I. INTRODUCTION

A. Procedural History

On August 27, 1999, New England Telephone and Telegraph Company, d/b/a Bell Atlantic-Massachusetts ("BA-MA") filed proposed tariffs M.D.T.E. Nos. 14 and 17 for effect on September 27, 1999. The Department suspended the effective date of these proposed tariffs until March 27, 2000. Numerous parties, including MCI WorldCom, Inc. ("MCI WorldCom"), petitioned for and were granted intervenor status. The parties and the Department conducted rounds of discovery. Evidentiary hearings were conducted by the Department on December 13-17, 1999, and on January 27-28, 2000. Several parties, including MCI WorldCom, submitted pre-filed testimony which proposed substantial changes in BA-MA's Tariff No. 17. The Department admitted into evidence exhibits sponsored by the parties as well as on its own motion. Pursuant to the procedural schedule in this investigation, MCI WorldCom files this Initial Brief.

B. Overview of Tariff No. 17

According to BA-MA, the "principal reasons" why it filed proposed Tariff No. 17 were as follows: (1) to make available as general offerings several interconnection arrangements that were not specifically covered in interconnection agreements; and (2) to update the terms for physical collocation and to introduce virtual and microwave collocation. (Exh. MCIW-3. Tr. 4 at 686-688). Part A, Section 1.4.1.A states, "The services contained herein are in addition to those being provided and/or available on an individual case basis between the Telephone Company and the CLEC." (emphasis added). BA-MA stated that Tariff No. 17(alone or in conjunction with Tariff No. 14), does not constitute a Statement of Generally Available Terms ("SGAT") (Exh. MCIW-10).

However, proposed Tariff No. 17's subject matter is not limited in the manner described by BA-MA in stating the purposes for its filing. Rather, Tariff No. 17 includes a broad range of currently offered interconnection and unbundled network element services ("UNEs") which BA-MA is obligated to provide to CLECs under existing interconnection agreements. Part A-Miscellaneous Network Services- covers the Bona Fide Request ("BFR") process, ordering of interconnection and unbundled network element ("UNE") services and related intervals, non-recurring charges, billing and collection procedures and BA-MA's previously rejected "GRIP" proposal. Part B covers UNEs, unbundled interoffice facility transport, unbundled multiplexer, tandem switching, local loops, local switching, access to signaling systems and call-related databases, directory assistance services, operator services, access to operational support systems ("OSS"), interim number portability, network interface device ("NID") and House and Riser Cable, Enhanced Expanded Link ("EEL") and combinations of UNEs. Part C covers switched interconnection services and optional services. Part E covers collocation arrangements, including proposals for compliance with recent orders of the Federal Communications Commission ("FCC") and the Department. Part M includes rates and charges.

Despite express language to the contrary in proposed Tariff No. 17, BA-MA has sought to extend the reach of Tariff No. 17 to services already being provided under interconnection agreements, BA-MA has misapplied Department precedent by claiming that new tariff proposals like its GRIP proposal, which were not included in Tariff No. 17 by virtue of a Department order, supersede like terms contained in interconnection agreements. BA-MA has further stated that in future interconnection agreement "negotiations" it would "rely on the tariff" (Exh. MCIW-4) as if it would control the outcome of any future arbitration proceeding in which a CLEC did not accept BA-MA's tariff provisions during interconnection agreement negotiations. BA-MA's filing thus has created serious problems concerning the relationship between its proposed tariff and its interconnection agreements with CLECs.

Tariff No. 17's proposed new services, including EEL and additional collocation requirements mandated under federal law and by the Department, are of critical importance to the ability of CLECs to enter the local exchange market in

Massachusetts without undue expense or delay and offer their services in a reliable, efficient and economical manner. These proposed new services were a focus of significant testimony and cross-examination and deserve close scrutiny by the Department in order ensure that BA-MA provides them in a non-discriminatory manner which does not impair the ability of CLECs to compete with BA-MA.

II. SUMMARY OF ARGUMENT

MCI WorldCom has addressed in its Initial Brief the following main issues: (1) the proper relationship between Tariff No. 17 and interconnection agreements; (2) modifications to BA-MA's proposed Enhanced Expanded Link ("EEL") terms and conditions and rejection of BA-MA's proposed Link Test Charge; (3) rejection of BA-MA's "GRIP" proposal; (4) modifications to BA-MA's new collocation offerings; (5) modifications to (a) Part B, Section 6.3.2.B., (b) certain installment payment provisions for non-recurring charges which are inconsistent with the Department's Phase 4-G Order, (c) Part A, Section 4.1.7.G. crediting of bills paid by CLECS which have been disputed more than three months after payment and (d) afford CLECs copies of any future revisions to Tariff No. 17 concurrent with the filing of those revisions with the Department; and (6) recommendations that the Department open an investigation of DSL loop rates, terms and conditions, including but not limited to line sharing.

III. ARGUMENT

A. TARIFF NO. 17 SHOULD BE TREATED AS A SUPPLEMENT OR ALTERNATIVE TO INTERCONNECTION AGREEMENTS AND

SHOULD NOT DISPLACE THE NEGOTIATED OR ARBITRATED TERMS OF EXISTING INTERCONNECTION AGREEMENTS

1. Summary of Position

The application of Tariff No. 17 to CLECs with existing interconnection agreements and the relationship between the provisions of those interconnection agreements and proposed Tariff No. 17 is an overriding issue in this proceeding. Despite its recitation in Tariff No.17 that "[t]he services contained herein are in addition to those being provided and/or available on an individual case basis between the Telephone Company and the CLEC", (Part A, Section 1.4.1.A.)(emphasis added), BA-MA now maintains that Tariff No.17 would supersede an arbitrated provision of an interconnection agreement on the same subject matter once the tariff is acted upon by the Department. (Tr. 4 at 684). BA-MA's position is inconsistent with the Department's prior orders on this issue, in part because BA-MA has included in Tariff No. 17 provisions which the Department has previously rejected as well as provisions which it was not required to include in a tariff as a result of a Department order. The end result of BA-MA's filing is a hodge podge of provisions that cannot be easily administered or fairly applied.

The Department should find and rule that Tariff No. 17 does not supersede the provisions of the interconnection agreements between BA-MA and MCI WorldCom. The Department should further rule that the provisions of Tariff No. 17 (1) represent alternatives to interconnection agreement provisions, (2) supplement interconnection agreements in the case of a new service which has not been offered under an interconnection agreement and (3) apply only where the parties to an interconnection agreement have expressly agreed that a tariffed offering should be applied to the provision of a service covered under their interconnection agreement. Unless these qualifications are made by the Department, the Department should disallow all provisions in Tariff No. 17 which overlap with interconnection agreements and permit to go into effect only those provisions which are not covered under interconnection agreements (e.g., the EEL arrangement, house and riser service).

MCI WorldCom recommends that the Department further clarify its position on the relationship between existing interconnection agreements and BA-MA's tariffs as follows:

1. Rates and charges should be contained in an exhibit to the

interconnection agreement and should be updated in accordance

with changes ordered or authorized by the Department. True ups

of any billing that did not comply with the correct rate or charge

should be made. However, negotiated rates should not be

superseded by a subsequent tariff filing or Department order unless so

provided for under the negotiated provisions of the interconnection agreement.

2. The provision of a service or facility covered by an existing interconnection

agreement should be governed by the terms of the interconnection

agreement. The providing party's tariff should apply to the provision of

a particular facility or service covered by the interconnection agreement and provided by that party only where the interconnection agreement expressly states that the particular facility or service is being provided subject to the terms and conditions of the providing party's tariffs.

3. A CLEC with an existing interconnection agreement should be afforded the option of obtaining a service or facility under a tariff which BA-MA has made available for any service or facility which is not provided for under the interconnection agreement.

4. A CLEC's agreement under its interconnection agreement to receive a service or a facility under the terms of a tariff does not limit that CLEC's "pick and choose" rights under Section 252(i) of the 1996 Act.

In the discussion of this issue which follows, MCI WorldCom has provided the policy and legal bases for its position as well as its specific arguments regarding the relationship between its existing interconnection agreements and proposed Tariff No. 17.

2. Discussion

The negotiation and arbitration of an interconnection agreement is a complicated process with which the Department and the parties are familiar. In the arbitration process in MCI WorldCom's case, as in other cases, an arbitrator was presented with an interconnection agreement which contained a number of sections on which the parties agreed and which were not presented for resolution by arbitration, as well as with a number of sections which were in dispute and required resolution by the arbitrator. Ultimately, the Department was asked to approve the final interconnection agreement which was the product of both the parties' negotiations and the decision of the arbitrator. The negotiation and arbitration of its interconnection agreement with BA-MA was a time-consuming, costly step in MCI WorldCom's entry into the local exchange market. The interconnection agreement defines the rates, terms and conditions under which MCI WorldCom's network will be interconnected to BA-MA's ubiquitous facilities and under which MCI WorldCom may obtain the use of UNEs which BA-MA is obligated to provide under the Telecommunications Act of 1996 (the "1996 Act"). MCI WorldCom's network planning and operational requirements are materially affected by the provisions of its

interconnection agreement with BA-MA. For these reasons, it is critical to MCI WorldCom that it have the benefit of the bargain of its lengthy negotiations with BA-MA as well as the benefits of the interconnection agreement provisions resulting from its arbitration.

MCI WorldCom acknowledges that the parties to an interconnection agreement may make reference to tariff provisions where they have agreed to do so. (Tr. 4 at 682). A CLEC and BA-MA may agree to reduce their transactional costs of negotiating and renegotiating their interconnection arrangements by providing that a specific BA-MA service or facility will be made available to the CLEC based upon the terms of any BA-MA tariff under which those services and facilities may be offered. In those instances, the interconnection agreement specifically states that a given service or facility will be provided by BA-MA in accordance with the terms and conditions of BA-MA's tariff. (Tr. 4 at 682). This option was recognized by the Department in its Order in Resale Tariff of New England Telephone, D.T.E. 98-15 at 11,12 (September 17, 1998) (the "D.T.E. 98-15 Order"). This option also has been useful in situations like the present in which BA-MA has proposed several service offerings which are not now available and which are subject to the outcome of the Tariff No. 17 investigation (e.g., house and riser service).

The relationship between the terms of an interconnection agreement and BA-MA's tariff provisions was addressed by the Department in the D.T.E. 98-15 Order. In that case, the Department reviewed a resale tariff filing made by BA-MA. The Department stated:

The purpose of this tariff is to give resellers of local

exchange service the option of either providing services

to customers via the resale tariff or pursuant to a resale

agreement, either negotiated or arbitrated, with Bell

Atlantic. The tariff option reduces the transaction costs

for new competitors and streamlines the entry process.

Clarity and fairness are important characteristics of any

tariff, and they are of especial importance here as

conditions of market entry.

D.T.E. 98-15 Order at 11, 12 (emphasis added).

The Department found that the terms and conditions of a resale tariff approved by the Department may not supersede the negotiated terms and conditions of an existing resale agreement (e.g., an interconnection agreement) " unless the parties mutually agreed through renegotiation that the ILEC/seller's tariff does so or may do so." Id. at 14. The Department further found that "Arbitrated terms and conditions, however, should be treated differently, for the parties, by requesting arbitration, have explicitly sought a Department determination on contract provisions. Where parties have sought such a determination, the Department-arbitrated provisions in the tariff shall supersede corresponding provisions in the existing resale agreements between those parties." Id. at 14. In light of its findings, the Department ordered BA-MA to file "a revised tariff that contains a provision specifying that tariffed rates and terms, derived from Department arbitrations, supersede corresponding provisions in resale agreements" (emphasis added) and to "file a list of such arbitration-derived provisions in the tariff." Id. at 14,15.(emphasis added).

The D.T.E. 98-15 Order supports the proposition that BA-MA cannot supersede the negotiated terms and conditions of an interconnection agreement by means of a

subsequent tariff filing unless the parties to that agreement have expressly provided for supersession (or, as clarified in the GMT/MediaOne Arbitration Order, if the Department orders a change in a negotiated provision).The D.T.E. 98-15 Order stands for the further proposition that the terms of the same interconnection agreement established through the arbitration process may be affected by a subsequent legal decision which applies generically to all CLECs and as a result of which BA-MA has been required to modify its interconnection agreements in specific respects ordered by the Department. According to the D.T.E. 98-15 Order, those generic modifications required by the Department may be implemented by tariff, if ordered by the Department, or pursuant to the specific provisions of the interconnection agreement which contemplate after the fact changes due to legal requirements that affect the material terms of the interconnection agreement.

The D.T.E. 98-15 Order does not stand for the proposition that BA-MA may make unilateral, voluntary tariff filings (e.g., tariff additions or revisions not ordered by the Department) such as the Tariff No. 17 filing under review in this proceeding on the same subject matter of its negotiated or arbitrated interconnection agreements and thereby supersede interconnection agreement provisions. Not only would it defeat the purposes of the 1996 Act and result in a waste of limited CLEC and Department resources if BA-MA could unilaterally modify the terms and conditions governing its interconnection agreement with a CLEC merely by filing a tariff covering the same subject matter, but such unilateral modification is prohibited by the terms of the BA-MA/MCImetro and MFS Intelenet interconnection agreements.

Congress did not establish comprehensive interconnection agreement negotiation, arbitration and appellate review procedures and substantive standards, only to see BA-MA perform an end run around them through unilateral tariff filings. Congress very clearly established a process for creating interconnection agreements (ie, contracts) and not interconnection tariffs. Congress was fully aware of the difference between tariffs and contracts and expressly chose contracts as the preferred method. The certainty that comes with a commercial contract and the fact that mutual consent usually is required to modify a pre-existing agreement is fully consistent with the competitive landscape that Congress sought to develop.

Moreover, the modification of interconnection agreements through tariff filings made unilaterally by BA-MA could easily conflict with federal law because the legal standards governing the Department’s approval of tariffs under G.L.c.159, §§14, 19 and 20 are not identical to the legal standards governing the approval or rejection of interconnection agreement provisions under 47 U.S.C. §252(e)(2) and could be applied by the Department in a manner which differs from the federal legal standards applicable to the review of interconnection agreements. While the Department guarded against this problem by limiting tariffed items to those which were subject to the arbitration process and included in tariffs as a result of a specific Department directive, BA-MA has improperly reversed the process. BA-MA wants to force its tariff provisions on to CLECs with interconnection agreements even where the Department never ordered BA-MA to include an arbitrated provision into its tariffs, and then use the tariffs to control the outcome of interconnection agreement negotiations and arbitrations.

While BA-MA has maintained that its tariffs are subject to review and suspension by the Department and that CLECs may intervene in any tariff investigation which concerns them, it has failed to address that Tariff No. 17, as applied according to BA-MA, would compromise the integrity of the interconnection agreement negotiation and arbitration process. The Department cannot expect every CLEC to intervene in all of its tariff investigations as a means of guarding against recurring attempts by BA-MA to alter their interconnection agreements. CLECs are not automatically notified of BA-MA’s tariff filings. Nor should every CLEC be required to bird-dog BA-MA’s unilateral tariff filings for their effects on its interconnection agreement and intervene at every turn. Such interventions would be costly and burdensome for both CLECs and the Department and contrary to what the Department contemplated in the D.T.E. 98-15 Order, when it provided for very limited situations in which a tariff filing ordered by the Department as a result of an arbitration might help

reduce-not increase- transactional costs incurred by CLECs. D.T.E. 98-15 Order at 11,12.

Section 20.16 of Part A of the MCImetro and MFS Intelenet interconnection agreements with BA-MA disallow BA-MA from unilaterally modifying existing interconnection agreements:

20.16 Amendments and Modifications. No provision of this

Agreement shall be deemed amended or modified by either

Party unless such an amendment or modification is in writing,

dated, and signed by both Parties.

This provision was negotiated between MCImetro and BA-MA and subsequently approved by the Department under Section 252 of the 1996 Act. BA-MA's attempt to supersede the provisions of these interconnection agreements through unilateral filings such as its GRIP proposal is tantamount to a breach of these interconnection agreements.

The overriding of existing interconnection agreements through BA-MA's voluntary tariff filings on the same subject matter also constitutes an impediment to the facilities-based competition which the 1996 Act was intended to foster. In order to compete fairly and effectively, a facilities-based CLEC cannot have its interconnection agreement terms and conditions subject to multiple and uncertain changes resulting from unilateral BA-MA tariff filings. Consistency in business terms is critical under a CLEC's interconnection agreement, since network configurations, operational requirements and business processes would be impacted by changes, as would the economics of interconnection and the provision of service to end users. (Tr. 7 at 1232-1238). A CLEC cannot compete fairly or efficiently if the basic business terms which it negotiated or arbitrated are subject to change at the whimsy of unilateral, voluntary BA-MA tariff filings which are totally under BA-MA's control as to timing and content.

BA-MA's position-a complete distortion of the Department's prior orders and inconsistent with Tariff No. 17's own language- is riddled with so many gaps that it is virtually impossible for the parties or the Department to administer. For example, some sections of an interconnection agreement regarding the provision of a specific service contain subsections which were negotiated and subsections which were arbitrated. In some instances, separate sentences in the same paragraph were produced through either negotiation or arbitration. BA-MA did not know how the Department's standards would apply in such instances and suggested that each situation would need to be reviewed on a case by case basis. (Tr. 4 at 682-684). BA-MA also posited that Tariff No. 17's GRIP proposal, if approved, would override the recently concluded GMT/MediaOne Arbitration Order. (Tr. 4 at 685-686). The acceptance of BA-MA's position by the Department would be life-threatening for a CLEC which expends significant management time and resources on its arbitration process. The CLEC cannot even plan its network and purchase equipment based upon the assumption that it can rely upon the terms of the Department's arbitration order. Once the CLEC makes the investment in its network, it faces the prospect of being ordered to reconfigure that network at great expense and in the very near term after deployment. (Tr. 7 at 1232-1238).

A CLEC might be faced with a loss of its federal rights to negotiate and arbitrate interconnection arrangements if its existing interconnection agreement were superseded by a voluntary tariff filing by BA-MA. For example, a CLEC could arbitrate an interconnection agreement, only to have BA-MA claim that the outcome of the arbitration has been trumped by Tariff No. 17. Moreover, as BA-MA testified, if Tariff No. 17 is approved, it fully intends to stifle CLEC efforts to negotiate interconnection arrangements which differ from Tariff No. 17 by BA-MA's using Tariff No. 17 as a "reasonable" position and not budging (Tr. 4 at 698-699), thus forcing the CLEC into arbitration without having had any meaningful opportunity to negotiate, as contemplated by the 1996 Act. In effect, BA-MA is proposing to treat

Tariff No. 17 like an SGAT, even though it has admitted that its filing does not constitute an SGAT. (Exh. MCIW-10).

The impracticality of BA-MA's position is further illustrated by the prospect of BA-MA's differential treatment as between a party with an existing interconnection agreement and a party which is seeking to arbitrate interconnection agreement provisions. The first party would have its interconnection agreement subject to being superseded by Tariff No. 17, whereas the second party would be able to arbitrate its issues. (Tr. 4 at 696-697). Of course, the second party might be subject to having its just won arbitration superseded by Tariff No. 17 revisions, thus making the entire arbitration process a non sequitur. In addition, while BA-MA states that its tariffs would be subject to revision as a result of a subsequent arbitration decision, it made no effort to conform Tariff No. 17 to the Department's GMT/MediaOne Arbitration Order. (Tr. 4 at 718-719). The Department's own questioning of BA-MA on these issues further revealed the serious problems which BA-MA has created by shoveling multiple UNE and interconnection arrangements into Tariff No.17 and pretending that these proposed changes would not affect existing interconnection arrangements or raise discrimination issues. (Tr. 4 at 719-723).

If BA-MA were permitted to make such unilateral tariff filings as a means of altering its interconnection agreements, nothing would prevent a CLEC from filing its own tariffs to override the terms and conditions contained in their interconnection agreements and in BA-MA's tariffs. Acceptance of BA-MA's proposal to eliminate the mutuality embedded in interconnection agreements would result in contractual and regulatory chaos.

In contrast, the Department adoption of MCI WorldCom's recommendations would provide each party with a level of certainty as to which rates, terms and conditions govern the services and facilities which are covered by an interconnection agreement. It would avoid any guessing game about whether subsequent tariff filings apply to these services and facilities. It prevents BA-MA from gaming the regulatory process by making subsequent tariff filings that are in conflict with the interconnection agreement. It would avoid the floodgate of inter-carrier disputes which BA-MA's proposal would surely produce. Finally, MCI WorldCom's approach recognizes that there may be instances in which the Department issues an arbitration order or the FCC takes further preemptive actions which require modifications to the interconnection agreements of CLECs in accordance with the provisions in those agreements which determine how such modifications are to be implemented.

Nothing in MCI WorldCom's suggested approach prevents BA-MA and any CLEC from reaching a different accommodation regarding the relationship between its interconnection agreement and BA-MA's tariffs. They may agree, for example, that all services and facilities will be provided by BA-MA in accordance with the rates, terms and conditions of BA-MA's tariffs, that some specific services and facilities will be provided under BA-MA's tariffs, or that a future offering not yet available will be provided-when available-under the rates, terms and conditions of a future BA-MA tariff.

For all the above reasons, the Department should adopt MCI WorldCom's recommendations concerning the relationship between Tariff No. 17 and existing interconnection agreements between BA-MA and CLECs, including MCImetro, Brooks Fiber and MFS Intelenet.

B. THE DEPARTMENT SHOULD DISALLOW AND ORDER

MODIFICATIONS TO BA-MA'S PROPOSED ENHANCED

EXTENDED LINK TARIFF FILED ON DECEMBER 27, 1999

Introduction
On December 27, 1999, BA-MA submitted a proposed tariff for its offering of a

service known as Enhanced Extended Link ("EEL") service. EEL service consists of a combination of an unbundled loop and unbundled dedicated interoffice transport, including unbundled multiplexers. (See, Exh. BA-MA-9, proposed Tariff Part B, Section 13.1.1.A).

The Department has previously found that prior refusals of BA-MA to provide combinations of UNEs "would impair the successful introduction of local exchange competition in Massachusetts and, in particular, would 'not advance our or the Act's policy to create efficiency-enhancing conditions that would allow local exchange competition to develop and to deliver price and service benefits to customers.'" The Department has also previously "expressed reservations as to whether Bell Atlantic's requirement that CLECs use collocation as the sole method to combine UNEs was consistent with the Act and the Eighth Circuit's findings." Accordingly, the Department directed BA-MA to develop an additional, alternative or supplemental method for provisioning UNEs in such a way that permits recombination by CLECs without imposing a facilities requirement of those carriers. The Department has previously rejected BA-MA's proposal to provision EEL solely through collocation. In the Department's recent order in Phase 4-P of the Consolidated Arbitrations, it noted that all aspects of BA-MA's newly proposed EEL offering would be reviewed in this proceeding.

As explained below, BA-MA's proposed EEL terms and conditions should be disallowed as filed. MCI WorldCom's proposed modifications to BA-MA's proposed EEL terms and conditions should be adopted by the Department.

The Terms and Conditions for EEL Service Should be Modified by Eliminating BA-MA's Proposed Restriction on the Use of Loop/Transport Equipment in Conjunction with Multiplexing Equipment Which BA-MA has Previously Forced CLECs to Purchase out of its Access Tariff

MCI WorldCom recommends that the Department disallow the restriction proposed by

BA-MA in Part B, Section 13.1.1.B. and modify the EEL tariff to provide that a CLEC currently using access arrangements to provide local exchange service be permitted to convert those arrangements to EEL arrangements. MCI WorldCom witness Daren Moore, Director of Line Cost Management, explained that BA-MA has continuously refused to provide MCI WorldCom with 4 wire DS-1 loop-transport combinations since November 1997. As a result, in order to obtain the loop facilities needed to provide this level of local exchange service to its local exchange customers, MCI WorldCom has been forced to lease more expensive T-1 circuits from BA-MA's access tariff.

Because BA-MA's proposed EEL tariff at long last contains the 4 wire DS-1 loop-transport

combination which MCI WorldCom has been seeking for over two years, MCI WorldCom

needs to convert its existing loop-transport arrangements to EEL arrangements. BA-MA, in

anticipation of such requirements, has proposed numerous barriers to an orderly and efficient

transition from BA-MA imposed access arrangements to Department-directed EEL

arrangements.

As explained by Mr. Moore, the Department should reject BA-MA's proposal that

a CLEC having an existing loop-transport arrangement under the access tariff and

wanting to convert to EEL pricing for that arrangement must (1) to disconnect its existing loop-transport arrangement, (2) separate those facilities from existing multiplexing equipment and transport and (3) then purchase separate multiplexing and transport equipment out of the EEL tariff in order to provide the same combination.

CLECs should not be required to uncombine the facilities that are currently being used to

serve local exchange customers. As Mr. Moore explained:

[E]ach time a CLEC were to convert a T-1 to EEL pricing, the

CLEC would be required to disconnect the combination from

its existing multiplexing, and then reconnect it again, incurring

wasteful costs and almost certain disruption to its customers'

service. Since as written, the tariff precludes loops purchased

out of the EEL tariff to be combined with the transport and

multiplexing purchased from the access tariff, this would be the

result even if 100% of the traffic provided over that DS1 loop

transport is local. This limitation is not necessary either, as the

access multiplexing and transport services associated with access

are identical to the facilities used for local service.

BA-MA's proposed restriction is especially unreasonable in light of the fact that it has been BA-

MA’s own refusal to make available the EEL arrangement which forced CLECs like MCI

WorldCom to obtain the same facilities under BA-MA’s access tariffs-at a substantially higher

cost- in order to provide local exchange service.

BA-MA’s proposed "disconnect-reconnect" requirement should be rejected by the Department because it is inconsistent with the United States Supreme Court’s ruling that ILECs may not rip apart existing UNE combinations. Moreover, this requirement should be rejected on the independent ground that it is unreasonable and anti-competitive.

BA-MA has not claimed-since it cannot- that there is a technological obstacle to a CLEC’s continuing to provide the same service to its end user over the same facilities under a lower rate without disconnection and reconnection. MCI WorldCom accordingly recommends that the Department disallow the restriction proposed by BA-MA in Part B, Section 13.1.1.B. and modify the EEL tariff to provide that a CLEC currently using access arrangements to provide local exchange service be permitted to convert those arrangements to EEL arrangements. MCI WorldCom’s proposal is not only economically efficient, but also consumer friendly. It avoids the incurrence of unnecessary costs by CLECs, enables CLECs to offer service to consumers under a more efficient cost structure, affords CLECs a greater ability to reduce prices to consumers and promotes local exchange competition. It also avoids unnecessary interruptions in customer service.

3. The Department Should Disallow BA-MA’s Proposal to Impose

Termination Liability Charges Upon CLECs that Convert Loop-

Transport Access Service Now Being Used to Provide Local

Exchange Service to EEL Service

Another tactic of BA-MA to frustrate the ability of CLECs to convert existing access

arrangements used to provide local exchange service to EEL arrangements is BA-MA’s proposal to stick those CLECs with termination liability charges under its access tariffs. These termination liability charges arise when the CLEC discontinues the access service and converts to EEL service before the expiration of the term of the access service arrangement or because the volume of access service required for discounts has not been achieved as a result of the conversion to EEL service. The termination charges which BA-MA would impose may represent a significant obstacle to the economic viability of converting existing loop-transport access arrangements to EEL arrangements as a means of continuing to serve local exchange customers of the CLEC.

The Department should disallow BA-MA’s proposal to force CLECs to pay access

service termination charges when they convert loop-transport access services currently used to

provide local exchange service to EEL service. (Tr. 6 at 1119). It is only by virtue of BA-MA’s stubborn refusal to provision EEL that CLECs have been forced to use the access services of BA-MA to provide local exchange service. BA-MA has already been unjustly enriched by forcing CLECs to pay higher access rates rather than UNE rates for these services. It would constitute a double whammy if CLECS were also forced to pay access service termination charges for switching to the service that BA-MA should have been providing all along.

Under these circumstances, MCI WorldCom recommends that the Department disallow

Part B, Section 13.5.1.D. of the proposed tariff. The Department should modify

Tariff No. 17 to

provide that any access service termination charges incurred by a CLEC as a result of its conversion of loop-transport access service now being used to provide local exchange service to an EEL arrangement be fully offset by a credit under the EEL tariff arrangement for all EEL

conversions ordered during a period within six months after the effective date of BA-MA's EEL

compliance filing in this proceeding. This mechanism would afford CLECs a limited "fresh

look" period within which to convert their existing loop-transport access arrangements used to

provide local exchange service to EEL arrangements, without the incurrence of any penalties.

4. BA-MA's Proposed EEL Tariff Improperly Prevents CLECs From

Commingling Access and Local Traffic on the Same Combination

of Elements

BA-MA's proposed EEL tariff restricts CLECs from commingling any amount of special

access traffic with local traffic over its T-1s which are converted to EEL pricing. This restriction

is discriminatory, given that BA-MA itself commingles access traffic and local traffic over the

same facilities. CLECs need to be able to commingle access and local traffic over network

elements in order to achieve the same type of network efficiency that BA-MA enjoys. Otherwise,

CLECs will be forced to create and pay for two separate networks even where capacity

requirements do not support such duplicative network construction.

As explained by MCI WorldCom witness Daren Moore, Section 13.1.1.B. of proposed

Tariff No. 17 effectively precludes any commingling, in violation of the FCC's current standard

that permits commingling. BA-MA permits commingling in the neighboring State of New York

and should not be permitted to require CLECs in Massachusetts to needlessly disconnect loop-

transport access arrangements (and the existing local traffic). BA-MA should therefore be

required to allow MCI WorldCom and other CLECs to lease UNE loops (or UNE loops

combined with transport) and combine traffic from these UNES to existing access services

provided to such MCI WorldCom or such CLECs. BA-MA should also be required to allow-as it

already does in New York- CLECs to combine access loops to new or existing UNE transport.

5. The Department Should Reject BA-MA’s Proposal to Require

CLECs to Collocate in Order to Access New EEL Combinations

The Department should reject Part B, Section 13.1.1.E. of BA-MA’s proposed EEL tariff

because it imposes the discriminatory, unnecessary and costly requirement that CLECs collocate

in order to access new EEL combinations. Exh. MCIW-32 at 10-11. BA-MA’s collocation requirement violates the Department’s Phase 4-K Order because it imposes a facilities requirement in violation of federal law. Phase 4-K Order at 26.

While a CLEC may choose to terminate a new EEL to a CLEC collocation, there is no technical reason why CLECs should be forced to terminate an EEL in a CLEC collocation. As Mr. Moore testified, BA-MA does not impose this collocation requirement on CLECs in New York. (Exh. MCIW-32 at 10, lines 9-10, 15-17). Nor does it impose that requirement upon a CLEC which converts an existing access arrangement to an EEL arrangement. (Tr. 6 at 1084-1085). BA-MA has acknowledged that it is technically feasible to provision EEL arrangements without collocation. (Tr. 6 at 1085). Collocation is not technically required to either convert existing T-1 arrangements to EEL or to provision new EEL arrangements. Moreover, as discussed above, the imposition of a collocation requirement is inconsistent with state and federal law.

6. BA-MA’s Proposed Section 13.3.1.A. Should be Disallowed

Because it Would Unduly Restrict the Ability of CLECs to

Use EEL Arrangements to Provide Local Exchange Service

While MCI WorldCom does not oppose compliance with the FCC’s current standard that

a CLEC self-certify that its EEL arrangement is being used to provide a significant amount of

local exchange service, it strongly objects to BA-MA proposed Part B, Section 13.3.1.A.

language which would require that for EEL arrangements using DS1 level and above loops, a

CLEC must either be providing all of the end user’s local exchange service or meet a two part

test established by BA-MA. BA-MA has transformed the limited fact pattern which it

suggested to the FCC in an ex parte filing and which the FCC acknowledged would be an

example of a "significant amount of local exchange service" into an exclusive test of what

constitutes the provision of a "significant amount of local exchange service." The

FCC has not

endorsed BA-MA's proposed tariff language as an exclusive test. Nor should this Department.

BA-MA's proposal is overly restrictive and would preclude CLECs from using the EEL

arrangement to provide many consumers with local exchange service. While that consequence

may suit BA-MA, it conflicts with the Department's previously enunciated position that EEL

arrangements should advance local exchange competition. In addition, BA-MA's standard is

overly vague, just like its audit provision. For example, BA-MA's standard does not address the

time period over which the standard will be applied (e.g., weekly, monthly, annually). Nor does

BA-MA address the fact that CLECs do not possess all of the information needed to provide a

"certification." BA-MA's proposed requirements would be costly and burdensome to

administer (Tr. 6 at 1096-1098). BA-MA's proposal also does not identify the frequency with which a CLEC must provide self-certifications. (Tr. 6 at 1094-1095). Finally, BA-MA's proposal is also unreasonably discriminatory because it does not apply to DS0 level EEL arrangements. (Tr. 6 at 1092).

Given the short amount of time between the submission and approval of a compliance filing by BA-MA in this matter and the FCC's anticipated action by June 30, 2000, MCI WorldCom recommends that the Department adopt the FCC's "significant amount of local exchange service" standard and self-certification requirement as an adequate means of ensuring that EEL arrangements are used to provide local exchange service until such time as the FCC has acted. However, if the Department believes that it is necessary to adopt a more specific standard than that currently stated by the FCC, then MCI WorldCom recommends that on an interim basis-pending further action by the FCC- a CLEC should be deemed to satisfy the "significant amount of local exchange service" standard if it is providing the end user with the first point of switching. A CLEC which provides the first point of switching to a customer is providing, among other services, E- 911 service, operator services, directory assistance services and other local services. The end user is a local exchange service customer of the CLEC. This standard eliminates the need for costly and burdensome audits. It also removes the arbitrariness associated with the application of BA-MA's proposed standard to a large, multiple location customer which may take local service from more than one carrier in order to meet reliability requirements of a redundant network. (Tr. 6 at 1096-1097). It further eliminates the ambiguities which would be associated with a CLEC's offering of a "premium" calling arrangement (like BA-MA's Metropolitan Service) which combines local and toll service into a flat rate service offering.

7. BA-MA's Proposed Audit Requirement Should be Disallowed

In proposed Part B, Section 13.2.1.B., BA-MA "reserves the right to conduct an audit of

an operational EEL arrangement to verify that the EEL arrangement is providing a significant

amount of local exchange service to a particular end user." Section 13.2.1.B. should be

disallowed because it conflicts with the FCC's recent finding that such audits are unnecessary:

...we do not find it to be necessary for incumbent LECS and requesting carriers to undertake auditing processes to monitor whether or not requesting carriers are using unbundled network elements solely to provide exchange access service. We expect that allowing requesting carriers to self-certify that they are providing a significant amount of local exchange service over combinations of unbundled loops and transport network elements will not delay their ability to convert these facilities to unbundled network element pricing...

Moreover, there are numerous practical reasons why the imposition of such an audit requirement at this time would constitute bad policy. First, the FCC has indicated its intention to issue a comprehensive national policy by June 30, 2000, about three months after the issuance of the Department's order in this investigation. Given the FCC's statement that such audits are unnecessary, the imposition of an audit requirement at this time would force CLECs and BA-MA to incur unnecessary expenses. Second, BA-MA's audit proposal has not been defined sufficiently enough to warrant approval. The tariff does not specify the frequency with which BA-MA could demand audits. Nor does the tariff indicate which party will bear auditing costs. Nor does the tariff explain what exactly will be audited, the period of time covered by the audit, how the audit will be conducted and how audit results will be interpreted to determine CLEC compliance. Finally, an audit requirement of such unknown contours would require the CLEC to provide a customer's CPN and usage data. This information is highly competitive, sensitive data that would be very valuable to a CLEC's competitors, including BA-MA.

8. The Department Should Disallow BA-MA's Requirement that CLECS Order Network Elements in a Specific Sequential Order

In Part B, Section 13.4.1.B., BA-MA proposes to require CLECs to order network elements in a specific sequential order. This requirement unreasonably stretches out the length of time that it takes to provision the EEL arrangement. MCI WorldCom recommends that this tariff section be revised to permit all of the EEL elements, including loops, transport and multiplexers,

to be ordered at the same time on one service order. Besides stretching out the length of time

required for ordering, BA-MA’s proposal might also have the effect of increasing CLEC costs,

especially if BA-MA imposed multiple service ordering charges for each separate order.

Part B, Section 13.4.1.C. Should be Modified to Specifically State that Expedite NRCs are Available for Each Rate

Element in the EEL Arrangement

During hearings, BA-MA witness Stern testified that each element of the EEL

arrangement has a tariffed expedite NRC. (Tr. 6 at 1098. BA-MA response to MCI-RR-85). MCI WorldCom submits that Part B, Section 13.4.1.C. should be modified to provide that an EEL arrangement may be ordered on an expedited basis. It is inaccurate and unnecessary to qualify this ordering provision with the statement "only if each of the separate elements ordered has a tariffed expedite NRC."

10. Part B, Section 13.3.1.D. Should be Disallowed or Modified to Include

Confidentiality Protections for CLEC Forecasts Provided

to BA-MA

The Department should disallow BA-MA’s proposal to require CLECs to file EEL

forecasts. As Mr. Moore testified, MCI WorldCom conducts forecasts, but not at the discrete

customer or product level that BA-MA is seeking to obtain. (Tr. 6 at 1164). For this reason, BA-

MA’s forecast proposal goes too far and should be disallowed. If any forecasting requirement is

approved by the Department it should be accompanied by confidentiality protections.

During hearings, BA-MA agreed to modify Part B, Section 13.3.1.D. in order to include

confidentiality protections for CLEC forecasts provided to BA-MA. (Tr. 6 at 1119-1120).

11. The Department Should Modify Tariff 17 to Include Intervals

for the Provisioning of EEL Arrangements

In order to ensure that CLECs are provided with prompt access to EEL arrangements, the Department should modify Tariff No. 17 to include specific intervals for the provisioning of EEL arrangements by BA-MA. The "standard" intervals cited by BA-MA during hearings for new EEL arrangements (Tr. 6 at 1095-1096) should adopted. In the case of conversions, the Department should require BA-MA to submit specific intervals as part of its compliance filing. It would be unreasonable to force CLECs with existing access arrangements used to provide local exchange service to negotiate intervals with BA-MA. Given BA-MA’s lack of any incentive to negotiate such arrangements, CLECs are likely to experience substantial provisioning delays. BA-MA knows well that many CLECs will not submit this type of dispute to the Department for resolution, given the costs and delays associated with such dispute resolution and BA-MA’s ability to retaliate. BA-MA has not provided evidence to

support its position that intervals for EEL conversions must be negotiated. In no event should the intervals for EEL conversions exceed the intervals for new EEL provisioning.

C. THE DEPARTMENT SHOULD REJECT BA-MA'S PROPOSED

CHARGES FOR EEL ARRANGEMENTS

1. Introduction

BA-MA filed with its new EEL tariff proposed rates for a charge that it

had originally called a "connection charge" and which it renamed the "Link Test Charge."

According to BA-MA witness Stern, the Link Test Charge is supposed to recover the costs that

BA-MA incurs to test loops. (Exh. BA-MA-9 at 5, lines 8-11. Tr. 6 at 1099). While Ms.

Stern's testimony included the proposed rates and charges as well as several worksheets which

summarized the development of these rates and charges at a high level, BA-MA offered no

testimony which explained its costing methodology and provided no detailed backup of

the type needed to evaluate the propriety of its claimed costs. For the reasons below, the

Department should reject BA-MA's proposed Link Test Charge.

2. The Link Test Charge Should be Rejected as Discriminatory

The proposed Link Test Charge is discriminatory because it only applies to links

which are purchased as part of an EEL arrangement and not to links which are purchased outside

of an EEL arrangement (Tr. 6 at 1100). BA-MA explains this situation by claiming that when it

developed its UNE rates, it presumed that all testing would be performed by CLECs and therefore did not need to develop link testing charges. (Tr. 6 at 1100). However, BA-MA has not demonstrated that under its interconnection agreements with CLECs it has not agreed to provide loop testing or does not perform such loop testing. Moreover, as explained below, BA-MA has deployed Smart Jacks on all of its DS1 loops since the early 1990s and therefore cannot be permitted to claim that it does not afford the same test capability with those loops that it affords to EEL customers using DS1 loops. If BA-MA overlooked the Smart Jack when it developed its UNE loops rates, it cannot now impose a discriminatory link test surcharge on EEL arrangements using DS1 loops.

3. The Department Should Follow the New York Public Service

Commission and Reject BA-MA's Proposed Smart Jack Charge

as Discriminatory

In the event that the Department considers the adoption of a Link Test Charge, The

Department should exclude from the Link Test Charge for DS1 loops the Smart Jack

component. As shown in Part M, Section 2, Page 23 of the proposed tariff, the Link Test

Charge per month per DS1 loop ranges from $7.37 to $7.94. $7.14 of these charges is attributable

to the recovery of the capital, maintenance and joint and common costs associated with the Smart

Jack. (Exh. BA-MA-9 at Workpaper Part Q, Worksheets 2, 4 and 9 of 9. Tr. 6 at 1110). The

remainder of the Smart Jack rate calculation involves (1) the addition of a line maintenance

factor cost (Worksheet 2 of 9 at line 2, Worksheet 5) and (2) the removal of costs associated with

NIDs which have been included in the cost of UNE loops (Worksheet 2 of 9. Line 4, Worksheet

6 of 9).

First, the Smart Jack charge should be excluded because it is unreasonably

discriminatory. It applies only to EEL arrangements and does not apply where the CLEC

purchases a DS1 UNE loop, even though these loops are accompanied by Smart Jacks (Tr. 6 at

1100, 1112) and even though BA-MA maintains that Smart Jack costs are not being recovered

through DS1 UNE loop rates . (Tr. 6 at 1109). In effect, BA-MA is selectively and

impermissibly seeking to alter the pricing of UNE loops only when they are ordered as part of

the EEL arrangement. This type of discriminatory conduct was cited by the New York Public

Service Commission when it rejected BA-MA’s Smart Jack cost component in its entirety. As

in New York, BA-MA has admitted that it has been deploying Smart Jacks prior to conducting

its UNE cost studies (in Massachusetts, BA-MA has stated that it has been deploying Smart

Jacks since 1990 and that by 1993-1994, all DS1 circuits were designed and provisioned with

Smart Jacks) (BA-MA Response to MCIW RR 88). BA-MA could have reflected this deployment in its UNE loop cost calculations in Phase 4 of the Consolidated Arbitrations. It cannot now revise its DS1 UNE loop costs on a selective basis for EEL arrangements only through the removal of one of the included cost components (NIDs) and the addition of a significantly more costly component (Smart Jacks). This discriminatory situation cannot be remedied by allowing BA-MA to add Smart Jack costs to its DS1 UNE loop rates. Such action would be inconsistent with the

Department's current policy that UNE rates be reexamined only every several years or via the submission of a petition which demonstrates a compelling reason for the change. These types of adjustments should be made as part of a broader UNE loop costing proceeding in which each party has an opportunity to sponsor changes in UNE loop costs and rates based upon new inputs and assumptions.

Second, the inclusion of Smart Jack carrying costs should be excluded from the Link Test

Charge because these costs are not testing expenses. Rather, they provide for the recovery of the

investment and maintenance costs associated with Smart Jacks and not the costs incurred by BA-

MA for actually testing loops. To the extent that Smart Jack costs are deemed testing costs because of their utility, these costs should have been offset by BA-MA with test cost savings attributable to the forward-looking deployment of Smart Jacks. Since BA-MA provided no such cost savings information, it would be unreasonable to recognize only Smart Jack costs. (Tr. 6 at 1111, 1112).

Third, BA-MA appears to have gamed the removal of NID-related costs in its rate

development. It applied a lower TELRIC carrying charge factor to the NID than it

applied in the case of the Smart Jack. This approach understates the amount of NID-related

costs which are subtracted in order to avoid a double count of NID and Smart Jack costs and

therefore overstates the proposed charges. Accordingly, BA-MA has not demonstrated that it has removed from the Link Test Charge costs the same amount of NID-related costs which were included in the UNE loop cost study for DS1 or higher loops. For this reason, BA-MA's proposed Smart Jack-related charge has not been shown to be free of double counting problems. Fourth, BA-MA's proposed Smart Jack charge is inherently suspect due to the lack of

any demonstration that it is based upon forward-looking TELRIC principles. The Smart Jack

costs proposed by BA-MA in Massachusetts are further suspect because they are substantially higher than those previously proffered and rejected in New York.$1.32). (See worksheet 2 of 9, lines 1 and 4). See, Order Concerning EEL Connection Charge at 4. BA-MA has not demonstrated that it costed out Smart Jacks based upon current vendor pricing, taking into account the volume discounts that it receives under its most recent vendor contracts. Nor has BA-MA demonstrated that its proposed charge captures the maintenance cost savings which are supposed to be produced by the Smart Jack. (Tr. 6 at 1111, 1112).

4. The Department Should Reject the EEL Testing Factor

of 0.003769 as Inconsistent with TELRIC Pricing Principles

and as Lacking Adequate Record Support

BA-MA's proposed Link Test charge should be rejected, given BA-MA's reliance

upon 1995 data to develop the .003769 testing factor. (Tr. 6 at 1102-1103). The use of such data

does not reflect TELRIC principles. BA-MA has not demonstrated that the use of 1995 data

captures efficiencies gains made since 1995. BA-MA made no effort to utilize more current

cost data, which would have captured to a greater degree efficiency gains made since 1995. (Tr. 6

at 1105-1106). Moreover, the testing factor has not been shown to be reasonable given the fact

that it was developed without any consideration of interoffice facilities, which are part of the EEL arrangement. (Tr. 6 at 1105).

Finally, in response to MCI-RR-87, BA-MA: (1) did not provide detailed backup for its claimed Subscriber Line Testing Subscriber Reports, thus making it impossible for the parties and the Department to determine the reasonableness of the inclusion of those costs in the development of the proposed testing factor; and (2) acknowledged that approximately one third of the costs used originally to develop this testing factor were already being recovered through TELRIC annual cost factors. BA-MA's candor in admitting its error is laudable. However, that does not make the remaining testing factor claimed by BA-MA reasonable in light of it failure to fully explain what costs comprise the overall entry. The testing factor and the proposed charge which it is intended to support must be rejected.

5. The Department Should Reject the Installation Factor

Proposed by BA-MA as Insufficiently Documented and

Inconsistent with TELRIC Pricing Principles

Similarly, BA-MA's installation factor is tainted because it is based upon 1995 inputs,

which do not constitute TELRIC-based inputs for a year 2000 cost study. BA-MA could have-

but did not- conduct either a current or forward-looking cost study. Nor did it provide any

sensitivity analysis to demonstrate that its reliance upon 1995 inputs is

appropriate.

6. The Department Should Confirm that BA-MA is not

Double-Recovering SAC or IAC Charges Referred to

in Part B, Section 13.5.1.D. and Should Confirm that

all EEL-Related NRCs, to the Extent Applicable, Must be

Reduced in Accordance with its Phase 4- Order

BA-MA stated during hearings that the SAC or IAC charges referred to in its proposed

tariff are not new charges, but refer to charges contained in BA-MA's collocation tariffs. (Tr. 6 at

1117,1118). BA-MA also maintained that SAC or IAC charges apply only once under the

collocation tariffs and are not "double-recovered" under the EEL tariff. (Tr. 6 at

1117, 1118).

The Department should direct BA-MA to include in its compliance filing a demonstration that

SAC and IAC charges do not result in any double recovery by BA-MA, under the EEL charges

or otherwise. The Department should either eliminate the references in Tariff No. 17 above to the

SAC and IAC as confusing and unnecessary or modify this section to expressly provide that

these charges apply at most only once under BA-MA's collocation tariffs and are not separate

charges for EEL arrangements.

In addition, the Department should direct that BA-MA reduce its SAC and IAC

charges, as well as any other applicable EEL-related non-recurring charges, to the extent that

they are based upon manual activity, in light of the Department's Phase 4-L and 4-O Orders.

7. Any Link Test Charge Should be a Non-Recurring Charge Which

is Imposed on a Per Transaction Basis

If the Department approves a Link Test Charge, it should order BA-MA

to submit in its compliance filing a non-recurring charge in place of its proposed recurring charge. A non-recurring charge would be applied on a per incident or transaction basis in which actual testing activity was performed on a loop facility and ensure that loops that cause the incurrence of testing costs are responsible for payment. The need for such a non-recurring charge rate design is illustrated by the fact that two CLECs with an equal number of EEL loops would, under BA-MA's proposal, pay the same amount for Link Test Charges even though one CLEC reports 500 troubles and the other CLEC reports 5 troubles in the same reporting period. (Tr. 6 at 1100, 1101). BA-MA has ackowledged that a non-recurring charge could be developed. (Tr. 6 at 1102). Such a charge would place more costs upon those EEL loops which necessitated more testing. (Tr. 6 at 1102). It would also provide strong incentives to fix loops which generate high than average troubles.

D. BA-MA'S GRIP PROPOSAL SHOULD BE REJECTED AS

UNLAWFUL AND CONTRARY TO THE POLICIES UNDERLYING

THE TELECOMMUNICATIONS ACT OF 1996

The Department should reject BA-MA's proposed Tariff 17, Part A, Section 1.7.12.A and approve only the first sentence of that Section. As revised, Section 1.7.12.A would read as follows: "A CLEC that assigns telephone numbers must make available to the Telephone Company at least one point of termination per LATA where the CLEC assigns telephone numbers."

BA-MA's proposed tariff language squarely conflicts with the Department's August 25, 1999 GMT/Media One Arbitration Order. In the GMT/MediaOne Arbitration Order, the Department expressly rejected both the proposal of BA-MA and the reasoning behind

that proposal to require CLECs-at BA-MA's election- to establish multiple points of termination within a LATA or to pay for additional transport costs. The Department ruled that as a matter of law CLECs cannot be required to establish multiple interconnection points within a LATA and satisfy their obligations to interconnect with BA-MA by establishing one interconnection point per LATA:

Regarding Bell Atlantic's request that the Department approve its proposal to require MediaOne and Greater Media to provide IPs at or near each of Bell Atlantic's tandems, neither the Act nor the FCC's rules require MediaOne or any CLEC to interconnect at multiple points within a LATA to satisfy an incumbent's preference for geographically relevant interconnection points. See Id. at ¶¶ 198-199. Therefore, we find that a CLEC may designate a single IP for interconnection with an incumbent even though that CLEC may be serving a large geographic area that encompasses multiple ILEC tandems and end offices. There is no requirement or even preference under federal law that a CLEC replicate or in a lesser way mirror an ILEC's network. Indeed, the Act created a preference for CLECs to design and engineer in the most efficient way possible, which Congress envisioned could be markedly different that the ILECs[']networks.

GMT/MediaOne Arbitration Order at 41,42.

The Department also rejected BA-MA's proposal to force CLECs which did not establish multiple interconnection points per LATA to pay additional transport costs:

Regarding Bell Atlantic's argument that if MediaOne and Greater Media do not establish 'geographically relevant' IPs, they would be obligated to pay Bell Atlantic's transport costs, Bell Atlantic has pointed to nothing in the Act or the FCC rules requiring CLECs to pay the transport costs that Bell Atlantic will incur to haul its traffic between Bell Atlantic's IP and the meet point. The FCC envisioned both carriers paying their share of the transport costs to haul traffic to the meet point under the interconnection rules. Therefore, we find that a CLEC may designate a single IP for interconnection with an incumbent even though that CLEC may be serving a large geographic area that encompasses multiple

ILEC tandems and end offices. There is no requirement or even

preference under federal law that a CLEC replicate or in a lesser

way mirror an ILEC's network. Indeed, the Act created a preference

for CLECs to design and engineer in the most efficient way

possible, which Congress envisioned could be markedly different

than the ILEC's network. Id. at ¶172.

Id. at 42.

BA-MA has offered in the present case the same evidence and argument in the

testimony of Mr. Howard that was pre-filed by him in the GMT/MediaOne Arbitration Order

proceeding. BA-MA has admitted that its current GRIP proposal conflicts with the Department's GMT/MediaOne Arbitration Order. The Department should reject BA-MA's so-called "GRIP" proposal as contrary to the requirements and preferences of the Telecommunications Act of 1996 and inconsistent with the GMT/MediaOne Arbitration Order.

The evidence adduced in this proceeding further confirms that the Department's rejection of the GRIP proposal in the GMT/MediaOne Arbitration Order was correct. First, as ruled by the Department in the GMT/MediaOne Arbitration Order, CLECs are under no obligation to establish multiple interconnection points within a LATA. As the Department has previously found, BA-MA should not be permitted to circumvent this legal ruling by forcing CLECs to pay for both their own transport costs to deliver a call from their originating customers and through their own switching point(s), plus the cost of further transporting calls to BA-MA's switching location(s). Under BA-MA's construct, the CLEC would absorb the full cost of transport between the CLEC's switching point(s) and BA-MA's switching location(s) for calls originated by a CLEC customer and, in addition, the CLEC would pay the full cost of transporting a BA-MA customer originated call between the BA-MA switching location(s) and the CLEC's switching point(s). (Tr. 2 at 350, 401-403).

BA-MA failed to bolster its previously rejected position through the submission of an affidavit from Ms. Gorman. (Howard Surrebuttal Testimony, Gorman Affidavit). The Gorman affidavit was thoroughly discredited during the examination of Ms. Gorman by Ms. Ballard (Tr. 7 at 1300-1301) and through the testimony of MediaOne/AT&T witness Turner (Exh. MediaOne/AT&T-1; Tr. 7 at 1230-1259). As explained by Mr. Turner, BA-MA's GRIP proposal should be rejected because that proposal "undermines the reciprocal nature of compensation by unilaterally transferring cost from Bell Atlantic to the CLEC." (Exh. MediaOne/AT&T-1 at 2, 6,7). Mr. Turner further explained that Ms. Gorman's affidavit was misleading and analytically flawed, significantly overstated the comparative costs between what would exist with and without the GRIP proposal, and failed to identify or take into account the costs incurred by CLECs to terminate calls to BA-MA's network. (Exh. MediaOne/AT&T-1 at 3, 7-17, 19, 20).

BA-MA's alternative GRIP proposal must also be rejected again. First, was found unlawful by the Department in the GMT/MediaOne Arbitration Order. Second, BA-MA improperly proposed to limit the location of CLEC IPs to locations within one mile of its own tandems, a clear contradiction of the GMT/MediaOne Arbitration Order. BA-MA has tried to force the CLEC to collocate at a BA-MA tandem, which it is not entitled to do. Third, the "transition" arrangements suggested by BA-MA before the GRIP requirement would be triggered are 12 months or 200,000 minutes of use per month, whichever occurs first (Tr. 7 at 1317. Tr. 2 at 350-352). Previously, BA-MA indicated a willingness to accept a 24 month or 6,000,000 minutes of use trigger,

whichever occurs first. (Tr. 7 at 1348. D.T.E. 99-42/43 and 99-52 Record, Tr. at 320-322, 332-334, 364-365, 371-374; Exh. GMT-3). Fourth, this proposal also requires CLECs to incur substantial nonrecurring and recurring costs and provisioning delays, while exempting BA-MA from those costs. As Greater Media Telephone, Inc. previously argued and MediaOne/AT&T now argue, BA-MA's proposal "further requires [CLECs] to absorb all transport costs between [their] switching location[s] and the BA-MA tandem...." Finally, as explained by Mr. Turner, approval of either of BA-MA's GRIP proposals would wreak havoc on the CLEC community. It would force CLECs now in operation under existing interconnection arrangements which do not require GRIPs to totally reconfigure their network facilities. It would also force new CLEC entrants to incur substantial additional costs and delays which are avoidable under the Department's recent GMT/MediaOne Arbitration Order. (Tr. 7 at 1237-1238.Tr. 2 at 356-357). BA-MA's proposed triggers for the GRIP requirement are also unreasonably low in comparison to what it had agreed to in the GMT/MediaOne arbitration proceeding and would be especially unreasonable if applied to a CLEC which furnished "always on" DSL service. (Tr. 2 at 389-393).

For all of these reasons, the Department should reject BA-MA's GRIP proposals.

E. TARIFF 17'S COLLOCATION PROVISIONS SHOULD BE MODIFIED CONSISTENT WITH THE DEPARTMENT'S POLICY IN FAVOR OF

LEVEL PLAYING FIELD FACILITIES-BASED COMPETITION

1. Introduction

Congress, the FCC and the Department have all recognized the important role which physical collocation plays in the development of facilities-based local exchange competition. Section 251(c)(6) of the 1996 Act directs BA-MA to provide for the physical collocation of equipment necessary for interconnection or access to UNEs on BA-MA's premises using rates, terms and conditions that are just, reasonable and non-discriminatory. The FCC has adopted regulations governing the provision of collocation by ILECs such as BA-MA and made it clear that its standards are minimum requirements which leave room for the States to impose additional requirements. The FCC predicated fulfillment of the pro-competitive goals of the 1996 Act upon the States complementing its minimum collocation standards:

State commissions play a crucial role in furthering the goals

of [the FCC's] collocation rules by enacting rules of their own

that, in conjunction with federal rules, ensure that collocation

is available in a timely manner and on reasonable terms and

conditions.

The Department recently exercised its role under the 1996 Act to facilitate the availability of collocation. In Complaint of Teleport, D.T.E. 98-58 (1999) at 12 (the "D.T.E. 98-58 Order"), the Department found that the object of state rules and policies regarding collocation "is to achieve broad public access to competitive telecommunications services as quickly as possible through physical collocation." The Department further found that its actions should "remove barriers to entry and...speed the deployment of advanced services." Id. at 12-13. Accordingly, in the D.T.E. 98-58 Order, the Department adopted collocation requirements which exceeded the FCC's minimum standards and which addressed: (1) response times for physical collocation requests, CO inspections, and incomplete applications; (2) timing and substance of notification of space exhaustion filing; (3) CLEC tours of BA-MA COs; (4) information to be included in BA-MA's collocation web site; (5) reclamation of collocation space; (6) reduction of BA-MA's administrative space; (7) virtual collocation; (8) availability of pre-application information; and (9) alternatives to traditional physical collocation. Id. at 13-14. (Exh. MCIW-1 at 3-5).

In the subsections which follow, MCI WorldCom has recommended modifications to the collocation provisions contained in proposed Tariff No. 17 in order to achieve consistency between that tariff and the letter and policy underlying the FCC's Advanced Services Order wp which arise under BA-MA's proposed Tariff 17. In various respects, BA-MA's proposed collocation tariffs are inconsistent with the letter or spirit of the FCC's Advanced Services Order and the Department's decision in the D.T.E. 98-58 Order.

2. Adjacent Off Site and On-Site Collocation Should be Required Without Any Need for Exhaust of Central Office Space

In Complaint of Teleport at 25-26, the Department encouraged BA-MA and CLECs to "use technically feasible alternatives to traditional physical collocation if and when shortages of CO space occur." Such alternatives included "adjacent physical collocation, where CLEC equipment is placed at a building adjacent to or nearby the CO; shared collocation cages; and cageless collocation." Id.

BA-MA has failed to comply with the Department's directives because it has omitted from

proposed Tariff No. 17 any provision for adjacent offsite collocation. MCI WorldCom recommends that the Department order BA-MA to include an offering for adjacent offsite collocation. Further, the Department should build upon the principles established in Complaint of Teleport to require BA-MA to provide adjacent offsite and onsite collocation even if existing collocation space within a CO has not been fully exhausted. (Tr. 3 at 617-621).

As explained by MCI WorldCom witness Roy Lathrop:

BA-MA's description of adjacent structures in Section 10.1.1 [of

Tariff 17, Part A] should be expanded to permit the use of adjacent

collocation at any central office, not only those where space has been

exhausted. (As mentioned above, the FCC's requirement to provide

adjacent collocation when CO space is exhausted is a minimum

standard.) Permitting CLECs to use adjacent collocation at all COs

would maximize the options for collocation and could act to conserve

CO space. Furthermore, an explicit statement should be included to

permit adjacent 'off-site' collocation, in which a CLEC places

equipment in a location nearby BA-MA premises and arranges for

rights-of-way to the nearest manhole to the CO. This form of

collocation has been used in Washington State and California as a

way for collocators to provide service despite space-constrained

central offices.

(Exhibit MCIW-1 at 24).

Mr. Lathrop further testified that "[a]djacent collocation should be available regardless of whether space for physical collocation has been exhausted at a particular central office. If a CLEC can obtain collocation space faster or cheaper by using adjacent collocation (whether 'adjacent on-site' or 'adjacent off-site'),

it should be allowed." (Exhibit MCIW-2 at 8). The availability of adjacent off-site collocation as an option is consistent with the Department's objective of affording "broad public access to competitive telecommunications services as quickly as possible..." (Complaint of Teleport at 12) and with the intent of the FCC's Advanced Services Order.

Adjacent off-site and on-site collocation also afford CLECs an opportunity to utilize the form of collocation which they may prefer. For example, a CLEC may prefer the security of its own adjacent off-site collocation at a time when the CO can accommodate only SCOPE or CCOE. The adjacent off-site collocation option may also afford a CLEC the opportunity to place equipment within a collocation cage much more rapidly and more economically than might be achievable under the standard BA-MA collocation terms and provisioning intervals. CLECs would be able to avoid the multiple costs and delays associated with ascertaining whether and what collocation space is available within a BA-MA CO and the need for Department intervention in the event of a dispute.

Because these adjacent off-site types of arrangements have been implemented in other states and are similar technically to the arrangements by which BA-MA and other ILECs have interconnected with IXCs (Tr. 6 at 1085-1088), they are technically feasible arrangements which BA-MA should be obligated to provide.

3. BA-MA's Proposed Reservation of CO Space for 3 Years

Should be Rejected in Light of its Proposed Reclamation

of CO Space from CLECs After 6 Months and the Lack

of Reasonable Support for a 3 Year Reservation

BA-MA has proposed to reserve central office space for its own use for a three year time frame. However, BA-MA has proposed that it be permitted to initiate collocation space reclamation from a CLEC if the CLEC does not make use of the collocation space for which the CLEC is paying within six months. The Department should reject BA-MA's proposals because they are unreasonably discriminatory, represent an arbitrary preference in favor of BA-MA and are contrary to the public interest in level playing field competition.

BA-MA's three year reservation of space has not been shown to be necessary. The criteria upon which BA-MA treats central office space as reserved for three years is vague at best. For example, it is not necessary that the future use reserved by BA-MA be covered by an approved capital budget. (BA-MA Response to MCI- RR- 41). Nor does the proposed reservation of space for three years conform to the analogous situation of plant held for future use, which requires that there be a "definite plan" to use such plant. An internal request that a certain amount of central office space be considered reserved and unavailable to a CLEC does not afford an objective basis for excluding a CLEC which has an immediate need for collocation space. It would not meet analogous FCC standards and is so unreviewable as to constitute no standard at all.

BA-MA's three year reservation of space also cannot be justified on the basis that BA-MA must be afforded preferential space reservation rights because such a preference is justified by universal service considerations. BA-MA has failed to provide any quantitative evidence or any credible qualitative evidence to demonstrate that its filling a request for physical collocation in any way interferes with its service obligations. BA-MA's professed concern that a non-discriminatory space reservation policy would impair its ability to meet its universal service obligations is nothing more than a classic red herring argument.

4. The Department Should Adopt the Collocation Provisioning

Intervals Proposed by Mr. Lathrop

The Department should adopt the collocation provisioning intervals recommended by Mr. Lathrop for the reasons set forth in his direct testimony. (Exh. MCIW-1 at 9-11).

5. Tariff 17 Should be Modified to Include Credits Against Non-Recurring Charges for Collocation in the Event that BA-MA Fails to Meet Provisioning Intervals

The Department should modify Tariff No. 17 to include credits against the non-

recurring charges for collocation in the event that BA-MA fails to meet collocation provisioning intervals established by the Department. MCI WorldCom recommends that the Department follow the lead of the Ohio Public Utilities Commission. The Ohio PUC requires a 50% rebate of the non-recurring charges if the ILEC fails to complete its construction within its tariffed intervals, and 100% if the space is provisioned 30 or more days late. In the alternative, the Department should at very least follow the approach taken in the SBC/Ameritech merger conditions accepted by the FCC. Under those conditions, BA-MA would be required to provide for a rebate of all non-recurring charges when a site is completed 60 days or more late.

The imposition of the credits required by the Ohio PUC would provide BA-MA with an incentive to comply with the collocation provisioning intervals established by the Department and mitigate against the harm caused to CLECs as a result of provisioning delays which are due to the fault of BA-MA. The Department has found these types of remedies appropriate in the context of BA-MA's provisioning of UNEs and should adopt complementary remedies in the case of collocation. This tariff modification is also consistent with the overarching goals of the collocation portions of the FCC's Local Competition Order and Advanced Services Order- "...to reduce the costs and delays faced by competitors that seek to collocate equipment in an incumbent LEC's central office."

6. The Minimum Amount of Space for Cageless Collocation Should be Reduced from 15 Square Feet to 7 Square Feet in Order to Avoid

Unreasonable Discrimination against CLECs

MCIW WorldCom recommends that BA-MA's cageless collocation offering minimum space requirement be reduced from 15 square feet to 7 square feet in recognition of the fact that some CLECs may install their bays without protective enclosures. (Exh. MCIW-2 at 3-4). BA-MA's own engineering estimate of the amount of floor space required for an equipment bay is 7 square feet. (Exh. MCIW-2 at 3). The use of the minimum amount of square footage required for a single bay is consistent with the FCC's requirement that collocation space be made available in single bay increments:

We require incumbent LECs to make collocation space available

in single bay increments, meaning that a competing carrier can

purchase space in increments small enough to collocate a single

rack, or bay, of equipment. We conclude that this requirement

serves the public interest because it would reduce the cost of

collocation for competitive LECs and it will reduce the likelihood

of premature space exhaustion.

BA-MA's approach more than doubles the square footage charged to a cageless collocator based upon its assumption that every cageless collocator will encase its rack or bay in a protective box. (Tr. 3 at 478-482, 484, 530-531). That assumption effectively forces a cageless collocator which does not use a protective box to pay for more space that it requires. Accordingly, BA-MA's minimum space requirement for

cageless collocation should be reduced from 15 square feet to 7

square feet.

7. BA-MA's Proposed Charges for Security Should be Eliminated in Order to Maintain Consistency with the TELRIC Approach Taken by the Department in Establishing Non-recurring Charges for Collocation

BA-MA's proposed cageless collocation security costs should be rejected. Most fundamentally, these costs are not based on forward-looking costing principles. Rather, they are based upon an embedded costing approach, as explained by MCI WorldCom witness Lathrop and acknowledged by BA-MA during discovery. (Exh. MCIW-2 at 15). Moreover, BA-MA has failed to demonstrate that it is not double recovering for security costs, since BA-MA included its forward-looking security costs in its physical collocation cost study recurring building space charges (Tr. 3 at 531-532). Significantly, BA-MA, which has the burden of justifying its proposed security costs, also failed to submit vendor statements, invoices or contracts to back up its claimed costs, as it did in the physical collocation cost study investigation in Phase 4-G. (Tr. 3 at 525-526).

To the extent that the Department wishes to consider the propriety of cost recovery for cageless collocation security measures on a forward-looking basis, the Department should take into account the factors cited by Mr. Lathrop. First, the Department should consider the extent to which CLECs wish to have security for themselves. "For example, CLECs that wish to avail themselves of cageless collocation and are willing to forego the 'security' provided by a cage should not be forced to purchase any more security than is already incorporated into the floor space of a forward-looking building." (Exh. MCIW-2 at 16). Mr. Lathrop explained the reasoning behind this factor:

First, the FCC requires cageless collocation in part to reduce

the costs and delays faced by collocators. Assessing BA-MA's

proposed cageless security costs on those collocators that wish

expressly to choose a less expensive form of collocation would

increase the cost of cageless collocation and obviate a chief reason

the form of collocation is now required. Collocators that wish

more security may purchase caged physical collocation or

SCOPE collocation.

Second, even if cageless collocators were required to 'purchase'

Some additional amount of security, they have no control over

the security costs. (Exh. MCIW-2 at 16).

Mr. Lathrop also noted that the Department should take into account that BA-MA's historical relationships with contractors, which have been permitted access to COs for many years without BA-MA's being compelled to install the security measures that BA-MA has suddenly found necessary. "Since BA-MA does not require additional security measures for its contractors, it should not require additional security measures for cageless collocation." (Exh. MCIW-2 at 16-17).

If the Department permits BA-MA to impose charges upon cageless collocators for claimed security costs, then the Department should do so only after BA-MA has presented cost data which is (1) forward-looking and (2) proven to avoid duplicate security measures. Since BA-MA is already charging collocators for building space

based upon costs which the Department has previously found to be forward-looking, it should not now be able to "cherry pick" additional cost inputs to impose upon collocators. It should not matter whether BA-MA's prior collocation cost studies made any specific assumptions about security measures when it costed out building space for TELRIC purposes. When those cost studies were conducted, BA-MA had in place security measures of its choosing. (Tr. 3 at 531-532). It cannot now "double up" on security-related cost inputs.

In addition, BA-MA has not demonstrated that its proposed security costs are efficient or otherwise reasonable. A central office constructed based on forward-looking costing principles would include perimeter corridors and electronic card key systems. The per square foot cost collocators pay for the use of central office space would include such features. The implication is that the number of security card readers BA-MA lists in its cost studies would be unnecessary. The wire mesh which BA-MA installs to isolate its own equipment is also unnecessary (or should be absorbed by BA-MA, not collocators, because the collocators do not control their placement within the central office, the passing on of such costs to collocators only disadvantages them and eliminates the incentives which BA-MA should have to minimize the costs that collocation "customers" must bear. BA-MA also has provide no invoices in support of its claimed costs. Given BA-MA's use of the same approach being proposed by Bell Atlantic throughout its entire footprint, the Department should reasonably expect that BA-MA's costs would reflect significant discounts off of single item costs. Yet, BA-MA has provided no such evidence in support of its claimed costs. (Exh. MCIW-2 at 17-18).

At a minimum, security costs for cageless collocation should be allocated on a per square foot basis, with BA-MA square footage factored into the cost allocation. (Exh. MCIW-2 at 18). This allocation is equitable because BA-MA occupies the vast majority of its central office space, determines where cageless collocators will be located, defines the security measures to be taken and otherwise has no incentive to minimize costs imposed upon cageless collocators.

8. Employee Hours Used to Develop Engineering

And Implementation Cost for Virtual Collocation

Should be Reduced by Ten Percent (10%)

The Department should require a ten percent (10%) reduction in employee hours for the Engineering and Administration charge for virtual collocation in order to impute efficiencies that BA-MA should experience in the future, in a manner consistent with the cost development approved by the Department in its Phase 4-G Order. (Exhs. MCIW-1 at 26, MCIW-2 at 4). In the Phase 4-G Order, the Department required a ten percent (10%) reduction in the number of hours required for BA-MA employees to carry out their functions:

> In another Order, we faced a similar problem, where we sought to impute the efficiencies that might be garnered by Bell Atlantic in the future. There, we were reviewing administrative and support functions, and concluded that a ten percent improvement in administrative efficiency was achievable during the period in which rates were likely to be in effect, basing our conclusion on a comparison with other Bell Operating Companies.

See, Consolidated Arbitrations, Phase 4-G Order (June 11, 1998) at 30. A similar

adjustment is proper here. As Mr. Lathrop pointed out, the Department has regarded a ten percent reduction in the number of hours required by BA-MA employees to carry out the functions of engineering and construction for physical collocation as a "modest and achievable goal." (Exhs. MCIW-1 at 26, MCIW-2 at 5). Given the infancy of BA-MA deployment of virtual collocation, it is reasonable for the Department to expect that BA-MA can achieve efficiencies in engineering and labor hours of the same magnitude as it is expected to achieve in the case of physical collocation, where BA-MA has had more experience.

MCI WorldCom's proposed adjustment is very conservative in light of the evidence in this proceeding that virtual collocation labor times were "fed" to BA-MA personnel, which then confirmed that the pre-selected labor hours were, not surprisingly, reasonable. (Tr. 3 at 436-438). It should be a rare cost study in which the "experts" are provided with the inputs that they themselves are supposed to be developing and then declaring that those inputs are appropriate. This practice employed by BA-MA invites biased results and creates serious doubts about the propriety of its cost study.

9. Site survey/report, application, engineering and administration

BA-MA site survey/report fees are excessive in light of BA-MA's claims that it already surveys its central offices regularly, the likelihood that the same report may be used for more than one CLEC, and the inclusion of excessive labor hours by BA-MA. The hours for the security

work group should be limited to 1.5 hours. The Common Systems Group should be able to "interface with real estate and security"(each of which surveys the site) in a meeting of less than 1 hour. The review of office plans and requirements should take no more than 2 hours. No more than 3.5 hours should be allotted to the Real Estate Group to conduct a site survey, review building plans and update any records. The TIS/LCC work group should be able to perform its

limited tasks within 2 hours. If the same report is used for more than one CLEC, BA-MA should implement a crediting mechanism to reimburse a CLEC which has paid for a disproportionate share for its pro rata use of the report.

10. Bona fide request

BA-MA's proposed tariff requires that the bona fide request process be used for collocation other than at a BA-MA central office. (Tariff No. 17, Part E, Section 2.1.1.D). As explained by Mr. Lathrop, the BFR process should not be required for adjacent collocation, on- site or off-site. (Tr. 3 at 607-609). Adjacent on-site and adjacent off-site forms of collocation have been deployed in other states. For this reason, technical feasibility is not at issue and the use of the BFR process is inappropriate. (Exh. MCIW-1 at 11). As the Department is well aware, the BFR process will result in increased delays and costs for CLECs and should not be invoked where, as here, the technical feasibility of adjacent collocation has been established.

11. ICB charges

MCI WorldCom recommends that the Department reject BA-MA's proposal to assess unspecified, individual case basis ("ICB") charges upon CLECs if, in BA-MA's judgment, a CLEC's request for power or environmental support exceeds central office capacity. (Part E, Section 2.2.1.B). ICB charges are often inconsistent with forward-looking costing principles and may be duplicative of other, existing charges. (Tr. 3 at 599-603). They are readily manipulated by BA-MA because they are undefined and remain within BA-MA's control. A CLEC lacks the ability to contest an ICB because it cannot gain market entry during the period of time that the propriety of the ICB remains in question (assuming the CLEC is willing and able to incur the regulatory costs and delays associated with a challenge to an ICB). If a CLEC pays the ICB, then it may be placed at a significant economic disadvantage. For these reasons, the ICB approach should be disallowed. At a minimum, BA-MA should be required to submit cost guidelines for the charges which would apply based upon the

addition of power supply or a specific form of environmental support.

12. Unnecessary escorts

BA-MA's tariff proposal reserves the right to require an escort for a CLEC when the CLEC needs to access a central office. Section H includes a charge for escorting a CLEC or its vendor during installation or maintenance in an area outside its multiplexing node. In Section N, BA-MA reserves the right to escort and observe a CLEC at the CLEC's requested time of entry to a central office "at no cost to the CLEC." In addition, BA-MA proposes to require in its discretion an escort in those central offices "where other security measures are not yet in place." BA-MA's tariff language would allow it to require escorts for CLECs indefinitely. (Exh. MCIW-1 at 12).

BA-MA's proposed security escort requirements are in direct contravention of the FCC's Advanced Services Order. The Advanced Services Order states that "incumbent LECs must allow collocating parties to access their equipment 24 hours a day, seven days a week, without requiring either a security escort of any kind or delaying a competitors' employees entry into the incumbent LEC's premises by requiring, for example, an incumbent LEC employee to be present." Security escort requirements of BA-MA are objectionable even in those instances where BA-MA does not charge the CLEC for the security escort because the requirement alone imposes unacceptable delays upon CLEC or CLEC contractor access to its collocation facilities. It is precisely for this reason that the FCC prohibited the security escort requirement. Accordingly, BA-MA should be directed to modify its proposed tariff to conform to the FCC's requirement that security escorts cannot be mandated. (Exh. MCIW-1 at 11-12).

13. Space Reclamation

MCI WorldCom recommends that the Department reject and order modifications to the space reclamation portions of Tariff No. 17, Part E, Section 2.2.8. That provision would give BA-MA the right, upon 6 months' notice (or less notice if required by law) to reclaim multiplexing space in order to fulfill its obligations under state and federal laws to provide service to its customers. Before attempting to invoke this clause, and prior to attempting to reclaim space from a collocator, BA-MA should be required first to determine whether it has any obsolete, unused equipment that can be removed, and also whether it has any administrative areas within the central office that can be converted. (Exh. MCIW-1 at 13).

BA-MA's proposed tariff is unreasonably discriminatory because it would displace a CLEC using central office space to serve its customers in favor of BA-MA's needs. A CLEC serving a customer has just as much an obligation to serve as does BA-MA. Moreover, in the case of new business, BA-MA's obligation to serve is not unconditional. It is conditioned upon BA-MA's having adequate facilities in place.

BA-MA's proposed right to reclaim space is also impermissibly vague. BA-MA has not spelled out in detail what it means when says "as required by law, as determined by BA-MA." Either BA-MA is subject to a legal requirement or it is not. BA-MA does not have the discretion to determine when a legal requirement should be deemed to apply.

BA-MA's proposed reclamation of space is even more pernicious when read in light of its proposed ability to reserve central office space for up to three years. A CLEC using central office space should not be subject to removal if BA-MA has unused, reserved space in that central office.

In Part G of Section 2.2.8, BA-MA also proposes to treat a CLEC moving from one location to another within a central office as a new installation. This proposal should be rejected, especially in the context of a CLEC moving to an existing shared cage, because the nature of BA-MA's activities in this situation are significantly different from a new application. As explained by Mr. Lathrop, BA-MA does not need to determine where equipment should be located if a CLEC moves to an existing cage,

or where the collocator's equipment terminates on BA-MA's network (since it exists already). There are likely other tasks that are avoided by BA-MA in this situation versus the new installation situation. The Department should require BA-MA to submit a cost study to support the specific work activities in which it must engage where a CLEC moves its equipment from one existing location to an existing collocation cage. (Exh. MCIW-1 at 14).

14. Technical specifications

Tariff No. 17, Part E, Section 2.2.3.6.H. states that CLECs may install equipment that has been deployed by BA-MA for five years or more with a proven safety record. This requirement, however, should not restrict collocators from placing equipment that has not been deployed by BA-MA for five years or more. Rather, BA-MA should be required to comply with the FCC's Advanced Services Order, which prohibits BA-MA from imposing safety requirements any more stringent than those which it imposes on its own equipment. Furthermore, as stated by Mr. Lathrop, if BA-MA denies collocation of a CLEC's equipment based upon safety standards, it must provide the CLEC within 5 business days a list of all equipment that BA-MA locates within its premises together with an affidavit attesting that all that equipment meets or exceeds the safety standard it contends the collocator's equipment fails to meet. This standard should apply to all forms of collocation.

15. Implementation-separate room

BA-MA should be required to modify its Tariff No. 17 to delete the reference in Part E, Section 2.4.1.E. to a separate room or space in providing collocation. Under BA-MA's proposal, it could determine that the demand for collocation necessitates construction of a separate room and impose special construction charges upon a CLEC for that construction. BA-MA's proposal is inconsistent with the FCC's Advanced Services Order, which provides that incumbent LECs may not require competitors to use separate rooms or floors. That type of requirement drives up the cost of collocation and may decrease the amount of available collocation space, according to the FCC. (Exh. MCIW-1 at 14-15).

16. Removal of obsolete equipment

MCI WorldCom recommends that BA-MA be required to remove obsolete unused equipment from its central offices on a pro-active basis in order to ensure that the availability of space for collocation can be readily and efficiently identified at a reasonable cost. (Exh. MCIW-1 at 15. Tr. 3 at 615-617). BA-MA contends that such a pro-active obligation would be wasteful and costly (Tr. 4 at 746), and that its current practice of removing such obsolete unused equipment upon the request of a CLEC or an order of the Department adequately meets the needs of collocators. BA-MA's position, if adopted, would, however, enable BA-MA to shift the cost of central office space management to collocating CLECs if BA-MA reserved the development of a space assessment until after a CLEC requested collocation. CLECs would essentially pay-perhaps multiple times- for BA-MA to review the availability of collocation space in a central office cluttered with retired in place, obsolete unused equipment. Each time a CLEC requests space, BA-MA will presumably incur the cost of reviewing the existing usage of space, including the space occupied by the unused obsolete equipment. BA-MA's approach drives up the cost of collocation for CLECs because CLECs must pay BA-MA non-recurring charges to determine the availability of central office space for collocation. The costs are-of necessity-higher if BA-MA must rummage through a central office cluttered with obsolete unused plant. It takes more time to inventory central office space which contains this clutter. It is inequitable for CLECs to shoulder the increased costs associated with the determination of central office space which are attributable to BA-MA's preferred practice of leaving unused obsolete equipment in place in central offices until it is forced to remove that equipment. BA-MA's preferred practice-costly to CLECs- is also inconsistent with the notion that CLECs are paying for the forward-looking costs associated with central office space. A forward-looking central office would not be occupied by unused obsolete equipment.

If the Department does not order BA-MA to proactively remove all unused obsolete equipment from its central offices at its own expense, it should-at a minimum-require BA-MA to proactively remove all unused obsolete equipment from all central offices in which collocation is present, has been formally requested or has been identified in a CLEC forecast of collocation requirements. This compromise position would spare BA-MA from the effort and cost of cleaning up its central offices in locations where collocation has not been requested or targeted.

At the very least, the Department should adopt the approach taken by the New York Public Service Commission: "...[T]o avoid unnecessary delay, the company should initiate equipment removal when it becomes reasonably clear that a central office is nearing the point of space exhaustion."

17. Virtual Collocation Issues

MCI WorldCom proposes several changes to BA-MA virtual collocation tariff language. First, the Department should not permit BA-MA to discontinue service without first providing written notice to the CLEC. The requirement of written notice should provide the parties with an opportunity to resolve any misunderstandings; moreover, it leaves room for the parties to address BA-MA's concerns informally and provides an effective escalation mechanism. Since BA-MA itself is responsible for installing virtually collocated equipment, it should not be permitted to use this tariff condition to discontinue CLEC service arbitrarily or in a discriminatory manner (as could occur if service were discontinued without prior formal notice). (Exh. MCIW-1 at 15-16).

Second, Section 3.4.14 should be modified to define what constitutes a "standard virtual arrangement." Without this specificity, CLECs run the risk that BA-MA will impose additional labor charges when they are inappropriate. Greater tariff specificity also is in the interests of consumers because it will reduce the number of time-consuming disputes, which drive up industry costs and may delay the provisioning of service. (Exh. MCIW-1 at 16).

Third, BA-MA's tariff should be modified to reflect the requirements of the Advanced Services Order relating to the conditions under which BA-MA is permitted to deny the collocation of CLEC equipment for failing to meet safety standards. That language should be incorporated into its tariff. (Exh. MCIW-1 at 16).

18. Microwave Collocation

MCI WorldCom requests that the Department adopt the suggestions made by Mr. Lathrop concerning microwave collocation. (Exh. MCIW-1 at 16-18). First, CLECs should not be required to install their equipment in a locked cabinet if they choose not to do so. Nor should CLECs be required to pay for such work if they do not request it. Second, the Department should adopt Mr. Lathrop's suggestions on the use of antenna structures (Id. at 17). Third, BA-MA's tariff must be modified to afford CLECs 24 hour, 7 days a week access to CLEC equipment and ensure that safety requirements placed upon CLECs are no more stringent than those which BA-MA places upon its own equipment. (Id. at 18).

19. Interconnection Between Collocated Spaces

(i) Dedicated Transit Service Revisions

MCI WorldCom recommends that the Department adopt Mr. Lathrop's proposed modifications to BA-MA tariff sections dealing with Dedicated Transit Service. (Exh. MCIW-1 at 18-19). The tariff should specify that CLECs have the right to (1) provide, to the maximum extent feasible, their own connection from one collocation arrangement to another collocation arrangement within a central office or (2) obtain such Dedicated Transit Service from BA-MA. This modification is consistent with the minimum requirements of the FCC's Advanced Services Order.

(ii) Dedicated Cable Support

BA-MA's proposed tariff would prohibit CLECs from using common overhead cable racking for direct cabling between CLEC collocation nodes. This restriction prevents CLECs from utilizing available racking and is therefore both unreasonable as well as inconsistent with the general policy of the FCC and the Department to speed the process and minimize the costs of collocation. Accordingly, MCI WorldCom recommends that BA-MA's proposed restriction be eliminated from its tariff. (Exh. MCIW-1 at 19).

CLECs should instead be expressly permitted to use existing and available cable racking and pay BA-MA a forward-looking charge based upon on the share of the cable rack space used by the CLEC's cables. (Tr. 3 at 622-626). This charge should be a set amount, rather than an ICB-type charge. (Exh. MCIW-1 at 19).

20. SCOPE

BA-MA's proposal for Secured Collocation Open Physical Environment ("SCOPE") should be modified in at least several respects. First, BA-MA should not be permitted to define SCOPE as involving a separate area of the central office. That type of provision is contrary to the FCC's Advanced Services Order. Second, BA-MA's proposal includes a charge for escorts, which is also inconsistent with the Advanced Services Order. Third, the Department should reject BA-MA's use of a 50 percent utilization factor, which has the effect of doubling the costs to be paid by CLECs using SCOPE. (Tr. 3 at 465). BA-MA has provided no credible evidence that a 50 percent utilization factor is reasonable over the long run,MA determined that the 50 percent utilization factor would prevail over the long term or what BA-MA considered to be the long term. (Tr. 4 at 528-529). given the rising demand for collocation in Massachusetts. Moreover, CLECs, which do not control what type of collocation space BA-MA will provide in its central offices, should not be penalized by BA-MA decisions to preconstruct SCOPE space, which may remain substantially unoccupied if, for example, more CLECs sought CCOE arrangements. BA-MA's witness was unable to articulate any type of coherent or logical basis for sticking CLECs with a 50 percent utilization factor where unused SCOPE space could be readily converted to other uses. (Tr. 3 at 469-470). BA-MA provided no reviewable information, such as data points, for the Department to review in determining the reasonableness of BA-MA's assumption. (Tr. 3 at 527). Finally, BA-MA presented no evidence that its 50 percent utilization factor is appropriate for each of the four density zones in Massachusetts. (Tr. 3 at 528). BA-MA is thus significantly overstating its SCOPE costs in central offices where SCOPE is most likely to be in demand. SCOPE would likely be in less demand in those central offices with an abundance of collocation space available for single CLEC serving arrangements.

For the reasons stated by Mr. Lathrop and above, given the growing demand for collocation and the long run, forward-looking nature of TELRIC analyses, MCI WorldCom recommends that the Department adopt a 100 percent utilization factor. (Tr. 1 at 125-129. Tr. 3 at 527-529. Tr. 4 at 796-797. Tr. 5 at 1034-1035. Exh. MCIW- 1 at 27).

21. Shared Cages-BA-MA's Guest Proposal

BA-MA proposes that if two CLECs elect to share a collocation cage, the "original" CLEC will be treated as the "collocator of record" or "host" and the second CLEC will be treated as a "guest." Under the guise of these euphemistic relationships, BA-MA refuses to "split bill" any rate elements associated with the collocation cage, such as square foot rental charges, power or cable racking. Furthermore, the "host" is required to assume responsibility for the guest's violation of all tariff regulations and other requirements and be liable to BA-MA for any damages arising out of the guest's behavior. These tariff provisions are unreasonable and should be disallowed. As explained below, BA-MA should be required to treat both collocators equally for ordering and billing, including separate billing (on a pro rata basis) for items such as square foot rental charges, power and cable racking. (Exh. MCIW-1 at 20-21).

BA-MA's tariff proposal is inconsistent with the FCC's and the Department's general policy of facilitating the availability of economic and efficient collocation arrangements. An original collocator's incentive to share its collocation space with another CLEC is significantly reduced if its entering into that sharing arrangement requires it to assume financial responsibility for the collocation services ordered by that CLEC and the future conduct of that CLEC. For its part, all that BA-MA would need to do is establish a separate billing arrangement with the second CLEC. BA-MA has not demonstrated that its having to deal with both CLECs would impair its ability to recover its costs or increase its exposure to harm in any way. A CLEC should not be forced to become a guarantor of another CLEC simply because it is willing to share existing collocation space and reduce the pressure upon BA-MA to expand its facilities.

22. Cageless Collocation ("CCOE")

BA-MA's proposed tariff must be modified to ensure that BA-MA meets at least the minimum requirements of the FCC's Advanced Services Order. First, BA-MA should not be permitted to require that CLEC equipment in a CCOE lineup be located at least 10 feet away from BA-MA equipment. BA-MA's requirement is inconsistent with the Advanced Services Order at ¶42, which states that "an incumbent LEC must give competitors the option of collocating equipment in any unused space within the incumbent's premises, to the extent technically feasible, and may not require competitors to collocate in a room or isolated space separate from the incumbent's own equipment." (Exh. MCIW-1 at 22). The New York Public Service Commission has rejected the 10 foot space requirement for cageless collocation and further rejected the requirement that a CLEC's equipment be placed in a lineup separate from the Bell Atlantic lineup. Moreover, during hearings, BA-MA acknowledged that it has "waived" this 10 foot separation requirement. (Tr. 4 at 777). Under these circumstances and in light of minimum federal standards, it would be unreasonable to codify in tariffs a 10 foot minimum distance requirement that BA-MA itself has not strictly enforced.

Second, BA-MA unreasonably proposes to require CLECs to fully equip their equipment with plug in cards prior to adding subsequent equipment bays. This restriction is unreasonable because it places BA-MA in a position to influence the speed with which collocators are able to respond to end user requests for service. Moreover, there is no similar restriction for other forms of collocation and BA-MA has not demonstrated that it has placed this type of restriction upon itself. Accordingly, this restriction should be eliminated from the tariff. (Exh. MCIW-1 at 22).

Third, BA-MA proposal to determine the level of security within each central office is flawed in the following respects. BA-MA has not provided any level of consistency in determining the level of security to be required. Use of several duplicative security measures would be unduly burdensome and costly to CLECs and delay their delivery of reliable services at a reasonable cost.

Finally, BA-MA's proposed Part E, Section 9.3.7 should be modified to (1) provide that BA-MA's control over CLEC direct access to CCOE equipment does not include the right to require security escorts or unduly delay CLEC access to their own equipment; and (2) include the language that BA-MA must "provide competitors reasonable access to basic facilities, such as restrooms facilities and parking, while at the incumbent LEC's premises." (Exh. MCIW-1 at 22-23).

F. ADDITIONAL CHANGES IN TARIFF 17 ARE NECESSARY

1. Part B, Section 6.3.2.B. Should be Revised to Eliminate

a Double-Counting Problem Identified in New York and

Removed by the New York Public Service Commission

Part B, Section 6.3.2.B. of proposed Tariff No. 17 contains a charge to recover the cost of unbundled local switching whenever the CLEC has a minute of use that utilizes BA-MA's unbundled local switch. For an intra-switch call the charge would

apply twice. (Tr. 4 at 676-677). The New York Public Service Commission rejected Bell Atlantic-New York's proposal to charge two charges for an intra-switch call. (Tr. 4 at 679-680). In Case 95-C-0657 et als (Order Approving Tariff and Directing Revisions, dated June 12, 1998), at the New York Public Service Commission found:

The company included two unbundled local switching charges (one originating and one terminating) to apply to intra-office calls; hence New York Telephone is charging two unbundled local switching charges (ULSC) for each call made within a central office. AT&T posits that the local switching rate should only be applied once to a call that originates and terminates in the same switch, and that the ULSC should include all charges necessary to perform a complete switching function.

There is no support for New York Telephone's proposal to charge twice for switching an intra-office call. There is no evidence that the cost of switching an intra-office call differs from switching the originating portion of an inter-office call, where one local switching charge applies. Therefore, New York Telephone will be directed to revise its tariff to apply the local switching rate only once to a call that originates and terminates in the same switch. The company will refund any excess local switching charges it has already collected under tariff.

The same reasoning applies in this case. Accordingly, the Department should modify this tariff section so this charge applies only once in the case of an intra-switch call.

2. Provisions involving installment payments of NRCs should be made consistent with the Department's order on BA-MA's collocation compliance filing

In two tariff sections involving the terms and conditions for installment payments for non-recurring charges, BA-MA has made proposals which are inconsistent with the Department's order regarding non-recurring charges installment payment terms and conditions for collocation arrangements. (Tr. 4 at 728-731). While these tariff sections do not involve collocation, that affords no reason for the Department to approve for those services terms and conditions which were expressly rejected in the case of collocation when the issue was presented. Accordingly, the Department should reject BA-MA's proposed tariff language and direct BA-MA to modify the terms and conditions for installment payments for these non-recurring charges to track the collocation terms and conditions ordered previously by the Department.

3. The Department Should Modify Part A, Section 4.1.7.G of

Proposed Tariff No. 17 to Provide for a Credit Back to the

Date of Payment Rather to the Date that a Billing Dispute

is Raised in the Case of a Dispute Raised More than Three

Months After the Payment Date

MCI WorldCom proposes that Part A, Section 4.1.7.G. be made consistent with Part A, Section 4.1.7.E. so that in the case of billing disputes resolved in favor of a CLEC more than three months after the date of payment, the credit to the CLEC will relate back to the date of payment. (Tr. 4 at 726-728). It would be inequitable to permit BA-MA to keep an amount which the CLEC has paid mistakenly simply because it took longer for the CLEC to uncover the mistake. Arguably, BA-MA's proposal also violates the principles underlying the "filed rate" doctrine, under which BA-MA is only allowed to recover the "correct" charges. The Department should not approve a tariff provision which effectively would permit BA-MA to circumvent its obligation to bill and collect correct rates.

4. BA-MA should be required to provide the parties to this investigation with copies of future Tariff 17 revisions concurrent with the filing of such revisions with the Department

The Department should order BA-MA to provide the parties to this investigation with copies of any future tariff revisions to Tariffs Nos. 14 and 17, concurrent with the filing of such revisions with the Department. CLECs expressed concern that BA-MA will attempt to alter the rates, terms or conditions applicable to them under their interconnection agreements through the filing of tariff revisions. The present case demonstrates that these concerns are very real. Accordingly, MCI WorldCom supports the position of these CLECs on this issue.

5. The Department Should Rule that Tariff 17 is not a SGAT

BA-MA has stated that Tariff 17 does not constitute an SGAT. (Exh. MCIW-10). The

Department should find and rule that Tariff 17 does not constitute an SGAT.

G. THE DEPARTMENT SHOULD INITIATE A SEPARATE

INVESTIGATION TO IMPLEMENT DSL LOOP RATES,

TERMS AND CONDITIONS

BA-MA failed to include in Tariff No.17 a proposed offering of DSL loops, even though it has such an offering in New York. BA-MA's failure to submit DSL loop tariffs in light of its filing in New York and in face of the burgeoning public demand for increased bandwidth capabilities constitutes a discriminatory withholding of service which BA-MA is required to provide and biases the marketplace in favor of BA-MA. The Department should initiate immediately a separate investigation to implement DSL loop rates, terms and conditions.

IV. CONCLUSION

For the reasons stated above, the Department should order that proposed Tariff 17 apply only as an alternative or supplement to existing interconnection agreements. In addition, the Department should disallow proposedTariff 17 as filed and adopt the above-referenced modifications recommended by MCI WorldCom and other CLECs.

Respectfully submitted,

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