Before the
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy upon its own motion pursuant to Section 271 of the Telecommunications Act of 1996 into the Compliance Filing of New England Telephone and Telegraph d/b/a Bell Atlantic-Massachusetts as part of its application to the Federal Communications Commission for entry into the in-region interLATA (long distance) telephone market.	**:**	**D.T.E. 99-271**

MCI WORLDCOM'S REPLY COMMENTS ON THE PROPOSED PERFORMANCE ASSURANCE PLANS FOR BELL ATLANTIC-MASSACHUSETTS

In accordance with the Department's March 28, 2000, Request for Proposals to Assure Future Bell Atlantic Compliance with its § 271 Obligations (DTE 99-271), and its May 10, 2000 memorandum regarding specific areas of interest, MCI WorldCom, Inc.,[1] hereby comments on the proposals of Bell Atlantic- Massachusetts (BA-MA), as well as of other carriers, for a comprehensive plan of performance and remedial measures by which Bell Atlantic's compliance with Sections 251 and 271 of the Telecommunications Act of 1996 may be monitored and enforced.

Introduction

Before Bell Atlantic can receive approval for long distance entry under Section 271, systems must be in place to ensure that BA-MA's commitments to providing parity service to CLECs are

[1]On May 1, 2000, MCI WorldCom, Inc., officially changed its corporate name to WorldCom, Inc. For the sake of consistency, in this document, WorldCom will continue to use the name MCI WorldCom.

enforced through remedies sufficient to modify Bell Atlantic's behavior and act as a genuine deterrent to discrimination in the future, without the need for lengthy regulatory proceedings. See Federal Communications Commission Memorandum Opinion and Order in the matter of the Section 271 Application of Ameritech Michigan to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137 (August 19, 1997), ¶ 394. To achieve these goals, states establish performance plans with three components: First, the plan must set standards. Second, the plan must effectively measure performance to determine if it meets the standards. Third, it must provide for remedies when the BOC's performance falls short. With a few exceptions, BA-MA has agreed to both appropriate standards and measurements.[2] Unfortunately, BA-MA's remedy system is inadequate.

BA-MA's proposed Performance Assurance Plan ("BA PAP") works as follows: The BA PAP's "Mode of Entry" provision aggregates BA-MA's performance on performance metrics for each of four modes of entry -- resale, UNE, interconnection, and collocation. See BA-MA Comments at 3. The BA PAP makes a maximum of $29 million annually available for Mode of Entry remedies doubling to $58 million if a special remedy provision is triggered. Id. at 6. The BA PAP's "Critical Measures" provision provides remedies for deficient performance in 12 specific metric categories; $29 million is the maximum remedy available for Critical Measures remedies. Id. at 3, 6. The BA PAP's "Special Provisions" address five areas of service quality: UNE flow-through, UNE ordering, hot cuts, Local Service Request Confirmations, and reject notices. Id. at 4. Separate dollar

[2]As MCI WorldCom indicated in its opening comments, to create an effective performance assurance plan for Massachusetts, certain measures adopted in New York must be altered and other, new measures must be added. Moreover, the Department must be prepared to alter the metrics as competitive conditions reveal new problem areas and new services create new requirements. Thus, MCI WorldCom urges the Department to adopt the new and changed measures outlined in its opening comments, as well as the additional measures suggested by AT&T and other commenters and discussed below.

amounts are available for two of the five Special Provisions. Id. at 6. Finally, on the grounds that change management processes in place in New York also cover Massachusetts, BA-MA proposes to rely solely on the Change Control Assurance Plan ("CCAP") in place in New York, making no separate or increased payments for CLECs operating in both states, and compensating carriers operating in Massachusetts but not in New York only through reallocation of funds from the Massachusetts MOE caps. Id. at 4, 19.

Collectively, this remedy scheme suffers from two deficiencies. First, the BA PAP improperly limits and distorts remedy calculations through a flawed and overly complex scoring system.[3] Second, the BA PAP and CCAP contain maximum remedy amounts that provide inadequate incentives to prevent discrimination. For these reasons, MCI WorldCom urges the Department to adopt a plan differing in significant ways from BA-MA's proposal. In the sections that follow, MCI WorldCom explains its concerns in response to questions posed by the Department in its May 10 memorandum.

[3]Bell Atlantic proposed a plan for Pennsylvania that was similar to, yet to some extent less complex than, the BA PAP proposed here. In their recommended decision to the Pennsylvania Public Utility Department, the presiding Administrative Law Judges forcefully rejected significant aspects of Bell Atlantic's plan on the grounds that it was too complicated. The ALJs ruled, "Our review of the [Bell Atlantic] plan indicates that it would be difficult for the CLECs and this Commission to monitor and to determine whether the remedies were being correctly generated." Pennsylvania PUC, Recommended Decision, Docket No. P-00991643, vol.1, p. 256 (Aug. 6, 1999). As indicated in its opening comments, MCI WorldCom urges the Department to adopt the simplified performance plan recommended by the Pennsylvania ALJs.

1) Please comment upon the Massachusetts-specific modifications proposed by Bell Atlantic to the PAP in effect in New York (see Bell Atlantic Proposal at 7-8). Also, please comment on Bell Atlantic's assertion that no stand-alone Massachusetts requirements for change control process are warranted due to the commonality of this process for competitive local exchange carriers ("CLECs") operating in New York and Massachusetts (see Bell Atlantic Proposal at 18).

MCI WorldCom is concerned about many of the proposed changes to the New York plan. Rather than address weaknesses in the New York plan they increase them.

A. <u>BA-MA's Scoring methodology is defective</u>

Most critically, the scoring methodology used in BA-MA's performance plan suffers from design defects that render it inadequate to prevent discrimination, and these defects are not solved by BA's Massachusetts adjustments.

Self-executing remedy plans must "ensure compliance with each standard."[4] But in BA-MA's plan, the lack of remedies for individual measures except those selected as "critical" and the elaborate scoring mechanism of the Mode of Entry provision defeat this requirement by permitting BA-MA to dilute or average out deficient performance on most selected metrics with adequate performance on others, even if deficiency is severe or repeated. This consequence results from the plan's weighted averaging of scores on individual MOE metrics within a category and its further use of a minimum -X score to excuse missed performance below a certain level.

As demonstrated in detail in Appendix A, because a large number of metrics are included in the UNE MOE category, it is particularly easy in that category under BA-MA's current proposal for several -2 scores under high-weighted metrics to occur, without payment of any remedy. But the

[4]See FCC, Memorandum Opinion and Order, "In the Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries," File No. NSD-L-96-10, ¶ 194 (rel. Aug. 14, 1997).

problem is not limited to the UNE MOE and is not merely hypothetical. The aggregation of performance in combination with the use of a minimum -X has let inferior installation service in New York for CLEC trunks in January and February drop out of the plan because it is the only metric missed in the interconnection MOE category.[5] Moreover, BA could provide discriminatory service on this measure forever without invoking any penalties, as the plan has no provision to account for the duration or severity of any problem. So long as BA meets its appointments to install new trunks in a timely fashion, it need not ensure that those trunks are actually functioning properly, as it will have satisfied enough of the metrics with which this one is aggregated to avoid all penalties under the BA PAP. Consequently, aggregation under the MOE portion of the plan negates any behavior - modifying effect of the individual metrics.

BA-MA's proposal to rate a miss as a -1 or -2 based on its degree of discrepancy from the standard every time the z-score indicates a 95% confidence of discrimination does not solve this problem. Although this change prevents -1 scores from dropping out of the plan altogether, the proposal does not ensure that discrimination will always give rise to remedies. Instead, BA-MA's proposal cuts out all remedies for scores in the range between -0.8225 and -1.645, although these indicate a high likelihood of discrimination[6]. And the plan makes some scores that are above a -1.645 rate only a -1, rather than the -2 score they would have received in the New York plan. Moreover,

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[5]BA provided service under PR-6-01, % Installation Troubles within 30 Days, for trunks, at levels in January and February of 2000 that registered as -2, or clearly out of parity. Although this single measure is weighted 15, through aggregation, its significance was quickly diluted.

[6]The New York Commission found that the institution of penalties for z-scores beginning at the -.8225 level was an important "early warning system" that would encourage BA to change its behavior and improve performance at the onset of inferior service, before serious competitive harm occurs. See Order Adopting the Amended Performance Assurance Plan and Amended Change Control Plan, NY PSC Case No. 97-(0271) (Nov. 3, 1999) at 28.

because the plan still aggregates scores within MOE categories, and because it uses a minimum -X score that excuses some scores where there is demonstrated discrimination, individual misses, even if very severe, can drop out of the plan. Under BA-MA's proposal, a score of -2 remains the highest level of noted severity, so regardless of whether BA-MA provisions a UNE within 3 days or 30 days, it would receive the same score under the BA PAP. Obviously, however, there is a great difference to CLECs and their customers, and to the development of competition in general, between these delays. In addition, absent deteriorating performance on other metrics grouped in the same category for aggregation purposes, subpar performance on any such measure can continue indefinitely without invoking any remedy at all – the plan as proposed takes no account of the duration of a problem, even though sustained poor performance on any single metric can easily lead to customer-affecting service problems. And even where a severe miss or misses does give rise to a penalty, the penalty remains at the same level even if the problem goes unremedied month after month.[7]

Finally, the caps on remedies for "Mode of Entry" provisions mean that gross failures of performance would result in only limited remedies.[8] For example, even a complete cessation of collocation would cause BA-MA to pay a maximum of $1 million annually under these provisions. See BA-MA Apx. A-12. Also, because the remedies are compartmentalized, by focusing its discrimination on initial functionalities such as pre-ordering or ordering, BA-MA could undermine its competitors without being penalized for the later, downstream functions that the CLEC cannot perform at all due to its initial injury. For example, if BA-MA does not provide collocation, CLECs will not be

[7]It is not clear from BA's PAP whether BA-MA will extend the availability of UNE-P for chronic failures, as is required in New York, but in any event, this does not immediately remedy CLEC harm from ongoing poor performance.

[8]Caps are discussed further below, in response to Question 2.

able to order unbundled loops. BA-MA's performance could trigger de minimis remedies under the BA PAP or the CCAP with respect to a single, bottleneck measure while causing tremendous disruption to CLEC operations that depend on that measure. Thus, the plan does not take into account the fact that discrimination with respect to a single measure can effectively stymie BA-MA's competitors, even if BA-MA's performance as to other measures is adequate. Per-measure remedies with escalating amounts for the magnitude and duration of the specific deficiency are necessary to compel BA-MA to provide adequate performance.

To prevent discriminatory performance from going unremedied, the Department should not adopt the aggregation approach and use of minimum -X scores advocated by BA-MA. Every miss should invoke some remedy, although that remedy could appropriately vary based on the severity (and duration) of the problem. Such remedies could be modeled on the "per measure" remedies set out in the Pennsylvania ALJ decision, advocated in MCI WorldCom's opening comments. In that way, every score of at least -2 would invoke some remedy, regardless of whether performance on other measures was adequate, and performance of either -1 or -2 would invoke a penalty (or a heightened penalty) if repeated for two or more consecutive months, since the cumulative result of discriminatory treatment at even a relatively mild level will harm competition.

Even if the Department preserves a minimum -X score methodology that will excuse some discrimination, it should recognize that particularly severe discrimination on a single measure could be crippling. Using the same basic severity framework that BA-MA proposes in Appendix C, the Department should at least create a third severity designation – a negative 3 score for misses that are at least 15% below the required standard – that would call for a remedy in every case, regardless of BA's

performance on other measures within the same MOE category.[9] For such severe misses, automatic "per measure" penalties like those adopted in Pennsylvania should be invoked regardless of the effect of aggregation and the minimum -X score, even if other measures within the same MOE category remain subject to aggregation and comparison to the minimum -X score. Likewise, repetition of problems should still be addressed, and no measure that is missed for more than two consecutive months should be permitted to go unremedied, regardless of the comparison of the aggregate, weighted value of all measures in that MOE for the given month.

B. BA's Change Control Plan must have higher remedy levels to cover separate harms in Massachusetts.

MCI WorldCom believes that the Change Control Assurance (CCAP) portion of BA's New York plan does not suffer the same structural loopholes as the BA PAP. Unfortunately, BA is trying to diminish the CCAP's deterrent effect on discrimination by keeping the maximum remedies available at the New York level. This is utterly inappropriate. If the change control process is the same in Massachusetts and New York, a single incident of poor performance can cause even more harm to a CLEC by undermining its business in both states. BA-MA must thus resize the amount of remedies available under the plan to cover the additional local growth opportunities that can be thwarted by failure to follow proper change control notice, documentation, software certification and error correction processes. The Department should thus reject BA-MA's proposal to depend solely on the New York CCAP remedies for carriers

[9]For any severity-based remedy scheme to work, the Department also should pin down how percentages of deviation from the standard are calculated. For example, if BA-MA's retail mean performance is one day and the CLEC's two, it is not currently clear whether this should be termed a 50% miss or a 100% miss.

operating in both states, and to compensate carriers operating only in Massachusetts by taking money from the MOE remedies.

C. BA's Wholesale Quality Assurance Program must be verified

As with the CCAP, BA-MA also seeks to rely to the Wholesale Quality Assurance Program in place in New York, indicating that the two states are served by the same support centers. See BA-MA at 8. MCI WorldCom believes that before this Department relies on the New York plan, KPMG should confirm that the New York WQAP will ensure that BA-MA employees properly report service quality data for all domains, for example stopping the erroneous coding of troubles as items excluded from metric reports (such as Found OK/Test OK/CPE for maintenance metrics). KPMG should also monitor other functions that affect performance reporting where differences exist between New York and Massachusetts activity. Further, KPMG should validate BA's thoroughness in implementing the WQAP and suggest modifications based on Massachusetts problem areas that would benefit from quality assurance monitoring and training. Cf. Notice of Proposed Rulemaking, New York PSC Case No. 97-C-0271 (August 30, 1999) at 21-22 (requiring BA-NY to develop a quality assurance plan to prevent and detect errors in reporting service quality in all domains); Order Adopting the Amended Performance Assurance Plan and Amended Change Control Plan, New York PSC Case No. 97-C-0271 (Nov. 3, 1999) at 22-23 (requiring BA-NY to submit its QAP within ten days of the issuance of the instant order).

D. The PAP should be implemented immediately

BA has proposed that no aspect of the Massachusetts PAP take affect prior to 271 approval. MCI WorldCom contends that adequate remedies are needed to open local markets to competition and enforce the Telecom Act's Section 25 requirements. Current contract remedies do not sufficiently deter discrimination. For example, despite the fact that between the first quarter of 1999 and the last quarter of 1999, MCI Metro obtained steadily increasing payments under its interconnection agreement (as construed in the consolidated arbitration proceeding), BA-MA over that period continued to provide sub-standard performance every month on similar metrics, paying the fines rather than improving performance.

Obviously, these contract remedy payments were simply too low to prompt BA-MA to change its behavior. As explained elsewhere in these comments, it is essential to impose sufficient PAP remedies in addition to the existing contract remedies available to individual CLECs in order to motivate BA to open its markets. In recognition of this need, the state commissions in Texas and Pennsylvania chose not to await 271 approval to implement remedies that improve on existing contractual remedies.[10] Moreover, even in New York, where substantial individual contract remedies were in place, the "special measures" provisions of the PAP, dealing with certain particularly sensitive service areas, were implemented in the last quarter of 1999, prior to BA-NY's receipt of federal 271 approval.

The Department should

[10] See Opinion and Order, Joint Petition of NEXTLINK Pennsylvania, Inc., et al., for an Order Establishing a Formal Investigation of Performance Standards, Remedies, and Operations Support Systems Testing for Bell Atlantic-Pennsylvania, Inc., Pennsylvania PUC Case No. P-00991643 (December 31, 1999), at 178-180; Order Adopting the Texas 271 Agreement, Texas PUC Project No. 16251 (October 13, 1999).

implement its PAP as soon as possible, prior to 271 approval, so that the plan can be an active tool to open the local market as well as a safeguard against backsliding after BA-MA's 271 approval.

2) Should the Department adopt an annual cap on the dollar amount at risk for Bell Atlantic-Massachusetts? If yes, should this cap be divided into one-month increments, by quarter, or by some other period of time? Upon what dollar amount or percentage of Bell Atlantic's net revenue should this cap be based? Please comment upon Bell Atlantic's proposed distribution of dollars at risk (see Bell Atlantic Proposal at 5-6; Attorney General Comments at 3-4).

As indicated in its opening comments, MCI WorldCom opposes caps to remedy plans, particularly monthly caps that allow BA easily to calculate the costs of retaining its dominant market share by further discrimination. Uncertainty as to its maximum liability for unattended discriminatory performance is a deterrent in and of itself.[11] By contrast, where caps are set too low, payments will only be an acceptable cost of doing business.

If the Department insists on capping total liability, it must do so at a level that makes discrimination the least rational economic choice for BA-MA. BA-MA's proposed remedy levels do not satisfy this criteria. First, as was explained above, the loopholes and subcaps in the BA PAP make its reported remedies illusory – BA can easily inflict crippling competitive harm, including severe service-effecting problems for consumers, without coming close to invoking the full remedy levels. For example, if BA-MA focused its discrimination on facilities-based carriers (who are its most potent

[11]Such uncertainty is not unfair or arbitrary. Since BA-MA has excluded non-parity conditions that do not result from its own actions (including CLEC errors and natural disasters), the level of service is entirely within BA-MA's control. No matter how high the possible upper range of sanctions for discriminatory provision of service, BA-MA would owe no remedies if it provided service at parity or within the standards set in the Carrier-to-Carrier Guidelines. Consequently it would not be harmed unless of course discriminates against its competitors. The possibility of uncapped remedies, then, at most, would help motivate BA to invest adequate resources to ensure that it provides non-discriminatory service.

long-run competitors) by denying or delaying the installation of interconnection trunks (as reflected in PR metrics), it would be faced with at most a remedy of $ 6.25 million for the year. See BA-MA Apx. A-11.[12] Indeed, $29 million – nearly one-third of the proposed total – is only at risk if BA-MA provides such egregiously bad service on a widespread basis as to invoke a doubling provision. The maximum amount available as remedy under the plans is thus as a practical matter far below the $100 million that BA-MA trumpets, and even farther below an amount that would serve as an effective incentive to prevent discrimination.

Second, the levels BA-MA proposes for Massachusetts are arbitrary and fundamentally flawed. BA-MA derives its $100 million cap from the "New York cap of $259M adjusted to reflect the ratio of Massachusetts access lines to New York access lines." BA-MA Comments at 5-6. As explained in the economic analysis supplied by MCI WorldCom in the FCC's consideration of BA-NY's 271 application, the New York remedies were set at a level that was inadequate for that state. See Appendix B. This is clear in light of the additions to the original cap that the New York PSC has been required to make subsequent to BA-NY's 271 approval, which bring the present New York cap for the PAP, including CCAP, to $293 million. Even assuming this level to be now adequate for New York, using BA-MA's own methodology, the Massachusetts plan should on this basis alone have a cap of more than $113 million.[13]

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[12]Practically, BA-MA would owe much less than this, because the "minimum -X" value would need to be tripped for the Interconnection MOE before BA-MA would owe anything. BA-MA would only owe the maximum amount if its performance was at or below the "maximum -X" score for the entire year.

[13]Moreover, the Massachusetts proposal is missing the $2 million monthly special metric category created by the PSC to cover metrics addressing MCI WorldCom and other CLECs' severe missing notice problems.

More fundamentally, however, BA errs by resizing the plan based on a comparison of the number of New York access lines versus Massachusetts access lines rather than the return for those lines. Using an analysis of ARMIS data like that conducted by the FCC, a 36% net return on local exchange service alone for Massachusetts would produce a cap of about $142 million, not $100 million as proposed by BA. But to deter discrimination, a cap should account for all potential gains from that discrimination. As the FCC recognized, local exchange revenues are not the only relevant figure because "Bell Atlantic may also derive benefits in other markets (such as long distance) from retaining its local market share." New York Order at ¶ 436, n. 1331.[14] Thus, providing remedies at levels that only counter incentives to retain net local exchange profits permits BA to retain added profits from long distance entry and sales of high-margin DSL service that would greatly increase its incentives to keep CLECs from gaining market share. The remedy levels proposed by the Attorney General better approximate the necessary minimum level that will incent Bell Atlantic to expend the resources and capital to correct disparities that add to its bottom line by stalling competition in Massachusetts. See Comments of Attorney General at 2-4.

Finally, in considering the deterrent value of remedies, the Department should reject BA-MA's proposal to make BA PAP remedies an alternative to contract remedies available to individual CLECs under the Consolidated Arbitrations Plan. See BA-MA Comments at 8. In New York, payments under the PAP are cumulative to the payments available to individual CLECs under their individual interconnection agreements making total monetary incentives for good performance higher than those

[14]Federal Communications Commission Memorandum Opinion and Order in the matter of the Application of Bell Atlantic New York for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295 (Dec. 22, 1999) (hereinafter "New York Order").

expressed on the face of the PAP. In fact, the FCC's order approving BA-NY's 271 application specifically pointed to the liquidated damages in BA's interconnection agreements as other remedies available to CLECs that would counter BA's incentives to discriminate and thus partially justified the PAP cap on this ground. New York Order at ¶ 430 (explaining that it may permit 271 entry even though a state PAP alone provides less than full protection against anticompetitive behavior because of additional incentives for ILEC compliance including "payment of liquidated damages through many of its individual interconnection agreements."). Thus, eliminating this additional remedy undermines overall deterrence. Moreover, BA's PAP mainly covers aggregate CLEC performance. The contract remedies address individual CLEC harm and provide remedies for individual violations that would generally drop out of the BA PAP. Thus, the BA PAP cap should not supercede contract remedies.

3) Should the Department adopt, without modification, the "critical measures" in effect in New York (see Bell Atlantic Proposal at 10)?

4) Should the Department adopt New York's weighted metrics for the "mode of entry" measurements without modification (see Bell Atlantic Proposal, App. A at 3-7)? If no, explain how the Department should weigh them differently (include whatever new metrics you believe should be added).

The Department's third and fourth queries, regarding the "critical measures" and the weighting of measures within the MOE categories, implicate the same fundamental flaw in the BA-MA performance remedy plan. By carving out a few "critical measures" that are the only ones automatically invoking remedies for subpar performance, while leaving most other metrics to the mode of entry plan where they are aggregated and subject to minimum -X scores, BA can easily miss many "minor" metrics without penalty. However, discrimination on several MOE measures can effect customers and competition as severely as would poor performance on any of the critical measures. Also, because of

the cap imposed on "critical measures" in toto, the identification of additional measures as critical means that either the amount of payments available for violations of any single critical metric will be lessened, or some critical measures will have to be "demoted." As a result, the choice of critical measures will quash innovation, as competitors following a different business model or seeking to offer new services may not have the benefit of having their crucial inputs protected by the critical measures.

The current system of weighting metrics within the MOE categories raises the same basic problem. For example, if DSL CLECs push for more weight for loop qualification, this takes away from the remedies available for other query type transactions. As with the selection of critical measures, the assignment of fixed weights to MOE metrics is problematic because different CLECs have different business models that place more emphasis on some services than others. Encouraging such diversity and innovation is an intended consequence of competition, but the caps, aggregation, and fixed weights for metrics that the BA-MA plan uses pose a serious threat to this goal. A CLEC with a new creative market entry plan--relying on metrics not in the critical measures category nor even highly weighted because not important to the majority of CLECs--could easily be thwarted in the market.

The best solution to this problem is to do away with the fixed distinction between critical measures and other metrics, and thus to end the aggregation of MOE metrics. As indicated in its opening comments, MCI WorldCom proposes that all newly proposed and existing submetrics (except the very few diagnostic measures in BA's plan) be covered by remedies. Such remedies should include a component based on bill proportions like the PA ALJs' plan or on per occurrence levels with additional per measure amounts added as disparities are repeated or become increasingly severe, as in MCI WorldCom's SiMPL plan. This approach better correlates the remedies to the importance of the metric on a dynamic, market basis--CLECs vote for relative weights of different metrics through their

monthly dollar amounts and/or ordering volumes, while per measure remedies are added on top for severe and repeated performance deficiencies. Even if the per measure remedies only grow in three steps, the per occurrence remedies will keep the size of the remedy proportionate to the metric's importance to the CLEC. If all metrics are covered in this manner, MCI WorldCom would not be opposed to giving some major competition-stopping metrics, such as those in the current special provisions and critical measures categories, higher per measure remedies than other metrics.

If the Department does not do away with the limited category of "critical measures," it should at a minimum retain authority, as has the New York PSC, to reallocate monies and metric designations in the plan to address problem areas as they develop.[15] BA-MA has not even suggested this important safety valve.

In addition, if critical measures are to be retained, the DTE should immediately designate as critical salient measures of trunk availability, including "Response to Trunk Resizing Requests"[16] and Installation Quality, in addition to the existing Final Trunk Group Blocked metric. Together, these measures indicate whether or not BA is responding to needs for trunk availability, without which customers will not be able to receive consistent local service. Without adequate, functioning trunk capacity, CLECs are unable to turn up new switches to serve new customers, and existing customers are more likely to encounter a trunk blockage, meaning that there is insufficient capacity to handle all of

[15] Although it is essential that the Department retain authority flexibly to apply any PAP, the New York experience illustrates the imperfections of this reactive approach. There, relief for competitive harms is still slow and burdensome for CLECs, because a notice and comment proceeding is required to reallocate plan remedies. And even if reallocation is approved, it does not apply retroactively to harmed areas.

[16] As MCI WorldCom indicated in its opening comments, this measure should be modified to cover ASRs and faxed requests as well as those mailed.

their calls. As noted above, in New York, BA has not provided new trunks of a quality equivalent to its own and thus is impeding CLEC service. Because of their service affecting potential, if any of this group of trunking metrics is missed, the full remedy should apply.

5) Explain whether the Department should adopt bill credits or direct payments to CLECs. Include in your explanation an analysis of whether one form would impose fewer administrative burdens upon the Department.

As explained in MCI WorldCom's opening comments, to ensure that remedies are not constrained by the amount of future business given by a harmed CLEC to BA-MA, direct payments are preferable to bill credits. Credits create the perverse incentive of requiring a customer to buy more service to gain remedies for past poor service. Direct payments ensure that CLECs immediately receive the full amount of remedies rather than awaiting subsequent bills. Further, CLECs often must resort to withholding bill payments to gain BA attention to errors in billing when requests for adjustments are ignored. PAP bill credits may diminish the attention getting effect of this action. BA may use the PAP bill credits as offsets of the amount withheld by CLECs rather than adjusting the existing billing errors and then applying the PAP. Direct payments, if accompanied by an explanatory invoice as proposed by the Pennsylvania ALJs, also make the amounts paid easier for CLECs to audit than bill credits. This may facilitate the self-policing aspect of the plan and reduce the Department oversight.

At a minimum, if the Department continues to support credits versus direct payments in full to CLECs, the plan should be clarified to state that bill credits may be applied to any future bills, including access bills, and that if BA-MA no longer bills a CLEC, BA-MA will pay the CLEC by check. Without this modification, CLECs who have been forced out of business altogether (or out of a

particular line of business), by BA-MA discrimination will not be able to recover under the PAP for that discrimination.

6) Explain whether and how the period of time before a CLEC receives a bill credit may be reduced from Bell Atlantic's proposal of "two months after the calendar quarter in which the unsatisfactory performance occurred" (see Bell Atlantic Proposal at 5).

Whether through bill credits or direct payments, new entrants should promptly receive remedies for poor performance to help them keep going while they pay credits to harmed customers, add resources to handle the inefficiencies, settle lawsuits, and escalate problems caused by their major competitor and supplier. Consequently BA should pay remedies monthly and not gain from the float of monies due CLECs. Many small CLECs could be severely harmed before they see a dime in remedies--every five months under BA's proposal. With the use of credits, the CLEC may even have to wait longer than five months to receive all the remedies due, because credits for severe discrimination may exceed any single month's bill, particularly where poor service itself has reduced the CLEC's business. Particularly given that under BA-MA's proposal, -1 scores on MOE metrics no longer drop out if performance improves in subsequent months, there is no need to wait for quarterly calculation of payments.

BA-MA should also be required to pay any remedies prior to seeking a waiver. Paying the remedy and then seeking a reimbursement (which the CLEC must refund promptly after a Department decision upholding BA-MA's waiver petition) would not harm BA-MA as much as a CLEC would be hurt by delays in receiving legitimate remedies during the Department's waiver deliberations. In this vein, MCI WorldCom does not oppose BA-MA's proposal that it be permitted to seek a waiver if a work stoppage degrades service, but this must be subject to a requirement that BA-MA prove that

CLEC performance suffered no more than retail performance as a result of the stoppage. In addition, while BA is clarifying grounds for a waiver, it should also heed the FCC's 271 order's observations that its "CLEC action" waiver category be more clearly defined. See New York Order ¶ 441, n. 1355. Overall, MCI WorldCom agrees with the Department of Justice's comments in the FCC 271 proceeding for BA-NY that BA's waiver process creates too much uncertainty, emasculating the benefits of self-executing remedies in keeping CLEC resources from being ground down in constant litigation.[17]

In addition to ensuring that BA-MA timely pays remedies for existing metrics, the Department also needs to ensure that new metrics do not linger in development limbo, as delay in the promulgation of metrics allows BA to avoid or at least delay payment of remedies for disparity. As this Department is aware, delay was a serious problem with regard to flow-through metrics developed in this Department's consolidated arbitrations decision. Similarly, CLECs are still awaiting development of DSL metrics in New York that BA was ordered to implement retroactive to January – meaning that CLECs are not yet receiving payments for subpar performance in this area. Even where BA has partially developed a metric, its delay can have a real impact on remedies due; for example, if, as often happens, BA develops an aggregate metric, but not the CLEC specific category, a CLEC can not determine if BA's performance should have triggered the "individual rule."

[17] See United States Department of Justice Evaluation of the Section 271 Application or Bell Atlantic New York to Provide In-Region InterLATA Services in New York, FCC CC Docket No. 99-295 (Nov. 1, 1999) at 39 ("No procedures or time requirements for considering these waiver requests are proposed in the amended plans, and the manner in which these standards will be interpreted is unclear at this time. This creates the potential for litigation and delay in imposing penalties and uncertainty that inadequate performance will in fact be punished.")

7) Does Bell Atlantic's proposed "Individual Rule" adequately compensate a CLEC for sub-standard performance by Bell Atlantic (see Bell Atlantic Proposal at 15-16 n.10).

Even where remedies are timely computed and paid, BA's "individual rule" does not adequately compensate a CLEC for sub-standard performance by BA. As indicated above, because of the MOE groupings, the majority of BA remedies only apply on the basis of aggregate violations of performance standards. On these measures, if aggregate performance is adequate, an individual CLEC will receive nothing, no matter how severely it was individually treated. BA's individual rule applies only with regard to the critical measures, and then only if an individual CLEC receives subpar service for two consecutive months. First month harms would not receive any type of remedy at all, simply because the aggregate performance was adequate, no matter what the real-world harm to the individual CLEC. Likewise, if a CLEC received severely subpar service every other month –six months out of a year– those harms would never be compensated. To ensure that BA does not selectively harm individual competitors, whether inadvertently or intentionally, a plan should have guaranteed remedies for individual injured parties, as well as per measure penalties to discourage discrimination affecting the market as a whole. MCI WorldCom's SiMPL and the Pennsylvania ALJs' proposed plans satisfy this need; BA-MA's individual rule does not and should be rejected.

The need for remedies for individual CLECs under the PAP is particularly acute if the Department remembers that BA-MA proposes to make the payments under existing interconnection agreements, which provide at least some remedies to individual CLECs, <u>alternative</u> to those in the PAP. This request should be rejected. Indeed, CLECs need to keep existing remedies in contract and even expand on them in protect themselves against specific areas of discrimination not captured in the

aggregate analysis in the PAP. BA should provide information on how many "individual rule" payments are triggered each quarter pending the Department's ruling on the adequacy of such plan.

11) Please comment further on the use of third-party auditors (e.g., the frequency and scope of audits, the payment for such audits) (see AT&T Proposal at 10; Nestling Comments at 9-10; RANK Comments at 5-7)

In New York, PSC staff is replicating all BA metric reporting for at least the first six months after 271 approval. Since most other commissions do not have the resources for this task, rigorous audits of metric reporting to ensure accuracy and completeness need to occur every six months for the first year after 271 approval, longer if BA is delayed in implementing new metrics or disaggregation ordered by the Department, at BA's sole expense. Annual audits should occur just prior to an annual review of the metric plans so that the review may address improvements called for in the audit as well as the need for new metrics or changes in existing metrics resulting from CLEC market experience. The audits should also ensure that BA correctly applies its remedy plan---particularly if a plan with all the complexities of the New York plan is adopted. CLECs should have the controlling say in developing the audit plan and approving the choice of auditors. MCI WorldCom does not object to conducting audits at unpredicted intervals as proposed by NextLink, and it fully supports AT&T's description of what a comprehensive audit should include. A CLEC should also have the right to seek two targeted audits of specific metric domains in between annual audits, for example auditing BA's provisioning performance toward that specific CLEC. Such an audit would be performed at BA-MA's expense, but if no remedy-impacting problems were found, the CLEC should share the cost. Finally,

MCI WorldCom finds RNK's proposal of a third party administrator of BA performance reporting an intriguing idea. Such an approach would provide an added level of trust in the accuracy of the metrics.

12) Please comment on the need for the recommended additional PAP metrics proposed by MCI, AT&T, Teligent, RANK, and Nestling.

As indicated in its opening comments, MCI WorldCom believes that some modifications and additions to the foundational New York performance metrics are necessary to provide adequate protection against service-affecting harms. In its opening comments, like MCI WorldCom, AT&T proposed that the missing notice metrics under consideration in New York be implemented in Massachusetts. One of these metrics, not mentioned in MCI WorldCom's opening comments, is a metric regarding % Completed Orders Not Closed In SOP that was discussed at the April 25 carrier-to-carrier meeting. BA is to bring back to the New York collaborative a metric that captures the percentage of orders for which a provisioning completion notice is not issued even though the order is completed. Without such a completion notice, an order also does not close to the billing system, so no billing notice is received. MCI WorldCom thus does not know when it owns the customer and becomes responsible for resolving problems for that customer. Without this billing notice, MCI WorldCom also cannot issue its own bill without concern that double billing would occur for the customer. This new metric, as well as the other missing notice metrics proposed by AT&T and MCI WorldCom, should be adopted. The inability to know the current status of customer orders make CLECs seem incompetent and hurts them in the local competitive market.

MCI WorldCom also supports AT&T's proposal for improving upon metric calculations for OR-8-01; OR-9; and OR-4-09, OR-4-11. See AT&T Comments at 25. Further, MCI WorldCom

echoes AT&T's call for adequate hot cut metrics. A new operational process may affect the New York hot cut metrics, but that change was not discussed at the April 25 Carrier-to-Carrier meeting, as anticipated in MCI WorldCom's comments. Such a discussion was rescheduled for the May 18 Carrier-to-Carrier meeting in Albany.[18] As hot cut metrics are considered in Massachusetts, that change in process needs to be considered in developing appropriate metrics to protect against customer service disruptions and the delivery of defective loops.[19]

BA-NY also is to report at an upcoming meeting the possible impact of its move to fielded completion notices on completion notice metrics, specifically discussing whether such notices will replace the provisioning or billing completion notices or both and the impact on CLEC processes. Line sharing metrics also are expected to be considered upon referral to the New York Carrier-to-Carrier proceeding from the DSL collaborative. A process for implementing such metrics in Massachusetts, including resolution of any contentious issues not yet resolved by the New York PSC, needs to be a product of this proceeding as well. Shorter collocation intervals for adding DSLAMs and splitters at existing CLEC collocations (i.e. within 30 days) also will need to be considered and reported separately from other types of collocation augments with longer intervals.

The timeliness and average interval for disconnects need to be reported as proposed by RNK. Moreover, MCI WorldCom recommends disaggregated reporting for disconnects, as is done under BA's Pennsylvania Carrier-to-Carrier guidelines. This will prevent the generally shorter intervals for

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[18]As the substance of that discussion was unknown as these comments were being prepared, MCI WorldCom intends to address any matters of significance through future letters to the Department.

[19]Like Teligent, MCI Worldcom is concerned about service outages for customers, but cannot precisely evaluate Teligent's concerns based on its brief comments. If those outage concerns are not addressed by the hot cut restoral and mean time to restore metrics in New York, MCI Worldcom would support guideline changes to remedy such customer – impacting problems.

disconnects from skewing other interval results. If BA can single out disconnects to exclude them, it can measure them separately and has agreed to do so without litigation before the PUC in Pennsylvania. Timely disconnects ensure that CLECs are not paying for lines for which their customers are delinquent in their payments. [20]

13) Please comment on MCI's "SiMPL" proposal (see MCI Proposal, App. D).

As stated in MCI WorldCom's opening comments, the SiMPL plan has the benefits of providing more certainty for CLECs to set customer expectations and enter into service level agreements than rolling monthly parity determinations. It also gives BA firm targets to shoot for to minimize its risks. Periodic updating means that expected improvement in performance would be captured. It also makes it easier for smaller CLECs that cannot hire statistical consultants to analyze accuracy of results. Even if the Department does not at present adopt the SiMPL plan, MCI WorldCom suggests that the Department test the use of the SiMPL plan on a parallel basis for certain provisioning and maintenance metrics (where customer commitments are most crucial) to gain a better idea of which plan will provide the most customer satisfaction with CLEC service. The resulting report could be timed to allow consideration of that option with the next metric review.

[20]With regard to the Department's question 10, MCI WorldCom has in other states encountered barriers in seeking to move from special access to provide local service to the purchase of UNE loop and transport combinations for the same purpose. Until all such barriers are clearly removed, MCI WorldCom believes that special access will remain critical to providing local service and hence the quality of special access will remain relevant to local competition, as NextLink suggests.

Conclusion

MCI WorldCom has no desire to receive remedy payments from BA-MA. It would be far preferable for the development of competition if BA-MA fully carries out its obligations to provide service at parity to CLECs and the remedy payments are never triggered. But the BA PAP as proposed is too lenient and too confusing to be effective in forcing BA-MA to live up to its obligations. This Department should remedy those defects by raising the available penalties and simplifying the method of their calculation.

Respectfully submitted,

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