

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Inquiry by the Department of Telecommunications	)
and Energy pursuant to Section 271 of the	)
Telecommunications Act of 1996 into the Compliance )	D.T.E. 99-271
Filing of New England Telephone and Telegraph Company	)
d/b/a Bell Atlantic-Massachusetts as part of its application	)
to the Federal Communications Commission for entry into	)
the in-region interLATA (long distance) telephone market.	)

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**COMMENTS OF THE ATTORNEY GENERAL  
ON BELL ATLANTIC'S MAY 26, 2000, SUPPLEMENTAL FILING**

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The Attorney General hereby submits these comments to the Department of Telecommunications and Energy (“DTE” or “Department”) pursuant to the May 18, 2000, and June 9, 2000, Memoranda of the Hearing Officers seeking comment on the Supplemental Filing (“Supplemental Filing”) of New England Telephone and Telegraph Company, d/b/a Bell Atlantic-Massachusetts (“Bell Atlantic” or “Bell Atlantic-Massachusetts”).<sup>1</sup> This matter concerns Bell Atlantic’s application for entry into the long distance telephone market pursuant to Section 271 of the Telecommunications Act of 1996.<sup>2</sup>

The Attorney General has completed his review of the Supplemental Filing to ascertain from the consumer’s perspective, whether Bell Atlantic has opened the local market to competition as measured

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<sup>1</sup> Supplemental Filing of Bell Atlantic, filed May 26, 2000.

<sup>2</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996), codified as amended in 47 U.S.C. § 271 (1996) and various other sections of 47 U.S.C. (“the Act”).

by the 14-point competitive checklist contained in Section 271. In this context, the Attorney General has reviewed similar Section 271 filings submitted by Bell Atlantic-New York (“New York Application”) and by SBC Communications (Texas) (“Texas Application”) to the Federal Communications Commission (“FCC”), related Section 271 opinions issued by the U.S. Department of Justice and the New York Office of the Attorney General, and Section 271 orders issued by the New York Public Service Commission, the Pennsylvania Public Utilities Commission (“PAPUC”), and the FCC relating to the New York and Texas Applications and the pending Section 271 filing submitted to the PAPUC by Bell Atlantic-Pennsylvania. Based upon that review, the Attorney General concludes that Bell Atlantic has not yet satisfied the 14-point checklist contained in Section 271 of the Telecommunications Act of 1996, there being unresolved issues on digital subscriber line (“DSL”) services, operational support systems (“OSS”), unbundled network elements (“UNEs”), and the Performance Assurance Plan (“PAP”).

Specifically, the Attorney General recommends as follows:

1. DSL issues:
  - a. The DTE should revise existing DSL performance measures (metrics) before final approval and should create DSL line sharing metrics as soon as possible.
  - b. The DTE should investigate the costs of a separate data affiliate for DSL advanced services as part of the Section 271 record.
2. OSS issues:
  - a. The Department should require Bell Atlantic-Massachusetts to fix all problems in its OSS.
  - b. The initial draft report of the independent third-party tester, KPMG, should have been circulated to all participants for comment at the same time.
  - c. KPMG must finish testing the pre-order, order, and provisioning (“POP”) domain of the OSS test to avoid New York-style problems.
3. The DTE should examine Bell Atlantic’s UNE recurring charges and finalize its

investigation into the UNE non-recurring charges.

4. The DTE should finalize the contents of the PAP.

## **I. SECTION 271 REQUIREMENTS**

By enacting Section 271 of the Act, Congress allowed regional Bell operating companies (“RBOCs”), including Bell Atlantic-Massachusetts, to offer in-region, long distance telephone service if the RBOC demonstrates to the FCC that it meets four criteria: (1) satisfy the requirements of either Section 271(c)(1)(A) (“Track A”) or Section 271(c)(1)(B) (“Track B”);<sup>3</sup> (2) demonstrate that the local markets are open to competition as measured by a 14-point competitive checklist;<sup>4</sup> (3) create and maintain a structurally separate affiliate to offer long distance service in compliance with Section 272 of the Act;<sup>5</sup> and (4) demonstrate that allowing the RBOC into the local market is in the public interest.<sup>6</sup> The FCC is required by law to consult with the U.S. Department of Justice and the applicable state public utilities commission.<sup>7</sup>

To date the FCC has considered seven such applications, granting only the New York and

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<sup>3</sup> Under Track A, the RBOC must show that it has entered into one or more interconnection agreements with an unaffiliated carrier. 47 U.S.C. § 271(c)(1)(A). Under Track B, the RBOC must receive certification by the state commission regarding interconnection terms and conditions if the RBOC has not signed an interconnection agreement. 47 U.S.C. § 271(c)(1)(B). The New York 271 Approval and the Texas 271 Approval were Track A applications, and Bell Atlantic-Massachusetts is likewise a Track A filing.

<sup>4</sup> 47 U.S.C. § 271(c)(2)(B)(I)-(xiv).

<sup>5</sup> 47 U.S.C. § 272(a).

<sup>6</sup> 47 U.S.C. § 271(d)(3)(C).

<sup>7</sup> 47 U.S.C. § 271(d)(2)(A), (B).

Texas Applications, on December 22, 1999, and June 30, 2000, respectively.<sup>8</sup> Related to the workings of these two recent “Section 271 approvals” are the FCC’s approvals of the Bell Atlantic-GTE Corporation merger (June 16, 2000) and the SBC-Ameritech merger (October 8, 1999), which included local market-opening conditions such as the mandatory creation of separate data affiliates to provide advanced services (including xDSL).<sup>9</sup>

The FCC has delegated some of its fact-finding authority in these investigations to the state public utilities commissions and, in that capacity, the Department opened this investigation to determine whether Bell Atlantic has complied with the 14-point checklist set forth in Section 271. This 14-point checklist measures Bell Atlantic-Massachusetts’ ability to provide nondiscriminatory access for competitive local exchange carriers (“CLECs”) to:

(1)

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<sup>8</sup> *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, CC Docket No. 99-295 (released December 22, 1999) (“New York 271 Approval”); *In the Matter of Application by SBC Communications, Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance, Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, CC Docket No. 00-65 (released June 30, 2000) (“Texas 271 Approval”).

<sup>9</sup> *In re Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, CC Docket No. 98-184 (released June 16, 2000) (“BA-GTE Merger Approval”); *In re Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission’s Rules*, Memorandum Opinion and Order, CC Docket No. 98-141 (released October 8, 1999) (“SBC-Ameritech Merger Approval”). The term “xDSL” refers to digital subscriber line technologies, which is a group to technologies designed to give the consumer high speed access to data and is more fully described herein.

interconnection agreements;<sup>10</sup> (2) unbundled network elements;<sup>11</sup> (3) poles, ducts, conduits, and rights-of-way at just and reasonable rates;<sup>12</sup> (4) unbundled local loops;<sup>13</sup> (5) unbundled local trunk transport;<sup>14</sup> (6) unbundled local switching;<sup>15</sup> (7) 911 and E911 services, directory assistance, and operator call completion services;<sup>16</sup> (8) white pages directory listings for other carriers' service;<sup>17</sup> (9) numbering administration;<sup>18</sup> (10) databases and associated signaling for call routing and completion;<sup>19</sup> (11) permanent or interim local number portability;<sup>20</sup> (12) intraLATA toll presubscription;<sup>21</sup> (13) reciprocal compensation arrangements;<sup>22</sup> and (14) resale arrangements.<sup>23</sup>

In the Texas 271 Approval, the FCC identified four elements that were important to its

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<sup>10</sup> 47 U.S.C. § 271(c)(B)(i) and 47 U.S.C. §§ 251(c)(2) and 251(d)(1).

<sup>11</sup> 47 U.S.C. § 271(c)(B)(ii), 47 U.S.C. § 251(c)(3) and 47 U.S.C. § 251(d)(1).

<sup>12</sup> 47 U.S.C. § 271(c)(B)(iii).

<sup>13</sup> 47 U.S.C. § 271(c)(B)(iv).

<sup>14</sup> 47 U.S.C. § 271(c)(B)(v).

<sup>15</sup> 47 U.S.C. § 271(c)(B)(vi).

<sup>16</sup> 47 U.S.C. § 271(c)(B)(vii)(I), (II), and (III).

<sup>17</sup> 47 U.S.C. § 271(c)(B)(viii).

<sup>18</sup> 47 U.S.C. § 271(c)(B)(ix).

<sup>19</sup> 47 U.S.C. § 271(c)(B)(x).

<sup>20</sup> 47 U.S.C. § 271(c)(B)(xi).

<sup>21</sup> 47 U.S.C. § 271(c)(B)(xii).

<sup>22</sup> 47 U.S.C. § 271(c)(B)(xiii).

<sup>23</sup> 47 U.S.C. § 271(c)(B)(xiv), 47 U.S.C. § 251(c)(4).

evaluation of whether Texas' local telephone markets were, in fact, open to competition: (1) full and open participation by all interested parties; (2) independent third party testing of the operational readiness of Southwestern Bell Telephone's OSS; (3) development of clearly defined performance measures and standards; and (4) adoption of performance measures that ensure future compliance with the section 271 checklist. Texas 271 Approval, News Release at 2. The Attorney General urges the Department to use these elements as the lodestar throughout the remaining portion of its investigation into Bell Atlantic-Massachusetts' Section 271 filing.

The Attorney General has participated in this investigation to date by appearing at public hearings, filing comments, responding to various motions, and participating in on-going discussions led by KPMG, the third-party overseer retained by the DTE to test and evaluate Bell Atlantic's operational support systems ("OSS"). The Attorney General intends to remain an active participant in this docket throughout the technical sessions and panel hearings/ oral arguments and, if Bell Atlantic-Massachusetts is allowed to serve the long distance market, through subsequent monitoring of the implementation of its Section 271 approval and compliance.<sup>24</sup>

## **II. UNRESOLVED ISSUES AND RECOMMENDATIONS**

Bell Atlantic filed more than 900 additional pages of supplemental public information on May

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<sup>24</sup> According to the July 14, 2000, Hearing Officer Memorandum, KPMG must submit its initial draft report to Bell Atlantic and the DTE for comment on July 17, 2000, must issue a revised draft report to CLECs for comment on July 26, 2000, and must issue a second revised draft report to the DTE, Bell Atlantic, and CLECs on August 7, 2000. The DTE will commence a round of non-OSS technical sessions on August 14, 2000, and OSS technical sessions on August 28-30, 2000. Furthermore, panel hearings and/or oral arguments are scheduled for September 7-8, 2000. This revised procedural schedule does not specify when KPMG must issue its final report.



26, 2000, in an attempt to bolster its argument that it has opened the local market to competition by satisfying the Section 271 14 point checklist and complied with the OSS requirements.<sup>25</sup> The Attorney General challenges that assertion and has identified several unresolved substantive issues regarding DSL, UNE, OSS, and certain unresolved procedural issues involving the PAP and associated programs. Herein the Attorney General respectfully offers his recommendations to the Department on each issue. This list is by no means intended to be a complete description of every flaw in Bell Atlantic's supplemental filing; the identified issues, however, are those that may affect Massachusetts consumers significantly and adversely if not addressed by Bell Atlantic and/or the Department.

**A. The Department must resolve the outstanding DSL and DSL Line Sharing issues prior to final approval.**

As part of the compliance requirements under Section 271, Checklist Item Number 4 (unbundled local loops), the Department is examining whether Bell Atlantic is providing non-discriminatory access to the high frequency portion of the local copper loop so that CLECs can compete against Bell Atlantic to provide customers with digital subscriber line ("xDSL") services.<sup>26</sup>

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<sup>25</sup> Supplemental Filing at 1.

<sup>26</sup> The term "xDSL" refers to a group of technologies used to transmit high-speed data over copper wires, or loops, and the group is often loosely referred to as "DSL" when, in fact, there are several types of DSL technologies used today by Bell Atlantic and CLECs to give customers access to the Internet and other broadband services. For example, asymmetrical DSL ("ADSL") can be used to transmit Internet data at high speeds from the customer to the phone company at up to 640 kilobits per second (Kbps) (called "upstream"), and from the phone company to the customer at up to 6 megabits per second (Mbps) (called "downstream") and hence the asymmetrical aspect of this data transmission technology. *D.T.E. 98-57 Phase III*, Testimony of Bruce Meachem, Bell Atlantic, June 14, 2000, at 5-6. Bell Atlantic and some CLECs currently uses ADSL to provide voice and/or data services to their customers over the same telephone line. Bell Atlantic's DSL conditioning and line sharing tariff in *DTE 98-57 Phase III* addresses both ADSL and high bit-rate DSL ("HDSL"). HDSL uses either a

(continued...)

The FCC ruled in its Line Sharing Order that the high frequency portion of the local loop should be unbundled from the remainder of the loop as an unbundled network element.<sup>27</sup> This ruling requires Bell Atlantic-Massachusetts to “line share” with CLECS so that Bell Atlantic-Massachusetts and CLEC can compete to provide DSL service for access to data over the high frequency portion of the loop, with Bell Atlantic-Massachusetts continuing to provide voice services over the low frequency portion of the same copper loop. Failure to do so will, as noted by the U.S. Department of Justice in its initial evaluation of the SBC - Texas Section 271 application to the FCC, “seriously retard the deployment of such services and competition in their provision.”<sup>28</sup>

The DTE is investigating Bell Atlantic’s DSL conditioning and line sharing tariff provisions for asymmetric DSL (“ADSL”) and high bit density DSL (“HDSL”) as part of Phase III of DTE 98-57, with evidentiary hearings set to commence on August 1, 2000, and final decision on all approved DSL line sharing issues no later than September 18, 2000. Because DSL line sharing holds such great

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<sup>26</sup>(...continued)

two-wire or four-wire copper loop and can transmit data signals symmetrically (both upstream and downstream) at rates from 784 Kbps to 1.5 Mbps (*id.*). Other types of xDSL technology not covered in the DTE 98-57 Phase III tariffs are universal DSL (“UDSL”), very high speed DSL (“VDSL”), rate adaptive DSL (“RADSL”), symmetrical DSL (“SDSL”), and integrated DSL (“IDSL”). *DTE 98-57 Phase III*, Testimony of Amy Stern, June 14, 2000, at 2, 5.

<sup>27</sup> *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, and Implementation of the Local Competition Provisions of the Telecommunication Act of 1996*, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (released December 9, 1999) (“Line Sharing Order”).

<sup>28</sup> *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas*, Evaluation of the United States Department of Justice, CC Docket No. 00-4 (filed 2/14/00), Evaluation at 1.

potential to bring high speed access to broadband services for Massachusetts residential and small business consumers, the DTE should resolve the outstanding DSL line sharing issues prior to giving the FCC a favorable recommendation for Bell Atlantic to enter the long distance market.<sup>29</sup> In addition, the DTE must be prepared to create DSL line sharing metrics in the very near future because the Master Test Plan of Bell Atlantic's OSS does not include DSL line sharing.<sup>30</sup> Consequently, there are no measurements for missed appointments, lost lines, or other relevant metrics for line sharing. The Attorney General renews his call for the creation of a metrics working group to consider and resolve such issues.<sup>31</sup>

**1. The Department should be ready to revise existing DSL metrics and create DSL line sharing metrics.**

As part of its investigation, the DTE should closely examine Bell Atlantic-Massachusetts' compliance with the existing DSL metrics to ensure that Bell Atlantic's performance is adequately

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<sup>29</sup> The U.S. Department of Justice has expressed the same concern in its recent re-evaluation of the SBC-Texas Section 271 Application: "We emphasize, however, that future applications may require more than SBC has demonstrated in this application because of continuing developments in the market for advanced services. For example, the Texas PUC is currently conducting proceedings to implement line sharing. The Commission should, of course, carefully monitor SBC's compliance with the line sharing order given its great importance to the future development of competition for advanced services." *In re Application by SBC Communications Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, DOJ Ex Parte Submission (June 13, 2000).

<sup>30</sup> Bell Atlantic-Massachusetts should have referenced this omission in its discussion of line sharing in the Supplemental Filing at pages 108-109; instead, Bell Atlantic provides an unspecific reference to collaborative sessions on DSL occurring in New York and to a New York DSL test pilot program, the results of which appear to have been available on June 8, 2000, but were not included in the Supplemental Filing.

<sup>31</sup> See Attorney General Comments filed April 25, 2000, at 5-6.

captured, accurately analyzed, and appropriately subject to remedies for discriminatory service to CLECs. This is of critical importance because Bell Atlantic-Massachusetts has or soon will launch its separate data affiliate to compete against CLECs for xDSL market share. In the Bell Atlantic-Massachusetts Master Test Plan, the Department ordered KPMG to test Bell Atlantic's DSL services; however, the metrics used to evaluate those tests may not be fully developed and appear to be under scrutiny as part of the DTE 98-57 Phase III consideration of the Bell Atlantic DSL and line sharing tariff.

The Master Test Plan adopted by the DTE on November 19, 1999, and amended January 14, 2000, does not appear to incorporate the March 9, 2000, modifications by the New York Public Service Commission to include DSL-specific metrics in its Carrier-to-Carrier metrics guidelines.<sup>32</sup> Given the significance of DSL, the DTE should revise the existing DSL metrics and incorporate additional appropriate DSL metrics and DSL line sharing metrics based on its DTE 98-57 Phase III investigation and on the New York DSL metrics adopted by the New York Public Service Commission on March 9, 2000.

**2. The Department should investigate and monitor the costs of the structurally separate affiliate for advanced services.**

On June 16, 2000, the FCC approved the proposed merger of Bell Atlantic and GTE, subject

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<sup>32</sup> See *Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions Pursuant Section 252*, New York Public Service Commission ("NYPSC") Docket No. 97-C-0271, and *Petition filed by Bell Atlantic-New York for Approval of a Performance Assurance Plan and Change Control Assurance Plan*, NYPSC Docket No. 99-C-0949, Order Amending Performance Assurance Plan (issued March 9, 2000).

to a long list of conditions which include creating a structurally separate affiliate for advanced services.<sup>33</sup>

The FCC-imposed merger conditions require the use of a data affiliate that uses the same processes as competitors, pay an equivalent price for facilities and services, and is subject to an annual comprehensive audit.<sup>34</sup> The creation of a separate data affiliate will, undoubtedly, make detection of discriminatory treatment more transparent; however, creation of a data affiliate could increase the overall costs and prices to consumers for advanced services through duplication of facilities, personnel, and procedures.

The record developed by the DTE in its Section 271 investigation contains no data at all regarding such potential increased consumer costs and prices, even though the FCC's separate data affiliate requirement directly impacts Massachusetts consumers. The DTE should require Bell Atlantic-Massachusetts, as part of its compliance with Section 272 of the Telecommunications Act of 1996 regarding separate affiliate compliance, to disclose its best estimate of those costs before the Department issues its final recommendation on Bell Atlantic-Massachusetts' Section 271 filing. Furthermore, the DTE must remain vigilant in monitoring the separate data affiliate to assure that the same expenses are not recovered twice in Bell Atlantic-Massachusetts' upcoming price cap compliance filing or subsequent price cap plan.<sup>35</sup>

#### **B. OSS issues regarding observations and exceptions, KPMG's initial draft**

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<sup>33</sup> Bell Atlantic-GTE Merger Approval, *supra*.

<sup>34</sup> *Id.*

<sup>35</sup> See *NYNEX*, D.P.U. 94-50 (1995). Bell Atlantic has not yet submitted either its Sixth Annual Price Cap Compliance filing, covering the period of July 1, 2000 to June 30, 2001, or its expected new price cap plan.

**report, and the POP-Domain remain to be resolved.**

Another part of the Department's investigation into Bell Atlantic's Section 271 filing that remains incomplete is the examination of the operation support systems ("OSS") that Bell Atlantic uses to pre-order, order, provision, bill, maintain and repair the various elements of network services for its retail and wholesale CLEC customers. As stated in the Master Test Plan, Bell Atlantic is required to:

provide nondiscriminatory access to its operations support systems (OSS) on appropriate terms and conditions, provide the documentation and support necessary for competitive local exchange carriers (CLECs) to access and use these systems; and demonstrate that BA-MA's systems are operationally ready and provide an appropriate level of performance.<sup>36</sup>

KPMG LLP is serving as the third-party tester of Bell Atlantic's OSSs and has divided the OSS test into five domains which reflect the five basic business functions within the Bell Atlantic-CLEC relationship: pre-ordering, ordering, and provisioning ("POP"); maintenance and repair; billing; relationship management and infrastructure; and performance metrics. As part of the OSS test, KPMG compares measurements of Bell Atlantic's performance within each domain against a corresponding set of evaluation criteria used to analyze Bell Atlantic's OSS performance. The DTE has required Bell Atlantic to report its performance measured using the New York Carrier-to-Carrier Metrics, as periodically supplemented by the New York Public Service Commission, which were developed in connection with Bell Atlantic-New York's Section 271 application.<sup>37</sup>

**1. Observations and exceptions should be fixed before approval.**

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<sup>36</sup> Letter Order on Master Test Plan, filed November 19, 1999, and Letter Order on Attachment A to Master Test Plan, filed January 14, 2000.

<sup>37</sup> January 14, 2000, Letter Order at 7.

The Attorney General recommends that the DTE not approve Bell Atlantic-Massachusetts' Section 271 filing until and unless all exceptions are cleared and all observations are resolved, as was ordered by the Pennsylvania Public Utilities Commission ("PAPUC") on June 8, 2000, as part of its Bell Atlantic-Pennsylvania's ("BA-PA") Section 271 investigation.<sup>38</sup> Commissioner Fitzpatrick of the PAPUC sponsored the underlying motion because of "uncertainty as to whether the OSS of BA-PA is capable of handling increased volumes when CLECs begin mass marketing of their local services."<sup>39</sup> The Attorney General has the same concern regarding Bell Atlantic-Massachusetts' OSS systems and urges the DTE to follow the Pennsylvania lead, rather than face the consequences of thousands of lost orders as in New York.

KPMG publishes and updates reports periodically to the DTE and participants on various "observations" of suspected deficient performance, which may or may not be resolved and which may or may not be escalated into the more serious category of "exceptions." With each observation, Bell Atlantic and CLECs have an opportunity to comment and Bell Atlantic has the opportunity to solve the problem noted by KPMG. If the problem is resolved to KPMG's satisfaction, then KPMG will close the observation; otherwise, resolution of the observation is deferred until a later date. As of June 29, 2000, KPMG noted over 100 primary observations and numerous sub-issues, of which 32 primary observations and several sub-issues remain deferred (open). KPMG will escalate an observation into

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<sup>38</sup> On June 8, 2000, the Pennsylvania Public Utilities Commission ("PAPUC") ordered Bell Atlantic-Pennsylvania to analyze, reveal, and fix the root cause of problems identified by KPMG during the Pennsylvania OSS tests. PAPUC Public Meeting, June-2000-C-3, *Operations Support Systems of Bell Atlantic-PA, Inc.*, Motion of Commissioner Terrance J. Fitzpatrick (approved by full PAPUC Commission on June 8, 2000).

<sup>39</sup> *Id.* at 2.

an exception if KPMG determines that the element of the test will fail. As of June 29, 2000, KPMG had noted nine primary exceptions and many sub-issues, of which six primary exceptions and several sub-issues remain open.

Requiring Bell Atlantic-Massachusetts to fix all problems reported by KPMG appears to be within the philosophy of “test until you pass” envisioned by the DTE in the Master Test Plan.<sup>40</sup> KPMG’s test of Bell Atlantic-Massachusetts’ OSS systems will play a vital role in determining whether competitors have access to Bell Atlantic’s systems and whether those systems are performing adequately. The experience of the New York Public Service Commission in cleaning up OSS problems earlier this year has demonstrated clearly the need for functioning OSS systems and adequate OSS testing.<sup>41</sup>

**2. The KPMG initial draft report should have been sent to all at the same time.**

On June 22, 2000, the DTE announced to CLECs during a KPMG CLEC conference call that it would circulate KPMG’s initial draft report only to Bell Atlantic and would allow KPMG to release a second draft report following Bell Atlantic’s review and comment, which the DTE would then release to all participants in this investigation. Several CLECs voiced their concern during the conference call over the lack of access to the initial draft report, and the ability of Bell Atlantic to dictate the contents of

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<sup>40</sup> See, e.g., Master Test Plan at 19-21, 169, and 173.

<sup>41</sup> See, e.g., NYPSC Order Directing Market Adjustments and Amending Performance Assurance Plan, Cases Nos. 00-C-0008, 00-C-0009, and 99-C-0949, issued March 23, 2000 (ordering Bell Atlantic-New York to provide \$10 million in bill credits to eligible CLECs for deficient service to CLECs, amending the Performance Assurance Plan to add three new metrics, and adding \$2 million per month to the Performance Assurance Plan for the new measures).



the draft report based on its “sneak preview.” CLECs also asserted that CLEC input was instrumental in the consideration by the FCC and the New York Public Service Commission of Bell Atlantic-NY’s Section 271 application and initial draft report. On July 14, 2000, the DTE issued a revised procedural schedule adhering to its stated intention to prevent CLECs from reviewing the initial draft OSS report and allow Bell Atlantic to comment on the initial draft report.<sup>42</sup>

The Attorney General recommends that the DTE allow public inspection of the initial draft report, together with the initial comments to this report submitted to KPMG by the DTE and by Bell Atlantic. The FCC, in its recent Texas 271 Approval, stated that an important element in opening the local market to competition was the “full and open participation by all interested parties.”<sup>43</sup> In the pursuit of a more open evaluation process, the Attorney General urges the DTE to release the initial draft and all comments for public inspection so that all participants know all the issues raised in the report. While it may be within the DTE’s discretion, under its delegated authority from the FCC under Section 271, to give Bell Atlantic a private preview and opportunity to comment on the initial draft report, the overall purpose of this proceeding -- to promote local competition -- will not be served best by shielding Bell Atlantic’s failings from the public eye. Moreover, the DTE and consumers will lose the benefit of the insights by CLECs who will actually use Bell Atlantic’s OSS if CLECs are not allowed to inspect and comment on KPMG’s initial findings.

Additionally, the DTE should have required KPMG to release the initial draft of KPMG’s report to all participants at the same time so that all participants have an equal opportunity to address

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<sup>42</sup> See footnote 24, *supra*.

<sup>43</sup> Texas 271 Approval, News Release at 2.

the issues raised by KPMG's report and to prepare expert testimony for the OSS technical sessions.

Given the current procedural schedule, Bell Atlantic has an additional ten calendar days (July 17 versus July 27) to analyze the report and prepare for the OSS technical sessions, scheduled to commence August 28, 2000. Finally, the July 14, 2000, revised procedural schedule does not specify a date for the issuance of KPMG's final report; the Attorney General recommends that the DTE should either clarify that the final report will be issued on August 7, 2000, or specify another date following conclusion of the OSS technical sessions.

### **3. OSS - POP domain questions remain open.**

KPMG is still testing all five domains of Bell Atlantic-Massachusetts' OSS, yet one test within the pre-order, order, and provisioning ("POP") domain, the POP Capacity Management Evaluation test, deserves specific attention.

In its February 16, 2000, Letter Order, the DTE approved KPMG's request to reduce the level of volume testing in the POP domain from an 18-month level (Mid-year 2001) to a 6-month level. The DTE stated in this Letter Order that the volume troubles occurring in New York did not merit rejecting KPMG's recommendation; instead, the DTE asserted that these troubles show that KPMG will have to focus heavily on another part of the POP domain test, the POP Capacity Management Evaluation test.<sup>44</sup> The POP capacity management evaluation test is designed to review Bell Atlantic's plans for projected growth in the use of the interfaces for wholesale, pre-order, order, and provisioning. Essentially, the DTE ordered KPMG to make sure that Bell Atlantic's OSS satisfied the exit criteria for

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<sup>44</sup> Master Test Plan, 8.0 POP 8, at. 71-73.

this test. Until KPMG issues its final report on Bell Atlantic's OSS, the Department has an insufficient basis upon which to gauge whether Bell Atlantic is able to handle the volume of orders that caused problems in New York. The Attorney General urges the DTE to carefully review the results of this specific test before agreeing that Bell Atlantic-Massachusetts has satisfied this portion of the OSS test.

**C. Unbundled network element (UNE) recurring and non-recurring charges should be examined.**

Access to unbundled network elements ("UNEs"), Checklist Item Number 2,<sup>45</sup> is one of the key means for CLECs to enter the local market and compete against Bell Atlantic for customers. Indeed, Bell Atlantic recognizes this method as a "mode of entry" in its proposed Performance Assurance Plan and has proposed statistics that seek to measure the success of this entrant strategy -- all the more reason to assure that the charges Bell Atlantic make to CLECs for UNEs, both recurring and non-recurring, are based on forward-looking, total element long-range incremental costs ("TELRIC"), rather than on inflated historical costs.<sup>46</sup>

The Attorney General previously urged the DTE to examine and implement appropriate UNE provisioning procedures in his July 19, 1999 comments.<sup>47</sup> The DTE has begun an investigation into reviewing Bell Atlantic's non-recurring charges as part of its Consolidated Arbitrations docket and is

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<sup>45</sup> 47 U.S.C. § 271(c)(B)(ii).

<sup>46</sup> Bell Atlantic proposed Performance Assurance Plan, filed April 25, 2000, at 3.

<sup>47</sup> Attorney General Comments, filed July 19, 1999, at 3.

expected to issue an order shortly. However, the DTE has not begun investigating allegations raised by AT&T Communications of New England, Inc. (“AT&T”) regarding Bell Atlantic’s recurring charges for switching and the cost of capital.

**1. UNE recurring charges should be reviewed.**

On March 13, 2000, AT&T filed a petition with the DTE to review Bell Atlantic’s recurring charges for unbundled network elements (“AT&T’s UNE Petition”).<sup>48</sup> Of specific concern to AT&T are the UNE rates for switching and the cost of capital.<sup>49</sup> WorldCom, Inc. (“WorldCom”) has filed two letters supporting AT&T’s UNE Petition,<sup>50</sup> contending that Bell Atlantic’s UNEs are priced so high for competitors that a CLEC must pay Bell Atlantic \$36 for the same UNEs Bell Atlantic charges its retail customers only \$24.<sup>51</sup> The Attorney General has supported AT&T’s request that the DTE open an investigation into the allegations of several CLECs that Bell Atlantic’s recurring rates for UNE and UNE-P have created barriers to local competition and are applied in an anti-competitive manner.<sup>52</sup> If any of these allegations are correct and are not addressed, then consumers will bear the ultimate burden of Bell Atlantic’s discriminatory treatment in the form of higher prices and fewer choices.

To date, Bell Atlantic has not responded to AT&T’s UNE Petition and the DTE has not

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<sup>48</sup> AT&T Petition Requesting the Department to Review and Reduce Existing Recurring Charges for Unbundled Network Elements, filed March 13, 2000 (“AT&T UNE Petition”).

<sup>49</sup> *Id.* at 3-8.

<sup>50</sup> WorldCom letters dated March 23, 2000, and May 18, 2000.

<sup>51</sup> WorldCom letter dated May 18, 2000, at 1.

<sup>52</sup> Attorney General letter dated May 30, 2000.

formally opened an investigation as urged by the Attorney General. This creates a cloud over Bell Atlantic's Section 271 application that may form the basis for a finding by the Department of Justice or the FCC that Bell Atlantic has not satisfied Checklist Item Number 2 regarding unbundled network elements. Consequently, the Department should open an investigation into Bell Atlantic's recurring charges for UNEs before the DTE issues its final recommendations on Bell Atlantic's 271 application.

**2. The DTE should conclude its UNE non-recurring charges review.**

The Department conducted evidentiary hearings on allegations raised by several CLECs on Bell Atlantic's non-recurring UNE charges on June 20 and 23, 2000.<sup>53</sup> These arbitration hearings are designed to investigate a limited set of issues identified by AT&T and WorldCom.

For the same reasons outlined above, the Attorney General urges the Department to review the testimony and complete its investigation into the non-recurring portion of the UNEs by issuing its order prior to issuing final recommendations on Bell Atlantic's Section 271 application.<sup>54</sup>

**D. Performance Assurance Plan Issues Must be Resolved.**

The Attorney General submitted comments to the DTE on the necessity and preferred contents of a Performance Assurance Plan ("PAP"), Quality Assurance Program ("QAP"), and Change Control Assurance Plan ("CCAP") on April 25, 2000. The Department has received reply comments and has not yet issued its order setting forth the terms of the PAP, QAP, and CCAP.

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<sup>53</sup> These hearings were conducted as part of the Department's *Consolidated Arbitrations* docket, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94.

<sup>54</sup> At the conclusion of hearings, the DTE requested initial briefs by CLECs by August 4, 2000, reply brief by Bell Atlantic by August 18, 2000, with CLEC reply briefs due by August 25, 2000. *Consolidated Arbitrations*, Tr. vol. 46, page 25 (June 23, 2000). The DTE has not indicated when a final order will be issued in this matter.

As the Attorney General has asserted, Bell Atlantic should have these components in place and ready for implementation prior to receiving a favorable recommendation from the DTE.<sup>55</sup> The New York experience demonstrates clearly the need for a mechanism to evaluate allegations of anticompetitive behavior and enforce remedies to those most directly affected by discriminatory treatment.

### **III. CONCLUSION.**

For the foregoing reasons, the Attorney General submits that Bell Atlantic has not complied with Section 271 of the Telecommunications Act of 1996 because of unresolved substantive issues surrounding DSL, OSS, and UNE. Furthermore, Bell Atlantic's Section 271 petition should not be approved until the Department resolves procedural issues regarding the Performance Assurance Plan and related compliance assurance programs.

Respectfully Submitted,

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<sup>55</sup> Attorney General Comments on Performance Assurance Plan, April 25, 2000, at 2.

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(617) 727-2200

Dated: July 18, 2000

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Inquiry by the Department of Telecommunications	)
and Energy pursuant to Section 271 of the	)
Telecommunications Act of 1996 into the Compliance	)
Filing of New England Telephone and Telegraph Company	)
d/b/a Bell Atlantic-Massachusetts as part of its application	)
to the Federal Communications Commission for entry into	)
the in-region interLATA (long distance) telephone market.	)
	)

D.T.E. 99-271

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding by e-mail and by either hand delivery, mail, or fax.

Dated at Boston this 18th day of July 2000.

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