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

JOINT COMMENTS OF THE
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES
AND NEXTLINK MASSACHUSETTS, INC.

The Association for Local Telecommunications Services ("ALTS") and NEXTLINK Massachusetts, Inc. ("NEXTLINK"), by their attorneys, hereby file their reply comments in the above-captioned proceeding.

I. INTRODUCTION AND SUMMARY

ALTS is the leading national industry association whose mission is to promote facilities-based local telecommunications competition. Created in 1987, ALTS has offices in Washington, D. C. and Irvine, California and now represents more than 200 companies that build, own, and operate competitive local networks.

NEXTLINK builds and operates high capacity, fiber-optic and fixed wireless networks to provide local, long distance, data and enhanced telecommunications services. NEXTLINK Communications, Inc., the parent company of NEXTLINK Massachusetts, Inc., currently operates 26 facilities-based networks in 45 markets throughout 19 states. NEXTLINK is a leading provider of voice and data telecommunications services, striving to provide Massachusetts consumers with innovative and cost-effective choices for telecommunications

services. Massachusetts consumers will not be offered meaningful choices and competition will be stifled if local telecommunications opportunities are limited or foreclosed by ILEC non-compliance with Section 271's requirements.

Bell Atlantic is in the process of asking the Department of Telecommunications and Energy ("Department" or "D.T.E.") to approve its 271 application because it claims to have satisfied the requirements of the New York Public Service Commission ("NYPSC") and the Federal Communications Commission ("FCC"). The experience in New York, as evidenced by the ongoing enforcement actions of the NYPSC and a Consent Decree between the FCC[1] and Bell Atlantic-New York ("BA-NY"), reveals that Bell Atlantic's post-271 performance has been grossly inadequate.

Compliance with Section 271's requirements is critical to realizing the 1996 Act's goal of opening local telecommunications markets to competition. It was the vigilance of the FCC and forward-looking state commissions like the Massachusetts D.T.E. and the NYPSC which have led to the significant strides made thus far. However, even though we are closer to the goal, the Department must continue with its approach if the final obstacles to competition are to be overcome.

Under the public interest test previously articulated by the FCC, Bell Atlantic's application may not be approved unless its opening of local markets is real, dependable and sustainable. Neither of these three concerns are satisfied at this time. Real competition has yet to become a reality in Massachusetts. Bell Atlantic continues to maintain a stranglehold on the local market, as demonstrated by Bell Atlantic's complete control of over 97% of the

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[1] *See In the Matter of Bell Atlantic-New York Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Service in the State of New York*, Order, FCC 00-92 (rel. March 9, 2000) ("*Consent Decree*").

(continued…)

Massachusetts local market. As discussed below, because Bell Atlantic's OSS system is incapable of processing routine CLEC orders, Massachusetts' consumers certainly do not have dependable service quality. Even if Bell Atlantic's current application in fact met the criteria for approval under Section 271, the woefully inadequate Performance Assurance Plan ("PAP") proposed by Bell Atlantic would not ensure that backsliding would not occur.

II. THE POST-271 EXPERIENCE IN NEW YORK DEMONSTRATES THE INADEQUACY OF BELL ATLANTIC'S SYSTEMS

After its 271 approval in New York, Bell Atlantic's woeful processing of orders, including mistakes, delays and lost orders have resulted in irreparable harm to the New York local market. Bell Atlantic's OSS systems, with their outdated software, indecipherable manuals and insufferable delays, have strained the CLECs' relationships with their customers. There is simply no reason, therefore, to believe that Bell Atlantic will not continue to discriminate against competitors, as it is doing in New York, by routinely botching orders and destroying consumer confidence in CLECs.

As demonstrated by the massive fines Bell Atlantic is paying to competitors in New York, and to the FCC, Bell Atlantic's OSS system is designed to fail.[2] BA-NY continues to manually process orders, fails to provide its staff with proper training, and routinely misses provisioning deadlines. In fact, since the BA-NY 271 Order the NYPSC and FCC have raised the initial remedy cap under the New York PAP, which penalizes BA-NY for non-compliance with

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[2] *See* Order Directing Market Adjustments And Amending Performance Assurance Plan, New York Public Service Commission Case 00-C-0008, Case 00-C-0009, Case 99-C-0949 (March 23, 2000); *see generally Consent Decree.*

its approval conditions, by $61 million or 23%, in an effort to offset BA-NY's degraded performance.

III. THE OBSERVATIONS OF KPMG AND COMPETITORS CONCLUSIVELY DEMONSTRATE THAT BELL ATLANTIC IS UNWILLING AND INCAPABLE OF PROCESSING AND COMPLETING CLEC ORDERS IN A NONDISCRIMINATORY FASHION

A. The Observations Of KPMG Substantiate That Bell Atlantic's OSS Systems Are Woefully Inadequate and Incapable of Handling CLEC Orders

Over 110 KPMG observations reveal the appalling performance of Bell Atlantic's legacy OSS systems. The observations clearly document that Bell Atlantic continues to erroneously record orders by hand, improperly train employees, incorrectly bill CLECs, and provides CLECs with inaccurate and false end-user information. Where Bell Atlantic does use electronic ordering, its software is so flawed that CLECs cannot even submit the initial order, much less graduate to Bell Atlantic's regimen of missed installations. These observations are not the unsupported "claims" and "anecdotes" of CLECs, but rather belong to an independent party, with no financial stake in the outcome.[3]

KPMG's observations show that Bell Atlantic's ordering systems are set up to fail at each and every level. First, determining how to correctly place an order is nearly impossible. *See, e.g.*, Observation Report #19 (stating "information and procedures that have been stated in the CLEC handbook are inconsistent with actual practice and can mislead a CLEC or delay a CLEC's ability to conduct business"). Second, electronic orders are routinely rejected. *See, e.g.*, Observation Report #11 ("stating that "ISDN resale orders cannot be completed without providing a field stated as being optional"). Third, Bell Atlantic relies on manual transcription,

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[3] *Supplemental Comments* at 3.

which continually leads to errors. *See, e.g.*, Observation Report #1 ("This manual transcription could lead to future errors of unpredictable magnitude."). Last, in the rare event Bell Atlantic "fixes" its interfaces, it employs the curious tactic of not informing CLECs. *See, e.g.*, Observation Report #94 (stating "KPMG did not receive timely and complete notification of changes").

Bell Atlantic, in its *Supplemental Comments,* claims that its ordering interfaces are both "available" and sufficiently able to handle capacity.[4] Furthermore, Bell Atlantic claims that CLECs are able to obtain more information about loops from the electronic interfaces than from Bell Atlantic's representatives.[5] KPMG's observations, however, clearly demonstrate that the glitches in Bell Atlantic's ordering software, in addition to the monumentally large handbook explaining the software, effectively prevents CLECs from placing, tracking, and completing orders. KPMG even recognizes that when Bell Atlantic has attempted to change its system, it does not inform CLECs of the changes, nor does it re-train its own staff.

Any perceived compliance by Bell Atlantic may be only a temporary phenomenon of Bell Atlantic's diversion of resources from other endeavors. As demonstrated in New York, once Bell Atlantic received 271 approval, subsequent CLEC orders were mishandled, lost, and "backlogged." The increase in CLEC orders in New York, combined with Bell Atlantic's untested interfaces, demonstrates that Bell Atlantic's dated OSS systems are incapable of processing CLEC orders. Because Bell Atlantic's Massachusetts OSS systems are provided within the same organization, the post-271 performance of Bell Atlantic in New York suggests

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4 *Supplemental Comments* at 128-30.

5 *Supplemental Comments* at 132-33.

Bell Atlantic simply is not currently capable of sustaining any perceived compliance with the checklist.

The New York experience shows that, regardless of how much Bell Atlantic strains to improve its performance under its current processing systems, massive failure will result once competition increases beyond the current insignificant level. The Department will then be faced with protracted monitoring proceedings which can never hope to repair lost consumer confidence in CLECs. Eventually, CLECs will be forced to resort to arbitration/complaint processes, further burdening the Department and delaying meaningful competition. Therefore, the Department should recognize that any present failures to satisfy KPMG's tests will inevitably "lead to future errors of unpredictable magnitude" and destroy any hope of meaningful competition in Massachusetts.

The Department must also scrutinize any attempt by Bell Atlantic to create a carbon-copy of the New York Performance Assurance Plan ("PAP"). As previously discussed by NEXTLINK and the Massachusetts Attorney General,[6] the New York PAP has completely failed to prevent Bell Atlantic from breaking its promises and actively discriminating against CLECs. Noticeably, the New York PAP has required several increases in remedy amounts to counterbalance the negative effects of Bell Atlantic's discriminatory actions.[7] The

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6 *See In the Matter of Bell Atlantic-New York Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Service in the State of New York*, Order, FCC 00-92 (rel. March 9, 2000) ("*Consent Decree*").

7 *See, e.g.*, Comments of NEXTLINK and Pennsylvania Attorney General; *Order Directing Market Adjustments And Amending Performance Assurance Plan*, New York Public Service Commission Cases 00-C-0008 *et al.* (March 23, 2000) ("*New York Market Adjustment Order*"); *see also Consent Decree* at ¶ 7 (stating "Bell Atlantic's performance in providing order acknowledgements, confirmation and rejection notices, and order completion notices for UNE-Platform local service orders deteriorated following Bell Atlantic's entry into the New York long distance market").

Massachusetts PAP offers no meaningful improvements whatsoever to the New York PAP and, therefore, is destined to fail unless higher remedy caps and simpler enforcement mechanisms are added.

Given all the system changes to its OSS since the KPMG testing, at a minimum, where Bell Atlantic has only recently employed new OSS systems, the Department should order re-testing and should establish a collaborative process whereby CLECs and Bell Atlantic can attempt to work out any ordering difficulties in the software and the processes. Only through such testing will the Department be able to determine whether competition has a chance in Massachusetts. Only through a collaborative process will Bell Atlantic be able to conclusively demonstrate that is OSS systems will deliver as promised. Otherwise, this Department will be faced with similar results to those in New York; low consumer confidence in CLECs and ongoing penalty phases.

B. Bell Atlantic Discriminates Against CLECs

Bell Atlantic's discriminatory behavior is not confined only it's OSS systems but pervades the entire provisioning process. Bell Atlantic claims that CLECs have offered only contrary anecdotal allegations and have failed to produce any support for their claims. The experiences of NEXTLINK, however, have produced countless documented instances of Bell Atlantic's abysmal failure to correctly process orders and install lines. At best, Bell Atlantic provides Firm Order Commitment ("FOC") dates months away. In one instance, NEXTLINK placed an order on June 23, only to be receive a FOC date of November 27. NEXTLINK is constantly forced to "escalate" its orders and track down senior Bell Atlantic staff (no simple task) to have its orders corrected. Bell Atlantic routinely misses NEXTLINK's installation appointments. For example, Bell Atlantic's technicians routinely appear at the wrong address or

prematurely determine that the customer is not ready on the service delivery date. Yet Bell Atlantic has incredulously refused to supply their technicians with mobile phones to confirm the correct address or determine that the customer (NEXTLINK) is not ready. Because of these problems, NEXTLINK was actually forced to set up, at its own expense, a toll-free number for Bell Atlantic technicians to call, just so they could show up at an address that Bell Atlantic was correctly supplied with in the first place. Even with NEXTLINK supplying a toll free number Bell Atlantic continues to appear at the wrong address or prematurely determines that the customer is not ready without fully checking with NEXTLINK.

IV. CONCLUSION

For the foregoing reasons, ALTS and NEXTLINK recommend that the Department require Bell Atlantic to conclusively demonstrate that its OSS systems are successfully handling CLEC orders. Bell Atlantic may then supplement or refile its application after curing the above deficiencies.

Respectfully submitted,

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