues that ILP should focus on the issue of consumer choice, not on academic arguments about purported economic equity (Id. at 16).

With respect to the question of whether implementation of ILP prior to Bell Atlantic's authorization to provide interLATA services is consistent with previous Department orders, the Competitive Carriers maintain that prior Department Orders did not establish an ILP date coincident with Section 271 approval (MediaOne Brief at 5; AT&T Brief at 8; MCI WorldCom Brief at 10; TRA Brief at 11; Attorney General Brief at 4).

MediaOne states that the Department's Order in D.P.U./D.T.E. 96-106 linked ILP implementation to the interLATA market entry solely because Bell Atlantic represented it would enter the long distance market in the third quarter of 1997 -- long before February 8, 1999 (MediaOne Brief at 6). MediaOne points out that D.P.U./D.T.E. 96-106 stated that the implementation of ILP should occur at the time Bell Atlantic enters the interLATA toll market, or February 8, 1999, whichever occurs first (MediaOne Brief at 5-6, citing D.P.U./D.T.E. 96-106 at 5-6).⁽¹⁰⁾

AT&T adds that Bell Atlantic should not be allowed to rely on an order that was predicated on facts that are no longer valid and over which Bell Atlantic has control (AT&T Brief at 8). AT&T argues that Bell Atlantic was well aware that the Department had the discretion to order ILP effective February 8, 1999, and that any such doubt should have been removed by the Department's August 28, 1998, Letter Order (Id. at 9).

b. Bell Atlantic

Bell Atlantic argues that as a matter of "reasoned consistency" it is entitled to the same outcome in this proceeding as reached by the Department's prior Orders in D.P.U./D.T.E. 96-106 and 96-106-A to allow ILP implementation coincident with Bell Atlantic's authorization to enter the interLATA market (Bell Atlantic Brief at 7). Furthermore, Bell

Atlantic states that requiring ILP implementation before it is allowed to offer a package of intraLATA and interLATA toll services is "inconsistent with sound economic principles and will not provide Massachusetts toll customers with the benefits economists usually ascribe to increased competition in a market." Id. According to Bell Atlantic, an environment in which competitors can offer the same variety or packages of services, if they choose, is what will promote efficient competition and enhance customer choice (id.). Commencing February 8, 1999, other carriers will be able jointly to market resold local services with both intraLATA and interLATA toll services while Bell Atlantic will not because Bell Atlantic will not have entered the interLATA market by that date (id. at 8). Bell Atlantic contends that the already existing competitive imbalance will be further exacerbated by these events, resulting in ILP not best serving the public interest (id. at 8).

Bell Atlantic contends that the Department has previously determined that ILP should be offered coincident with Bell Atlantic's ability to offer interLATA services, and that the Department should reaffirm its prior ILP decisions and allow ILP at a time "when every company is free to market its services on an equal footing." Id. at 11.

3. Analysis and Findings

Bell Atlantic misinterprets and misconstrues the Department's finding in D.T.E. 96-106 on the timing of ILP implementation. The Department never needed to address the issue of whether Bell Atlantic should implement ILP by February 8, 1999, because the record in that docket showed that Bell Atlantic expected to have received Section 271 approval well before that date. The Department, in determining in D.T.E. 96-106 that Bell Atlantic should implement ILP coincident with its entry into the Massachusetts interLATA market, presumed that Bell Atlantic would in fact have received interLATA authority before February 8, 1999.

Moreover, the "reasoned consistency" doctrine does not preclude the Department from re-examining issues or modifying prior decisions, as long as the Department provides a reasoned explanation for its changed policy. Boston Gas Company v. Dept. of Pub. Util., 324 N.E. 2d 372, 379 (1975). Indeed, it would be unfair to Massachusetts consumers if the Department failed to reassess the timing question given the significant change in circumstances.

The Competitive Carriers have presented convincing evidence of the competitive benefits to consumers from introducing ILP as soon as possible (Exhs. AT&T-1, at 6; AT&T-4, at 2-3, 13; MCI WorldCom-1, at 3-4). Currently, consumers must dial an access code to make intraLATA calls using a carrier other than Bell Atlantic. With ILP, consumers will be able to presubscribe their intraLATA toll carrier in the same way that they now pre-select their interLATA long distance carrier. There is ample evidence that competition and the consumer benefits that result from competition (e.g., more choices in products and services, lower prices, better service) would be enhanced by the availability of ILP (Exh. AT&T-4, at 2-3, 13). Consumers would find it more convenient to select their carrier of choice through presubscription, notwithstanding the

many dial-around plans today (*id.* at 4-5). Conversely, the lack of ILP operates as an artificial barrier to competition. Consumers are discouraged from using a carrier other than Bell Atlantic because of the difficulty or inconvenience of having to dial an access code. Thus, as an artifact of its former monopoly status, Bell Atlantic retains a competitive advantage as long as ILP is delayed (Exh. MCI WorldCom-1, at 10-11). We are not persuaded by Bell Atlantic's witness, Dr. Taylor, that ILP implementation on a date earlier than Bell Atlantic's entry into the interLATA market would lead to such inefficient competition that consumers on balance would be harmed. While there will be temporary limitations placed asymmetrically on Bell Atlantic, which may result in some degree of inefficient competition, the benefits customers are likely to derive from ILP should outweigh any welfare losses from this inefficient competition. Moreover, according to Dr. Taylor, such harm would appear only over the long run, and not during the short run (Tr. 1, at 113-118). We would expect that the period intervening between when ILP is introduced and Bell Atlantic enters the long distance market need not be a long one.

In addition, contrary to Bell Atlantic's contention, the Department did not consider the issue of competitive balance when we originally found in D.P.U. 96-106 that Bell Atlantic could implement ILP coincident with receiving Section 271 approval (*see* Tr. 1 at 65, 88-89). As stated earlier, the timing question was never addressed because it was assumed that Bell Atlantic would be in the long distance market by the time its ILP tariff became effective. Therefore, for all of the above reasons we find that the public interest requires that Bell Atlantic implement ILP as soon as practicable.

C. Technological Feasibility of Implementing ILP

1. Overview

The third issue the Department must address is Bell Atlantic's concern about whether it is technologically feasible for Bell Atlantic to implement ILP by February 8, 1999, or by April 20, 1999, as ordered by the Department in its November 28, 1998 Interlocutory Order.

2. Analysis and Findings

In its November 20, 1998 Interlocutory Order in this case, the Department found that it is technically feasible for Bell Atlantic to implement ILP on April 20, 1999. As we ruled in the November 20, 1998, Interlocutory Order, the record demonstrates that Bell Atlantic has the capability to implement ILP on April 20, 1999, without requiring modifications to the ILP implementation plans approved in D.P.U. 96-106 and D.T.E./D.P.U. 96-106-A. Moreover, an April 20, 1999, implementation date will not significantly or unreasonably impair Bell Atlantic's operations and systems work. Finally, that date will lead to a smooth, efficient implementation process. Accordingly, we find that Bell Atlantic shall implement ILP in Massachusetts beginning April 20, 1999.

To ensure that there will be no further delay in ILP implementation, Bell Atlantic is hereby required to file with the Department monthly status reports summarizing Bell Atlantic's ILP implementation efforts and activities beginning two weeks from the date of this Order. These progress reports are designed to ensure that the necessary steps will be taken for the April 20, 1999, implementation date. Copies of these reports shall be served on all parties to this case.

V. ORDER

After due notice, hearing and consideration, it is

ORDERED: That the Petition filed by MCI Telecommunications Corporation, now MCI WorldCom, Inc., is GRANTED in part and DENIED in part as described herein; and it is

FURTHER ORDERED: That New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts shall make available IntraLATA Presubscription by April 20, 1999, and shall submit monthly status reports as described herein; and it is

FURTHER ORDERED: That New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts shall 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

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. A LATA, or local access transport area, is a designation of geographic area based on population sizes. In 1984 at the time of the AT&T Divestiture, the Justice Department created LATAs to define where Bell operating companies ("BOCs") were permitted to provide local telephone service. Massachusetts has two LATAs. One aspect of divestiture

was to permit long distance carriers to provide call service between LATAs (interLATA service), but BOCs could provide call service only within a LATA (intraLATA service).

2. The Department granted petitions for intervention filed by AT&T Communications of New England, Inc. ("AT&T"), Competitive Telecommunications Association ("CompTel"), Telecommunications Resellers Association ("TRA"), Sprint Communications Company, L.P. ("Sprint"), MediaOne Telecommunications of Massachusetts, Inc. ("MediaOne"), CTC Communications Corporation ("CTC"), and RCN BecoCom ("RCN"). The Attorney General for the Commonwealth of Massachusetts ("Attorney General") filed a notice of intervention and, for purposes of this Order, is included in the designation of "Competitive Carriers." The Department also granted Bell Atlantic's petition for intervention.

3. The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, was codified as amended in scattered sections of Title 47, United States Code.

4. In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket 96-98, *Second Report and Memorandum Opinion and Order*, (August 8, 1996). On August 22, 1997, the Eighth Circuit Court of Appeals vacated this and other FCC rules on dialing parity and numbering administration as intruding on state jurisdiction. People of the State of California v. FCC, 124 F.3d 934 (8th Cir. 1997) (Court concluded that the FCC exceed its jurisdiction in promulgating rules that govern intrastate dialing parity, which jurisdiction the Court found lies with the states; vacated 47 C.F.R. §§ 51.205-51.215), cert. granted, Case Nos. 97-1519, 97-1520, 1998.

5. The Act was enacted on February 8, 1996.

6. Bell Atlantic initially submitted its compliance filing on August 1, 1997, with an effective date for the revised tariffs of August 31, 1997. At the Department's direction, Bell Atlantic withdrew and refiled its compliance filing on August 18, 1997.

7. AT&T, MCI WorldCom, CompTel and TRA filed Oppositions to the Motion to Stay.

8. Bell Atlantic anticipates filing its Section 271 application with the FCC in August 1999, with a proposed ILP implementation date of November 10, 1999 (DTE-BA-RR-7).

9. AT&T points out that Bell Atlantic has implemented ILP throughout the rest of New England and New York without waiting to make a Section 271 filing (AT&T Brief at 7).

10. Several Competitive Carriers point out that Bell Atlantic's own conduct indicated that it was well aware of the February 8, 1999, implementation date for its ILP Plan, citing Bell Atlantic's 1997 Annual Report and brief filed with the Department in D.P.U./D.T.E. 96-106 (1997) (MediaOne Brief at 7; Attorney General Brief at 4).