COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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 December 11, 1998, to become effective January 10, 1999, by New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts

DTE 98-57

TESTIMONY OF FREDRICK CEDERQVIST

ON BEHALF OF

AT&T COMMUNICATIONS OF NEW ENGLAND, INC.

REGARDING EEL

January 21, 2000

Q. PLEASE STATE YOUR NAME, PRESENT POSITION AND BUSINESS ADDRESS.

A. My name is Fredrick Cederqvist. I am an employee of AT&T. My business address is 32 Avenue of the Americas, New York, New York.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND YOUR EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY.

A. I received a B.A. in political science from Syracuse University in 1990, and a J.D. from New York Law School in 1994. While I am a licensed attorney in New York

state, I do not presently hold an attorney position at AT&T, but rather I hold a business position. Since November, 1999, I have been a District Manager, Negotiations, for the Eastern Region. My primary duty is to serve as the lead negotiator for interconnection agreements with Bell Atlantic, Frontier and other companies in the 14-state eastern region. Prior to my current position, I served as a District Manager in Strategic Policy, Local Service & Access Management for approximately six months. I joined AT&T through the AT&T TCG merger. My career started at TCG in October 1994. At TCG, I worked in three positions in the Regulatory & External Affairs Group. My latest position at TCG was as Director of Government Affairs, where I worked on various interconnection issues.

Q. ON WHOSE BEHALF ARE YOU SUBMITTING TESTIMONY?

A. I am submitting this testimony on behalf of AT&T Communications of New England, Inc. ("AT&T").

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to identify the parts of the EEL tariff provisions filed by Bell Atlantic on December 27, 1999, that are inappropriate, anticompetitive or in violation of FCC requirements.

Q. PLEASE DESCRIBE GENERALLY YOUR PROBLEM WITH BELL ATLANTIC'S EEL PROVISIONS.

A. Bell Atlantic imposes numerous restrictions on the right of telecommunications carriers to obtain EELs and on the use to which the telecommunications carriers can put EELs. Many of these restrictions are in violation of FCC requirements. Moreover, for many of them, Bell Atlantic provides no technical reason for imposing the restriction, which leads me to conclude that Bell Atlantic is seeking to restrict carriers' use of EELs for Bell Atlantic's own competitive purposes. Such motives are an inappropriate basis for wholesale tariff provisions that are suppose to enable entry into the local exchange market and the results are anticompetitive.

Q. PLEASE IDENTIFY EACH OF THE PROVISIONS TO WHICH ONE OF THE ABOVE CRITICISMS APPLY AND EXPLAIN WHY.

A. Section 13.1.B. prohibits EEL arrangements from being connected to Bell Atlantic's special access multiplexing or transport services. In addition to imposing a restriction that is not permitted by the FCC, this particular restriction will have the effect of forcing CLECs that have existing multiplexing ("mux") and interoffice transport capacity (which they have purchased to provide special access service to local exchange customers)(1) to purchase additional multiplexing and interoffice transport to serve their EEL customers. This is uneconomic because it prevents CLECs from using existing facilities to serve their customers and forces them to purchase even more facilities from Bell Atlantic. CLECs should be able to use, as part of an EEL arrangement to provide local exchange service, a mux and interoffice transport that they have already purchased and paid for in full.

Section 13.1.B. prohibits EEL arrangements that cross LATA boundaries. Bell Atlantic provides no technical reason why that restriction should apply. This is a Bell Atlantic restriction, not an FCC restriction, as far as I am aware. It should not be allowed in the absence of a legitimate technical reason.

Section 13.1.D., Section 13.1.F., and Section 13.1.G. are all unacceptable because they require compliance with Section 13.3.1A.

Q. WHAT IS THE PROBLEM WITH SECTION 13.3.1A?

A. This provision requires CLECs to "certify in writing that the EEL arrangement is

being used to provide a significant amount of local exchange service and associated switched access services to a particular customer." Up to this point, AT&T has no objection, as such a "self-certification" requirement of a "significant" amount of local exchange and associated access service is expressly contemplated by the FCC's November 24, 1999 Supplemental Order in FCC 99-370. See, ¶5, n. 9. It is the rest of Section 13.3.1A. that AT&T has a problem with. In the rest of Section 13.3.1A, Bell Atlantic purports to define what constitutes a "significant" amount of local exchange and access service. No FCC provision permits ILECs to exercise this kind of authority. The standards that Bell Atlantic has imposed here will deny CLECs the opportunity to use EELs to provide certain customers with local exchange service. Bell Atlantic's self-serving definition of "significant" should be stricken from the tariff.

Q. ARE THERE OTHER TARIFF PROVISIONS WITH WHICH YOU HAVE CONCERNS?

A. Yes. Section 13.1.E. restricts the use of new EEL arrangements to situations in which termination is to either a CLEC collocation arrangement in a Bell Atlantic central office or to a Bell Atlantic switch. There are two problems with this provision. One problem is that the collocation should not be restricted to a situation in which the collocation is actually in the Bell Atlantic central office, since there may be situations in which the collocation facility is in an adjacent building or "parking lot." The second problem relates to Bell Atlantic purporting to impose different restrictions on "new" EEL arrangements than it imposes on existing EEL arrangements. This is discriminatory and should not be allowed.

Q. SO FAR YOU HAVE DISCUSSED ONLY SECTION 13.1. ARE THERE PROVISIONS IN OTHER SECTIONS WITH WHICH YOU HAVE A CONCERN?

A. Yes. In Section 13.2.1.B., Bell Atlantic purports to reserve "the right to conduct an audit of an operational EEL arrangement to verify that the EEL arrangement is providing a significant amount of local exchange service to a particular end user customer." The FCC, however has made clear its disapproval of such auditing requirements. In its November 24, 1999 Supplemental Order it stated:

Because we intend the constraint we identify in this Order to be limited in duration, we do not find it to be necessary for incumbent LECs and requesting carriers to undertake auditing processes to monitor whether or not requesting carriers are using unbundled network elements solely to provide exchange access service. We expect that allowing requesting carriers to self-certify that they are providing a significant amount of local exchange service over combinations of unbundled loops and transport network elements will not delay their ability to convert these facilities to unbundled network element pricing, and we will take swift enforcement action if we become aware that any incumbent LEC is unreasonably delaying the ability of a requesting carrier to make such conversions.

Id. at ¶5, n. 9. In an attempt to get around the FCC's order, Bell Atlantic has added a bare assertion which simply states that such audits will not delay the provisioning of EEL arrangements. I don't think that such a "promise" of future "good behavior" relieves Bell Atlantic of the FCC's prohibition against the requirement of audits. I am confident that Bell Atlantic will find many ways to use this audit provision to disrupt or impair a CLEC's ability to use EELs to serve its customers. It should be stricken.

Q. ARE THERE OTHER PROVISIONS WITH WHICH YOU HAVE PROBLEMS?

A. Yes. I will mention them briefly. Section 13.4.1.C. states that an "EEL arrangement may be ordered on an expedited basis only if each of the separate elements ordered has a tariffed expedite NRC." First, it is not clear to me why this provision is stated the way that it is. Bell Atlantic should know whether there are any rate elements in an EEL arrangement that do have "expedite NRCs." This tariff

provision, therefore, should not be stated generally; rather it should refer to exactly what it means. Second, AT&T also objects to this provision to the extent that Bell Atlantic may seek to apply it to the conversion of special access customers to UNE pricing. In AT&T's view, there should be no network related work associated with such a conversion and the only NRCs that should apply are cost based NRCs permitted by the FCC.

AT&T also objects to Section 13.4.1.B. to the extent that it prevents a CLEC from ordering backbone facilities and a loop on a single order.

Finally, the issue of a two-year forecast in Section 13.3.1. has already been addressed in AT&T's prior testimony in this case and I will not repeat our concerns here.

Q. ARE THERE PROVISIONS RELATED TO RATES AND CHARGES AND THEIR APPLICATION WITH WHICH YOU HAVE A CONCERN?

A. Yes. According to AT&T's cost expert, several of the charges do not reflect TELRIC costs and may double recover certain costs.

Q. PLEASE EXPLAIN.

A. According to AT&T's cost expert, Bell Atlantic has used embedded cost relationships rather than forward-looking cost relationships. Two examples demonstrate the point. The first is shown on Part Q, Worksheet 3 of 9. Bell Atlantic develops a Testing expense to investment ratio (E/I ratio) for based on embedded cost relationships and does not even attempt to adjust this E/I ratio to reflect a forward-looking environment. Such a forward-looking environment could include the usage of Remote Testing equipment which can greatly reduce the time and effort of testing loops. The second example is shown on Part Q, Worksheet 7 of 9. BAMA develops an installation factor based on 1995 embedded cost data. Again, no attempt is made to reflect a forward-looking environment.

Q. WHAT ABOUT THE DOUBLE RECOVERY ISSUE?

A. According to AT&T's cost expert, testing costs may already be included in the UNE rates that make up the EEL offering. We are still investigating this issue, however, and at this time have not reached a definitive result. Nevertheless, it should be Bell Atlantic's burden to demonstrate that these rates are not recovering costs that Bell Atlantic is already recovering elsewhere.

Q. DO YOU HAVE ANY OTHER CONCERNS ABOUT THE APPLICATION OF RATES AND CHARGES?

A. My only concern is that the Department make sure that the application of these rates and charges are considered in the general proceeding that I understand the Department will conduct regarding the application of rates and charges generally.

Q. DOES THIS COMPLETE YOUR TESTIMONY?

A. Yes.

1. 1 I am referring here to local exchange customers for whom loops and other access facilities were purchased under special access tariffs because at the time no other options were available. That is, UNEs were not readily available under tariff or agreement.