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D.T.E. 99-52

Petition of Greater Media Telephone, Inc. for arbitration, pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an interconnection agreement with New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts.

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I. INTRODUCTION

This arbitration proceeding is held pursuant to the Telecommunications Act of 1996, 47 U.S.C. § 252 ("Act"). The proceeding is an arbitration between Greater Media Telephone, Inc. ("Greater Media") and New England Telephone and Telegraph Company d/b/a/ Bell Atlantic-Massachusetts ("Bell Atlantic"). A portion of the proceeding (as described below) has been consolidated with D.T.E. 99-42/43, an arbitration between MediaOne Telecommunications of Massachusetts, Inc. ("MediaOne") and Bell Atlantic, in order to address similar issues.[1] D.T.E. 99-42/43, 99-52.

Bell Atlantic is an incumbent local exchange carrier ("ILEC"), as defined by the Act, within the Commonwealth of Massachusetts. Greater Media is a facilities-based[2] competitive local exchange carrier ("CLEC"). Greater Media is arbitrating its initial interconnection agreement with Bell Atlantic and is not currently providing telecommunications services. Greater Media is in the process of completing its network design, and plans to provide local exchange and other telecommunications services, initially in the Worcester area.

II. PROCEDURAL HISTORY

Greater Media filed a Petition for Arbitration of an interconnection agreement with Bell Atlantic

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[1] On April 22, 1999, both MediaOne and Bell Atlantic filed Petitions for Arbitration. The MediaOne petition was docketed as D.T.E. 99-42 and the Bell Atlantic petition was docketed as D.T.E. 99-43. The Arbitrator consolidated the two Petitions for Arbitration ("MediaOne/Bell Atlantic Arbitration") on May 6, 1999.

[2] Greater Media's network will comprise a combination of cable plant and telecommunications facilities, including switching equipment.

on May 10, 1999 pursuant to Section 252(b) of the Act[3] ("Petition"). The petition was docketed as D.T.E. 99-52. On June 4, 1999, Bell Atlantic filed a response to Greater Media's Petition ("Response"). On June 14, 1999, the Department held a procedural conference and technical session.

On June 4, 1999, Greater Media filed a Motion for Partial Consolidation of Arbitration proposing that the Department consolidate six issues included in the Greater Media arbitration petition with the MediaOne/Bell Atlantic Arbitration. The six issues are: (1) Rate Demarcation Point Definition, (2) Interpretation and Construction, (3) Geographic Relevance, (4) Physical Architecture, (5) Trunk Group Connections and Ordering, and (6) Network Interface Device. On June 9, 1999, the Arbitrator[4] granted Greater Media's Motion for Partial Consolidation stating that the issues involved common questions of law and fact. The Arbitrator also accepted a request by the parties that should a consolidated issue be resolved between MediaOne and Bell Atlantic (but not Greater Media), that issue would continue to be investigated, and decided, in the Greater Media Arbitration. Since the consolidation ruling, Bell Atlantic and MediaOne resolved the Rate Demarcation Point and the Network Interface Device issues.[5] On August 25, 1999, the Department issued its decision in D.T.E.

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3 Section 252(b) of the Act permits a carrier to petition a state commission to arbitrate any issue left unresolved after voluntary negotiations between the carriers have occurred. 47 U.S.C. § 252(b)(1).

4 The Commission designated Department Hearing Officer Joan Foster Evans as the Arbitrator.

5 Though not included in Greater Media's Motion for Partial Consolidation of Arbitration, the issue entitled "Points of Interconnection/Interconnection Points," which is closely related to several issues that were consolidated, was addressed in the consolidated portion of the proceeding. The Department decided this issue, with the consent of the

(continued…)

99-42/43, 99-52.

On June 25, 1999, the parties submitted prefiled direct testimony, and on July 2, 1999, rebuttal testimony was filed. The parties also filed Position Statements which addressed issues generally not discussed in testimony. On July 23, 1999, the Department conducted arbitration hearings at its offices. In support of its proposal, Greater Media presented the testimony of Dr. Francis R. Collins, president of CCL Corporation. Bell Atlantic presented Donald E. Albert, network services director of competitive local exchange carrier implementation.

The parties submitted initial briefs on August 2, 1999, including proposed findings of fact and conclusions of law, and reply briefs on August 6, 1999. The record consists of ten exhibits, twelve record request responses, and responses to all discovery requests filed in this proceeding.[6]

III. STANDARD OF REVIEW

Section 252(c) of the Act sets out the standards for arbitrations by state commissions. 47 U.S.C. § 252(c). Section 252(c) states, in relevant part, that a state commission shall

> (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [Federal Communications Commission ("FCC")] pursuant to section 251;
> (2) establish any rates for interconnection, services, or network elements according to [section 252(d).]

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[5](…continued)
parties, in D.T.E. 99-42/43, 99-52.

[6] The parties agreed that all discovery responses submitted in this proceeding would be entered as evidence. Those responses are referred to in this Order by their information request designations. In addition, the Arbitrator incorporated by reference the record in D.T.E. 99-42/43. The Arbitrator took administrative notice of Bell Atlantic Proposed M.D.T.E. No. 17, and FCC Docket 99-141.

Section 251(c)(2) of the Act defines the obligations for ILECs to interconnect with other carriers. Each ILEC has the duty

> to 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 [section 251] and section 252.

Furthermore, § 252(e)(3) provides that "nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards and requirements."

IV. UNRESOLVED ISSUES

A. Local Traffic Definition; Reciprocal Compensation

1. Introduction

Local traffic is traffic that originates from a customer of one carrier on that carrier's network and terminates to a customer of another carrier within a given local calling area (Bell Atlantic Brief at 13). Local calling areas, as defined by the Department, include at least a customer's home and contiguous exchanges, which a customer is able to call without incurring a toll charge. New England Telephone and Telegraph Company, D.P.U. 89-300, at 52, 64 (1990).

The Act requires local exchange carriers to establish reciprocal compensation arrangements for the transport and termination of telecommunications. 47 U.S.C. § 251(b)(5). In the Local Competition

Order,[7] the FCC construed this provision to apply only to the transport and termination of local telecommunications traffic. Local Competition Order at ¶ 1034. The FCC and the Department have investigated and issued orders addressing whether traffic to Internet Service Providers ("ISPs") constitutes local traffic and therefore is subject to reciprocal compensation payments under the Act. The Department found in MCI WorldCom, Inc., D.T.E. 97-116-C (1999) ("MCI WorldCom Order"), that Bell Atlantic was no longer required to pay reciprocal compensation to CLECs for ISP-bound traffic. See also In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Declaratory Ruling (rel. Feb. 26, 1999) ("Internet Traffic Order"); Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, Notice of Proposed Rulemaking (rel. Feb. 26, 1999) ("Inter-Carrier Compensation").

The Parties disagree on two points. First, the parties disagree whether ISP-bound traffic should be included in the definition of local traffic[8] (Bell Atlantic Brief at 14; Greater Media Brief at 8). Second, the parties disagree whether Bell Atlantic should be allowed to exclude ISP-bound traffic from

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[7] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325, (rel. August 8, 1996) ("Local Competition Order").

[8] Bell Atlantic's proposed local traffic definition states, in pertinent part, that local traffic is "traffic that is originated by a Customer of one Party on that Party's network and terminated to a Customer of the other Party on that other Party's network, within a given local calling area, or [expanded area service] area, as defined in BA-MA's effective Customer tariffs, or, if the Department has defined local calling areas applicable to all LECs, then as so defined by the Department…Local Traffic does not include any traffic that is transmitted to or returned from the Internet at any point during the duration of the transmission ("Internet Traffic")" (Bell Atlantic Brief at 13).

reciprocal compensation arrangements as specified in the proposed interconnection agreement.[9]

2. Positions of the Parties

a. Bell Atlantic

Bell Atlantic maintains that the FCC and the Department have both found that "local traffic" excludes ISP-bound traffic because ISP traffic is non-local, interstate traffic and not subject to reciprocal compensation under § 251(b)(5) of the Act (Bell Atlantic Brief at 14, citing Internet Traffic Order; MCI WorldCom Order).

Bell Atlantic argues that Greater Media's concern for preserving its rights in the event the Department, FCC, or a court makes internet traffic subject to reciprocal compensation are covered in the "change of laws" provision in Section 29.3 of the proposed interconnection agreement (Bell Atlantic Brief at 14). Bell Atlantic notes that if the FCC were to determine that some form of inter-carrier compensation was required for internet traffic, then Bell Atlantic would comply with any such effective requirement (Bell Atlantic Reply Brief at 6).

Bell Atlantic argues that consistent with the Department's MCI WorldCom Order and the FCC's Internet Traffic Order, ISP-bound traffic is not subject to reciprocal compensation; therefore, it is reasonable to exclude such traffic from reciprocal compensation in the interconnection agreement (Bell Atlantic Brief at 30; Bell Atlantic Proposed Findings of Facts and Conclusions of Law at 10-11).

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9 Bell Atlantic proposed to include the following subsection in the section defining the parties' reciprocal compensation obligations: "[n]o Reciprocal Compensation shall apply to traffic that is transmitted to or returned from the Internet at any point during the duration of the transmission ("Internet Traffic")" (Greater Media Petition at Attachment B, Proposed Interconnection Agreement Section 5.7.2.1(d)).

b. Greater Media

Greater Media proposes that the Department should reject Bell Atlantic's proposed language excluding ISP-bound traffic from the definition of local traffic that is subject to reciprocal compensation, and, instead, include Greater Media's "placeholder" section until this issue has been resolved by regulators (Greater Media Brief at 9, 16). Greater Media attached, as Exhibit C to its Petition, a proposal for payment of reciprocal compensation for ISP-bound traffic, modified to reflect the payment scheme required by the Department in the MCI WorldCom Order (id. at 9). Greater Media argues that the placeholder will protect each party's interest from pending regulatory proceedings (Greater Media proposed Findings of Facts and Conclusions of Law at 11).

Greater Media argues that the issue of compensation for ISP-bound traffic is unsettled (Greater Media Brief at 8). Greater Media maintains that the Department should not force upon Greater Media contract language on the definition of local traffic before the following outcomes have been decided: 1) motions for reconsideration have been decided in D.T.E. 97-116-C; 2) the parties have negotiated compensation for the termination of ISP-bound traffic as directed by the Department in D.T.E. 97-116-C; and 3) the FCC has adopted a federal standard for compensation of ISP-bound traffic (id.). Finally, Greater Media requests that the Department distinguish between ISP-bound traffic and local traffic that relies on Internet Protocol for telephony (id. at 8 n.8).

3. Analysis and Finding

The FCC has found that ISP-bound traffic is not local but interstate for purposes of the Act's

reciprocal compensation provisions. Inter-Carrier Compensation; Internet Traffic Order 99-68, at ¶¶ 12 and 26 n.87. In the MCI WordCom Order, the Department found, based on the FCC's ruling that ISP traffic is interstate, that reciprocal compensation is not due for ISP-bound traffic. Internet Traffic Order; MCI WorldCom Order at 13.[10]

Therefore, we find that the definition of Local Traffic, as proposed by Bell Atlantic, which states that ISP-bound traffic is not local but interstate for purposes of the 1996 Act's reciprocal compensation provisions is reasonable. In FCC Docket No. 99-68, the FCC will address appropriate compensation for ISP-bound traffic; it will not be reconsidering the question of whether ISP-bound traffic is local or interstate. In addition, any decision we make on reconsideration in D.T.E. 97-116-C will not affect the definition of local traffic, nor will potential negotiations between the parties.

Regarding compensation for ISP-bound traffic, the parties are bound by the compensation rules set out in MCI WorldCom Order where we stated that "Bell Atlantic shall not be required to make reciprocal compensation payments, in excess of a 2:1 terminating-to-originating traffic ratio" as an interim arrangement pending establishment of permanent FCC rules. MCI WorldCom Order at 41. MCI WorldCom Order also encouraged the parties to negotiate appropriate compensation for ISP-bound traffic. Id. at 30. We note that the parties have not yet been successful in negotiating

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[10] Regarding the IP telephony concern raised by Greater Media, we note that the FCC in its Internet Traffic Order made no distinctions between ISP-bound traffic and what Greater Media considers a different type of traffic, local traffic that relies on Internet Protocol for telephony. In addition, the Department's MCI WorldCom Order deals with the nature and compensation for calls that are bound to ISPs; the Order does not differentiate between IP telephony and other Internet-bound traffic, such as traffic to web sites. Thus, for purposes of the local traffic definition, we find there should be no distinction.

compensation for ISP-bound traffic. When the FCC issues its permanent intercarrier compensation rules for ISP traffic, the parties will incorporate those rules into their interconnection agreement per the change of laws section of the agreement.

We reject Greater Media's proposal for a placeholder, and conclude that it is reasonable and appropriate for Bell Atlantic to include language that ISP-bound traffic is not subject to reciprocal compensation, as long as that language reflects the Department's findings in the MCI WorldCom Order concerning the 2:1 traffic ratio and the ability of the parties to negotiate their own compensation mechanism for ISP-bound traffic. See also, MediaOne/Bell Atlantic Arbitration, D.T.E. 99-42/43, 99-52, at 66 (1999) ("MediaOne Order"). We note that the parties are required to modify their interconnection agreement to comply with future FCC and Department decisions. See Section 29.3 of the proposed interconnection agreement (requiring parties to renegotiate in good faith provisions materially affected by regulatory decisions). However, in the meantime, the interconnection agreement should reflect existing rules.

B. Switched Exchange Access Service Definition

1. Introduction

Switched Exchange Access [11] Services are ILEC switching services that are used in the origination or termination of telephone toll service. 47 U.S.C. §153(16). Bell Atlantic proposes the following definition:

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[11] The Act defines exchange access as "the offering of access to telephone exchange services or facilities for the purpose of origination or termination of telephone toll services." 47 U.S.C. §153(16).

> "Switched Exchange Access Service" means the offering of transmission or switched services to Telecommunications Carriers for the purpose of the origination or termination of Telephone Toll Service. Switched Exchange Access Services include Feature Group A, Feature Group B, Feature Group D, 800/888/877 access, and 900 access and their successors or similar Switched Exchange Access services. *Switched Exchange Access Service does not include Internet Traffic*.

(Bell Atlantic Brief at 21-22, emphasis added). The issue in dispute is whether the definition of Switched Exchange Access Service should include a disclaimer stating, "Switched Exchange Access Service does not include Internet Traffic."

2. Positions of the Parties

a. Bell Atlantic

Bell Atlantic contends that the definition for Switched Exchange Access Service should exclude Internet Traffic (id. at 22). Bell Atlantic points out that the FCC has articulated that ISP Traffic is not subject to access charges and exclusion of such traffic from the access definition is consistent with FCC Rulings (id., citing MTS/WATS Market Structure, CC Docket No. 78-72, Memorandum Opinion and, 97 FCC 2d 682 (1983); Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, CC Docket No. 87-213, Order, 3 FCC Rcd 2631 (1988)). According to Bell Atlantic, Greater Media has failed to show why this agreement should not adhere to the FCC's ruling exempting interstate, Internet-bound traffic from access charges (Bell Atlantic Brief at 22). Bell Atlantic asks the Department to maintain this clarification as part of the definition.

b. Greater Media

Greater Media contends that the definition of Switched Exchange Access Services should not include Bell Atlantic's proposed disclaimer for Internet traffic (Greater Media Brief at 14). Greater

Media states that such disclaimers are inappropriate in light of the pending proceedings by the Department regarding ISP traffic and reciprocal compensation, MCI Worldcom Order (IR-DTE-GMT-1-23). Greater Media contends that the proposed language could prohibit it from obtaining "appropriate compensation for the termination of Internet Traffic" in the future (id.). Furthermore, Greater Media believes this disclaimer to be confusing because "the definition pertains to access services and not specifically to the nature of the traffic. Singling out Internet Traffic appears to connote a technological aspect of that traffic that factually does not exist" (id.). Greater Media proposes to address all issues relating to internet traffic through a separate placeholder provision (Greater Media Proposed Finding of Facts and Conclusions of Law at 9). Greater Media requests that the Department exclude the internet traffic disclaimer from the proposed interconnection agreement.

3. Analysis and Findings

While internet traffic is exempted from switched access charges, the FCC has recognized that "ESPs[12] in fact use interstate access service; otherwise, the exemption would not be necessary." Internet Traffic Order at ¶ 16, citing MTS/WATS Market Structure, CC Docket No.78-72, Memorandum Opinion and, 97 FCC 2d 682, at 860 (1983); Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, CC Docket No. 87-213, Order, 3 FCC Rcd 2631 (1988)). Therefore, we disagree with Bell Atlantic that the definition for Switched Exchange Access Service should not include Internet Traffic. However, we agree with Bell Atlantic that there needs to be a qualifier that Internet Traffic is not subject to intrastate access charges. Therefore, the

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[12] Enhanced Service Providers ("ESPs") include ISPs. Internet Traffic Order at ¶ 5.

Department directs the parties to modify this provision accordingly.

C. Point of Termination Bay Definition

1. Introduction

The parties dispute whether the definition of a Point of Termination Bay ("POT Bay"), "the piece of equipment at which the CLEC and Bell Atlantic cables meet" (Consolidated Arbitrations-Phase 4-G Order at 3),[13] must indicate that a POT Bay is available only with a collocation arrangement.

2. Positions of the Parties

a. Greater Media

Greater Media argues that a POT Bay is a point of termination where Greater Media may interconnect its facilities with the facilities of Bell Atlantic regardless of whether Greater Media is physically collocated (Exh. GMT-2, at 8). Greater Media opposes Bell Atlantic's attempt to limit this term only in relation to physical collocation, and insists that Bell Atlantic's narrow definition is in violation of the FCC's Advanced Telecommunications Capability Order[14] (id. at 9; Greater Media Proposed Findings of Fact and Conclusions of Law at 6).

Greater Media argues that a POT Bay is useful for interconnection independent of whether a CLEC is collocated because it allows a CLEC to terminate its facilities on one side and Bell Atlantic to

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[13] Consolidated Arbitrations, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 ("Consolidated Arbitrations").

[14] In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, FCC 99-48 (1999) ("Advanced Telecommunications Capability Order").

terminate the loops on the other side, so that a CLEC can access loops through cross connections within the POT Bay (IR DTE-GMT-1-6). Greater Media argues that Bell Atlantic's naming its generic termination bay "POT Bay"is an attempt to limit the arrangement to collocation (id.).

Greater Media contends that its definition of a POT Bay, which is "[t]he intermediate distributing frame system that serves as a point of demarcation for interconnection," is more consistent with the fact that a "POT Bay should be available to CLECs for interconnection without collocation as such interconnection is technically feasible" (Exh. GMT-2, at 9-10; Greater Media Brief at 9). Greater Media stated that its proposal of a Customer Interface Panel ("CIP")[15] is a example of a POT Bay (IR DTE-GMT-1-6) and noted that Greater Media's witness stated during the hearing that both the POT and the CIP refer to cross-connect termination bays (Tr. at 85).

b. Bell Atlantic

Bell Atlantic's proposed definition of a POT Bay is as follows: "POT Bay" or "Point of Termination Bay" is a frame located in a physical Collocation area that serves as a point of demarcation for physical Collocation Interconnection" (Bell Atlantic Brief at 16; Bell Atlantic Proposed Findings of Facts and Conclusions of Law at 6).

Bell Atlantic argues that "[Bell Atlantic] utilizes a POT Bay as the demarcation point when the parties interconnect or access unbundled network elements through physical collocation" (Bell Atlantic

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[15] "The [CIP] is a digital cross-connect panel that was to have been offered by Bell Atlantic to connect individual UNEs to each other as specified by a CLEC." Consolidated Arbitrations-Phase 4-E Order at 2. See Section IV.H. for a discussion of the CIP.

Brief at 16). Bell Atlantic maintains that a POT Bay is located in a physical collocation node and serves as a point where Bell Atlantic delivers loops so that a CLEC obtains access to those loops and can transport them to the CLEC's switch (id.). Bell Atlantic contends that Greater Media's witness stated during hearings that a POT Bay is similar to a CIP, which Bell Atlantic describes as type of physical collocation arrangement (id.).

3. Analysis and Findings

The question is whether a POT Bay can be defined independent of collocation. This question is answered below in the CIP proposal section (Section IV.H.) where we reject Greater Media's CIP proposal because of a lack of evidence on which to base a finding of technical feasibility. We reiterate the fact that Greater Media has the right to interconnect with Bell Atlantic without being required to collocate. Bell Atlantic's definition of POT Bay as a device to be used with collocation does not preclude Greater Media from proposing a method of interconnection with Bell Atlantic that does not require collocation. Therefore, we accept Bell Atlantic's POT Bay definition. We note that although we accept Bell Atlantic's POT Bay definition, this does not preclude Greater Media from requesting other types of technically feasible interconnection arrangements that do not include collocation. See Consolidated Arbitrations-Phase 4-K Order at 26.

D. Rate Demarcation Point Definition

1. Introduction

Rate Demarcation Point ("RDP") is the dividing line "between wiring and other equipment that is under the control and responsibility of the carrier and that which is under the control and

responsibility of the subscriber or premises owner" (Bell Atlantic Brief at 17, citing FCC WT Docket No. 99-217 and CC Docket No. 96-98, Notice of Proposed Rulemaking and Notice of Inquiry, at ¶ 65 (rel. July 7, 1999)). For single family dwellings, the parties agree that the RDP should be located at the Network Interface Device ("NID"),[16] placed on the outside or in the basement of the building. For multiunit buildings, the parties disagree on the RDP's location, and how the location of the RDP is determined for multiunit buildings. Specifically, the parties disagree whether the RDP should be located at each tenant's unit or at the Minimum Point of Entry ("MPOE"),[17] usually the basement of the building.

2. Positions of the Parties

a. Greater Media

Greater Media asks that the Department establish the RDP at the MPOE for multiunit properties (Exh. GMT-1 at 11-12; Greater Media Brief at 10). Greater Media states that establishing the RDP at the MPOE ensures that customers are free to choose a local exchange provider in a competitive marketplace (Exh. GMT-1, at 11). Greater Media argues that the farther an RDP is from

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16 NID is a connection device between the line or drop wire from the telephone company and inside wiring in the customer's premises. See Section IV.I. for a discussion of the NID.

17 MPOE is defined as "either the closest practicable point to where the wiring crosses a property line or the closest practicable point to where the wiring enters a multiunit building or buildings" (Bell Atlantic Brief at 18, citing 47 C.F.R. § 68.3).

public access on private property, the harder it is for a customer to acquire services from one of the CLECs (id.). Greater Media contends that its proposal would decrease the challenges CLECs face connecting their facilities to the customer, thereby eliminating a significant barrier to entry and providing customers with access to a variety of local exchange providers (Greater Media Brief at 10). In addition, Greater Media maintains that this arbitration is the appropriate proceeding to adopt its MPOE proposal because the issue has been squarely presented by Greater Media and is ripe for decision (id. at 14).

Greater Media points out that it is anti-competitive for Greater Media and other CLECs to be required to build their own house and riser cable or pay to lease sub-loop unbundled facilities from Bell Atlantic to serve customers in multiunit buildings (Greater Media Petition at 19). In addition, Greater Media argues that Bell Atlantic's current practice is discriminatory because it prevents CLECs from gaining access to end users, or subjects CLECs to demands from premises owners for payments to gain access to the premises (Greater Media Reply Brief at 3).

Furthermore, Greater Media states that by placing the RDP at the MPOE, multiunit property owners will incur less disruption because additional trenching and conduit construction on their property will be eliminated (Exh. GMT-1, at 11). While Greater Media points out that moving the RDP to the MPOE shifts the responsibility of the maintenance of the inside wiring from Bell Atlantic to the customer, these customers/owners would still have the option to contract with Bell Atlantic or other qualified companies to maintain this wiring (Greater Media Brief at 11). Greater Media notes that the FCC has recognized that changing the RDP to the MPOE would place the burden of the costs

associated with the maintenance of the inside wiring from the general body of ratepayers to those specific customers[18] (id., citing Notice of Proposed Rulemaking, CS Docket No. 95-184, at 40 (1996)). Greater Media notes that its approach is analogous to the detariffing of inside wiring, where Bell Atlantic no longer owns and maintains that wiring (id. at 12). Greater Media also argues that Bell Atlantic has not substantiated its claim that moving the RDP to the MPOE would result in excessive burdens on property owners (id. at 13).

Greater Media points out that at least six states in Bell Atlantic's southern region and the District of Columbia have adopted the MPOE as the RDP (id. at 12). Greater Media's witness stated that placing the RDP at the MPOE promotes the central theme of the Act by aiding market entry for CLECs "in an efficient and economical manner and affording customers additional choices in local service providers" (Tr. at 28-29).[19]

b. Bell Atlantic

Bell Atlantic contends that its definition of RDP conforms to the FCC's definition of a demarcation point in 47 C.F.R. § 68.3 (Bell Atlantic Brief at 17). Bell Atlantic contends that Greater

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[18] Greater Media argues that under its proposal to move the RDP to the MPOE, intra-premises distribution plant would be removed from rates thereby benefitting consumers (Greater Media Brief at 13).

[19] Greater Media suggests the Department "track" the existing FCC regulations for those buildings constructed before the effective date of the FCC's ruling on the RDP in 1990; Bell Atlantic should be allowed to continue to practice its nondiscriminatory methods for the placement of the RDP (Greater Media Brief at 14). For those buildings built or substantially renovated after the 1990 regulations were established, the RDP should be placed at the MPOE (id.). The Department notes that this proposal by Greater Media appears for the first time in the Brief. To the extent that there is no record evidence to support this proposal, the Department will not accept it.

Media's proposal to place the RDP at the MPOE is not required by the FCC guidelines (Bell Atlantic Proposed Findings of Facts and Conclusions of Law at 6). Bell Atlantic points out that 47 C.F.R. §68.3(b)(2) states "if the telephone company does not elect to establish a practice of placing the demarcation point at the MPOE, the multiunit premises owner shall determine the location of the demarcation point" (Exh. BA-2, at 10-11). Bell Atlantic states that it abides by this regulation; that it does not choose to place the RDP at the MPOE, as Greater Media has requested, but gives the property owner the opportunity to choose the location of the RDP (IR DTE-BA-1-2). Bell Atlantic states that property owners do and should determine where the RDP is located (id.). Additionally, Bell Atlantic contends that Greater Media's witness, while originally making statements to the contrary, stated clearly during cross examination that Greater Media is in agreement with Bell Atlantic that the property owner should have the choice (Bell Atlantic Brief at 18).

Bell Atlantic maintains that Greater Media's MPOE proposal would shift installation and maintenance responsibility for any riser cable or wiring in an existing multiunit building to the property owner (id. at 21). Bell Atlantic argues that a change in the current policy of allowing property owners to determine the location of the RDP could cause confusion for customers and property owners (Exh. BA-MA-2, at 11). Bell Atlantic points out that by placing the RDP at the MPOE, as Greater Media has proposed, customers will have to contact the building owners when a problem arises with the wiring (id.). According to Bell Atlantic, property owners would acquire the additional responsibilities of installation and maintenance for the riser cable and wiring located in the multiunit buildings; responsibilities they may not wish to assume (Bell Atlantic Brief at 21).

Due to the major customer impact that could result from a change in this policy, Bell Atlantic argues that a decision or change of policy should not be made in this arbitration, and other affected parties should have the opportunity to comment since the policy would apply to all carriers and customers (Exh. BA-MA-2, at 11-12).

Bell Atlantic acknowledges that some of the states in Bell Atlantic's southern region have adopted a policy which places the RDP at the MPOE, but it contends that this fact is irrelevant (Bell Atlantic Brief at 20 n.16). Furthermore, Bell Atlantic argues that Greater Media's claim that it is anti-competitive for Bell Atlantic to charge Greater Media for the use of Bell Atlantic's house and riser cables in multiunit buildings is unfounded because Bell Atlantic is entitled to recover its costs for the equipment Greater Media chooses to use (Exh. BA-MA-2, at 12). Finally, Bell Atlantic contends that it is not anti-competitive to require Greater Media to place its own house and riser cables in the multiunit properties because Bell Atlantic was obligated to place the cables in order to serve the customers in those buildings (id.). Bell Atlantic notes that the FCC is investigating this issue through a Notice of Inquiry (Bell Atlantic Brief at 21).

3. Analysis and Findings

The FCC rules at 47 C.F.R. § 68.3(b)(2) state that:

> [i]f the telephone company does not elect to establish a practice of placing the demarcation point at the minimum point of entry, the multiunit premises owner shall determine the location of the demarcation point or points. The multiunit premises owner shall determine whether there shall be a single demarcation point location for all customers or separate such locations for each customer.

We find that Bell Atlantic is complying with 47 C.F.R. § 68.3. While this regulation states that

the telephone company may place the RDP at the MPOE for multiunit buildings built or renovated after August 13, 1990, the regulation doesn't require such placement, but provides guidelines for situations where the company does not choose to place the RDP at the MPOE. Since Bell Atlantic is complying with 47 C.F.R. § 68.3, we see no need to mandate a change in the location of the RDP at this time. While we note that other states have implemented policies that place the RDP at the MPOE, we agree with Bell Atlantic that this does not change the fact that Bell Atlantic is complying with the FCC's requirements.[20]

We note that competitive carriers may gain access to tenants of multiunit buildings through access to existing wires. Bell Atlantic recently filed rates, terms, and conditions for CLEC access to house and riser cable in Bell Atlantic Proposed M.D.T.E. No. 17 ("Tariff No. 17") (D.T.E. 98-57). Bell Atlantic must provide this tariffed service on a non-discriminatory basis,[21] and therefore Greater

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20 The FCC has opened a rulemaking that addresses the very issue proposed here by Greater Media. See Promotion of Competitive Networks in Local Telecommunications Markets, Notice of Proposed Rulemaking and Notice of Inquiry, WT Docket No. 99-217, and Third Further Notice of Proposed Rulemaking, CC Docket No. 96-98 (rel. July 7, 1999). The NPRM and NOI request comment on how the FCC's rules governing determination of the demarcation point between facilities controlled by the ILEC and by the property owner in multiple unit premises impact competitive provider access, and whether any modification or clarification of those rules is appropriate to promote access. Id. at ¶¶ 65-67. The FCC specifically references comments received in other proceedings that recommend that the FCC fix the demarcation point at the MPOE, and impose an obligation on building owners to provide nondiscriminatory access to inside wiring. Id. at ¶ 66.

21 Bell Atlantic included terms and conditions in its proposed Tariff No. 17 filing that describe its house and riser cable offering. See Bell Atlantic Proposed M.D.T.E. No. 17, Section 12.2. Bell Atlantic proposes to offer house and riser cable "subject to the availability of facilities on a first-come-first-served basis." Section 12.2.1.C. Under

(continued…)

Media and other CLECs may use this service, once approved, to access tenants in a multitenant building.

E. Transport Issues

1. Introduction

When a carrier transports a call originated by a customer on its network to a customer of another carrier's network, the originating carrier must provide transport to reach the terminating carrier's network. One option for the originating carrier is to purchase transport (i.e., entrance facilities) from the terminating carrier.[22] The terminating carrier would charge the originating carrier a fee for entrance facilities that would include fixed charges as well as a mileage-sensitive charge. When Bell Atlantic chooses to purchase transport from Greater Media to reach Greater Media's Interconnection Point ("IP"),[23] Bell Atlantic proposes to limit the transport fees that Greater Media may

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[21](…continued)
our parity standard adopted in the Consolidated Arbitrations, Bell Atlantic must provide service to CLECs on parity to service it provides itself. Consolidated Arbitrations-Phase 3 Order at 21. Bell Atlantic may not give preference to its own retail customers over CLECs. Id. In light of this standard, we construe Bell Atlantic's provision of house and riser cable on a first-come-first-served basis to mean that the first carrier to request access to house and riser cable, whether that carrier is Bell Atlantic retail or a CLEC, is the first carrier to be given access to that cable.

[22] Carriers have four options to provide the necessary transport to reach another carrier's Interconnection Point: (1) self-provision its own transport; (2) purchase transport from the terminating carrier; (3) purchase transport from a third party; or (4) negotiate a mid-span fiber meet or other facility-sharing arrangement (Exh. BA-MA-7 Consolidated, at 5).

[23] An IP, as defined by Bell Atlantic, is a specific point designated by each carrier on its respective networks from which the terminating carrier provides the transport (and termination) to complete a local call (Exh. BA-MA-7 Consolidated at 5; MediaOne

(continued…)

charge Bell Atlantic to a monthly fixed transport charge (Exh. BA-MA-7 Consolidated, at 13-14).

2. Positions of the Parties

a. Bell Atlantic

Because Greater Media is proposing to interconnect with Bell Atlantic at one location in the Eastern LATA, Bell Atlantic argues that this arrangement would force Bell Atlantic to transport all calls in the LATA to this one IP (Exh. BA-MA-7 Consolidated, at 13; Bell Atlantic Brief at 28). In this situation, Bell Atlantic proposes that the rate that it would pay to Greater Media to transport traffic to Greater Media's IP, when Bell Atlantic elects to purchase transport from Greater Media, should be the entrance facility fixed rate fees and should not include the mileage sensitive/recurring fees as set forth in M.D.T.E. No. 15 (Exh. BA-MA-7 Consolidated, at 14). Bell Atlantic states that in the event Greater Media expands beyond the Worcester area and does not establish an additional IP in the tandem area associated with its customers in its expanded territory, Bell Atlantic would be forced to pay inflated mileage charges to deliver traffic to Greater Media's IP in Worcester (id. at 28). Bell Atlantic contends that it is unreasonable to shift to Bell Atlantic the entire cost burden for the transport of traffic; Bell Atlantic's proposal eliminates the mileage-sensitive transport charges when Greater Media fails to offer what Bell Atlantic considers adequate interconnection arrangements (Bell Atlantic Brief at 28).

b. Greater Media

Greater Media opposes Bell Atlantic's proposal to pay Greater Media only a non-distance-

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[23](…continued)
Order at 22).

sensitive entrance facility charge for transport based on the location of Greater Media's IPs (Greater Media Brief at 15-16). Greater Media claims that Bell Atlantic is attempting to either dictate Greater Media's network architecture or penalize Greater Media for a network architecture that is different than Bell Atlantic's (id. at 16). Greater Media contends that the Act requires Bell Atlantic to interconnect with Greater Media at any technically feasible point and does not impose upon Greater Media the obligation to establish multiple switching locations in each LATA or suffer reduced compensation (id.).

3. Analysis and Finding

As we stated in the MediaOne Order, neither the Act nor the FCC requires any CLEC to interconnect at multiple points within a LATA to satisfy an incumbent's preference for additional interconnection points. MediaOne Order at 41, citing Local Competition Order at ¶¶ 198-199). We also previously found that Greater Media's proposal to establish one IP per LATA satisfies its interconnection obligation. Id. at 42. In addition, we concluded in that Order that the FCC envisioned both carriers paying their share of the transport costs to haul traffic to the meet point under the interconnection rules. Id. Lastly, we found that a CLEC's decision to establish one IP in a LATA does not constitute an "expensive interconnection" with Bell Atlantic, where the expense is based solely on Bell Atlantic's additional transport costs to route all traffic to a CLEC's sole IP. Id. We find in this case that regardless of whether the IP is at a meet point arrangement[24] or a switch location, each carrier is responsible to pay the transport costs to deliver a call to the other carrier's designated IP. Both

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[24] The FCC defines a meet point as a point, designated by two carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends. Local Competition Order at ¶ 546 n. 1332.

Greater Media and Bell Atlantic are bound by the same rates when either carrier chooses to purchase entrance facilities from the other carrier, as referenced in Exhibit A to the proposed interconnection agreement and delineated in M.D.T.E. No. 15. Bell Atlantic must pay the full tariffed rate (i.e., both the fixed rate and mileage sensitive rate components) for entrance facilities if it elects to purchase transport from Greater Media.

Initially, as Greater Media has stated, it plans to serve only customers in 21 communities in the Worcester area – all of which are serviced by Bell Atlantic end offices that interconnect to Bell Atlantic's Worcester tandem switch location[25] (Exh. GMT-2 Consolidated, at 5, 8). Greater Media has not yet begun providing service to customers in the Worcester area, much less established a customer base in additional areas beyond Worcester. Greater Media may eventually expand its service territory beyond the Worcester area and maintain a single IP for the entire Eastern LATA. As we found in our MediaOne Order, Bell Atlantic and Greater Media are responsible for their own transport costs to deliver traffic to the other carrier for all traffic that originates and terminates in the Eastern LATA.

F. Tandem Transit Service

1. Introduction

Tandem transit service is a service provided by Bell Atlantic to CLECs that allows the

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25 Greater Media states that it may choose to interconnect with Bell Atlantic at either a mid-span meet, remote network nodes or remote switching nodes, a CIP or through any other technically feasible interconnection mechanism (Greater Media Consolidated Brief at 17, 24; Greater Media Brief at 5). But see, Section IV.H., for a discussion on CIP interconnection.

exchange of traffic between CLECs or Commerical Mobile Radio Services providers that do not directly interconnect with one another but whose facilities do connect to the same Bell Atlantic tandem switch[26] (Greater Media Brief at 17). Bell Atlantic routes transit traffic from the originating CLEC to the terminating CLEC via the Bell Atlantic tandem provided that both carriers are connected to the same tandem location (Bell Atlantic Brief at 32). This service does not involve the origination or termination of traffic to a Bell Atlantic customer (id.).

2. Bell Atlantic's Proposal

Under Bell Atlantic's proposal to Greater Media, it will route transit traffic from Greater Media to the terminating CLEC via Bell Atlantic's tandem provided that both CLECs are connected to the same Bell Atlantic tandem and the level of terminating traffic between those carriers does not exceed one DS1[27] trunk capacity (Bell Atlantic Brief at 32). When traffic between Greater Media and another CLEC exceeds one DS1 on average for three consecutive months, Greater Media would be required

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[26] A Bell Atlantic tandem office (or tandem switch) either connects trunks to and from (1) a Bell Atlantic end office and another tandem or (2) CLEC and/or interexchange carrier ("IXC") switches to a Bell Atlantic tandem. Bell Atlantic has six tandem switches serving Eastern Massachusetts. The tandem switches are located in Lawrence, Framingham, Worcester, Brockton and two in Cambridge.

An end office is a Bell Atlantic switching facility that exclusively serves customers in a specific geographic location corresponding to a specific NXX exchange code. The first three digits in a seven digit telephone number is the NXX exchange code. Generally speaking, all calls to and from customers are routed by the particular end office that is designated for that specific exchange code. Bell Atlantic has 286 end offices in Massachusetts.

[27] One DS1 carries 24 simultaneous calls over a direct trunk.

to establish direct end office trunk groups with the terminating CLEC with which it terminates traffic;[28] only minor traffic overflow would go through the Bell Atlantic's tandem (id. at 34). In addition, Bell Atlantic states that Greater Media would have up to 180 days to negotiate a reciprocal compensation agreement (i.e., billing arrangement) with a CLEC to which it sends transit traffic (id. at 32). If an agreement between Greater Media and the other CLEC is not reached within 180 days, Bell Atlantic would have the right to block traffic between Greater Media and that CLEC anytime after 30-day written notice is provided to Greater Media (id.).

The parties disagree on (1) the proposed threshold for tandem transit service beyond which Greater Media would be required to establish direct trunking; and (2) the 180 day timeframe for establishing reciprocal compensation agreements with other CLECs (Greater Media Brief at 18).

3. Positions of the Parties

a. Bell Atlantic

Bell Atlantic claims that tandem transit service is a voluntary offering, tendered on a transitional basis, to assist start-up CLECs in completing calls in the short-term until they are able to complete their own interconnection arrangements with other CLECs (Bell Atlantic Brief at 33). Bell Atlantic argues that it is under no legal obligation under the Act or the FCC's Local Competition Order to provide

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[28] The Department notes that once this tandem transit threshold is exceeded, Greater Media would need to negotiate an interconnection agreement with another CLEC before direct trunks would be constructed between the two CLEC switches.

tandem transit service (Bell Atlantic Reply Brief at 10). Bell Atlantic contends that its position is supported by the FCC statements in its Local Competition Order that "interconnection" under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic; tandem transit service involves three instead of two networks and does not involve the "mutual exchange of traffic" between Bell Atlantic and Greater Media (id. at 10-11, citing Local Competition Order at ¶ 176).

Bell Atlantic argues that because tandem transit is a voluntary service, it should be able to recover all costs associated with this service and limit the amount of traffic transited through its tandems (Bell Atlantic Brief at 33). Bell Atlantic states that its proposed volume limitation of tandem transit service is justified because it is designed to ensure that non-Bell Atlantic traffic that originates from CLECs does not cause network congestion or exhaust Bell Atlantic's tandems (id.). Bell Atlantic presented evidence of its tandem exhaust problem stating that since CLECs have begun interconnecting with Bell Atlantic, it has experienced a growing increase in traffic volumes and exhaust of tandem switch hooks or ports used by CLECs connecting at Bell Atlantic's tandems (id.). Bell Atlantic claims that evidence of tandem exhaust is illustrated by its need to increase trunk capacity by adding two new tandems in 1999 (id.). Bell Atlantic claims that the use of additional tandem trunk ports, primarily for CLECs, has contributed to the need to add these two additional tandem switches in Eastern Massachusetts (id.; Tr. at 201; RR-DTE-5).

Regarding the level of its proposed limit, Bell Atlantic argues that when a DS1 threshold of transit traffic, on average, is met for three consecutive months, CLECs should be required to establish

direct, end office trunk group connections between the two CLECs with only minor overflow going through Bell Atlantic's tandems (Bell Atlantic Brief at 34). Bell Atlantic further states that its proposed DS1 threshold for transit traffic recognizes the issues of the initial growth stage and network planning raised by Greater Media (id.). In addition, Bell Atlantic contends that the DS1 threshold would maximize trunking efficiency, reduce tandem network costs, and be consistent with Bell Atlantic's "economic breakpoint" for network engineering design standards[29] (id.).

Bell Atlantic states that Greater Media's claims that the DS1 threshold would be too limiting and establishing direct trunks at this threshold would be cost prohibitive are exaggerated (id. at 34-35). Bell Atlantic points out that 50 percent of Bell Atlantic's direct trunks between end offices carry less than a DS1 level of traffic, and 90 percent of all its direct end-office trunk connections have traffic volumes less than three DS1s; based on these statistics, Greater Media's proposed DS3 threshold is excessive and would overburden Bell Atlantic's tandems (id.). In addition, Bell Atlantic states that Greater Media's claim that establishing direct trunking at a DS1 threshold would be cost prohibitive is an extreme case and ignores other alternatives such as leasing facilities at a substantially lower cost from Bell Atlantic or another carrier (id. at 35).

In response to Greater Media's argument on paying the higher blended reciprocal compensation rate instead of the lower end office rate once Greater Media establishes direct trunk

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[29] Bell Atlantic's "economic breakpoint" is based on its network engineering design standards that indicate the threshold (i.e., one DS1 trunk) at which Bell Atlantic believes it is economically efficient to establish a direct trunk group connection from one end office to another instead of routing the calls from the end office through the Bell Atlantic tandem (Tr.1 Consolidated, at 76-78).

connections to other CLECs, Bell Atlantic points out that reciprocal compensation charges between Bell Atlantic and Greater Media would not apply in that situation since the calls between the two CLECs would bypass Bell Atlantic's network (Bell Atlantic Reply Brief at 13).

b. Greater Media

Greater Media states that it does not agree with the volume limitation or the duration for tandem transit traffic service to be available as proposed by Bell Atlantic (Greater Media Brief at 18). Greater Media states that despite its offer to reach a compromise with Bell Atlantic on the volume limitation by reducing its original volume request from an OC-3[30] volume to 10-15 DS1s,[31] Bell Atlantic has refused Greater Media's proposal (id. at 18-19).

Greater Media contends that Bell Atlantic's proposed volume limitation on tandem transit service would create a substantial economic barrier to entry for Greater Media; forward-looking SONET technology[32] that Greater Media would deploy would be cost prohibitive to install direct trunks to another CLEC for small amounts of traffic such as Bell Atlantic's proposed DS1 volume threshold (id.). Greater Media gives one example where the costs it would incur to establish direct trunking to another CLEC ten miles away would cost Greater Media up to $1.35 million, which would exceed the economic benefit of carrying 25 simultaneous calls over a direct trunk (id.). Greater Media

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30 An OC-3 would allow 2016 simultaneous conversations (Exh. GMT-1, at 15).

31 During hearings, Greater Media proposed a 15-20 DS1 volume limit for tandem transit traffic service (Tr. at 104). 15 DS1s would allow up to 360 simultaneous calls.

32 SONET is a broadband transport system implemented over fiber that is configured in a ring; this ring allows a SONET system to reroute traffic with no interruption of service if a fiber is cut.

maintains that Bell Atlantic provides tandem transit service to other CLECs with no DS1 limitation (id. at 18).

With regard to the duration of tandem transit service, Greater Media claims that Bell Atlantic's proposed 180 day limitation on the availability of tandem transit service would require Greater Media to engineer, permit and construct direct trunking before it begins transiting traffic with another CLEC or wireless provider; it would also require Greater Media to establish direct trunking before any business justification for direct trunking with another CLEC has been demonstrated or even forecasted[33] (id. at 23).

Greater Media also states that it would be harmed if it has to establish direct trunks to other CLECs at Bell Atlantic's proposed threshold level because it would be paying Bell Atlantic a higher blended tandem/end office reciprocal compensation rate instead of the lower end office reciprocal compensation rate for traffic that would be routed directly to an end office (id. at 19).

In addition, Greater Media maintains that Bell Atlantic has falsely claimed that tandem transit traffic service is a voluntary offering and that tandem transit traffic that exceeds a DS1 level of traffic would lead to congestion of Bell Atlantic's tandems (Greater Media Brief at 20). First, Greater Media states that Bell Atlantic provides no credible legal basis to support its position that tandem transit traffic service is voluntary and not required under the Act. Greater Media claims that Bell Atlantic's narrow

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[33] Bell Atlantic states that Greater Media mischaracterizes Bell Atlantic's 180 day requirement (Bell Atlantic Reply Brief at 12). Bell Atlantic contends that it only requests that Greater Media enter into a reciprocal compensation agreement with another CLEC within the 180 day time period (id.).

reading of the FCC's Local Competition Order would have the effect of precluding the exchange of traffic originated by or terminated to a third carrier, which would defeat a central purpose of carrier interconnection (id.). Greater Media argues that if Congress had intended such a narrow interpretation of Section 251(c)(2)A it would have specified that interconnection is required only with a requesting carrier's network instead of "any local exchange carrier's network" (id. at 21-22).

Second, Greater Media contends that Bell Atlantic has provided no quantitative support for its position that tandem transit traffic service has caused or even contributed to tandem switch exhaustion (id. at 22). Greater Media states that because Bell Atlantic did not present evidence on the number of minutes of tandem switch usage attributable to CLECs, it provided no basis for its claim that either CLEC service alone or CLEC to CLEC tandem transit service has caused its tandem switch congestion problem (id.). Greater Media suggests that any perceived problem regarding Bell Atlantic's tandem switch utilization should not be resolved in this arbitration but should be addressed generically so that Greater Media is not placed at an economic disadvantage relative to its competitors[34] (id. at 22-23; Greater Media Reply Brief at 4).

Finally, Greater Media claims that Bell Atlantic is attempting to punish Greater Media by imposing a volume limitation because Bell Atlantic is unhappy with its arrangements with wireless carriers and other CLECs who do not have volume limitations in their interconnection agreements

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[34] Greater Media also states that it would be operationally difficult to establish direct trunking to other CLECs because other CLECs are not subject to a direct trunking requirement in their interconnection agreements (Greater Media Proposed Findings of Fact and Conclusions of Law at 14).

(Greater Media Reply Brief at 4).

4. Analysis and Findings

In the MediaOne Order at 73, we found that Section 251(c)(2) of the Act requires Bell Atlantic to make its network available to new market entrants for the purpose of allowing new entrants to exchange traffic with other CLECs without having to interconnect with each and every CLEC. However, we also noted that Bell Atlantic should not be required to provide this tandem transit service indefinitely for any given CLEC. MediaOne Order at 74. In addition, we stated that "tandem transit service should, generally speaking, only be made available as a transition service until a CLEC sufficiently expands its business as demonstrated by increased levels of traffic ... to warrant direct interconnection to other CLECs. At that time, CLECs should cease using Bell Atlantic's transit service and establish direct trunks to those CLECs with which it originates and terminates substantial traffic." Id.

Regarding the issue of whether CLECs have caused tandem exhaust, in the MediaOne Order we found that while Bell Atlantic's evidence that CLECs have created the tandem exhaust problem was inconclusive, Bell Atlantic persuaded us that CLECs are a significant contributing factor. Id. at 75. During hearings in this case, Bell Atlantic provided additional evidence not supplied in the MediaOne/Bell Atlantic Arbitration that the exhaust of both its Cambridge and New Bedford tandems was directly caused by the exhaust of tandem trunk ports (RR-DTE-5). However, from the record evidence we still cannot determine the particular effect of tandem transit traffic on Bell Atlantic's tandem exhaust or congestion. Bell Atlantic did not isolate the effect of CLEC-to-CLEC traffic on tandem

exhaust or congestion. Much of the CLECs' demand for trunk ports may very well be created by traffic routed to Bell Atlantic and not to a third party. Thus, we find here, as we did in the MediaOne Order, that CLECs are a contributing factor to the tandem exhaust situation, though certainly not the only factor. Therefore, we find that a reasonable volume limit on tandem transit service is appropriate.

For the same reasons we found in the MediaOne Order, we also do not rely on Bell Atlantic's economic break point study as justification for establishing a DS1 trunk threshold for tandem transit service. Specifically, direct trunking costs from one CLEC's switch to another may vary significantly from Bell Atlantic's costs for establishing direct trunking from one end office to another. MediaOne Order at 62-64.

During the hearing, Greater Media did provide a rough estimate of the cost prohibitiveness of establishing direct end office trunks to another CLEC -- especially at a DS1 trunk threshold (Tr. at 139-140). Greater Media estimated that if direct office underground (versus aerial) trunks were constructed for a ten mile average distance, the cost to establish direct trunking would total roughly $1.35 million[35] (id. at 140). However, we find that Greater Media's estimate uses the most expensive cost per mile figures. In addition, as pointed out by Bell Atlantic, less expensive alternatives to establishing direct trunks do exist. Greater Media could lease trunks from Bell Atlantic or a third party,

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[35] Greater Media testified that the cost of direct trunking for aerial facilities would range from $15,000 to $20,000 per mile and the cost of underground conduit and fiber construction would range from $50,000 to $125,000 per mile, depending upon the topology (Tr. 139-140). The cost for electronics would be roughly an additional $100,000 (id.). Greater Media's $1.35 million estimate assumes underground rather than aerial facilities and the most expensive topology conditions possible at $125,000 per mile for ten miles of direct trunking.

if available, for much less than $1.35 million. We believe that both Greater Media's proposed DS3 threshold and its 15-20 DS1 threshold are excessive and inadequate to address the tandem exhaust problem. A DS3 circuit will carry up to 672 simultaneous voice or data calls while 15-20 DS1s will carry between 360-480 simultaneous calls. Both of these proposed thresholds, if applied to all CLECs, would route a substantial amount of traffic through the tandem beyond what the tandem switch is designed to handle. However, we also find that Bell Atlantic's DS1 threshold is too restrictive. During hearings, Bell Atlantic's witness testified that 90 percent of Bell Atlantic's direct end office trunk connections have traffic volumes less than three DS1s while 50 percent carry less than a DS1 level of traffic (id. at 219). Since 90 percent of Bell Atlantic's direct end office trunk connections have traffic volumes less than three DS1s, and Bell Atlantic is the dominant telecommunications carrier in Massachusetts, we believe this three DS1 threshold is more than appropriate for a start-up carrier like Greater Media. Thus, we find that three DS1s is an appropriate tandem transit volume limit that will adequately address both Bell Atlantic's concern for a volume limit on tandem transit traffic and Greater Media's concern of additional trunking costs for low traffic volume exchanges with other CLECs.

Neither carrier specified a timeline for establishing direct trunks once the threshold is met. We direct Greater Media to follow the same guidelines for constructing new direct end office trunks as adopted by the Department in the MediaOne Order. Specifically, the Department finds that six months should be adequate time for Greater Media to determine whether traffic volumes are stable or whether volumes will continue to vary. MediaOne Order at 78. At the end of the initial six-month stabilization period, if traffic volumes exceed the three DS1 threshold for three additional consecutive

months, then Greater Media will be required to begin planning the construction of direct end office trunks with another CLEC, including beginning negotiations for an interconnection agreement. Id. at 78. Lastly, we find that Greater Media shall have 60 days beginning from the effective date of an interconnection agreement with another CLEC to establish direct trunks. Id. at 78-79.

Finally, we will address Bell Atlantic's requirement that CLECs using Bell Atlantic's tandem transit service must enter into reciprocal local traffic exchange arrangements[36] with other CLECs within 180 days of first using this service or Bell Atlantic has the right to terminate the transit arrangement after providing Greater Media 30 days written notice. Consistent with our finding in the MediaOne Order, we find in this case as well that Bell Atlantic's proposal to terminate transit arrangements unilaterally is unreasonable. See id. at 74. "While we are sensitive to Bell Atlantic's argument about serving as a 'middle man' for compensation for CLECs exchanging traffic, Bell Atlantic should not have the ability to avoid its interconnection obligation based on a CLEC's inability to establish reciprocal compensation agreements in a timely manner." Id. at 74-75. Therefore, consistent with our finding in the tandem transit section of the MediaOne Order, we direct the parties to negotiate additional reasonable incentives (e.g., increased charges) that may be applied to Greater Media if it has not established a reciprocal compensation agreement with other carriers within 180 days of the start of tandem transit service. Id. at 75.

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[36] We note that reciprocal compensation charges would only apply to Greater Media and another CLEC that exchange traffic with one another through Bell Atlantic's tandem transit service. Since tandem transit service does not involve a Bell Atlantic end user customer, Bell Atlantic would not bill Greater Media for reciprocal compensation; Bell Atlantic would only charge Greater Media a tandem transit service fee as specified in Exhibit A to the interconnection agreement.

G. DS3 Digital Grade Loops

1. Introduction

A DS-3 digital grade loop is a circuit that provides a total bandwidth or transmission that will carry 672 simultaneous voice or data communications (Greater Media Petition at Attachment B, Proposed Interconnection Agreement, Section 1.31). Both parties recognize that Bell Atlantic does not currently offer DS-3 digital grade loops in Massachusetts either on a retail or wholesale basis (Bell Atlantic Brief at 41; Greater Media Petition at 36).[37] The parties differ on the date when Bell Atlantic shall make DS-3 loops should be made available to Greater Media. In addition, the parties disagree (1) whether the definition of "other Telecommunications Carriers" should include Bell Atlantic; and (2) whether Bell Atlantic should offer DS-3 loop functionality to CLECs even if Bell Atlantic does not label this functionality as a Unbundled Network Element ("UNE").

2. Positions of the Parties

a. Greater Media

Greater Media argues that for purposes of Bell Atlantic's commitment to provide Greater Media DS-3 digital grade loops "no later than the date on which they are made commercially available to other Telecommunications Carriers in Massachusetts," the Department should consider Bell Atlantic

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[37] Greater Media proposed the following language: "DS-3 Digital Grade [loops] shall be made available to GMT no later than the date on which they are made commercially available to other Telecommunications Carriers in Massachusetts, at rates and terms and conditions to be determined at such time. The foregoing shall not preclude GMT from requesting a DS-3 Digital Grade [loop] through the [bona fide request] process" (Greater Media Petition at Attachment B, Proposed Interconnection Agreement, Section 9.5).

as an "other Telecommunications Carrier" (Greater Media Proposed Findings of Facts and Conclusions of Law at 17). Absent this clarification, Greater Media argues that Bell Atlantic could provide DS-3 digital loops to its own retail customers, but refuse to do so to CLECs including Greater Media (id.).

Secondly, Greater Media argues that even though Bell Atlantic has not labeled the DS-3 digital loop functionality as a UNE, if and when Bell Atlantic offers that functionality to its retail customers, Bell Atlantic should be required to offer the same functionality to CLECs (Greater Media Brief at 28). Greater Media argues that "BA-MA's non-discriminatory provisioning obligation under Sections 251 and 252 is based on the functionality of the facilities in question, as opposed to the label put on the facilities by BA-MA" (Greater Media Brief at 28).

Finally, Greater Media contends that it does not wish to depend on the bona fide request "BFR") process for obtaining DS-3 digital grade loops because (1) Bell Atlantic has no obligation to provide DS-3 digital loops through such a request, and (2) the process is too long and costly (Greater Media Proposed Findings of Fact and Conclusions of Law at 17).

b. Bell Atlantic

Bell Atlantic proposes to provide to Greater Media DS-3 digital grade loops when they become generally available in Massachusetts to other CLECs, or when Greater Media makes a request for DS-3 loops under the BFR process (Bell Atlantic Brief at 41; Bell Atlantic Proposed Findings of Fact and Conclusions of Law at 17). Bell Atlantic argues that "[it] does not consider itself 'one of the Telecommunications Carriers' for purpose of determining when DS-3 loops are commercially available

since Bell Atlantic would not order unbundled local loops from itself" (IR DTE-BA-1-10).

Bell Atlantic argues that Greater Media's proposal should be rejected because Bell Atlantic intends to provide Greater Media with access to DS-3 loops on a non-discriminatory basis (Bell Atlantic Reply Brief at 17). Bell Atlantic believes that the Act and the Local Competition Order do not require it to offer the functionality of UNEs to CLECs because UNEs are not defined based on functionality (id.).

3. Analysis and Findings

The parties' proposed interconnection agreement states that Bell Atlantic must provide Greater Media access to UNEs when they are "commercially available." Commercial availability is determined by when Bell Atlantic provides the UNEs to "other telecommunications carriers." For purpose of determining commercial availability of DS-3 loops, we conclude that if Bell Atlantic were not considered an "other telecommunications carrier," there would be no way to ensure that Bell Atlantic provides UNEs to Greater Media at the same time Bell Atlantic deploys them on a retail basis. We, therefore, direct the parties to revise the proposed language to reflect that Bell Atlantic is included within the definition of "other Telecommunications Carriers, " so that Greater Media can be assured that it will receive DS-3 digital grade loops in the same time period as Bell Atlantic provides them to its retail customers.[38]

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[38] In its Petition, Greater Media cites "other Telecommunications Carriers" language in reference to the section on DS-3 digital grade loops (section 9.2.5) (Greater Media Petition at 36). However, in its Position Statement, Greater Media expands this issue to include "other Telecommunication Carriers" language that appears in the section on other types of loops (section 9.6.10) (Exh. GMT-4, at 10). Our finding here applies to

(continued…)

As to the question of whether the functionality of DS-3 digital grade loops should be provided, we find that it should not. In its Local Competition Order, the FCC specifically stated that a loop element should be defined in terms of the facility itself, not in functional terms. Local Competition Order at ¶ 385. Accordingly, we deny Greater Media's proposal on this issue.

H. Customer Interface Panel Proposal/ Enhanced Extended Loops

1. Customer Interface Panel Proposal

a. Introduction

The Customer Interface Panel ("CIP") proposal is a purported method of interconnection that Greater Media claims would give Greater Media the ability to access Bell Atlantic's UNEs or to exchange traffic with Bell Atlantic without the need for collocation (Tr. at 50-51). Greater Media states that "CIP" is a generic term for a cross-connect panel that serves as a point of termination for a CLEC's outside plant facilities in Bell Atlantic's central offices (id. at 50). Under Greater Media's CIP proposal, Greater Media would bring its outside plant facilities into Bell Atlantic's central offices via entrance facilities[39], terminate those cables on a block mounted on a rack (i.e., at the CIP), and Bell Atlantic's facilities would be terminated on the other side of the rack; the two facilities could then be connected (id. at 50-51). The Parties disagree on whether the CIP proposal should be made available to CLECs as a method of interconnection.

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[38](…continued)
both sections.

[39] Entrance facilities are the transport facilities between an ILEC's serving wire center and a competing carrier's point of presence.

b. Positions of the Parties

i. Greater Media

Greater Media has proposed that the definition and function of the CIP be included in its proposed interconnection agreement with Bell Atlantic. Greater Media maintains that the definition should read as follows:

> Customer Interface Panel (CIP) - An interconnection panel in the BA-MA switching office upon which connections to BA-MA's network for Traffic exchange; connections to extended links; or connections to unbundled network elements may be made through the use of an entrance facility. The CIP may, at the CLEC's request, be used to combine network elements which BA-MA already combines for its own use or those, such as Enhanced Extended Loop (EELs), which the Department orders BA-MA to provide.

(Exh. GMT-1, at 7).

According to Greater Media, the CIP arrangement is a technically feasible interconnection method and much less expensive than Bell Atlantic's physical collocation offerings (Tr. at 51). Greater Media contends that the fact Bell Atlantic deploys identical technology in its own operations, and the fact that Bell Atlantic had at one time offered an arrangement similar to CIP, shows that the CIP arrangement is a technically feasible method of interconnection (Greater Media Proposed Findings of Facts and Conclusions of Law at 2). Greater Media does acknowledge the significant similarities between its CIP proposal and Bell Atlantic's proposed Cageless Collocation Open Environment ("CCOE") arrangement[40] but argues that those similarities do not negate Greater Media's right under

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[40] According to Bell Atlantic's proposed Tariff No. 17, "CCOE is a form of physical collocation in which CLECs can place their equipment in Telephone Company central (continued…)

the Act to request other technically feasible arrangements for interconnection (IR-DTE-GMT-1-26; Tr. at 70; Greater Media Proposed Finding of Facts and Conclusions of Law at 3).

In addition, Greater Media contends that Bell Atlantic's refusal to offer the CIP proposal is anti-competitive in that CLECs are forced to incur excessive and unnecessary costs in order to physically collocate (Greater Media Petition at 9; Greater Media Brief at 5). Greater Media contends that the CIP arrangement is less expensive and has other benefits compared to Bell Atlantic's CCOE physical collocation offering (Greater Media Proposed Finding of Facts and Conclusions of Law at 2).

First, under Greater Media's CIP proposal, Greater Media argues that it could bring less expensive copper cable into Bell Atlantic's central offices, whereas under Bell Atlantic's CCOE offering, only fiber optic cables can be used (Tr. at 52). Greater Media downplays Bell Atlantic's network safety and liability issues, arguing that Bell Atlantic itself brings copper cable into its central offices (id. at 189). Greater Media further states that assuming the two companies set up their facilities in the exact same manner, Greater Media's use of copper cables would create no more risk to network safety than Bell Atlantic currently does (id. at 191).

Second, Greater Media asserts that the power charges in its CIP arrangement would be less than the power charges proposed by Bell Atlantic in its CCOE offering. The CCOE offering requires a recurring DC Power charge based on fused amperes instead of on the actual amount of power used by

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[40](…continued)
office space." Bell Atlantic Proposed M.D.T.E. No. 17, Part E, Section 9.1.1.C.). CLECs would use CCOE to install equipment in single bay increments in a separate lineup designated by the Telephone Company (Bell Atlantic Proposed M.D.T.E. No. 17, Part E, Section 9.1.1.A.).

a CLEC (IR DTE-GMT-1-26). Under its CIP proposal, Greater Media would be charged for AC power based on the actual power it uses (id.). Greater Media contends that the way in which Bell Atlantic charges for power is punitive and argues it should not be obligated to pay for power it does not use (Tr. at 59).

Third, Greater Media states that an additional termination bay -- a SPOT bay[41] – is required with the CCOE arrangement (id. at 79, 80). Greater Media's CIP proposal does not have such a requirement, and Greater Media argues that it should not have to pay for the unnecessary termination bay (id. at 80).

Fourth, Greater Media is concerned with some of Bell Atlantic's language regarding the use of the SPOT bay in the CCOE proposal. From what Greater Media can discern, Bell Atlantic would require Greater Media to hold equipment on at least one shelf in the electronic bay, though Greater Media is not sure what type of equipment would be required (id. at 79). Greater Media also disagrees with the fact that it would not be permitted to leave a bay empty (id.).

Finally, Greater Media maintains that Bell Atlantic's reluctance to provide the CIP arrangement is counter to the Department's goal of "creat[ing] efficiency enhancing conditions that would allow local exchange competition to develop and to deliver price and service benefits to customers" (Exh. GMT-1, at 6, citing Consolidated Arbitrations-Phase 4-E Order at 12-13).

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41 "The SPOT bay is a connection point between the collocated equipment and the Telephone Company network and is shared by all CLEC's in the [collocation] area. The SPOT bay is the demarcation point. Within the SPOT bay the individual terminal block/subpanel will be ordered by and dedicated to each CLEC." Bell Atlantic Proposed M.D.T.E. No. 17, Part E, Section 6.1.1.B.2.

ii. Bell Atlantic

Bell Atlantic opposes Greater Media's CIP proposal. Bell Atlantic argues that Greater Media's proposal is a concept or a description of a collocation arrangement that cannot be matched with a specific piece of telecommunications equipment (Bell Atlantic's Brief at 3). Bell Atlantic claims that Greater Media's CIP proposal is no different from a number of collocation offerings that Bell Atlantic filed in its proposed Tariff No. 17 and is, therefore, creating a new, ill-defined collocation arrangement is unnecessary (Bell Atlantic Brief at 3).[42] In addition, Bell Atlantic argues that Greater Media's CIP proposal bears no relation to the Bell Atlantic CIP proposal included in Bell Atlantic's July 3, 1997 Collocation Cost Study (id. at 5 n.3).

Responding to Greater Media's cost arguments, Bell Atlantic contends that its costs of preparing space, delivering power, and providing access arrangements would be the same under both the CIP proposal and the CCOE offering (id. at 7). Bell Atlantic also asserts that Greater Media's concern about charges for power is without merit since those charges have already been reviewed and approved by the Department (id.). In addition, Bell Atlantic argues that if Greater Media believes that recurring and non recurring charges for Bell Atlantic's caged collocation offerings are too high in relation to Greater Media's expected costs under its CIP proposal, Greater Media may avail itself of the SCOPE or CCOE cageless collocation offerings (id. at 5; Tr. at 61; Bell Atlantic Proposed

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[42] Bell Atlantic observes that its CCOE offering appears to be the type of collocation arrangement that Greater Media has described as the CIP proposal (Bell Atlantic Brief at 6).

Findings of Facts and Conclusions of Laws at 2).[43] Furthermore, Bell Atlantic argues that D.T.E. 98-57, not this proceeding, is the proper avenue to raise concerns about Bell Atlantic's proposed collocation offerings (Bell Atlantic Brief at 8; Bell Atlantic Proposed Findings of Facts and Conclusions of Laws at 1).

Bell Atlantic also asserts that the Greater Media's proposal of bringing copper cables into Bell Atlantic's central offices is contrary to existing state and federal collocation tariffs, as well as to Bell Atlantic Proposed M.D.T.E. No. 17 (Bell Atlantic Brief at 8).[44] Bell Atlantic also argues that bringing copper cables into central offices creates technical and operational problems (id. at 9). First, Bell Atlantic asserts that copper cable is less efficient than fiber optic cables because copper cable takes up more space within central offices, where space for facilities is scarce (id.; Bell Atlantic Proposed

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43 The SCOPE offering allows a CLEC that does not wish to put equipment in a standard cage to place its equipment in a secure, separated area within the Bell Atlantic's central office (Bell Atlantic Brief at 6). Under the CCOE arrangement, a CLEC's equipment is placed, not in the common secured collocation space, but in appropriate space agreed to by the CLEC and Bell Atlantic (id.).

44 Bell Atlantic states that "Each of these tariffs limits the type of cables that may be brought into a BA-MA central office to fiber optic cables. M.D.T.E. No. 15, Section 16.1.2.B; M.D.T.E. No. 17, Part E, Section 2.2.2A; Tariff F.C.C. No. 11, Section 28.0. This limitation is consistent with the FCC's collocation requirements and provides for the most efficient use of limited manhole/conduit space and central office racking as well as avoiding potential network harm." See Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, First Report and Order, 7 FCC Rcd. 7369, 7415-7416 ("Expanded Interconnection Order") (Bell Atlantic Brief at 8; see also Bell Atlantic Proposed Findings of Fact and Conclusions of Law at 2).

Findings of Fact and Conclusions of Law at 2).[45] Second, Bell Atlantic asserts that any copper cable brought into the central office puts the integrity and reliability of the public switched network at risk (Tr. at 191-192; Bell Atlantic Brief at 9; Exh. BA-MA-2, at 16-17; Bell Atlantic Brief at 10). Bell Atlantic claims that because copper conducts electricity, an electrical short, induced current, or a lighting strike along the copper route could be carried into the central office, potentially harming life and property (Bell Atlantic Brief at 10).

Finally, Bell Atlantic argues that Greater Media's reliance on AT&T Corp. v. Iowa Utilities Bd., 119 S.Ct. 721 (1999) ("AT&T Supreme Court Decision"), to support its CIP proposal is misplaced (Bell Atlantic Reply Brief at 3). Bell Atlantic contends that the Eighth Circuit decision (stating that the FCC acted properly in declining to require CLECs to own facilities before they purchase and use unbundled network elements) has nothing to do with the way in which Greater Media gains access to UNEs (id.). Moreover, Bell Atlantic maintains that neither the Supreme Court nor the Eighth Circuit decided that collocation is not a valid interconnection method under Section 251(c)(6) of the Act (id. at 4).

c. Analysis and Findings

The issue we must decide is whether Bell Atlantic must allow Greater Media to interconnect using Greater Media's CIP proposal. For the reasons stated below, we find that Bell Atlantic is not so required.

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[45] Bell Atlantic notes that the same reasoning applied when the FCC in its Expanded Interconnection Order only allowed fiber cabling to enter central offices (Bell Atlantic Brief at 9).

Section 251 (c)(2)(b) of the Act states that it is the duty of each incumbent local exchange carrier "to provide for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network -- (2) at any technically feasible point within the carrier's network." 47 U.S.C. § 251(c)(2).

The FCC elaborated on the Act's language regarding technical feasibility by stating that "the Act does not permit [ILECs] to deny interconnection or access to unbundled elements for any reason other than a showing that it is not technically feasible." Local Competition Order at ¶ 206.

> We conclude that, under sections 251(c)(2) and 251(c)(3), any requesting carrier may choose any method of technically feasible interconnection or access to unbundled elements at a particular point. Section 251(c)(2) imposes an interconnection duty at any technically feasible point; it does not limit that duty to a specific method of interconnection or access to unbundled elements.

Id. at ¶ 549. See also ¶ 550.

Consistent with the above standard of review, Bell Atlantic must allow Greater Media to interconnect using Greater Media's CIP proposal, if, and only if, we find that the CIP proposal is a technically feasible method of interconnection. The FCC made clear that the burden regarding technical feasibility lies not with the CLEC but with the ILEC. Local Competition Order at ¶ 198. Thus, Bell Atlantic has the burden of proving that Greater Media's CIP proposal is not technically feasible.

We find that Bell Atlantic has met its burden of demonstrating that the CIP arrangement is not technically feasible. First, notwithstanding Greater Media's claims to the contrary, Bell Atlantic has demonstrated that the CIP proposal, as presented by Greater Media, is nothing more than an ill-defined concept. Greater Media has not provided enough detail about the CIP proposal to allow us to evaluate

its potential. Greater Media provided a description of its CIP proposal, but failed to offer any technical specifications or information on where or how CIP is to be used. Greater Media contends that its CIP proposal is similar to Bell Atlantic's withdrawn CIP offering; however, the record contains little information about Bell Atlantic's withdrawn CIP arrangement, other than the statement from Bell Atlantic that it is a digital cross-connect panel used solely for the purpose of combining individual unbundled network elements specified by a CLEC (Exh. BA-MA-5, at 1; Tr. at 249; Bell Atlantic Brief at 5). We have no way of confirming that Greater Media's proposal is similar to what Bell Atlantic had previously offered. Moreover, Greater Media did not present evidence to show that the technology used in implementing its CIP proposal is identical to the technology Bell Atlantic uses. Thus, we simply do not have a sufficiently detailed proposal that would enable us to find that the arrangement is technically feasible. See Consolidated Arbitrations-Phase 4-K Order at 15 (Department found that AT&T's "recent change" proposal was not sufficiently developed or explained to warrant a finding that the proposal was technically feasible and that Bell Atlantic was required to offer such interconnection arrangement). Therefore, we find that because of lack of sufficient information, we cannot find that the CIP proposal is technically feasible.

Second, Bell Atlantic demonstrated, based on the limited information that Greater Media did provide, that the CIP proposal could pose a threat to network safety and reliability. In its Local Competition Order at ¶ 203 (emphasis added), the FCC stated that

> ... legitimate threats to network reliability and security must be considered in evaluating the technical feasibility of interconnection or access to incumbent LEC networks. *Negative network reliability effects are necessarily contrary to a finding of technical feasibility*...Thus, with regard to network reliability and security, to justify a

> refusal to provide interconnection or access at a point requested by another carrier, incumbent LECs must prove to the state commission, with clear and convincing evidence, that specific and significant adverse impacts would result from the requested interconnection and access.

We agree with Bell Atlantic that Greater Media's proposal to bring copper lines into Bell Atlantic's central office introduces significant network safety and reliability risks to Bell Atlantic network facilities and personnel. The electrical conductivity properties of copper significantly increase the potential for damage to Bell Atlantic's facilities, outages or network disruption, and could possibly harm Bell Atlantic's employees. That is exactly the reason the Department approved an earlier Bell Atlantic tariff provision that prevents other carriers from bringing copper facilities into Bell Atlantic's central offices. M.D.T.E. No. 15, Section 16.1.2.B. Even if Greater Media deployed copper facilities in an identical manner to Bell Atlantic, additional copper in Bell Atlantic's central offices creates additional risk. Thus, we find that Greater Media's CIP proposal is not technically feasible because it would negatively impact network safety and reliability.[46]

Finally, although not necessary to our findings on technical feasibility, we address Greater Media's arguments concerning the inadequacy of Bell Atlantic's current collocation offerings. Essentially, Greater Media contends that its CIP proposal is superior to Bell Atlantic's existing or proposed collocation offerings because those offerings would be more expensive for Greater Media to implement. Whether Greater Media's CIP proposal would be a less expensive method of

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[46] We note that this finding is independent of our finding that Greater Media's CIP proposal is not technically feasible because it is not sufficiently detailed. The former finding alone is more than adequate support for our rejection of Greater Media's CIP proposal.

interconnection than Bell Atlantic's physical collocation offerings is not clear from the record. As Bell Atlantic notes, Bell Atlantic would incur the same or similar costs under the CIP proposal as under Bell Atlantic's collocation offerings that Greater Media is reluctant to accept. Bell Atlantic would need to charge for space, delivering power, and providing access arrangements under the CIP proposal, as it does under its established offerings, such as the CCOE arrangement.[47] Greater Media raises objections to Bell Atlantic's power charges under its collocation offerings, but those rates were reviewed and found reasonable by the Department in the Consolidated Arbitrations. See Consolidated Arbitrations, Phase 4-G (1998).

2. Enhanced Extended Loop

a. Introduction

Extended Loops, also known as enhanced Extended Loops or "EELs," are a combination of two Bell Atlantic unbundled network elements: the local loop (to the customer's premises), plus interoffice transport (from one end office or tandem to another end office) (Bell Atlantic Brief at 11). Extended Loops allow a CLEC to access unbundled loops in one central office, and transport traffic from those loops to CLEC facilities in another Bell Atlantic end office (Exh. GMT-2, at 6). An EEL is

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[47] We note that this is not the proper forum for Greater Media to be raising objections to Bell Atlantic's proposed collocation offerings. The Department is reviewing Bell Atlantic's collocation arrangements in D.T.E. 98-57, and that is the appropriate proceeding to raise objections about those arrangements.

a combination of network elements that are not already combined in Bell Atlantic's network (Bell Atlantic Brief at 11).[48]

The parties disagree whether EELs can only be accessed through collocation at a Bell Atlantic end or tandem office.

b. Positions of the Parties

i. Greater Media

Greater Media would like Bell Atlantic to bundle inter-office transport and unbundled loops together, thereby providing access to loops in a second office in which Greater Media has facilities (Greater Media Petition at 34). Greater Media contends that once a CLEC has gained access to Bell Atlantic's networks for interconnection and UNEs, it should have the right to use this access, achieving technological and economic efficiency (id. at 37). Greater Media maintains that its extended loop arrangement is technically feasible (Greater Media Proposed Findings of Facts and Conclusions of Law at 4).

Greater Media contends that it should be able to purchase EELs from Bell Atlantic without collocating (id.). Greater Media argues that it should be able to gain access to EELs through a mid-span meet[49] or through Greater Media's proposed CIP arrangement (Greater Media Brief at 6-7).

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[48] When this Arbitration commenced, Bell Atlantic did not offer EELs. However, in its July 15, 1999 filing in D.T.E. 98-57, Bell Atlantic proposed an EEL offering.

[49] A mid-span fiber meet is an interconnection architecture whereby two carriers' transmission facilities meet at a mutually agreed upon point of interconnection ("POI") with the POI 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. MediaOne

(continued…)

Greater Media claims that Bell Atlantic's collocation requirement interferes with Greater Media's ability to interconnect in any technically feasible manner, in violation of the Act (Greater Media Proposed Findings of Facts and Conclusions of Law at 4). Furthermore, Greater Media maintains that Bell Atlantic's recent decision to offer EELs does not change the fact that this offering still requires collocation (Greater Media Brief at 6).

Greater Media states that D.T.E. 98-57 is not the proper forum in which to review its extended loop proposal because its proposal differs from Bell Atlantic's EEL proposal in proposed Tariff No. 17, and Greater Media is not a party to D.T.E. 98-57 (Greater Media Reply Brief at 2). Greater Media also requests that the interconnection agreement indicate that if Greater Media takes the EEL service under Tariff No. 17, it has not waived any rights it has to opt into an extended loop arrangement from another interconnection agreement (Greater Media Brief at 7).

ii. Bell Atlantic

Bell Atlantic claims that it is not required to offer EELs under either the Eighth Circuit's ruling in Iowa Utility Bd. v. FCC or the Department's Phase 4-K Order in the Consolidated Arbitrations (Bell Atlantic Brief at 11-12). However, Bell Atlantic states that it has agreed to voluntarily offer EELs to CLECs under certain conditions, and has filed tariff provisions for EEL in its proposed Tariff No. 17 (id. at 12; Bell Atlantic Proposed Findings of Fact and Conclusions of Law at 3-4). Bell Atlantic states

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[49](…continued)
Order at 13 n.12. The FCC includes mid-span meet arrangements in its discussion of meet point arrangements. Local Competition Order at ¶ 553.

that if Greater Media has any issues with Bell Atlantic's EEL tariff, D.T.E. 98-57 is the appropriate forum for addressing those issues (Bell Atlantic Brief at 12; Bell Atlantic Proposed Findings of Fact and Conclusions of Law at 4).

In addition, Bell Atlantic states that Greater Media has offered no evidence as to why EELs should, or how EELs would, be provisioned without collocation (Bell Atlantic Reply Brief at 4). Bell Atlantic contends that it has numerous collocation offerings such as SCOPE and CCOE other than traditional physical collocation that would meet Greater Media's need for access to EELs (Bell Atlantic Brief at 42). Bell Atlantic also asserts that CLECs can access the transport end of EELs through the variety of collocation options Bell Atlantic provides (id. at 12, 42; Bell Atlantic Proposed Findings of Fact and Conclusions of Law at 4; see also Tr. at 241).

Bell Atlantic states that if Greater Media genuinely was interested in establishing a mid-span meet arrangement as its initial form of interconnection, it had an obligation to raise this issue in negotiations with Bell Atlantic either before or during this arbitration, which it did not do (Bell Atlantic Reply Brief at 5). Therefore, Bell Atlantic maintains that the Department should not decide in this proceeding whether EELs should be provisioned under a mid-span meet arrangement (id.).

Finally, Bell Atlantic states that it has proposed language in its initial brief that would ensure that Greater Media's rights under Section 252(i) of the Act with respect to EELs are not waived (id. at 5-6).

c. Analysis and Findings

Since Bell Atlantic has voluntarily agreed to offer EELs, the only issue we must decide is

whether Greater Media must access EELs through collocation, or whether Greater Media may obtain access through other arrangements, including its CIP proposal.[50] For the reasons discussed below, we find that Greater Media shall be limited to collocation to obtain access to EELs.

In the previous section, we found that Bell Atlantic is not required to offer Greater Media interconnection or access to UNEs through Greater Media's CIP proposal. Based on that finding, Greater Media may not obtain access to EELs through its CIP arrangement. We also cannot approve Greater Media's blanket proposal to obtain access to EELs through other options, such mid-span meets, remote network nodes, or remote switching modules. Greater Media did not present us with sufficient details to understand how it would obtain access to EELs through an arrangement other than collocation or adequate information to determine the technical feasibility of obtaining EELs without collocation. While Greater Media did generally describe how a CLEC such as MediaOne could obtain access to EELs through a mid-span meet connection, Greater Media has not yet begun negotiations with Bell Atlantic to construct a mid-span meet. As Bell Atlantic correctly points out, a mid-span meet arrangement would require extensive negotiations between the parties (Bell Atlantic Reply Brief at 5). As we stated in the MediaOne Order, Greater Media has not yet chosen a particular method of interconnection, but has requested the ability to choose among several options, including a mid-span meet, and interconnection at remote network nodes, and remote switching modules. MediaOne Order at 39. When Greater Media has decided on a particular interconnection method, it should pursue

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[50] Given Bell Atlantic's voluntary offering, the Department need not address the question of whether Bell Atlantic is obligated to provide EELs under state or federal law.

negotiations with Bell Atlantic. Bell Atlantic is required to provide that interconnection method unless Bell Atlantic is able to prove to us that the method is not technically feasible. Local Competition Order at ¶ 198. If the parties cannot agree on that particular method, they may seek Department arbitration. Therefore, until otherwise determined by the Department or agreed to by the parties, Greater Media must rely on Bell Atlantic's collocation offerings to obtain access to EELs.[51]

With respect to Greater Media's interest in protecting its rights under Section 252(i) to opt into the EEL service provisions of another CLEC's interconnection agreement, we find that Bell Atlantic's proposed language in its Reply Brief adequately addresses Greater Media's concern (Bell Atlantic Reply Brief at 5-6).

I. Network Interface Device; Greater Media-provided Loops

1. Loops without Network Interface Device

a. Introduction

A NID is a connection device between the line or drop wire from the telephone company and the inside wiring in the customer's premises. The NID is installed on the customer's premises line; the line from the telephone company is connected to one side of the NID, and the customer's inside wire is attached to the other side of the NID. See also, Local Competition Order ¶ 392 n. 852. This device provides a cross-connect location to connect the Bell Atlantic loop with the customer's inside wiring, a

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[51] As Bell Atlantic points out, it offers a variety of cageless and caged physical collocation offerings. In addition, through those offerings, Greater Media can obtain access to the transport end of EELs. Bell Atlantic has proposed to make those offerings available to CLECs in Bell Atlantic Proposed M.D.T.E. No. 17, which is being investigated in D.T.E. 98-57. Greater Media may want to participate in that docket to protect its rights.

point to test Bell Atlantic's loop or the customer's inside wiring, and grounding and over-voltage protection (Exh. GMT-1, at 7; Tr. at 177-178). Bell Atlantic currently provides a loop and a NID together, or a stand alone NID, but not a loop without a NID (Greater Media Brief at 29).

There are two issues in dispute: (1) whether Bell Atlantic should provide loops without a NID ("NID-less loops") to Greater Media; and (2) whether Greater Media technicians can access Bell Atlantic's NID to disconnect the loops provided by Bell Atlantic and connect these loops to Greater Media's Network Interface Unit ("NIU").[52]

b. Positions of the Parties

i. Greater Media

Greater Media claims that Bell Atlantic should be required to provide NID-less loops and also allow Greater Media to connect a Bell Atlantic loop to its own NIU (Greater Media Brief at 28). Greater Media contends that a loop and NID are offered by Bell Atlantic as separate unbundled network elements[53] and, therefore, Greater Media should be allowed to purchase the loops without the NID (Greater Media Proposed Findings of Fact and Conclusions of Law at 18; Greater Media Brief at

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52 Greater Media refers to its NID as an NIU and maintains that it would use "a highly sophisticated electronic [NIU] to bridge its broadband network to the customer's premise wiring" (Exh. GMT-1, at 7).

53 Greater Media argues that, for example, a loop and NID are offered separately by Bell Atlantic when a CLEC connects its loops to Bell Atlantic's NID (Greater Media Brief at 29).

29).

Greater Media offers several reasons why it should be allowed to connect Bell Atlantic's loops to its NIU (id. at 28). Greater Media maintains that its electronic NIU is not inferior in safety to the NID since it provides sophisticated grounding and over-voltage protection (Exh. GMT-1, at 7). In response to Bell Atlantic's concern about Greater Media's access to Bell Atlantic's side of the NID, Greater Media argues that this concern is unfounded because Greater Media is seeking to access only the "customer chamber"[54] in the NID (Greater Media Brief at 29; Greater Media Reply Brief at 6). Moreover, Greater Media asserts that its technicians are qualified to work on a NID and therefore should be allowed access to the NID (Greater Media Brief at 29). Greater Media claims that the Department, in other orders, has recognized that trained technicians can gain access to utility plant in accordance with applicable safety standards (IR DTE-GMT-1-4; see Massachusetts Electric Company, D.T.E. 98-69, at 18-19 (1999). In response to the labor union concern raised by Bell Atlantic, Greater Media contends that Bell Atlantic's claim that it may experience union problems if Greater Media technicians work on Bell Atlantic's network is not supported by the evidence (Greater Media Proposed Findings of Fact and Conclusions of Law at 18; Greater Media Brief at 32 n.25).

Greater Media provided citations from a Connecticut Department of Public Utility Control

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[54] Bell Atlantic's "modern residential NIDs are 'dual chamber' enclosures that contain a customer access chamber on one side and a Telephone Company network chamber on the other" (Exh. BA-MA-2, at 3). The customer chamber was designed by the manufacturer for the purpose of access by the customer (IR-DTE-GMT-1-2).

("DPUC") order[55] where that commission decided that "[t]he loop and NID are separate network elements and therefore, subject to individual provisioning processes . . . (Greater Media Brief at 31, citing DPUC Order at 54-55). Furthermore, Greater Media urges the Department to adopt the DPUC's position that allows the ILEC to inspect the grounding on NID-less loops provided to CLECs (Greater Media Proposed Findings of Fact and Conclusions of Law at 19). Finally, Greater Media argues that the FCC's regulations cited by Bell Atlantic (47 C.F.R. § 68.213) in support of its argument that third parties are prohibited from accessing its NIDs, are not related to carrier access to the NID (Greater Media Reply Brief at 6).

ii. Bell Atlantic

Bell Atlantic contends that Greater Media's proposal for NID-less loops is inconsistent with the FCC's regulations. Bell Atlantic states that the FCC declined to require ILECs to provide NID-less loops in its Local Competition Order (Bell Atlantic Brief at 43, citing Local Competition Order at ¶¶ 392-394).

Regarding Greater Media's proposal to disconnect loops from Bell Atlantic's NID and connect them to its own NIU, Bell Atlantic argues that the FCC has established specific regulations regarding third-party access to an ILEC's NIDs at 47 C.F.R. § 68.213(b), which state that "a customer may not access the Telephone Company's protector" (Bell Atlantic Proposed Findings of Facts and Conclusions of Law at 18). Bell Atlantic asserts that the regulation recognizes ILEC safety and liability

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55 Application of the Southern New England Telephone Company for Approval of Total Service Long Run Incremental Cost Studies and Rates for Unbundled Elements, DPUC Docket No. 97-04-10, at 54-55 (May 20, 1998) ("DPUC Order").

concerns (Bell Atlantic Brief at 42-43). Bell Atlantic also contends that Greater Media's request that its technicians to be allowed to access the NID is inconsistent with the Department's order in the Consolidated Arbitrations, where the Department ruled in the context of interconnection with dark fiber that "[a]s in the case of provisioning other unbundled network elements to competing carriers, [Bell Atlantic] will retain the right to establish the physical connection with its own personnel" (id. at 45, citing Consolidated Arbitrations-Phase 3 Order at 48).

Bell Atlantic further argues that allowing Greater Media's technicians to work on Bell Atlantic's property and equipment, and to terminate the Bell Atlantic loops on Greater Media's NIU, will subject Bell Atlantic's network and customers to risk and potential liability (Bell Atlantic Brief at 43). Bell Atlantic asserts that there should be a clear separation point between carrier networks in a multi-carrier environment so that each carrier would be able to control and be responsible for its own network facilities (id. at 44). According to Bell Atlantic, its current practice of providing the loop with a NID makes this separation clear, as Bell Atlantic is entirely responsible for the loop plant (id.).

In addition to safety and liability concerns, Bell Atlantic argues that labor issues would arise if Greater Media's technicians were allowed to work on Bell Atlantic's network because all of Bell Atlantic's work is currently being done by Bell Atlantic union employees and technicians (id. at 43). Furthermore, Bell Atlantic contends that Greater Media's proposal would undermine Bell Atlantic's ability to standardize procedures for loop provisioning since Greater Media's proposal differs significantly from the procedures that are currently in place and would require additional coordination between Bell Atlantic and Greater Media (id. at 44). Bell Atlantic observes that no other carrier has

requested NID-less loops (Bell Atlantic Proposed Findings of Fact and Conclusions of Law at 19).

c. Analysis and Findings

Section 251(c)(3) of the Act imposes a duty on ILECs to "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 ..." See Local Competition Order at ¶ 226. Furthermore, Section 251(d)(2) provides that "[i]n determining what network elements should be made available for purposes of [section 251(c)(3)], the [FCC] shall consider, at a minimum, whether -- (A) access to such network elements as are proprietary in nature is necessary; and (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." Id. at ¶ 227.

In the Local Competition Order, the FCC enunciated a standard to be used to evaluate the network elements that must be unbundled, and announced that states that impose additional unbundling requirements during arbitrations must follow the FCC's interpretation of the statutory standards as defined in the Local Competition Order. Id. at ¶¶ 277-288. Interpreting Section 251(c)(3), the FCC implemented a standard that imposed a duty on ILECs to provide all network elements for which it is technically feasible[56] to provide access on an unbundled basis. Id. at ¶ 278. Furthermore, the FCC

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[56] The FCC stated that states must apply its definition of technical feasibility. See Local Competition Order at ¶¶ 192-206. The FCC has stated that legitimate threats to network reliability and security must be considered in evaluating the technical feasibility of interconnection or access to ILEC networks. Id. at ¶ 203.

interpreted the "necessary" and "impair" standards in Section 251(d)(2). The FCC stated that when determining whether access to proprietary elements is "necessary," the FCC and a state can require the unbundling of such elements unless an ILEC can prove that "(1) the element is proprietary, or contains proprietary information that will be revealed if the element is provided on an unbundled basis; and (2) a new entrant could offer the same proposed telecommunications service through the use of other, nonproprietary unbundled elements within the [ILEC's] network." Id. at ¶ 283. The FCC stated that when determining whether failure to provide access to an element would "impair" the ability of new entrants to provide a service it seeks to offer, the term "impair" means to "make or cause to become worse; diminish in value." Id. at ¶ 285.

The rule promulgated by the FCC, identifying specific unbundling requirements, identified both the local loop (the transmission facility between an ILEC's central office and a customer's premises), and the NID (a cross-connect device used to connect the loop to a customer's inside wiring), as separate unbundled network elements. 47 C.F.R. § 51.319(a) and (b). However, the AT&T Supreme Court Decision vacated Rule 319. The Supreme Court rejected the FCC's interpretation of Section 251(d)(2), stating that the Act required the FCC "to determine on a rational basis *which* network elements must be made available, taking into account the objectives of the Act and giving some substance to the 'necessary' and 'impair' requirements." AT&T Supreme Court Decision. Therefore, we are left without any valid regulations or FCC standards to determine whether a NID-less loop should be offered by Bell Atlantic as a UNE.

On February 8, 1999, Bell Atlantic sent a letter to the FCC in which it committed to providing

each of the individual network elements defined in the now-vacated FCC rules and then-existing interconnection agreements. We have previously stated that we hold Bell Atlantic to the commitments it made to the FCC in this February 8, 1999 letter. Consolidated Arbitrations-Phase 4-J Order at 9. Bell Atlantic commits to the same list of UNEs in its proposed interconnection agreement with Greater Media (see Greater Media Petition at Attachment B, Proposed Interconnection Agreement, Section 9.1). To determine which UNEs Bell Atlantic commits to provide, we must look to the definitions of those UNEs in the FCC's rules as they existed pursuant to Bell Atlantic's commitment. Pursuant to those definitions, the NID and loop are separate network elements. 47 C.F.R. § 51.319.

As stated earlier, on September 15, 1999, the FCC adopted new rules on unbundling of network elements in FCC Docket No. 99-238. The FCC has not yet released its order on this matter, but has released a summary of the pending order that identifies the network elements that must be unbundled. That summary lists the loop and the NID that were identified in its now-vacated FCC rules, in addition to subloops. The FCC continues to identify both the loop and NID as separate UNEs. Based on Bell Atlantic's commitment to provide UNEs contained in Rule 319, the definitions of those UNEs in Rule 319, and the FCC's recent pronouncement that the loop and NID must still be provided as UNEs, we conclude that the NID and the loop, including a NID-less loop, are individual UNEs that must be provided separately by Bell Atlantic.

Although it is not necessary to our finding that Bell Atlantic is required to provide NID-less loops, we consider and reject each of Bell Atlantic's reasons for opposing provision of NID-less loops. First, Bell Atlantic argues that the FCC established regulations that "a customer may not access the

Telephone Company's protector." 47 C.F.R. § 68.213. However, the regulations cited by Bell Atlantic do not address CLEC access to an ILEC's NID; the "customer" referred to in this regulation is an end-user, not a CLEC. Second, we note that Bell Atlantic's references to the Local Competition Order at ¶¶ 392-394 do not provide guidance here. The cited paragraphs have nothing to do with carrier access to the NID, but relate to the ILEC's duty to provide CLEC access to the incumbent's NIDs when a CLEC provides its own loops. Greater Media is proposing to connect a Bell Atlantic loop, not its own loop, to its NIU. The Local Competition Order does not address the situation were a CLEC requests to connect an ILEC loop to a CLEC NID, and thus does not apply to the situation here. Third, Bell Atlantic provided citations from the Consolidated Arbitrations-Phase 3 Order where the Department stated that Bell Atlantic would retain the right to utilize its own personnel to establish the physical connections to unbundled network elements for CLECs (Bell Atlantic Brief at 45, citing Consolidated Arbitrations-Phase 3 Order at 48). Because we find that the NID-less loop is a separate UNE, its connection to a Greater Media NIU is not part of provisioning that UNE, and therefore does not fall into the policy established in the Consolidated Arbitrations-Phase 3 Order.

Bell Atlantic cites a number of safety concerns with providing a NID-less loop. A Bell Atlantic witness argued during the hearing that if Bell Atlantic were to be responsible for the electrical protection and the service it provides to the customers, it should also provide loops combined with a NID (Tr. at 155). We agree with Greater Media that in the situation where Greater Media seeks to obtain NID-less loops and connect them to its NIU, the parties would need to coordinate the actions. The proposal should not be rejected simply because it entails coordination between the parties (Greater Media Reply

Brief at 6 n.3). We believe that Bell Atlantic's safety concerns can be adequately addressed by requiring Greater Media to use industry standard equipment and practices in the installation of its NIUs, and allow Bell Atlantic to inspect grounding on loops terminated to Greater Media's NIU. We note the decision by Connecticut DPUC as a good example.

On Bell Atlantic's claim that it may experience union problems if Greater Media technicians access Bell Atlantic loops and connect those loops to Greater Media equipment, we find that Bell Atlantic's Article P9.01 of its current labor agreement between Bell Atlantic and its union, states that "[a]ccordingly, [Bell Atlantic] will not contract out work, other than that which has been customarily contracted out, if such contracting out will cause, currently and directly, layoffs or demotions of present employees" (RR-GMT-1). We are not convinced that the work relating to disconnecting the loop from Bell Atlantic's NID to Greater Media's NIU will cause layoffs or demotions of present employees since this particular work did not exist before Greater Media raised this issue in this proceeding. Bell Atlantic's argument is not persuasive on this point.

Accordingly, we require the parties go back and negotiate the scope of responsibility of each party regarding connecting NID-less loops to Greater Media's NIU and submit the agreed proposal to the Department in their proposed interconnection agreement.

2. Greater Media-provided Loops and Removal of NID

a. Introduction

There are three issues in dispute: (1) whether each carrier should be required to remove its NID upon the request of a property owner; (2) whether Greater Media should be allowed to remove

Bell Atlantic's NID with customer authorization; and (3) whether the carriers should be allowed to charge customers a removal fee for removing a NID.

b. Positions of the Parties

i. Greater Media

Greater Media contends that a carrier should be obligated to remove its NID when its customer no longer wants to be served by that carrier or at the customer's request, and each carrier should permit a customer's authorized representative to remove a NID (Greater Media Brief at 28-29). Greater Media argues that "[s]hould the end-user customer[s] want one or more of the NID/NIUs removed from their premises, each of the affected parties will be required to remove their respective NID/NIU at their own expense" as stated in the DPUC's decision (id. at 31, citing DPUC 97-04-10). Greater Media believes that the customers, not Bell Atlantic nor Greater Media, should have the right to decide the number of NIDs they wish to keep at their premises (Greater Media Brief at 32). Greater Media argues that the removal of the NID will not undermine Bell Atlantic's duty as a carrier of last resort, and there is no basis for Bell Atlantic's claim that its labor agreement will prevent the premise owner from requiring an unused NID to be removed (id. at 30). Therefore, Greater Media asserts that the Department should adopt its position, which is consistent with the DPUC's decision (id. at 32).

In response to Bell Atlantic's claim that it will incur additional cost if it is required to remove its NID at the customer's request, Greater Media argues that the cost of installing service drops and the NID is capitalized, and Bell Atlantic depreciates the capitalized costs to recover these capitalized costs

(IR GMT-BA-1-1, 1-2, 1-3; Greater Media Brief at 30). Greater Media contends that Bell Atlantic calculated its depreciation rate to include the cost of NID removal; therefore, Bell Atlantic has been recovering costs for removal of NIDs without having to remove them (Greater Media Brief at 30; Greater Media Reply Brief at 7-8). Moreover, Greater Media contends that Bell Atlantic did not establish charges associated with NID removal anywhere in its tariffs (Greater Media Brief at 30). Greater Media asserts that Bell Atlantic's proposed additional charges for NID removal would discourage end-users from receiving service from facility-based CLECs if the end-users do not want multiple NIDs on their premises (Greater Media Reply Brief at 7).

ii. Bell Atlantic

Bell Atlantic argues that, first of all, it is not necessary that Bell Atlantic remove its NIDs for CLECs to gain access to a customer's inside wiring, citing the FCC's Local Competition Order, where the FCC stated "that a requesting carrier is entitled to connect its loops, via its own NID to the incumbent LEC's NID" (Bell Atlantic Brief at 50, citing Local Competition Order at ¶ 392). Bell Atlantic allows a CLEC to connect to the customer side of a NID from its adjoining NID, and, in this way, Bell Atlantic argues that continued electrical grounding and protection to Bell Atlantic's network, the CLEC's network, and the customer's premise is ensured (Bell Atlantic Brief at 50).

Second, Bell Atlantic agrees that the property owner has the right to request Bell Atlantic to remove its NID from the premises (Bell Atlantic Proposed Findings of Fact and Conclusions of Law at 20). However, Bell Atlantic contends that its obligation is owed to the property owner making the request, not to Greater Media (Bell Atlantic Brief at 50). Therefore, Bell Atlantic argues that there is

no need to create a separate contractual obligation to Greater Media in the interconnection agreement, in addition to Bell Atlantic's obligation owed to the property owner (id.).

Third, Bell Atlantic asserts that customers should be fully informed that there may be a charge if they want to have the NID removed from their premises (id. at 51). Bell Atlantic contends that Greater Media's assertion that there is no cost exposure for the removal of the NID is wrong because "only the initial costs of installing NIDs are capitalized and depreciated . . . removal of NID must be expensed" (Bell Atlantic's Reply Brief at 18). According to Bell Atlantic, the customer will be charged for such work under Bell Atlantic's retail tariff (Bell Atlantic Proposed Findings of Fact and Conclusions of Law at 20; IR GMT-BA-1-5). Bell Atlantic argues that since Greater Media intends to encourage customers to consider NID removal, Greater Media should be responsible for informing the customers of the consequences, including the charges, of NID removal (Bell Atlantic Brief at 51).

Finally, Bell Atlantic contends that if the Greater Media's customer wants to switch to Bell Atlantic or another CLEC that uses Bell Atlantic's loops or its NID, then Bell Atlantic will incur costs to reinstall a NID and will have to recover those installation costs (id.). According to Bell Atlantic, these additional costs would create disincentives for customers to switch from Greater Media to Bell Atlantic, and, therefore, will hurt the competitive environment (id.).

c. Analysis and Findings

We agree that a property owner should have the right to request removal of a NID from her premises. While Bell Atlantic argued that the FCC stated in its Local Competition Order that the connection between a CLEC's NID to the incumbent's NID is appropriate for providing CLECs with

access to customer inside wiring (Local Competition Order at ¶¶ 392-394), we do not think that this rule excludes the possibility that the incumbent could remove the NID if the customer wants it to be removed. We conclude that as long as a carrier is requested and authorized by its customer to remove a NID, it is reasonable that the carrier should perform removal of its own NID.

Regarding charges for removal of a NID, we agree with Greater Media that the tariff provision provided by Bell Atlantic is not clear concerning the charges Bell Atlantic will impose for NID removal. However, we note that this is not a sufficient basis to reject Bell Atlantic's proposal to charge a removal fee, since Bell Atlantic has not yet had to remove a NID (Tr. at 169). We are persuaded by Greater Media's argument that once Bell Atlantic has capitalized the cost of installing the NIDs, it should then depreciate that capitalized cost and the depreciation rate will reflect the cost of removing the NID.[57] We further find that Bell Atlantic has been recovering the cost of NID removal without having to remove the devices.[58] Account 2421.11 shows that Bell Atlantic does recover the cost of removal when it capitalizes the costs of installing service drops and/or network interface devices. Therefore, Bell Atlantic should not be allowed to recover the removal cost again by charging customers for removal of the NID.

Accordingly, the Department finds that each carrier is required to remove its own NID when

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57 This practice is consistent with Bell Atlantic's practice of including disconnect costs in its retail installation costs.

58 In the narrative of account 2421.11, Bell Atlantic maintains that initial installation of service drops and/or network interface device is booked to include a salvage analysis stating that "[t]he future gross salvage is estimated to be 8.0% and the future cost of removal is estimated to be 43.0%, producing a future net salvage factor of -35%" (IR GMT-BA-1-3).

requested by to do so by a premise owner, and may not charge another carrier for doing so. In addition, the customer should be informed at the time of the removal request, that if the customer requests service in the future requiring a Bell Atlantic NID, the customer may be charged for the installation of a new NID.

J. Payment of Costs as a Result of False Starts;

Provisioning and Maintenance of Unbundled Loops

1. Introduction

This section addresses the process the parties will follow when an existing Bell Atlantic customer changes its local service provider to Greater Media, and Greater Media provides service to this customer by purchasing Bell Atlantic's UNE Loop for access to that customer's premises (Bell Atlantic Brief at 51). Disconnecting a customer's "live" telephone service from Bell Atlantic and connecting this customer to live telephone service with Greater Media is a process known as a "hot cut" (id. at 52). This process is coordinated by Bell Atlantic and the CLEC to minimize the service disruption to the customer (id.).

Bell Atlantic proposes to recoup costs from Greater Media when (1) Greater Media erroneously identifies a service problem with a Bell Atlantic UNE and Bell Atlantic dispatches a technician to correct the problem;[59] or (2) if Bell Atlantic dispatches a technician and that technician is

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[59] Bell Atlantic refers to this situation as a dispatch-related charge (Exh. BA-MA-1, at 2). Greater Media would be assessed either a "dispatch in" or "dispatch out" charge as set forth in Exhibit A to the Interconnection Agreement (id.).

unable to complete his or her work as a result of Greater Media's end user customer[60] (id. at 55; Exh. BA-MA-1, at 3).

The Parties disagree whether the same standards and charges for false starts[61] and missed installation appointments that will apply to Greater Media should also be applied to Bell Atlantic (Greater Media Brief at 32). In addition, the Parties do not agree on three other issues relating to how "hot cuts" are performed: (1) the scheduling of the Conversion Time interval[62]; (2) the period of time dial tone must be provided in advance of the hot cut; and (3) the amount of time a customer will be out of service during the hot cut process.

2. Positions of the Parties

a. Greater Media

Greater Media contends that Bell Atlantic should be subject to the same standards that it

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60 Bell Atlantic refers to this situation as a Customer Not Ready ("CNR") situation (Exh. BA-MA-1, at 2). Greater Media would be assessed a charge including both a Service Order Charge and a Premises Visit Charge as specified in Bell Atlantic's applicable tariff (id.).

61 Greater Media describes a false start as useless work caused for either Greater Media or Bell Atlantic by the actions of the other carrier or its customers at the request of the other carrier (Exh. GMT-1, at 18). For example; a problem exists with a Bell Atlantic UNE Loop and Greater Media dispatches a technician based on Bell Atlantic's diagnosis that the problem exists on Greater Media's network. If the problem actually lies with Bell Atlantic's network, this would qualify as a false dispatch or false start. The reverse of this situation caused by a mis-diagnosis of the problem by Greater Media would likewise qualify as a false start (Tr. at 134-135).

62 The Conversion Time is described as the CLEC's desired due date and time for a hot cut as designated on the Local Service Request that the CLEC submits to Bell Atlantic (Exh. BA-MA-1, Attachment A). The Local Service Request is the first order form generated by the CLEC to Bell Atlantic indicating a former Bell Atlantic customer wishes to change telephone service providers.

applies to Greater Media and therefore reimbursement for false starts should be reciprocal (id.). Greater Media proposes that Bell Atlantic should be charged if Greater Media dispatches its technician at Bell Atlantic or its customer's request, or on Greater Media's own request, and is unable to complete work due to the inaction or action of Bell Atlantic or its customer (id.). Greater Media states if a Greater Media technician shows up at the appropriate meet time and the Bell Atlantic technician does not show up at the proper time, does not show up at all, or does show up and is not qualified to do the work delineated in the job ticket that initiated the dispatch, then Greater Media should get paid under these circumstances (Tr. at 133-135).

Regarding the hot cut process, Greater Media argues that Bell Atlantic should agree to a definite Conversion Time that would fall within a two hour window to coordinate the hot cut performed by the Bell Atlantic and Greater Media technicians (Greater Media Brief at 33). This two hour window would reduce the time that a Greater Media technician would wait, at Greater Media's expense, for the Bell Atlantic technician (id.).

Additionally, under Bell Atlantic's current language, Greater Media is supposed to provide facilities for the hot cut 48 hours in advance of the date the Bell Atlantic customer switches to Greater Media, in order for Bell Atlantic to test for Greater Media's dial tone. (Exh. GMT-1, at 17). Greater Media proposes a reduction in that time from 48 hours to 24 hours (Greater Media Brief at 33). Greater Media claims facilities installed 48 hours in advance sit unused until the hot cut is completed (Exh.-GMT-1, at 17).

Lastly, Greater Media maintains that a five minute dial tone loss interval during the hot cut, in

contrast to Bell Atlantic's proposed 15 minute interval, would allow hot cuts to be as seamless as possible for the customer and facilitate consumer's willingness to change local service providers by minimizing the inconvenience associated with losing dial tone (Greater Media Brief at 33).

b. Bell Atlantic

Bell Atlantic states that reciprocity of charges for false starts is not appropriate because the rationale supporting Bell Atlantic assessing charges against Greater Media does not flow in the other direction (Exh. BA-MA-1, at 2-3). Bell Atlantic states that it would not request a Greater Media technician be dispatched to correct a problem with either a Bell Atlantic UNE or a Greater Media-provided service (Bell Atlantic Brief at 55). In addition, Bell Atlantic points out that it has no performance remedies against Greater Media in situations where Greater Media or its customer cause Bell Atlantic to incur additional costs that are not included in the UNE TELRIC charges approved by the Department (Bell Atlantic Reply Brief at 19).

Bell Atlantic claims that what Greater Media is actually seeking is to impose a charge whenever Greater Media dispatches a technician and Bell Atlantic fails to perform service in a timely manner as expected (Bell Atlantic Brief at 55). Bell Atlantic points out that the Performance Standards Plan, adopted by the Department in the Consolidated Arbitrations, has established remedies for CLECs when Bell Atlantic fails to perform as specified in the performance standards (Exh. BA-MA-1, at 4). Specifically, the Incident Based Credit ("IBC") for Missed Installation Appointments included in the Department's Performance Standards Plan provides remuneration to CLECs when Bell Atlantic misses an installation appointment (Bell Atlantic Brief at 56). If Greater Media is allowed to impose an

additional charge to Bell Atlantic beyond what is established in the Consolidated Arbitrations, Bell Atlantic contends that Greater Media would be recovering double charges for the same incidents (id.).

In addition, Bell Atlantic states that it is appropriate to charge Greater Media a customer-not-ready ("CNR") charge for a false start if Bell Atlantic cannot complete its work at a Greater Media's customer premise because of this customer's actions (id.). Bell Atlantic claims that no comparable situation would exist that would entitle Greater Media to levy the CNR charge on Bell Atlantic (id. at 57). Bell Atlantic points out, again, that Greater Media is really seeking financial reimbursement whenever Bell Atlantic fails to perform a service and Greater Media has dispatched a technician (id.). Bell Atlantic reiterates that Greater Media has remedies through the Department's Performance Standards Plan (id.).

Regarding the Conversion Time Interval, Bell Atlantic states that its revised proposal to Greater Media should satisfy Greater Media's concern for a definite time for hot cuts (id. at 53). Bell Atlantic proposes to schedule the Conversion Time at a particular time within the regularly scheduled operating hours of Bell Atlantic's Regional CLEC Control Center or at an agreed upon Conversion Time if Bell Atlantic's work force is not available (id.).

Bell Atlantic states that it is attempting to establish the same standard process for hot-cuts among all CLECs in order to provide good quality service to CLECs (id. at 53-54). Bell Atlantic points out that it cannot be expected to ensure the timely and accurate provision of live customer loop conversions if it is required to have different procedures for each individual CLEC (id. at 53). Bell Atlantic maintains that Greater Media's proposal to shorten the 48-hour timeframe to establish dialtone

to 24 hours should be rejected because Greater Media has offered no reason why Bell Atlantic should deviate from standard practices (id. at 54). Bell Atlantic also points out that the 48 hour timeframe for hot cuts was established by an industry consensus and allows both Bell Atlantic and the CLEC time to test and correct potential service problems; Greater Media would not have experience with hot cuts since it has not yet processed a hot cut (id. at 53-54). Lastly, Bell Atlantic contends that the amount of time the customer is out of service during the hot cut is standard operating procedure and Greater Media has not provided any record evidence for its proposed five-minute interval (id. at 54).

3. Analysis and Findings

Greater Media agrees that Bell Atlantic should be reimbursed for false starts attributed to Greater Media (Tr. at 134). Greater Media's objection to Bell Atlantic's position on CNR and dispatch charges relates solely to the reciprocal nature of those charges. In addition, although Greater Media raises the issue of reciprocity of charges under its discussion of false starts, its testimony during the hearing indicates Greater Media's position is that charges for "false starts" (Bell Atlantic's CNR charges under Section 9.11) and "false dispatches" (Bell Atlantic's charges for dispatch under Section 9.14) should be reciprocal (id. at 135). Our conclusions below address both situations.

For situations when Bell Atlantic fails to perform, (i.e., a Bell Atlantic technician does not show for an installation or service repair appointment; a Bell Atlantic technician mis-diagnosis a service problem; or a Bell Atlantic technician dispatched on a repair call is not qualified to do a particular job because of incorrect information on a job ticket) the Department notes that Greater Media has recourse

through the Department's established performance standards (id. at 133-136). In the Consolidated Arbitrations-Phase 3-E Order, Bell Atlantic defines Missed Installation Appointment and Missed Repair Appointment as an order that is completed after the commitment date or repaired and cleared after the date and time committed due to Bell Atlantic reasons. Consolidated Arbitrations-Phase 3-E Order at 17, 22. Bell Atlantic represents that the Performance Standards provide Greater Media a remedy for the situations it has raised in this proceeding and we will hold Bell Atlantic to those representations. Thus, Greater Media's concern that a mishandled repair appointment would not be covered is addressed because the Performance Standards cover those circumstances (see RR-DTE-8; Bell Atlantic Brief at 56). If Greater Media were to have additional remedies for this particular situation over and above the Performance Standards, Greater Media, as Bell Atlantic points out, would be able to collect twice for Bell Atlantic's nonperformance for the same incident.

We agree with Bell Atlantic that Greater Media did not identify a situation where it would be entitled to financial compensation because a Bell Atlantic customer stopped a Greater Media technician from completing work or where Greater Media would provide a UNE loop to a Bell Atlantic customer. Bell Atlantic should not be held responsible for the same charges it proposes for Greater Media because the situations are not reciprocal: Bell Atlantic would not make an appointment with a Greater Media technician to service a Bell Atlantic UNE loop for a Bell Atlantic customer. Therefore, we find that it would be inappropriate to make the charges reciprocal for false starts for repair calls or missed installation appointments.

With regard to the hot cut standards Bell Atlantic proposes to Greater Media, we find that

these standards developed by an industry consensus are likewise appropriate for Greater Media. We agree with Bell Atlantic that a standard process among all CLECs for hot-cuts promotes higher quality service to CLECs and facilitates customer transition to a competitive market. It is unreasonable to require Bell Atlantic to establish different hot cut procedures and timelines for individual CLECs. We also note that Greater Media has not provided any compelling testimony or record evidence that the 48 hour timeframe for hot cuts should be reduced to 24 hours, or that the interval customers are out of service during a hot cut should be reduced from 15 minutes to five minutes. We note the lack of any direct experience completing hot cuts with Bell Atlantic undermines Greater Media's position for establishing shorter hot cut timelines. Lastly, we note that the 48 hour standard industry timeline for completing a hot cut benefits Greater Media by providing more time to correct a potential problem with the hot cut than would a 24 hour timeline. The 48 hour timeline, as previously agreed to by Bell Atlantic and other CLECs, is reasonable. Therefore, we find that Bell Atlantic's proposed standard for hot cuts is appropriate and should be included in the interconnection agreement between the parties.

K. Audits

1. Introduction

In our MediaOne Order, the Department found that it was not necessary for parties to interconnection agreements to have general audit rights of the other party's compliance with the terms of the agreement. MediaOne Order at 140. In this case, the parties' proposed interconnection agreement contains a number of provisions that allow the parties to conduct audits of each other concerning specific issues, but does not contain a general provision that allows auditing of the other

party's overall compliance with terms and conditions of the interconnection agreement. The parties dispute whether either party should be allowed to perform a comprehensive audit up to four times a year to determine the other party's compliance with the terms of the interconnection agreement.

2. Positions of the Parties

a. Greater Media

Greater Media argues that it needs a comprehensive audit provision to audit the full spectrum of services and facilities under the interconnection agreement (Greater Media Proposed Findings of Facts and Conclusions of Law at 23). Greater Media argues that its proposed audit provision is based on Bell Atlantic's interconnection agreement with MCImetro[63] (Greater Media Brief at 34). Greater Media contends that it needs to be able to monitor and audit non-recurring charges and non-traffic related recurring charges to satisfy itself that charges are appropriate (id.). Greater Media contends that this cannot be accomplished through current provisions of monitoring and auditing of traffic (id.). Greater Media alleges that in order to comply with the billing dispute section of the agreement, Greater Media is required to deliver to Bell Atlantic a notice containing the "disputed amounts" and "specific details and reasons for disputing each item," and Greater Media cannot comply with these requirements without comprehensive audit rights (Greater Media Reply Brief at 7; Greater Media Petition at

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63 The audit provision of the MCImetro interconnection agreement states that "[e]ach party may audit the other Party's books, records, and documents for the purpose of evaluating the accuracy of the other Party's bills and performance reports rendered under this Agreement. Such audits may be performed no more than 4 times in a calendar year nor more often than once every nine months for a specific subject matter area…"(MCImetro Interconnection Agreement, Section 15 Audits and Examinations). The MCIMmetro agreement was approved by the Department on October 30, 1998. D.T.E. 98-104.

Attachment B, Proposed Interconnection Agreement Section 30.9.3). Greater Media argues that the billing dispute resolution mechanism of the interconnection agreement does not help it determine whether to dispute a bill because that mechanism only comes into play after a billing dispute begins (Greater Media Reply Brief at 7-8).

b. Bell Atlantic

Bell Atlantic argues that Greater Media's proposed "Audits and Examinations" provision providing for comprehensive audits up to four times a year is unreasonable and should not be accepted by the Department for the following three reasons (Bell Atlantic Brief at 62). First, Bell Atlantic proposes that the proposed interconnection agreement contains provisions for audits relating to exchange of traffic for reciprocal compensation and access billing that obviate the need to create the comprehensive audit rights requested by Greater Media (id.).

Second, Bell Atlantic claims that the proposed interconnection agreement already provides a means to solve billing disputes without the burden of the audit (id. at 63). Bell Atlantic emphasizes that the billing dispute section contains language that "all reasonable requests for relevant information made by one Party to the other shall be honored," and asserts that the billing dispute section is appropriate and will protect both parties' interests (id. at 64).

Third, Bell Atlantic argues that Greater Media's claim that it needs to audit the accuracy of the performance report as well as Bell Atlantic's billing is not appropriate because accuracy of the performance reports is a matter to be addressed by the Department (id.). Bell Atlantic maintains that it should not be required to participate in performance report audits requested by individual carriers (id.).

Lastly, Bell Atlantic argues that audits are time and resource consuming, and burdensome, and therefore a party should not be given a comprehensive audit right "without cause or if the information is otherwise reasonably available" (Bell Atlantic Proposed Findings of Fact and Conclusions of Law at 27).

3. Analysis and Findings

As noted, Greater Media's proposed audit provisions are based on the audit provision of MCImetro interconnection agreement.[64] Greater Media, however, has not indicated that it is seeking that audit provision under the "pick and choose" provision of Section 252(i). Although Greater Media asks for general audit rights, the MCImetro interconnection agreement is limited to audit authority for two specific areas – billing and performance reports, and not comprehensive audit authority Greater Media has argued for in its brief. We review Greater Media's request as a request for the type of audit rights specified in the MCImetro interconnection agreement. Thus, our finding in the MediaOne Order rejecting general audit rights is not relevant to deciding this dispute.

Bell Atlantic argues that it is not appropriate for Greater Media to audit the accuracy of Bell Atlantic's bills and performance reports. However, Bell Atlantic has agreed to give such a right to at least one carrier – MCImetro. In addition, these two specific audit requests are not the same as the expansive audit rights we rejected in the MediaOne Order. We find that specific audit rights for Greater Media to audit the accuracy of Bell Atlantic's bills and performance reports are reasonable and

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[64] Greater Media never provided the Department with a copy of its proposed audit language.

appropriate. The proposed agreement shall reflect this finding.

L. Satisfying Section 251 Requirements

1. Introduction

The parties disagree whether to include language indicating that the performance of the terms of the interconnection agreement satisfy Bell Atlantic's obligations to provide interconnection under § 251 of the Act. The Bell Atlantic proposals at issue, in pertinent part, are:

> Section 3.2. The Parties agree that the performance of the terms of this Agreement will satisfy [Bell Atlantic's] obligation to provide Interconnection under Section 251 of the Act.
>
> Section 29.2 The Parties covenant and agree that this Agreement is satisfactory to them as an agreement under Section 251 of the Act.

(See Bell Atlantic Brief at 23).

2. Positions of the Parties

a. Greater Media

Greater Media argues that Bell Atlantic's proposed § 251 language, provided above, would require it to agree with legal conclusions in its interconnection agreement, the terms of which have yet to be finally approved (Greater Media Brief at 15). In addition, Greater Media is concerned that the adoption of these provisions would result in a waiver of Greater Media's rights in the event it appeals any part of the Department's ruling approving this interconnection agreement (id.). Lastly, Greater Media argues that it is unnecessary for an interconnection agreement to require one party to agree as to the legal effects of the other party's performance of that interconnection agreement (Greater Media Proposed Findings of Fact and Rulings of Law at 10).

b. Bell Atlantic

In support of including the above-mentioned provisions, Bell Atlantic argues that such language is included in numerous interconnection agreements in Massachusetts and throughout the Bell Atlantic region (Bell Atlantic Brief at 23). Bell Atlantic contends that these sections merely reflect the parties' concurrence that the agreement satisfies the requirements of § 251 of the Act (id.). According to Bell Atlantic, under §§ 252(c) and (e) of the Act, the Department must find that the interconnection agreement complies with Bell Atlantic's obligations under § 251 of the Act and that Bell Atlantic's proposal merely recognizes this fact (id. at 23-24).

Bell Atlantic argues that its proposal is appropriate because Greater Media insists that various provisions be included in the interconnection agreement because Bell Atlantic is obligated under § 251 of the Act to provide the specific arrangement requested by Greater Media (id. at 24). It would be disingenuous, according to Bell Atlantic, to permit Greater Media to assert its rights under § 251 of the Act but then to refuse to acknowledge that the specific arrangements, upon which Greater Media is insisting, satisfy Bell Atlantic's obligations under this same section of the Act (id.). Moreover, Bell Atlantic argues that Greater Media fails to recognize the fact that a fully executed and implemented interconnection agreement would meet § 251 requirements (id.). Finally, Bell Atlantic contends that performance of a Department-approved interconnection agreement satisfies § 251 of the Act; therefore, there is no reasonable basis to delete the references to § 251 in Sections 3.2 and 29.2 of the proposed interconnection agreement (id.).

3. Analysis and Findings

The Department disagrees with Bell Atlantic's contention that inclusion of its proposed Sections 3.2, provided above, merely states the obvious -- that if the Department approves an interconnection agreement, Bell Atlantic must have met its obligations under §251 of the Act. In the MediaOne Order, the Department rejected a similar provision[65] because it required MediaOne to acknowledge that the interconnection agreement met the requirements of § 251. MediaOne Order at 21, citing NYNEX/MFS Intelenet Interconnection Agreement, D.P.U. 96-72, at 18 (1996). The provision here requires a more explicit acknowledgment, and, for the same reasons stated in the MediaOne Order, we strike Section 3.2.

The other sentence we must address is contained in Section 29.2. In its brief, Bell Atlantic expressed its willingness to adopt language making clear that Section 29.2, as well as Section 3.2, shall not impair Greater Media's appeal rights (Bell Atlantic Brief at 24). We find that Greater Media's concerns are best addressed by striking the objectionable sentence in Section 29.2 from the proposed interconnection agreement. Bell Atlantic has not adequately explained the necessity for including this sentence in the agreement. In the absence of record evidence explaining Bell Atlantic's intent for proposing this sentence, we agree with Greater Media that this language may be interpreted to impair Greater Media's ability to appeal a ruling of this Order. In addition, it could imply Greater Media's acknowledgment that the interconnection agreement satisfies Bell Atlantic's Section 251 requirements.

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[65] Bell Atlantic's proposed § 251 provision read as follows, "Whereas Sections 251 and 252 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996 have specific requirements for interconnection . . . and the Parties intend that this Agreement meet these requirements." See MediaOne Order at 19.

M. Municipal Calling Service

1. Introduction

Municipal Calling Service ("MCS") is a non-optional service provided by Bell Atlantic whereby toll calls within municipalities served by multiple exchanges are billed by Bell Atlantic as local calls. NYNEX IntraLATA Presubscription, D.P.U. 96-106, at 20 (1997) ("NYNEX ILP"). Due to technical limitations, Bell Atlantic cannot provide MCS to customers who select a carrier other than Bell Atlantic. Id. To address this impediment, the Department found that non-Bell Atlantic carriers shall have the option of providing toll free municipality-wide calling to its customers who had previously received MCS from Bell Atlantic. Id. at 21-22. While encouraging all carriers to offer MCS to eligible customers, the Department found that if a carrier declines to provide such toll-free calling, it must inform its new customers that municipality-wide toll calls will be billed at toll rates. Id. at 22.

The parties disagree about whether and to what extent they must share certain customer information so that each party may comply with the Department obligations, as set forth in NYNEX ILP. Bell Atlantic proposes the following language, to be contained in Section 5.8 of the interconnection agreement:

> The Parties shall work cooperatively to facilitate each Party's public service obligations as required by the Department to provide its end user Customers with toll free Municipal Calling Service ("MCS"). Such cooperation shall include the sharing of certain account and toll free municipal ("TFM") codes on a daily or other mutually agreeable basis and working with other industry participants to satisfactorily resolve MCS related measurement and billing issues associated with implementation of IntraLATA presubscription.

(see Bell Atlantic Brief at 30-31).

2. Positions of the Parties

a. Greater Media

Greater Media argues that Bell Atlantic's MCS proposal to share certain customer information may impose obligations that Greater Media cannot bear at this time (Greater Media Brief at 17). According to Greater Media, it is concerned that the adoption of Bell Atlantic's proposal will require it to modify its billing systems, and that the cost to do so is unknown and would be borne by Greater Media (id.). In addition, Greater Media argues that it has unsuccessfully requested clarification from Bell Atlantic on the type of information it would be required to provide under this proposal (id.). Absent that information, Greater Media is unwilling to accept the costs and operational burdens that would follow from the MCS proposal (id.). Finally, Greater Media argues that the inclusion of Section 5.8 in the interconnection agreement is inconsistent with the NYNEX ILP order since it would remove the "power of election . . . to provide [affected] customers . . . with a disclaimer" (id.).

b. Bell Atlantic

Bell Atlantic argues that its proposal requires Greater Media to identify on a continuing basis those Greater Media customers that reside in MCS areas so that Bell Atlantic customers calling Greater Media customers are appropriately billed in accordance with Bell Atlantic's Department-approved M.D.T.E. No. 10 (Bell Atlantic Reply Brief at 8-9). Contrary to Greater Media's view, Bell Atlantic argues that it is not attempting to force Greater Media to adopt MCS; rather, Bell Atlantic is merely seeking information it deems necessary to bill its own customers appropriately (id. at 9). According to Bell Atlantic, Greater Media's refusal to provide Bell Atlantic with certain customer information

undermines "one of the major policy rationales underlying MCS," which, Bell Atlantic argues, is to ensure that a Bell Atlantic customer will not incur a toll charge when calling a local public safety agency (id.). To illustrate this point, Bell Atlantic states that if a police, fire or municipal agency became a Greater Media customer and if Greater Media declines to provide Bell Atlantic with "appropriate information" identifying the municipality where the Greater Media customer is located, Bell Atlantic contends that its customers calling this police, fire or municipal agency would be charged for toll calls (id.). Finally, Bell Atlantic argues that other CLECs have recognized the mutual obligation to share information so that customer calls are properly rated (Bell Atlantic Brief at 31).

3. Analysis and Findings

Greater Media is correct that, subject to the conditions set forth in NYNEX ILP, non-Bell Atlantic carriers have the option of not providing toll free municipality-wide calling to their customers. Although Greater Media is not obligated to provide MCS to its own customers, it cannot hinder Bell Atlantic from its requirement to do so. To meet its Department obligation to provide MCS to its Massachusetts customers, Bell Atlantic must obtain certain customer information from other carriers, including Greater Media. The Department shares Bell Atlantic's concern that absent the receipt of basic customer information from Greater Media, Bell Atlantic will be unable to bill its customers properly.

Greater Media did not propose an alternative to Bell Atlantic's language, arguing instead that this section should be omitted from the interconnection agreement. We disagree with Greater Media's suggestion and will review Bell Atlantic's proposal to determine whether it complies with our Orders

and requires no more information from Greater Media than is necessary. The first sentence of Bell Atlantic's proposed Section 5.8 states that the parties shall work cooperatively to facilitate each carrier's Department obligations "to provide its end user Customers with toll free [MCS]." We agree with Greater Media that this language may be construed as requiring Greater Media to provide toll free MCS, which is not consistent with our findings in the NYNEX ILP Order, described above. To remove any ambiguity, we direct the parties to insert the following first sentence for this section: "The Parties shall work cooperatively to facilitate each Party's [MCS] obligations as required by the Department in NYNEX ILP, D.P.U. 96-106 (1997) and D.P.U./D.T.E. 96-106-A (1998)."

Moreover, Bell Atlantic indicated in this proceeding the specific information it needs from Greater Media: the appropriate ten-digit telephone number and a toll free municipal code ("TFM") (RR-DTE-9). The TFM is a four-digit numeric code unique to each municipality. Bell Atlantic argues that this code enables Bell Atlantic to properly rate as toll free a call made by one of its customers within a municipality served by multiple exchanges (id.). The remainder of Bell Atlantic's proposal is: "Such cooperation shall include the sharing of certain account and TFM codes on a daily or other mutually agreeable basis and working with other industry participants to satisfactorily resolve MCS related measurement and billing issues associated with implementation of IntraLATA presubscription." On the basis of Bell Atlantic's response to the record request mentioned above, the Department modifies the second sentence of Bell Atlantic's proposal to read, "Such cooperation shall include the sharing of ten-digit telephone numbers and TFM codes on a daily or other mutually agreeable basis and working with other industry participants to satisfactorily resolve MCS related measurement and billing

issues associated with the implementation of IntraLATA presubscription." We find that this change addresses Greater Media's concerns. The parties shall modify their proposed interconnection agreement accordingly.

N. "Pick and Choose" Rights

1. Introduction

The parties disagree about their rights under § 252(i) of the Act, which provides:

> A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

47 U.S.C. § 252(i).

In its Local Competition Order, the FCC promulgated regulations implementing § 252(i) of the Act, which are contained in 47 C.F.R. § 51.809. The FCC explained that its so-called "pick and choose" rule gives requesting carriers the ability to choose among individual provisions contained in publicly-filed interconnection agreements, and that the requesting carrier should be permitted to obtain its statutory rights on an expedited basis. Local Competition Order at ¶¶ 1310, 1321. The FCC conditions the availability of such provisions upon the ILEC demonstrating to the state commission that it cannot provide the requested provision at the same cost as it does to a CLEC with which it has an approved interconnection agreement, or that it is technically not feasible to provide the requested item. See 47 C.F.R. § 51.809(b). Lastly, the rule provides that individual interconnection, service, or network element arrangements shall remain available for use by carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under § 252(f)

of the Act. 47 C.F.R. § 51.809(c).

Greater Media proposes to include a provision that recognizes its § 252(i) rights. Bell Atlantic does not oppose Greater Media's provision, but proposes to add language identifying Greater Media's obligations under the same section.

2. Positions of the Parties

a. Greater Media

In response to Bell Atlantic concerns about the language contained in Greater Media's petition, Greater Media proposes the following "compromise position"[66] for Section 30.12: "Notwithstanding any other provision of this Agreement, each party shall be entitled to exercise its rights under Section 252(i) of the Act and any related regulations or decisions of the FCC, the Department and the Courts" (Greater Media Brief at 34). According to Greater Media, this revised language protects the rights of the parties without "overly specifying an interpretation of Section 252(i) or the FCC's existing regulations" (id.). Greater Media argues against tracking the precise language of the FCC's regulations because if the regulations are amended, the parties would be required to amend their interconnection agreement (Greater Media Proposed Findings of Fact and Conclusions of Law at 22). Lastly, Greater Media opposes using "this type of section" to require Greater Media to agree to pay Bell Atlantic for all costs associated with the exercise of Greater Media's § 252(i) rights (Greater Media Brief at 34). According to Greater Media, the parties should be expected to cooperate regarding any work that the

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66 This "compromise position" appears for the first time on brief. Bell Atlantic commented on the new proposal in its reply brief, where it renewed the same objections as it had to Greater Media's original proposal.

providing party must perform and the level of reimbursement involved (id.).

b. Bell Atlantic

Bell Atlantic does not object to the substitution of Greater Media's revised language for Bell Atlantic's Section 30.12.1; however, Bell Atlantic argues that any provision addressing Greater Media's rights under § 252(i) must set forth Greater Media's obligations under this same section (Bell Atlantic Reply Brief at 21). Bell Atlantic contends that its proposed Sections 30.12.2 and 30.12.3[67] make clear Greater Media's obligations and should, therefore, be adopted (id. at 21-22). According to Bell Atlantic, the additional language is necessary to make explicit Greater Media's obligation to pay for all incremental costs associated with exercising its rights as well as create a fair and understandable procedure to accomplish Greater Media's election under § 252(i) (id. at 22).

3. Analysis and Findings

Although the FCC has made clear in its Local Competition Order that parties need not include "most favored nation" clauses[68] in their interconnection agreements to obtain "most favored nation" status, Greater Media and Bell Atlantic have expressed interest in making explicit their rights under § 252(i). See Local Competition Order at ¶ 1316 (concluding that § 252(i) entitles all parties with

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67 Bell Atlantic's proposed Sections 30.12.2 and 30.12.3 are set forth in their entirety in Bell Atlantic's brief (see Bell Atlantic Brief at 61-62).

68 In international law, a most favored nation clause is a clause in a treaty by which each signatory country grants to the other the broadest rights and privileges which it accords to any other nation in treaties it has made or will make. Barron's Law Dictionary, at 303 (1984).

interconnection agreements to "most favored nation" status). Greater Media's revised proposal, contained in its brief, provides that the parties may exercise their rights under § 252(i). As mentioned above, Bell Atlantic does not oppose substituting Bell Atlantic's proposed Section 30.12.1 for Greater Media's revised § 252(i) language as long as Bell Atlantic's Sections 30.12.2 and 30.12.3 are adopted to provide clarification as to the parties' rights and obligations under § 252(i). Since we find that Greater Media's proposal makes clear that the parties have rights under § 252(i), it is reasonable that the parties include this language in the interconnection agreement.[69]

Bell Atlantic's proposed Section 30.12.2 would require Greater Media to be liable for all incremental costs associated with any rearrangement of Bell Atlantic's facilities necessary to provide Greater Media with a requested item pursuant to § 252(i). The Department declines to direct the parties to include this provision in the agreement. In its Local Competition Order, the FCC states that publicly-filed agreements are to be made available "only to carriers who cause the [ILEC] to incur no greater costs than the carrier who originally negotiated the agreement, so as to result in an interconnection arrangement that is both cost-based and technically feasible." Local Competition Order at ¶ 1317. If Greater Media requests an item from another approved Bell Atlantic interconnection agreement that would cause Bell Atlantic to incur a cost greater than providing the same item to the carrier that originally negotiated the agreement, Bell Atlantic is not required to provide it, assuming Bell Atlantic proves to the Department that the cost would be higher. 47 C.F.R. §

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69 The Department notes that the pick and choose provision approved by the Department in the MediaOne Order is subject to a Motion for Clarification in D.T.E. 99-42/43, 99-52.

51.809(b)(1). If Bell Atlantic is willing to provide Greater Media with an item that Greater Media requested pursuant to § 252(i), even though the cost to Bell Atlantic is greater, there is nothing in the interconnection agreement or applicable law to prevent the two parties from negotiating the payment of this additional cost. The Department declines to direct the parties to do so, and, therefore, we reject Bell Atlantic's Section 30.12.2.

Bell Atlantic's proposed Section 30.12.3 would require Greater Media to notify Bell Atlantic in writing if Greater Media elects to exercise its § 252(i) rights. The Department finds this to be a useful provision that would not be overly burdensome to Greater Media; therefore, we direct the parties to include this language in the interconnection agreement. The next sentence of this proposed subsection requires the parties to amend the interconnection agreement to reflect the provision of the requested "pick and choose" item. This modification would include not only the rates, terms, and conditions for the interconnection, service, or network element that Greater Media has elected to adopt, but, also all of the rates, terms, and conditions of the other agreement that are "legitimately related" to such elected interconnection, service, or network element. See Local Competition Order at ¶ 1315. Moreover, Bell Atlantic would limit this adopted item to the shorter of the term of the Greater Media interconnection agreement or the remainder of the term of the other agreement (see Bell Atlantic Brief at 61). While we are concerned that the phrase "legitimately related" is subject to varying interpretations, since that phrase was used by the FCC in its Local Competition Order[70] and reaffirmed

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[70] See Local Competition Order at ¶ 1315.

by the Supreme Court in its decision reinstating the pick and choose rule,[71] we conclude this part of Bell Atlantic's proposal is an accurate representation of the FCC's rules and shall be included in the interconnection agreement. We also find that Bell Atlantic's proposal directing the parties to amend their interconnection agreement and to limit the term of the adopted item to the shorter of Greater Media's interconnection agreement or the other interconnection agreement is reasonable and consistent with the FCC's rules.[72] 47 C.F.R. § 51.809(c). We, therefore, direct the parties to include this proposal.

The last part of Bell Atlantic's proposed Section 30.12.3 reads as follows:

> provided, however, that [Greater Media] shall continue to provide the same services or arrangements to [Bell Atlantic] as required by this Agreement, subject either to the rates, terms, and conditions applicable to [Bell Atlantic] for the interconnection, service, or network element under the Other Agreement or to the rates, terms, and conditions of this Agreement for such interconnection, service, or network element, whichever is more favorable to [Bell Atlantic] in its sole determination.

(see Bell Atlantic Brief at 61-62).

The Department declines to adopt this section of Bell Atlantic's proposal. Bell Atlantic may not prevent Greater Media from exercising its rights under § 252(i), even if that means Greater Media will select a term from another agreement that requires it to do less than what it negotiated to do in its own

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71 "The Commission has said that an [ILEC] can require a requesting carrier to accept all terms that it can prove are 'legitimately related' to the desired term." AT&T Supreme Court Decision at 738.

72 47 C.F.R. § 51.809(c) provides that "individual interconnection, service or network element arrangements shall remain available for use by telecommunications carriers … for a reasonable period of time after the approved agreement is available for public inspection."

agreement. The pick and choose rule does not limit a requesting carrier to only picking and choosing items that supplement its interconnection agreement. Therefore, we direct the parties to modify Section 30.12 to incorporate the Department's findings provided above.

O. Tandem Transit on Same Rates, Terms and Conditions

1. Introduction

As noted above, tandem transit service allows CLECs to terminate traffic on each others' networks without directly interconnecting with each other; instead, the CLECs only have to interconnect at the same tandem location with Bell Atlantic. See MediaOne Order at 66. In its petition, Greater Media proposes the following language for Section 7.2.4 of the interconnection agreement:

> [Bell Atlantic] agrees that it shall make available to [Greater Media], at [Greater Media's] sole option, any Tandem Transit arrangement [Bell Atlantic] offers to another Telecommunications Carrier at the same rates, terms, and conditions provided to such other Telecommunications carrier.

The parties disagree whether § 252(i) of the Act enables Greater Media to obtain any tandem transit traffic arrangement Bell Atlantic may have with another CLEC, pursuant to an approved interconnection agreement, on the same rates, terms and conditions.

2. Positions of the Parties

a. Greater Media

Greater Media argues that § 252(i) of the Act[73] requires Bell Atlantic to make available to

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[73] See Section IV.N., above, for a discussion of § 252(i) of the Act and the FCC's (continued…)

Greater Media, upon its request, any tandem transit traffic service that Bell Atlantic provides to other CLECs, pursuant to another Bell Atlantic interconnection agreement approved under § 252 of the Act (Greater Media Brief at 23-24). According to Greater Media, tandem transit traffic is a "service" as defined by the Act and is, thus, an appropriate subject to be provided to Greater Media should Greater Media choose to exercise its rights under § 252(i) of the Act (id.). Greater Media argues that Bell Atlantic's interpretation that tandem transit traffic is not covered by § 252(i) because this service does not involve traffic from a Greater Media customer to a Bell Atlantic customer is incorrect (id. at 24). Greater Media asserts that § 252(i) applies to any "service" covered by an approved Bell Atlantic interconnection agreement and since Bell Atlantic has admitted that it provides tandem transit traffic service to many CLECs, it is obligated to provide the same to Greater Media, upon Greater Media's request (id.).

b. Bell Atlantic

Bell Atlantic argues that Greater Media's right to adopt transit service provisions from another carrier's interconnection agreement should be no greater than the rights it is afforded under § 252(i) of the Act and the FCC's implementing rules (Bell Atlantic Brief at 36). According to Bell Atlantic, since Greater Media's § 252(i) rights are set forth in Section 30.12 of the interconnection agreement,[74] it is unnecessary to carve out an individual "Most Favored Nation" section for tandem transit service (id.).

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[73](…continued)
implementing rules.

[74] See Section IV.N., above, for a discussion of Section 30.12 of the interconnection agreement.

At any rate, Bell Atlantic argues that tandem transit service is not available under the FCC's pick and choose rule implementing § 252(i) (Bell Atlantic Reply Brief at 14). Bell Atlantic contends that § 252(i) only allows a carrier to pick and choose a service that is required under § 251 of the Act and tandem transit service is simply not required under § 251 because this service is voluntary (id.). Finally, Bell Atlantic argues that the FCC limits a carrier's ability to use the pick and choose rule by requiring an ILEC to make a service available to the requesting CLEC only for a reasonable period of time and that this limitation is applicable to Greater Media and tandem transit traffic (id.).

3. Analysis and Findings

The Department declines to adopt Greater Media's proposed Section 7.2.4, set forth above. Since the Department directs the parties to incorporate language making clear the parties' rights under § 252(i) of the Act in Section 30.12 of the interconnection agreement, it is redundant to reiterate those rights for tandem transit traffic service. However, for the reasons cited below, we do not agree with Bell Atlantic's interpretation of § 252(i), that the availability of interconnection, service, or network elements is limited to only those required by § 251 of the Act.

As discussed in greater detail above in Section IV.N. of this Order, § 252(i) of the Act provides that Bell Atlantic must make available "*any* interconnection, service, or network element provided under an agreement *approved under this section* to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." 47 U.S.C. § 252(i) (emphasis added). Bell Atlantic points to nothing in the Act or the FCC's rules (and we are aware of none) that limits the applicability of this rule to only those items

"required under Section 251." As long as Bell Atlantic makes a particular service available to a carrier through the terms of an approved interconnection agreement, it is irrelevant for purposes of § 252(i) whether this particular service is "required" under § 251. Unless one of the limitations contained in 47 C.F.R. § 51.809 apply, Bell Atlantic must make available individual provisions of other approved interconnection agreements to Greater Media, upon Greater Media's request. Indeed, in a pair of recent decisions issued by the FCC, the FCC rejected a similar argument by Bell Atlantic, and expressly stated that its rules establish only two limited exceptions to the right of carriers to opt-into an interconnection agreement under § 252(i).[75] Greater Media may request this service on the same terms and conditions as contained in interconnection agreements between Bell Atlantic and other CLECs approved by a state commission.

Finally, Bell Atlantic argues that the "reasonable period of time" limitation contained in 47 C.F.R. § 51.809(c) applies to tandem transit traffic service. Bell Atlantic is correct that the FCC stated that interconnection "agreements remain available for use by requesting carriers for a reasonable period of time." Local Competition Order at ¶ 1319; see also 47 C.F.R. § 51.809(c). However, Bell Atlantic presented no evidence establishing a reasonable period of time for Bell Atlantic to make tandem transit

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75 See Global NAPs South, Inc. Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission, Memorandum Opinion and Order, CC Docket No. 99-198 at ¶ 7 n. 25 (rel. August 5, 1999) (rejecting Bell Atlantic's argument that section 252(i) only permits carriers to opt-into provisions of interconnection agreements that are based on the requirements of section 251); Global NAPs, Inc. Petition for Preemption of Jurisdiction of the New Jersey Board of Public Utilities, Memorandum Opinion and Order, CC Docket 99-154, at ¶ 8 n.26 (rel. August 3, 1999) (rejecting Bell Atlantic's argument that section 252(i) only permits carriers to opt-into provisions of interconnection agreements that are based on the requirements of section 251).

service provisions contained in existing interconnection agreements available to Greater Media. Therefore, we cannot make a finding as to a reasonable period of time for availability of tandem transit service provisions. The parties shall amend the proposed interconnection agreement accordingly.

P. E911 Funding

1. Introduction

In addition to providing both residents and businesses with the ability to reach emergency services by dialing "9-1-1," enhanced 911 ("E911") gives emergency personnel the address location of the caller when a call is placed to 911. See Statewide Emergency Telecommunications Board, D.P.U./D.T.E. 97-87, at 1 n.2 (1998). By Massachusetts statute, E911 is funded through directory assistance ("DA") revenues. All local exchange carriers must provide E911 service and may charge for DA to recover the cost of doing so. See St. 1990, c. 291, § 2; G.L. c. 166, §§ 14A(a), 15E; G.L. c. 159, §§ 19, 19A. The parties dispute how Greater Media should contribute to E911 service when it provides its own DA, rather than relying on Bell Atlantic's DA services.

In the Department-arbitrated and approved interconnection agreement between NYNEX, now d/b/a Bell Atlantic, and AT&T, the Department adopted NYNEX's proposal to require AT&T to pay a portion of E911 costs by assigning AT&T a proportional amount of the costs based on AT&T's numbers in the E911 database. AT&T/NYNEX Arbitration, D.P.U. 96-80/81, at 6-7 (1997) ("AT&T/NYNEX Arbitration"). In adopting NYNEX's proposal for its interconnection agreement with AT&T, the Department made clear that this language provided a temporary solution that was

acceptable in the interim pending approval of a permanent cost and funding mechanism for E911.[76] Id. at 7.

2. Positions of the Parties

a. Greater Media

Greater Media argues that Bell Atlantic withdrew its original proposal to include language mirroring that approved by the Department in AT&T/NYNEX Arbitration, and offered instead its proposal contained in Tariff No. 17, which is pending before the Department (Greater Media Brief at 24-25). Greater Media states that it did not object to Bell Atlantic's withdrawal of its original proposal; rather, Greater Media supports incorporating the E911 terms and conditions from Tariff No. 17 into its interconnection agreement, though these terms and conditions would be subject to change as a result of tariff revisions or pursuant to Greater Media's rights, if any, under § 252(i) of the Act (id. at 25).

Greater Media opposes the inclusion of the E911 funding provision contained in the AT&T/NYNEX interconnection agreement, arguing that this language is "inoperative and of no value to any party" (Greater Media Reply Brief at 5). Greater Media contends that Bell Atlantic's AT&T language was never utilized and now conflicts with Bell Atlantic's intention to adopt the language contained in its Tariff No. 17 proposal, as and when approved (id.).

b. Bell Atlantic

Bell Atlantic argues that its initial proposal for E911 funding mirrored the language contained in

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[76] Bell Atlantic has submitted a permanent E911 funding mechanism in its Tariff No. 17 submittal. The Department is reviewing Bell Atlantic Proposed M.D.T.E. No. 17 in D.T.E. 98-57.

the Department-arbitrated AT&T/NYNEX interconnection agreement and notes that the AT&T language was only an interim arrangement pending a future Department review (Bell Atlantic Brief at 37). To resolve this issue with Greater Media, Bell Atlantic asserts that it suggested an alternative to the AT&T language that would defer any charges until the Department determines the cost and funding mechanism for E911 in the D.T.E. 98-57 proceeding. Bell Atlantic argues that Greater Media would not accept this alternative and offered no explanation for its opposition (id.). Finally, Bell Atlantic argues that in light of Greater Media's rejection of its suggested alternative, it objects to Greater Media's proposal to incorporate, subject to modification, Bell Atlantic's proposed E911 funding language contained in Tariff No. 17 (Bell Atlantic Reply Brief at 14-15). According to Bell Atlantic, until the Department orders an alternative funding mechanism under Tariff No. 17, its interconnection agreement with Greater Media should include E911 funding language identical to that approved by the Department in the AT&T/NYNEX Arbitration (id. at 15).

3. Analysis and Findings

Bell Atlantic, which is proposing new E911 funding language in one of its tariffs, is opposed to including that same provision in an interconnection agreement to which it is a party. However, Bell Atlantic's caution may reflect the fact that the tariff provisions are not yet approved and may be changed by the Department. We find Bell Atlantic's position to be reasonable. Thus, despite the parties' spirited debate about which E911 funding provision we should adopt, we find that the practical effect of our decision will be short-lived.

Therefore, the Department declines Greater Media's suggestion to simply incorporate Bell

Atlantic's proposal contained in Bell Atlantic Proposed M.D.T.E. No. 17. That proposed tariff is the subject of a open proceeding and we are reluctant to take any action that may be construed as pre-determining the result of E911 funding, the cost and funding mechanism which is to be decided in D.T.E. 98-57. We also disagree with Greater Media's assertion that the AT&T/NYNEX interconnection agreement E911 funding language is "inoperative and of no value to any party." Although the Department emphasized the interim nature of the AT&T language, that provision has been in effect for two years, and represents current Department precedent on this issue. Accordingly, we require the parties to incorporate the AT&T/NYNEX language into the proposed interconnection agreement. We note that depending on what the Department decides in D.T.E. 98-57, the parties may have to revise their interconnection agreement to incorporate the new E911 funding provisions. As both parties know, Department-arbitrated provisions of interconnection agreements may be superseded by corresponding provisions in Department-approved tariffs. See MediaOne Order at 11.

Q. Unbundled Network Elements; Available Network Elements

1. Extent of Obligation to Provide UNEs

a. Introduction

The FCC promulgated Rule 319 to implement the Act's unbundling obligations under Section 251(c)(3) and Section 251(d)(2). See Section IV.I. for a discussion of Bell Atlantic's unbundling obligations. Rule 319 required ILECs, such as Bell Atlantic, to make available a minimum of seven network elements to requesting carriers. 47 C.F.R. § 51.319. Rule 319 was vacated by the Supreme Court in AT&T Supreme Court Decision. The FCC instituted a proceeding to revisit the list of

network elements that ILECs were required to unbundle. FCC Docket No. 99-238.[77]

As stated earlier, the FCC recently adopted its final rules, which contain a list of UNEs required to be offered by ILECs, although the FCC's order has not been released. It is possible that Bell Atlantic may no longer be required under the new federal rules to provide certain UNEs as provisioned today to CLECs in Massachusetts. The parties disagree about how to address the uncertainty caused by the Supreme Court's remand of the FCC's Rule 319 in the interconnection agreement.

b. Positions of the Parties

i. Greater Media

Greater Media argues that its proposal, contained in Attachment D of its petition, enables Greater Media to obtain UNEs from Bell Atlantic in accordance with § 251(c)(3) of the Act and acts as a "placeholder" until the FCC's final rules are issued (Greater Media Brief at 25). According to Greater Media, its proposed Section 9.0 is based upon the Department's Phase 4-J Order in the Consolidated Arbitrations and the corresponding provision, Section 11.0, of the Cablevision Lightpath/Bell Atlantic interconnection agreement[78] (id. at 25-26). Greater Media asserts that its proposal is preferable to Bell Atlantic's because Greater Media's proposal would better define Bell Atlantic's UNE obligations, thereby leaving less room for possible dispute (id. at 26).

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77 In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, 95-185, Second Further Notice of Proposed Rulemaking (rel. April 8, 1999).

78 The Cablevision Lightpath/Bell Atlantic interconnection agreement was approved by the Department on September 10, 1998.

According to Greater Media, Bell Atlantic's proposal would enable it to immediately stop providing a UNE later found by the FCC not to be required under the Act (id.). According to Greater Media, this abrupt cessation creates the risk of disruption of customer service, loss of business, and public safety risks (id.). In addition, Greater Media contends that Bell Atlantic's language would allow Bell Atlantic to file tariffs to govern its provision of UNE combinations rather than utilizing the terms contained in the interconnection agreement that comply with the Consolidated Arbitration-Phase 4-J Order (id.). Lastly, Greater Media argues that Bell Atlantic's proposal is deficient because it does not reflect Bell Atlantic's representations made to the FCC in the context of the Bell Atlantic-NYNEX merger (id.).

ii. Bell Atlantic

Bell Atlantic argues that its proposal accurately and fully describes the current state of the law concerning the identification of UNEs and expressly provides that Bell Atlantic will continue offering the UNEs listed in Rule 319 pending the FCC's rulemaking (Bell Atlantic Brief at 39). Bell Atlantic contends that its language properly preserves Bell Atlantic's rights to seek review of any regulatory decision concerning UNEs and reaffirms its voluntary commitment to the FCC and the Department to provide UNEs (id. at 40; Bell Atlantic Reply Brief at 15). Bell Atlantic states that it is willing to negotiate a reasonable transition period with Greater Media to address its concerns about an abrupt discontinuance of a UNE offering after implementation of the FCC's new rules (Bell Atlantic Reply Brief at 15).

c. Analysis and Findings

Bell Atlantic's proposed Section 9.1 is identical to its proposal made to MediaOne for its interconnection agreement. Like Greater Media, MediaOne opposed that part of Bell Atlantic's proposal that would enable Bell Atlantic to unilaterally discontinue any UNE offering if under the FCC's new rules, it is no longer required to do so.[79] In the recently issued MediaOne Order, the Department found this part of Bell Atlantic's proposal, allowing it to discontinue provisioning UNEs without a transition period, to be unreasonable. MediaOne Order at 91. In that Order, we approved MediaOne's language, which requires the parties to negotiate UNE modifications to the interconnection agreement and submit such changes to the Department; until such changes are approved, Bell Atlantic is required to continue its provision of the affected UNEs. Id. at 92. We directed MediaOne and Bell Atlantic to include language in their interconnection agreement to reflect the Department's finding in the MediaOne Order. Id. Since Bell Atlantic has presented nothing that would persuade us to change our findings, we direct Greater Media and Bell Atlantic to include the same language in their proposed interconnection agreement.

Greater Media argues that Bell Atlantic's proposed language would cause UNE combination language in Bell Atlantic's tariffs to supersede the UNE combination provisions contained in the interconnection agreement. As reiterated most recently in the MediaOne Order, Department-arbitrated provisions in a tariff shall supersede corresponding arbitrated provisions in interconnection agreements.

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[79] MediaOne's concern was based on the same as that language contained in Section 9.1 of Bell Atlantic's Greater Media proposal.

MediaOne Order at 8. Greater Media has presented no evidence that would persuade us to deviate from this policy. Greater Media may protect its rights, with respect to Tariff No. 17, by participating in D.T.E. 98-57 and subsequent reviews of that tariff. With the exception of Bell Atlantic's proposed Section 9.1, we find that the remainder of their proposal is reasonable and, therefore, direct the parties to include it in their interconnection agreement.

2. Available Network Elements

a. Introduction

Although Greater Media characterizes its disagreement with Bell Atlantic on the "Available Network Elements" issue as involving Section 9.1, we agree with Bell Atlantic that Greater Media meant to refer to Section 9.5 (Bell Atlantic Reply Brief at 15-16). Section 9.5 of the proposed interconnection agreement does, in fact, contain a list of UNEs that Bell Atlantic will make available to Greater Media, subject to certain conditions.

b. Positions of the Parties

i. Greater Media

According to Greater Media, there does not appear to be any dispute concerning the language presented. Rather, Greater Media notes that there appears to be a question whether Bell Atlantic has agreed to provide the listed UNEs to Greater Media (Greater Media Brief at 26). Greater Media argues that the Department's disposition of the "Extent of Obligation to Provide UNEs," provided immediately above, should be controlling here (id.).

ii. Bell Atlantic

Bell Atlantic asserts that the only issue that is in dispute is that Bell Atlantic has voluntarily agreed to make these listed UNEs available to Greater Media pending the FCC remand proceeding (Bell Atlantic Reply Brief at 16). According to Bell Atlantic, following the FCC's determination, Bell Atlantic will comply with all effective FCC rules, subject to its right to seek judicial review (id.).

c. Analysis and Findings

In our discussion of UNEs, provided immediately above and analyzed at length in the MediaOne Order, the Department directed the parties to include language in the interconnection agreement that would require them to negotiate UNE modifications to the interconnection agreement and to submit such changes to the Department for approval. See MediaOne Order at 91-93. Unless and until the Department approval is given, Bell Atlantic is required to continue its provision of the affected UNE. We agree with Greater Media that our finding on this matter, Section IV.Q.1., above, is controlling here and, therefore, there remains no issue with respect to the list of UNEs provided in Section 9.5 for the Department's consideration.

R. Remedies Set Forth are Non-Exclusive and Cumulative

1. Introduction

In the Consolidated Arbitrations, the Department set forth remedies available to CLECs should Bell Atlantic fail to provide services to CLECs at parity with services it provides to itself and its retail customers. This principle is referred to as the parity standard. See Consolidated Arbitrations-Phase 3 Order at 20. The Department stated that "the interconnection agreements should provide for both

liquidated damages and the ability to seek consequential damages for failure to meet parity and that the contractual damages be treated as an offset to any such consequential damages awarded." Consolidated Arbitrations-Phase 3-B Order at 23. Additionally, the Department noted that the parties retain their rights to petition the Department for relief should the liquidated damages not provide sufficient financial incentives to Bell Atlantic to maintain parity. Id. at 24.

Section 28 of the proposed interconnection agreement, language that has been agreed to by the parties, reads as follows:

> The Parties agree that the performance standards and remedies, as approved by the Department in the Consolidated Arbitrations [citation omitted] as of the Effective Date of this Agreement and as contained in any decisions subsequently issued in such proceedings, shall be incorporated by reference into this Agreement and shall govern the provision of services and arrangements hereunder, as applicable.

The parties dispute whether the remedies available under the interconnection agreement should be limited to those performance standards and remedies approved by the Department in the Consolidated Arbitrations.

2. Positions of the Parties

a. Greater Media

Greater Media proposes the following additional provision to address available remedies:

> "Except as set forth in Section 27.5, no remedy set forth in this Agreement is intended to be exclusive and each and every remedy shall be cumulative and in addition to any other rights or remedies now or hereafter existing under applicable law or otherwise."

(Greater Media Brief at 33; Greater Media Petition at Attachment B, Section 21.4).

Greater Media opposes Bell Atlantic's suggestion that the remedies available under this

interconnection agreement be limited to those provided for under the performance standards decision contained in the Consolidated Arbitrations (Greater Media Brief at 33). In arguing against such a limitation, Greater Media contends that the performance standards adopted by the Department, in the Consolidated Arbitrations, did not limit CLEC rights to remedies but, rather, permit CLECs to seek relief from the courts to recover damages in excess of performance penalty payments (id.). Finally, Greater Media argues that the Consolidated Arbitrations performance standards do not address all of the situations governed by this interconnection agreement from which Bell Atlantic liability to Greater Media may arise and, thus, cannot serve as a basis for a general limitation (id.; Greater Media Proposed Findings of Fact and Conclusions of Law at 21).

b. Bell Atlantic

Bell Atlantic argues that under the proposed agreement, Greater Media is afforded all performance standards and remedies approved by the Department in the Consolidated Arbitrations (Bell Atlantic Brief at 58). Bell Atlantic asserts that Greater Media unreasonably seeks to expand upon the Department's requirements in the Consolidated Arbitrations and that Bell Atlantic should only be held to the standards and remedies the Department has approved (Bell Atlantic Proposed Findings of Fact and Conclusions of Law at 25).

According to Bell Atlantic, the Department's findings in the Consolidated Arbitrations "clearly conclude that the remedies available to CLECs under an interconnection agreement are in the nature of liquidated damages . . ." (Bell Atlantic Reply Brief at 20). Moreover, Bell Atlantic argues that liquidated damages are designed specifically to limit rights to damages that are in excess of those

specified in the contract (id.). If the payments, as provided for under the Consolidated Arbitrations, were not the exclusive remedy, Bell Atlantic argues that Greater Media "would be able to collect payments where there were no damages to it and seek higher amounts in cases where [Greater Media] could make a claim of higher damages" (id.). Bell Atlantic contends that this result defeats the purpose of establishing an automatic payment schedule for liquidated damages (id.).

3. Analysis and Findings

Under proposed Section 28 of the interconnection agreement, set forth above, there is no question that if Bell Atlantic does not comply with the performance standards contained in the Consolidated Arbitrations, the remedies contained in the Consolidated Arbitrations apply. Bell Atlantic argues that these remedies only include liquidated damages. We do not agree. The Consolidated Arbitrations-Phase 3-B Order expressly provides that "the specific monetary remedies provided in the interconnection agreement for liquidated damages *should not be the sole damage remedy available*." Consolidated Arbitrations- Phase 3-B Order at 22 (emphasis added). Specifically, both liquidated and consequential damages are available to CLECs should Bell Atlantic fail to meet the parity standard, and the interconnection agreements must provide that a court of law may rule on such disputes. Id. at 22-23. The Department stated that the contractual (i.e., liquidated) damages are to be treated as an offset of any consequential damages awarded. Id.

Thus, the Department agrees that Greater Media should not be limited by the remedies set forth in the Consolidated Arbitrations. Greater Media shall also have the right to seek consequential damages. Regarding Bell Atlantic's claim that Greater Media "would be able to collect payments

where there were no damages," we decline to assume that a court is incapable of identifying frivolous claims. We also believe Bell Atlantic's concern about Greater Media obtaining higher amounts in cases where [it] could make a claim of higher damages" to be unwarranted. As Bell Atlantic is aware, the performance penalties were not developed to provide recovery for actual damages, but primarily to provide Bell Atlantic with the appropriate economic incentives to meet the parity standard in providing wholesale services to CLECs.[80] Consolidated Arbitrations-Phase 3-B Order at 22; Consolidated Arbitrations-Phase 3-E Order at 4 n.6. Thus, it is likely that in many cases, the performance penalties do not represent a CLEC's actual damages. Therefore, we agree with Greater Media that remedies available to the parties are not limited by the remedies defined in the Performance Standards phase of the Consolidated Arbitrations.

S. Assurance of Payment

1. Introduction

Bell Atlantic proposes, in Section 30.24, in pertinent part, inclusion of the following assurance of payment provision, as proposed in its initial brief, that would enable Bell Atlantic to request assurance of payment[81] of charges if Greater Media

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80 In the Consolidated Arbitrations-Phase 3-E Order, the Department noted that payments required under the interconnection agreements referred to as "liquidated damages" have features that are different from typical liquidated damages provisions. Consolidated Arbitrations-Phase 3-E Order at 2 n.4.

81 In business documents, an assurance is a pledge or security, which is given by a debtor to assure the payment or performance of his debt, by furnishing the creditor with a resource to be used in case of failure in the principal obligation. Black's Law Dictionary, at 123, 1355 (6th ed. 1991).

> (a) in [Bell Atlantic's] reasonable judgment, based on [Greater Media's] then current financial information certified by the [Greater Media] Chief Financial Officer and/or President, and/or financial information and/or analyses about [Greater Media] from a reputable commercial source at the Effective Date or at any time thereafter, is unable to demonstrate that it is creditworthy, (b) fails to timely pay a bill rendered to [Greater Media] by [Bell Atlantic], (c) at the Effective Date or at any time thereafter, does not have established credit with [Bell Atlantic] or (d) admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had a case commenced against it) under the U.S. Bankruptcy Code or any other law relating to bankruptcy, insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding.

(See Bell Atlantic Brief at 65). Greater Media opposes the inclusion of an assurance of payment section in the interconnection agreement.

2. Positions of the Parties

a. Greater Media

Greater Media argues against the inclusion of Section 30.24 in the interconnection agreement (Greater Media Reply Brief at 8). Specifically, Greater Media opposes subparts (a) and (c) of this Section, as modified by Bell Atlantic in its initial brief, which require assurance of payment of charges if, in Bell Atlantic's "reasonable judgment," Greater Media is unable to demonstrate its creditworthiness, or if Greater Media does not "have established credit" with Bell Atlantic (id. citing Bell Atlantic Brief at 65).

According to Greater Media, neither subpart provides an objective standard against which Greater Media's creditworthiness could be demonstrated (Greater Media Reply Brief at 8). Greater Media is concerned that absent an objective standard for what is required to "have established credit" with Bell Atlantic, Greater Media is open to a demand for assurances at Bell Atlantic's discretion (id.).

Greater Media argues that Bell Atlantic's interests are adequately protected by subpart (b), in which an assurance of payment is triggered by the failure of Greater Media to pay a bill from Bell Atlantic in a timely fashion (id.). Should the Department adopt Bell Atlantic's proposal, without modification, Greater Media contends that utilization of the interconnection agreement's dispute resolution process is inevitable due to the vagueness embedded in these subparts (id.).

In addition to its concern about subparts (a) and (c), Greater Media contends that Bell Atlantic's proposal enables Bell Atlantic to retain indefinitely Greater Media's assurance of payment without paying any interest on the cash deposit (Greater Media Brief at 35). To remedy this shortcoming, Greater Media suggests that the Department require Bell Atlantic to pay interest on such deposits and to terminate the assurance of payment once Greater Media is in good standing (id.). Lastly, Greater Media argues that the similar terms to those proposed by Bell Atlantic for this interconnection agreement have not been established on the record in this proceeding and, in any event, such terms are more appropriate under a tariff, which does not contain a three year term (Greater Media Reply Brief at 8 n.5).

b. Bell Atlantic

According to Bell Atlantic, it sustained "tens of millions of dollars" in losses due to non-payment for services rendered by Bell Atlantic to CLECs (Bell Atlantic Brief at 64). To address this problem, Bell Atlantic asserts that, beginning in 1998, it included assurance of payment clauses in its interconnection agreements (id.). Bell Atlantic states that in response to Greater Media's concerns about the discretion Bell Atlantic reserved to itself, Bell Atlantic modified its initial assurance of payment

proposal in its initial brief to address this issue (id. at 64-65). Bell Atlantic argues that in addition to the protections provided to Greater Media in the modified proposal, Greater Media has the right to seek Department intervention under Section 30.18, governing the dispute resolution process, if Greater Media thinks Bell Atlantic is acting unreasonably (id. at 65-66).

Bell Atlantic contends that the terms contained in this section of the interconnection agreement are commercially reasonable and are necessary to protect Bell Atlantic's interest in receiving payment for services rendered to Greater Media (Bell Atlantic Reply Brief at 23-24). Bell Atlantic argues that similar terms are included in Department-approved Bell Atlantic tariffs[82] to ensure payment from customers that may be credit risks, and the proposal provision would only go into effect if Greater Media is unable to demonstrate that it is creditworthy, does not have established credit with Bell Atlantic, fails to timely pay its bills, or files for bankruptcy (Bell Atlantic Brief at 66).

3. Analysis and Findings

Bell Atlantic's assurance of payment provision, which is designed to protect Bell Atlantic against losses resulting from a CLEC's inability to pay for services rendered, is a reasonable response to substantial losses Bell Atlantic has suffered in the past and could otherwise experience in the future. As noted by Bell Atlantic, we have approved similar customer deposit provisions in Bell Atlantic's resale (M.D.T.E. No. 14) and access (M.D.T.E. No. 15) tariffs,[83] and we note that Bell Atlantic has

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82 See M.D.T.E. No. 15, Section 4.1.6; M.D.T.E. No. 14, Section 4.1.6 (Bell Atlantic Brief at 66).

83 See, e.g., Tariff No. 14, Section 4.1.6.A., which provides that Bell Atlantic "will, in order to safeguard its interests, require a reseller which has a proven history of late

(continued…)

proposed similar language in its Tariff No. 17. See Bell Atlantic M.D.T.E. No. 17, Part A, Section 4.1.6.A.

Greater Media is concerned that Bell Atlantic's proposal enables Bell Atlantic to arbitrarily exact an assurance of payment from Greater Media and to retain this payment indefinitely. Section 30.18 of the interconnection agreement, which provides the mechanism for dispute resolution between the parties, permits either party to initiate "appropriate action in any regulatory or judicial forum of competent jurisdiction." State commissions have been authorized under the Act and through FCC orders to enforce the terms of interconnection agreements. See Iowa Utilities Bd. v. FCC, 120 F. 3d 753, 804 (8th Cir. 1997). Once in effect, the dispute resolution provision[84] will enable Greater Media to seek relief from the Department if Greater Media believes Bell Atlantic has acted unreasonably in its request for an assurance of payment. This express access to the Department gives Greater Media adequate protection from any possible abuse of discretion by Bell Atlantic under Section 30.24 of the interconnection agreement.

Since we agree that inclusion of an assurance of payment provision in general is reasonable, we must next address Greater Media's specific objections to subparts (a) and (c) of this section. As

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[83](…continued)

payments or whose parent or holding company which has a proven history of late payments, to [Bell Atlantic] or does not have established credit (except for a reseller which is a successor of a company which has established credit and the successor has no history of late payments to [Bell Atlantic]), to make a deposit prior to or at any time after the provision of a service to the reseller to be held by [Bell Atlantic] as a guarantee of the payment of rates and charges."

[84] The parties have agreed to this provision.

modified in Bell Atlantic's brief, Bell Atlantic may request assurance of payment from Greater Media under subpart (a) if, in Bell Atlantic's reasonable judgment, based on Greater Media's then current financial information certified by the Greater Media Chief Financial Officer and/or President, and/or financial information and/or analyses about Greater Media from a reputable commercial source at the effective date or at any time thereafter, is unable to demonstrate that it is creditworthy (Bell Atlantic Brief at 65). Greater Media argues that this proposal is subjective and should be stricken. Similarly, it argues against inclusion of subpart (c) because Greater Media claims that it is unclear what it means to have "established credit with Bell Atlantic."

While Bell Atlantic argues that subpart (a) is a commercially reasonable term, it provides no support for this assertion. Bell Atlantic has not provided in the record before us a standard for evaluating "creditworthy." Consequently, we decline to approve Bell Atlantic's proposed subpart (a). Bell Atlantic claims that the Department has already approved similar language in the tariffs Bell Atlantic cites, M.D.T.E. No. 14, for example, where the Department permits Bell Atlantic to require a deposit from carriers that have a "proven history of late payments" to Bell Atlantic or that do not "have established credit" with Bell Atlantic. See M.D.T.E. No. 14, Section 4.1.6.A. These approved provisions, unlike the proposed section 30.24(a), have an objective standard for determining credit worthiness. Accordingly, we reject subpart (a). The Department will, however, permit Bell Atlantic's proposed subpart (c) to be incorporated into the interconnection agreement. This provision appears in other Department-approved tariffs and Greater Media has not demonstrated that the operation of such provisions have been unreasonable. Moreover, Greater Media has not persuasively shown why such a

provision should not apply to it.

Lastly, Greater Media claims that Bell Atlantic's proposal to hold Greater Media's assurance payment indefinitely and not pay interest on it is unreasonable. We agree. M.D.T.E. No. 14 contains language placing a reasonable constraint on Bell Atlantic's ability to retain an assurance deposit even after Greater Media fully satisfies the criteria that triggered the assurance.[85] Therefore, the parties shall include similar language in Section 30.24. It is also unreasonable for Bell Atlantic to retain interest on receipt of the funds. Bell Atlantic did not present evidence why it, as opposed to Greater Media, should keep the interest. Moreover, M.D.T.E. No. 14 provides for interest in these circumstances. Therefore, we find that Greater Media shall receive interest on cash deposits for the period the deposit is held by Bell Atlantic. This interest will accrue for the number of days from the date the Greater Media deposit is received by Bell Atlantic to and including the date such deposit is credited to Greater Media's account or the date the deposit is refunded by Bell Atlantic. See M.D.T.E. No. 14, Section 4.1.6.F.

T. Deposits/Letters of Credit

1. Introduction

Bell Atlantic proposes that the following provision be inserted as Section 30.25 in the interconnection agreement:

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85 "At the option of [Bell Atlantic], such a deposit will be refunded or credited to the resellers' account when the reseller has established credit or after the reseller has established a one year prompt payment record at any time prior to the termination of the provision of the service to the reseller." M.D.T.E. No. 14, Section 4.1.6.E.

> The fact that a security deposit or a letter of credit is requested by [Bell Atlantic] hereunder shall in no way relieve [Greater Media] from compliance with [Bell Atlantic's] regulations as to advance payments and payment for service, nor constitute a waiver or modification of the terms herein pertaining to the discontinuance of service for nonpayment of any sums due to [Bell Atlantic] for the service rendered.

(see Bell Atlantic Brief at 66).

2. Positions of the Parties

a. Greater Media

Greater Media argues that Section 30.25 only "comes into play" if the Department adopts Section 30.24 (regarding assurance of payment) and that the parties have not otherwise disputed it (Greater Media Brief at 35; Greater Media Proposed Findings of Fact and Rulings of Law at 24). Greater Media objects to Section 30.25 insofar as it has objected to Section 30.24 in its entirety (Greater Media Brief at 35; Greater Media Proposed Findings of Fact and Rulings of Law at 24).

b. Bell Atlantic

According to Bell Atlantic, its proposed Section 30.25 is intended to make clear that by requesting a security deposit or letter of credit from Greater Media under Section 30.24, it is not waiving any right Bell Atlantic has to payments due for services provided to Greater Media or to terminate service for non-payment of charges (Bell Atlantic Brief at 66). Bell Atlantic argues that Greater Media's opposition to Section 30.25 is noteworthy in that Greater Media provides no independent basis for objecting to the purpose or specific language of Bell Atlantic's proposal (Bell Atlantic Reply Brief at 24).

3. Analysis and Findings

The Department is hindered in its analysis of this section by the dearth of evidence provided by both parties on this issue. Greater Media provides no discernable explanation for its objection to this section. We find Bell Atlantic's proposal to be reasonable since it is intended to clarify the effect of Section 30.24 on other provisions of the interconnection agreement (see Bell Atlantic Reply Brief at 24). Since the Department has determined that the parties shall include Section 30.24, as modified by our directives contained in this Order, we also direct the parties to include Bell Atlantic's proposed Section 30.25 in the interconnection agreement.

U. Bona Fide Requests

1. Introduction

The bona fide request ("BFR") process applies when a CLEC requests a network element or service not covered by its interconnection agreement. Bell Atlantic proposed inclusion of its standard BFR terms as Exhibit B of the Greater Media interconnection agreement. The parties disagree about following the terms of the BFR process: (1) the intervals for steps in the process; (2) reimbursement if Bell Atlantic fails to perform; (3) disposition of development costs; and (4) possible intellectual property rights in new products or service.

2. Positions of the Parties

a. Greater Media

Greater Media opposes incorporation of Bell Atlantic's standard BFR terms, which are either

contained in existing interconnection agreements or in Bell Atlantic Proposed M.D.T.E. No. 17, into its interconnection agreement for the following reasons: (1) the lengthy intervals in which the BFR process will be accomplished; (2) the lack of protection against financial loss if Bell Atlantic fails to perform; (3) the lack of cost sharing for development of BFR elements between other requesting CLECs and the lack of refund provisions; and (4) the failure to provide Greater Media with proprietary or intellectual property rights and protections (Exh. GMT-2, at 16; RR-DTE-3; Greater Media Brief at 36).

First, according to Greater Media, the intervals by which Bell Atlantic must respond to a BFR are too lengthy and, therefore, not meaningful in a commercial setting (Exh. GMT-2, at 17). Specifically, under Bell Atlantic's proposed BFR process, Greater Media may have to wait two weeks for Bell Atlantic to acknowledge receipt of a BFR (id.) Greater Media argues that two business days is a sufficient amount of time for Bell Atlantic to acknowledge such receipt (id.). Second, Greater Media argues that Bell Atlantic Proposed M.D.T.E. No. 17 protects Bell Atlantic from financial loss if the requesting company cancels the BFR, but offers no reciprocal protection should Bell Atlantic decide that it cannot or will not provide the requested feature, function or service (id.). Greater Media argues that indemnification for nonperformance should be reciprocal (id.).

Third, Greater Media is concerned that under Bell Atlantic's proposed BFR process, the first CLEC to request a given service or facility will be required to pay the full cost of development of that service or facility, whereas a subsequent CLEC that requests the same service or facility will not be "saddled with these extraordinary costs" (Greater Media Brief at 36). Greater Media argues that unless this situation is remedied, Greater Media will be disadvantaged in the marketplace if its

competitors can receive the same service or facility at a lower cost because Greater Media alone absorbed the costs of the BFR process for that service or facility (id.). Lastly, Greater Media argues that it is necessary to include language providing Greater Media with proprietary or intellectual property rights and protections (Exh. GMT-2, at 16; Greater Media Brief at 36).

b. Bell Atlantic

Bell Atlantic argues that it is "critically important" for Bell Atlantic to have a uniform BFR process because uniformity provides assurance that (1) all the necessary "channels" (e.g., development, billing, ordering) are addressed in the development process; and (2) CLECs are treated in a nondiscriminatory fashion throughout the BFR process (Bell Atlantic Reply Brief at 24-25). According to Bell Atlantic, its BFR process is structured to provide for efficient and thorough technical and economic analyses of CLEC requests for UNEs (RR-DTE-4). Moreover, while a CLEC request for UNEs may vary, Bell Atlantic argues that Bell Atlantic's response must either explain why a request will not be filled or provide information to the CLEC necessary for the development and eventual order of the resulting product (id.).

Bell Atlantic opposes Greater Media's request that, using its best efforts, Bell Atlantic acknowledge receipt of Greater Media's request within two business days, advising Greater Media of any missing information necessary to process the request (Bell Atlantic Brief at 67). Instead, Bell Atlantic urges the Department to adopt its standard interval of a maximum of ten business days to acknowledge receipt of a BFR (id.). According to Bell Atlantic, during this period of time it determines: (1) whether an equivalent product or arrangement could be used; (2) whether the request

is for a UNE or arrangement that Bell Atlantic is obligated to provide; (3) whether there is a technically feasible solution; and (4) the order of magnitude for the development and eventual cost (id.). Bell Atlantic argues that this ten-day period is consistent with the period provided in all other Massachusetts interconnection agreements (id. at 67-68).

Bell Atlantic also objects to Greater Media's proposal that it conduct a preliminary analysis of Greater Media's BFR within 15 business days after it receives the request and, in any event, no longer than 22 business days (id. at 68). Bell Atlantic contends that its standard interval for this procedure is a maximum of 30 business days (id.). According to Bell Atlantic, the preliminary analysis is one of the most important steps in the BFR process, requiring extensive coordination among multiple Bell Atlantic individuals and disciplines (id.). Until Bell Atlantic has more experience in this area, it is reluctant to agree to a shorter term, especially since its 30 business day proposal is consistent with other interconnection agreements (id.).

As to Greater Media's suggestion that the BFR process contain a reimbursement mechanism should Bell Atlantic subsequently renege on offering a certain product, Bell Atlantic opposes such a blanket term because Greater Media's entitlement to reimbursement is dependent upon the nature, necessity and reasonableness of Greater Media's expenditures under the facts of the case (id. at 69-70). Bell Atlantic argues that its standard BFR process contains no such comparable term and that a unique arrangement should not be created for Greater Media (id. at 70). Lastly, Bell Atlantic doubts that reimbursement will even be an issue because the process of evaluating a request and developing an offering necessarily entails a commitment by Bell Atlantic to offer the requested network element or

service (id. at 70).

Bell Atlantic does not oppose spreading Greater Media's "development costs" to all requesting CLECs in a fair and equitable manner, and would consider doing so on a case-by-case basis; however, it is concerned that adopting Greater Media's cost-apportionment proposal may not be enforceable against other carriers (id. at 68-69). Bell Atlantic argues that most costs it incurs in connection with a BFR will likely relate to determining whether it can do a specific thing, in a specific location, for a specific carrier (id. at 68). Therefore, according to Bell Atlantic, it is not obvious why or how such costs should be spread among multiple requesting carriers (id.). Finally, Bell Atlantic opposes Greater Media's proposal to protect any intellectual property rights that Greater Media may have or acquire in a new product or service (id. at 69). According to Bell Atlantic, Greater Media misunderstands the BFR process because the intellectual property concerns mentioned by Greater Media will not arise from a BFR (id.). In the unlikely event such protection is necessary, Bell Atlantic is not opposed to entering into a commercially reasonable arrangement to protect either party's intellectual property rights (id.). Until then, however, Bell Atlantic is reluctant to address this issue in the BFR process or in this arbitration. Bell Atlantic notes that its standard BFR process is silent on this matter and unique terms should not be crafted for Greater Media (id.).

3. Analysis and Findings

Greater Media claims that Bell Atlantic urges adoption of its BFR proposal simply because it is "standard" for other interconnection agreements (see Greater Media Brief at 36). While Greater

Media may be dissatisfied with Bell Atlantic's explanation of the superiority of its proposal over Greater Media's, Greater Media has not provided the Department with a sufficient explanation for why we should deviate from Bell Atlantic's "standard" BFR process. The record before us is inadequate to approve Greater Media's novel BFR proposals.

We note Greater Media' displeasure at the amount of time required by Bell Atlantic to acknowledge receipt of a BFR; however, as mentioned above, Bell Atlantic explained that it does much more during this maximum ten-day period than merely acknowledge receipt of a request (see RR-DTE-4). Greater Media has not persuaded us that Bell Atlantic could accomplish the thorough review necessary in two business days. Moreover, Greater Media's two-day interval was a "best efforts" provision, while Bell Atlantic's ten-day period is a maximum. Absent a more persuasive record contradicting Bell Atlantic's assertion of the reasonableness of its standard intervals, we decline to adopt new, shorter periods of time by which Bell Atlantic must act on BFRs.

We are also concerned that the issue of reimbursement is not one that we can determine based on the limited record provided by the parties. It is foreseeable that, despite good will, Bell Atlantic might have to cancel its plans to offer an item pursuant to a Greater Media BFR because it later determined that such an item is not technically feasible. We cannot say, based upon the information before us, that Bell Atlantic should compensate Greater Media for its costs associated with the BFR without a more developed record. Greater Media noted that Bell Atlantic Proposed M.D.T.E. No. 17 would protect Bell Atlantic should a CLEC renege on a BFR but noted that this protection is not reciprocal. If reimbursement reciprocity remains a concern to Greater Media, we suggest that Greater

Media request the issue be more fully investigated in the Department's investigation of Bell Atlantic Proposed M.D.T.E. No. 17.[86]

While Bell Atlantic is not opposed in theory to Greater Media's cost-sharing proposal, it is concerned about the ability to impose such costs on other carriers through this arbitration proceeding. We agree with Bell Atlantic. The Department understands Greater Media's desire not to pay all the costs of obtaining a BFR term should subsequent CLECs request and receive the same item; however, we are reluctant to direct other CLECs to share these costs based upon language contained only in Greater Media's interconnection agreement. A more appropriate forum may be D.T.E. 98-57, which would allow additional CLEC participation and would provide a more developed record upon which the Department could make a determination.

Finally, Greater Media urges adoption of language that would protect potential intellectual property rights in new products or services developed in the BFR process. Bell Atlantic responds that such a provision is unnecessary, but should such a need arise, it is willing to negotiate a commercially reasonable arrangement. We agree that Bell Atlantic's approach is the prudent one. Other than Greater Media's statement that intellectual property protection is necessary in the BFR context, the record is silent on this issue. Greater Media has not adequately supported the need for these provisions. We decline to deviate from the standard BFR language contained in prior Department-approved interconnection agreements by inserting an intellectual property provision without some

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86 The Department is reviewing Bell Atlantic Proposed M.D.T.E. No. 17 in D.T.E. 98-57. We note that Greater Media may raise its concerns regarding its recommended revisions to the standard BFR process in that proceeding.

showing that such a provision is necessary. In sum, we direct to the parties to include Bell Atlantic's "standard" BFR process language as Exhibit B of the interconnection agreement.

V. ORDER

Accordingly, after hearing and due consideration, it is

ORDERED: That the issues under consideration in this arbitration be determined as set forth in this Order; and it is

FURTHER ORDERED: That Greater Media Telephone, Inc. and Bell Atlantic incorporate these determinations into a final interconnection agreement, setting forth both the negotiated and arbitrated terms and conditions, to be filed with the Department pursuant to Section 252(e)(1) within 21 days from the date of this Order.

By Order of the Department,

_____
James Connelly, Commissioner

_____
W. Robert Keating, Commissioner

_____
Paul B. Vasington, Commissioner

_____
Eugene J. Sullivan, Jr., Commissioner