

**MASSACHUSETTS DEPARTMENT OF  
TELECOMMUNICATIONS AND ENERGY**

New England Telephone and Telegraph	)	
Company, d/b/a Bell Atlantic – Massachusetts	)	DTE 99-271
Section 271 of the Telecommunications Act of	)	
1996 Compliance Filing	)	

**REPLY COMMENTS OF RHYTHMS LINKS INC. AND  
COVAD COMMUNICATIONS COMPANY**

Rhythms Links Inc. (“Rhythms”) and Covad Communications Company (“Covad”) hereby submit these joint reply comments on the Performance Assurance Plan (“PAP”) proposals submitted on April 25, 2000, pursuant to the Massachusetts Department of Telecommunications and Energy’s (“Department’s”) March 28, 2000 request for proposals for a comprehensive performance monitoring and enforcement mechanism to be adopted by Bell Atlantic – Massachusetts (“BA-MA”).

**I. INTRODUCTION**

As many of the initial comments explained, it is essential that the Department adopt a comprehensive PAP for Massachusetts to ensure that BA-MA’s performance in providing wholesale services and network elements does not deteriorate after receiving Federal Communications Commission ("FCC") approval to offer in-region interLATA service.<sup>1</sup> In this vein, it is critical that the Department adopt a PAP that monitors BA-MA’s provision of *all* essential wholesale services and network elements. Moreover, if the PAP is to be effective, it must include sufficient monetary penalties for violations of the relevant performance standards that exceed the economic advantage that BA-MA otherwise would enjoy from impeding the

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<sup>1</sup> AT&T Initial Comments at 1-4; MCI Worldcom Initial Comments at 31; RNK Initial Comments at 9-10; NEXTLINK Initial Comments at 1-2.

competitive provisions of services, including advanced services, once BA-MA achieves § 271 approval. Toward that end, Rhythms and Covad make the following recommendations:

- The PAP should be flexible to allow the Department to revise the plan as needed to address future changes in the competitive landscape and in BA-MA's obligations under the law.
- The PAP should include xDSL as a separate Mode of Entry category.
- The PAP should include metrics in the critical measures to address line sharing, including the average interval for provisioning individual line sharing arrangements; and, to the extent *not* addressed in the critical measures, the PAP must include metrics for line sharing. Rhythms and Covad recommend the Department incorporate a placeholder in the Massachusetts PAP and adopt those line sharing metrics that result from the current New York xDSL Collaborative and C2C Proceeding.

Rhythms and Covad rely on the other parties to provide input on aspects of BA-MA's proposal not specifically addressed in these reply comments.

## II. THE PAP MUST BE FLEXIBLE TO ALLOW REVISIONS AS NEEDED

Rhythms and Covad agree with the Attorney General that whatever plan is adopted must be flexible to address future developments – legal, operational or otherwise.<sup>2</sup> The first post-271 enforcement action in New York demonstrates the importance of the Department having the flexibility to revisit and revise the PAP as necessary. As was explained by many parties in the initial comments filed in this proceeding, after the New York PAP was established and BA-NY had received § 271 approval from the FCC, BA-NY failed to send its CLEC customers many order acknowledgments, Firm Order Confirmations and Notices of Completion. As a result, many CLECs were left without critical information needed to process their customer orders which placed them at a competitive disadvantage compared to BA-NY. However, since the New

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<sup>2</sup> See Attorney General Initial Comments at 5.

York PAP did not count unsent notices in any of its performance measures, it did not subject BA-NY to any consequences under the PAP.<sup>3</sup>

As this experience makes abundantly clear, it is not possible to anticipate every issue that could arise in the future. Moreover, while the New York PAP may be an appropriate starting point, it has proven that it will not be adequate for Massachusetts as currently structured.

Illustratively, AT&T, MCI Worldcom, the Attorney General, RNK, NEXTLINK and Teligent all suggest worthwhile improvements to the New York PAP in their initial comments. In order to assure that the Department has the ability to close other such loopholes that are not contemplated at this time but may arise in the future, the Department must retain authority to modify the PAP as circumstances warrant.

Further, as the Attorney General and AT&T noted, this industry is constantly evolving.<sup>4</sup> Therefore, the plan should allow the Department to incorporate new metrics into the PAP to address any “technological evolutions.”<sup>5</sup>

### III. xDSL METRICS MUST BE INCORPORATED IN THE MASSACHUSETTS PAP FOR BA-MA

#### A. xDSL Should Be Added As A Separate Mode Of Entry Category

BA-MA’s PAP, as currently proposed, evaluates BA-MA’s wholesale performance through two methods: the Mode of Entry (“MOE”) categories and the Critical Measures. The MOE method triggers penalties based upon BA-MA’s overall wholesale performance in four categories (Resale, UNEs, Interconnection Trunking and Collocation), while the Critical Measures trigger penalties for violations of individual metrics. BA-MA proposes to address its

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<sup>3</sup> The FCC instituted an investigation of these activities as possible § 271 violations, which resulted in a consent decree between BA-NY and the FCC. *In the Matter of New York Telephone Company (d/b/a BA-MA – New York)*, File No. EB-00-JH-0085, Acct. No. X32080004, Consent Decree and Order, FCC 00-92, rel. Mar. 9, 2000.

<sup>4</sup> Attorney General Initial Comments at 6.

xDSL performance only under the Critical Measures. Yet, as AT&T mentioned in its initial comments, a good performance plan must measure *all* aspects of BA-MA's wholesale provisioning upon which CLECs rely in delivering their retail services to end-users.<sup>6</sup> xDSL is not just another type of loop by which CLECs can offer retail services. Rather, it is a separate and distinct service. Indeed, many CLECs—such as Rhythms and Covad—focus on providing xDSL-based services. Yet, under BA-MA's proposal, this mode of entry is not even evaluated. It is obvious, then, that BA-MA's proposal only to evaluate BA-MA's performance on xDSL services through four xDSL metrics in the Critical Measures list is too limited in scope. Thus, the Department should reject BA-MA's proposal and require BA-MA to include xDSL and line sharing metrics in the MOE evaluation method.

Rhythms and Covad submit that xDSL metrics and line sharing metrics should not be lumped into the UNE MOE category. Rather, the Department should create a separate MOE category to address xDSL loops, line sharing, and related xDSL services. In doing so, the Department should draw the specific metrics for this separate MOE category from the work of the New York xDSL Collaborative and C2C Proceeding.<sup>7</sup> New York currently has specific metrics for xDSL loops (albeit not fully incorporated into BA-NY's PAP) and soon will have new metrics for line sharing and related services. All of these metrics should be included in an xDSL MOE in Massachusetts.

There are sound reasons for not grouping xDSL metrics together with general UNE metrics, but rather to segregate performance for xDSL loops. First, xDSL is a unique and

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<sup>5</sup> AT&T Initial Comments at 28; Attorney General Initial Comments at 5-7.

<sup>6</sup> AT&T Initial Comments at 5.

<sup>7</sup> See *Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services*, Case 00-C-0127 (NYPSC) (“xDSL Collaborative”); *Proceeding on the Motion of the Commission to Review Service Quality Standards for Telephone Companies*, Case 97-C-0139 (NYPSC) (“C2C Proceeding”).

distinct type of service. Given the significant role that xDSL services are playing in the evolving telecommunications market, it is important for the Department to ensure that BA-MA's performance in this area is fully captured in any PAP. Indeed, the importance of broadband capabilities and xDSL-based services has been widely recognized by both the FCC and this Department.<sup>8</sup> The FCC has recognized the importance of xDSL as a method for new entrants to enter local telecommunications markets. Specifically, in passing upon BA-NY's Section 271 application, the FCC stated plainly that future applicants must demonstrate adequate xDSL performance independent of their general performance in providing UNEs.<sup>9</sup> The FCC has recognized that "the demand for broadband capability is growing rapidly" and "[f]or consumers, access to broadband capability means that many new services and vast improvements to existing services will be available."<sup>10</sup> In fact, the FCC has remarked that the ability of all Americans to access high-speed, packet switched networks through xDSL-based services and to "share in their resources, will very likely spur our growth and development as a nation."<sup>11</sup> Further, in its recent *Tariff 17 Decision*, this Department specifically recognized the importance of requiring BA-MA to offer xDSL capable loops and directed BA-MA to develop comprehensive tariff provisions

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<sup>8</sup> E.g., *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 98-188, ("Advanced Serviced Order and NPRM") ¶¶7-8; *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket 98-146, Report, FCC 99-5 (rel. Feb. 2, 1999), ("Section 706 Report to Congress") ¶¶ 3-6, 14-18; *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order CC Docket No. 98-147, Fourth Report and Order, CC Docket No. 96-98 (rel. Dec. 9, 1999) ("Line Sharing Order") ¶¶ 25,29,35-37.

<sup>9</sup> *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, FCC 99-404, at ¶ 330 (rel. Dec. 22, 1999) ("[w]e will find it most persuasive if future applicants under section 271, unlike this applicant, make a separate and comprehensive evidentiary showing with respect to the provision of xDSL-capable loops, either through proof of a fully operational separate advanced services affiliate as described below, which may also include appropriate performance measures, or through a showing of nondiscrimination in accordance with the guidance provided herein.") (emphasis added).

<sup>10</sup> *Section 706 Report to Congress* at ¶ 3.

<sup>11</sup> *Advanced Serviced Order and NPRM* at ¶ 7.

covering rates terms and conditions for xDSL-capable loops.<sup>12</sup> It is clear, then, that xDSL is integral to current and future competition in the telecommunications market and is an area with great growth and burgeoning competition.

Second, the provisioning processes for xDSL loops is distinct from that associated with voice-grade loops, making BA-MA's performance in provisioning the latter virtually irrelevant to its performance in provisioning the former. For instance, BA-MA performs a hot-cut in the central office for the majority of voice-grade loops, while it treats stand-alone xDSL loops as "new" loops that generally require a field dispatch. Third, there are provisioning services that BA-MA performs exclusively for purchasers of xDSL loops, such as loop qualification, loop conditioning, and cooperative testing.

These differences between the provisioning processes for analog and xDSL UNEs justify creating a separate xDSL MOE. Otherwise, if BA-MA successfully meets all voice-grade UNE performance measures, yet routinely fails in its performance in providing xDSL loops to CLECs, it may be able to conceal deficient xDSL performance with adequate performance in provisioning voice-grade UNEs. Combining the evaluation of xDSL with all other loops could result in a misleading impression that BA-MA's performance in its provision of xDSL loops is acceptable, when, in fact it could be failing miserably. In short, to detect and deter any BA-MA

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<sup>12</sup> *Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in the following tariffs: M.D.T.E. Nos. 14 and 17, filed with the Department on August 27, 1999, to become effective on September 27, 1999, by New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts, D.T.E. 98-57 (rel. Mar. 24, 2000) ("Tariff 17 Decision") at 166-167. The Department also recognized the importance of xDSL separate and apart from interconnection, collocation, or UNEs and specifically directed BA-MA to address xDSL in its evaluation of its progress toward 271 approval in light of the FCC's Bell Atlantic New York Order. Revised Schedule in D.T.E. 99-271 Memorandum from Cathy Carpino and Tina Chin, Hearing Officers, (Apr. 24, 2000).*

discriminatory provisioning of xDSL network elements and services, the Department should create a separate MOE for xDSL.<sup>13</sup>

B. The MOE Penalties Should Be Distributed Among the Categories in Proportion to the Consumption of the Various Network Elements and Services

Currently, under BA-MA's proposal for the Massachusetts PAP, aggrieved CLECs receive up to \$7.25 million for each of the four MOE categories in which BA-MA's overall performance is deficient. This rigid allocation structure fails to account for future shifts in CLEC demand for network elements and services. For instance, in the future there may be substantially fewer CLECs reselling BA-MA's retail services. Current resellers may start purchasing UNEs and the \$7.25 million dedicated to the Resale MOE would be disproportionate to the other categories based on usage. It would make much more sense to allocate the \$29 million in total MOE penalties to each category based upon the proportion of wholesale network elements and services purchased therein. This allocation should be calculated on a per quarter basis to more accurately reflect the make-up of the wholesale market.

The process of making such an allocation might occur as follows. BA-MA would determine the ratio between purchases of resold lines, UNEs, interconnection trunks (on a DS0 basis) and related services purchased in the previous quarter.<sup>14</sup> That ratio would control the allocation of total penalty money at risk. For example, if CLECs in a certain quarter purchased 7000 UNEs, 1000 resold lines, 1000 DS0 interconnection trunks, and 1000 collocation "units" (however regulators define such units), the amount of penalties allocated to the UNE MOE in the

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<sup>13</sup> In the alternative, should the Department choose not to include xDSL as a separate MOE category, the current UNE category must be expanded to include xDSL measures. Currently no xDSL metrics are included in the UNE MOE category. For the reasons stated above, including metrics to evaluate BA-MA's performance on xDSL is imperative to ensure that its post-long distance-entry performance in this area in which it too competes is not ignored.

next quarter would be 70% of the total available penalties for all four MOEs.<sup>15</sup> The other three MOE categories would each have 10% of the total penalties allocated to them. In this manner, the amount of penalties available for each MOE would reflect the degree to which CLECs actually used the MOE. At the same time, the use of this allocation structure would not change the way penalties under the MOEs are triggered. In other words, the amount of penalties allocated to each MOE would have no effect on the triggering mechanism (that penalties are triggered based on deficient overall performance on the metrics making up each MOE).

The advantage of making the PAP penalties proportional to the purchases of various network elements and services is that, over time, the PAP will continue to reflect the dynamics of the Massachusetts local telecommunications market. If CLECs in the future favor one MOE over another, the PAP will adjust automatically every quarter. There will be less need for the Department to intervene and modify the PAP as the market evolves. In this manner, the PAP would enforce Section 271 compliance more effectively than the static model that BA-MA proposes.

#### C. The Department Should Include Line Sharing Metrics in the Critical Measures

In addition to including line sharing metrics in the proposed separate xDSL MOE, the Department should include line sharing metrics in the Critical Measures. Line sharing enables a competitive advanced service provider, such as Rhythms or Covad, to transmit xDSL-based services over the same copper loops by which BA-MA provides voice services to its customers. The tremendous consumer benefit of this arrangement cannot be overstated. Consumers can receive high-speed, high-capacity data and Internet access without waiting for the ILEC to install

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<sup>14</sup> For purposes of collocation, the Department should make individual collocation arrangements equal to a specified number of “units” to account for the fact that a single collocation arrangement is clearly worth more than a single UNE or resold line.



a separate loop dedicated to data services. Moreover, line sharing allows consumers to retain their desired local service provider while enjoying the benefits of competitively provided data services all over a single loop. Line sharing thus truly provides the type of technological convergence that Congress envisioned in the Telecommunications Act of 1996. Indeed, Bell Atlantic has been providing its own retail xDSL services solely via line sharing arrangements for more than a year, while refusing to make this functionality available to CLECs.<sup>15</sup>

As noted above, line sharing metrics are currently under consideration in the New York Proceedings. Once line sharing metrics are finalized in New York, they should be adopted in Massachusetts and incorporated in to the Massachusetts PAP. In particular, one line sharing metric, “Average Interval Completed” (PR-2), should be included as a Critical Measure in the Massachusetts PAP. This metric measures the average number of business days between order application date and actual work completion date. The only way to assure BA-MA meets its obligations to provision line sharing arrangements on a timely basis is if its performance is held up to certain pre-determined standards. Thus, the Department should incorporate placeholders in the Massachusetts PAP in both the MOE and Critical Measures evaluation methods for line sharing metrics, including PR-2.

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<sup>15</sup> The total amount of penalties *annually* for all four MOEs is \$29 million dollars. Therefore, there is \$7.25 million in penalties available *quarterly* for all four MOEs.

<sup>16</sup> Bell Atlantic Telephone Co., Tariff F.C.C. No. 1, Transmittal No. 1076 (Sept. 1, 1998).

#### IV. CONCLUSION

For the foregoing reasons, Rhythms and Covad respectfully urge the Department to (1) ensure its PAP is flexible to allow the Department to revise the plan in response to any future developments that are not currently anticipated; (2) incorporate metrics for xDSL loops, line sharing and related services in the PAP as a separate MOE category; and (3) include line sharing metrics in the Critical Measures (especially one measuring the average provisioning interval for line sharing).

Respectfully submitted,

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