March 24, 2000

D.T.E. 98-57

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 Telegraph Company d/b/a Bell Atlantic-Massachusetts.

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I. INTRODUCTION AND PROCEDURAL HISTORY

On May 15, 1998, New England Telephone Telegraph Company d/b/a Bell Atlantic-Massachusetts ("Bell Atlantic" or "BA-MA" or "Company") filed with the Department of Telecommunications and Energy ("Department") revisions to M.D.T.E. Tariff No. 14 and a new M.D.T.E. Tariff No. 17, both with an effective date of June 14, 1998. Tariff No. 17 contained the rates, terms and conditions for miscellaneous service offerings available to Competitive Local Exchange Carriers ("CLECs") for interconnection,[(1)] whereas the revisions to Tariff No. 14 related to the rates and charges for operator and directory assistance service for resellers. On May 29, 1998, the Department directed Bell Atlantic to file a comprehensive interconnection tariff that included the permanent unbundled network element ("UNE") rates adopted by the Department in another proceeding. See

Order on AT&T Motion to Expand Scope and Strike Portions of Bell Atlantic Tariff, D.T.E. 98-15, at n.2 (May 29, 1998).

On June 3, 1998, the Department docketed its investigation of Bell Atlantic's proposed tariffs as D.T.E. 98-57, and suspended the effective date of the tariffs until December 14, 1998. At the Department's request, on December 11, 1998, Bell Atlantic withdrew the previously-filed tariffs and refiled the tariffs to become effective January 10, 1999. On December 15, 1998, the Department suspended the effective date of the revised tariffs until April 15, 1999.

On January 8, 1999, the Department held a public hearing and procedural conference, and granted full intervenor status to AT&T Communications of New England, Inc. ("AT&T"), MCI WorldCom, Inc. ("MCIW"), Sprint Communications Company L.P. ("Sprint"), CTC Communications Corp. ("CTC"), MediaOne Telecommunications of Massachusetts, Inc. ("MediaOne"), and the Telecommunications Resellers Association ("TRA"). In addition, the Department granted limited participant status to Mr. J. Joseph Lydon. On January 19, 1999, the Department granted the motions of RCN-BeCoCom, L.L.C. ("RCN") and Choice One Communications, Inc. ("Choice One") to file late-filed petitions to intervene and petitions to intervene. The Department approved the petitions to intervene of RCN and Choice One.

On January 21, 1999, Bell Atlantic filed a Motion to Withdraw the proposed tariffs on the grounds that the cost analyses had to be revised in light of other pending Department matters. The Department granted the Motion to Withdraw on March 13, 1999, and ordered Bell Atlantic to file revised tariffs within three weeks. On April 2, 1999, Bell Atlantic refiled (1) a revised wholesale product/service tariff (M.D.T.E. Tariff No. 17) containing rates, terms and conditions for individual unbundled network elements, switched interconnection services, access to operator, signaling and emergency services, and collocation products; (2) five new and/or revised pages to the Bell Atlantic resale tariff (M.D.T.E. Tariff No. 14); and (3) cost support for the various products/services. On April 13, 1999, the Department suspended the effective date of the tariffs until October 1, 1999. On April 15, 1999, the Department issued another Notice of Public Hearing and Procedural Conference since the new filing contained substantially different materials than previous filings.

On May 18, 1999, the Department held a public hearing and procedural conference and granted full intervenor status to Network Plus, Inc. ("Network Plus"), RNK, Inc. d/b/a RNK Telecommunications ("RNK"), ACI Corporation d/b/a Accelerated Communications, Inc., currently Rhythm Links, Inc. ("ACI" or "Rhythms"), Global NAPs, Inc. ("GNAPs"), and CoreComm Massachusetts, Inc. ("CoreComm"), and granted limited participant status to the Massachusetts Statewide Emergency Telecommunications Board ("SETB"). Thereafter, the Department granted limited participant status to the following companies who filed late-filed petitions to Intervene: Northpoint Communciations, Inc. ("Northpoint"), Covad Communications Company[(2)] ("Covad"); Conversent Communications of Massachusetts, LLC ("Conversent"), Vitts Network, Inc. ("Vitts"), Z-Tel Communications, Inc. ("Z-Tel"), Digital Broadband

Communications, Inc. ("DBC"), Net2000 Communication Services, Inc. ("Net2000"), and Intermedia Communications, Inc. ("Intermedia"). In addition, the Office of the Attorney General filed its Notice of Intervention on December 10, 1999.

On May 27, 1999, the Department suspended the effective date of the tariffs until November 2, 1999. On May 28, 1999, June 11, 1999, July 16, 1999 and August 13, 1999, Bell Atlantic filed revisions to the proposed M.D.T.E. Tariff No. 17. The May 28, 1999 tariff revision was filed in accordance with the Federal Communications Commission's ("FCC") Advanced Services Order(3) and the Department's May 18, 1999 procedural order in this docket, and included two new cost studies and new tariff material supplementing the collocation offerings in Tariff No. 17. The June 11, 1999 tariff revision was filed in compliance with the Department's May 21, 1999 order in Consolidated Arbitrations, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 ("Phase 4-K Order"), and included new tariff material related to Extended Enhanced Link ("EEL") and Switch Sub-Platform. The July 16, 1999 filing was made to correct certain rate and density zone information. Lastly, the August 13, 1999 tariff was filed to comply with the Department's Physical Collocation Order(4) concerning collocation provisions. The Department incorporated the revised tariff provisions into this docket.

On August 25, 1999, MCIW and ACI jointly filed a Motion for Stay and Modification of the Revised Procedural Schedule. On September 1, 1999, Bell Atlantic filed its response to the MCIW and ACI Motion. In its response, Bell Atlantic requested that the Department permit the two proposed tariffs to go into effect immediately on an interim basis, subject to refund. By Order dated October 5, 1999, the Department denied Bell Atlantic's request that the tariffs take interim effect, subject to refund.

On August 27, 1999, at the Department's request, Bell Atlantic withdrew Tariff No. 17 and the revisions to Tariff No. 14 and refiled the tariffs with an effective date of September 27, 1999. The tariffs were revised slightly when refiled. On September 24, 1999, the Department suspended the effective date of the refiled tariffs until February 15, 2000.

On December 8, 1999, AT&T and MCIW filed a Joint Motion to Continue the evidentiary hearings scheduled for December 13 to 17, 1999. AT&T and MCIW requested that the Department require Bell Atlantic to file its intended revisions to Tariff No. 17 with respect to EEL, and to continue the hearings until Bell Atlantic filed the revisions. This motion was denied in part, and granted in part. Specifically, the Department denied the motion to continue the hearings, but in light of the FCC's decisions in the UNE Remand Order(5) and Supplemental Order(6), directed Bell Atlantic to file by December 27, 1999 revisions to the EEL offering in Tariff No. 17 to be considered by the Department under a revised procedural schedule.

From December 13 to 17, 1999, the Department held evidentiary hearings in this docket. At the hearings, Bell Atlantic presented the testimony of John Howard, Robert Kenney, Frederick Miller, and Amy Stern. AT&T presented the testimony of Stephen Jacobsen, Thomas Lofrisco, Denise Henderson, and William Carmody. MCIW presented the testimony of Roy Lathrop, and Covad presented the testimony of Michael Moscaritolo.

During the testimony of John Howard on December 14, 1999, AT&T moved to strike the affidavit of Sheila Gorman that was attached to Mr. Howard's prefiled surrebuttal testimony. Although the motion to strike was denied, the Department deferred review of Bell Atlantic's Geographically Relevant Interconnection Point ("GRIP") proposal, which was the subject of Ms. Gorman's affidavit. The review was postponed to a later date in order to provide the parties the opportunity to explore the GRIP proposal through discovery and to present testimony on the GRIP proposal at a later hearing.

On December 28, 1999, AT&T filed a Motion to Strike those portions of Tariff No. 17 relating to House and Riser Cable ("HARC"). The Department granted AT&T's Motion and indicated that neither HARC or the UNE platform ("UNE-P") would be considered at the hearings scheduled for January 27 and 28, 2000.[(7)] On January 5, 2000, the Department further suspended the effective date of Tariff No. 17, including the EEL revision to Tariff No. 17, and the revisions to Tariff No. 14, until March 27, 2000.

On January 27 and 28, 2000, the Department held additional evidentiary hearings in this docket. Bell Atlantic presented the testimony of Amy Stern, John Howard and Sheila Gorman. AT&T presented the testimony of Fred Cederquist, AT&T and MediaOne jointly presented the testimony of Steven Turner, and Global NAPs presented the testimony of Fred Goldstein.

II. BELL ATLANTIC'S PROPOSED TARIFFS - OVERVIEW

A. Tariff No. 14

Bell Atlantic's proposed revisions to Tariff No. 14, the resale tariff, relate to the payment options and rates for operator and directory assistance service for resellers. More specifically, the proposed revisions to Tariff No. 14 provide for an optional payment plan for NRCs, and revised rates and charges for operator and directory assistance services.

B. Tariff No. 17

Bell Atlantic's proposed Tariff No. 17 sets forth the terms, conditions, and pricing under which Bell Atlantic offers to provide to any requesting CLEC, pursuant to Section 251 of the Telecommunications Act of 1996 ("Act"), interconnection, access to network elements, and ancillary telecommunication services available within each LATA in which such CLECs operate within Massachusetts. Bell Atlantic notes that the services offered in proposed Tariff No. 17 are in addition to those being provided or made available on an individual contract basis, i.e. interconnection agreements, between Bell Atlantic and a CLEC.

Generally, Part A - Miscellaneous Network Services - covers the Bona Fide Request ("BFR") process, ordering of interconnection and UNE services and related intervals, NRCs, billing and collection procedures, and Bell Atlantic's GRIP proposal. Part B covers UNEs, unbundled interoffice facility transport, unbundled multiplexer, tandem switching, local loops, local switching, access to signaling systems and call-related databases, directory assistance services, operator services, access to OSS, interim number portability, network interface device ("NID"), HARC, EEL, and combinations of UNEs. Part C covers switched interconnection services and optional services. Part E covers collocation arrangements, including proposals for compliance with recent orders of the FCC and the Department. Part M includes the rates and charges.

III. STANDARD OF REVIEW

Section 251(c)(2) of the Act imposes a duty upon Bell Atlantic, as an incumbent local exchange carrier ("ILEC"):

[T]o provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network-(A) for the transmission and routing of telephone exchange service and exchange access; (B) at any technically feasible point within the carrier's network; (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and (D) on rates, terms, and conditions that are just reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

In addition, section 251(c)(3) of the Act imposes a duty on Bell Atlantic to provide unbundled network elements on a nondiscriminatory basis. Specifically, the Act states that ILECs are required:

[T]o provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

The Act also requires ILECs, such as Bell Atlantic, to provide physical collocation on a nondiscriminatory basis. Section 251(c)(6) of the Act imposes a duty on Bell Atlantic:

[T]o provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations."

Last, in section 251(d)(3), the Act did not "preclude the enforcement of any regulation, order, or policy of a State commission that--(A) establishes access and interconnection obligations of local exchange carriers; (B) is consistent with the requirements of this section; and (C) does not substantially prevent implementation of the requirements of this section and the purposes of this part."

The obligations imposed upon an ILEC are typically referenced in relation to the terms and conditions contained in interconnection agreements under the Act, but the obligations under the Act apply equally to an ILEC seeking to fulfill its obligations under the Act in part by filing a tariff. The Department notes that section 252(f) of the Act grants the Department authority to review and approve a statement of generally available terms and conditions ("SGAT") filed in Massachusetts by Bell Atlantic to comply with the requirements of section 251. However, Bell Atlantic has declared that Tariff No. 17 is not a SGAT, and the Department accepts Bell Atlantic's position. Therefore, the Department reviews Bell Atlantic's filing in this docket pursuant to authority granted by the Act, as noted above, and pursuant to state statutes governing tariffs filed by common carriers.

Specifically, pursuant to G.L. c. 159 §§ 19 and 20, the Department must determine whether Bell Atlantic's proposed rates, terms, and conditions in its interconnection tariff and its revisions to its resale tariff are "just and reasonable." The right of a common carrier to make rules and regulations, subject to the approval of the Department and the requirement of reasonableness, has been long recognized. Wilkinson v. New England Telephone and Telegraph Company, 327 Mass. 132, 135 (1951).

IV. TARIFF NO. 14 - RESALE

A. Revisions to Tariff No. 14

1. Introduction

In D.T.E. 98-15, the Department approved Bell Atlantic's Tariff No. 14, which provides for the rates, terms, and conditions for the sale of its retail local exchange services to resellers. Bell Atlantic Resale Tariff, D.T.E. 98-15 (Phase I) (September 17, 1998) ("Bell Atlantic Resale Tariff Phase I Order"). On March 19, 1999, the Department issued an Order in Phases II and III in D.T.E. 98-15, wherein the discount rates in Tariff No. 14 were made permanent, effective April 2, 1999. Bell Atlantic has proposed revisions to

Tariff No. 14 relating to the payment options and rates for operator and directory assistance services for resellers. The revisions provide for an optional payment plan for NRCs, and revised rates and charges for operator and directory assistance services.

2. Position of the Parties

Bell Atlantic contends that the proposed revisions are just, reasonable, and non-discriminatory and will enable CLECS to compete fully in the local exchange telecommunications market (Bell Atlantic Brief at 1). No CLEC raised concerns regarding Bell Atlantic's proposed revisions to Tariff No. 14 at the evidentiary hearing. Moreover, no party address the proposed revisions to Tariff No. 14 on brief.

3. Analysis and Findings

Bell Atlantic's proposed revisions introduce an optional payment plan ("OPP") that would allow resellers to pay NRCs on an installment basis over an 18-month period. The monthly NRC payment would be increased by a factor of 14.16 percent to cover the Company's cost of money and bad debt, and a new, additional payment of $199.43 per month would also apply to cover the Company's cost of administering the installment option (Exh. BA-MA-1, at Tariff No. 14, Section 4.4.1.C; RR-DTE-30). Unless expressly renewed by Bell Atlantic, this OPP would not be available for orders placed after August 14, 2000.

Other revisions would change rates for certain customized routing and announcement services associated with the resale of Bell Atlantic's Operator and Directory Services (Exh. BA-MA-1, at Tariff No. 14, Section 10.8.3). The proposed revisions either reflect corrections in Bell Atlantic's cost study or correct transcription errors (RR-DTE-33).

The OPP will provide resellers with the option to pay over time rather than incur steep upfront nonrecurring fees. Such a payment plan may minimize a potential barrier to entry particularly for smaller new entrants. Thus, the Department finds the OPP to be reasonable. In addition, we find the other tariff changes to be reasonable. The Department hereby approves the proposed revisions to Tariff No. 14.

V. TARIFF NO. 17 AND INTERCONNECTION AGREEMENTS

A. Effect of the Tariff on Interconnection Agreements

1. Introduction

Under current Department policy, Department-arbitrated provisions in a tariff supercede corresponding arbitrated provisions in interconnection agreements, and the Department may, in certain circumstances, explicitly direct that a tariff provision supercede corresponding negotiated provisions in interconnection agreements. MediaOne/Greater Media Arbitration Order, D.T.E. 99-42/43, 99-52 (1999) ("MediaOne/Greater Media Arbitration Order"). The parties' positions on the issue focus mainly on 1) what effect

Tariff No. 17 should be deemed to have on existing interconnection agreements; 2) the effect of the tariff on future negotiations between a CLEC and Bell Atlantic; and 3) what manner of notice Bell Atlantic should be required to give to CLECs in the event of a proposed tariff change. In addition, there is considerable disagreement among the parties regarding the proper interpretation and application of the Department's policy in this area.

2. Positions of the Parties

a. Bell Atlantic

i. Effect of the Tariff on Existing Interconnection Agreements

Bell Atlantic notes that the relationship of any tariff to an interconnection agreement is governed by Department precedent, and argues that Tariff No. 17 will have little effect on existing interconnection agreements, in which most provisions have been negotiated and are thus unaffected by any changes contained in Tariff No. 17 (Bell Atlantic Brief at 7).

ii. Effect of the Tariff on Future Negotiations

Bell Atlantic insists that it is committed to meeting its obligations under the Act to negotiate interconnection agreements in good faith (Exh. BA-MA-2, at 4). Bell Atlantic notes that it regards the terms of proposed Tariff No. 17 as being reasonable, non-discriminatory, and pro-competitive, and indicates its intent to rely upon Tariff No. 17 as a basis for future negotiations (id.). Bell Atlantic argues that while it intends to rely on Tariff No. 17 as the "start point" in future negotiations, it remains agreeable to the trade-offs and give-and-take that occur in any good faith negotiation (Tr. 4, at 696, 699).

iii. Notice of Proposed Tariff Changes

Bell Atlantic contends that it would be administratively burdensome to evaluate the effect that a proposed tariff change would have on each CLEC's interconnection agreement with Bell Atlantic, and argues that the best party to evaluate the effect of a proposed tariff change on a carrier is the carrier itself (Bell Atlantic Brief at 8). Bell Atlantic states that subsequent tariff filings will specify which tariff pages are being amended (id. at 9), and indicates that, after Tariff No. 17 is approved, Bell Atlantic will follow existing Departmental notice procedures whenever the Department opens an investigation into proposed tariff changes (RR-MediaOne-54). Bell Atlantic argues that further notification to CLECs by first-class mail, electronic mail, and posting to the Bell Atlantic website are not necessary (RR-AT&T-59).

b. CLECs

i. Effect of the Tariff on Existing Interconnection Agreements

CLECs generally urge the Department to amend its policy on the applicability of tariffs to interconnection agreements as expressed in the Bell Atlantic Resale Tariff - Phase I Order and MediaOne/Greater Media Arbitration Order, or to declare that the existing Department policy is not applicable to Tariff No. 17. CLECs contend that Department policy allows Bell Atlantic to unilaterally alter the terms of an interconnection agreement simply by filing a tariff that contains different terms than those contained in interconnection agreements (Rhythms/Covad Brief at 45; MCIW Brief at 12; AT&T Brief at 10). They argue that this puts CLECs at a competitive disadvantage relative to Bell Atlantic because CLECs cannot make similar changes themselves, and because CLECs will be unable to make strategic business plans if the terms of their interconnection agreements are subject to change at the whim of Bell Atlantic (Rhythms/Covad Brief at 45; MCIW Brief at 12; AT&T Brief at 10).

To remedy the perceived inequities in Department policy, CLECs propose that Tariff No. 17 should be construed as a supplement to interconnection agreements from which carriers may choose to purchase items not provided for in their interconnection agreements (Rhythms/Covad Brief at 47; MCIW Brief at 7). The CLECs further urge the Department to find that tariff provisions never supercede provisions in interconnection agreements unless the agreement explicitly provides that an applicable tariff will control the terms of the offering (Rhythms/Covad Brief at 46; MCIW Brief at 7).

ii. Effect of the Tariff on Future Negotiations

Certain carriers argue that current Department policy on the relationship of tariffs to interconnection agreements makes it easy for Bell Atlantic to change an arbitrated provision through a subsequent tariff revision, thus providing Bell Atlantic with a disincentive to negotiate interconnection agreements in good faith and an incentive to force the agreements to arbitration (AT&T Brief at 11; Rhythms/Covad Reply Brief at 3; Global NAPs Reply Brief at 3). MCIW argues that Bell Atlantic's testimony reveals an intent to use Tariff No. 17 to stifle any effort by a CLEC to negotiate an interconnection agreement with terms that differ from Tariff No. 17 (MCIW Brief at 17).

Global NAPs argues that Bell Atlantic is trying to use Tariff No. 17 to sidestep its obligation under the Act to negotiate interconnection agreements in good faith, and that the Act provides only for statements of generally available terms and conditions, not for tariffs (GNAPs Brief at 2). Global NAPs contends that Tariff No. 17 violates Sections

252(c)(1) and 252(a) of the Act,[(8)] and therefore should be stricken in its entirety (id. at 8).

iii. Notice of Proposed Tariff Changes

CLECS contend that Bell Atlantic should be required to provide CLECs with advance notice of any proposed changes in tariff language. CLECs are concerned that without a notice requirement, every CLEC that has an interconnection agreement with Bell Atlantic will be required to contact the Department every day in order to determine whether Bell Atlantic has jeopardized their interconnection agreements with a new tariff filing (Rhythms/Covad Brief at 45; MCIW Brief at 14; DBC Brief at 9). MCIW asserts that such diligence is costly, burdensome, and contrary to Department policy favoring the reduction of costs incurred by CLECs (MCIW Brief at 14). DBC asserts that some of the most important provisions in interconnection agreements are defined by reference to "applicable tariffs," making immediate notice of all proposed tariff changes crucial to CLECs whose interconnection agreements are governed by the terms of a tariff (DBC Brief at 8). DBC further argues that requiring Bell Atlantic to provide notice to CLECs via electronic notification to a pre-defined contact list is less burdensome than requiring CLECs to conduct daily monitoring of Department activity (id. at 9). Rhythms Links and Covad argue that a notice requirement properly shifts the burden back onto the carrier who is proposing the change (Rhythms/Covad Brief at 46). AT&T contends that the notice requirement should include an analysis component, and would require Bell Atlantic to analyze the impact of any proposed tariff changes on interconnection agreements (AT&T Brief at 12).

3. Analysis and Findings

a. Effect of the Tariff on Existing Interconnection Agreements[(9)]

In prior Orders, the Department has held that Department-arbitrated provisions contained in a tariff supercede corresponding Department-arbitrated provisions in resale and interconnection agreements. See Bell Atlantic Resale Tariff Order - Phase I at 14; MediaOne/Greater Media Arbitration Order at 8. The Department also reserved the right to explicitly direct that a tariff provision supercede corresponding negotiated provisions in interconnection agreements. See MediaOne/Greater Media Arbitration Order.[(10)] Numerous CLECs expressed grave concern with the Department's policy, arguing that it throws their contracts into doubt and infuses a level of uncertainty into their strategic planning that makes it very difficult for them to do business in the Commonwealth (AT&T Brief at 10; MCIW Brief at 12; Rhythms/Covad Brief at 45). After consideration of the arguments and policy considerations concerning the proper relationship of tariffs and interconnection agreements, the Department chooses to amend the policy adopted in the Bell Atlantic Resale Tariff Order and later affirmed and expanded upon in the MediaOne/Greater Media Arbitration Order.

To start, we agree with the CLECs that our policy has the potential to undermine their interconnection agreements and can make it difficult for CLECs to rely on business strategies reflected in those agreements. The Act encourages carriers to fashion agreements through negotiation and arbitration that may have differing provisions between the same incumbent and different CLECs, so that each contract reflects the individual business strategies and priorities of that CLEC. However, by allowing a tariff (or other Department Order) to take precedence over contractual provisions, our policy in practice has the potential to undermine the intent behind the arbitration/negotiation provisions of section 252 of the Act. In retrospect, we find that our unstated desire underlying this policy -- that is, to promote nondiscrimination among Bell Atlantic rates, terms, and conditions for resale and interconnection -- had negative unintended consequences.

CLECs should be able to rely with certainty on their interconnection agreements. They should not have to worry about the possibility that Bell Atlantic will file a tariff that, if approved, could eviscerate their contract. For instance, the existence of the GRIP proposal in Tariff No. 17[(11)], which is substantially similar to the GRIP proposal rejected by the Department in the MediaOne/Greater Media Arbitration Order, created significant uncertainty among CLECs as to whether the provisions in their interconnection agreements could be relied on, thus, justifying a re-examination of the Department's policy.

In order to promote fair competition by ensuring that all carriers retain the benefits of their bargains, and to further the preference for negotiated agreements expressed in the Act, the Department holds that tariff provisions, whether derived from arbitration or Department investigation, will not supercede corresponding arbitrated or negotiated provisions in interconnection agreements, except in rare circumstances as discussed below. Tariff provisions will be applicable to interconnection agreements only where the parties to the agreement have explicitly provided in the agreement that an applicable tariff shall control the terms of the offering.

The Department acknowledges that there may be extraordinary circumstances in which a tariff provision will supercede a corresponding provision in an interconnection agreement. The Department declines to enumerate the range of possible extraordinary circumstances at this time; however, we emphasize that the burden on any carrier that proposes to trump an interconnection provision with a tariff provision will be very significant. We note also that a tariff has to be approved by the Department before it may take effect. The Department, where necessary, can propose a change sua sponte.

Next, the Department concludes that arbitrated provisions in one carrier's interconnection agreement shall not supercede corresponding negotiated provisions in other carriers' interconnection agreements. In addition, Department decisions will supercede arbitrated, but not negotiated, provisions in interconnection agreements only in extraordinary circumstances. Again, any carrier who wishes to have one arbitrated provision supercede a corresponding arbitrated provision in another agreement will face a significant burden before the Department.

b. Effect of the Tariff on Future Negotiations

Some carriers have requested that the Department strike Tariff No. 17 in its entirety. The Act requires both ILECs and CLECs to negotiate the terms of an interconnection agreement in good faith. See 47 U.S.C. § 251(c)(1). The Department recognizes that good faith negotiations do not require parties to enter the process *tabula rasa*, i.e. without any opinion as to the reasonableness of their positions. So long as the parties comply with the requirement to engage in good faith negotiations, the Department cannot order any carrier to adopt a particular negotiating posture.

If Tariff No. 17 was presented as the only method by which a carrier could obtain interconnection, then that tariff would plainly be contrary to the goals of the Act and would not be approved by the Department. Bell Atlantic has, however, indicated a willingness to continue to negotiate interconnection agreements in good faith (Exh. BA-MA-2, at 4; Tr. 4, at 696, 697). Rather than being indicative of a desire to thwart free and fair negotiations, we find that the section of Bell Atlantic's testimony cited by MCIW actually reflects a willingness to negotiate in good faith. Specifically, Bell Atlantic's witness, Amy Stern, testified that "[Bell Atlantic] can rely on a tariff as a start point for negotiations, but negotiations by nature-you know, parties can give and take and things could change" (Tr. 4, at 699). In addition, the Department has revised its policy on the effect of tariffs on interconnection agreements to prevent a tariff from trumping interconnection agreements and to preserve the finality of contracts.

The Department finds that Bell Atlantic's interconnection tariff is not inconsistent with the Act's preference for negotiated agreements because carriers can chose to negotiate interconnection agreements or to purchase from the tariff. Permitting carriers to purchase products and services from a tariff furthers the goals of competition by allowing carriers to avoid a lengthy and expensive negotiation process that may constitute a significant barrier to entry for smaller carriers.

The Department holds that the terms and conditions of Tariff No. 17 represent a supplement to interconnection agreements from which carriers may choose to purchase services not addressed in their interconnection agreements, or as a template for those carriers who choose not to develop detailed negotiation positions. Those carriers who prefer to avoid the time and expense of negotiating an interconnection agreement may choose to purchase services directly from the tariff as an alternative to negotiating an agreement. Moreover, some carriers have noted the appropriateness of having an interconnection tariff available for those carriers who may prefer to purchase from a tariff rather than engage in negotiations (MediaOne Brief at 8; AT&T Brief at 9). Indeed, Global NAPs states that:

[I]t is useful to have a public statement of the terms and conditions available for interconnection and UNEs, and a tariff may in some sense be 'a functional surrogate' for a statement of generally available terms (SGAT) pursuant to Section [252](f) of the Telecommunications Act. But an SGAT and a tariff are not the same if a tariff preempts negotiation, because the Telecommunications Act makes it clear that an [sic] SGAT does not override the obligation to negotiate in good faith.

Global NAPs Reply Brief at 2.

We find that the negotiation of an interconnection agreement necessarily involves an expense of time and money, which may serve as an entry barrier to smaller carriers. Thus, allowing carriers to purchase interconnection and UNEs from a tariff furthers the goals of competition by removing this potential entry barrier.

Lastly, we note that the Act provides the FCC and state commissions with authority to consider allegations that a carrier has failed to negotiate in good faith, and to impose penalties on carriers found to be in violation of its duties.[(12)] Consistent with that authority, the Department will monitor whether Bell Atlantic is negotiating in good faith, or whether it is using Tariff No. 17 to avoid that obligation. We will not hesitate to use our authority to impose penalties, if necessary. For the reasons stated above, the Department refuses to strike the tariff in its entirety.

c. Notice of Proposed Tariff Changes

The amendment of Department policy concerning the relationship between tariffs and interconnection agreements removes the uncertainty regarding whether tariff provisions will override corresponding Department-arbitrated provisions in an interconnection agreement and resolves most of the CLECs' concerns regarding notice of proposed tariff changes. However, so long as there remains a possibility that a tariff change will have an effect on an existing interconnection agreement,[(13)] then fairness requires that CLECs have an opportunity to participate in the Department's decision as to whether or not an investigation should be conducted into the propriety of proposed tariff changes and not simply be the passive recipients of notice after the Department has made its decision. Accordingly, we find the notice procedures referred to in RR-MediaOne-54, which Bell Atlantic stated it would follow, are insufficient since the procedures provide for notice only after the Department has already decided to open an investigation.

During the evidentiary hearing, Bell Atlantic was asked to explain why it could not comply with a requirement to serve notice on CLECs via e-mail and first-class mail, followed by a same-day posting on Bell Atlantic's website (RR-AT&T-59). In response, Bell Atlantic simply indicated that the notice was unnecessary. However, we find that a notice requirement would enhance CLEC input in the tariff review process. Thus, the Department will require Bell Atlantic to serve notice of proposed changes to Tariff No. 17 on all CLECs with whom it has interconnection agreements. Such notice shall be served on the same day that the proposed changes are filed with the Department by electronic mail to e-mail addresses supplied by the CLECs and will be accompanied by a posting on the Bell Atlantic website.[(14)] With the requirement for e-mail notification and website posting, there is no need for redundant notification via first class mail.

While this Order imposes an expanded notice requirement upon Bell Atlantic, we reject AT&T's suggestion that Bell Atlantic be required to provide CLECs with an analysis of how the proposed tariff change will affect their interconnection agreements. The individual parties to interconnection agreements are in the best position to evaluate the effect of any changes in their own agreements. Therefore, while Bell Atlantic is henceforth required to provide advance notice of any proposed changes to Tariff No. 17, Bell Atlantic is not required to evaluate the effect that the proposed changes might have on existing interconnection agreements.

VI. TARIFF NO. 17 - COLLOCATION ISSUES[15]

A. Safety and Security Measures

1. Escorts

a. Introduction

Bell Atlantic's proposed Tariff No. 17 allows Bell Atlantic to impose an escort requirement on CLEC personnel when accessing areas outside the CLEC's multiplexing collocation node, including all manhole and cable vault locations, subject to an escort charge. See e.g., Part E, Sections 2.2.2.F; 2.2.5.F; and 4.4.6.A. In addition, at no charge to the CLEC, Bell Atlantic reserves the right to provide a Bell Atlantic employee to accompany and observe CLEC employees at the CLEC's requested time of entry into the central office. See e.g., Part E, Section 2.2.5.L. In those central offices where other security measures are not yet in place, the proposed tariff states that Bell Atlantic may require the CLEC to use an escort. See e.g., Part E, Section 2.2.5.L. The parties dispute the validity of escort requirements.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic contends that its offer to provide escorted access to the central office so that a CLEC may begin installing equipment prior to Bell Atlantic's full implementation of security measures is reasonable, pro-competitive, and in full compliance with the Advanced Services Order (Bell Atlantic Brief at 39; Bell Atlantic Reply Brief at 23). Bell Atlantic argues that escorts strike a reasonable balance between allowing CLECs to proceed with their business and preserving Bell Atlantic's right to secure its own network (Bell Atlantic Brief at 40). In response to concerns raised concerning delays allegedly caused by waiting for escorts, Bell Atlantic claims that it has no incentive to delay since the Department is monitoring Bell Atlantic's performance, and since providing escorts is costly (Bell Atlantic Brief at 40).[16] Bell Atlantic indicates that the alternative would be to require CLECs to wait until all the security measures are in place (Bell Atlantic Brief at 41; Bell Atlantic Reply Brief at 23).

Moreover, Bell Atlantic claims that the FCC did not preclude escorts for non-collocation sites or to areas outside the collocation arrangement, such as the cable vault or manhole (Bell Atlantic Brief at 39-40). Bell Atlantic argues that the most cost efficient means of providing CLECs access to these areas is through a security escort at the CLEC's expense (id. at 40). Bell Atlantic contends that it is not reasonable, and in many cases not technically feasible, for Bell Atlantic to secure its own network and to provide CLECs unrestricted access to those areas that would require infrequent visits by the CLEC (id.). In addition, Bell Atlantic argues that imposing a time limit for escorts where security does not currently exist is not reasonable since this would force Bell Atlantic to expend time and money to provide security in central offices that may never need to be secured in this manner (id.).

ii. CLECs

The CLECs state that the Advanced Services Order rejected an escort requirement and urge the Department to reject Bell Atlantic's escort proposal (Rhythms/Covad Brief at 18; MCIW Brief at 61; Sprint Brief at 11). The CLECs argue that Bell Atlantic applies an overly broad definition of "reasonable" security measures to include restrictive escort requirements (Rhythms/Covad Brief at 19), and that Bell Atlantic's tariff language would allow Bell Atlantic to require escorts for CLECs indefinitely (MCIW Brief at 60). Even if there is no charge to CLECs for escorts, the CLECs argue that Bell Atlantic's escort proposal would delay a CLEC employee's entry into Bell Atlantic's premises and access to the CLEC's equipment (Rhythms/Covad Brief at 19-20; MCIW Brief at 61; Sprint Brief at 11; Sprint Reply Brief at 6). The CLECs also note that the Advanced Services Order makes clear that no security measures may be imposed if they are more restrictive than those the ILEC uses for its own personnel or third-party contractors working for the ILEC (Rhythms/Covad Brief at 18). Furthermore, the CLECs contend that the Advanced Services Order prohibits Bell Atlantic from restricting a CLEC's access in the central office to the CLEC's equipment (Rhythms/Covad Brief at 18; Sprint Brief at 11). Finally, the CLECs contend that there is no exception in the Advanced Services Order that would allow Bell Atlantic to impose an escort requirement if other security measures are not yet in place (Rhythms/Covad Brief at 19).

c. Analysis and Findings

The FCC permits an ILEC to adopt certain reasonable security measures to protect its network and central office equipment, including installing "security cameras or other monitoring devices, or to require competitive LEC personnel to use badges with computerized tracking systems." Advanced Services Order at ¶¶ 47 and 48 (emphasis added). The FCC also stated that "incumbent LECs must allow collocating parties to access their equipment 24 hours a day, seven days a week, without requiring either a security escort of any kind or delaying a competitor's employees entry into the incumbent LEC's premises by requiring, for example, an incumbent LEC employee to be present." Advanced Services Order at ¶ 49 (emphasis added).

In light of the clear language in the Advanced Services Order, the Department finds that Bell Atlantic's escort requirements are unreasonable. First, Bell Atlantic's distinction between collocation and non-collocation sites is specious given that a CLEC's equipment is not necessarily limited to a designated collocation node. In fact, Part E Section 2.2.5.F of proposed Tariff No. 17 specifically references installation of CLEC equipment in the cable vault, a location for which Bell Atlantic seeks to require an escort at the CLEC's expense. In addition, it is clear that CLECs who interconnect via microwave collocation will require access to roof space, transmitter/receiver space, and cable risers and racking. See Tariff 17, Part E, Section 4.4.6.A. Thus, the Department finds that in order for a CLEC to address maintenance or repair issues as they arise and to properly serve its customers, Bell Atlantic must permit a CLEC to access all of its equipment in the central office, regardless of its location within the central office, without requiring a security escort of any kind. Bell Atlantic may, of course, impose other reasonable security measures as provided in the FCC's Advanced Services Order.

Second, the FCC did not specifically address the use of temporary security escorts pending an ILEC's implementation of permissible security measures. Subject to the conditions provided below, the Department finds that Bell Atlantic's proposal to provide escorted access, at no expense to the CLEC, prior to implementation of permanent security measures is reasonable. The Department supports providing CLECs with access to their collocation space so that they might install their equipment prior to Bell Atlantic's implementation of permanent security measures at that central office.

However, the Department agrees with CLECs that Bell Atlantic's ability to impose escorts on CLECs prior to implementation of permanent security measures must be limited in the following manner. Escorted access may be used only temporarily while Bell Atlantic implements reasonable security measures, a fact which Bell Atlantic acknowledges (Exh. DTE-210). Moreover, Bell Atlantic may not delay implementing reasonable security measures by relying on security escorts. Rather, the Department expects that when a CLEC forecast anticipates an application to a particular central office where security measures have not been implemented or, at the very least, when collocation applications are received for central offices that do not have security measures in place, Bell Atlantic will begin developing, and promptly implement, its security plan (Exh. DTE-295). Bell Atlantic may not delay a CLEC's access to equipment, even if the only security measure in place is an escort. Bell Atlantic must allow the CLEC access when the CLEC employee arrives at the central office, so long as the CLEC has provided prior notice of its intent to enter the central office at a designated time, as discussed, infra, at Section VI.A.2. The Department finds the temporary use of security escorts at Bell Atlantic's expense, subject to the above limitations, to be reasonable, pro-competitive, and consistent with the Advanced Services Order.

Finally, in proposed Tariff No. 17, Bell Atlantic uses "and/or" when listing possible security measures that it may adopt despite the fact that the FCC listed alternative permissible security measures with the disjunctive "or". The FCC expected ILECs, such as Bell Atlantic, to recover the costs of implementing security measures from collocating carriers. However, if Bell Atlantic is be able to implement security measures over and above those necessary to protect its network, these additional security measures would likely result in increased collocation costs without the concomitant benefit of providing necessary protection to Bell Atlantic's equipment. See Advanced Services Order at ¶ 47. Furthermore, the FCC also indicated that the alternative security measures it outlined[17] "adequately protect incumbent LEC networks without the added cost and burden of security escorts." Id. at ¶ 49. Likewise, the Department believes that if Bell Atlantic were able to impose all the security measures outlined by the FCC in a single central office, this would result in unnecessary added costs. Thus, the Department finds that Bell Atlantic may not adopt as many, or as few, security measures as it wishes. We, therefore, direct Bell Atlantic to replace the "and/or" with "or" in its list of possible security measures contained in Part E, Section 9.2.2.A of proposed Tariff No. 17.

2. Prior Notice to Enter

a. Introduction

Proposed Tariff No. 17 requires CLECs to provide Bell Atlantic with no less than 30 minutes notice for manned premises and 60 minutes for an unmanned premise prior to dispatching a CLEC employee to the collocation arrangement, unless an emergency exists. See Part E, Section 2.2.5.M. The parties dispute the validity of the prior notice requirements.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic states that it has a valid need to know when a CLEC's employees are in a central office at any given time, and that the notification provision is not unreasonable or burdensome and is consistent with the manner in which Bell Atlantic treats outside vendors (Bell Atlantic Brief at 41; Bell Atlantic Reply Brief at 24). Moreover, Bell Atlantic indicates that the 30- and 60-minute CLEC notification provisions do not apply in the case of an emergency (Bell Atlantic Brief at 41; Bell Atlantic Reply Brief at 24). Bell Atlantic contends that this prior notification provision does not require a CLEC to wait for a Bell Atlantic employee to arrive, but allows the CLEC to enter the central office at the designated time (Bell Atlantic Brief at 41 n.32).

ii. CLECs

The CLECs urge the Department to reject Bell Atlantic's prior notification requirements (Sprint Brief at 12; Rhythms/Covad Brief at 19). Rhythms and Covad argue that the proposed notice requirements will delay CLECs in coordinating their site visits, and is anticompetitive since Bell Atlantic personnel can access their premises without requiring such coordination (Rhythms/Covad Brief at 20).

c. Analysis and Findings

The FCC stated that "incumbent LECs may impose security arrangements that are as stringent as the security arrangements that incumbent LECs maintain at their own premises either for their own employees or for authorized contractors. To the extent existing security arrangements are more stringent for one group than for the other, the incumbent LEC may impose the more stringent requirements." Advanced Services Order at ¶ 47.

Since Bell Atlantic requires outside vendors to provide prior notice, the FCC's rules permit Bell Atlantic to impose this security arrangement regardless of whether Bell Atlantic's own personnel are required to provide prior notice. Moreover, the tariff language clearly indicates that prior notice does not apply in the event of an emergency and that CLEC employees are not required to wait for a Bell Atlantic employee to arrive prior to entering the central office at the designated time. The Department finds that prior notification before dispatching a technician is reasonable and does not place a burden on CLECs. However, the Department finds no support in the record to differentiate between manned and unmanned premises if prior notification is all that Bell Atlantic seeks. Thus, the Department finds that a 30-minute prior notification before dispatching a technician is sufficient time for both manned and unmanned premises, and directs Bell Atlantic to modify the tariff accordingly.

3. Ten-Foot Separation/Separate Lineups

a. Introduction

Bell Atlantic's proposed Tariff No. 17 establishes a 10-foot separation between the equipment of Bell Atlantic and the CLEC for Cageless Collocation Open Environment ("CCOE" or "cageless"), and prohibits the commingling of CLEC and Bell Atlantic equipment. See Part E, Section 9.1.1.C. CLECs challenge the validity of these provisions.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic indicates that the 10-foot separation is intended only as a guideline to protect its equipment and to provide a safe working environment by permitting an aisle on either side of the fencing enclosing Bell Atlantic's equipment (Bell Atlantic Brief at 37-38). Bell Atlantic recognizes that it may be necessary to reduce the amount of separation space if a central office is near exhaustion provided that Bell Atlantic is still able to secure and access its equipment (id. at 38). Bell Atlantic states that the 10-foot separation is not unused space, and that the 10-foot guideline is reasonable and consistent with the Advanced Services Order (id.). Moreover, Bell Atlantic states that the FCC allows Bell Atlantic to enclose its own equipment, and that placing the CLEC's equipment in the same line-up as Bell Atlantic's equipment would make it impossible for Bell Atlantic to secure its network (id. at 30).

ii. CLECs

The CLECs argue that Bell Atlantic's 10-foot separation requirement and the prohibition against commingling CLEC and Bell Atlantic equipment violates the Advanced Services Order, which, they contend, allows CLECs the option of collocating in any unused space (Rhythms/Covad Brief at 21; MCIW Brief at 71). The CLECs contend that the 10-foot separation space and the prohibition against commingling of equipment unnecessarily reduces space available for collocation and will result in a premature exhaust of space (Rhythms/Covad Brief at 21). Moreover, the CLECs note that Bell Atlantic has waived this 10-foot minimum distance requirement at various central offices, and state that it would be unreasonable to codify a requirement that Bell Atlantic itself has not strictly enforced (MCIW Brief at 71). In fact, the CLECs contend that Bell Atlantic has agreed to withdraw the 10-foot buffer (AT&T Brief at 54).

c. Analysis and Findings

The FCC sought "to optimize the space available at incumbent LEC premises, thereby allowing more competitive LECs to collocate equipment and provide services." Advanced Services Order at ¶ 39. Moreover, the FCC considered the "efficient use of space to be crucial to the continued development of the competitive telecommunications market" and thus required ILECs, such as Bell Atlantic, to allow CLECs to collocate in "any unused space . . . and may not require competitors to collocate in a room or isolated space separate from the incumbent's own equipment." Advanced Services Order at ¶ 42.

Requiring separate line-ups for CLEC equipment and imposing a 10-foot separation between Bell Atlantic's equipment and CLECs' equipment frustrates the FCC's goals to optimize space and, if allowed, would likely result in an inefficient use of space that may already be limited at some Bell Atlantic premises. Given that space is at a premium in more than a few central offices, and that space problems likely will only increase with time, any requirements that would perpetuate, rather than alleviate, space concerns should be reviewed critically. The fact that Bell Atlantic has waived the 10-foot separation requirement and has still been able to secure its network, weighs against placing any space separation requirement, even if only as a guideline, in the tariff (see Exh. DTE-294). Moreover, the record indicates that it is possible, if not efficient, for Bell Atlantic to enclose its equipment if CLEC equipment were commingled with Bell Atlantic's equipment.[(18)] In addition, other reasonable security measures exist, such as security cameras or card access, that Bell Atlantic may use to protect its network. Therefore, the Department directs Bell Atlantic to strike both the proposed 10-foot separation and the prohibition against commingling Bell Atlantic and CLEC equipment. 4. Technical Standards for CLEC Equipment/NEBS Level 1

a. Introduction

Bell Atlantic's proposed Tariff No. 17 requires that all collocation equipment meet NEBS Level 1 requirements along with three additional safety/hazard requirements. See e.g., Part E, Section 2.3.6. Proposed Tariff No. 17 also states that a CLEC may install equipment that has been deployed by Bell Atlantic for five years or more with a proven safety record. See Part E, Section 2.3.6.H. The CLECs raise various concerns about both these provisions.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic states that NEBS Level 1 safety requirements are generally sufficient to protect equipment from harm, and that it has fully addressed its basis for requiring the additional safeguards, which are the same standards currently used by Bell Atlantic for its own equipment (Bell Atlantic Brief at 43-44; Bell Atlantic Reply Brief at 32).

ii. CLECs

The CLECs argue that Part E Section 2.3.6.H of proposed Tariff No. 17 should not restrict collocators from placing equipment that has not been deployed by Bell Atlantic for five years or more, as long as Bell Atlantic's safety standards are met (MCIW Brief at 63). In addition, if Bell Atlantic denies equipment based upon safety standards, the CLECs argue that Bell Atlantic should be required to provide the CLEC, within five business days, a list of all equipment that Bell Atlantic locates within the premises that is the subject of the CLEC's request along with an affidavit attesting that all that equipment meets or exceeds the safety standards that Bell Atlantic contends the CLEC's equipment fails to meet (id.).

c. Analysis and Findings

The FCC stated that "incumbent LECs may impose safety standards that must be met by the equipment to be collocated in its central office" and that "NEBS Level 1 safety requirements are generally sufficient to protect competitive and incumbent LEC equipment from harm." Advanced Services Order at ¶ 35. The FCC also stated that "although an incumbent LEC may require competitive LEC equipment to satisfy NEBS safety standards, the incumbent may not impose safety requirements that are more stringent than the safety requirements it imposes on its own equipment that it locates in its premises." Id. at ¶ 36. The Department finds that Bell Atlantic's equipment safety standards are reasonable to protect its network, and that Bell Atlantic imposes the same equipment safety standards on its own equipment, including the three additional safeguards above NEBS Level 1 (Exh. BA-MA-3, at 23-24; Exh. DTE-213; Exh. DTE-

216; Exh. DTE-257). Thus, CLEC equipment should be held to these same safety standards. Moreover, in accordance with the Advanced Services Order, in the event Bell Atlantic denies collocation of CLEC equipment due to safety standards, the Department directs Bell Atlantic to provide to the CLEC, within five business days, a list of all equipment that Bell Atlantic locates within the premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standards that Bell Atlantic contends the CLEC's equipment fails to meet. See Advanced Services Order at ¶ 36.

Lastly, the Department finds that CLECs should not be prohibited from installing equipment that Bell Atlantic has not deployed for five or more years as long as the equipment meets the safety standards set forth in the proposed Tariff. Nor should a CLEC be prevented from collocating equipment that Bell Atlantic chooses not to deploy in its central offices if such equipment meets the applicable safety standards. To find otherwise would allow Bell Atlantic to take advantage of new technologies five years before a CLEC is allowed to collocate the identical equipment, and would limit a CLEC's choice of equipment to only that which Bell Atlantic has chosen to utilize. This clearly would be an anticompetitive result.

5. Separate Entrances During Work Stoppages

a. Introduction

Bell Atlantic's proposed Tariff No. 17 establishes separate entrances, where available, for CLECs in the event of work stoppages. If a separate entrance is not available, Tariff No. 17 proposes to provide CLECs with the same access provided to management employees. See e.g., Part E, Section 2.2.5.H.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic claims that its tariff conforms fully with the FCC's requirements regarding permissible security measures, and argues that those criticizing the collocation security requirements understate the importance of security in the central office to the ILEC and to other CLECs (Bell Atlantic Brief at 26). Bell Atlantic states that this limitation would only occur in special circumstances (Exh. BA-MA-2, at 57).

ii. CLECs

The CLECs oppose any limitation on access to their collocated equipment (Sprint Brief at 12; Exh. AT&T-44, at 9-10). Sprint indicates that the FCC expressly rejected superfluous security arrangements that hinder CLEC access to their equipment, and urges the Department to reject Bell Atlantic's provision which would allow it to provide a separate entrance for CLEC entry into their collocation space during a work stoppage (Sprint Brief at 12).

AT&T argues that if a CLEC experiences technical problems with its equipment during a work stoppage, the CLEC must be permitted access to its equipment by the Bell Atlantic employees temporarily assigned to the central office (Exh. AT&T-44, at 10).

c. Analysis and Findings

The FCC states that "incumbent LECs may require competitors to use a central entrance to the incumbent's building, but may not require construction of a new entrance for competitors' use." Advanced Services Order at ¶ 42. The Department finds that designation of a specific entrance for CLEC use during work stoppages, even if such entrance is separate from that which is used by Bell Atlantic personnel during such work stoppages, is not unreasonable, nor inconsistent with the Advanced Services Order. Although the designated entrance may be a separate one for CLEC personnel only, this provision does not prevent or delay a CLEC from accessing its equipment, or impose any unreasonable burdens on a CLEC such as requiring the construction of a separate entrance. Moreover, the record indicates that the use of the separate entrance would only occur in special circumstances and, thus, should only be temporary.

B. Space Availability and Exhaust Issues[(19)]

1. Removal of Obsolete/Unused Equipment

a. Introduction

Bell Atlantic's proposed Tariff No. 17 indicates that it will remove obsolete unused equipment upon the reasonable request of a CLEC or by order of the Department. The CLECs seek a more pro-active approach.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic states that it routinely removes obsolete equipment from central office space when the space is needed to meet Bell Atlantic's forecasted service needs and CLEC collocation demands (Bell Atlantic Brief at 31). Bell Atlantic argues that to remove unused obsolete equipment from a central office where no CLEC has expressed an interest is an inefficient use of resources and would detract from the proper deployment of resources to meet the continuing demands for space needed by Bell Atlantic and CLECs alike (id. at 31-32). Bell Atlantic contends that it should only have to clear space when that space is needed (id. at 32). Bell Atlantic suggests that if a CLEC is concerned with the timely removal of equipment to provide space at a central office, the CLEC should provide Bell Atlantic with a valid and binding forecast so Bell Atlantic can try to clear the correct amount of space in a timely manner (id.).

ii. CLECs

The CLECs state that Bell Atlantic should pro-actively remove obsolete unused equipment from its central offices in order to ensure that the availability of space for collocation can be readily and efficiently identified at a reasonable cost (MCIW Brief at 64; DBC Reply Brief at 4). The CLECs argue that Bell Atlantic's position would enable Bell Atlantic to shift the cost of central office space management to collocating CLECs if Bell Atlantic does not conduct a space assessment of a central office until after the CLEC requests collocation (MCIW Brief at 64; DBC Reply Brief at 4). The CLECs contend that Bell Atlantic's approach drives up the cost of collocation for CLECs because CLECs must pay NRCs to determine the availability of space for collocation (MCIW Brief at 64; DBC Reply Brief at 4). At a minimum, the CLECs request that the Department require Bell Atlantic to remove obsolete or unused equipment where collocation is present, has been formally requested, or has been identified in a CLEC forecast of collocation requirements (MCIW Brief at 64; DBC Reply Brief at 4).

c. Analysis and Findings

The FCC stated that "in order to increase the amount of space available for collocation, incumbent LECs must remove obsolete unused equipment from their premises upon reasonable request by a competitor or upon the order of a state commission. There is no legitimate reason for an incumbent LEC to utilize space for obsolete or retired equipment that the incumbent LEC is no longer using when such space could be used by competitors for collocation." Advanced Services Order at ¶ 60.

Bell Atlantic's proposal regarding obsolete equipment mirrors the minimum requirement set forth by the FCC. The Department, however, may adopt additional collocation requirements. See Advanced Services Order at ¶ 23. The record clearly indicates that there is a time element associated with the removal of obsolete unused equipment (see Tr. 4, at 747; RR-MCIW-39; RR-Covad-81), and we find that the time interval to remove obsolete unused equipment could result in unnecessary delays in collocation space provisioning. The FCC stated that "new entrants cannot compete effectively unless they have timely access to provisioned collocation space. We encourage states to ensure that collocation space is available in a timely and pro-competitive manner that gives new entrants a full and fair opportunity to compete." Advanced Services Order at ¶ 55. Accordingly, the Department directs Bell Atlantic to pro-actively remove obsolete unused equipment in those central offices experiencing space constraints, and in any central offices where a CLEC is collocated or where applications have been received for collocation.

2. Reservation of Space

a. Introduction

Bell Atlantic's proposed Tariff No. 17 allows a CLEC six months prior notice before initiating space reclamation procedures; thus, in effect limiting a CLEC's space reservation for future use to six months. See Part E, Section 2.2.8.A. Bell Atlantic allows itself the ability to reserve space for future use for up to three years. This three-year limit is not contained in a tariff but is Bell Atlantic's general planning horizon (Tr. 4, at 785). The parties dispute the reasonableness of Bell Atlantic's three-year space reservation policy.

b. Position of the Parties

i. Bell Atlantic

Bell Atlantic states that its three-year space reservation policy is reasonable not only because of its universal service obligations, but also to meet its requirement to provide collocation to CLECs (Bell Atlantic Brief at 32; Bell Atlantic Reply Brief at 25). Bell Atlantic argues that prohibiting it from reserving space could jeopardize service to end users as well as CLECs with established collocation arrangements (Bell Atlantic Brief at 33). Bell Atlantic indicates that it must plan expansions necessary to meet expected growth many years in advance, and notes that unforecasted CLEC demand contributed to Bell Atlantic seeking funding for building additions in ten central offices for the year 2000 (id.).

Moreover, Bell Atlantic distinguishes itself from CLECs, and asserts that its universal service and other tariff obligations may require it to undertake legitimate projects that require long lead times (Bell Atlantic Brief at 33-34); that it must reserve space in its central offices for switch, trunking, and transmission equipment growth (id.); and, that, unlike CLECs, it has no alternative other than its central offices when it runs out of space, whereas CLECs have the option of virtual collocation, resale, or building their own facilities (Tr. 4, at 786; Bell Atlantic Brief at 34; Bell Atlantic Reply Brief at 25).

Bell Atlantic points out that if it denies space to a CLEC, the Department may request that Bell Atlantic explain its growth plans for that office during the "exemption request" process,[20] thereby adequately protecting the CLEC's interests (Tr. 4, at 787-788; Bell Atlantic Brief at 34-35). Finally, Bell Atlantic suggests that before limiting its space reservation policy, the Department should consider auditing CLECs' use of space (Bell Atlantic at 34).

ii. CLECs

The CLECs argue that ILECs cannot reserve space for future use on terms more favorable than those that apply to other telecommunications carriers seeking to reserve space (Rhythms/Covad Brief at 22), and that Bell Atlantic's space reservation policy is contrary to the public interest (MCIW Brief at 50; Rhythms/Covad at 22). First, the CLECs contend that the criteria upon which Bell Atlantic treats central office space as reserved is vague at best, and they note that Bell Atlantic's proposed reservation of space is not covered by an approved capital budget, nor is it analogous with the situation of plant held for future use, which requires that there be a definite plan to use such plant (Tr. 4, at 751; RR-MCIW-41; MCIW Brief at 50-51). Second, the CLECs challenge Bell Atlantic's claim that universal service obligations justify its three-year space reservation policy, and state that Bell Atlantic has not provided any credible evidence that would show how filling a physical collocation request would impair its ability to meet its universal service obligations (Rhythms/Covad at 23-24; MCIW Brief at 51). Third, given Bell Atlantic's resources to build facilities to meet its demand, the CLECs find Bell Atlantic's claim that it has nowhere to go if space is exhausted at its central offices to be without merit (Rhythms/Covad Brief at 24).

Fourth, with respect to room for growth for switching equipment, the CLECs argue that this is not limited to local exchange service, but includes vertical features as well (Rhythms/Covad Brief at 24). Fifth, although Rhythms and Covad acknowledge the reasonableness for space reservation for continuing basic local exchange service, they claim that Bell Atlantic's space reservation proposal for CLECs vis-a-vis itself exploits its role as the ILEC (Rhythms/Covad Brief at 24). Last, the CLECs argue that nothing prevents Bell Atlantic from using its space reservation policy as a stalling tactic to deny collocation (Exh. MCIW-1, at 10; Rhythms/Covad Brief at 23).

c. Analysis and Findings

In the Local Competition Order, the FCC stated that:

Incumbent LECs may retain a limited amount of floor space for defined future uses. Allowing competitive entrants to claim space that incumbent LECs had specifically planned to use could prevent incumbent LECs from serving their customers effectively. Incumbent LECs may not, however, reserve space for future use on terms more favorable than those that apply to other telecommunications carriers seeking to reserve collocation space for their own future use.

Local Competition Order at ¶ 604.

First, the Department finds that a CLEC and an ILEC are not similarly situated. As the ILEC, Bell Atlantic has universal service and tariff obligations that CLECs do not have (Exh. DTE-288; Tr. 4, at 753, 786). Although some CLECs may find that the universal service obligations are an opportunity (Tr. 1, at 117-18), the fact remains that, regardless of whether an ILEC is reasonably compensated, Bell Atlantic does not have the option to refuse to customers service because of these universal service obligations, and thus must make plans to serve all customers. We note that New England Telephone and Telegraph Company, currently doing business as Bell Atlantic, was designated as the carrier-of-last-resort for local exchange service, and therefore, is required to offer originating and terminating service in all exchanges except those service by independent telephone companies. See Petition of the Attorney General for a Generic Adjudicatory Proceeding Concerning Intrastate Competition By Common Carriers, D.P.U 1731 at 76 (October 18,

1985) ("D.P.U. 1731").[21] We defined a carrier of last resort as "a carrier that will be required to continue service to a particular area or exchange, or to provide service to such an area or exchange, if a particular area or exchange is either left without or not provided with telephone service." Id. at 71.

Moreover, the FCC imposes duties upon ILECs pertaining to space planning. Specifically, the FCC requires that ILECs "should be required to take collocator demand into account when renovating existing facilities and constructing or leasing new facilities, just as they consider demand for other services when undertaking such projects." Local Competition Order at ¶ 585. Accordingly, in addition to projecting its own customers' needs, Bell Atlantic must consider its competitors' needs in future growth, including space planning, whereas no reciprocal obligation falls upon a CLEC when projecting its future growth plans (see also Tr. 4, at 790).

Second, because an ILEC, such as Bell Atlantic, and a CLEC are not similarly situated, we find that limiting Bell Atlantic's own space reservation policy to six months, in order to match the time period after which Bell Atlantic may initiate space reclamation proceedings against CLECs, would subject Bell Atlantic to terms for space reservation that are less favorable than those that would apply to other telecommunications carriers seeking to reserve space for future use. More precisely, Bell Atlantic's needs in terms of reservation of space incorporate broader interests than a CLEC reserving space for itself since Bell Atlantic must consider universal service obligations as well as growth of the network infrastructure to accommodate both Bell Atlantic and CLEC needs.

Third, although the Department finds that Bell Atlantic should be afforded a more flexible policy on space reservation for than provided to CLECs, but we do not necessarily conclude that three years is reasonable. Since we find no evidence to support a time limit that is more than six-months and less than three years, the Department concludes that it is inappropriate to shorten the three-year policy at this time. We note that the record does indicate that building plans and Bell Atlantic needs may vary, and that Bell Atlantic does not permanently and unconditionally reserve space in its central offices, but only does so when it has a real plan to use it (Tr. 4, at 789; Exh. DTE-258). Rather than issue a defined policy on this matter, the Department adopts Bell Atlantic's suggestion that the evaluation of cases where space exhaust is an issue should be approached on a case-by-case basis (Tr. 4, at 787-788; Bell Atlantic Reply Brief at 26). Moreover, the fact that space exhaustion is currently at issue in only six out of 268 central offices further supports a case-by-case approach (Tr. 4, at 787). Thus, the Department directs Bell Atlantic to modify the tariff accordingly.

3. Warehousing of Space

a. Introduction

Bell Atlantic's proposed Tariff No. 17 requires that in a cageless collocation arrangement, the CLEC must install at least one shelf of working equipment equipped with plug-ins, and that equipment bays must be fully equipped with common cards prior to adding subsequent equipment bays. See Part E Section 9.1.1.A.1. The "fully equipped" requirement seeks to prevent CLECs from adding bays before the CLEC actually needs them as opposed to merely reserving additional bays for future use.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic indicates that its requirement that CLECs equipment have common cards before more cageless collocation bays are added is intended to prevent CLECs from hoarding valuable collocation space, and that this requirement is consistent with the FCC's Advanced Services Order and the Department's Physical Collocation Order (Bell Atlantic Brief at 35). Bell Atlantic asserts that it has the right to prevent hoarding of space since it has to bear the burden and cost of space shortages (id.).

ii. CLECs

MCIW contends that this restriction is unreasonable because it places Bell Atlantic in a position to influence the speed with which collocators are able to respond to requests for service (Exh. MCIW-1, at 22). MCIW also points out that there is no similar restriction for other forms of collocation, nor does Bell Atlantic place this restriction on itself (id.).

c. Analysis and Findings

The FCC allows incumbent LECs to adopt reasonable restrictions on the warehousing of space by interconnectors. Local Competition Order at ¶ 586. The record reflects that Bell Atlantic's requirement that shelves be "fully equipped" does not mean fully equipped with working services, and that Bell Atlantic acknowledges that a CLEC may be in the process of expanding its provision of services so that, at the time a new bay is requested, not all shelves will have working equipment (Exh. DTE-189). Thus, we find Bell Atlantic's anti-warehousing provision to be reasonable and justified.

Bell Atlantic also indicated that when it becomes aware that bays are not fully equipped with common cards prior to adding subsequent bays, Bell Atlantic will first seek to reach mutual agreement with a CLEC on what is reasonable and necessary for the initial equipment deployment (id.). The Department approves of this approach and requires Bell Atlantic to attempt to reach mutual agreement with a CLEC on what is reasonable and necessary for the initial equipment deployment when it becomes aware that bays are not fully equipped. The Department directs Bell Atlantic to incorporate this requirement into Tariff No. 17.

4. Minimum Space Requirements for CCOE

a. Introduction

Bell Atlantic allocates a minimum of 15 square feet per bay for cageless collocation, although only seven square feet is allocated for a virtual collocation arrangement. See Exh. BA-MA-1, Tariff No. 17 at Part R. The CLECs request that the space allocation for cageless collocation arrangements be reduced to seven square feet.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic indicates that similarities between the engineering and implementation activities related to virtual and cageless collocation do not support the conclusion that they should be allocated equivalent minimum space (Bell Atlantic Reply Brief at 35-36). Bell Atlantic states that the seven square feet allocated for virtual collocation is based upon accommodating a standard relay rack with a 12-inch footprint, whereas equipment of up to 22-inches in depth is permitted in cageless collocations (Tr. 3, at 481; Exh. BA-MA-6, at 10; Bell Atlantic Reply Brief at 36). In addition, Bell Atlantic indicates that the 15 square feet allocated for cageless collocation allows CLECs the option of securing their equipment in a locked cabinet (Tr. 3, at 480; Bell Atlantic Reply Brief at 36).

ii. CLECs

The CLECs recommend that the minimum space allocation for Bell Atlantic's cageless collocation be reduced from 15 square feet to seven square feet since some CLECs may install bays without protective enclosures (Exh. MCIW-2, at 3-4; MCIW Brief at 53; Rhythms/Covad Brief at 9). The CLECs argue that Bell Atlantic's approach more than doubles the square footage charged to a cageless collocator (MCIW Brief at 53; Rhythms/Covad Brief at 9). The CLECs note that Bell Atlantic relies upon virtual collocation arrangements to derive its engineering and implementation costs (Exh. MCIW-2, at 3; Rhythms/Covad Brief at 9). Moreover, the CLECs note that the use of the minimum square footage of floor space is consistent with the FCC's requirement that collocation space be made available in single bay increments (MCIW Brief at 53).

c. Analysis and Findings

The FCC stated that ILECs must "ensure that cageless collocation arrangements do not place unreasonable minimum space requirements on collocating carriers. Thus, a competitive LEC must be able to purchase collocation space sufficient, for example, to house only one rack of equipment, and should not be forced to purchase collocation space that is much larger than the carrier requires." Advanced Services Order at ¶ 43. The FCC concluded that this requirement was in the public interest since it would reduce the cost of collocation and the likelihood of premature space exhaust (id.). Moreover, the FCC relies upon state commissions "to ensure that the prices of these smaller collocation spaces are appropriate." (id.).

The Department is persuaded that the 15 square feet minimum space allocation for cageless collocation must be reduced to seven square feet. The record shows that the 15 square feet allocation doubles the cost for cageless collocation on a square footage basis (Tr. 3, at 484). Although some CLECs may seek to enclose their equipment in cabinets, or may decide to deploy equipment that is up to 22 inches in depth,[(22)] not all CLECs will choose to do so (Tr. 5, at 978). Thus, imposing a 15 square feet minimum space requirement for cageless increases collocation costs for CLECs where seven square feet would be sufficient for their needs. In addition, to allocate 15 square feet also increases the likelihood of premature space exhaustion in central offices. Accordingly, we direct Bell Atlantic to allocate a minimum of only seven square feet for cageless collocation bays.

5. Space Availability Response for Collocation

a. Introduction

Bell Atlantic's proposed Tariff No. 17 provides, within ten business day after receipt, three possible Bell Atlantic responses to a complete collocation application. The CLECs challenge the third possible response, which indicates that there is "no readily available space, however, [Bell Atlantic] will determine whether space can be made available and will notify the CLEC within twenty business days." Part E, Section 2.1.2.C.3.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic states that the proposed tariff does not extend the ten-day response period by an additional 20 days, but rather allows Bell Atlantic to continue looking for suitable space after informing a CLEC within ten business days that there is no space readily available (Bell Atlantic Brief at 46). Bell Atlantic indicates that during the 20-day period, Bell Atlantic performs various activities with the involvement of experts and outside parties, such as researching building plans, checking on the status of building codes, determining if administrative offices or equipment storage can be moved, and determining if HVAC can be brought to a new part of the building (id.). Bell Atlantic argues that this provision would benefit CLECs by creating a tariff obligation on Bell Atlantic to continue looking while temporarily deferring a denial of the CLEC's collocation request (Bell Atlantic Reply Brief at 29). Bell Atlantic states that the running of the additional 20-day period would not delay or defer a CLEC-requested tour and is consistent the Physical Collocation Order (id.). Bell Atlantic argues that reducing the 20-

day interval would lead to rushed decisions, unnecessary space denials, additional tours, and the inefficient use of resources of all parties (Bell Atlantic Brief at 47).

ii. CLECs

The CLECs urge the Department to reject the additional 20 days proposed by Bell Atlantic, and state that this provision was previously rejected by the Department in D.T.E. 98-58 (AT&T Brief at 44; MCIW Brief at 46-47; Sprint Brief at 10; Sprint Reply Brief at 5-6). Furthermore, AT&T argues that it does not appear that Bell Atlantic intended to comply with the compliance filing order in D.T.E. 98-58 since, although the Department specifically disallowed Part E, Section 2.1.2.C.3, Bell Atlantic continues to allege that the additional 20-days in its tariff is appropriate (AT&T Brief at 44). Moreover, the CLECs argue that Bell Atlantic fails to address what work it performs in the initial ten-day period (Sprint Reply Brief at 5-6).

c. Analysis and Findings

Pursuant to the terms of the Physical Collocation Order,[(23)] Bell Atlantic filed two compliance filings with the Department on August 13 and September 3, 1999. On September 17, 1999, the Department issued a letter order approving certain sections from both compliance filings and stating that the remaining collocation sections of Bell Atlantic's tariff pages shall not go into effect unless and until the Department approves them in D.T.E. 98-57. See September Letter Order, D.T.E. 98-58, at 2 (September 17, 1999). Specifically, Part E Section 2.1.2.C.3 was rejected by the Department, and the Department is not persuaded by the evidence in this proceeding to modify its position. Rather, since Bell Atlantic conducts a thorough look at the existing plant and notifies the CLECs whether space is available during the initial ten-day interval,[(24)] the Department finds that the additional 20-days are unnecessary and would contribute to collocation delays.

6. Space Reclamation

a. Introduction

Bell Atlantic's proposed Tariff No. 17 sets forth a procedure whereby Bell Atlantic, upon six months notice or less if required by law as determined by Bell Atlantic, can reclaim space from a CLEC. See Part E, Section 2.2.8.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic claims that the CLECs have misconstrued the reclamation procedures (Bell Atlantic Reply Brief at 26). Bell Atlantic states that the reclamation process would take a minimum of nine months since Part E, Section 2.2.8.A provides Bell Atlantic with the right to begin reclamation procedures upon six months notice, and Part E, Section 2.2.8.B of the tariff requires Bell Atlantic to provide CLECs with 180 days written notice prior to termination of a collocation arrangement (id. at 27). Bell Atlantic claims that these provisions are reasonable and properly reflect the Department's intent in the Physical Collocation Order (id.).[25]

ii. CLECs

The CLECs claim that Bell Atlantic's space reclamation policy is discriminatory (Rhythms/Covad at 24; MCIW Brief at 61). The CLECs state that the tariff allows CLECs to reserve space only until such time as Bell Atlantic determines it requires the reserved space, and, even if a CLEC is successful in convincing Bell Atlantic to reserve space for that CLEC, Bell Atlantic may unilaterally determine that it needs the space and take it away (Rhythms/Covad at 22-23; MCIW Brief at 62). Moreover, the CLECs assert that the space reclamation notice provisions are meaningless with the qualification of the six month's notice (Rhythms/Covad at 24; MCIW Brief at 62). The CLECs argue that, before Bell Atlantic may reclaim space, Bell Atlantic should be required to remove obsolete or unused equipment, convert any administrative space into collocation space, and consolidate functions scattered throughout the central office (Rhythms/Covad Brief at 24; MCIW Brief at 61).

c. Analysis and Findings

The Department recently established "a process whereby Bell Atlantic or a CLEC may petition the Department to institute a reclamation proceeding against a CLEC that has not constructed a cage or placed functional equipment in that cage within six months of the award of space." Physical Collocation Order at 22. The Department notes that Bell Atlantic specifically incorporated the above-referenced language into Part E Section 2.2.8.A of proposed Tariff No. 17. Bell Atlantic also included additional language reserving its right to reclaim space when it determines that space is needed to fulfill its obligations to provide telecommunications services to its customers under state and federal laws and Bell Atlantic tariffs. This additional language, however, was reviewed and rejected by the Department in our September Letter Order in D.T.E. 98-58. The Department is not persuaded by the evidence in this record to modify its position, and specifically finds that Bell Atlantic's reservation of the right to reclaim space from CLECs without a definite time period for prior notice, based upon Bell Atlantic's unilateral determination that the space is needed for Bell Atlantic to fulfill obligations under state or federal law or Bell Atlantic tariffs, circumvents protections inherent in the space reclamation procedures established by the Department. Accordingly, the Department directs Bell Atlantic to delete the first two sentences of Part E, Section 2.2.8.A. The Department finds that whenever Bell Atlantic seeks to reclaim space from a CLEC, including when Bell Atlantic determines that "it is required by law" to fulfill obligations under state or federal law or under its tariffs, Bell Atlantic shall provide prior written notice to a CLEC and petition the Department in accordance with the requirements set forth in D.T.E. 98-58. We find that this process sufficiently protects the interests of both Bell Atlantic and CLECs.

C. Collocation Types and Provisioning Intervals

1. Adjacent Collocation

a. Introduction

Bell Atlantic's proposed Tariff No. 17 provides that, in the event no space is available for physical collocation at a central office, the CLEC will be permitted to construct or otherwise procure a controlled environmental vault or similar adjacent structure where technically feasible. See Part E, Section 10.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic states that its adjacent collocation offering provides for space on the Bell Atlantic central office premises when no internal physical CO collocation space exists (Bell Atlantic Brief at 29). Bell Atlantic argues that there is no reason to disrupt the exterior of the building, create zoning problems, puncture exterior walls, or create parking problems if there is room inside the central office (id.). Moreover, Bell Atlantic contends that to create structures outside the exterior walls of a central office arbitrarily and prematurely could impede its ability to expand the central office space at a time in the future when space is exhausted within (id.).

Bell Atlantic indicates that, with regard to adjacent off-site collocation, it cannot provide the actual space since it's not Bell Atlantic's space (Tr. 4, at 741). Bell Atlantic further argues that if the CLEC is off Bell Atlantic property, Bell Atlantic does not believe this is collocation, but, rather, constitutes a CLEC purchasing facilities (id. at 743). Bell Atlantic explains that if a CLEC seeks to connect to Bell Atlantic's central office and main distribution frame from an off-site location, the CLEC is purchasing some other kind of tariffed facilities, such as a loop (id. at 742)

ii. CLECs

The CLECs state that Bell Atlantic has failed to comply with the Department's Physical Collocation Order since Bell Atlantic has omitted any provision for adjacent off-site collocation, and recommends that Bell Atlantic be ordered to provide adjacent on- and off-site collocation even when existing central office space has not been exhausted (MCIW Brief at 48-49; Rhythms/Covad Brief at 32). The CLECs indicate that adjacent off-site collocation affords significant benefits including: providing the opportunity to place equipment within a collocation cage more quickly and economically; relieving demand for central office space since adjacent off-site collocation does not occupy central office space; and resolving any security related issues (MCIW Brief at 49; Rhythms/Covad Brief at 32; AT&T Brief at 22). Moreover, the CLECs indicate that adjacent off-site collocation arrangements have been implemented in other states, which they contend establishes a rebuttable presumption that such collocation is technically feasible (MCIW Brief at 50; Rhythms/Covad Brief at 33; AT&T Brief at 23). AT&T also notes that off-site adjacent collocation is necessary for some central offices, particularly in urban settings where there is no on-site space available (AT&T Brief at 23).

c. Analysis and Findings

The FCC required "incumbent LECs, when space is legitimately exhausted in a particular LEC premises, to permit collocation in adjacent controlled environmental vaults or similar structures to the extent technically feasible." Advanced Services Order at ¶ 44. Moreover, the FCC encouraged state commissions to adopt additional requirements beyond those set forth by the FCC. Id. at ¶ 23.

The Department finds that requiring adjacent collocation when there is available space in a central office could interfere with future proposals to expand central office premises (Exh. BA-MA-3, at 45). Thus, the Department will not require Bell Atlantic to permit adjacent collocation unless space is legitimately exhausted. However, the Department directs Bell Atlantic to provide both on-site and off-site adjacent collocation when space has become legitimately exhausted at a particular central office.(26) The record shows that adjacent off-site collocation is offered by ILECs in other states and thus, a rebuttable presumption exists that adjacent off-site collocation is technically feasible in Massachusetts (Tr. 1, at 170-171; Tr. 3, at 618-619; see also Advanced Services Order at ¶ 45). Moreover, off-site adjacent collocation would expand the options of CLECs wishing to collocate in central offices in urban settings where space is an issue yet on-site collocation may not be available (Tr. 3, at 618-619). The Department finds that requiring off-site adjacent collocation when space is legitimately exhausted is consistent with the Advanced Services Order.

The Department understands Bell Atlantic's concern that adjacent off-site collocation is merely a CLEC purchasing a loop or transport facilities. However, we note that it is the absence of available physical collocation space within Bell Atlantic central offices which dictates that alternative means of collocation be explored. Adjacent off-site collocation may not mirror established collocation arrangements in form, yet we hold it is an appropriate mean to an end by serving the ultimate goal of interconnecting networks. Of course, Bell Atlantic may set reasonable terms and conditions for adjacent off-site collocation, including cost recovery for incremental transport costs incurred by Bell Atlantic, so long as the costs avoided by Bell Atlantic due to the nature of adjacent off-site collocation are also taken into consideration. Accordingly, the Department directs Bell Atlantic to include tariff provisions for adjacent off-site collocation.

2. Collocation at Remote Terminals

a. Introduction

Bell Atlantic's proposed Tariff No. 17 does not include any offering for collocation at remote terminals. The CLECs urge that the Department require Bell Atlantic to include tariff provisions for collocation at remote terminals.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic acknowledges that the FCC ordered collocation at remote terminals in the UNE Remand Order, and stated that it intends to comply with that order (Tr. 5, at 1007; RR- DTE-73). Bell Atlantic indicated that it is currently developing and designing the service (Tr. 5, at 1007-1008). Bell Atlantic, however, notes that the UNE Remand Order is not yet in effect and that there is a certain period of time before the requirements take effect (Tr. 4, at 794).[27] In addition, Bell Atlantic believes it is premature to determine how long it will take to evaluate potential arrangements for collocation at remote terminals and then to design and develop a specific interconnection arrangement(s) (RR-DTE-73).

ii. CLECs

The CLECs request that the Department explicitly require Bell Atlantic to tariff remote terminal collocation (Rhythms/Covad Brief at 33; AT&T Brief at 19). The CLECs state that remote terminal collocation is extremely important to data CLECs, i.e.,CLECs that primarily provide data services as opposed to voice services, because it would allow data CLECs to place DSLAM[28] equipment in the remote terminal when there is fiber in the feeder. They further argue that when data CLECs are prevented from accessing the copper/fiber interface, they will be artificially limited in the type of services they can provide (Rhythms/Covad Brief at 34). Moreover, the CLECs assert that Bell Atlantic has demonstrated a pattern of resisting its obligations to provide UNEs to CLECs, and that Bell Atlantic is aware of the requirements of the UNE Remand Order yet has done nothing to update the tariff to comport with the UNE Remand Order (AT&T Brief at 21).

c. Analysis and Findings

The FCC's UNE Remand Order requires ILECs, such as Bell Atlantic, to provide unbundled access to subloops at technically feasible points throughout an ILEC's loop plant, including feeder distribution interfaces located in remote terminals. UNE Remand Order at

¶¶ 209, 210. The FCC also noted that the remote terminal has, to a substantial degree, assumed the role and significance traditionally associated with the central office. Id. at ¶ 218. Moreover, the FCC established a "rebuttable presumption that the subloop can be unbundled at any accessible terminal in the outside loop plant," and placed upon ILECs "the burden of demonstrating to the state, in the context of a section 252 arbitration proceeding, that there is no space available or that it is not technically feasible to unbundle the subloop at these points." Id. at ¶ 223. The FCC ordered that the requirement to provide access on an unbundled basis to subloops and inside wire would be effective 120 days after publication in the Federal Register. Id. at ¶ 526.

The rules adopted in the UNE Remand Order were published in the Federal Register on January 14, 2000.[(29)] Thus, the requirement to provide access to subloops on an unbundled basis at technically feasible points, including at remote terminals, becomes effective on May 13, 2000. Bell Atlantic has acknowledged its obligation to comply with the requirements of the UNE Remand Order, and, to that end, the Department directs Bell Atlantic to amend Tariff No. 17 to incorporate its offering on collocation at remote terminals, and to file this amendment with its compliance filing in this proceeding.

3. Microwave Collocation

a. Introduction

Bell Atlantic's proposed Tariff No. 17 includes an offering for microwave collocation. See Part E, Section 4. Microwave collocation provides for the interconnection of CLEC-provided facilities, equipment, and support structures located in, on, or above the exterior walls and roof of Bell Atlantic central offices/wire centers. The CLECs challenge certain terms and conditions of Bell Atlantic's microwave collocation offering. Those challenged terms and conditions are described below.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic argues that its requirement that CLEC equipment be placed in locked cabinets is reasonable and justified (Bell Atlantic Brief at 43). At the evidentiary hearing, Bell Atlantic testified that there are technical differences inherent in microwave collocation (Exh. BA-MA-2, at 60). Bell Atlantic further stated that placement of equipment in a locked enclosure is specific to placement of transmitter/receiver equipment and that, depending on the architecture of a central office, there may be a requirement to place transmitter/receiver equipment between the microwave antenna and the transmission equipment (id.). Bell Atlantic contends that the requirement for transmitter/receiver equipment to be in a locked enclosure or separate room is for the protection of other telecommunications equipment and for the safety of employees within the central offices (id. at 61).

Moreover, Bell Atlantic, noting the irony to MCIW's objection to locked cabinets when MCIW has only ordered caged collocation arrangements, states that if the CLEC is willing to accept a tariff amendment that overrides its interconnection agreement and specifies that Bell Atlantic will not be held liable for unsecured arrangements, the requirement can be changed (Exh. BA-MA-2, at 42-43; Bell Atlantic Brief at 43).

ii. CLECs

MCIW contends that CLECs should not be required to install their equipment in a locked cabinet if they choose not to do so, or be required to pay for such work if they do not request it (Exh. MCIW-1, at 17; MCIW Brief at 66-67). MCIW also argues that Bell Atlantic should permit a third party to build, own, and maintain the antenna support structure if Bell Atlantic chooses not to own it (Exh. MCIW-1, at 16-18; MCIW Brief at 66-67). Furthermore, MCIW asserts that Bell Atlantic's proposal to use any unused portion of the antenna support structure is unreasonable and contradicts other proposed conditions, including the tariff's proposal that spare capacity is that of the owner of the structure (Exh. MCIW-1, at 16-18; MCIW Brief at 66-67). Last, MCIW argues that the tariff must be modified to afford CLECs 24 hours a day, seven days a week access to its equipment (Exh. MCIW-1, at 16-18; MCIW Brief at 66-67).

c. Analysis and Findings

The FCC rules prohibit an ILEC from requiring competitors to use separate rooms, or from using unreasonable segregation requirements to impose unnecessary costs on competitors. Advanced Services Order at ¶ 42. Although Bell Atlantic refers to safety concerns in support of its requirement that transmitter/receiver equipment be installed in a locked cabinet or separate room, the record does not support a conclusion that enclosing transmitter/receiver equipment in a locked cabinet would protect other telecommunications equipment, presumably, from interference, or somehow would promote the safety of employees in a central office. Likewise, we find that the record does not support segregating microwave equipment in a separate room. We note that interference with other equipment and safety of employees would be valid reasons for the segregation of microwave equipment in a separate room, but we find that the evidence of potential interference to other equipment, or harm to employees, is vague at best, consisting merely of Bell Atlantic's unsupported assertions. We find that Part E, Section 4.3.1 already provides specific technical specifications and safety standards that microwave equipment must meet including "environmental and transmission standards as they relate to fire, safety, health, or interference with [Bell Atlantic] services or facilities" and "regulations governing the safe levels of radio frequency radiation." See Tariff No. 17 Part E, Section 4.3.1.F and G. Moreover, the fact that Bell Atlantic is willing to remove the locked cabinet requirement if CLECs do not hold Bell Atlantic liable for unsecured arrangements is inconsistent with genuine safety concerns. Thus, the Department concludes that, based upon the record before us, Bell Atlantic's proposal that allows it to require CLEC transmitter/receiver equipment to be installed in a locked cabinet or separate room is not justified.

Next, the Department finds no basis upon which Bell Atlantic should be allowed to distinguish between business and non-business hours for CLEC access to collocated microwave equipment. Rather, the FCC was clear that CLECs must be able to access their equipment 24 hours a day, seven days a week. Advanced Services Order at ¶ 49. Thus, the Department directs Bell Atlantic to modify Part E, Section 4.2.3 accordingly.

Lastly, there is insufficient evidence in the record to support any modification of the tariff provisions pertaining to antenna support structures, including the modifications proposed by MCIW.

4. Shared Cages

a. Introduction

Bell Atlantic's proposed Tariff No. 17 allows two or more CLECs to share physical collocation arrangements. For established collocation arrangements, Bell Atlantic proposes to designate the initial CLEC as the collocator of record or host collocator, and the other collocator as the guest. When two CLECs request establishment of a new physical collocation arrangement to be used as a shared cage, Bell Atlantic requires one CLEC to assume the role as host, and the other to be the guest. Although proposed Tariff No. 17 allows the guest to order services and be billed separately from the host, Bell Atlantic's proposal does not allow for split billing of any rate elements associated with the collocation cage, such as square footage, power, and cable racking. Moreover, proposed Tariff No. 17 requires the host to assume responsibility for the guest's violations. See Tariff No. 17, Part E, Section 7. The CLECs claim that the proposed terms and conditions are unreasonable.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic states that the shared collocation arrangement fully complies with the FCC's Advanced Services Order, and that nothing in that Order precludes a host/guest structure (Bell Atlantic Reply Brief at 21). In addition, Bell Atlantic contends that its shared collocation arrangement complies with the FCC's Advanced Services Order regarding costs of shared cages in that Bell Atlantic does not increase the costs for cage preparation or occupancy fees when other CLECs enter into a shared arrangement (id.). Moreover, Bell Atlantic argues that it is reasonable for Bell Atlantic to require CLECs sharing a physical collocation cage to manage the terms of their shared collocation arrangement (id.).

ii. CLECs

The CLECs argue that Bell Atlantic should treat both collocators in a shared arrangement equally for ordering and billing, including separate billing on a pro-rata basis for items such as square foot rental charges, power, and cable racking (Exh. MCIW-1, at 20-21; Exh. AT&T-44, at 16; MCIW Brief at 70).

c. Analysis and Findings

The FCC defined a shared collocation cage as a caged collocation arrangement shared by two or more CLECs pursuant to terms and conditions agreed to by the CLECs, and required that ILECs prorate the charge for site conditioning and preparation of the collocation cage. Advanced Services Order at ¶ 41. Moreover, the FCC stated that "a carrier should be charged only for those costs directly attributable to that carrier." (id.).

First, we find that Bell Atlantic's refusal to "split bill" the costs associated with a shared collocation cage, such as charges for square footage, power, and cable racking, contravenes the directives of the Advanced Services Order since one collocator would be charged with all those costs though some costs are attributable to the other(s). Thus, the Department directs Bell Atlantic to revise its tariff to provide for split billing of recurring rate elements associated with the collocation cage.

Second, by requiring ILECs to offer shared cages, the FCC sought to maximize collocation options for CLECS. Although the Advanced Services Order does not specifically prevent the host/guest structure outlined in Bell Atlantic's shared collocation arrangements, we find that it discourages CLECs from considering a shared collocation cage as an option by requiring one CLEC to assume absolute responsibility and liability for another CLEC's violations vis-a-vis Bell Atlantic. Moreover, Bell Atlantic's argument that it should not be obliged to participate in any disputes between the host/guest is inconsistent with its self-proclaimed "fundamental rights as a landlord." As a landlord, Bell Atlantic should not be able to completely divorce itself from disputes that may arise between CLECs occupying space within Bell Atlantic's central offices (Exh. MCIW-1, at 21).

However, we acknowledge that Bell Atlantic must have the ability to impose reasonable terms and conditions on shared arrangements so that it does not become unduly embroiled in disputes between CLECs in a shared arrangement. During the evidentiary hearings, Bell Atlantic testified that to the extent that it could attribute responsibility for a violation to one CLEC in a shared arrangement, Bell Atlantic would take action against only that CLEC if the violation were not rectified. However, in situations where Bell Atlantic could not distinguish between the two CLECs in a shared arrangement, Bell Atlantic would terminate the service of both CLECs (Tr. 5, at 1031). The Department finds that this approach properly places the burden of potential CLEC violations when a shared arrangement is involved, and directs Bell Atlantic to incorporate this procedure into its tariff. If, however, Bell Atlantic unreasonably applies this approach, i.e., terminates service to both CLECs without making reasonable attempts to determine responsibility for alleged violations, we find that the CLEC whose service is terminated due to the violations of a co-tenant CLEC in the shared arrangement must have some avenue of recourse. Accordingly, if the non-violating CLEC believes that Bell Atlantic unreasonably terminated its service to that CLEC by failing to adequately investigate and assess responsibility, the Department will allow that CLEC to petition the Department for relief.

5. Interconnection between Collocated Spaces

a. Introduction

Bell Atlantic's proposed Tariff No. 17 indicates that it will provide dedicated transit service ("DTS") connections. DTS, which allows for interconnection between CLECs, provides a dedicated electrical or optical path between collocation arrangements using Bell Atlantic provided distribution facilities. Proposed Tariff No. 17 also states that dedicated cable support ("DCS") is subject to space availability and technical feasibility. DCS allows a CLEC to directly connect facilities from its physical collocation node to another physical collocation node. The proposed tariff indicates that Bell Atlantic will process CLEC requests to install cable racking for DCS. In addition, the proposed tariff prohibits CLECs from using any portion of Bell Atlantic's common overhead cable rack to access and place facilities to a DCS. See Tariff No. 17 Part E, Section 5. The parties raise concerns regarding Bell Atlantic's prohibition against CLECs using Bell Atlantic's cable racking and whether CLECs may provide their own DTS.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic states that it allows CLECs to provide their own cable racking, and contends that the Advanced Services Order does not require it to allow CLECs to run facilities on Bell Atlantic's cable racking (BA-MA Exh. 3, at 38; Bell Atlantic Reply Brief at 27). Such a requirement, Bell Atlantic contends, would deny Bell Atlantic the ability to manage its own space and facilities for its own and all other collocators' needs (Exh. BA-MA-3, at 38; Bell Atlantic Reply Brief at 27). Bell Atlantic argues that if it permitted CLECs to utilize cable racking after it vacates the cable racking of a particular equipment area, Bell Atlantic would not be able to reclaim the area for future growth or new equipment, and would not have the ability to provide additional collocation space (Exh. BA-MA-3, at 38; Bell Atlantic Reply Brief at 27). Bell Atlantic states that the Department should mandate Bell Atlantic to provide access to cable racking, but allow

Bell Atlantic and CLECs to review this on a case-by-case basis (Exh. BA-MA-3, at 38; Bell Atlantic Reply Brief at 27).

ii. CLECs

The CLECs argue that the proposed tariff fails to provide any certainty on whether Bell Atlantic will allow access to Bell Atlantic's cable racking for CLEC-to-CLEC connections or whether CLECs may install their own racking (Exh. MCIW-1, at 19; Rhythms/Covad Brief at 25; MCIW Brief at 67). The CLECs state that they already rely on Bell Atlantic's cable racking to support their fiber, power, and copper cabling, and that a requirement for CLECs to build their own racking would be duplicative, costly, and discriminatory (Exh. MCIW-2, at 13; Rhythms/Covad Brief at 25; MCIW Brief at 67-68). Moreover, CLECs contend that they should pay a set, forward-looking charge based upon the share of the cable rack space used by the CLECs' cables (Exh. MCIW-2, at 13; Rhythms/Covad Brief at 26; MCIW Brief at 68). The CLECs note that in New York, Bell Atlantic-New York allows CLECs the option of installing their own cabling or using Bell Atlantic's racking to connect to other CLECs (Exh. MCIW-2, at 13; Rhythms/Covad Brief at 26). The CLECs claim that the tariff should clearly specify that CLECs have the right to provide their own connection from one collocation arrangement to another, or to obtain DTS from Bell Atlantic (MCIW Brief at 67).

c. Analysis and Findings

The FCC rules clearly indicate that ILECs must permit CLECs to construct their own cross-connect facilities between collocated equipment located on the ILEC's premises. Advanced Services Order at ¶ 33. Thus, the Department directs Bell Atlantic to revise its tariff to clearly indicated that CLECs may construct their own cross-connects. Concerning access to cable racking, we find that Bell Atlantic's refusal to allow CLECs to utilize Bell Atlantic's cable racking for cross-connects ignores the fact that CLECs already use Bell Atlantic's cable racking for reasons other than CLEC-to-CLEC connections and that such use is permitted by FCC rules (Exh. MCIW-2, at 13; Exh. DTE-76). We see no reason to treat use of Bell Atlantic's cable racking for CLEC-to-CLEC connections any differently. Moreover, we agree that requiring CLECs to build additional racking when spare Bell Atlantic racking is available would be inefficient and increase the costs of collocation (Exh. MCIW-2, at 13; Tr. 3, at 625-626). Accordingly, the Department directs Bell Atlantic to offer CLECs the option to utilize Bell Atlantic cable racking, subject to feasibility and availability.

6. Provisioning Intervals

a. Introduction

Bell Atlantic's proposed Tariff No. 17 does not contain specific collocation provisioning intervals. The CLECs urge that provisioning intervals be included in the tariff.

b. Positions of the Parties

i. Bell Atlantic

Although not set forth in proposed Tariff No. 17, Bell Atlantic states that its provisioning intervals are 90 business days for physical, 76 business days for cageless, and 105 business days for virtual and cageless when security measures are not yet in place, and contends that these intervals are reasonable (Bell Atlantic Brief at 45). Bell Atlantic notes that, in New York, the 76-day provisioning interval for physical collocation is contingent upon a bona fide forecast three months in advance of the application, with up to an additional three months if not forecasted and additional time in the event of extraordinary spikes in demand (id. at 46). Bell Atlantic argues that if the Department decides to adopt a 76 business day interval for physical collocation in Massachusetts, these same conditions should be adopted (id.).

ii. CLECs

Rhythms and Covad argue that Bell Atlantic should be required to adopt specific collocation provisioning intervals in the proposed tariff, rather than rely on non-tariffed guidelines that are not only excessive but also unreliable and unenforceable (Rhythms/Covad Brief at 27-28; Rhythms/Covad Reply Brief at 12). Without tariffed intervals, the CLECs argue that they will have difficulty proceeding with deployment plans (Rhythms/Covad Brief at 28). Rhythms and Covad suggest provisioning intervals for physical collocation of 60 calendar days from the date of receipt of the request, and 30 calendar days for cageless and adjacent collocation (id. at 29). On the other hand, MCIW argues for collocation provisioning intervals of 76 days for all forms of collocation (Exh. MCIW-1, at 10-11; MCIW Brief at 51-52).

c. Analysis and Findings

The FCC stated that "new entrants cannot compete effectively unless they have timely access to provisioned collocation space. We urge the states to ensure that collocation space is available in a timely and pro-competitive manner that gives new entrants a full and fair opportunity to compete." Advanced Services Order at ¶ 55. First, the Department finds that specific provisioning intervals must be incorporated into Tariff No. 17 since provisioning intervals that are subject to on-going adjustments do not provide CLECs a full and fair opportunity to compete (see Exh. DTE-103; Exh. DTE-105). Moreover, Bell Atlantic already agreed to incorporating provisioning intervals into its tariff (Tr. 5, at 988).

Second, with respect to specific provisioning intervals, the Department is not convinced by the CLECs' argument in favor of intervals of 60 calendar days for physical and 30 calendar days for cageless or adjacent (Tr. 5, at 974-975). The Department, however, finds that, absent special or extraordinary circumstances, 76 business days for all forms of collocation, exclusive of adjacent, is appropriate (Exh. MCIW-1, at 10-11; Tr. 5, at 987-988). We note that the record indicates that Bell Atlantic generally provides physical caged collocation nodes and secured collocation open physical environment ("SCOPE") within 76 business days, and only adds 15 days in special circumstances (Exh. DTE-102; Exh. DTE-193). Thus, we are not reducing the provisioning interval for physical from 90 days, but merely requiring codification of the interval absent special circumstances. In addition, the Department agrees with Bell Atlantic that the restrictions that apply to New York's 76-day provisioning intervals for physical collocation should be adopted as well. We note that at least one CLEC, namely MCIW, finds these restrictions acceptable in order to receive a 76-day provisioning interval (Exh. DTE-99; Exh. DTE-100).

The Department finds 76 business days for provisioning virtual collocation to be appropriate since the Department agrees with CLECs that this form of collocation should require less time to provision given that less work is needed to prepare the space (Tr. 1, at 104). The Department, however, believes that Bell Atlantic must be allowed to use a "stopped clock" approach[(30)] when delays occur from a CLEC's failure to deliver equipment to Bell Atlantic for installation, or when training is necessary for use of non-standard equipment in a virtual collocation arrangement.[(31)]

Lastly, although CLECs urge the Department to adopt provisioning intervals for adjacent collocation, the record does not contain sufficient information upon which to determine the appropriate interval for provisioning this form of collocation. For instance, adjacent on-site collocation may involve zoning regulations and building permit processes, which vary by individual communities, and variances may be required that involve formal hearings (Exh. DTE-219). Moreover, Bell Atlantic has not yet received any request for adjacent collocation (Tr. 4, at 744; see also Tr. 1, at 170). Until Bell Atlantic has gained more experience in provisioning this form of collocation, the Department has no basis upon which to determine an appropriate provisioning interval when such uncertainties exist (Bell Atlantic Brief at 45 n.36). Bell Atlantic is required to inform the Department when it receives a request for adjacent collocation and must indicate at that time the expected interval for fulfilling the request. D. Miscellaneous Collocation Issues

1. Implementation - separate room

a. Introduction

Bell Atlantic's proposed Tariff No. 17 allows Bell Atlantic to impose special construction charges on CLECs for the construction of a separate room in the event that demand for collocation nodes necessitates this. See Tariff No. 17 Part E, Section 2.4.1.E. The CLECs assert that this provision is unreasonable.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic claims that it reasonably reserves the right to provision collocation in a separate room or space (Bell Atlantic Reply Brief at 32). Bell Atlantic states that Part E Section 2.4.1.E of proposed Tariff No. 17 requires Bell Atlantic to make a reasonable effort to locate collocation facilities in a way that minimizes costs, but if no unused conditioned space exists in the central office, it may be necessary to construct a separate room or condition space for the CLEC (id. at 33).

ii. CLECs

MCIW contends that the proposal is inconsistent with the FCC's Advanced Services Order, and urges the Department to delete the reference to a separate room or space for collocation (MCIW Brief at 63). MCIW argues that under Bell Atlantic's proposal, Bell Atlantic could determine that the demand for collocation necessitates construction of a separate room and impose special construction charges upon a CLEC for that construction (id.). MCIW states that requiring separate rooms or floors drives up the cost of collocation and may decrease the amount of available space for collocation (id. at 64).

c. Analysis and Findings

Since Bell Atlantic is not required to construct additional space to provide physical collocation when existing space has been exhausted,[(32)] we assume Bell Atlantic's reference to construction of a separate room refers to conditioning space for traditional physical collocation and, thus, find that the reference to construction of a separate room is not only unnecessary but could be interpreted to allow Bell Atlantic to assess a CLEC for the entire costs of construction when Bell Atlantic unilaterally determines that collocation demand necessitates the construction of a separate room. As such, we direct Bell Atlantic to remove from the tariff the reference to construction of a separate room.

The Department, however, notes that the FCC only precludes use of "unreasonable segregation requirements,"[(33)] and, by directing Bell Atlantic to remove the reference to a separate room, the Department does not intend to imply that the construction of a separate room would be unreasonable in all circumstances. For instance, if, in response to demand for collocation nodes, Bell Atlantic decided to consolidate administrative functions to free up a portion of its administrative office space at a central office, it would be reasonable for Bell Atlantic to divide the administrative office space into two separate rooms with one to be used for collocation, and then to recover the costs associated with this construction. But, Bell Atlantic may not construct a separate room for the purposes of segregating its equipment from that of the CLECS, or of preventing CLECs from collocating in other unused space within the central office.

Because Bell Atlantic's proposal requires Bell Atlantic to make reasonable efforts to place collocation arrangements in areas requiring the minimum amount of site preparation costs, the Department finds it reasonable to allow Bell Atlantic to recover costs to condition additional unused space for collocation. In other words, we permit Bell Atlantic to recover costs associated with conditioning space to make it suitable for collocation if no other unused conditioned space exists.

In addition, consistent with the Advanced Services Order, the Department directs Bell Atlantic to allocate the costs associated with any special construction that may be required to meet collocation node demand, which may include the construction of a separate room as noted above, so that the burden does not fall solely upon the first CLEC whose demand for collocation space necessitates special construction by Bell Atlantic to accommodate that request. See Advanced Services Order at ¶ 51; see also Tariff No. 17, Part E, Section 2.2.1.C.

2. Virtual to Cageless Conversions

a. Introduction

Bell Atlantic's proposed Tariff No. 17 does not allow in-place conversions of virtual collocation arrangements to a CCOE collocation arrangement. In the event that a CLEC wishes to convert from a virtual collocation arrangement to CCOE, Bell Atlantic requires that the CLEC discontinue the old virtual collocation arrangement and construct a new CCOE arrangement.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic states that virtual and CCOE are two different product offerings, and that allowing in-place conversions essentially eliminates the distinctions between the two forms of collocation, which include spacing requirements and security concerns (Bell Atlantic Reply Brief at 17-18). Bell Atlantic contends that a policy allowing in-place conversions would lead to the unnecessary, costly and inefficient churn of Bell Atlantic facilities, particularly when CCOE was available at the time the CLEC chose virtual collocation (id. at 18). Moreover, Bell Atlantic argues that if a CLEC is allowed to convert any virtual collocation arrangement to CCOE, even when the CLEC had the option of ordering either virtual collocation or CCOE, CLECs could "flip-flop" between the options and thus could engage in "tariff-arbitrage" games (id.).

Bell Atlantic notes that there is currently only one virtual collocation arrangement in Massachusetts, and if that CLEC wished to convert, Bell Atlantic would be willing to discuss conversion, and if that arrangement is in a location that lends itself to securing the equipment, Bell Atlantic would agree to an in-place conversion (id. at 18-19). Otherwise, if Bell Atlantic cannot secure its equipment and a CLEC wants a CCOE arrangement, the CLEC may still obtain a CCOE arrangement by canceling the existing virtual collocation arrangement and requesting a new CCOE service (id. at 19). Since, Bell Atlantic argues, the CLEC is the cost causer when it requests the new CCOE service, the CLEC should bear all costs associated with the change (id.). Bell Atlantic urges the Department to allow Bell Atlantic and CLECs to work together and review each case individually (id.).

ii. CLECs

The CLECs state that there is no technical reason to require a CLEC to disconnect its virtual collocation arrangement and to do a new installation when converting to CCOE (Rhythms/Covad Brief at 35). The CLECs argue that such a requirement will cause a service outage for the CLEC's end users during the disconnect/reconnect time period, or would require the CLEC to build redundant facilities and to incur unnecessary costs to avoid the service outage (id.).

Moreover, the CLECs contend that there is no difference between the space requirements of the actual equipment placed in the rack, whether it is virtual collocation or CCOE, and that an in-place conversion is just a method to transfer title of the property (id.). In addition, the CLECs assert that the Department should not allow security concerns raised by Bell Atlantic to be used as delay tactics for establishing collocation arrangements, and that Bell Atlantic is asking the Department to subordinate the service of CLEC customers by compelling outages during a transition from virtual to CCOE to allay Bell Atlantic's fears of potential outages for its customers (id. at 36). Further, the CLECs challenge Bell Atlantic's claims about service outages given that the disconnect/reconnect that Bell Atlantic seeks to impose results in outages for CLEC customers with the only difference being that the outage is suffered by the CLEC only (id.).

c. Analysis and Findings

In its argument in support of treating a move from an existing cage to a different existing cage as a new installation, Bell Atlantic indicated that it "does not believe that any CLEC would disrupt service to working customers by moving equipment to another location and re-cabling and re-terminating all communications connections and DC power. Such an endeavor would only lead to lengthy service outages that would be unacceptable to any telecommunications provider" (Exh. BA-MA-3, at 44-45). We find that refusing to allow in-place conversions under any circumstances would force a CLEC to experience the unacceptable situation Bell Atlantic describes, unless redundant facilities are built. Thus, we find that in-place conversions of a virtual collocation arrangement to a CCOE arrangement is appropriate if the CCOE was not an available option for the CLEC at the time it applied for collocation, or if the CLECs first collocation choice was CCOE, but CCOE was not available due to space constraints, yet subsequently becomes available. We find in-place conversion of virtual collocation to CCOE is reasonable under these limited circumstances given that the alternatives are a service outage to CLEC customers or a CLEC incurring unnecessary costs to build redundant facilities to avoid a service outage (Tr. 1, at 201-202; Tr. 4, at 844-845; Tr. 5, at 1045).

Apart from the limited circumstances identified above, we agree with Bell Atlantic that allowing in-place conversions when both CCOE and virtual collocation arrangements were available options to the CLEC creates additional and unnecessary work for Bell Atlantic that is not justified when the CLEC freely chooses a virtual collocation arrangement over CCOE (Tr. 4, at 778). Moreover, we also find that allowing any virtual collocation arrangement to be converted in-place to CCOE would not be in the public interest since it would allow CLECs to flip-flop between those options at will (Tr. 4, at 779-780).

We note that even in the circumstances where in-place conversions are allowed, Bell Atlantic may secure its equipment prior to the conversion and may recover costs associated with the conversion (Tr. 5, at 1045-1046). We also note that allowing in-place conversions of virtual collocation to CCOE results in commingling of CLEC and ILEC equipment, a situation that the Department, in this Order, has determined to be acceptable and consistent with the FCC's rulings. Moreover, we have directed Bell Atlantic to reduce its minimum allocation of space for CCOE to seven square feet and to remove the 10-foot buffer from its tariff. The fact that equipment in a virtual collocation arrangement is restricted to 12-inches in depth renders the differences in space requirements for virtual collocation and CCOE irrelevant for in-place conversions of virtual collocation to CCOE. See, supra, at Sections VI.A.3 and VI.B.4.

3. CLEC Tours of Central Offices

a. Introduction

Bell Atlantic's proposed Tariff No. 17 allows CLECs to obtain a tour of a central office where the CLEC has been denied physical collocation space, but provides that the CLEC sign a confidentiality agreement prior to receiving a tour. In addition, Bell Atlantic proposes that no further tours will be provided after a central office has been deemed exempt due to space exhaustion by the Department, unless conditions affecting space availability have changed or if requested by the Department. See Tariff No. 17, Part E, Section 2.4.2. The CLECs claim that the restrictions on tours are unreasonable.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic argues that it should have the right to require the party touring a central office to sign a confidentiality agreement, thereby enabling Bell Atlantic to protect its central offices from security risks and to prevent CLECs from using central office information for other than its intended purpose (Bell Atlantic Brief at 42). Bell Atlantic argues that the requirement that information regarding its central office be kept confidential is reasonable, is not burdensome to CLECs, and does not prevent CLECs from obtaining relevant information (id.). Bell Atlantic notes it has concerns because some CLEC's have used central office information obtained in one jurisdiction out of context in another jurisdiction, and Bell Atlantic should not have to go through the expense of defending against this type of misuse of information (Exh. BA-MA-2, at 42; Bell Atlantic Brief at 42 n.35;). Bell Atlantic states that central offices should be closed to tours upon a Department finding that an office cannot accommodate physical collocation and should remain closed until such time as space becomes available in that office at a later date (Exh. BA-MA-3, at 19-20).

ii. CLECs

The CLECs argue against Bell Atlantic's limitation on tours after a central office has been deemed space-exhausted (Sprint Brief at 14; AT&T Brief at 27-28). In addition, AT&T argues for the removal of the requirement that a confidentiality agreement be signed prior to a tour (AT&T Brief at 27). More precisely, Sprint states that the FCC held that when a CLEC is denied physical collocation, a premise tour must be provided, while AT&T contends that the Department, in its Physical Collocation Order, specifically declined to adopt Bell Atlantic's limitations on central office tours including requiring confidentiality agreements (Sprint Brief at 14; AT&T Brief at 27-28).

c. Analysis and Findings

The Department previously reviewed the confidentiality agreement proposal as well as the limitation on tours contained in proposed Tariff No. 17 Part E, Section 2.4.2.B and Section 2.4.2.B.1. See September Letter Order, D.T.E. 98-58 (September 17, 1999). In that Order, we directed Bell Atlantic to remove these two provisions and, for reasons set forth below, we again direct Bell Atlantic to adhere to the directives set forth in the September Letter Order. First, the FCC requires ILECs to permit CLECs denied physical collocation due to space constraints to tour the entire premises. Advanced Services Order at ¶ 57. The FCC did not identify any limitations on the requirement to provide premise tours, and we find that Bell Atlantic's attempt to close a central office to tours is inconsistent with the FCC's requirements (Exh. AT&T-44, at 5).

Next, the FCC stated that ILECs "may assign their own personnel to such tours, thus offering sufficient protection against harm to the network and proprietary information." Advanced Services Order ¶ 57. In response to potential intellectual property and proprietary concerns, the FCC commented that it was unclear "how these concerns would be raised by the mere presence of a competitive LEC employee in [an ILEC's] central office, nor does [ILEC] explain how these concerns would outweigh the importance of providing tours of incumbent LEC facilities." Id. at n.141. In this proceeding, Bell Atlantic has only raised vague concerns of misuse of information, and we find that the record does not support imposing a confidentiality requirement on CLECs prior to being provided a tour.

Last, we feel the need to clarify that the Department does not "exempt" a central office from further physical collocation.(34) Our directives in the Physical Collocation Order imposed notice obligations upon Bell Atlantic when it could not accommodate a request for physical collocation because of space exhaustion at a particular central office. Physical Collocation Order at 17-18; see also Local Competition Order at ¶ 602 and Advanced Services Order ¶ 56. Separate from this notification obligation, the Physical Collocation Order provides a process whereby a CLEC and Bell Atlantic may petition the Department for a determination on space availability related to a specific denial of a physical collocation application. Physical Collocation Order at 20; see also Local Competition Order at ¶ 602 and Advanced Services Order at ¶ 56. We note that the Department's review of any petition filed pursuant to the Physical Collocation Order would include an evaluation of whether the denial of a specific physical collocation application was justified. See Advanced Services Order at ¶ 56. In the event that the

Department agrees with Bell Atlantic about the availability of physical collocation space in a particular central office, such determination does not constitute a conclusion that future denials of applications for physical collocation at that particular central office are justified. Rather, each petition to the Department would be evaluated individually, although the Department may choose to rely on prior determinations where appropriate, and CLECs should expect that the Department will give significant weight to such prior determinations.

4. Relocation of Equipment

a. Introduction

Bell Atlantic's proposed Tariff No. 17 treats a CLEC relocation of equipment from one physical collocation cage to another as a new installation. See Tariff No. 17, Part E, Section 2.2.8.G. The CLECs challenge this policy.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic states that all the same work needs to be performed for a move as for a new collocation order; therefore, treatment as a new installation is appropriate (Exh. BA-MA-1, at 60). Specifically, Bell Atlantic indicates that it must still facilitate a site survey to identify the requirements for installation of the supporting cross connects and DC power that CLECs would require for the new equipment installed in the cage; that detailed engineering records and estimates are required; that additional project management would be required; and, that more administration and billing are needed (Exh. BA-MA-3, at 44-45). In addition to managing the installation of the equipment at the new location, Bell Atlantic is required to project-manage the removal of the equipment from the old location (id. at 45). Bell Atlantic notes that the administrative work for a relocation would be doubled since there were initially two arrangements with separate billing accounts and common language codes established for each arrangement, and, that once the relocation is complete, the inventory for the power and cross connects assigned to the vacated arrangement would have to be removed and the bill support systems would have to be updated (id. at 45-46).

ii. CLECs

MCIW argues that the nature of Bell Atlantic's activities when a CLEC relocates, especially for a CLEC moving to an existing shared cage, are different from a new application (Exh. MCIW-1, at 13; MCIW Brief at 62). MCIW argues that there are tasks that are avoided when compared to a new installation (Exh. MCIW-1, at 13; MCIW Brief at 62). For example, MCIW argues that a site survey is not needed since the location where the equipment will be installed is already decided if the move involves an existing cage (Exh. MCIW-2, at 14). Likewise, there is no need to determine where to terminate the equipment on Bell Atlantic's network since the termination point already exists (Exh.

MCIW-1, at 13). In addition, labor hours are saved in preparing engineering records and estimates, time is saved in administration and billing, and the contact meetings to discuss methods of procedures are avoided (Exh. MCIW-2, at 14).

c. Analysis and Findings

Bell Atlantic's treatment of CLEC moves as a new installation is a reasonable approach in response to the efforts required to effectuate a CLEC relocation of equipment, even if the relocation involves an existing cage. Bell Atlantic has identified various activities in a relocation that are not only equivalent to those performed in a new installation, but also activities that are in addition to those required in a new installation. Thus, the Department finds that Bell Atlantic's treatment of a CLEC relocation of equipment is reasonable.

VII. TARIFF NO. 17 - ENHANCED EXTENDED LINK (EEL)[35]

A. Commingling of Special Access and EEL Arrangements

1. Introduction

As part of its EEL offering, Bell Atlantic proposes to prevent a CLEC from commingling its local exchange service with its special access service. Specifically, Part B, Section 13.1.1.B of proposed Tariff No. 17 states that "EEL arrangements may not be connected to the Telephone Company's special access multiplexing or transport service." The CLECs disagree with Bell Atlantic's proposal, contending that the prohibition against commingling of service is discriminatory and contradicts the intent of the Act.

2. Positions of the Parties

a. Bell Atlantic

Bell Atlantic argues that, while it is technically possible to connect EEL elements to Special Access facilities (Tr. 6, at 1130), allowing CLECs to connect EEL arrangements to existing Special Access arrangements would defeat the intended purpose of the EEL, which is to provide local service to an end user without the CLEC being required to collocate in the central office that serves the end user (Exh. DTE-328; Bell Atlantic Brief at 24). Bell Atlantic contends that it included this provision in Tariff No. 17 to prevent CLECs from attempting to use the EEL arrangement as a less expensive substitute for Special Access facilities (Bell Atlantic Brief at 24). Bell Atlantic states that its tariff allows CLECs to convert an entire Special Access arrangement, including multiplexer and interoffice facilities, to an EEL arrangement, and that, in such cases, CLECs' end-user customers would experience no service disruptions (id. at 24-25). Bell Atlantic contends the FCC has allowed ILECs to restrict the use of EEL, consistent with its Supplemental Order, pending the outcome of its Fourth Further Notice of Proposed Rulemaking (Bell Atlantic Reply Brief at 9). Bell Atlantic states that if the FCC requires commingling in a future ruling, Bell Atlantic will amend Tariff No. 17 to comply with the ruling "subject to its right to challenge such a ruling in the appropriate forum" (Bell Atlantic Reply Brief at 9, n.3).

b. CLECs

AT&T and MCIW both oppose Bell Atlantic's attempt to prohibit commingling of Special Access and EEL arrangements. AT&T contends Bell Atlantic's proposal is discriminatory in that it requires CLECs to purchase new facilities (multiplexers and interoffice transport) when existing Special Access facilities are capable of supporting EEL arrangements (Exh. AT&T-70, at 2-3). AT&T also argues that Bell Atlantic is "imposing a restriction that is not permitted by the FCC" (id., at 2).[(36)]

MCIW argues that Bell Atlantic's proposal is discriminatory in that Bell Atlantic itself commingles Special Access and local traffic over its "integrated network" (Exh. MCIW-32, at 8). MCIW contends that commingling Special Access and local traffic is the only way a CLEC can achieve network efficiency, and that Bell Atlantic's proposal will force CLECs "to create and pay for two separate networks even where capacity issues do not support such duplicative network construction" (Exh. MCIW-32, at 8). MCIW also contends that Bell Atlantic's proposal violates the FCC's current stance set out in the Supplemental Order (MCIW Brief at 26), and points out that Bell Atlantic does not have a commingling restriction in its New York EEL tariff (Exh. MCIW-32, at 9-10).

3. Analysis and Findings

As Bell Atlantic notes, the FCC in its Supplemental Order allows ILECs "to constrain the use of combinations of unbundled loops and transport network elements as a substitute for special access service subject to the requirements in this Order." Supplemental Order at ¶ 4. As this statement shows, however, the FCC's concerns lies with the use of EEL as a substitute for special access service. The Order does not address the issue of EEL being connected through special access facilities for use in providing local service.

Bell Atlantic has acknowledged that there are no technical limitations that would prevent a CLEC from providing local service through an EEL arrangement connected to special access facilities (see Tr. 6, at 1130). Furthermore, the Department agrees with the CLECs that Bell Atlantic's proposed requirement is discriminatory in that it requires CLECs to duplicate facilities to provide services that Bell Atlantic itself provides over a single integrated network (see Exh. MCIW-32, at 8). Therefore, the Department finds that Bell Atlantic shall delete Part B, Section 13.1.1.B from Tariff No. 17.

B. Provisioning of EEL Arrangements across LATA Boundaries

1. Introduction

Bell Atlantic's EEL offering includes a provision (Part B, Section 13.1.1.C) that prevents CLECs from ordering EEL arrangements that would cross LATA boundaries. While Bell Atlantic contends this provision is based on federal law, the CLECs argue that there is no legal or technical basis for this prohibition.

2. Positions of the Parties

a. Bell Atlantic

Bell Atlantic contends that § 271 of the Act prohibits Bell Atlantic from providing in-region inter-LATA services except in such incidental circumstances as are identified in subsection (g). Since the provisioning of EEL arrangements is not listed as an incidental inter-LATA service pursuant to § 271(g), Bell Atlantic argues it is not allowed to provision EELs across LATA boundaries (Exh. DTE-220). Bell Atlantic also argues that under the FCC's "necessary and impair" standards,[(37)] Bell Atlantic would not be required to provide EELs across LATA boundaries even if it were determined not to be a violation of the Act (Bell Atlantic Brief at 25).

b. CLECs

AT&T opposes Bell Atlantic's position, arguing the FCC has not provided any rulings on the provision of EEL arrangements across LATA boundaries (Exh. AT&T-70, at 3). AT&T also argues that this provision should be disallowed because there are local calling areas in Massachusetts that cross LATA boundaries, and this provision would prevent CLEC customers in those areas from being served by an EEL arrangement (AT&T Brief at 50, citing RR-DTE-95).

3. Analysis and Findings

As Bell Atlantic has acknowledged, there are local calling areas within Massachusetts that cross LATA boundaries. Therefore, as AT&T has noted, it is possible that an EEL arrangement would cross LATA boundaries while still being used to provide local exchange service (see RR-DTE-95). To best meet the potential needs of CLECs serving customers in Massachusetts, the Department instructs Bell Atlantic to revise Part B, Section 13.1.1.C to allow for the provisioning of EEL arrangements across LATA boundaries in cases where such provisioning is in a local calling area that crosses LATA boundaries.[(38)] With that exception, Bell Atlantic's tariff provision (Part B, Section 13.1.1.C) that prevents CLECs from ordering EEL arrangements that would cross LATA boundaries is approved.[(39)]

With regard to Bell Atlantic's argument that it does not have to provision EEL arrangements across LATA boundaries because such provisioning does not meet the

FCC's "necessary" and "impair" standards, the Department finds no basis for such an argument. In its UNE Remand Order, the FCC has stated that the "necessary" and "impair" standards are relevant only in the determination of whether a network element generally should be available as a UNE under §251(c)(3) of the Act. See UNE Remand Order at ¶42 and ¶49. The FCC does not apply these standards to specific cases in which a UNE may or may not be offered.

C. Collocation Requirement for New EEL Arrangements

1. Introduction

Bell Atlantic's EEL proposal requires CLECs purchasing new EEL arrangements (but not EEL arrangements that are converted from Special Access) to terminate their EEL arrangements in a collocation space within the LATA. More precisely, Part B, Section 13.1.1.E states that "new EEL arrangements . . . may only terminate to a CLEC collocation arrangement in a BA-MA central office or to a BA-MA switch."

2. Positions of the Parties

a. Bell Atlantic

Bell Atlantic states that in response to the FCC's UNE Remand Order and Supplemental Order, it has amended its EEL offering to remove the collocation requirement for conversions of existing Special Access arrangements to EEL (Exh. BA-MA-9, at 3). However, since the FCC has not yet required ILECs to provision new EEL, Bell Atlantic argues its offering for new EEL arrangements is voluntary, and is not subject to the same provisions (Tr. 6, at 1085). Bell Atlantic contends that its collocation requirement is intended to include all forms of collocation available to a CLEC, including adjacent collocation, and that a CLEC needs to have only one collocation node anywhere in the LATA to meet the collocation requirement (Tr. 6, at 1086; Bell Atlantic Brief at 22, n.16).

b. CLECs

AT&T raises two main arguments against the inclusion of Bell Atlantic's collocation requirement in Tariff No. 17. First, AT&T contends that the proposed tariff does not allow CLECs to utilize collocation arrangements that are housed outside a Bell Atlantic central office to terminate EEL arrangements (Exh. AT&T-70, at 4). AT&T's second concern with the proposed collocation requirement is that the requirement applies only to new EELs, creating what AT&T considers to be a discriminatory double standard (id. at 4-5).

MCIW argues that Bell Atlantic's proposed collocation requirement is inconsistent with the Department's Phase 4-K Order,[40] which directs Bell Atlantic to "come up with an additional, alternative, or supplemental method for provisioning previously uncombined UNEs in such a way that permits combination by competing carriers, but without imposing a facilities requirement" (Exh. MCIW-32, at 11; see also Phase 4-K Order, at 26). MCIW also points out that there is no technical reason for requiring EEL arrangements to terminate in a CLEC's collocation facilities (Exh. MCIW-32, at 10; MCIW Brief at 27).

c. Attorney General

The Attorney General argues that Bell Atlantic's collocation requirement contradicts the Department's Phase 4-K Order, as well as rulings of both the Eighth Circuit Court of Appeals[(41)] and the United States Supreme Court[(42)] (Attorney General Brief at 3, n.7). The Attorney General also contends that the collocation requirement is discriminatory in that it is not technically required and does not apply to all EEL arrangements (id. at 3). The Attorney General points out that the FCC has warned that facilities requirements can potentially act as a barrier to open competition (id. at 4).

3. Analysis and Findings

The Department rejects Bell Atlantic's proposal to require EEL arrangements to terminate at a CLEC's collocation facilities. The Department has previously ruled that imposing a facilities requirement on CLECs is a "direct contravention of the Eighth Circuit's findings, and the Supreme Court decision upholding the FCC's authority to preclude a facilities requirement." Phase 4-K Order at 26. The fact that the proposed requirement is intended to apply only to new EEL arrangements is proof that there are no technical grounds for a collocation requirement to be imposed. Consequently, the Department finds that Bell Atlantic has not provided sufficient evidence in this proceeding concerning EEL arrangements to warrant a reversal of the Department's decision in its Phase 4-K Order.

D. Significant Local Usage and Audit Provisions

1. Introduction

In its EEL offering, Bell Atlantic proposes to impose a significant local usage requirement on EEL arrangements and reserves for itself the right to audit CLEC EEL arrangements to ensure that its requirements are being met. Part B, Section 13.3.1.A requires a CLEC to provide written self-certification that each of its EEL arrangements is being used to provide either 100 percent of the end-user's local service or, in the case of EELs using DS 1 level or above loops, "at least one-third of the end-user's local exchange service" and "at least 50% of the activated channels must have at least 5% local voice traffic individually," with the entire facility having at least 10 percent local voice traffic.

Bell Atlantic's proposed audit provision is included in Part B, Section 13.2.1.B, which states "the Telephone Company reserves the right to conduct an audit of operational EEL arrangements to verify that the EEL arrangement is providing a significant amount of local exchange service to a particular end user customer." This provision also states that "such audits will not delay the provisioning of EEL arrangements."

2. Positions of the Parties

a. Bell Atlantic

Bell Atlantic contends that its definition of significant local exchange service is consistent with "the only guidance the FCC has provided," and, because no other party has offered a viable alternative definition, the Company's definition should be accepted by the Department (Bell Atlantic Brief at 23, n.17). Bell Atlantic asserts that it changed its original EEL offering to the current significant local usage standard in response to the FCC's Supplemental Order decision (Exh. BA-MA-9, at 4). Bell Atlantic argues that the Supplemental Order "concluded that the local service component as described by Bell Atlantic in an *Ex Parte* submission to the FCC met the 'significant amount of local exchange service' standard" (Exh. BA-MA-9, at 4; Exh. BA-MA-269). Therefore, Bell Atlantic believes it is justified in using this definition as the basis for CLEC self-certification within its EEL offering in Tariff No. 17 (Exh. BA-MA-9, at 4; Tr. 6, at 1092-93). Bell Atlantic did not specify a format for CLECs' written self-certifications, but the Company believes CLECs should be able to develop, on their own, an adequate form of documentation that each of the lines on their EEL arrangements meets the tariff's significant usage requirement (Tr. 6, at 1094).

Bell Atlantic admits that it made an error by not including a provision specifying the frequency with which CLECs must update their self-certifications, but Bell Atlantic argues that it believes CLECs are capable of monitoring their own arrangements and would be expected to notify Bell Atlantic if there is a significant change to the end customer's usage patterns (id. at 1127). Bell Atlantic also explains that it did not develop a specific re-certification plan for EEL customers whose arrangements are terminated because the Company assumed the CLEC would provide a new self-certification if and when the CLEC attempted to place an order for a new EEL arrangement for that customer (id. at 1128).

Bell Atlantic also argues that its audit provisions should be accepted because they provide a mean for the Company to ensure that CLECs are using EEL arrangements for their intended purposes (Bell Atlantic Brief at 26). Bell Atlantic argues that the FCC's comments on audits in the Supplemental Order relate to audits conducted prior to the provisioning of an EEL arrangement. Since Bell Atlantic would be conducting its audits after the arrangement is in-service, the Company argues the audits would not delay the provisioning of EELs, and, thus, the FCC's comments would not apply in this case (Tr. 6, at 1155-56). Bell Atlantic asserts that it believes the FCC's ruling does not constitute a prohibition of audits, but merely states the FCC does not find them necessary (Bell Atlantic Brief at 26).

Bell Atlantic argues that the confidentiality of CLEC information used in an audit would be upheld through the Company's use of a third-party auditor, and that it is willing to work with the CLEC's to develop other means for conducting audits while maintaining CLECs' confidentiality rights (Exh. DTE-224). Bell Atlantic asserts that it is willing to amend Tariff No. 17 to include a "reasonableness standard" so that no EEL arrangement would be audited more than once in a year unless that EEL was found to be in violation of the significant usage requirements or there was a significant change in the pattern of the EEL arrangement's traffic (Tr. 6, at 1139-40).

b. CLECs

AT&T and MCIW both accept the requirement that CLECs must self-certify that their EEL arrangements provide a significant amount of local exchange service, since that requirement is mandated by the FCC (Exh. AT&T-70, at 4; MCIW Brief at 28). However, both CLECs object to Bell Atlantic's attempt to define unilaterally what constitutes a significant amount of local exchange service (Exh. AT&T-70, at 4; MCIW Brief at 28). AT&T argues that Bell Atlantic has not been given any authority to provide a definition for significant usage, and that the process should be left to the FCC or to an industry-wide collaborative (Tr. 6, at 1173, 1179-80). AT&T argues that the FCC included in the Supplemental Order examples of what would entail a significant amount of local exchange service, and that if the FCC had intended for those examples to be used as limiting factors, then it would have stated so in its ruling (AT&T Brief at 51). AT&T believes CLECs, in line with the limits of the FCC's present stance, should be required to self-certify based on their own "good judgment" that they are providing significant local service until the FCC offers further insight on the issue (id.).

MCIW argues that Bell Atlantic's definition of significant usage should be rejected because it is vague in its description, overly restrictive, and has no support based on the FCC's current position (MCIW Brief at 28). MCIW contends that CLECs do not always have access to information necessary to ensure their customers meet Bell Atlantic's definition, and that Bell Atlantic's definition is discriminatory because it applies different requirements to different types of EEL arrangements (MCIW Brief at 28-29). MCIW proposes that CLECs be required to self-certify based on either the generic definition of significant amount of local exchange service provided by the FCC, or a more specific definition in which the CLEC is providing significant local service if it is providing the end user's "first point of switching" (id. at 29).[(43)]

AT&T and MCIW also oppose Bell Atlantic's proposal for an audit provision on the basis that the FCC has ruled that audits are not necessary in the provisioning of EELs (Exh. AT&T-70, at 5; Exh. MCIW-32, at 12). AT&T argues that Bell Atlantic's assertion that audits will not delay the provisioning of new EELs does not resolve the basic conflict between Bell Atlantic's proposal and the FCC's position (Exh. AT&T-70, at 5). MCIW also opposes this provision on the grounds that audits would require CLECs to provide confidential and competitively sensitive information to Bell Atlantic and its auditors (Exh. MCIW-32, at 12-13). MCIW also argues that, if an audit provision were to be accepted, Bell Atlantic's proposal is deficient in that it fails to specify the time period over which an audit would be conducted or the information that CLECs would be expected to provide to Bell Atlantic to perform such an audit (MCIW Brief at 28-29).

c. Attorney General

The Attorney General argues that Bell Atlantic's significant local usage definition and audit provision are lacking in detail and should be rejected (Attorney General Brief at 5). The Attorney General points out that Bell Atlantic includes in its definition of a significant amount of local exchange service a provision stating that, for CLECs providing less than 100 percent of a customer's local service, they must be providing "at least one-third of the end user's local exchange service," but that Bell Atlantic does not state how that amount will be calculated (id. at 5).[(44)] The Attorney General also contends that Bell Atlantic's proposed audit provision fails to specify a number of details that should be included in the tariff, including the process for selecting an auditor, the frequency at which audits would be conducted, the information that would be required to conduct an audit, and the assessment of liability for the costs of an audit (id.). The Attorney General proposes that the Department reject Bell Atlantic's audit provisions and require Bell Atlantic to submit a new audit proposal in a separate proceeding (id. at 5).

3. Analysis and Findings

Bell Atlantic appears to misread the FCC's position with regard to its "local service component." Supplemental Order at ¶ 5, n.9. In the Supplemental Order, the FCC accepted the two instances used by Bell Atlantic in its proposed EEL offering as examples of significant local exchange service. However, as the CLECs contend, the FCC was clear that those were merely examples of significant local exchange service, and there is no basis for the belief that the FCC intended those examples to be definitive for determining the local service component. The Department agrees with AT&T witness Cederquist that the definition of what comprises a significant amount of local exchange service is best left to the FCC or, if the FCC chooses to go no further than its current position, to an industry collaborative (see Tr. 6, at 1173, 1179-80).

We find persuasive the FCC's statements that this constraint will be in effect for only a limited term, and that there is no need 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." Supplemental Order at ¶ 5, n.9. Therefore, we reject Bell Atlantic's proposal to conduct audits of EEL provisions.

E. Ordering Provisions

1. Introduction

Bell Atlantic's EEL offering includes a number of provisions setting forth the ordering requirements for EEL arrangements. At issue are the requirements surrounding the separate and sequential ordering of individual EEL elements, and the language of the proposed EEL offering concerning the issue of expedited orders. Part B, Section 13.4.1.B states that "orders for backbone elements must be ordered sequentially, with the higher level service being pre-positioned (completed and turned up) prior to the second backbone element being ordered. The backbone EEL elements must be in place (completed and turned up) prior to the EEL loops being ordered." On the issue of expedited orders, Part B, 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."

2. Positions of the Parties

a. Bell Atlantic

Bell Atlantic asserts that there is a necessity for its requirement that EEL elements be ordered separately and in a sequential order, and that if the backbone-to-loop sequence were not followed, then the case could arise where a loop is provisioned without a multiplexer facility to which it can be connected (Tr. 6, at 1156-57). Bell Atlantic affirms that the already accepted standard intervals for the individual elements in an EEL arrangement will apply in the provisioning of a new EEL arrangement (id. at 1095). Bell Atlantic also asserts that the requirement of sequential and separate ordering of EEL elements will not cause delays in the overall provisioning of the EEL arrangement, and is actually a more cost-efficient process (Bell Atlantic Reply Brief at 13-14). Bell Atlantic acknowledges that all elements that are capable of being included in an EEL arrangement have expedite NRCs(45) within Tariff No. 17, and, as such, an EEL arrangement can be ordered on an expedited basis (RR-MCIW-85; see also Exh. BA-MA-1, at Part M, Section 1.3).

b. CLECs

AT&T and MCIW both reject Bell Atlantic's argument for separate and sequential ordering of EEL elements. MCIW asserts that there is no technical reason why EEL elements need to be ordered separately, and that Bell Atlantic's proposal would significantly lengthen the provisioning process for new EELs (Exh. MCIW-32, at 13). MCIW also argues that Bell Atlantic's proposal would place added costs on CLECs through the imposition of multiple service order charges (MCIW Brief at 31-32). AT&T and MCIW both recommend that the Department reject Bell Atlantic's proposal and allow all EEL elements to be ordered as a single service request (Exh. AT&T-70, at 6; MCIW Brief at 31).

MCIW contends that Bell Atlantic should be required to adopt its standard provisioning intervals for new EEL arrangements in Tariff No. 17,(46) and should also be required to develop standard provisioning intervals for conversions of existing arrangements to EELs (MCIW Brief at 32-33). MCIW also proposes, in light of Bell Atlantic's confirmation that all EEL elements have expedite NRCs,(47) that Part B, Section 13.4.1.C be revised "to provide that an EEL arrangement may be ordered on an expedited basis" (id. at 32).

3. Analysis and Finding

We find Bell Atlantic's proposed ordering provisions will lead to an inefficient ordering process for CLECs who wish to purchase EEL arrangements through the tariff. First, while it may be necessary to provision EEL elements in a specific order, Bell Atlantic has not demonstrated a need for individual EEL elements to be ordered on separate service orders. The Department is concerned that CLECs may experience unnecessary delays as a result of the processing of multiple service orders for a single arrangement. The Department also agrees with MCIW's argument that Bell Atlantic's proposed ordering process would impose unnecessary costs on CLECs in the form of multiple service order charges. Therefore, the Department finds no reason for the inclusion of the requirement for separate and sequential ordering of individual EEL elements. The Department instructs Bell Atlantic to make any necessary changes to its ordering process, through its standard change control process, to allow CLECs to order all elements of an EEL arrangement in a single service order.

On the issue of expedited orders, the Department considers the language of the proposed offering to be misleading. Recognizing Bell Atlantic's acknowledgment that all EEL elements have tariffed expedite NRCs (see RR-MCIW-85), the Department instructs Bell Atlantic to amend Part B, Section 13.4.1.C to state affirmatively that CLECs may order EEL arrangements on an expedited basis.

Finally, the Department finds that Bell Atlantic should include standard provisioning intervals for EEL arrangements in the tariff. Bell Atlantic stated during hearings that it would apply the standard intervals for the individual UNEs that make up the arrangement in the provisioning of a new EEL (Tr. 6, at 1095). The Department accepts this proposal and orders Bell Atlantic to include these intervals in its tariffed EEL offering. The Department also finds that it is important that CLECs who wish to convert their existing special access arrangements to EELs have access to a standard provisioning interval and not be required to negotiate provisioning intervals individually. The Department, therefore, instructs Bell Atlantic to develop and file a standard provisioning interval for conversion of existing arrangements to EEL arrangements.

F. Application of Termination Charges

1. Introduction

Part B, Section 13.5.1.D of Bell Atlantic's EEL offering reserves for Bell Atlantic the right to impose termination liability charges, where applicable, to a CLEC's conversion from Special Access to an EEL arrangement.

2. Positions of the Parties

a. Bell Atlantic

Bell Atlantic asserts that if a CLEC converts its Special Access arrangement to an EEL, and, as a result, the CLEC cannot fulfill any term or volume commitments agreed to under its Special Access arrangement, then Bell Atlantic has a right to impose termination charges for that Special Access arrangement (Exh. DTE-235; Exh. DTE-241). Bell Atlantic argues that the termination charge is Bell Atlantic's method of recovering lost revenues that had been guaranteed under the term or volume agreements of the Special Access arrangement (Exh. DTE-241). Bell Atlantic also claims that, since termination charges are contained in its federal- and state-approved Special Access tariffs, the Department has no authority in this proceeding to waive those charges (Bell Atlantic Reply Brief at 10-11).

b. CLECs

MCIW argues that Bell Atlantic's failure to provide an EEL offering to CLECs at an earlier date forced CLECs to provide their customers with local exchange service through more expensive Special Access arrangements, and, as a result, Bell Atlantic has already earned a "windfall" by charging CLECs higher rates than they would have been forced to pay had they been able to order EELs (MCIW Brief at 24-25). MCIW proposes that the Department require Bell Atlantic to offset any termination liability charges with an equal credit under the EEL tariff arrangement for a period of six months following the effective date of the compliance filing in this proceeding (id. at 25). MCIW argues that this type of credit is support by prior Department decisions.[(48)]

3. Analysis and Findings

The FCC has addressed this issue in its UNE Remand Order. In deciding that incumbent LECs had no legal right to separate "unbundled network elements [that] are already combined as a special access circuit," the FCC ruled that "any substitution of unbundled network elements for special access would require the requesting carrier to pay any appropriate termination penalties required under volume or term contracts." UNE Remand Order at ¶ 486, n.985. Thus, we find that Bell Atlantic may assess applicable termination charges to conversions from Special Access arrangements to EEL arrangements.

G. EEL Cost Issues

1. Introduction

Within Bell Atlantic's EEL offering, it proposes to include an EEL Link Test Charge as a monthly recurring charge to recover the Company's costs for testing the individual loops connected to an EEL arrangement. At issue for the imposition of this charge is Bell Atlantic's cost recovery method, the inclusion of certain expenses for recovery, and the form that such a testing charge should take.

2. Positions of the Parties

a. Bell Atlantic

Bell Atlantic argues that it has proposed the EEL Link Test Charge to allow for the recovery of costs incurred in testing the loops that it provisions for EEL arrangements (Tr. 6, at 1099). Bell Atlantic explains that it proposes the charge in its EEL offering, and not in its provisioning of individual UNE loops, because Bell Atlantic developed its UNE loop rates under the assumption that CLECs would conduct their own testing (id. at 1101-02). Bell Atlantic contends its cost studies and workpapers are sufficient and forward-looking because they use the same data supplied in the Company's TELRIC compliance filing, which was approved by the Department (Bell Atlantic Reply Brief at 11). Bell Atlantic argues this process was used to "maintain consistency between the investments on which the recurring Link charges are based and the expenses associated with those very same investments" (id.). Bell Atlantic believes that if it were to use more recent data, the costs would likely be higher than what is reflected in the workpapers (Tr. 6, at 1106-07).

Bell Atlantic acknowledges that its initial workpapers included a double-recovery of certain testing costs included in the Company's TELRIC annual cost factors (RR-MCIW-87), but contends it eliminated all double-recoveries in its revised workpapers (RR-MCIW-87, at Attachment 1). Bell Atlantic believes that it should be allowed to recover the avoided retail costs it factored into its revised workpapers because, when the Company originally developed those costs as avoided retail, it did so under the assumption that CLECs would be conducting their own tests of all UNE loops. Since, under an EEL arrangement, Bell Atlantic is obligated to conduct loop tests, Bell Atlantic states that it should be entitled to recover those testing costs (Bell Atlantic Reply Brief at 12). Bell Atlantic also contends that it is entitled to recover the costs of Smart Jacks[(49)] as part of its Link Test Charge because the Company incurs the expense to test EEL loops. Bell Atlantic disagrees with the argument that, since it does not recover Smart Jack costs on individual UNE loops, it should not be allowed to recover them in this offering (id. at 12-13). Bell Atlantic argues that it does not charge for Smart Jacks on its UNE loops because the UNE loop rates include a network interface device ("NID") charge, which is removed from the EEL loops through the calculation of the Link Test Charge (id.).

b. CLECs

AT&T argues that Bell Atlantic's rates and charges should be rejected because Bell Atlantic's cost study workpapers show that the Company used historical embedded costs in determining its rates and charges, rather than forward-looking costs (Exh. AT&T-

70, at 6-7). AT&T points out that Bell Atlantic used cost data from 1995 in its calculations, and that this information, as presented by Bell Atlantic in its workpapers, does not recognize any efficiencies that may have been gained since 1995 (RR-DTE-98).[(50)] AT&T also argues that Bell Atlantic, through its Link Test Charge, is recovering costs for loop testing that are already included in Bell Atlantic's TELRIC Administrative Factor (RR-DTE-99; AT&T Brief at 51). AT&T objects to Bell Atlantic's contention that it can recover avoided retail costs[(51)] because, by definition, avoided retail costs are not a part of wholesale operational costs (AT&T Brief at 52). AT&T also opposes Bell Atlantic's attempt to apply a monthly recurring charge to recover the costs of transaction-based activities and argues that such a charge is not in accordance with the Department's Phase 4-L Order (RR-DTE-98).

MCIW argues that Bell Atlantic's Link Test Charge is discriminatory in that it applies charges only to loops ordered for EEL arrangements, despite the fact that EEL loops are identical in nature to individual UNE loops (MCIW Brief at 34). MCIW contends that Bell Atlantic's inclusion of Smart Jacks on all DS-1 loops enables the same testing capability to all loops, and Bell Atlantic "has not demonstrated that under its interconnection agreements with CLECs it has not agreed to provide loop testing or does not perform such loop testing" (Tr. 6, at 1100; MCIW Brief at 34). MCIW argues that if a Link Test Charge is adopted, the cost of the Smart Jacks should be excluded from the charge for a number of reasons. First, MCIW states that since Smart Jacks are a basic component of all DS-1 loops, Bell Atlantic should not be able to recover the cost of this equipment only on loops being used in a particular manner (Tr. 6, at 1100, 1112; MCIW Brief at 35). Second, MCIW points out that the Smart Jack costs do not reflect actual testing expenses, but rather reflect the cost of equipment. MCIW argues that if Bell Atlantic wants to factor in the costs of such equipment as a testing expense, it would also have to factor out of the charge the relevant cost-savings that would arise from the use of the Smart Jack, which Bell Atlantic did not do (MCIW Brief at 36-37). Finally, MCIW points out that Bell Atlantic has been unable to provide, in this proceeding, a reason why its Smart Jack costs are "substantially higher than those previously proffered and rejected in New York," and has not shown that its Smart Jack costs are "based upon current vendor pricing" (id. at 37-38).[(52)]

MCIW agrees with AT&T's argument that Bell Atlantic's Link Test Charge should be rejected on the grounds that its Testing Factor is based on 1995 cost data (MCIW Brief at 38). MCIW argues that Bell Atlantic's cost studies do not "reflect TELRIC principles,"[(53)] which presume that efficiency gains occur every year (id.). MCIW also agrees with AT&T's argument that transaction-based costs should not be recovered by recurring charges (id. at 40). MCIW contends that, since Bell Atlantic has admitted it can develop a non-recurring transaction-based charge (see Tr. 6, at 1102), the proposed Link Test Charge should be rejected and Bell Atlantic should be required to submit a non-recurring charge for the Link Test Charge with its compliance filing (MCIW Brief at 40).

3. Analysis and Findings

The Department finds that Bell Atlantic's cost recovery mechanism for testing of the EEL arrangements is flawed in several respects. First, Bell Atlantic has proposed a monthly recurring charge to be applied evenly to all EEL arrangements. However, this charge is meant to recover the costs of individual testing of EEL loops, a scenario that Bell Atlantic agrees does not apply equally to all EEL arrangements (see Tr. 6, at 1100-02). Consistent with cost causation principles, it is unfair for CLECs to pay a monthly recurring rate for EEL loop testing if their EEL loops are in a condition that does not require them to be tested. Since Bell Atlantic has agreed that a non-recurring charge could be developed (see Tr. 6, at 1102), the Department directs Bell Atlantic to submit in its compliance filing a transaction-based non-recurring charge.(54)

Second, Bell Atlantic has not followed TELRIC pricing standards in developing the Link Test Charge. As AT&T notes, Bell Atlantic's cost studies are based on embedded historical data that do not necessarily reflect efficiency gains that may have been experienced since 1995, the year from which Bell Atlantic extracted its data. While Bell Atlantic's argument that it used the same data as it did in its TELRIC compliance filing to "maintain consistency between the investments on which the recurring Link charges are based and the expenses associated with those very same investments" (Bell Atlantic Reply Brief at 11) may have some merit, it does not eliminate the potential problems posed by using data that is five years old and that does not reflect any efficiencies realized since 1995. The Department, therefore, instructs Bell Atlantic to redo its cost studies based on current and forward-looking cost relationships, and to document any post-1995 or projected efficiencies accounted for in the development of the revised cost study.

As part of its revised cost study and transaction-based non-recurring charge, the Department instructs Bell Atlantic to exclude the costs of Smart Jacks from its calculations. It is inappropriate for Bell Atlantic to include the cost of a piece of equipment in the testing charges for EEL loops when the cost should be included in the cost of the loop itself. Bell Atlantic has acknowledged that it has included Smart Jacks on all DS-1 loops since at least 1994 (RR-MCIW-88), and has not included the recovery of Smart Jack costs in any previous rates or charges. Bell Atlantic has not justified its reasons for including the costs of Smart Jacks in its testing costs without documenting the saved costs that have resulted from use of the Smart Jack. Finally, we find that Bell Atlantic has not sufficiently shown that the costs recovered for Smart Jacks in its cost study reflect the actual cost paid for its Smart Jacks (see RR-MCIW-92; see also RR-MCIW-89).

VIII. TARIFF NO. 17 - GRIP PROPOSAL

A. Introduction

Bell Atlantic's geographically relevant interconnection point ("GRIP") proposal is based on the interconnection and transport arrangements between Bell Atlantic and each respective CLEC. These interconnection/transport arrangements are unique as each arrangement has been either individually negotiated or arbitrated between the CLEC and Bell Atlantic. Bell Atlantic has submitted certain terms and conditions that would now create uniformity concerning where all CLECs must deliver and pick up traffic exchanged with Bell Atlantic. This proposal is discussed more fully below.

The GRIP proposal revolves around two different interconnection terms - the Interconnection Point ("IP") and the Point of Termination ("POT")[(55)]. The IP[(56)] is a term used by the CLECs to designate the point each CLEC selects on its network where the originating carrier (Bell Atlantic or a CLEC) must drop off traffic to the terminating carrier (Tr. 7, at 1318-1320). The POT is a term defined by Bell Atlantic as a demarcation point in a rate center[(57)] where the facilities of Bell Atlantic and the CLEC interconnect (Exh. BA-MA-1, Tariff No. 17, Part A, Section 1, Page 9). Bell Atlantic designates POTs for CLEC-originated traffic at either its terminating end offices or at its centralized access tandem locations (Exh. BA-MA-1, Tariff No. 17, Part A, Section 1, Page 9).

In existing interconnection agreements, CLECs have established an IP (as defined by the CLECs) on their network where Bell Atlantic would deliver traffic originated by Bell Atlantic's end users.[(58)] Likewise, per the terms of some existing interconnection agreements, Bell Atlantic has identified a POT where the CLEC is required to deliver traffic originated by its end users.

1. Bell Atlantic Proposal

Bell Atlantic's initial GRIP proposal would require all local exchange carriers (including Bell Atlantic) to exchange local traffic with one another at a POT that is within reasonable geographic proximity to the rate center or NXX[(59)] of the terminating end user customers (Bell Atlantic Brief at 53). Each carrier would be responsible for the transport of local calls to and from the geographically relevant point by (1) providing its own transport, (2) purchasing such transport from either the other LEC or a third party carrier, or (3) negotiating a mid-span meet[(60)] or other facility-sharing arrangement, such as collocation (id.).

Bell Atlantic modified its original GRIP proposal by extending the geographically relevant area to the larger Bell Atlantic access tandem wire center or "hub" location[(61)] (Bell Atlantic Brief at 59). In addition, Bell Atlantic requests that if a new CLEC initially established only a single IP in a LATA, the new-entrant CLEC should be required to establish a GRIP upon the earlier of the two following conditions transpiring: (1) within 12 months of assigning telephone numbers in a particular tandem serving area subject to negotiation; or (2) when local traffic from Bell Atlantic end users to CLEC end users in a tandem-serving area exceeds 200,000 minutes of use[(62)] per month[(63)] (id. at 59-60).

B. Positions of the Parties

1. Bell Atlantic

Bell Atlantic contends that the location of the end user (customer) is the objective criteria for determining where to establish a POT, rather than permitting one carrier to dictate a POT based on its own network design (Bell Atlantic Brief at 53). Bell Atlantic asserts that a GRIP arrangement is more reasonable than requiring Bell Atlantic to pay the transport costs of interconnecting local traffic at a distant CLEC switch because GRIP is based on where the end use customers are calling rather than how a CLEC designs its network (id. at 55).

Bell Atlantic maintains that the GRIP proposal fully complies with the requirements in Section 251(c)(2) of the Act and the FCC rules, and disagrees with AT&T and MCIW that the GRIP proposal is prohibited (Bell Atlantic Brief at 54; Bell Atlantic Reply Brief at 44). Bell Atlantic states that the Act contemplates providing reciprocal interconnection arrangements to incumbents just as it does for CLECs (Bell Atlantic Brief at 56).

Bell Atlantic maintains that, contrary to the CLECs' arguments, the FCC's Local Competition Order at ¶ 209 and Section 251(c)(2) of the Act do not prohibit Bell Atlantic's GRIP proposal because Bell Atlantic has already satisfied its interconnection obligations in the Act and FCC rules by offering CLECs a POT at any Bell Atlantic end office or access tandem location for the delivery of local traffic originated on the CLECs' network (Bell Atlantic Reply Brief at 44). Bell Atlantic argues that its GRIP proposal, in contrast, concerns Bell Atlantic's right to require CLECs to provide a GRIP for local traffic originated on Bell Atlantic's network and delivered to the CLEC for termination; the CLECs have not pointed to anything in either the Act or the FCC rules that would prohibit Bell Atlantic from requesting a GRIP location in the reverse direction, i.e., when Bell Atlantic delivers local traffic originating on its network to a CLEC (id.).

Bell Atlantic contends that its GRIP proposal would not require CLECs to purchase or build facilities to geographic areas (rate centers) where they do not serve customers or to assign telephone numbers; a CLEC would only be requested to establish a GRIP when a CLEC opens an exchange code in a rate center (Bell Atlantic Brief at 55). Bell Atlantic argues that once a CLEC opens an NXX code in a rate center and begins serving customers, that CLEC would, by that time, already have established its own or leased facilities in that geographic area (id. at 55).

Bell Atlantic claims that if it is required to haul local traffic from every end office to a CLEC's single POT within the LATA, the Company will incur substantial costs. Bell Atlantic also argues that it would be required to provide toll-free transport to interconnect local calls terminating to a CLEC's end-user (Bell Atlantic Brief at 56, 58). Bell Atlantic points out that even Global NAPs' witness recommended that a terminating party compensate an originating party for providing additional transport and that such as arrangement is consistent with Bell Atlantic's rationale for requesting a GRIP (id. at 57).

Bell Atlantic points to its Foreign Exchange ("FX")[(64)] and Internet Protocol Routing Service ("IPRS")[(65)] as examples of services that allow Bell Atlantic to charge the "cost causer" for delivering a call originated on its network to a location beyond the NXX or rate center (Bell Atlantic Brief at 58). Bell Atlantic claims that some CLECs have abused the system by assigning "local" numbers anywhere in the LATA, i.e., outside of the NXX or rate center of the end user (id.). Bell Atlantic states that its GRIP proposal is based on the same concept as IPRS and FX services - requiring the entity that requests that the local call be transported beyond the local calling area to assume financial responsibility for routing that call beyond the Bell Atlantic rate center or access tandem (id. at 59).

With respect to the Department's previous decision on the GRIP issue in the MediaOne/Greater Media Arbitration Order, Bell Atlantic contends that the final decision in that Order would apply only to the parties to that arbitration and not necessarily to all CLECs electing interconnection service under Tariff No. 17 (Bell Atlantic Brief at 60). In addition, Bell Atlantic states that the Department did not give due consideration to transport costs borne by Bell Atlantic in that Order,[(66)] and argues that transport costs are critical in evaluating the GRIP proposal (id.).

Bell Atlantic further contends that none of these transport costs were included in TELRIC studies or incorporated into existing interconnection rates or reciprocal compensation charges established in the Consolidated Arbitrations (Bell Atlantic Brief at 60-61). Bell Atlantic claims that existing interconnection rates and reciprocal compensation charges only include interoffice transport costs between two Bell Atlantic end offices or between a Bell Atlantic end office and the access tandem; transport charges from a Bell Atlantic access tandem to a CLEC's POT or switch were excluded (id. at 61). Bell Atlantic further states that the TELRIC methodology approved by the Department did not envision these additional transport costs and that there is no existing mechanism to recover these costs (id.).

Bell Atlantic maintains that its analysis of additional transport costs, which quantified the cost differential between transporting and switching a local call between one Bell Atlantic end user to another versus the costs to transport and switch a local call from a Bell Atlantic end user to a CLEC IP (which the CLEC would transport and terminate to its end user), identified roughly $35 million[(67)] of annual incremental transport costs that would be incurred by Bell Atlantic (Bell Atlantic Brief at 62). Bell Atlantic claims that because the 1999 annual minutes of use incorporated in its study is expected to grow as CLECs' usage volumes increase, the magnitude of the additional transport costs will increase as well (id.).

In support of its GRIP proposal, Bell Atlantic points to a recent decision[(68)] by the New York Public Service Commission ("NYPSC") in connection with a petition by Sprint whereby the NYPSC found that Sprint's general proposal to use a single interconnection point amounts to an unreasonable and inefficient use of the telecommunications network and did not present any valid technical reason why more efficient interconnections should not be established (Bell Atlantic Brief at 62). Bell Atlantic states that the NYPSC determined that Bell Atlantic may interconnect at any technically feasible points it chooses to deliver traffic to Sprint, as long as Bell Atlantic is willing to bear the costs of constructing and maintaining such facilities (id.).

In response to MCIW's assertion that CLEC's would bear the full cost of transporting a local call under the GRIP proposal, Bell Atlantic maintains that the CLEC would only pay the portion of transport from the serving access tandem to the CLEC's end user (Bell Atlantic Reply Brief at 48). In addition, Bell Atlantic argues that the CLECs have not presented any evidence to support CLEC claims that they would incur substantial costs under a GRIP environment (id.).

Moreover, Bell Atlantic points out that its GRIP proposal is reasonable because it claims that AT&T has compared the GRIP proposal to the traditional access services model where the interexchange carrier pays to get a call to the office that services the end user's phone number (Bell Atlantic Reply Brief at 48). Bell Atlantic concludes that the GRIP proposal for the delivery of local traffic is exactly the same as the current model for the delivery of interexchange traffic (id.).

Lastly, Bell Atlantic maintains that, contrary to CLEC claims, its GRIP proposal is neither unclear nor a moving target (Bell Atlantic Reply Brief at 45, n.26). Bell Atlantic also states that its modified GRIP proposal in this proceeding closely resembles its initial GRIP proposal in D.T.E. 99-42/43/52 (id.).

2. CLECs

While each CLEC's individual brief varies in its emphasis and discussion of different aspects of Bell Atlantic's GRIP proposal, the CLECs all agree that the Department should reject Bell Atlantic's GRIP proposal. For this reason, we have consolidated all the CLECs' comments.

Global NAPs argues that Bell Atlantic's GRIP proposal would frustrate the efficiency envisioned in the Act and would delay facilities-based competition, which is at the heart of the pro-competitive policies of the 1996 Act and the Department (Global NAPs Brief at 7). AT&T claims that Bell Atlantic's GRIP proposal does the following: shifts all of the incremental interconnection costs that arise from competition in the local exchange market to the CLECs; is a moving target; is contrary to both FCC and Department requirements; and is anti-competitive (AT&T Brief at 26). Lastly, MediaOne argues that Bell Atlantic's interconnection cost study does not prove that Bell Atlantic incurs additional transport costs for routing calls to competing carriers (MediaOne Brief at 9).

First, AT&T maintains that Bell Atlantic's GRIP proposal is a moving target which has been revised and modified numerous times since it was first submitted in the tariff (AT&T Brief at 26). AT&T contends that Bell Atlantic, after modifying its original GRIP proposal to allow CLECs to establish a POT at either a Bell Atlantic access tandem or end office, further altered this amended GRIP proposal in response to a record request on the last day of hearings (id. at 28). AT&T claims that Bell Atlantic's new proposed language, limiting the CLEC point of interconnection to a one-mile radius from a Bell Atlantic tandem, would violate the CLECs' ability to negotiate the point of interconnection with Bell Atlantic - a point that was previously left open to negotiations between the two parties (id.). MCIW contends that a CLEC may designate any technically feasible point to interconnect with Bell Atlantic and is not limited to a one mile area around each Bell Atlantic tandem switch (MCIW Brief at 45, n.72).

Secondly, Global NAPs argues that Bell Atlantic's GRIP proposal would violate FCC rules that allow competing carriers to interconnect at the most efficient and convenient points on the incumbent LECs network, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic (Global NAPs Brief at 4; citing Local Competition Order at ¶ 172). AT&T claims that Bell Atlantic is attempting to mandate these less efficient or convenient interconnection points through its GRIP proposal, and that such a mandate is expressly prohibited by the FCC (AT&T Brief at 30). AT&T argues that the FCC knowingly prohibited an incumbent from requiring CLECs to establish a point of interconnection in every rate center because the CLECs would not have the ubiquitous networks incumbent LECs already have established (id.). AT&T maintains that Bell Atlantic can not mandate, as the GRIP proposal would, the location where the CLECs interconnect with Bell Atlantic (id.). In addition, Sprint points out that nothing in the Act or the Department rules requires CLECs to build to Bell Atlantic's multiple interconnection points solely to reduce Bell Atlantic's transport costs (Sprint Brief at 7).

Third, AT&T and others state that the Department has previously rejected Bell Atlantic's original and revised GRIP proposals in the MediaOne Order (AT&T Brief at 30). Specifically, Sprint notes that the Department found, in that Order, that nothing in the Act or the FCC's rules requires CLECs to build to Bell Atlantic's multiple interconnection points solely to reduce Bell Atlantic's transport costs (Sprint Brief at 7; Global NAPs Brief at 6). In addition, Sprint argues that the Department's decision in another docket, D.T.E. 97-116-C (MCI WorldCom Order, D.T.E. 97-116-C (1999)), has helped to offset Bell Atlantic's additional transport costs that may result from convergent traffic imbalances that have arisen from competition (Sprint Brief at 7).

Fourth, AT&T argues that Bell Atlantic's GRIP proposal would shift all costs associated with implementing local competition to the CLECs rather than sharing these costs among all carriers (AT&T Brief at 31). AT&T notes that in the absence of a GRIP requirement, each carrier in a competitive, multi-carrier environment has an obligation to transport its own customers' calls to the terminating carrier's network to reach the other carrier's customer (id.). MediaOne argues that the GRIP proposal would require CLECs to absorb the full costs of transport between the CLECs' switching points and Bell Atlantic's switching locations for calls originated by both a CLEC customer and a Bell Atlantic customer (MediaOne Reply Brief at 5). AT&T also notes that it is more expensive for a carrier to complete a call to an end-user on another carrier's network than to complete a call to an end-user on its own network and that these increased interconnection costs are considered "competitive onset" costs (AT&T Brief at 31). AT&T argues that the FCC has considered such competitive onset costs in similar situations, specifically in the Local Number Portability Order[(69)] and the Dialing Parity Order,[(70)] which implemented local dialing parity requirements, and has required that such costs should be borne by the industry as a whole and ultimately recovered from end-users (AT&T Brief at 33). AT&T maintains that allowing all carriers to share the increased interconnection costs would be a competitively neutral method of allocating costs that creates the correct incentives for carriers to negotiate the most efficient interconnection arrangements (id.).

Furthermore, AT&T argues that Bell Atlantic has not proven that it incurs additional costs completing calls to CLEC end users (AT&T Brief at 33). AT&T contends that Bell Atlantic did not even provide a cost study of increased interconnection costs when it initially filed its proposed tariff (id. at 37-38). MediaOne states that the premise of Bell Atlantic's interconnection cost study is flawed because it improperly assessed the overall cost of transmitting and terminating a call rather than isolating the transport component, and because it used inaccurate assumptions that produced an inflated cost estimate (MediaOne Brief at 10-11) AT&T, MediaOne, and MCIW maintain that Bell Atlantic: (1) overstates its costs by not assuming that any local traffic is routed through its access tandems; (2) relies on numerous different sources of information created at different points in time; (3) overstates mileage estimates by not taking into account that Bell Atlantic does not pay terminating compensation for Internet traffic on all the CLEC Minutes of Use ("MOU") identified in the analysis; (4) incorrectly weights cost estimates by trunks without accounting for minutes, which results in a higher cost estimate by giving greater weight to less heavily used trunks; and (5) incorrectly includes fiber termination costs (AT&T Brief at 38-39; MediaOne Brief at 10-11; MCIW Brief at 34). AT&T argues that these factors grossly overestimate Bell Atlantic's increased transport costs associated with interconnection (AT&T Brief at 38).

In response to Bell Atlantic's position that the motion for reconsideration in the MediaOne/Greater Media Arbitration would only apply to the parties in that proceeding, while the GRIP proposal in the tariff would potentially apply to all other CLECs, MCIW notes that, as a legal matter, a rule of law in an arbitrated case would apply to all other CLECs and not just to MediaOne and Greater Media (MCIW Reply Brief at 10-11). In addition, Sprint points out that it is unfair that Bell Atlantic should be able to raise again an issue that has already been decided in a previous case and for the Department to come to a different conclusion in the latter case (Sprint Reply Brief at 4). Sprint argues that if Bell Atlantic was concerned about additional transport costs in the MediaOne/Greater Media Arbitration, Bell Atlantic had the opportunity to develop a record on the issue in that proceeding (Sprint Reply Brief at 4).

With respect to Bell Atlantic's reference to the New York Public Service Commission's (NYPSC) decision in the Sprint/Bell Atlantic Arbitration proceeding, MCIW contends that the Department should not give that arbitration decision any weight in this tariff proceeding because the full record and details of that case have not been included or discussed in this proceeding (MCIW Reply Brief at n. 27). In addition, AT&T points out that the NYPSC did not, in fact, rule on GRIP in that proceeding, and, instead, only ruled that Sprint may not require Bell Atlantic to interconnect with Sprint's network at only one point (AT&T Reply Brief at 12). Further, AT&T claims that the NYPSC's ruling is consistent with the CLECs' position on GRIP in this proceeding because the decision did not require Sprint to build out its network to interconnect and deliver Bell Atlantic traffic to Sprint, but required Bell Atlantic to build facilities to interconnect with Sprint's existing network (id.). Moreover, Sprint points out that Bell Atlantic overlooked the

NYPSC's rejection of the GRIP proposal in an earlier proceeding (Sprint Reply Brief at 5).[(71)]

Furthermore, Global NAPs contends that Bell Atlantic misquotes Global NAPs' testimony in its Brief by generalizing on an example Global NAPs used that was meant to apply to a larger, more rural area than the example Bell Atlantic substituted in its place (Global NAPs Reply Brief at 1). In addition, Global NAPs maintains that any compensation that Bell Atlantic may be entitled to for transport must come through reciprocal agreements subject to TELRIC pricing and not by unilaterally imposing toll transport rates on CLECs (id. at 2).

Lastly, with respect to Bell Atlantic's proposed 12 month or 200,000 MOU trigger for establishing a GRIP, MCIW notes that in the MediaOne/Greater Media Arbitration, Bell Atlantic proposed a less stringent GRIP trigger of 24 months or 6,000,000 minutes of use (MCIW Brief at 45). MCIW maintains that the more restrictive conditions proposed in this tariff proceeding would force CLECs to reconfigure their existing networks, require new CLEC entrants to incur substantial additional costs and delays, and would be particularly unreasonable for CLECs providing DSL services (id. at 45-46).[(72)]

C. Analysis and Findings

Our analysis of Bell Atlantic's GRIP proposal will begin by considering the intent of the Act and the FCC's Rules for interconnection and the allocation of transport[(73)] costs. We will then proceed to discuss Bell Atlantic's interconnection cost study and its estimate of additional transport costs.

1. Interconnection and Transport Costs

With respect to the CLECs' right to choose any technically feasible point on the incumbent's network, we note that the FCC has stated that:

Section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network ... and lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic.

Local Competition Order at ¶ 209.

The FCC clearly states that it is the competing carrier, not the incumbent, that has the prerogative to select the technically feasible interconnection point on the incumbent's network. Bell Atlantic is required to offer such interconnection points to the CLECs as an option but cannot require interconnection at only its tandem and end offices points. Bell

Atlantic cannot limit the CLEC's interconnection point specifically to its tandem or end office servicing a particular Bell Atlantic end user if a CLEC chooses a different IP or has already established another technically feasible interconnection point. By requiring a CLEC to purchase or provide additional transport to a Bell Atlantic end or tandem office, the CLEC is in effect establishing additional physical IPs. In contrast with this technical feasibility argument, Bell Atlantic's GRIP proposal also addresses the responsibility for transport costs, and not just physical interconnection.

While a CLEC has the right to choose any technically feasible point to interconnect on an incumbent's network, various interconnection agreements currently contain GRIP terms that allow Bell Atlantic to designate where the CLEC must drop off traffic to Bell Atlantic for transport and termination of the call to Bell Atlantic's end users (even if the CLEC does not interconnect at the same tandem or end office serving a particular Bell Atlantic end user).(74) Thus, Bell Atlantic's GRIP proposal not only requires CLECs to establish additional physical interconnection points(75) but also determines each carrier's responsibility for the transport costs.

The question of how the recovery of transport costs should be assigned arises whenever a carrier chooses to hand off traffic to a terminating carrier at a location other than the location where the terminating carrier's reciprocal compensation payments begin. For example, in the situation where the parties interconnect and exchange traffic at a mid-span meet, Bell Atlantic would be forced to provide transport of its originating traffic up to the mid-span meet, and, for CLEC originating traffic, Bell Atlantic would have to provide transport from the mid-span meet to the Bell Atlantic end-user customers. In the latter case, reciprocal compensation payments only compensate Bell Atlantic for the portion of the call from Bell Atlantic's end office or tandem switch, to the end-user customers -- Bell Atlantic's costs to transport CLEC-originated traffic from the mid-span meet to its end office or tandem switch are left "stranded." The FCC has not addressed this question directly.

Though the FCC has not directly addressed the question of transport cost recovery when a CLEC chooses one interconnection point in a LATA, it has provided guidance on how to assign costs that arise from competition. In the Local Number Portability Order,(76) the FCC stated that:

In determining the cost recovery mechanism for currently available number portability measures, we set forth principles with which any competitively neutral cost recovery mechanism should apply. Specifically, we required that (1) a competitively neutral cost recovery mechanism should not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber; and (2) a competitively neutral cost recovery mechanism should not have a disparate effect on the ability of competing service providers to earn a normal return.

Local Number Portability Order at ¶ 210. The FCC also applied these guidelines to recovery of dialing parity costs. Dialing Parity Order,[77] at ¶ 92.

We find the FCC's rationale concerning recovery for costs arising from competition in the local telecommunications market should also apply in this context, and, we conclude that Bell Atlantic's GRIP proposal is inconsistent with this policy. It is clear that these transport costs have arisen solely from competition in the local exchange market. Bell Atlantic's GRIP proposal could potentially give Bell Atlantic a competitive advantage over the CLECs by assigning all additional transport costs to the CLECs. Such a result is inconsistent with the intent of the Act and the FCC's stance on competitively neutral cost recovery. It could also inhibit the development of competition in Massachusetts.

We agree with AT&T that each carrier in a competitive, multi-carrier environment has an obligation to transport its own customers' calls to the destination end-user on another carrier's network (or bear the cost of such transport) (AT&T Brief at 31). To decide otherwise would be inconsistent with both the FCC's principles on assigning costs that materialize from competition in a competitively neutral manner and our findings and intent in the MediaOne/Greater Media Arbitration Order.

Therefore, the Department adopts the FCC's guidance for competitively neutral recovery of costs to the transport cost recovery question before us. Transport costs should be assigned in a competitively neutral manner. Carriers are responsible to provide transport or pay for transport of their originating calls, including reciprocal compensation, between their own originating and the other carrier's terminating end-user customers. This is regardless of where the carriers choose to physically interconnect. CLECs may decide where to interconnect with the LEC, but each carrier is responsible to transport its own traffic or to pay the costs of transporting its originating traffic all the way to the terminating end user. Carriers may choose the most efficient method to accomplish this task.

Because Bell Atlantic's GRIP proposal would require CLECs to establish additional interconnection points at Bell Atlantic's tandem and end offices and does not allocate transport costs in a competitively neutral manner, we reject it. We direct Bell Atlantic to revise its tariff to eliminate the GRIP proposal and to include a provision that reflects that each carrier has an obligation to transport its own customers' calls to the destination end-user on another carrier's network or bear the cost of such transport.

2. Bell Atlantic Cost Study

Parties to this proceeding have acknowledged that all carriers, including Bell Atlantic, incur additional transport costs when interconnecting in a competitive environment. Bell Atlantic claims that its additional transport costs, based on its cost study filed with the affidavit of Sheila Gorman (attached to John Howard's surrebuttal testimony), amount to roughly $35 million and are expected to grow as CLECs' usage volumes increase. Bell Atlantic based this cost study on a comparison of the costs (switching and transport) to complete a call both originated and terminated within Bell Atlantic's network to the costs for Bell Atlantic to originate a call within its network and terminate the call to a CLEC's network (not including reciprocal compensation charges paid to the CLEC to terminate the call).

First, we find that various assumptions used by Bell Atlantic in its cost study are problematic. Specifically, we concur with AT&T and MediaOne's witness that there are flaws with the assumptions made in Bell Atlantic's analysis of additional transport costs. We will not comment on the particular problems with any of these assumptions, as each has been addressed by various CLEC witnesses. Instead, we will focus our analysis on what Bell Atlantic's study failed to show - namely, the study did not isolate the incremental transport costs Bell Atlantic incurs to deliver traffic originated on its network to the CLEC's IP.

Bell Atlantic's claim that it incurs $35 million in additional transport charges is based on two faulty premises. First, rather than applying a TELRIC transport charge[(78)] (inter-office facility UNE rate) as a proxy rate for its incremental transport charges, Bell Atlantic inappropriately assessed the overall cost difference between transmitting and terminating a call from its network to the CLECs' network, as pointed out by AT&T and MediaOne's witness (Exh. MediaOne/AT&T-1, at 8).

Additionally, Bell Atlantic did not present an accurate representation of the total MOU for which it incurs costs transporting to a CLEC's IP. Bell Atlantic claims that CLECs requesting interconnection at single points in a LATA are the cause of Bell Atlantic's increased transport costs because Bell Atlantic must transport a call from a Bell Atlantic tandem to the CLEC IP. However, Bell Atlantic indicates that numerous CLECs have more than one IP with Bell Atlantic in the LATA, and five CLECs have terms in their interconnection agreements requiring the CLEC to pay for transport from Bell Atlantic's IP to the CLEC- designated IP (Exh. DTE-246; Exh. DTE-23). Thus, Bell Atlantic would not necessarily incur additional transport costs associated with some of these CLEC MOU currently included in Bell Atlantic's estimate in its cost study of 15 billion MOU.

Moreover, our decision in the MCI WorldCom Order is relevant in this case because it effectively decreases the overall costs Bell Atlantic pays for transporting and transmitting Internet-bound traffic destined for a CLEC's IP. In that Order, we directed Bell Atlantic to pay reciprocal compensation for CLEC terminating traffic that does not exceed a ratio of 2:1 (terminating-to-originating) (Exh. DTE-317). Bell Atlantic has paid reciprocal compensation charges on only 1.5 billion of the total 15 billion MOU used in its study, which is consistent with the Department's Order in D.T.E. 97-116-C (RR-DTE-107). Bell Atlantic has also paid inter-carrier compensation[(79)] on roughly 3.5 million MOU (id.). Since Bell Atlantic does not incur the same incremental costs to transport roughly 13.5 million of the total 15 million MOU, it would not be accurate to include all 15 million MOU in the calculation of additional transport costs. Therefore, we find that including incremental costs derived from the majority of the MOU used in Bell Atlantic's cost study would inappropriately inflate the transport cost estimate, making Bell Atlantic's interconnection transport cost study unreliable. Therefore, because Bell Atlantic has not proven that it incurs additional transport costs to deliver traffic to CLECs, we reject the cost study.

IX. TARIFF NO. 17 - GENERAL PROVISIONS

A. Limitation on Liability

1. Introduction

Part A, Section 1.6.2.A of Bell Atlantic's proposed Tariff No. 17 limits Bell Atlantic's liability to CLECs for service interruptions or for interference with operations of CLEC facilities to situations caused by Bell Atlantic's willful misconduct. In addition, Part A, Section 1.6.2.B limits Bell Atlantic's liability in all other claims involving damages associated with the "installation, provision, termination, maintenance, repair, or restoration of service" to the amount equal to the proportionate charge for the period during which the service was affected. The parties disagree over the interpretation of these provisions and whether these liability provisions are reasonable.

2. Positions of the Parties

a. Bell Atlantic

Bell Atlantic indicates that in cases of willful misconduct, the tariff does not limit its liability to an amount equal to the proportionate charge for the service affected. Bell Atlantic argues that the proportionate charge limitation applies only to claims due to "mistakes, omissions, interruptions, delays, errors, or defects in the transmission or facilities furnished by Bell Atlantic in accordance with the tariff" (Exh. BA-MA-2, at 16). Bell Atlantic argues that the liability provisions in Tariff No. 17 are consistent with the liability provisions found in the tariffs of virtually all carriers in Massachusetts, and that such provisions serve the policy goals of establishing reasonable rate levels, discouraging litigation, and avoiding increased costs to consumers (Bell Atlantic Brief at 16). Bell Atlantic points to virtually identical language limiting AT&T's liability in a number of AT&T's Massachusetts tariffs to support its argument that liability provisions such as those contained in Tariff No. 17 are standard in Massachusetts (id. at 17). Also, Bell Atlantic rejects AT&T's proposal that Bell Atlantic alter the liability provision to resemble the liability provisions found in AT&T's interconnection agreement, insisting that other tariffs, not interconnection agreements, are the proper basis for comparison when assessing the reasonableness of a tariff provision (id.).

b. CLECs

AT&T interprets the proposed provisions as limiting liability to an amount equal to the proportionate charge for the service even in cases of willful misconduct, and argues that such limitations in the face of willful misconduct are improper (Exh. AT&T-36, at 6). AT&T contends that a failure to provide a product or service needed by a CLEC to serve its end users is the worst sort of injury that can be inflicted on a CLEC in a developing competitive marketplace, and argues that Bell Atlantic's liability for this type of competitive injury should not be limited to instances of willful misconduct (id.). AT&T argues that Bell Atlantic should be liable for interference or interruptions in service caused by Bell Atlantic's willful misconduct or gross negligence, and that this is the same standard contained in AT&T's interconnection agreement with Bell Atlantic (RR-DTE-17).

3. Analysis and Findings

A close reading of Part A, sections 1.6.2.A and 1.6.2.B of the tariff reveals that the "willful misconduct" limitation is not applicable to the entire liability section, but is limited to subsection A by the language that introduces section B, to wit: "With respect to any other claim or suit." Therefore, AT&T's argument that Bell Atlantic's liability in cases of willful misconduct should not be limited to the proportionate charge is moot.

The next question is the reasonableness of Bell Atlantic's limitation of liability to instances of "willful misconduct" in Part A, section 1.6.2.A. First, we agree with Bell Atlantic that other tariffs are the best subjects of comparison when evaluating the propriety of a disputed tariff provision.(80) Bell Atlantic's FCC Tariff No. 11, dealing with Access Service, contains the following provision regarding fiber optic and microwave expanded interconnection: "Neither party shall be liable to the other or to any third party for any physical damage to each other's facilities or equipment within the servicing wire center, access tandem or remote node, unless caused by the gross negligence of the party's agents or employees." FCC No. 11, at 28.9.4.A.

While a provision assigning liability in instances of gross negligence in an interconnection agreement is not controlling, we find the same provision in another tariff to be persuasive. Because of the unique vulnerabilities of CLECs who collocate equipment in Bell Atlantic offices and the impact Bell Atlantic's malfeasance or negligence could have on a CLEC's ability to compete, the Department finds that the "willful misconduct" limitation contained in Part A, section 1.6.2.A is unreasonable. The Department holds that Bell Atlantic should be held liable for interruption of service or interference of operation of CLEC facilities when caused by Bell Atlantic's gross negligence as well as willful misconduct. More precisely, the Department directs Bell Atlantic to amend the tariff to clearly indicate that its liability for gross negligence or willful misconduct is not limited by Tariff No. 17.

Turning to Part A, Section 1.6.2.B, and the limitation of Bell Atlantic's liability to an amount equal to the proportionate charge in cases not involving willful misconduct and gross negligence, as we just found, we note that similar limitations can be found in numerous tariffs in Massachusetts, inter alia, AT&T's Tariff Nos. 2, 3, and 4; Teleport's Tariff No. 1; and Bell Atlantic's Tariff No. 10. However, the Department finds that the tariffs cited by Bell Atlantic are not applicable since none take into consideration the unique business relationship between ILECs and CLECs, players who do business with one another while, at the same time, they compete against each other.

Although Bell Atlantic argues that this limitation serves the policy goals of discouraging litigation and keeping rates low for consumers (Bell Atlantic Brief at 16), the following language can be found in Bell Atlantic's Resale Tariff:

In case of damage, loss, theft, or destruction of equipment and facilities furnished by the Telephone Company due to negligence or willful act of the reseller or the reseller's end user or other persons authorized to use the service, the reseller or reseller's end user may be required to pay the expense incurred by the Telephone Company to replace or restore the equipment and facilities to its original condition.

M.D.T.E. Tariff No. 14, at 2.3.1.F.

The Department finds that the goals of keeping rates down and discouraging litigation are worthy, but these goals do not trump the need to provide adequate protections for CLECs in their dealings with ILECs. Rates cannot be kept down at the expense of injured CLECs, and litigation should not be discouraged when it is necessary to redress a wrong that can have serious market consequences. In the Tariff No. 14 provision quoted, supra, Bell Atlantic assures itself of compensation more than the proportionate charge associated with the equipment and facilities. In fact, Bell Atlantic requires the reseller or the reseller's end user to make Bell Atlantic whole by restoring or replacing equipment and facilities to their original condition. Likewise, in cases where damage associated with the installation, provision, termination, maintenance, repair, or restoration of service results in significant injury to the CLEC's ability to compete, CLECs should not be arbitrarily limited to an amount equivalent to the proportionate charge for the service.

Furthermore, the Department agrees with AT&T's contention that the failure to provide a product or service needed by a CLEC to serve its end users can have dire consequences in a competitive marketplace. As noted, supra, a CLEC collocating in Bell Atlantic's central offices is in a unique, and vulnerable, position. The ILEC-CLEC relationship addressed by Tariff No. 17 is markedly different from most commercial situations in that the ILEC has a financial incentive to under-serve its CLEC customers in order to prevent the loss of its market share of end-users to those CLEC customers. See Consolidated Arbitrations, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94, (Phase I), at 19-20 (1996). In the competitive marketplace, any CLEC customer is a potential ILEC customer, and thus represents lost revenue for the ILEC unless the ILEC's wholesale rates cover the lost retail revenue. Because the end-user is likely to associate service problems with the CLEC with whom they have established a customer relationship rather than with the ILEC, disruptions in service could drive a dissatisfied CLEC end-user to sign up with the ILEC or another carrier. Accordingly, the Department concludes that if Bell Atlantic's liability for claims not involving willful misconduct is set too low, there is a danger that Bell Atlantic may regard it simply as another cost of doing business. Thus, the Department finds that the damages must be set at a level sufficient to make the CLEC whole and to eliminate any financial incentive an ILEC may have to under-serve CLECs.

Because we acknowledge the difficulty in anticipating the myriad of injuries that a CLEC may face as a result of disruptions in service caused by Bell Atlantic, we find that the liability provisions of Tariff No. 17 shall not preclude a CLEC from seeking remedy in a court of competent jurisdiction. We hold that CLECs shall have the option of requiring Bell Atlantic to restore CLEC facilities to their original condition or seeking remedy in court.

In sum, the Department rejects any limitation of liability and directs Bell Atlantic to strike Sections 1.6.2.A and 1.6.2.B of Tariff No. 17. In order to make the parameters of Bell Atlantic's liability clear to all parties and to further the policy expressed herein, the Department directs Bell Atlantic to file liability provisions consistent with this Order.

B. Limitation on Expedited Orders

1. Introduction

Part A, Section 3.1.4 of Tariff No. 17 provides that when placing an order for which standard intervals exist, a CLEC may request a service date that is earlier than the standard service date (i.e., an expedited order). The tariff limits these orders to no more than five percent of a CLEC's total orders per month. If the expedited order is allowed, additional charges would apply, as specified in the tariff. The parties dispute the five percent limit, with CLEC's arguing that it is arbitrary and may have a negative impact in emergency situations.

2. Positions of the Parties

a. Bell Atlantic

Bell Atlantic argues that the purpose of an expedited order is to facilitate an emergency circumstance, or unusual occurrence, and should not become the routine business practice of the CLEC (Bell Atlantic Brief at 18). Bell Atlantic states that the five percent threshold is derived from its historical ordering experience with CLECs (id. at 18, n.15). Bell Atlantic also claims that, counter to what some CLEC's suggest, it is not appropriate to compare wholesale expedited ordering procedures with retail procedures because the retail structure may have higher margins to cover the additional costs associated with expedited orders (Tr. 4, at 704). Bell Atlantic also states that the five percent limitation was designed so that it can manage its business efficiently and fairly balance the activity among different CLECs (id. at 706-707). Bell Atlantic argues that it would not be fair for one CLEC to ask for all orders to be expedited, and particularly unfair if that CLEC has provided no forecast of this activity, thus preventing Bell Atlantic from arranging for adequate staffing (id.). Bell Atlantic states that the diversion of resources caused by a CLEC's numerous expedited requests could possibly delay orders for other CLECs (id.). Bell Atlantic states that the five percent limitation is a guideline and that it tries to be flexible with CLECs, particularly if a CLEC has forecasted such activity (id. at 707).

b. CLECs

AT&T states that Bell Atlantic places low, and wholly arbitrary, limits on the number of expedited orders a CLEC can place (AT&T Brief at 7). DBC states that by Bell Atlantic's own admission, expedited orders are designed to respond to "emergency circumstances [and] unusual occurrence[s]" (DBC Reply Brief at 2). DBC argues that by their very nature, expedited orders are not capable of prediction by the CLEC and that, accordingly, it is unreasonable for Bell Atlantic to set an arbitrary five percent limit on such orders (id.). DBC urges the Department to reject Bell Atlantic's proposed five percent limit unless BA provides, at a minimum, for a waiver of that limit due to "emergency circumstance[s] or unusual occurrence[s] that could not be reasonably foreseen or controlled by the CLEC" (id. at 3).

3. Analysis and Findings

We agree with Bell Atlantic that it is necessity to place a limit on the number of expedited orders that a CLEC may submit each month. Such a limitation imposes discipline on CLECs in the ordering process. Without it, certain CLECs could abuse the process and seek to expedite a large portion of their orders, thus straining Bell Atlantic's ordering systems and imposing additional costs on Bell Atlantic and possibly other CLECs.

The CLECs claim that the five percent limitation is arbitrary, but they present no evidence of their own of a more reasonable limitation, except to point to the retail analogue. In general, the retail ordering process is not analogous, unless we were to consider the ordering patterns of Bell Atlantic's 100 largest business customers. However, there is no evidence in the record concerning that business segment. Accordingly, we find that Bell Atlantic's five percent limit is reasonable. In addition, notwithstanding Bell Atlantic's assurance that it would not rigidly enforce the five percent limitation, we agree with DBC that CLECs should have the opportunity to seek a waiver to the five percent threshold for "emergency circumstance[s] or unusual occurrence[s] that could not be reasonably foreseen or controlled by the CLEC." Bell Atlantic shall have discretion to apply the waiver provision, but a CLEC may appeal to the Department if it believes that Bell Atlantic has unreasonably denied its waiver request. Bell Atlantic shall revise its tariff accordingly. Finally, if experience shows that the five percent limitation is having a negative impact on competition or CLEC customers, the Department may consider revisiting this issue.

C. Rearrangement of Facilities

1. Introduction

Bell Atlantic's proposed Tariff No. 17 includes provisions allowing Bell Atlantic the unilateral authority to change or rearrange network facilities, regardless of the effect such changes will have on CLEC operations. See Part A, Section 1.9.1. While Bell Atlantic contends it has the right and the need to make such changes unilaterally, CLECs contend that they have a right to be made aware of planned changes to the network and to provide input in the planning of such changes.

2. Positions of the Parties

a. Bell Atlantic

Bell Atlantic contends that "as the owner and manager of its network, [it] clearly needs to be able to make business decisions regarding management of its network in the context of serving all of its customers including retail and wholesale customer alike" (Exh. BA-MA-2, at 10-11). As such, Bell Atlantic claims that it "needs to retain for itself an ability to move or change its network as required or deemed appropriate" (id. at 10). Bell Atlantic argues that it performs network changes on an almost daily basis, and that most of those changes have no effect on CLEC operations (Tr. 5, at 944). Bell Atlantic accepts that it has a responsibility to notify CLECs if it plans to perform any network changes that may affect the service CLECs provide to their end users (Exh. BA-MA-1, at Part A, Section 1.9.1.B; Exh. BA-MA-2, at 9; Exh. BA-MA-3, at 6). Bell Atlantic states it is willing to revise Tariff No. 17 to include a provision that would require Bell Atlantic "to provide CLECs reasonable notice of network changes that may be service affecting" (Exh. BA-MA-3, at 6-7).

Bell Atlantic, however, objects to including in Tariff No. 17 a provision that would require Bell Atlantic and CLECs to engage in a "joint planning process" to plan network changes (Exh. BA-MA-2, at 9). Bell Atlantic argues that such a process would unnecessarily slow down the Company's network operations and improvements (id. at 10). Bell Atlantic believes it should be allowed to "make operational decisions regarding the management of its network in a timely manner" (Bell Atlantic Brief at 12), and that a joint planning process will prevent this from happening. Bell Atlantic asserts that CLECs, in general, have adequate input in the network planning process through discussions with their account management teams and the submission of demand forecasts (Tr. 5, at 947).

Bell Atlantic also objects to being required to assume liability for costs incurred by CLECs when they redesign their services in responses to Bell Atlantic's network changes (Bell Atlantic Brief at 12). Bell Atlantic argues that all carriers "make network design and equipment decisions that involve risks" (Exh. BA-MA-2, at 11), and CLECs "should accept the risks inherent with their choice to use a particular BA-MA UNE" (id.).

b. CLECs

The CLECs in general, and AT&T in particular, oppose Bell Atlantic's unilateral authority to make network changes "without regard to whether such a modification will render existing CLEC services obsolete or otherwise affect their performance" (Exh. AT&T-36, at 5). AT&T argues that the tariff should include a joint process to allow CLECs to have "the maximum possible notice and thought to upgrades that may affect CLEC services that are in turn being used to provide service to end user customers" (Exh. AT&T-38, at 6). MCIW agrees with the concerns of AT&T, and further argues that Bell Atlantic's proposed tariff language is in conflict with federal law.(81)

AT&T contends that the main concern of CLECs with this provision lies in the planning by Bell Atlantic of major network changes that would either put end users out of service for a period of time or force CLECs to redesign their service offerings. AT&T believes that, in these instances, CLECs deserve the most advance notice possible from Bell Atlantic, and that they should be able to provide input for Bell Atlantic's consideration during the planning process (Tr. 2, at 382; Exh. AT&T-38, at 6).

AT&T argues that Bell Atlantic's offer to revise Tariff No. 17 to include a requirement "to provide CLECs with reasonable notice of network changes that may be service affecting" (AT&T Reply Brief at 6) does not resolve CLEC concerns. AT&T believes "Bell Atlantic has no incentive to design network changes to reduce the impact on its competitors; indeed it has just the reverse incentive" (id. at 7). AT&T proposes that Bell Atlantic incorporate CLEC input into its existing network planning process, so as not to cause any delays in the design and implementation of network improvements (id.).

AT&T also argues that Bell Atlantic, under the proposed tariff, has the ability to impose upon CLECs unnecessary costs by changing its network and facilities unilaterally (Exh. AT&T-36, at 6). AT&T believes that Bell Atlantic should be held responsible for costs incurred by CLECs that result from Bell Atlantic's unilateral changes to its network (id.).

3. Analysis and Findings

The Department finds that Bell Atlantic's provisions for the rearrangement of network facilities fall short of its requirements under the Act. Specifically, Section 251(c)(5) of the Act imposed upon incumbent LECs the "duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks." The Department holds that this duty requires Bell Atlantic to provide notice of its planned network changes and upgrades. Therefore, we direct Bell Atlantic to include such language in its tariff, as it has agreed would be possible (see Bell Atlantic Brief at 12).

Furthermore, the planning of network changes and upgrades is a process that has the ability to affect all carriers significantly and, as such, should involve the input of all those affected. While Bell Atlantic is the "owner and manager of its network" and does have the primary authority in maintaining the integrity of that network, CLECs are justified in their concern that Bell Atlantic's planning processes may not necessarily reflect the best interests of the CLECs and their customers (see AT&T Reply Brief at 7). Therefore, the Department orders Bell Atlantic to provide a mechanism for CLECs to submit formal comments and suggestions as to proposed network changes and upgrades. The Department believes that allowing CLECs a formal opportunity to provide input and suggestions in the planning of major network changes will ensure that all views on an issue are raised, and will not significantly delay the network maintenance process, as Bell Atlantic contends. The Department believes Bell Atlantic should be capable of designing its internal planning processes in such a way that it will allow for the review of CLEC concerns and suggestions.

The Department does not intend to imply that the CLECs will be included in all stages of the planning process, but rather our intent is to allow CLECs a meaningful opportunity to voice their concerns about proposed changes being planned by Bell Atlantic. Nevertheless, the Department still entrusts Bell Atlantic with the authority to make all final decisions with regard to its planned network changes and upgrades. However, if one or more CLECs believe that Bell Atlantic's network changes have been planned and implemented in an unreasonable or anticompetitive manner, then the CLECs may seek recourse with the Department. In any cases brought to the Department, the burden of proof that a network change or upgrade was unreasonable or anticompetitive will lie with the CLEC bringing the complaint.

On the issue of responsibility for costs incurred by CLECs as a result of network changes, the Department feels that, by allowing CLECs greater input into the planning process, their concerns about Bell Atlantic unilaterally imposing unnecessary costs on CLECs are lessened. As a result, the Department does not consider there to be sufficient evidence to require Bell Atlantic to reimburse CLECs for costs associated with network changes and upgrades.

D. Bona Fide Request Process

1. Introduction

The bona fide request ("BFR") process applies when a CLEC requests a network element or service not covered by an interconnection agreement with Bell Atlantic and not made generally available by Bell Atlantic under the terms of Tariff No. 17 (see Tariff No. 17, Part A, Section 1.3.2. (definition of "bona fide request process"); and, Greater Media/Bell Atlantic Arbitration, D.T.E. 99-52, at 117 (1999) ("Greater Media/Bell Atlantic Arbitration Order")). The parties disagree about when the BFR process applies, and whether Bell Atlantic's proposed BFR language creates unnecessary delays for the provisioning of the requested element and enables Bell Atlantic to profit at the expense of the requesting carrier.

2. Positions of the Parties

a. Bell Atlantic

Bell Atlantic argues that the BFR process would not apply to adjacent collocation because Bell Atlantic's proposed Tariff No. 17 expressly provides for the recovery of costs associated with a CLEC's deployment of an adjacent structure, and that the BFR process is used when a service or network element is not specifically provided for in a tariff (Bell Atlantic Reply Brief at 52, n.32). Therefore, Bell Atlantic states that MCIW's assertion is without merit and should be rejected by the Department (id.). Bell Atlantic argues that DBC's comments should also be rejected because they are unreasonable and unsupported (id. at 51). According to Bell Atlantic, its proposed BFR process provides specific timetables by which Bell Atlantic will respond to requests made through this process, the Department has approved a similar process in the Greater Media/Bell Atlantic Arbitration Order, and a CLEC could use the dispute mechanism of the BFR process if it believes Bell Atlantic is providing reports and quotes in bad faith simply for the purpose of charging for such reports (id. at 51-52 n.31).

b. CLECs

MCIW argues that Bell Atlantic's proposal[(82)] would require the use of the BFR process for collocation other than at a Bell Atlantic central office (MCIW Brief at 59). MCIW contends that this process should not be required for adjacent collocation because this form of collocation has been deployed in other states and, thus, is technically feasible (id. citing, Exh. MCIW-1, at 11). DBC argues that under Bell Atlantic's proposal it is unclear when Bell Atlantic will respond to requests made through the BFR process, how Bell Atlantic will respond, and whether Bell Atlantic could abuse this process to profit from requesting CLECs (DBC Brief at 5-7). DBC proposed an alternative to Bell Atlantic's BFR language in Attachment B of its brief.[(83)]

3. Analysis and Findings

The Department approves Bell Atlantic's proposed BFR process with little modification. The Department agrees with Bell Atlantic that MCIW's concerns about the applicability of the BFR process to adjacent collocation are unfounded. While we find it unnecessary to modify Bell Atlantic's proposed language to make the following point explicit, we will emphasize here that any network element or service (including adjacent collocation) mentioned either in a Department-approved tariff or in any state commission-approved interconnection agreement with Bell Atlantic[(84)] removes CLEC access to that network element or service from the BFR process, thus making that network element or service available to any requesting CLEC either by the tariff or through the FCC's pick-and-choose rule. Consistent with our decision about the applicability of the BFR process, we do agree with Bell Atlantic that if it provides a network element or service to another carrier through the BFR process, and a second carrier requests the same network element or service, that second carrier would also have to use the BFR process to obtain that network element or service (Exh. DTE-111).

While not mentioned by Bell Atlantic in its reply brief, we find that many of DBC's concerns with Bell Atlantic's BFR proposal were based on an earlier version of Tariff No. 17, which is no longer the subject of the Department's review in this proceeding. Specifically, in its description of when the BFR process would be used, Bell Atlantic changed, "The following process should be utilized by [Bell Atlantic] . . ." to "The following process is utilized by [Bell Atlantic] . . ." Moreover, Bell Atlantic makes clear in its August filing that Bell Atlantic is obligated to acknowledge its receipt of a BFR, and that Bell Atlantic must respond to such a request within a defined period of time (except under extraordinary circumstances).[(85)]

The Department approves the intervals set forth in Bell Atlantic's proposal (i.e., ten days to acknowledge a BFR; 30 days to provide a preliminary report; 90 days to provide a detailed report) and notes that, other than DBC, no party has provided comment on Bell Atlantic's proposed intervals. Based upon the record before us, which contains no evidence that Bell Atlantic could complete its work required under the BFR process in a shorter amount of time, the Department finds Bell Atlantic's proposed BFR intervals to be reasonable. The Department also approves Bell Atlantic's proposal to recover its reasonable and demonstrable costs from processing and implementing the BFR should the requesting carrier cancel the request. We agree that Bell Atlantic is reasonably entitled to recover the costs it incurs as a result of providing its products or services (Bell Atlantic Reply Brief at 51-52). Moreover, the dispute resolution mechanism set forth in the tariff[(86)] provides CLECs the means to contest Bell Atlantic's charges should a CLEC cancel its BFR (id. at n.31).

Although Bell Atlantic has indicated that it generally acknowledges BFR requests in the same manner in which it receives them (e.g., electronic, facsimile),[(87)] the Department directs Bell Atlantic to make clear in its revised tariff filing that its acknowledgment of a BFR will be in writing (see DBC Brief at 6). In addition, so that there will be no confusion about when the BFR process should apply, the Department directs Bell Atlantic to modify both its definition of the BFR process in Part A, Section 1.3.2 and its introduction to Part A, Section 2 to make clear that the BFR process applies when Bell Atlantic receives requests for network elements and services not offered either by tariff or through its state commission-approved interconnection agreements.

E. Service Termination

1. Introduction

Part A, Section 1.6.6 of proposed Tariff No. 17 describes conditions where Bell Atlantic may discontinue service or cancel an application for service, with or without notice. The tariff allows service to be discontinued for, among other things, non-payment of sums owed, violation of regulations governing network element services, or any violation of law, fraud, etc. In response to concerns raised by AT&T regarding Bell Atlantic's ability to terminate unilaterally CLEC service under non-emergency circumstances, Bell Atlantic amended its tariff language to address emergency circumstances (see Exh. AT&T-38, at 2-3; Bell Atlantic Brief at 9-10).

2. Positions of the Parties

a. Bell Atlantic

Bell Atlantic argues that the revised provision is reasonable and should be adopted by the Department (Bell Atlantic Brief at 10). Bell Atlantic states that it is critical for the Company to retain the right, in certain circumstances, to act without notice (e.g., in the event of any emergency condition that poses a threat to the safety of personnel or equipment) (id.). According to Bell Atlantic, circumstances in which the CLEC may have the ability to react to a particular violation (e.g., non-payment of any sum owed to Bell Atlantic) would be treated differently, and Bell Atlantic will provide 30-days advance notice in writing to the CLEC before discontinuing new or existing services (id. at 10-11). Bell Atlantic states that where prior notification is provided, the CLEC will have the opportunity during the notification period to correct the problem or seek to have the dispute resolved by the Department (id. at 11).

Bell Atlantic states that history demonstrates that it has never abused its right to act without notice, and the Company has never interpreted such measures as giving it a right to act in an anti-competitive manner (id.). Bell Atlantic contends that its proposed changes to the tariff strike an appropriate balance between its need to act without notice, and a CLEC's desire to receive prior notice in those circumstances where timely CLEC remedies can be implemented (id.).

b. CLECs

AT&T argues that Bell Atlantic's proposed tariff gives Bell Atlantic the unilateral right to discontinue service for a variety of reasons, including the perceived violation of any term governing the furnishing of network element service (AT&T Brief at 54). According to AT&T, the proposed tariff includes no dispute resolution procedures in such a situation (id.). AT&T argues that it is completely inappropriate for Bell Atlantic to have this power over its competitors (id.). AT&T recommends that Bell Atlantic be ordered to incorporate in the tariff the reasonable dispute resolution procedures contained in AT&T's interconnection agreement (id.).

MCIW argues that Bell Atlantic's service termination provisions are unreasonable because they would result in an interruption of a CLEC's service without the CLEC having been afforded any opportunity to review the matter with Bell Atlantic. MCIW claims that the Department should determine whether reasonable grounds for such termination exist and the impact such a termination would have upon consumers (MCIW Reply Brief at 14-15).

MediaOne states that the 30-day notification period Bell Atlantic offers to give CLECs to correct problems or to seek dispute resolution from the Department is too short (MediaOne Reply Brief at 8). MediaOne argues that 30 days is not enough time for the CLEC to present its dispute before the Department and for the Department to issue a ruling (id.). MediaOne states that, depending on the nature of the violation, it may not be appropriate to terminate services as a penalty because the violations may be minor in nature and not intentional (id.). MediaOne contends that the Department should have the authority to determine the appropriate penalty - which may not always be discontinuance of service (id.). Finally, MediaOne states that if the Department were to determine, after review of the issues, that termination of a service was appropriate, the CLEC should be afforded the opportunity to make alternative arrangements for its customers (id.). MediaOne argues that this is consistent with the Department's MediaOne/Greater Media Arbitration Order where the Department stated that it was reasonable to allow an affected CLEC an opportunity to make alternative arrangements for its customers in the event Bell Atlantic was no longer going to provide UNEs to a CLEC due to changes in law (id., citing MediaOne/Greater Media Arbitration Order at 92).

3. Analysis and Findings

With the exception of termination of service based upon fraudulent use, the Department finds that Bell Atlantic's modified proposal is reasonable and consistent with the termination regulations contained in Bell Atlantic's Resale Tariff No. 14 (see Tariff No. 14, at 3.2.1). Bell Atlantic should have the right to terminate service or refuse applications for additional service where a CLEC is indebted to Bell Atlantic for undisputed charges[88] or in situations where the CLEC is willfully violating regulations governing that service. We have approved thirty-days notice in the resale context. Tariff No. 14, Section 3.2.1(A). However, because service terminations affect customers (MediaOne/Greater Media Arbitration Order at 128), we find that where a carrier disputes Bell Atlantic's characterization of a violation with the Department, the termination provision shall be stayed until the dispute is resolved.

Bell Atlantic has revised its tariff to allow for service termination without notice in the event of emergency conditions that pose a threat to personnel or equipment, pursuant to an Order from a Court or regulatory body of competent jurisdiction, or in the event of fraudulent use of its network. In addition, in the case of emergency conditions or court orders, the Company shall notify the Department and the CLEC of the termination of service within 48 hours and provide the details upon which Bell Atlantic based its decision to terminate service. In light of the critical importance of maintaining network integrity and providing for the safety of personnel in a timely manner, the Department finds such procedures to be reasonable.

The Department, however, finds that the provision allowing Bell Atlantic to terminate service without notice in the event of fraudulent use of the network is vague since it does not indicate how, and by whom, the determination that a CLEC is fraudulently using the network will be made. Thus, the Department directs Bell Atlantic to revise this provision so that 30-days notice is provided prior to termination of service when fraudulent use is alleged.

F. Performance Standards

1. Introduction

Bell Atlantic's proposed tariff does not include any performance standards or provisions whereby CLECs could recover remedies for poor performance. The parties disagree about whether the Department should direct Bell Atlantic to include performance standards in Tariff No. 17.

2. Positions of the Parties

a. Bell Atlantic

Bell Atlantic argues that it is unnecessary to include performance standards in Tariff No. 17 because such standards are under review in D.T.E. 99-271, the Department's inquiry into Bell Atlantic's compliance with 47 U.S.C. § 271, and the existing Consolidated Arbitrations performance standards evolved over a two-year period (Bell Atlantic Brief at 13). Bell Atlantic argues that "a tariff is not an appropriate vehicle to incorporate performance standards that are subject to constant revisions and updating" (id.). Bell Atlantic suggests that a reasonable approach for addressing a CLEC's concerns with Bell Atlantic's performance would involve the execution of a simple interconnection agreement relating to performance standards (id.). Bell Atlantic also asserts that any carrier can obtain the Consolidated Arbitrations standards through the FCC's "pick-and-choose" rule (Bell Atlantic Reply Brief at 60).

b. CLECs

AT&T argues that Bell Atlantic's decision to omit performance standards from the tariff is unreasonable and inappropriate (AT&T Reply Brief at 7). AT&T suggests that if the Department were to agree that no performance standards apply to orders placed and filed under the tariff, Bell Atlantic could argue that the Department's decision would supercede the Consolidated Arbitrations provisions for standards and remedies and, therefore, eliminate those provisions from its interconnection agreements (id. at 7-8).

3. Analysis and Findings

The Department determined that the performance standards contained in the New York Public Service Commission's Carrier-to-Carrier Guidelines, as amended or modified on an on-going basis, shall be the standards used by the Department for purposes of evaluating Bell Atlantic's § 271 compliance. Attachment A Letter Order, D.T.E. 99-271, at 2 (January 14, 2000). In this same Letter Order, the Department indicated that it will address in D.T.E. 99-271 the establishment of remedies for any Carrier-to-Carrier Guidelines used in conjunction with, or as a replacement for, the Consolidated Arbitrations performance penalties. In the interim, we find that CLECs may avail themselves of the Consolidated Arbitrations performance standards when they purchase services out of Tariff No. 17. We direct Bell Atlantic to include language to this effect in its compliance tariff.

G. Dispute Resolution Process

1. Introduction

Bell Atlantic's proposed Tariff No. 17 does not contain an express dispute resolution process. Bell Atlantic argues that disputes between itself and CLECs should be resolved through the Department's previously established dispute resolution process outlined in Massachusetts Local Competition, D.P.U. 94-185 (1996)("Massachusetts Local Competition Order"). The CLECs argue that the Massachusetts Local Competition Order dispute resolution procedures are insufficient and no longer address the need for speedy resolution of disputes.

2. Position of the Parties

a. Bell Atlantic

Bell Atlantic argues that when a dispute arises concerning Tariff No. 17 services, it should be addressed through the Department's previously established inter-carrier dispute resolution process set forth in the Department's Massachusetts Local Competition Order (Bell Atlantic Brief at 14). Bell Atlantic points out that numerous CLECs, including AT&T, actively participated in the Department's investigation that led to the development of that dispute resolution process (id. at 14-15).

Bell Atlantic argues that litigation of a new dispute resolution process in this case is unnecessary (id. at 16). Bell Atlantic contends that creating a separate dispute resolution process for incorporation in the tariff would lead to unnecessary confusion because of the continuing availability of the dispute resolution mechanism established in D.P.U. 94-185. Bell Atlantic argues that having two distinct dispute resolution procedures would allow parties to select between the dispute resolution mechanism in D.P.U. 94-185 and whatever alternative mechanism was required by the Department for incorporation in the tariff, thus creating unnecessary confusion (id.).

b. CLECs

AT&T states that the tariff should include express dispute resolution procedures and urges the Department to adopt AT&T's dispute resolution procedures contained in its interconnection agreement with Bell Atlantic (Exh. AT&T-36, at 2-3). MCIW states that the dispute resolution timelines set forth D.P.U. 94-185 do not address the CLECs' need for speedy resolution of disputes (MCIW Reply Brief at 17-18). MCIW states that under the existing guidelines, resolution of even the most basic dispute would take 160 days at best before a Department order (id. at 18). Finally, MCIW states that consumers wanting to use CLEC services cannot be expected to wait a minimum of 160 days pending the resolution of the CLEC's dispute with BA-MA (id.).

3. Analysis and Findings

The D.P.U. 94-185 dispute resolution process was established in August 1996 at a time when competition in the Massachusetts local exchange market was just emerging. Only a few carriers had negotiated interconnection agreements with Bell Atlantic at that time (see RR-AT&T-63), and neither the Department nor carriers had significant experience with resolving interconnection disputes. Since then, through formal and informal means, the Department has gained considerable insight into local exchange competition disputes, and we realize that the D.P.U. 94-185 procedures are inadequate to address such disputes. The Department finds that the D.P.U. 94-185 procedures are too cumbersome and slow to respond effectively to competitive disputes, and therefore give Bell Atlantic an unfair advantage since, in the majority of these disputes, a delay would benefit the incumbent. Thus, the Department finds that the D.P.U. 94-185 dispute resolution procedures are inappropriate for addressing disputes under Tariff No. 17.

The Department, as we have stated recently (see D.T.E. 99-271, Hearing Officer Ruling Rejecting Collaborative Process), intends to open a proceeding to establish expedited dispute resolution procedures mirrored after the FCC's Accelerated Docket rules (See 47 C.F.R. 1.730). Until then, carriers may rely on the dispute resolution procedures contained in AT&T's agreement as a default. Bell Atlantic shall revise its tariff to reflect these findings.

X. TARIFF NO. 17 - MISCELLANEOUS ISSUES

A. xDSL-capable Loops

1. Introduction

Digital subscriber line ("DSL") technology allows broadband capacity to be sent over standard copper cable. A common application using DSL technology is Internet access at capacity levels much greater than those available over dial-up connections. Several types of DSL technology exist and are collectively referred to as xDSL. Bell Atlantic's Tariff No. 17 is silent on the provision of xDSL-capable loops. Parties disagree about whether and to what extent terms and conditions related to the availability of xDSL loops should be tariffed.

2. Positions of the Parties

a. Bell Atlantic

Bell Atlantic asserts that manual efforts are required to retrieve paper plans and to obtain information that is not populated in the database (RR-Sprint-11). Bell Atlantic maintains that DSL is an emerging technology requiring further work and that industry standards need to be established (Exh. DTE-137). Bell Atlantic argues that xDSL loops are available to CLECs through interconnection agreements and that no CLEC is hindered from obtaining these elements because xDSL is not tariffed. Bell Atlantic maintains that it is developing tariff provisions for unbundled xDSL-capable loops and will file those with the Department as soon as Bell Atlantic completes them. Bell Atlantic contends that the absence of xDSL loop provisions in Tariff No. 17 is irrelevant to the Department's assessment of the reasonableness of the comprehensive terms that Bell Atlantic has filed in its proposed tariff (Bell Atlantic Reply Brief at 56).

b. CLECs

Rhythms and Covad argue that the loop information obtained through Bell Atlantic's database is inadequate because it merely provides the loop length and whether the loop is ADSL-capable.[(89)] Rhythms and Covad contend that, for CLECs to determine which variant of DSL services to provide, this amount of information is insufficient. According to Rhythms and Covad, Bell Atlantic has access to comprehensive loop information by virtue of its exclusive control over the local network and its engineering and plant database. Rhythms and Covad urge the Department to order Bell Atlantic to provide CLECs with comprehensive loop characteristic information and to incorporate access to the loop qualification database into its tariff (Rhythms/Covad Brief at 40-41).

DBC claims that because of chronic malfunctions of the mechanized loop database, it has to submit requests for manual qualification, which results in substantially greater processing time and cost for DBC (DBC Brief at 10). As a solution, DBC proposes that the rates charged for manual loop qualification be reduced when mechanical loop qualification is unavailable due to database malfunctions or when a loop is located in a central office that has not been included in the mechanized loop database (id. at 11). DBC asserts that due to the extraordinary cost differential between mechanized and manual qualifications,[(90)] Bell Atlantic no incentive to remedy the database problem since its revenues increase with each failure of the database (id. at 11-12). In addition, DBC claims that Bell Atlantic's description[(91)] of the process by which a CLEC can obtain loop information is not accurate and urges the Department to require Bell Atlantic to include language in its tariff accurately describing the manual and mechanized loop qualification processes (id. at 10-11).

By not tariffing the provision of xDSL-capable loops, Rhythms and Covad claim that Bell Atlantic is attempting to side-step its legal obligations when Bell Atlantic asserts that it is fulfilling its obligation to provide xDSL-capable loops through interconnection agreements. Rhythms and Covad argue that negotiating prices, terms and conditions for these loops through interconnection agreements creates unnecessary uncertainty with respect to their business plans. According to Rhythms and Covad, two of Bell Atlantic's subsidiaries are currently offering xDSL-capable loops with permanent recurring and nonrecurring prices, and, thus, Bell Atlantic should be required to do likewise in its tariff (Rhythms/Covad Brief at 38-39). MCIW argues that Bell Atlantic's failure to tariff xDSL-capable loops in light of its Section 271 filing for the state of New York, and in face of the "burgeoning" public demand for increased bandwidth capabilities, constitutes a discriminatory withholding of necessary service. MCIW urges the Department to initiate a separate investigation to implement xDSL-capable loop rates, terms and conditions (MCIW Brief at 74).

3. Analysis and Finding

It is unclear from the record in this proceeding whether Bell Atlantic's mechanized database is able to provide the type of comprehensive loop qualification information sought by CLECs. To date, detailed loop information is available only by a manual review of engineering records and other network-related documents, a process that is much more time-consuming and costly for Bell Atlantic, and, correspondingly, the CLECs. The significant cost differential is reflected in the rates Bell Atlantic has proposed between database queries and manual searches.

The Department agrees with the CLECs that CLECs should be able to access the loop qualification data in the same manner as Bell Atlantic (see Tr. 1, at 189). We find nothing in the record to contradict Bell Atlantic's assertion that its employees rely only on the mechanized database and not manual queries for the provisioning of ADSL service. We find that CLECs should have access to the same amount of loop qualification information as Bell Atlantic's retail employees even though such parity means that CLECs must use the time-consuming and expensive manual process to obtain additional loop qualification information. However, we agree with DBC that Bell Atlantic's description of the loop qualification process contained in the proposed tariff is insufficient and hereby require Bell Atlantic to include, in its revised tariff, language that clearly and comprehensively describes the loop qualification process.

With respect to tariffing xDSL-capable loops, Bell Atlantic does not oppose doing so at some point but argues that it needs additional time to develop the rates, terms and conditions (Tr. 5, at 995). Although the Department accepts Bell Atlantic's statement that xDSL is an emerging technology and some technical issues must still be resolved, the Department is not convinced that these unresolved technical issues impair Bell Atlantic's ability to determine rates, and certain terms and conditions for xDSL-capable loops. CLECs require greater certainty on the pricing of xDSL-capable loops and not, necessarily, the immediate resolution of all technical issues. CLECs should not be held hostage to ever-evolving technology and changing industry standards. By its own admission, Bell Atlantic is already developing tariff provisions for xDSL-capable loops (Tr. 4, at 863-864). The record demonstrates that most of the information needed for such tariff provisions has already been developed in New York.[92] Therefore, the Department directs Bell Atlantic to develop comprehensive tariff provisions covering rates, terms and conditions for xDSL-capable loops, including recurring and non-recurring charges, conditioning charges, charges for access to the mechanized database, and charges for manual engineering queries. These proposed tariff provisions shall be filed with the Department within 45 days of the date of this Order. If Bell Atlantic cannot meet the 45 day deadline for filing, it must provide the Department with a request to extend the deadline, along with a detailed explanation for the reasons behind the request.

B. Interoffice Transmission Facilities Transport ("IOF Transport")

1. Introduction

Bell Atlantic's proposed Tariff No. 17 (Part B, Section 2) contains language addressing the provision of interoffice ("IOF") transport, several provisions of which the CLECs oppose.[93] The parties disagree about whether the tariff should contain provisions requiring Bell Atlantic to provide CLECs with reports on the availability of transport facilities upon request, and whether provisioning intervals for high-capacity transport facilities should be incorporated.

2. Position of the Parties

a. Bell Atlantic

Bell Atlantic claims that it is extremely burdensome for Bell Atlantic to monitor hundreds of thousands of transport facilities and to provide reports on the availability of facilities. Bell Atlantic further claims that the reports requested by Rhythms and Covad would be of little value because the availability of facilities is constantly changing (Bell Atlantic Reply Brief at 58). Bell Atlantic argues that it is more appropriate for it to research the availability of facilities when there is a real request rather than to try to "hit a moving target" by periodically producing comprehensive reports (Exh. BA-MA-2, at 63). Bell Atlantic adds that, similar to requests for DS-1 or DS-3 facilities in quantities greater than eight, requests for optical carrier level 3 ("OC-3") and optical carrier level 12 ("OC-12") facilities will almost always involve additional engineering activity, and, therefore, it is reasonable for the tariff to provide for a "negotiated" interval (Bell Atlantic Reply Brief at 58).

Bell Atlantic argues that it is not technically feasible to provide shared IOF transport without the use of a Bell Atlantic switch, and therefore Bell Atlantic's tariff proposal is reasonable (Bell Atlantic Brief at 20). Bell Atlantic also contends that the tariff accurately describes the scope of Bell Atlantic's obligations under the Act, and Bell Atlantic limits the usage of IOF transport accordingly. Finally, Bell Atlantic adds that AT&T's interconnection agreement does not provide for the unlimited use of IOF transport as AT&T asserts (Bell Atlantic Reply Brief at 61).

b. CLECs

Rhythms and Covad argue that Bell Atlantic's failure to include sufficient information on the location of available transport capacity in its tariff hinder their plans to roll out xDSL services and that Bell Atlantic should be required to provide information on the locations where Bell Atlantic's DS-3 capacity is available. Rhythms and Covad maintain that even if, as Bell Atlantic argues, this requested information continually changes, it still provides CLECs a valuable tool for planning their network rollout (Rhythms/Covad Brief at 42).

Rhythms and Covad also claim that Bell Atlantic's current practice of providing OC-3 and OC-12 transports at negotiated intervals will enable Bell Atlantic to delay indefinitely its provision for such transport. Rhythms and Covad further claim that since the work intervals for provisioning DS-3 and optical carrier levels of transport are comparable, optical carrier level transport should be provisioned within the same interval as DS-3 transport (Rhythms/Covad Brief at 42-43).

AT&T argues that Part B, Section 2.1.1.A.1 in Bell Atlantic's tariff should be revised to clarify that shared IOF transport can be unbundled from switching and other elements (AT&T Brief at 54). AT&T further argues that the Department should direct Bell Atlantic to eliminate language in the description of IOF transport that could be read as restricting the usage of unbundled dedicated IOF transport to the provisioning of local exchange and associated exchange access services within a LATA boundary. AT&T contends that its interconnection agreement does not include such a restriction (id.).

3. Analysis and Finding

In support of its argument that Bell Atlantic should be required to provide comprehensive reports on the availability of IOF transport capacity, Rhythms and Covad analogize such reports to the FCC's requirement that ILECs provide CLECs with collocation availability reports in order to facilitate a CLEC's business planning. We find this analogy to be unpersuasive. It would be very burdensome for Bell Atlantic to maintain up-to-date reports on the availability of IOF transport throughout its entire network, let alone make this information available within Tariff No. 17. We find that Bell Atlantic's approach, whereby it would identify IOF transport capacity in response to a specific request, is more reasonable, and we adopt it here.

However, the Department agrees with Rhythms and Covad that CLECs should have the certainty of provisioning intervals for OC transport facilities rather than leaving them subject to negotiation. The Department is concerned that given the rapid pace in which the xDSL market is developing in Massachusetts, there will be an increasing demand for high-capacity transport facilities in the future. Maintaining unspecified intervals for the provisioning of these transport facilities will detrimentally affect the CLECs' ability to plan, thereby potentially slowing the deployment of xDSL services in our state. However, the record is insufficient for determining specific intervals at this time.[94] Therefore, we direct Bell Atlantic in its compliance filing to propose reasonable intervals for OC-3 and OC-12 facilities for quantities that Bell Atlantic currently is able to provision. The Department also requires Bell Atlantic as part of its compliance filing to propose construction intervals for situations when facilities are not available.

We next address AT&T's recommendation for unbundling shared transport. In its UNE Remand Order, the FCC found that shared IOF transport is a UNE. UNE Remand Order at ¶ 371-372. However, the FCC stated that since shared IOF transport is physically inseparable from unbundled switching, the phrase "on an unbundled basis" does not refer to physically separate elements but, rather, to separately priced elements. UNE Remand Order at ¶ 372. The FCC stated that shared IOF transport is an "unbundled" element because it consists of separately priced switching and transport network elements. In addition, the FCC found that an ILEC is required to provide access to unbundled shared IOF transport services "where an incumbent LEC provides a requesting carrier with access to unbundled switching." UNE Remand Order at ¶ 369 (emphasis added). The FCC was clear on this point. Therefore, the Department rejects AT&T's recommendation that Bell Atlantic be required to physically unbundle switching from shared transport.

We now turn to the issue of using unbundled transport to provide toll services. The FCC permits carriers to access UNEs to offer a "telecommunications service" and does not limit "a telecommunication service" to telephone exchange and exchange access services. Local Competition Order at ¶ 360. In addition, the FCC rejected the argument that allowing carriers to use UNEs to provide originating and terminating toll services was inconsistent with the purposes of the 1996 Act. Local Competition Order at ¶ 361. The FCC also stated that Congress intended the 1996 Act to promote competition for not only telephone exchange services and exchanges access services, but also for toll services. (Id.)

Because the Department agrees that the description of IOF transport in Part B, Section 2.1.1.A could be read as restricting the usage of unbundled dedicated IOF transport to the provisioning of local exchange and associated exchange access services within a LATA boundary, and thus, as being inconsistent with FCC rules, the Department strikes that portion of Part B, Section 2.1.1.A which reads "dedicated to the use of the ordering CLEC in provisioning of local exchange and associated exchange access services." The Department directs Bell Atlantic to revise its tariff to permit CLECs to use UNE IOF transport to provide toll services.

Although the FCC clearly identified toll service as a telecommunications service that CLECs can provide through UNEs, we note that the issues of whether the requesting carriers may use UNE IOF transport solely for the purpose of originating and terminating interexchange traffic is still undecided by the FCC. In its Third Order on Reconsideration,[95] the FCC limited the obligation of ILECs to provision shared transport to end users to whom the requesting carrier was providing local exchange service. The FCC also sought comment on whether the requesting carrier may use unbundled dedicated or shared transport facilities in conjunction with unbundled switching, in order to originate or terminate interstate toll traffic to customers to whom the requesting carrier does not provide local exchange service. UNE Remand Order at ¶ 493. While the Department has the authority to decide this question on its own, we find that the record in this proceeding is insufficient to determine whether a CLEC may use unbundled transport with unbundled switching to provide toll services to customers whom the CLEC does not provide local exchange services, particularly where the policy ramifications of such a finding could cause a significant reduction in Bell Atlantic's special access revenues. See UNE Remand Order at ¶ 489. Thus, pending the FCC's final decision on this issue, the Department hereby prohibits a requesting carrier from using UNE IOF transport to originate or terminate interstate toll traffic to customers to whom the requesting carrier does not provide local exchange service.

Finally, AT&T contends that Bell Atlantic's tariff restricts the provision of UNE transport across LATA boundaries, and that such a restriction is unreasonable and not supported by federal law. We agree. Although Bell Atlantic claims that Section 271 prohibits it from providing IOF transports crossing LATA boundaries, Bell Atlantic acknowledges that there are local calling areas in Massachusetts that cross LATA boundaries (RR-DTE-95). In the UNE Remand Order at ¶ 324, the FCC clearly states that an ILEC's unbundling obligation extends "throughout its ubiquitous transport network." UNE Remand Order at ¶ 324 (emphasis added). Therefore, in the absence of a clear direction from the FCC, we require Bell Atlantic to provide IOF transport to requesting CLECS within local calling areas where those calling areas cross LATA boundaries, if such facilities exist. Bell Atlantic is directed to modify Part B, Section 2.1.1.B of Tariff No. 17 accordingly.[96]

C. Forecasting Requirements

1. Introduction

As part of Tariff No. 17, Bell Atlantic proposes to require CLECs to submit detailed forecasts of projected demand for various products and services, including interconnection trunking (Part A, Section 3.1.3) and EEL arrangements (Part B, Section 13.3.1.D).[97] Bell Atlantic's proposed forecast provisions require CLECs to provide two-year demand forecasts, updated at different intervals, which take into account new growth and changes in volumes over the period of the forecast.

2. Positions of the Parties

a. Bell Atlantic

Bell Atlantic argues that long-range CLEC forecasts are necessary to the Company's ability to "manage and grow an efficient, state-of-the-art network" (Exh. BA-MA-2, at 14). Bell Atlantic believes its demand for two-year detailed forecasts from CLECs for services such as interconnection trunking requirements and EEL arrangements is reasonable and that it will allow Bell Atlantic to serve CLEC interests in a better and more efficient manner (id.). Bell Atlantic does not believe it has a responsibility to reciprocate this requirement by providing its central office space requirements to CLECs. Bell Atlantic believes that it is its responsibility to manage the network in response to all carriers' needs, and that CLECs have no legitimate need to know Bell Atlantic's own space and demand requirements (Bell Atlantic Reply Brief at 59). Additionally, Bell Atlantic contends that providing CLECs with its space planning forecasts would allow the CLECs to have access to "unfair competitive information about the plans of BA-MA and other CLECs" (id.).

Bell Atlantic also argues that in cases where CLECs do not supply demand forecasts, or supply inadequate forecasts, the Company should not be held liable for missing established performance standards or paying any associated penalties. Bell Atlantic argues that these missed performance standards would not occur if the Company had access to accurate CLEC demand forecasts that would enable the Company to prepare sufficiently for future orders (Exh. BA-MA-2, at 14).

Bell Atlantic states that it would use these forecasts, along with other information, as a guide in planning its network improvements and workforce management (Exh. DTE-230; Exh. DTE-231). Bell Atlantic argues that if CLECs fail to submit forecasts for their future EEL demands, then the Company may be unable to provide the necessary facilities and elements to fulfill the CLECs' requests on time (Exh. DTE-229; Bell Atlantic Reply Brief at 59). Bell Atlantic affirms that it would treat all information provided by CLECs in a confidential manner, and that, wherever possible, the information will be used and viewed on an aggregate basis with the data of other CLECs (Exh. DTE-234). Bell Atlantic also agrees to include such language in Tariff No. 17, if required to do so by the Department (Tr. 6, at 1119-20).

b. CLECs

AT&T and MCIW both object to Bell Atlantic's proposed forecast requirements for EEL arrangements and interconnection trunking. AT&T argues that Bell Atlantic's proposal requires CLECs to develop "burdensome forecasts" which, if inaccurate, will allow Bell Atlantic to avoid liability for its failure to meet certain performance standards (AT&T Brief at 53). AT&T argues further that these forecast requirements are discriminatory in that Bell Atlantic does not provide its own forecasts of central office space use to CLECs so that the CLECs can "anticipate collocation space availability" (id.).

MCIW also argues that Bell Atlantic's forecast requirements are burdensome, because CLECs do not normally perform planning forecasts down to the level of detail that Bell Atlantic is proposing to require (Tr. 6, at 1164). MCIW also opposes the demand forecast requirement because it would enable Bell Atlantic to have access to sensitive and confidential information about CLECs' marketing and business plans (MCIW Brief at 32). MCIW proposes that, if Bell Atlantic is allowed to require the submission of demand forecasts, the tariff explicitly state that Bell Atlantic will treat all CLEC information as sensitive and confidential (id.).(98)

3. Analysis and Findings

The Department agrees that forecasting future demand is an essential tool in maintaining an efficient network operation and in assuring that future needs are met with adequate resources. Therefore, the Department affirms Bell Atlantic's right to require the submission by CLECs of forecasts projecting future demand for Bell Atlantic products and services. However, the Department also understands the CLECs' concerns that such forecasts may contain sensitive and confidential information that must be treated accordingly, and orders Bell Atlantic to submit a provision to the tariff guaranteeing that Bell Atlantic will maintain such confidentiality when dealing with all CLEC demand forecasts (i.e., interconnection trunking and EEL arrangements).

Furthermore, the Department recognizes the need to address CLEC concerns that developing forecasts to a greater level of detail than is already done for internal purposes may create a burden on CLECs. The Department finds that this burden may be relieved by shortening the span for which CLECs are required to project their demands, and, as such, orders Bell Atlantic to reduce the period covered by the forecasts from two years to one year, with CLECs being required to update their forecasts on an annual basis.(99)

Finally, the Department does not accept Bell Atlantic's argument that it should not be held to accepted performance standards as a result of CLECs' failure to provide accurate forecasts. As the owner and manager of its network, Bell Atlantic is expected to provide an acceptable level of service to all of its customers, both retail and wholesale. While the CLEC demand forecasts will be a useful aid for Bell Atlantic in the planning and allocation of its network resources, the Department does not expect CLEC forecasts to be the only tool used by Bell Atlantic in determining wholesale market trends. Therefore, while the Department does accept Bell Atlantic's proposal to require CLEC demand forecasts, as amended by this Order, the Department expects Bell Atlantic to use these forecasts only as an additional tool in network planning, and will not give much weight to any Company argument that CLEC forecasts are the reason for the Company's failure to meet any established performance standards.(100)

D. Call Detail Records and Calling Party Numbers

1. Introduction

Bell Atlantic's proposed Tariff No. 17, Part C, Section 1.7.1.A.1 requires a CLEC combining traffic over a trunk group to provide Bell Atlantic with the percentage of local traffic use on the combined traffic. Specifically, CLECs are required to provide monthly call detail records, by traffic type and end office, showing the development of the local usage percentage ("percent local usage" or "PLU"). In addition, Part C, Section 1.14.6 states that Bell Atlantic will rate and bill all termination traffic on combined trunk groups for which it has not received complete call detail records or timely calling party numbers ("CPN") under switched access rates. The CLECs contend that these requirements are burdensome and unreasonable.

2. Positions of the Parties

a. Bell Atlantic

Bell Atlantic indicates that the Company is not restricting the combination of traffic but only requiring a CLEC who combines traffic to provide Bell Atlantic with the percentage of local usage on the trunk group on a quarterly basis and call detail records supporting the local usage percentage, on a monthly basis (Bell Atlantic Brief at 64). According to Bell Atlantic, call detail records are an important piece of information for the Company to verify whether CLECs properly report their traffic on a jurisdictional basis. The Company asserts that providing the records is reasonable and does not impose an undue burden on the CLECs (id.). The Company indicates that its Carrier Access Billing System ("CABS") cannot determine the jurisdiction of the traffic and cannot audit the CLEC-provided Percent Interstate Usage ("PIU") or PLU factors because the CLECs do not routinely supply the CPN (id. at 65). Thus, according to the Company, its reporting requirements are simply an attempt to remedy its long-standing concern regarding the CLECs' failure to supply CPN as required under terms of their individual interconnection agreements (id.).

Although the interconnection agreements require CLECs to provide CPN on 90 percent of their originating calls, AT&T, for example, supplies CPN on only 25 percent of its originating calls in Massachusetts, and Bell Atlantic is unable to characterize the jurisdiction of nearly 75 percent of AT&T's originated traffic (id. at 65-66). Bell Atlantic contends that the billing and revenue impact is significant because if a CLEC sends access traffic over combined trunks and supplies an inaccurate PLU, the access traffic may be rated as reciprocal compensation traffic and billed at that rate rather than the appropriate access rate (id.). Moreover, Bell Atlantic contends that its proposal for the frequency of CLEC reporting of the local usage factor is consistent with the reporting of similar factors under the Company's access tariffs and is standard industry practice (id.).

b. CLECs

The CLECs note that there is an industry-wide problem with documenting calls when a PBX[(101)] is involved and that Bell Atlantic's reporting requirements cannot be met when a call originates on a PBX (AT&T Brief at 52-53; MCIW Reply Brief at 17). The CLECs argue that is unreasonable for Bell Atlantic to assess the higher access charges on PBX calls (AT&T Brief at 53; MCIW Reply Brief at 17). AT&T argues that the requirement to submit CPN is an expensive solution and would make local service more expensive for the consumers of Massachusetts (AT&T Brief at 53). Accordingly, the CLECs urge the Department to reject Bell Atlantic's proposal, which assumes that all calls that cannot be documented are access traffic and seeks to charge the higher access rate on those undocumented calls (AT&T Brief at 53; MCIW Reply Brief at 17).

Moreover, the CLECs argue that providing call detail records on a monthly basis is burdensome and propose that they be provided on a quarterly basis (Exh. AT&T-37, at 9). The CLECS assert that such records are obtained by Bell Atlantic only to permit it to audit the local usage percentage (id. at 10).

3. Analysis and Findings

We agree with Bell Atlantic that call detail records with CPN are necessary for the reasons discussed above. The interconnection agreements, as indicated by the Company, require CLECs to provide CPN on 90 percent of their originating calls. However, according to the Bell Atlantic and undisputed by AT&T, Bell Atlantic received CPN on only about 25 percent of AT&T's originating calls in the state. The Department recognizes the billing and revenue impact of rating access traffic as local for reciprocal compensation purposes if the CLEC's fail to provide accurate records to determine jurisdiction. We also recognize, and Bell Atlantic has not denied, that there are difficulties in documenting calls from PBXs to distinguish which lines on a trunk are making calls. Therefore, for calls originated by CLECs that are not from a PBX, the CLECs shall provide to Bell Atlantic the CPN on all originating calls. With regard to calls originating from PBXs, the burden is on the CLECs to prove to Bell Atlantic that the calls actually originated from PBXs. We direct the CLECs and Bell Atlantic to attempt to work out an arrangement to determine the nature of the calls, i.e., access vs. local usage.

The Department agrees with the CLECs that reporting call detail records on a monthly basis is burdensome. We note that on the interstate basis, the FCC requires interexchange carriers to provide call detail records to ILECs no more than once a year upon request. However, because the potential billing and revenue impact may be significant due to the Act's requirement of reciprocal compensation, we find it necessary that CLECs report call detail more than once a year. The Department, therefore, finds that the reporting of call detail by CLECs on a quarterly basis will provide Bell Atlantic with a reasonable time period to verify whether CLECs are properly reporting call detail for jurisdictional purposes, while addressing the CLECs' concerns about the reporting burden.

E. End-User Notice Concerning Discontinuance of Service

1. Introduction

Bell Atlantic's proposed Tariff No. 17 does not require CLECs who purchase UNEs to provide notice to the CLEC's end-users when the CLEC discontinues service to all or substantially all of its end-users.

2. Positions of the Parties

Bell Atlantic agreed to amend Tariff No. 17, upon Department request, to include a provision that places notification requirements on CLECs who discontinue service to all or substantially off of its end-users (RR-DTE-76). No party raised this issue on brief.

3. Analysis and Findings

Pursuant to Section 3.3.4.A of Tariff No. 14, a reseller must send advance written notice to Bell Atlantic, the Department, and to each of the reseller's end-users, when the reseller discontinues providing service to all or substantially all of its end users for any reasons. The Department finds that a similar notice requirement for CLECs who purchase UNEs under Tariff No. 17 is in the public interest. We direct Bell Atlantic to revise its tariff accordingly.

F. Department Arbitrated Decisions Not Reflected in Tariff No. 17

1. Introduction

Many of the Department's decisions in the MediaOne and Greater Media arbitrations are not reflected in Tariff No. 17. In addition, inconsistencies exist between the Department's decisions in the MediaOne and Greater Media arbitrations and Tariff No. 17. Bell Atlantic is opposed to incorporating the Department's decisions in the MediaOne and Greater Media arbitrations into Tariff No. 17 or to addressing any inconsistencies between the decisions from the MediaOne and Greater Media arbitrations and Tariff No. 17.

2. Positions of the Parties

Bell Atlantic indicated that many of the Department's decisions in the MediaOne and Greater Media arbitrations were not reflected in Tariff No. 17 and that provisions of the tariff are inconsistent with decisions from those arbitrations (Exh. DTE-147). Bell Atlantic stated that because the arbitrated decisions were rendered pursuant to Section 252(b) of the Act and were specific to interconnection agreements between specific carriers, those decisions should not be applied generally to all carriers through the tariff (id.). No parties raised this issue on brief.

3. Analysis and Findings

We disagree with Bell Atlantic. The arbitrated decisions from the MediaOne and Greater Media Arbitrations, although based on evidence presented in those cases, took into account broader public policy considerations than just the parochial interests of the parties to the arbitrations. In making those determinations, the Department was well aware of the possibility, if not the likelihood, that other carriers would seek to avail themselves of the results of those arbitrations through the "pick and choose" rule. Therefore, we find that Bell Atlantic shall incorporate the decisions from the MediaOne and Greater Media arbitrations in Tariff No. 17, unless any of those decisions conflict with our findings herein, in which case this Order will prevail. Bell Atlantic shall propose such revisions in its compliance filing.

XI. TARIFF NO. 17 - COLLOCATION COST PROVISIONS

A. Collocation Cost/Rate Issues

1. Collocation Cost Study

a. Introduction

The Act requires Bell Atlantic to make space available in its central offices to CLECs for the collocation of CLEC equipment necessary for interconnection and access to UNEs, and the FCC has determined that a forward-looking cost method called total element, long-run, incremental cost ("TELRIC") shall be used to price these services to CLECs. 47 U.S.C.

§§ 251(c)(6), 252(d)(1). Pursuant to the Act, on December 4, 1996, the Department issued a decision in the Consolidated Arbitrations,[102] setting forth the method to be used by Bell Atlantic in carrying out its TELRIC studies to determine the prices to be charged for UNEs. In the same Order, the Department required Bell Atlantic to file a TELRIC study for the physical collocation of CLECs' equipment in Bell Atlantic's central offices. Subsequently, the Department investigated and set collocation charges that CLECs must pay to Bell Atlantic in both the Phase 4-G Order[103] and Phase 4-I Order[104] of the Consolidated Arbitrations.

In this proceeding, Bell Atlantic has proposed a TELRIC study that includes costs for site survey/report fee; virtual collocation installation and engineering costs; virtual, Secured Collocation Open Physical Environment ("SCOPE"), and CCOE collocation floor space requirements; collocation security costs; and mini-cage fixed costs. The CLECs assert that the collocation cost methodology is flawed and that Bell Atlantic's cost data is outdated.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic indicates that its collocation cost studies are consistent with the TELRIC methodology and the Department's established standards in the Consolidated Arbitrations, Phase 4 Order and Phase 4-I Order (Bell Atlantic Brief at 47-48). Bell Atlantic claims that the collocation cost studies reflect forward-looking costs based on Bell Atlantic's existing wire centers (id. at 48). Contrary to some parties' claims that the data relied on by Bell Atlantic is outdated, Bell Atlantic contends that the Department previously addressed this issue and concluded that the data can withstand short-term anomalies and that the current TELRIC rates are in effect until December, 2001 (id. at 49). Bell Atlantic indicates that it has identified the source of all of its collocation costs in the work papers accompanying Tariff No. 17, and in response to discovery requests in this proceeding (Bell Atlantic Reply Brief at 34). According to Bell Atlantic, no party to this proceeding has disputed the fact that the cost functions or activities studied in Bell Atlantic's approved collocation TELRIC studies are the same functions and activities that are associated with the proposed collocation arrangements introduced in this filing (id.). Moreover, Bell Atlantic states that it has made reasonable use of current information, as well as engineering and other professional judgment, in the development of the costs used in its collocation study (Bell Atlantic Brief at 50). Accordingly, Bell Atlantic requests that the Department reject Rhythms/Covad's and AT&T's arguments that Bell Atlantic's collocation costs are not consistent with TELRIC (Bell Atlantic Reply Brief at 34).

ii. CLECs

AT&T argues that Bell Atlantic's collocation charges are based on cost studies that are fundamentally flawed because they rely on improper assumptions and on an improper methodology, are without underlying documentation, and permit Bell Atlantic to double-recover its costs in many instances (AT&T Brief at 38-39). Contrary to Bell Atlantic's claim, Rhythms and Covad argue, that the Department never found that the collocation cost studies conducted here satisfy the FCC and Department requirements (Rhythms/Covad Reply Brief at 8). Given the recent changes in regulatory requirements for collocation, Rhythms and Covad contend, that Bell Atlantic's outdated cost study cannot be based on the most efficient, forward looking collocation deployment (Rhythms/Covad Reply Brief at 8). Accordingly, Rhythms and Covad recommend that, because Bell Atlantic has failed to meet its burden of proof, the Department should reject the rates proposed in Tariff No. 17 as filed (Rhythms/Covad Reply Brief at 8-9).

c. Analysis and Findings

First we address the issue of whether the collocation cost studies presented in this case are consistent with the FCC's TELRIC methodology and the Department's established standards in the Consolidated Arbitrations, Phase 4 Order, Phase 4-G Order, and Phase 4-I Order. In the Phase 4 Order, the Department set a standard of review in evaluating Bell Atlantic's TELRIC model. In that Order, the Department stated that:

To determine whether [Bell Atlantic's] proposed TELRIC study meets the standard set forth by the FCC, we must examine both the structure of the model and the inputs used in the model. With regard to the structure of the model, we must determine whether it is reviewable, i.e., whether it is possible to find and understand the financial and numerical relationships inherent in the model. We must also determine whether the structure itself provides a good representation of a reconstructed local network that will employ the most efficient technology for reasonably foreseeable capacity requirements. If the model is reviewable and accurately portrays the network we desire, we must determine whether the various inputs to the model are appropriate.

Phase 4 Order, at 8-9.

In the Phase 4-G Order, the Department, based on this standard of review, found that Bell Atlantic's collocation cost structure model was reviewable and that "it is entirely transparent, based on clearly presented investment amounts and cost factors." Phase 4-G Order at 10. Moreover, after ordering Bell Atlantic to make some modifications to its collocation cost study, the Department, in its Phase 4-I Order, approved Bell Atlantic's collocation cost study. Phase 4-I Order at 11. Bell Atlantic used the same methodology in this docket to develop the collocation rates proposed in Tariff No. 17.

After reviewing the cost study in this case, we find that the methodology that Bell Atlantic applied in this proceeding is consistent with the FCC's TELRIC methodology and the Department's findings in the Phase 4-G Order and the Phase 4-I Order. Bell Atlantic has provided complete documentation identifying the source of all of its collocation costs in the work papers accompanying Tariff No. 17. Moreover, with regards to the alleged staleness of the data, the Department has addressed this issue in its D.T.E. 98-15 (Phases II/III) Order. In that Order, the Department disagreed with the CLECs and stated that "[T]he claim that more current data exist today is likely always to be true for any telecommunications cost study performed several years ago. However, the UNE cost study is by its very nature 'forward looking.' Accordingly, the Department concludes that it can withstand short-term anomalies in Bell Atlantic's costs." Id. at 14. While the Department's finding in that Order dealt with resale discounts and UNEs, the reasoning applies equally to collocation costs. Accordingly, we reject Rhythms' and Covad's argument that the costs are not forward-looking and approve Bell Atlantic's methodology.

In addition to challenging Bell Atlantic's methodology, the CLECs raise concerns regarding particular rates, factors, and terms and conditions, which we address below.

2. Security Costs

a. Introduction

Bell Atlantic proposes three levels of security in its collocation offerings. The first level requires CCOE collocators to purchase a minimum of five security access cards for their employees' own use to enter the exterior central office doors. The second level of security proposed is the erection of a secure barrier between SCOPE, Mini-Cage, and Physical Collocation arrangements and Bell Atlantic's facilities. The third level of security proposed by Bell Atlantic is the use of cameras, interior card readers on doors, or caging/walls surrounding Bell Atlantic's facilities.

The CLECs argue that the security costs are not based on forward-looking cost principles and that the CLECs should not be required to pay for unnecessary security measures.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic claims that its proposed security costs for CCOE are reasonable (Bell Atlantic Brief at 51). Bell Atlantic contends that the purchase of security access cards by a collocator, erecting a secure barrier between the collocator's equipment and Bell Atlantic's equipment in the case of SCOPE and other physical collocation, and the use of cameras, interior card readers on doors, or caging/walls surrounding Bell Atlantic's network in the case of CCOE, are consistent with the reasonable measures the FCC recognized were appropriate in its Advanced Services Order (id. at 51-52). Bell Atlantic indicates that the $73,000 figure that Rhythms and Covad cite is a gross misrepresentation of Bell Atlantic's proposal because it is not the rate CLECs are charged for security in CCOE arrangements; instead, it is the average investment required for security associated with CCOE in a central office (Bell Atlantic Reply Brief at 40). Bell Atlantic indicates that it proposes to spread this cost over a forecast of nine CCOE bays and to charge CLECs on a per-bay basis, and that Bell Atlantic may not recover the costs if the nine bays are not actually used by CLECs within the office (id. at 40-41).

Furthermore, Bell Atlantic argues that the CLECs' challenge to the per-office estimate for security is also without merit because the analysis was based on a survey of 34 central offices in New England, and the physical attributes of central offices do not vary significantly by state (id. at 41). The CLECs' argument that Bell Atlantic is purchasing more security than it needs is without merit, Bell Atlantic asserts, and the Company should be allowed to recover the costs of protecting its assets, an assertion that the Advanced Services Order recognized and permitted (id.).

ii. CLECs

MCIW argues that Bell Atlantic's proposed charge for security arrangements is not based on forward-looking cost principles (MCIW Brief at 54). MCIW also claims that Bell Atlantic failed to demonstrate that it is not double recovering for security costs, since such costs are included in its forward-looking security costs in its physical collocation cost study recurring building space charges (id.). MCIW argues that CLECs who do not wish to purchase any more security than is already incorporated in the floor space of a forward-looking building should not be forced to do so, because the FCC has recognized that cageless collocation, in part, should reduce the costs and delays faced by collocators (id. at 55). MCIW argues that since Bell Atlantic does not require additional security measures for its contractors, it should not require additional security measures for cageless collocation (id.). MCIW, Rhythms, and Covad assert that, if the Department allows Bell Atlantic to impose security charges upon cageless collocators, then the Department should do so only after Bell Atlantic presents forward-looking cost information and proves that it has eliminated duplicate security measures (MCIW Brief at 56; Rhythms/Covad at 11-12).

MCIW further argues that the wire mesh that Bell Atlantic installs to isolate its own equipment is unnecessary and the cost should not be absorbed by the collocators (MCIW Brief at 57). In addition, MCIW recommends that security costs for cageless collocation should be allocated on a per square foot basis, with Bell Atlantic square footage factored into the cost of allocation (id.).

Moreover, Rhythms and Covad contend that Bell Atlantic's proposal to charge each cageless collocator over $73,000 for security arrangements in every central office is unreasonable and is not based on the TELRIC methodology (Rhythms/Covad Brief at

11). According to Rhythms and Covad, Bell Atlantic provided no justification for these "excessive" charges and is attempting to erect cost barriers to competitive entry (id.).

c. Analysis and Findings

MCIW, Rhythms, and Covad argue that the costs of Bell Atlantic's proposed collocation security measures are not based on forward-looking costs, but rather on embedded, cost principles. The record shows otherwise. While it is true that the security costs are based on actual central office investment data, the building investments were made forward-looking through the use of forward-looking annual carrying charge factors. Moreover, as noted by Bell Atlantic, its cost study includes the latest technologies, such as cameras, card readers, and wire mesh caging. The record shows these are the least cost alternatives to providing security within a central office. The CLECs presented no evidence that there are new technologies for the foreseeable future that will replace these measures. Accordingly, we find that Bell Atlantic has developed a forward-looking average cost per building that accurately reflects its security requirements, and that Bell Atlantic's proposal is reasonable.

We next address MCIW's claim that Bell Atlantic is double recovering for CCOE security costs, since such costs are included in its forward-looking security costs in its physical collocation cost study recurring building space charges. Bell Atlantic's security cost is based on an average security conditioning investment associated with CCOE per central office. The amount was divided by the total forecasted space required per central office to calculate the investment per square feet. The result was then multiplied by the annual carrying charge factors (for building and administration/common) to get the annual charge per central office, which was then divided by 12 to get the monthly security cost per square foot. The monthly security cost was then multiplied by 15 to get the monthly security cost per equipment bay based upon the assumption that each CCOE equipment bay will occupy 15 square feet of space. However, in Section VI.B.4 of this Order, we directed Bell Atlantic to reduce the minimum space allocation for CCOE to seven square feet. Thus, we direct Bell Atlantic to recalculate its CCOE security costs based on an assumption of seven square foot per bay.(105)

Even with the reduction in the CCOE space allocation, CCOE collocators will occupy space within Bell Atlantic's central office and some security will be needed to protect both Bell Atlantic's equipment and CLECs' equipment. As the Department stated it in its Phase 4-G Order, each portion of the network must carry its own weight (i.e., collocators should pay their own share of security cost required for each central office). Furthermore, we do not agree with MCIW's recommendation that security costs for CCOE should be allocated on a per square foot basis, with Bell Atlantic square footage factored into the cost of allocation. The various security investments are incremental investments caused by the need for CLECs to place their equipment in Bell Atlantic's central office.

With respect to Rhythms' and Covad's concern relating to the $73,000 cost of CCOE security, the record indicates that this amount represents the average investment required for security associated with CCOE per central office and not what each collocator pays, as implied by Rhythms and Covad. The proposed monthly security cost per bay is substantially less.

3. Site Survey/Report Fee

a. Introduction

The purpose of the Site Survey/Report is to provide CLECs with information on the available physical collocation space in a central office, the number of CLECs currently collocated in that central office, modifications in the use of space since the last report requested, and measures being taken to make additional space available. This report is optional, and the proposed rate is $1,046 per application. The CLECs argue that the Site Survey/Report fee is excessive.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic claims that Rhythms and Covad misconstrue the intent and purpose of the Site Survey/Report fee by arguing that it is required for both CCOE and Physical Collocation (Bell Atlantic Reply Brief at 39). Bell Atlantic states that the Rhythms and Covad argument is based on their continuing failure to understand the nature of this fee, which Bell Atlantic specifically addressed during the case (id.). According to Bell Atlantic, the Site Survey/Report, which provides CLECs with an informational tool to assist them in their planning efforts, is optional and is not related to ordering (or the work associated with) any form of collocation (id.). Moreover, the six hours for the optional Site Survey/Report fee, which Rhythms and Covad continue to confuse with site survey, is reasonable given the analysis and work required to produce the report (id. at 40).

ii. CLECs

MCIW, Rhythms, and Covad contend that Bell Atlantic's site survey/report fee is excessive in light of Bell Atlantic's claim that it already surveys its central offices regularly, the likelihood that the same report may be used for more than one CLEC, and the inclusion of excessive labor hours by Bell Atlantic (MCIW Brief at 58-59; Rhythms/Covad Brief at 9-10). According to MCIW, the Bell Atlantic Real Estate Group should take no more than 3.5 hours to conduct a site survey, review building plans, and update any records (MCIW Brief at 59). Moreover, if the same report is used for more than one CLEC, MCIW recommends that Bell Atlantic should implement a crediting mechanism to reimburse a CLEC that has paid a disproportionate share for its pro rata use of the report (id.). Similarly, Rhythms and Covad argue that the site survey for cageless collocation space should be lower than for caged collocation because it requires only empty space on the floor (Rhythms/Covad Brief at 8).

c. Analysis and Findings

Although the Site Survey/Report is optional, the proposed fee is not supported by a detailed cost study. The hours that Bell Atlantic used to estimate the four groups of activities listed were developed in a meeting attended by representatives of all Bell Atlantic departments concerned. Since each listed activity has several functions within it, Bell Atlantic should have provided the breakdown of the number of hours required to perform each function within each activity. We are not persuaded by Bell Atlantic's claim that there is no relationship between the report Bell Atlantic produces for its own use and the one provided to CLECs given the fact that, according to Bell Atlantic's witness, site surveys are a normal part of the duties for Bell Atlantic's engineers (Tr. 3, at 535). We are also not persuaded by Bell Atlantic's argument that the report produced for one CLEC may not be used for another CLEC. Therefore, we deny Bell Atlantic's proposed site survey/report fee and require the Company to recalculate the rate. We direct Bell Atlantic to provide the breakdown of the specific hours for the functions within each activity. In addition, we direct Bell Atlantic in its compliance filing to propose a revised charge that will reflect economies of scale from reports being used by Bell Atlantic and multiple CLECs.

4. SCOPE Fill Factor

a. Introduction

Bell Atlantic proposes to apply a 50 percent utilization/fill factor to the SCOPE conditioned area where CLECs' bays will be installed. The proposed conditioned area represents the cost to house 14 CLEC POT bays. The 50 percent utilization factor has the effect of doubling the cost per CLEC. According to Bell Atlantic, the SCOPE offering contains all the same rate elements as the ones approved for physical collocation in the Phase 4-G Order, with the exception of: (1) the conditioned area in SCOPE is based on a common area cage and is assessed per bay, whereas physical collocation is based on building a cage per CLEC; and (2) physical collocation provides a POT bay per CLEC cage and SCOPE allows CLECs to share a POT bay. The CLECs argue that the 50 percent utilization factor is too low.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic argues that its use of a 50 percent fill factor in developing its per bay construction costs for SCOPE arrangements is reasonable because the actual utilization of existing space is well below the 50 percent utilization factor used in Bell Atlantic's study (Bell Atlantic Brief at 52). Bell Atlantic indicates that, as of July 1999, it had approximately 85 offices that contained SCOPE, of which over 50 percent had only one SCOPE installation (id.). In addition, Bell Atlantic claims that the cages and SCOPE space currently assigned in the state are less than 25 percent filled and the utilization of cross connects supporting the interconnection to these areas is well below the 25 percent margin (id.). Absent a viable forecast from the CLECs, Bell Atlantic states that its construction model of 200 square feet for SCOPE space is reasonable, and the suggestion that it is overbuilding SCOPE is incorrect (Bell Atlantic Reply Brief at 42). According to Bell Atlantic, preparing a smaller space in an effort to achieve a higher utilization factor has little effect on the cost per square foot. Moreover, Bell Atlantic argues that MCIW's recommendation to apply a utilization factor of 100 percent should be rejected outright because the only way to achieve 100 percent utilization factor would be to construct only the amount of space required for SCOPE for each application when it is received (id.). According to Bell Atlantic, this approach would be extremely inefficient, costly, and time consuming (id.).

ii. CLECs

AT&T and MCIW claim that Bell Atlantic's 50 percent utilization factor, which has the effect of doubling costs, is inappropriate because Bell Atlantic did not review different utilization factors for central offices in different parts of the state, used no data points to arrive at the number, and applied the same factor to each of the four density zones in the state (AT&T Brief at 43; MCIW Brief at 68-69). Similarly, Rhythms and Covad argue that Bell Atlantic provided no justification for using such an artificially low fill factor in its cost calculation, which results in a doubling of the cost to CLECs (Rhythms/Covad Brief at 15). Rhythms and Covad request that the Department order Bell Atlantic to utilize a fill factor that accurately reflects the factors adopted by other states (id.). MCIW recommends that the Department adopt a 100 percent utilization factor (MCIW Brief at 69).

c. Analysis and Findings

Given the fact that Bell Atlantic cannot know with certainty the demand for SCOPE in its various central offices, we find that its 50 percent fill factor is reasonable. The record indicates that the actual utilization of existing space in Bell Atlantic's central offices is well below the 50 percent factor Bell Atlantic is proposing. Bell Atlantic has argued persuasively that the cages and SCOPE space currently assigned in Massachusetts are less than 25 percent filled. As to AT&T's and MCIW's claim that Bell Atlantic did not review different utilization factors for the different offices in the state, Bell Atlantic's witness indicated that the 50 percent factor is intended to represent an average of all central offices in the state (Tr. 3, at 464). Moreover, because it is an average factor, we also reject AT&T's and MCIW's argument that Bell Atlantic should be required to develop factors for each of the four density zones in the state. Furthermore, neither Rhythms' and Covad's recommendation that the Department order Bell Atlantic to utilize a fill factor that accurately reflects those adopted by other states, nor MCIW's recommendation that the Department adopt a 100 percent utilization factor, is supported by the record. Accordingly, we accept Bell Atlantic's 50 percent utilization factor.

5. Virtual Collocation

a. Introduction

Virtual collocation is a service whereby Bell Atlantic installs CLEC-provided equipment (which is dedicated exclusively to the CLEC) in a Bell Atlantic central office. Virtual collocation is provided by splicing the CLEC's fiber optics to the Company's fiber at a splice point in the central office designated by Bell Atlantic, or by means of other transport leased from Bell Atlantic or from a third party.

The CLECs propose that the cost for virtual collocation be reduced by ten percent to take into account future efficiencies and because the labor estimate to install the equipment is excessive.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic recommends that the Department not reduce the engineering and implementation costs for virtual collocation by ten percent as suggested by MCIW (Bell Atlantic Reply Brief at 37). Bell Atlantic claims that, contrary to MCIW's assertion, the ten percent efficiency adjustment in the Phase 4-G Order was based on the assumption that Bell Atlantic could build and engineer multiple cages at one time within an office, and some economies of scale could therefore be realized (id.). Bell Atlantic argues that virtual collocation is based on a specific, potentially unique, configuration supporting the particular equipment a CLEC wishes to employ (id.). Therefore, contends Bell Atlantic, there are no efficiencies to be gained when constructing multiple arrangements at a single time unless multiple CLECs with identical or substantially similar equipment having the same service requirements sought to establish virtual arrangements in the same office at the same time (id.). In addition, Bell Atlantic argues that the ten percent reduction to physical collocation was based on the Department's assumption that engineering efforts for collocation projects were relatively new and that efficiencies would be possible once more experience was gained (id.). Bell Atlantic asserts that it has ample experience with engineering and installing telecommunications equipment and it has already accounted for any efficiencies in the cost study for different virtual collocation scenarios (id. at 38). Furthermore, Bell Atlantic contends that, contrary to the arguments of AT&T, Rhythms, Covad, and MCIW, its 25-hour estimate for equipment installation in a virtual collocation arrangement is reasonable (id.). Bell Atlantic claims that it has clearly explained what is identified in its installation cost estimates for virtual collocation (id. at 39).

ii. CLECs

MCIW requests that the Department require a ten percent reduction in employee hours for the engineering and administration charge for virtual collocation, in order to impute efficiencies that Bell Atlantic should experience in the future, in a manner consistent with the cost development approved by the Department in its Phase 4-G Order (MCIW Brief at 57). According to MCIW, given the infancy of Bell Atlantic deployment of virtual collocation, it is reasonable to expect Bell Atlantic to achieve further efficiencies in the future (id. at 58).

Moreover, AT&T and MCIW state that Bell Atlantic's time estimate for virtual collocation equipment is unreliable and biased because Bell Atlantic presented an estimate of 25 hours of work time to employees who actually install the equipment and asked them to confirm whether the estimate was accurate (AT&T Brief at 39-40; MCIW Brief at 58). According to AT&T and MCIW, given the process employed by Bell Atlantic, the cost study invites biased results and creates serious doubts as to the propriety of its cost study (AT&T Brief at 40; MCIW Brief at 58). AT&T, Rhythms, and Covad claim that further doubt is cast on the accuracy and reliability of Bell Atlantic's installation cost estimate because Bell Atlantic uses unsupported and unrealistic inputs and assumptions in its cost model concerning the breakdown of the 25 hours to install virtual collocation equipment (AT&T Brief at 40; Rhythms/Covad Brief at 15).

c. Analysis and Findings

Bell Atlantic argues that the Department should not reduce the engineering and implementation costs for virtual collocation by ten percent, as suggested by MCIW, because virtual collocation is based on a customized configuration, and, therefore, there are no economies of scale to be realized. Bell Atlantic made a similar argument with respect to physical collocation in the Phase 4-G Order. In the Phase 4-G Order, the Department found that "while there is, as all acknowledge, an element of customization in the construction of collocation cages, there are also common functions of planning, design and procurement subject to the economies of scale of multiple installations." Phase 4-G Order at 11. We find that that reasoning applies equally here.

We agree with MCIW that, given the infancy of Bell Atlantic's deployment of virtual collocation, it is reasonable to expect that Bell Atlantic will achieve further efficiencies in the future. Bell Atlantic's argument that it has ample experience with engineering and installing telecommunications equipment and, therefore, it has accounted for any efficiencies in the cost study for different virtual collocation scenarios, is not supported with record evidence. Bell Atlantic's process used to estimate its labor hours to install virtual collocation equipments is not consistent with the approach Bell Atlantic used to develop its other estimates in the collocation cost study, where costs were estimated by experts, not by management personnel. Accordingly, we direct Bell Atlantic to reduce its engineering and implementation costs for virtual collocation by ten percent to account for future efficiencies.

6. Non-Recurring SCOPE Charge

a. Introduction

Bell Atlantic's proposed nonrecurring charges for SCOPE include, among other things, $3,906 for engineering and administration and $1,779 for bay construction, for a total of $5,685.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic contends that it is not suggesting that it should be permitted to charge the same amount for a 300 square foot and a 25 square foot collocation arrangement (Bell Atlantic Reply Brief at 43). Bell Atlantic claims that its TELRIC cost study includes a variable component and a fixed component similar to the one approved by the Department in its Phase 4-G Order (id.). Bell Atlantic states that, based on the record in this case and the Department approved cost study in the Phase 4-G Order, the fixed cost for a 25-square foot collocation cage is reasonable (id.).

ii. CLECs

Rhythms and Covad state that Bell Atlantic assumes the fixed costs of 300 square foot and 25 square foot cages for SCOPE to be the same (Rhythms/Covad Brief at 15-16). Accordingly, Rhythms and Covad request that the Department order Bell Atlantic to revise its tariffed rates to reflect the significant cost savings inherent in smaller collocation space (Rhythms/Covad Brief at 16). AT&T also indicates that Bell Atlantic's non-recurring charge for SCOPE in Pennsylvania is $1,859, whereas its proposed charge for Massachusetts is $5,685 (AT&T Brief at 41).

c. Analysis and Findings

Concerning Rhythms' and Covad's argument that the fixed costs for a 25 square foot arrangement should be less than for a 300 square foot SCOPE arrangement, we find Bell Atlantic's application is consistent with the process the Department approved in the Phase 4-G Order. For example, in the Phase 4-G Order, the Department allowed Bell Atlantic to use the same fixed cost for both a 300 square foot cage and a 200 square foot cage. As Bell Atlantic indicated, the fixed costs include, among other things, light fixtures and associated switches; two 20 amp, 100 volt AC circuits; the cost to drill new cable holes; the cost for patching, painting, floor tiles, and core holes; the cost for sleeves for power and various interconnection cables; and the cost for cable access from the vault. We agree with Bell Atlantic that these cost elements do not vary significantly with the cage size. As to AT&T's claim that Bell Atlantic's proposed non-recurring charge of $5,685 for SCOPE construction is much higher than the charge of $1,859 in Pennsylvania, the record shows that SCOPE charges for Pennsylvania in fact are $10,669, or approximately twice as much as the charge proposed for Massachusetts (Exh. BA-MA-7, at 16-17).

7. ICB and Special Constructions

a. Introduction

Bell Atlantic proposes to charge for certain elements on an individual case basis ("ICB"). Specifically, Bell Atlantic proposes to charge CLECs on an ICB basis for non-recurring special construction charges required to do additional extraordinary engineering work and/or build special routes, facilities, or other physical plant to meet CLECs' requests. Bell Atlantic indicates that the Department approved ICB pricing by allowing the use of a "time and materials" charge for "cable pull and splice" activities in its Phase 4-G Order. The CLECs criticize ICB pricing because it creates cost uncertainty, may delay service offerings, and may allow Bell Atlantic to price discriminate between different CLECs.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic disputes the Rhythms and Covad allegation that by leaving rate elements and rates for CCOE as ICB or to-be-determined ("TBD"), Bell Atlantic is imposing inherent expense, delaying provisioning, and offering Bell Atlantic the ability to charge whatever it chooses (Bell Atlantic Reply Brief at 34). Bell Atlantic indicates that, contrary to Rhythms' and Covad's claim, it provided specific cost-based prices in Tariff No. 17, Part M, Section 5, for CCOE site preparation, conditioning, and provisioning (id. at 35). Bell Atlantic indicates that it reserves the right to charge CLECs on an ICB basis for non-recurring special construction charges required to do additional extraordinary engineering work, or to build special routes, facilities, or other physical plant to satisfy a carrier's request (Bell Atlantic Brief at 50). Bell Atlantic argues that the recovery of special construction charges is necessary and not duplicative because such costs were never included in Bell Atlantic's TELRIC building costs in the first place (id. at 51). Bell Atlantic asserts that the instances in which ICBs are used for collocation components are de minimis and completely appropriate (Bell Atlantic Reply Brief at 35).

ii. CLECs

AT&T, Rhythms, and Covad argue that ICB pricing is problematic because CLECs have no idea of the costs involved, an ILEC may apply price discrimination between different CLECs, and CLEC service offerings may be delayed due to the need to negotiate the price (AT&T Brief at 17; Rhythms/Covad Brief at 6-7). AT&T and MediaOne argue that, because Bell Atlantic does not identify the types of activities that would qualify for special construction charges under the tariff, it is impossible to determine the reasonableness of such a proposal (AT&T Brief at 18; MediaOne Reply Brief at 9). AT&T, Rhythms, and Covad indicate that the FCC has considered the concept of ICB pricing in connection with collocation offerings and concluded that it was not an appropriate pricing approach because it denies collocators advance notice of the costs associated with collocating and creates uncertainty (AT&T Brief at 18; Rhythms/Covad Brief at 8). AT&T, Rhythms, and Covad recommend that the Department require Bell Atlantic to file new tariffs identifying the services it proposes to provide, the prices of those services, the costs associated with providing the services, and justification for those costs (AT&T Brief at 19; Rhythms/Covad Brief at 8). Similarly, MCIW, Rhythms, and Covad claim that ICB pricing is inconsistent with forward-looking cost principles, may be duplicative of other existing charges, and could be readily manipulated by Bell Atlantic (MCIW Brief at 60; Rhythms/Covad Brief at 10). MCIW argues that ICB pricing should be disallowed or, at minimum, Bell Atlantic should be required to submit cost guidelines for the charges that would apply, based upon the addition of a power supply or a specific form of environmental support (MCIW Brief at 60).

AT&T contends that Bell Atlantic's plan to apply special construction charges on CLECs to recover space conditioning costs in the case where equipment is placed in collocation space that had not previously been conditioned for collocation amounts to double-recovery because the recurring TELRIC collocation charges already include the cost of conditioning the space (AT&T Brief at 41-42). Similarly, Rhythms and Covad claim that special construction charges allow Bell Atlantic to double-recover its costs because such charges will be imposed in addition to the TELRIC collocation rate, which allows Bell Atlantic to recover fully all costs incurred in leasing collocation space (Rhythms/Covad Brief at 10). Rhythms and Covad argue that forward-looking costs should take into account the need to construct additional space in the face of growing collocation demand (Rhythms/Covad Reply Brief at 9).

c. Analysis and Findings

The FCC, in its order in CC Docket No. 93-162, found that "LEC's additional, extraordinary, or individually determined cost provisions violate the Commission's requirement that expanded interconnection rate levels be uniform for all interconnectors and that LEC's tariffs identify the actual rates for expanded interconnection service."[106] We note that the Department currently allows carriers to price certain retail services on an ICB basis.[107] However, we do not find it appropriate for Bell Atlantic to have ICB pricing in an interconnection tariff of general applicability. As the FCC clearly stated in the above-cited docket, such pricing denies CLECs advance notice of all costs associated with collocation, thereby creating uncertainty for CLECs. This uncertainty, according to the FCC, may serve as a barrier to entry and increase CLECs' business risks. Moreover, Bell Atlantic indicated that it has ample experience with engineering and installing telecommunications equipment, which leads us to believe that Bell Atlantic can cost out and price all its collocation services with reasonable certainty. Accordingly, with the exception of the time and material for cable pull and splice, which the Department approved in its Phase 4-G Order, we direct Bell Atlantic to file with its compliance filing revised tariff provisions for the services identified in RR-DTE 23, including the price of each service, the costs associated with providing the service, and detailed cost data justifying those costs.

XII. TARIFF NO. 17 - MISCELLANEOUS RATE ISSUES

A. Miscellaneous Rate Issues

1. Introduction and Approval of Uncontested Rates

Part M of proposed Tariff No. 17 contains the rates for the various interconnection services and products, including UNEs, offered under the tariff. Many of the rates included in this section have already been approved by the Department in the Consolidated Arbitrations and currently are in effect through interconnection agreements (See Exh. DTE-44; Exh. DTE-45; RR-DTE-56). These include permanent UNE rates and rates for certain collocation services. Other rates in Part M are being proposed by Bell Atlantic for the first time. These include NRCs, OSS-related charges, and rates for additional collocation and EEL services. These also include so-called composite rates that are comprised of individual cost elements approved by the Department in the D.T.E. 98-15 Phases II/ III Order (RR-AT&T-57). As noted above in Section I, the NRCs and OSS-related charges are being reviewed in Phase O of the Consolidated Arbitrations. When those rates are finalized, Bell Atlantic will be required to incorporate them into Tariff No. 17.

CLECs raise concerns about various proposed miscellaneous charges, including cancellation charges, installment payments, switching charges, retention rates for billing and collection of information services, Individual Case Basis Pricing, and rate-related billing disputes. We address those issues below.

We have examined all other uncontested rates under review in this docket, including the composite rates, as well as the supporting cost data. Based on this review, we find that Bell Atlantic has correctly applied the forward-looking TELRIC methodology, as set forth by the FCC and the Department in its Phase 4 Order of the Consolidated Arbitrations, and that the rates are consistent with both federal and state precedent. Therefore, we find that such rates are reasonable and approved as filed.

2. ICB Pricing

a. Introduction

Bell Atlantic proposes in its Tariff No. 17 that certain charges be priced on an individual case basis ("ICB"). Specifically these costs include non-recurring service orders, non-recurring service connections, and ANI development (RR-DTE-23).

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic points out that it only uses ICB in limited circumstances "where specific arrangements are unique, and the costs for each individualized arrangement can reasonably be expected to be unique" (Bell Atlantic Reply Brief at 55). Furthermore, Bell Atlantic notes that ICB pricing was approved in the Department's Phase 4-G Order.

ii. CLECs

The CLECs indicate that ICB pricing creates a barrier to entry because it poses cost uncertainty, allows Bell Atlantic to discriminate between CLECs, and delays a CLEC's ability to receive offerings (AT&T Brief at 17). The CLECs argue that because the changes are undefined, the CLECs lack the ability to contest these charges, leaving ICB pricing in Bell Atlantic's control (MCIW Brief at 60). In addition, the CLECs contend that ICB charges are not always consistent with forward-looking costing principles and may result in duplication of existing charges (Tr. 3, at 599-603).

c. Analysis and Findings

While the Department has permitted Bell Atlantic ICB pricing in a specific circumstance, i.e. time and material for cable pull and splice, we do not find ICB pricing to be appropriate in Bell Atlantic's general interconnection tariff, as we explained in Section XI.A.7. Accordingly, the Department directs Bell Atlantic to file new tariffs for the services identified in RR-DTE-23, with the exception of time and material for cable pull and splice, and to follow the guidelines set forth in Section XI.A.7.

3. Cancellation Charges

a. Introduction

Bell Atlantic states in Part A, Section 3.3.4.A of its proposed Tariff No. 17 that a CLEC should be required to pay the "full nonrecurring charges for the service that apply in connection with all cancelled CLEC orders." The parties disagree on the amounts CLECs should be obligated to pay Bell Atlantic in the case of a cancellation.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic states that although processing a request for a cancellation minutes after an order is submitted can be relatively inexpensive, processing a request for a cancellation minutes prior to its completion can be very costly (Bell Atlantic Brief at 19). Bell Atlantic argues that in addition to its incurred expenses necessary to bring the order to a state of near completion (i.e., the NRCs), there are other significant costs incurred by Bell Atlantic when it intercepts and stops the order (Exh. BA-MA-2, at 20; Bell Atlantic Brief at 19). Bell Atlantic contends that at the time of cancellation, numerous internal organizations may have already received mechanized instructions to perform specific activities at the scheduled due date (Bell Atlantic Brief at 19). Each of these organizations must be manually contacted to assure that they do not act on those instructions (id.). In addition, significant manual effort may be necessary to restore Bell Atlantic's service and records to the original, pre-order state (id.).

Additionally, Bell Atlantic proposes that, rather than seeking recovery of these additional charges based upon when the order is canceled and the associated costs Bell Atlantic incurs, it will assess the NRCs associated with the completion of the original order and forego all additional cancellation costs that are incurred (Exh. BA-MA-3, at 7; Bell Atlantic Brief at 19). Bell Atlantic explains that it has no way of knowing, nor does it care to know, the cause of a cancellation. According to Bell Atlantic, in this case the CLEC is Bell Atlantic's customer and the CLEC is the party who cancels the order. Therefore, Bell Atlantic contends it is the CLEC who should pay the cancellation charge (Tr. 4, at 884-885).

Bell Atlantic argues that the approach outlined in Part A, Section 3.3.4 of the proposed tariff provides a reasonable method of establishing cancellation charges compared to the complex and costly method of tracking and analyzing each cancellation order individually (Bell Atlantic Brief at 19). Accordingly, Bell Atlantic contends that its proposed cancellation charge is fair and reasonable and should be approved by the Department (id. at 19).

ii. CLECs

MediaOne argues that Bell Atlantic's proposal to apply the full NRC to every canceled order regardless of the cause of the cancellation or the specific costs incurred as a result of the cancellation is unreasonable because it will allow Bell Atlantic to charge the CLEC for a cost that the CLEC did not cause Bell Atlantic to incur (MediaOne Brief at 13-14). MediaOne states that one cause of canceled orders is that Bell Atlantic customers change their minds about taking service from a CLEC and instead choose to remain with Bell Atlantic; however, Bell Atlantic does not, as MediaOne points out, make any attempt to determine whether the cause of the cancellation was due to a Bell Atlantic customer changing his or her mind (Tr. 4, at 884-885; MediaOne Brief at 14). According to MediaOne, Bell Atlantic has acknowledged that even though the customer that caused the cancellation never actually became a CLEC customer, Bell Atlantic still considers this customer a CLEC customer for purposes of cancellation charges (MediaOne Brief at 14). However, MediaOne states that Bell Atlantic is attempting to require CLECs to pay for costs that CLECs have no obligation to pay and argues that Bell Atlantic's customers should pay for the cost of the cancellation, and not the CLEC (id.).

MediaOne states that in addition to the fact that the cancellation would be imposed on the CLEC regardless of whether the CLEC has actually caused the cost to be incurred, Bell Atlantic also makes no attempt to determine what the actual costs of the canceled orders are and to match the cancellation charge with the actual costs incurred (id.). MediaOne argues that there is no evidence that the costs Bell Atlantic claims to incur to process a cancellation represent the costs actually incurred (id.). Rather, according to MediaOne, Bell Atlantic's position is that the actual level of costs are not determinative because the cost involved in identifying the appropriate charge would be greater than the refund involved (id. at 15).

AT&T argues that Bell Atlantic's proposal treats all canceled orders as if they are canceled within the final minutes before the scheduled due date (Exh. AT&T-47, at 5). AT&T argues that it is unreasonable for a CLEC to pay NRCs for tasks that Bell Atlantic did not perform (id.). AT&T notes that Bell Atlantic has not performed all of the activities when an order is canceled, so Bell Atlantic is not justified in charging for all of the NRCs (id.).

c. Analysis and Findings

For the reasons stated below, we find that Bell Atlantic's proposal is reasonable. Although it would be preferable for Bell Atlantic to specifically identify the costs related to each cancellation order, the Department agrees with Bell Atlantic that tracking each cancellation order is a difficult and costly endeavor, and likely counterproductive in that it would result in higher individually-calculated charges for CLECs than under Bell Atlantic's proposal. Therefore, we adopt Bell Atlantic's proposal to assess the full NRCs associated with the completion of the original order and to forego all additional cancellation costs that it would incur (see Exh. BA-MA-3, at 7; Bell Atlantic Brief at 19).

We also agree with Bell Atlantic that for purposes of canceling an order, it is the CLEC, not the potential end user, that is the customer. Thus, the CLEC should be responsible for those charges associated with cancellation even though the CLEC's would-be customer decides to remain with Bell Atlantic.

4. Billing Disputes

a. Introduction

Part A, Section 4.1.7.E of Tariff No. 17 provides that if a billing dispute is raised within three months of the payment date and the billing dispute is resolved in favor of the CLEC, the CLEC will receive credit for the disputed amount penalty[108] for the period beginning with the date of payment and ending on the date the issue is resolved. Part A, Section 4.1.7.G of Tariff No. 17 provides that if a CLEC disputes a bill more than three months after the payment date and the dispute is resolved in favor of the CLEC, the CLEC will only receive the disputed amount penalty for the period starting on the date of dispute and ending on the date of resolution. The CLECs contend that these provisions are inconsistent with each other.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic states that although it proposes different treatment for billing disputes raised by CLECs within three months (See Part A, Section 4.1.7.E) from billing disputes raised by CLECs after that period of time (See Part A, Section 4.1.7.G), Bell Atlantic argues that the different treatment is reasonable and should be approved (Bell Atlantic Reply Brief at 54). According to Bell Atlantic, the interval contained in Section 4.1.7.G is designed to encourage CLECs to "promptly identify and submit disputes" and discourage CLECs from harboring disputes with the intent of collecting increased disputed amount penalties (RR-MCIW-38). Bell Atlantic contends that MCIW's reference to the "filed rate doctrine" is inappropriate (Bell Atlantic Reply Brief at 54). According to Bell Atlantic, Section 4.1.7.G is consistent with comparable terms in Bell Atlantic's Access Tariff No. 15[(109)] and Bell Atlantic's Resale Tariff No. 14[(110)] (Exh. MCIW-15). Additionally, Bell Atlantic argues that under the "filed rate doctrine," the right to a reasonable rate is the right to the rate approved by the regulator, and the courts can assume no right to a different rate (Bell Atlantic Reply Brief at 54).

ii. CLECs

MCIW contends that the two sections should be made consistent so that if a CLEC resolves a billing dispute with Bell Atlantic more than three months after the date of payment, the CLEC will receive a credit back to the date of its payment, as has been proposed by Bell Atlantic in Part A, Section 4.1.7.E (Tr. 4, at 726-728; MCIW Brief at 73). MCIW states that it is unfair to deny a CLEC the compensation it deserves simply because the CLEC needed more than three months to uncover Bell Atlantic's mistake (MCIW Brief at 73).

Furthermore, MCIW claims that the proposed language in Section 4.1.7.G "violates the principles underlying the 'filed rate' doctrine, under which Bell Atlantic is only allowed to recover the 'correct' charges" (id.). MCIW contends that this proposed section, in effect, would allow Bell Atlantic to circumvent its obligation to bill and collect correct rates.

c. Analysis and Findings

Contrary to the CLECs arguments, we find that Part A, Sections 4.1.7.E. and G. are reasonable. They are intended to give CLECs an incentive to identify, and work with Bell Atlantic to correct, billing errors promptly (see RR-MCIW-38). We believe that three months is ample time for a CLEC to find an error and raise a dispute, if necessary, with Bell Atlantic.

5. Installment Payments

a. Introduction

Part A, Sections 4.2.2 and 4.2.3 of Tariff No. 17 provide for optional installment plans that allows CLECs to pay the NRCs associated with the purchase of UNEs and central office switch dialing plans over an 18-month period. The CLECs contend the term of the installment plans are too short.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic contends that these optional installment plans were included in Tariff No. 17 as part of Bell Atlantic's merger commitments to the FCC (Bell Atlantic Reply Brief at 53).[(111)] According to Bell Atlantic, the installment plans for purchasing UNEs and central office switch dialing plans allow CLECs to pay NRCs over numerous months and "include a return that is intended to reflect Bell Atlantic's cost of capital" (id.).

Bell Atlantic disputes MCIW's claim that the term of the installment plans should be the same as the installment plans for collocations services established in the Phase 4-G Order of the Consolidated Arbitrations (id. at 52). Bell Atlantic states that it filed installment plans for collocation and office dialing plans before Phase 4-G of the Consolidated Arbitrations was ordered by the Department (Tr. 4, at 729). According to Bell Atlantic, the Phase 4-G Order directed Bell Atlantic to modify the installment plan for collocation, and Bell Atlantic complied (Tr.4, at 729). Bell Atlantic states that the installment options for central office plans and UNEs, as described in Tariff No. 17, are not addressed in the Phase 4-G Order of the Consolidated Arbitrations.

ii. CLECs

MCIW contends that the proposed installment plan is inconsistent with the NRC mechanism set forth in the Department's Phase 4-G Order[(112)] (Tr. 4, at 728-731). MCIW acknowledges that the tariff sections in question do not involve collocation but contends that the installment plan provisions in Tariff No. 17 should be consistent with the spirit of the Phase 4-G Order.

c. Analysis and Findings

The fact that the proposed installment plans here are not identical to those approved in our Phase 4-G Order for collocation services is not dispositive of whether the plans are reasonable. The installment plans approved in the Phase 4-G Order were adopted based on the record in that case and were designed to address the significant upfront costs of collocation, which we noted could be a barrier to entry for some CLECs. The higher NRCs for collocation justify a longer installment period. Therefore, we find that Bell Atlantic's 18-month installment plans are reasonable.

6. Switching Charges

a. Introduction

An unbundled local switching charge ("ULSC") is designed to recover the costs Bell Atlantic incurs for switching a call. This cost applies for every minute a CLEC uses an unbundled local switch. In most cases, the CLEC pays for the ULSC only once, with one exception. Part B, Section 6.3.2.B of Tariff No. 17 states that in the case of intra-office calls, the ULSC applies twice: once for originating a call, and once for terminating the call (Tr. 4, at 678).[(113)] The CLECs oppose this provision.

b. Positions of the Parties

i. Bell Atlantic

While Bell Atlantic did not brief the issue of whether it should be permitted to assess the ULSC twice for an intra-office call, a Bell Atlantic witness acknowledged that the New York Public Service Commission ("NYPSC") rejected Bell Atlantic-New York's proposal to charge two ULSC's for an intra-office call (Tr. 4, at 679). According to Bell Atlantic, the NYPSC rejected the proposed charge due to a lack of understanding of how the costs were developed (id.). Bell Atlantic states that prior to the New York tariff proceeding, AT&T had agreed to this double charge in its interconnection agreement with Bell Atlantic-New York. Additionally, Bell Atlantic notes that the NYPSC did not reject the charge in AT&T's interconnection agreement and that this double charge remains in the agreement (Tr. 4, at 678). Accordingly, Bell Atlantic contends that the proposed language is reasonable.

ii. CLECs

Both AT&T and MCIW contend that in the case of an intra-office call, the ULSC should only apply once (MCIW Brief at 72; AT&T Brief at 52). Additionally, AT&T and MCIW point out that the NYPSC rejected a similar charge in Bell Atlantic-New York's tariff (Tr. 4, at 679-680). According to the CLECs, the NYPSC found there was no support for Bell Atlantic-New York's proposal to charge twice for switching an intra-office call and that there was no evidence that the cost of switching an intra-office call differs from switching the originating portion of an inter-office call, where only one local switching charge applies (MCIW Brief at 72). MCIW argues that the same reasoning applies in this proceeding and that the Department should reject Bell Atlantic's proposal (id.).

c. Analysis and Findings

Bell Atlantic provided no evidence in this proceeding showing that the cost of switching an intra-office call differs from switching the originating portion of an inter-office call. Bell Atlantic, as the proponent of the tariff, has the burden of demonstrating that its rates are reasonable. Therefore, we find that Bell Atlantic may charge CLECs only one ULSC for an intra-office call. Bell Atlantic shall revise this tariff provision accordingly.

7. Retention Rates for Billing and Collection of Information Service Calls

a. Introduction

Bell Atlantic proposes in Part C, Section 2.3.1.B of Tariff No. 17 to allow CLECs to retain five cents ($ 0.05) for every information services call[(114)] placed by one of the CLEC's customers.[(115)] The CLECs dispute Bell Atlantic's right to retain any portion of the charges from a CLEC customer's information services calls, absent a cost study justifying the charge.

b. Positions of the Parties

i. Bell Atlantic

Bell Atlantic argues that its proposed retention rate of $.05 is consistent with the CMDS[(116)] rate for billing and collection (Exh. BA-MA-5, at 16; Bell Atlantic Brief at 66). According to Bell Atlantic, it must perform several functions so that a CLEC's customer may place information services calls, including recording usage, billing, handling end-user questions, remitting federal taxes, and handling a variety of Internet service provider-specific matters (Tr. 2, at 319). Bell Atlantic contends that $.05 is "just, reasonable, and consistent with current interconnection agreements" (Exh. BA-MA-5, at 17).

ii. CLECs

AT&T argues that Bell Atlantic's proposed CLEC retention rate of $0.05 for rating, billing, and collecting when a CLEC customer calls a Bell Atlantic information services number is unreasonable (AT&T Reply Brief at 28). AT&T argues that the CMDS rate is not analogous to the retention rate that is at issue in this proceeding (Exh. AT&T-38). According to AT&T, there is no rating involved for CMDS calls, and the ILECs do not perform the task of recording (Tr. 2, at 385). AT&T contends that the CLEC "is doing the preponderance of the work on a per-call, per-transaction basis" (Tr. 2, at 384). AT&T argues that in order for its customer to place an information services call, AT&T's switch must process and record the call, send it to Bell Atlantic, receive it back from Bell Atlantic, bill the call, send out the bill to the customer, answer customer phone calls, and resolve delinquent accounts (id.). Furthermore, AT&T points out that Bell Atlantic does not provide cost-based support for its proposed rate of $0.05 (AT&T Reply Brief at 28).

In addition, AT&T notes that the $0.05 rate is half of what Bell Atlantic charges information service providers for billing and collection services (i.e., $0.10) (Exh. DTE-39).

For these reasons, AT&T argues that $0.05 is unreasonable but notes that $0.10 would likely cover a CLEC's costs (AT&T Reply Brief at 29). Consequently, AT&T proposes a rate of $0.08 as a compromise (id.).

c. Analysis and Findings

AT&T is correct in noting that Bell Atlantic did not provide any cost support for its $0.05 proposal. Instead, Bell Atlantic indicated that the rate was the result of a "business judgement" (Tr. 2, at 321). As stated above, Bell Atlantic has the burden of demonstrating that its rates are reasonable and, absent a cost study, we cannot find that the $.05 proposed rate is reasonable. Therefore, we deny Bell Atlantic's proposed rate and direct Bell Atlantic to perform a cost study supporting its proposed retention rate to be submitted with its compliance filing.

XIII. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That the revisions to the Resale Tariff No. 14 of New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts, filed with the Department on August 27, 1999 for effect on September 27, 1999, be and hereby are APPROVED; and it is

FURTHER ORDERED: That the Interconnection Tariff No. 17 of New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts, filed with the Department on August 27, 1999 for effect on September 27, 1999, be and hereby is DENIED; and it is

FURTHER ORDERED: That Bell Atlantic shall file, within four weeks of the date of this order, a compliance tariff consistent with the findings herein; and it is

FURTHER ORDERED: That Bell Atlantic comply with all other directives contained herein.

By Order of the Department,

James Connelly, Chairman

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. [1] In the cover letter accompanying its May 15, 1998 tariff filing, Bell Atlantic stated that the new tariff "contains miscellaneous service offerings available to Certified Local Exchange Carriers" and "includes a comprehensive set of terms and conditions" for Meet Point-C Interconnection, Coin Ports, Electronic Key Ports, Integrated Digital Loop Carrier Port TR08 Interface, Advanced Intelligent Network Triggers, Collocation including Virtual Collocation and Mini-Cages, and Access to Service Management Systems.

2. [2] On July 1, 1999, Mr. J. Joseph Lydon filed a Notice of Appeal, in part, of the Hearing Officer Ruling granting the Motion Pro Hac Vice filed by Ms. Susan Jin Davis of Covad. The Department denied Mr. Lydon's Appeal on October 22, 1999.

3. [3] Deployment of Wireline Services Offering Advanced Telecommunications Capability, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48, CC Docket No. 98-147 (rel. March 31, 1999) ("Advanced Services Order"). In this decision, the FCC adopted a new set of collocation arrangements and terms.

4. [4] AT&T Communications of New England, Inc., D.T.E. 98-58 (July 30, 1999) ("Physical Collocation Order").

5. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Notice of Proposed Rulemaking, FCC 99-238, CC Docket No. 96-98 (rel. Nov. 5, 1999) ("UNE Remand Order")

6. [6] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Supplemental Order, FCC 99-370, CC Docket No. 96-98 (rel. Nov. 24, 1999) ("Supplemental Order").

7. [7] On October 14, 1999, the Department issued its Phase 4-L Order in the <u>Consolidated Arbitrations</u>, D.T.E./D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 ("<u>Phase 4-L Order</u>"). In the <u>Phase 4-L Order</u>, the Department directed Bell Atlantic to file a non-recurring charge compliance filing to be reviewed in the <u>Consolidated Arbitrations</u>. <u>Phase 4-L Order</u> at 31. In addition, the Department rejected Bell Atlantic's attempt to recover historic operational support system ("OSS") costs through its OSS cost study, and disapproved the cost study and resultant rates. <u>Phase 4-L Order</u> at 46, 49. We stated that the appropriate forum for Bell Atlantic to attempt to recover historic OSS costs is a price cap proceeding (<u>id.</u>). The Department issued its Phase 4-O Order in the <u>Consolidated Arbitrations</u> ("<u>Phase 4-O Order</u>") on January 10, 2000. In that Order, the Department

noted that it would address the questions of application of non-recurring charges ("NRCs") for UNEs in the Consolidated Arbitrations and not in this proceeding. Phase 4-O Order at 5.

8. [8] Generally, section 252 of the Act provides for procedures for negotiation, arbitration, and approval of agreements. Section 252(a) sets forth the procedures for agreements arrived at through negotiation whereas section 252(c) provides the standards for arbitration. Section 252(c)(1) specifically states that "[i]n resolving by arbitration . . . any open issues and imposing conditions upon the parties to the agreement, a State commission shall . . . ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251."

9. [9] The policy expressed here will apply with equal force to Tariff No. 14.

10. [10] As we stated more specifically in the MediaOne/Greater Media Arbitration Order, the relationship between tariffs and interconnection agreements is as follows: (1) the interconnection agreement entered into by the parties generally controls the relationship of the parties; (2) the parties have the ability to choose to incorporate terms of a tariff, and that choice should be specified in the interconnection agreement; (3) the parties may elect to purchase services under tariff that are not otherwise in an interconnection agreement; (4) in the event of a conflict between provisions of a tariff and the interconnection agreement, the interconnection agreement controls; and (5) where the Department orders a local exchange carrier ("LEC") to include certain terms in a tariff, either through an arbitration proceeding or other proceeding, Department-ordered provisions control. MediaOne/Greater Media Arbitration Order at 8-12.

11. [11] Bell Atlantic's GRIP proposal is discussed, infra, at Section VIII.

12. [12] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Order and Report, FCC 96-325, CC Docket 96-98 (rel. August 8, 1996) ("Local Competition Order").

13. [13] See, supra, where the Department held that it may, in extraordinary circumstances, determine that a tariff provision should supercede an interconnection agreement provision.

14. [14] The notice requirements outlined here will apply also to Tariff No. 14 revisions in that Bell Atlantic is required to serve notice of proposed changes on all CLECs with whom it has resale agreements by electronic mail, and will post proposed changes on the Company's website.

15. [15] We note that the United States Court of Appeals vacated and remanded portions of the FCC's Advanced Services Order in its decision in GTE Service Corporation, et. al. v. FCC, Nos. 99-1176, 99-1201, 200 U.S. App. LEXIS 4111 (D.C. Circuit, March 17, 2000). It is unclear to the Department at this stage whether, and to what extent, that

decision will impact our findings herein. We trust that the parties will notify the Department if revisions to our findings are necessary. In the meantime, we expect Bell Atlantic to comply with our Order.

16. [16] We assume Bell Atlantic's concern with cost of escorts only refers to its own cost in providing escorts at no charge to CLECs when other security measures are not in place, rather than the cost of escorts that the proposed Tariff seeks to impose on CLECs for access to areas outside the CLECs multiplexing node.

17. [17] The FCC outlined the following security measures: "security cameras or other monitoring devices, or to require competitive LEC personnel to use badges with computerized tracking systems." Advanced Services Order at ¶ 48.

18. [18] See Tr. 4, at 838-40.

19. [19] In its initial brief, Sprint raised concerns with limitations on physical collocation cage sizes in proposed Tariff No. 17, Part E Section 1.2.1.A (Sprint Brief at 9). In the May revisions to the tariff, Bell Atlantic deleted the specific language to which Sprint objected. Therefore, this issue is moot.

20. [20] See discussion, infra, at Section VI.D.3(c).

21. [21] The Department designated New England Telephone and Telegraph Company, cureently doing business as Bell Atlantic, as the carrier of last resort for local exchange service and intra-LATA Message Telecommunications Service, Wide Area Telecommunications Service and Private Line Services. D.P.U 1731 at 76.

22. [22] See Tr. 3, at 531.

23. [23] Physical Collocation Order at 26.

24. [24] See Tr. 4, at 872.

25. [25] Citing Physical Collocation Order at 23.

26. [26] The Department will consider space to be legitimately exhausted at a particular central office when Bell Atlantic notifies the Department, pursuant to requirements in the Physical Collocation Order, that it cannot accommodate a request for physical collocation because of space exhaustion at that central office. See Physical Collocation Order at 17-19. We find this to be the appropriate trigger for requiring adjacent collocation to be made available since it will encourage Bell Atlantic to take a hard look at space availability issues within a central office prior to notifying the Department that it cannot accommodate a request for physical collocation.

27. [27] At the time of the December 1999 evidentiary hearings, the UNE Remand Order had not been published in the Federal Register.

28. [28] DSLAM, or Digital Subscriber Line Access Multiplexer, uses digital subscriber line and asynchronous transfer mode technologies to deliver high-speed data rates over the existing copper network.

29. [29] See 65 F.R. 2367 (January 14, 2000).

30. [30] In other words, upon notification to a CLEC that Bell Atlantic is able to begin installing CLEC equipment in a virtual collocation arrangement, the time period that it takes a CLEC to deliver the equipment to Bell Atlantic will not be counted towards the 76-day provisioning interval. In addition, when Bell Atlantic notifies the CLEC that training is required to provision the virtual collocation arrangement, the time period needed for the CLEC to coordinate the training, but not the training itself, will not be counted towards the 76 day provisioning interval.

31. [31] Bell Atlantic's proposed Tariff No. 17 imposes additional labor charges for implementation or provisioning of a non-standard arrangement. MCIW urges that the Department require Bell Atlantic to define a non-standard arrangement so CLECs will know when additional labor charges will be applied (MCIW Brief at 66). Although Part E, Section 3.3.3.A alludes to a non-standard arrangement as "equipment which [Bell Atlantic] does not normally use," we find that this definition vague and direct Bell Atlantic to define a non-standard arrangement with more specificity.

32. [34] See Local Competition Order at ¶ 585.

33. [35] See Advanced Services Order at ¶ 42.

34. [36] See also Memo to Carriers Operating in Massachusetts From Michael Isenberg, Director, Telecommunications Division, re: Bell Atlantic's Notification of Space Exhaust at Several of its Central Offices (March 3, 2000) ("Although Bell Atlantic entitled its notification filings as 'exemption requests,' the Department finds that under federal law, Federal Communications Commission ("FCC") regulations and prior Department orders, the Department need not approve or deny Bell Atlantic's 'exemption requests' and chooses not to do so at this date.")

35. [37] Enhanced Extended Link, also known as "EEL" and referred to as Expanded Extended Loop by Bell Atlantic, consists of a combination of an unbundled loop [or loops], multiplexing/concentrating equipment, and dedicated transport. The EEL allows new entrants to serve customers without having to collocate in every central office in the incumbent's territory. See UNE Remand Order, Executive Summary at 12.

36. [38] In AT&T's response to RR-DTE-97, AT&T argues that the FCC has interpreted Section 251 (c)(3) of the Act to prohibit ILECs from imposing restrictions on the use of network elements. AT&T cites the FCC's Local Competition Order at ¶ 27 and ¶ 264, and 47 C.F.R. §§51.307(c) and 51.309(a) as further limits on an ILEC's ability to restrict the use of network elements.

37. [39] See UNE Remand Order at ¶¶ 41-61.

38. [40] If the FCC directly addresses the issue of EELs crossing LATA boundaries in its forthcoming Report and Order as a result of its Fourth Further Notice of Proposed Rulemaking, the Department will direct Bell Atlantic to modify its tariff provisions accordingly.

39. Our finding here is limited only to those situations where Bell Atlantic is providing retail service across LATAs pursuant to existing FCC authority. Bell Atlantic is not required, however, to provision EELs across LATAs where it is not already provisioning retail service.

40. [42] Consolidated Arbitrations, D.T.E./D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 (May 21, 1999) ("Phase 4-K Order").

41. [43] Iowa Utilities Board, et al. v. Federal Communications Commission, 120 F.3d 753, 814 (8th Cir., July 18, 1997, as amended on rehearing on October 14, 1997).

42. [44] AT&T Corp. et al. v. Iowa Utilities Board et al., 119 S.Ct. 721 (1999).

43. [45] MCIW defines "first point of switching" as being the situation in which the CLEC is the provider of E-911, operator services, directory assistance, and other basic services to the end user (MCIW Brief at 29). However, because this proposal is not supported by evidence in the record, it will not be considered.

44. [46] During evidentiary hearings, Ms. Stern of Bell Atlantic testified that the requirement would be "based on the usage that's generated" as opposed to revenues collected. (Tr. 6, at 1126). However, nowhere in the record does Bell Atlantic distinguish whether the one-third relates to the local service as a percentage of total traffic on the line, or to the CLEC's portion of the customer's total local service.

45. [47] Proposed Tariff No. 17 provides that when a CLEC places an order for a UNE with an established standard interval, the CLEC may request a service date earlier than the standard interval service date, i.e. an expedited order, and if Bell Atlantic agrees to the expedited order, expedited order charges, i.e. expedite NRCs, will apply. See Exh. BA-MA-1, Tariff No. 17, Part A, Sections 3.2.6 and 3.3.3.

46. [48] During evidentiary hearings, Ms. Stern of Bell Atlantic testified that, for new EEL arrangements, Bell Atlantic would apply the standard provisioning intervals for each of the individual elements that make up the EEL arrangement (Tr. 6, at 1095).

47. [49] See RR-MCIW-85.

48. [50] MCIW equates its proposal for a termination charge credit to the "trunk equivalency mechanism which [Bell Atlantic] has employed for Centrex customers to

offset the costs of increased end user common line charges under its federal tariffs." (MCIW Brief at 25, n. 40, citing New England Telephone, D.P.U. 84-82 (1984)).

49. [51] A Smart Jack is used to provide loop-back testing, trouble isolation, and performance monitoring, and is installed at the premises of the end user, replacing the 4-wire NID normally associated with the DS-1 Link (Exh. DTE-242).

50. [52] AT&T concedes that there may not, in fact, have been any efficiency gains since 1995, but that Bell Atlantic's data does not provide enough information for CLECs to determine whether this may be the case. However, AT&T contends that there have been so many advances in the industry since 1995, that this is unlikely, and Bell Atlantic's cost studies are out of date (RR-DTE-98).

51. [53] Bell Atlantic, in its response to RR-MCIW-87, revised its cost recovery workpapers to eliminate the double-counting that was originally included in the Link Test Charge. However, in its revised cost study, Bell Atlantic included recovery of avoided retail costs associated with the testing of loops that Bell Atlantic had originally assumed CLECs would test (see RR-MCIW-87, at Attachment 2).

52. [54] As evidence in support of this statement, MCIW cites Bell Atlantic's failure to include any contract or other documentation to support its claim in RR-MCIW-92 that the "material price for the Smart Jack represents the most recent price available to Bell Atlantic including all available discounts."

53. [55] MCIW cites the Department's D.P.U. 94-50 price cap form of regulation for the basis that efficiency gains can be "presumed to occur every year" (MCIW Brief at 38, n.64).

54. [56] Though we expect Bell Atlantic to submit this revised non-recurring Link Test Charge in its compliance filing for this proceeding, the Department expects that this charge will be reviewed within the Consolidated Arbitrations proceedings with Bell Atlantic's other tariffed NRCs.

55. [57] The terms IP and POT represent similar concepts. The primary difference is that the CLEC defined IP can be a point located on either carrier's network whereas Bell Atlantic's POT (as defined by Bell Atlantic) could only be located on Bell Atlantic's network at an end or tandem office (or within one mile of the end or tandem office).

56. [58] Bell Atlantic states that the IP is a rating point that determines responsibility for transport and termination (Tr. 7, at 1319).

57. [59] Rate centers are geographic areas (usually corresponding closely to end offices) that Bell Atlantic uses to determine distance-sensitive pricing. Bell Atlantic has 261 rate centers in the Eastern LATA.

58. [60] To illustrate, although AT&T collocates at numerous Bell Atlantic end offices, its IP for the delivery of local traffic originated by Bell Atlantic customers is at one of its three switch locations (Tr. 2, at 346). Bell Atlantic is responsible for delivering traffic originated on its network to AT&T's appropriate switch location regardless of whether AT&T may be collocated at the Bell Atlantic end office or access tandem serving the Bell Atlantic end user.

59. [61] The first three digits in a seven digit telephone number represent the NXX exchange code.

60. [62] A mid-span fiber meet is an interconnection architecture whereby two carriers' transmission facilities meet at a mutually agreed upon point of interconnection in the middle of a fiber ring. Each party builds half a fiber ring and purchases and maintains all the fiber and electronics for its half of the ring. The FCC includes mid-span meet arrangements in its discussion of meet point arrangements. Local Competition Order at ¶ 553.

61. [63] Bell Atlantic has six tandem wire centers and a total of seven tandem switches in the Eastern Massachusetts LATA 128. The tandem switches are located in Brockton, Cambridge (two), Newton, Framingham, Lawrence, and Worcester.

62. [64] The 200,000 minutes of use per month is an estimation of a Digital Signal Level 1 amount of traffic (Tr. 7, at 1323). Digital Signal Level 1 ("DS-1") is the volume that a T-1 circuit will carry. A T-1 is a single telephone circuit that carries up to 24 separate voice or data channels.

63. [65] In response to a record request issued after the close of hearings, Bell Atlantic further modified its GRIP proposal by requiring a CLEC to establish a POT within one mile of the Telephone Company's local and/or access tandem that the rate center or equivalent rate center connects to, or such other point within proximity of said tandem, as the parties may agree (RR-MediaOne-105).

64. [66] Foreign Exchange Service is a Bell Atlantic retail service that charges the foreign exchange customer in an end office where the NXX resides for service to the foreign exchange customer's location beyond the end user's rate center (Exh. BA-MA-4, at 9-10).

65. [67] Internet Protocol Routing Service is a Bell Atlantic retail service that allows an Internet Service Provider to pay a rate that covers the costs to transport and deliver calls originated by Bell Atlantic retail customers in different rate centers to an ISP's single IP in a LATA (Exh. BA-MA-4, at 9-10).

66. [68] We noted in the MediaOne/Greater Media Arbitration Order that the record, including citation to relevant FCC precedent, on the issue of transport costs was not well developed by the parties. MediaOne/Greater Media Arbitration Order at 42, n.44.

67. [69] Bell Atlantic later modified its analysis in response to an information request (which did not request Bell Atlantic to recalculate its cost study), increasing this cost estimate to $49,717,960 (Exh. DTE-340). Since this first change, Bell Atlantic further modified this cost study and the estimated transport costs through record requests that again did not ask Bell Atlantic to recalculate its cost study.

68. [70] Case No. 99-C-1389, Order Resolving Arbitration Issues at 13-14 (January 28, 2000).

69. [71] In the Matter of Telephone Number Portability, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-286, at ¶ 210 (rel. July 2, 1996) ("Local Number Portability Order").

70. [72] In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, FCC 96-333, at ¶ 91(rel. August 8, 1996) ("Dialing Parity Order").

71. [73] Case 99-C-0529, Proceeding on Motion of the Commission to Reexamine Reciprocal Compensation, Opinion and Order Concerning Reciprocal Compensation, issued and effective August 25, 1999 at 59.

72. [74] When questioned by Rhythms/Covad's attorney, AT&T's witness indicated at hearings that it would be likely that a data CLEC with the same number of customers would reach Bell Atlantic's proposed GRIP threshold quicker than a voice CLEC with a similar number of customers (Tr. 2, at 393).

73. [75] We are referring specifically to the costs to transport traffic from a CLEC IP to a Bell Atlantic IP (the Bell Atlantic IP being located at an end office or tandem serving the Bell Atlantic end user).

74. [76] For example, a CLEC may route a call to a Bell Atlantic end user and may not have a collocation or meet point arrangement in the tandem footprint of that Bell Atlantic end user. The CLEC must still transport the call to the tandem or end office serving that Bell Atlantic end user. For calls originated on Bell Atlantic's network and destined for a CLEC customer, Bell Atlantic would be responsible for transporting those calls to the CLEC's designated IP.

75. [77] This physical interconnection for a GRIP takes the form of transport from a CLEC IP to a Bell Atlantic end or tandem office (unless a CLEC was collocated at the end or tandem office). However, this transport arrangement alone is not a point where the CLEC's and Bell Atlantic's networks would physically terminate (such as at a mid-span meet or collocation site) (Tr. 7, at 1319-1320).

76. [78] In the Matter of Telephone Number Portability, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-286 (rel. July 2, 1996) ("Local Number Portability Order").

77. [79] In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, FCC 96-333 (rel. August 8, 1996) ("Dialing Parity Order").

78. [80] Bell Atlantic uses some of the assumptions supplied by Global NAPs and obtained a different annual transport cost estimate of $1.5 million (Bell Atlantic Reply Brief at 47-48, n.28). However, as this cost estimate was presented for the first time as a footnote in Bell Atlantic's Reply Brief and is not otherwise a part of the record, we will not use it in our analysis.

79. [81] Inter-carrier compensation is defined as the remuneration received by one Party (the "Receiving Party") to recover its costs for receiving and terminating Local Traffic or receiving and handing off Compensable Internet Traffic that originates on the network of the other party (the "Originating Party") (RR-DTE-107). Inter-carrier compensation rates, as stated in the two amended interconnection agreements, are approximately one-third of the blended reciprocal compensation rates agreed to by Bell Atlantic and other CLECs in their respective interconnection agreements.

80. [82] Unfortunately, we note that there are few liability provisions similar to Tariff No. 17 Part A, Section 1.6.2.A to be found in CLEC tariffs for comparison since CLECs are generally not in the business of providing space in their facilities to other LECs.

81. [83] MCIW contends Bell Atlantic's proposal is in conflict with the section 251(c)(5) of the Act, which states that an ILEC has the "duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks" (MCIW Reply Brief at 16, n.41).

82. [84] Exh. BA-MA-1, Tariff No. 17, Part E, Section 2.1.1.D.

83. [85] DBC filed an Erratum to Attachment B on February 11, 2000.

84. [86] In an earlier Department Order, the Department clarified its position with respect to the applicability of the pick-and-choose rule by stating the following: "if the agreement is signed by 'New England Telephone and Telegraph Company,' then the 'pick-and-choose' rule applies only to provisions in any other agreements signed by 'New England Telephone and Telegraph Company,' including such agreements from Maine, New Hampshire, Rhode Island, and Vermont." MediaOne/Greater Media Arbitration Order at 97 n.83.

85. [87] Bell Atlantic states that such extraordinary circumstances may include instances where (1) Bell Atlantic must consult with multiple outside vendors to "build" the proposal; (2) the network configuration is so complex that multiple meetings with the

requesting carrier are required to define the request; and (3) Telecordia development may be required (Exh. DTE-114).

86. [88] See Part A, Sections 2.1.1.I and 2.1.1.J.

87. [89] See Exh. DTE-113, at 1.

88. [90] We note that Bell Atlantic has stated that it will not seek to terminate service for charges that are in dispute.

89. [91] Asynchronous digital subscriber line, or ADSL, is a type of DSL technology that provides for different capacity levels for incoming and outgoing communications, which is why it is referred to as "asynchronous."

90. [92] The costs are $0.61 per loop for mechanized loop qualifications and $60.91 per loop for manual qualifications.

91. [93] See RR-Sprint-11.

92. [94] Bell Atlantic agrees that the DSL tariff on file in New York would be very similar to the tariff provisions they develop for Massachusetts, the primary difference being rates due to different underlying costs (Tr. 4, at 863-864; Tr. 5, at 1049).

93. [95] Bell Atlantic Tariff No. 17, Part B, Sections 2.1.1.A - B states:

Unbundled dedicated IOF transport, which is offered subject to availability, provides a two point transmission path on a directly connected basis, dedicated to the use of the ordering CLEC in provisioning of local exchange and associated exchange access services. Unbundled dedicated IOF transport is offered as an individual network element separate from bridging, multiplexing, testing, or customer reconfiguration capabilities and functions. Unbundled common (shared) IOF transport is provided in conjunction with unbundled switching identified in this tariff under Part B, Section 5 and Section 7. Unbundled dedicated IOF transport provides a transmission path within a LATA.

94. [96] We note that the standard provisioning interval for DS-1 and DS-3 transports is 15 days for up to quantities of eight when they are available, and that this interval is subject to negotiation for DS-1 and DS-3 facilities of quantities greater than nine when there are no facilities available and construction is necessary.

95. [97] Local Competition Third Reconsideration Order, 12 FCC Rcd. at 12462.

96. Our finding here is limited only to those situations where Bell Atlantic currently is providing retail services across LATAs, pursuant to existing FCC authority. Bell Atlantic

is not required, however, to provision IOF transport across LATAs where it is not already provisioning retail service.

97. [99] Part E, Section 2.2.2.B of proposed Tariff No. 17 also requires CLECs to provide three-year forecasts for planning and duct allocation for physical collocation arrangements. We find that the forecast requirement as well as the three-year interval are reasonable. We note that this specific forecast requirement was not disputed by the CLECs; that AT&T's and Sprint's interconnection agreements both contain three-year forecasting requirements (Exh. DTE-271); and that Bell Atlantic will attempt to accommodate reasonable requests for facilities additions even though the requested addition may not have been included in the CLEC's three-year forecast (Exh. DTE-272).

98. [100] During evidentiary hearings, Bell Atlantic's witness, Amy Stern, testified that Bell Atlantic would be willing to include a confidentiality protection within the forecast requirement for EEL arrangements (Part B, Section 13.3.1.D) if the forecast requirement were approved by the Department (Tr. 6, at 1119-20).

99. [101] The Department realizes that, in the case of EEL arrangements, this change will actually increase the frequency in which CLECs will be expected to submit demand forecasts. However, it is the Department's belief that this reduced period will enable CLECs to develop more accurate forecasts.

100. [102] This decision is consistent with previous rulings on the use of forecasts as a condition in meeting provisioning obligations under the Act. <u>See</u> <u>MediaOne/Greater Media Arbitration Order</u>.

101. [103] A PBX, or a private branch exchange, is a computerized on-site telephone system which routes calls within the organization, and from the outside to persons within the organization.

102. [104] <u>Consolidated Arbitrations</u>, D.T.E./D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 (December 4, 1996) ("<u>Phase 4 Order</u>").

103. [105] <u>Consolidated Arbitrations</u>, D.T.E./D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 (June 11, 1998) ("<u>Phase 4-G Order</u>").

104. [106] <u>Consolidated Arbitrations</u>, D.T.E./D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 (January 7, 1999) ("<u>Phase 4-I Order</u>").

105. We direct Bell Atlantic to recalculate all CCOE costs which were based upon the 15 square feet space allocation to reflect our findings in Section VI.B.4 that reduced the per bay space allocation to seven square feet.

106. [108] <u>In the Matter of Local Exchange Carriers' Rate, Terms and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and</u>

Switched Transport, Second Report and Order, CC Docket No. 93-162 at ¶ 35 (adopted June 9, 1998).

107. [109] See AT&T Special Pricing Arrangement, D.P.U. 90-24, at 190 (1991); NET Centrex, D.P.U. 85-275/276/277 (1985).

108. [110] The disputed amount penalty is the interest accrued during the dispute (see Exh. DTE- 119).

109. [111] Section 4.1.8.G.

110. [112] Section 4.1.7.G.

111. [113] The FCC approved the merger of Bell Atlantic and NYNEX with, among others, the condition that Bell Atlantic would provide Massachusetts carriers with the option to pay one-time NRCs in installments (Exh. MCIW-16; Exh. MCIW-17).

112. [114] The non-recurring charge mechanism as defined in the Phase 4-G Order of the Consolidated Arbitrations provides CLECs with the option of "amortiz[ing] the NCR over the initial term of the collocation agreement**.** Phase 4-G Order at 26.

113. [115] The rates for the ULSC are contained in Part M, Section 2.6.3.

114. [116] For the purposes of this section, Bell Atlantic defines an information services call as a call to "telephone numbers with the NXX designation of 976 or 940."
Tariff No. 17, Part C, Section 2.3.1.B.

115. [117] Bell Atlantic originally proposed to allow CLECs to retain $.02 for every information service call. However, it later revised the rate from $.02 to $.05 to be consistent with the rate CLECs receive under interconnection agreements.

116. [118] A CMDS rate is the rate associated with the "Centralized Message Distribution System" used by ILECs to exchange billing data with each other and to determine the financial settlements between them. ILECs also clear Independent Telephone Company ("ITC") data through CMDS and charge the ITCs for doing this.