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 PROPOSED PERFORMANCE ASSURANCE PLAN 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), MCI WorldCom hereby proposes a comprehensive plan of performance and remedial measures by which Bell Atlantic's compliance with Section 271 of the Telecommunications Act of 1996 may be monitored and enforced.

To develop an effective system of performance metrics and self-effectuating remedies, the Department may draw on resources developed in other states, particularly the plans developed for Bell Atlantic in New York and Pennsylvania. With regard to performance metrics, the measures adopted in the New York Carrier-to-Carrier proceedings provide a solid starting point for the Department. MCI WorldCom urges the Department to adopt, with those modifications and additions described below, the Carrier-to-Carrier Guidelines, Performance Standards and Reports as contained in Bell Atlantic's

February 29, 2000 compliance filing with the New York Public Service Commission in NY PSC Case 97-C-0139.

MCI WorldCom points to a particular dated version of the New York performance metrics because no performance assurance plan is static. As CLECs gain greater commercial experience in the local market, and as new products are developed and processes improve, metrics may need revisions and new metrics will be required. The performance metrics and remedies that MCI WorldCom proposes today are a starting point, designed on the basis of current information to cover the most basic aspects of service provision. MCI WorldCom fully anticipates, however, that as in New York, there will need to be a continuing dialogue between Bell Atlantic and competitive local exchange companies, with accompanying changes to the remedies plan.[1] MCI WorldCom advocates that Massachusetts adopt some metrics in this proceeding that address areas currently under discussion in other BA states, including New York and Pennsylvania.

In addition to defining performance metrics, the Department must provide effective self-enforcing remedies for violations of the performance standards. MCI WorldCom proposes that the Department adopt a remedy plan similar to that found in the proposed decision of the Administrative Law Judges in Pennsylvania Public Utility Commission Docket No. P-00991643 (August 6, 1999). As described below, this plan will give BA little choice but to modify its behavior and strive toward compliance, because the remedies eliminate financial incentives to give CLECs poor performance.

[1]Discussions are ongoing in New York regarding several specific topics that will require alterations and additions to the metrics throughout the BA region. A number of these specific issues are pointed out in the comments on particular metrics below.

Moreover, the Pennsylvania plan is simpler to administer than the plan adopted in New York, although it employs the same basic statistical methodology to detect discrimination.[2]

Finally, MCI WorldCom appreciates that this Department may have concerns, however, that a statistical methodology is too complex to administer effectively. To address these concerns, MCI WorldCom is in the process of developing a remedies plan that will use historical performance to set benchmarks, making the detection of sub-par treatment easier. This system creates fixed targets for performance, subject to periodic revision, which should give BA certainty about what is expected of it, and permit CLECs to provide accurate predictions to their customers of when work will be performed. Should the Department determine that it prefers to avoid the statistical analysis used in New York and Pennsylvania remedies plans, MCI WorldCom believes that a refined version of its Simplified Measurement of Performance and Liability (SiMPL) plan, attached as Appendix D, will be a viable alternative.

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[2]The final plan adopted in Pennsylvania softened the ALJs' recommendation in light of the PUC's decision in the Global Settlement Proceedings to separate BA into retail and wholesale divisions. See Pennsylvania PUC, Global Order (Pa. PUC dockets P-00991648 & P-00991649), August 26, 1999. Such structural separation has not been adopted in Massachusetts. Therefore, MCI WorldCom recommends the stronger ALJ plan in the absence of the added protection of BA's retail unit being placed in the similar position of buying services from and electronically interfacing with BA's wholesale unit. Cf. 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) [hereinafter "PA Final Order"], at p. 13 ("We note that the ALJs' Recommended Decision was crafted and issued before our Global Order which, inter alia, directed structural separation for the wholesale and retail elements of BA-PA's business. We shall now assess performance measures, at least in part, from the context of structural separation. That is, perhaps, one of the strongest assurances of performance parity that we can have.").

Executive Summary

The February 29, 2000 New York performance metrics provide a foundation for a Massachusetts performance assurance plan. But modifications to the New York performance metrics are necessary to fill a number of gaps. First, as the Department is aware, both before and particularly after BA's entry into the long distance market in New York, MCI WorldCom and other CLECs experienced severe problems with the electronic notices due in conjunction with ordering and provisioning of local service, particularly the UNE platform. On March 9, 2000, BA-NY entered into a consent decree with the FCC designed to remedy these problems going forward, and agreed to pay up to $27 million in fines. See Consent Decree, In the Matter of BA-NY Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Service in the State of New York, FCC 00-92 (March 9, 2000). To ensure that this problem is not repeated in Massachusetts, MCI WorldCom proposes new metrics covering the problem areas redressed in the FCC consent decree. MCI WorldCom's proposed measures, which it has also introduced in the New York Carrier-to-Carrier proceeding, differ somewhat from the standards in the FCC Consent Decree, as well as from the similar measures already added to the New York Performance Assurance Plan; the proposed measures are more consistent with the overall standards of the performance remedies plan and better guarantee CLECs a meaningful opportunity to compete in real commercial conditions. To complement these new measures, MCI WorldCom also proposes modifications to existing measures to ensure that BA is not given credit for a completed task until it has notified the CLEC that it has completed its work. These changes close a loophole in the New York metrics – although those metrics comprehensively

measured intervals for confirmations, rejections, and completion notices received, they did not adequately address instances where no notices were received at all. Nor did they capture whether orders placed with BA had even registered in BA's systems, so as to be in the queue for any type of notice at all. MCI WorldCom's proposals capture this information, which is critical to assess meaningfully BA's performance.

Second, MCI WorldCom proposes other new measures that have been adopted in other states to address areas not treated in the New York plan. These include a number of general standards relevant to Section 271 checklist obligations. In addition, MCI WorldCom proposes measures that track BA's timeliness in providing solutions to problems posed to the help desk and billing problems. Third, a number of changes address the geographic dimension of performance reporting, as appropriate for Massachusetts, or suggest more relevant comparisons for measuring performance for certain services. These and other miscellaneous changes are explained in section II below.

Once performance measures are established, this Department must give them teeth through a stringent remedies plan. Experience in other states demonstrates that several key principles must be honored in any remedies plan. Remedies should be triggered automatically with the first evidence of unequal treatment under the performance measures. They should be structured to increase in relation to the severity and duration of the parity or benchmark failure, so that BA has a proper incentive to correct any disparity before permanent harm occurs to CLEC reputations and market momentum. Where performance measures demonstrate systemic discrimination against the CLEC industry in aggregate, penalties should be paid into a public fund, but the remedial aspect of the plan should also provide relief to individual CLECs, in proportion to the harm suffered where possible. Most important,

the remedies should be set at significant levels to counter BA's powerful incentives and abilities to impede competition. They should make it BA's most rational economic choice to a fix a problem – even if this requires added human and capital resources. The overall amount of available fines should not be capped, but instead should relate to BA's net return from retaining existing local revenues, as well as profits from new advanced services and eventually, long distance services after 271 approval. And whatever the amount, remedies should be paid directly, and not in bill credits, so that the ability to recoup for past poor service is not limited by the amount of future business given to BA. MCI WorldCom's proposals to achieve these goals are discussed in Section III below.

I. The Department Should Adopt Performance Measures that Build and Improve Upon the Standards Developed in New York

The Department has relied, on an interim basis, on the performance measures adopted in New York. MCI WorldCom believes that these measures form a excellent basis for a permanent performance plan in Massachusetts. But they require alterations to fill gaps revealed by CLECs growing experiences with commercial operation. In this section, MCI WorldCom explains its proposed alterations to existing performance measures found in New York, referring to the metric designations used in the New York filings. Although fairly comprehensive, the New York metrics require a number of additional measures to close loopholes and otherwise guarantee accurate tracking of all critical elements of service provision. The resulting new and changed metrics are reproduced in Appendices A and B to this document in the format used in New York.

B. Certain New York Measures Require Modification to Close Loopholes and to Establish Sufficiently Rigorous Standards to Ensure Good Service for CLECs

PO-1 Response Time OSS Ordering Interface. This metric should be altered to report more accurately the reality that many CLECs are not yet using EDI to place pre-order queries, but instead are still dependent on the Web GUI. Even carriers such as MCI WorldCom that are implementing EDI interfaces for preorder have not yet developed all query types, and thus remain active users of the Web GUI. Pennsylvania has recognized this reality and adopted a performance metric requiring that Web GUI results be reported in preorder response time measurements. See PA Final Order at pp. 40-43. This type of disaggregation is also tentatively endorsed in the FCC's Notice of Proposed Rulemaking,[3] at ¶ 23. In Massachusetts, as in Pennsylvania, MCI WorldCom proposes that BA be held to a benchmark of parity plus 7 seconds for Web GUI transactions, with this standard to be reduced to the parity plus 4 seconds standard currently used for all other interfaces by April 2001.[4] The additional seconds above parity are an acknowledgment of BA's position that additional time is required for passage through security gateways when queries are placed by CLECs. In the event that KPMG finds that the amount of time necessary to execute these security protocols is exaggerated, however, the benchmark should be reduced appropriately for both EDI and the Web

[3]See Notice of Proposed Rulemaking, Performance Measurements and Reporting Requirements for Operations Systems, Interconnection, and Operator Services and Directory Assistance, FCC CC Docket No. 98-56, 63 FR 27021 (May 15, 1998) [hereinafter "NPRM"].

[4]The Pennsylvania PUC concluded: "We see no evidence of record that BA-PA cannot provide service at parity plus four (4) seconds thereafter. The pace of competition and technological change, in particular BA-PA's Web GUI, is such that this requirement, expected on or before one (1) year after the effective date of the revised PA Guidelines, promotes competition and monitors for anticompetitive behavior in light of technological feasibility." PA Final Order at p. 43.

GUI. The proposed revised metric, requiring reporting of Web GUI results, is attached at Appendix A, p. A1.[5]

In addition, a performance standard and sub-metric must be added to address the delivery of Customer Service Records (CSRs) that must be delivered manually because of limits in the electronic systems. CLECs placing queries via both EDI and the GUI sometimes receive error responses from BA indicating that the CSR in question exceeds the size limitation that allows for electronic delivery. When this occurs, CLECs contact the BA Telecom Industry Services Ordering Center (TISOC) to request that BA print the CSR and arrange manual delivery to the CLEC. Such CSRs typically relate to business customers with substantial numbers of different lines or services. At present, no standard and no metric ensures the timely delivery of such CSRs to CLECs, for whom these records are essential to complete an order. To ensure competition in the business market, BA should be required to deliver CSRs that exceed the size limitations for delivery by EDI or GUI within three business days of obtaining the information necessary to process a CLEC request for such a CSR. A proposed new submetric, PO 1-11 measures the percentage of on-time deliveries for this type of CSR under this standard. See Appendix A, p. A4.

[5]In addition to these changes, MCI WorldCom wishes to alert the Department that while submetric PO-1-06 addresses current systems, as a result of the DSL collaborative and other ongoing discussions in New York, new systems are under development to allow CLECs access to loop qualification and other preorder data such as the existence of IDLC, loop length, the presence of bridge taps, and BA CFA records. Once these systems are implemented, the associated performance measures will have to be revised and should measure any access to such information through whatever process delivered, be it EDI, GUI, or manual.

PO-2 OSS Interface Availability. A clarification should be made to the methodology of both this measure and PO-1 to ensure that BA measures system availability and query responses regardless of whether a CLEC uses its own information technology group or a third party vendor for access. MCI WorldCom seeks here to document what it understands to be BA's current position, guaranteeing that all routes into BA's back end systems be included in the measurement, in light of the suggestion of one ILEC that third party interfaces be excluded. The requirement that all queries be measured is reasonable since the measure only addresses BA's own systems, on its side of the firewall. Requiring that all methods of CLEC access be included should not alter the results for BA but will ensure that BA does not exclude from measurement any CLEC that chooses to use a third party vendor.

Although BA is not responsible for performance on the CLEC side of the OSS interface, it is critical that BA monitor the availability of all servers and other middleware between its firewall and its back-end systems since failures at any point in this route could deny CLECs access to BA's systems. BA has not consistently done so. For example, in technical hearings in Massachusetts, it was revealed that although CLECs were assigned to one of four different ECXpert boxes, only access through one of the boxes was being measured for purposes of determining system availability. BA is now changing its systems configurations in light of the lost notice problem found in New York, but MCI WorldCom seeks assurances that whatever the new configuration, the availability of the entire route and all variations for reaching BA back end systems will be measured. See Appendix A, p. A5.

OR-1 Order Confirmation Timeliness. MCI WorldCom proposes adopting the performance time frames already in use in Pennsylvania instead of the longer time frames in the New

York plan.[6] These intervals are sufficient for BA to perform necessary tasks to give a firm order confirmation, including checking facilities availability, if necessary. Indeed, other states require even tighter intervals. For example, California requires confirmations within 20 minutes for fully electronic Local Service Request Confirmations, 6 hours for partially electronic LSRCs, and 12 hours to all other orders except trunks. See Decision 99-08-020, Orders Instituting Rulemaking and Investigation on the Commissions's Own Motion into Monitoring Performance of Operations Support Systems, California PUC Rulemaking 97-10-016; Investigation 97-10-017 (August 5, 1999). The revised OR-1, found at Appendix A, p. A7, includes these changes.

Confirmations of Inbound BA-to-CLEC Trunks. MCI WorldCom has significant concerns about BA's handling of requests for inbound (BA-to-CLEC) augment trunks, and thus about the performance metric and submetric measuring order confirmation in this area. MCI WorldCom proposes changes to the metrics and process for inbound trunks because of long delays in receiving responses to such requests. Specifically, in New York, submetric OR-1-19, Percent On Time Response– Request for Inbound Augment Trunks, appears to count only CLEC requests for additional inbound trunks using an e-mailed Trunk Group Service Request (TGSR). In MCI WorldCom's experience, however, BA-North does not accept emailed TGSRs, and BA-South accepts emailed

[6]The Pennsylvania PUC concluded: "The maximum interval for order confirmation for POTS for any order with less than (10) lines shall be forty-eight (48) hours if the order is electronically submitted, as proposed by AT&T. We are not persuaded that any changes required by the forty-eight (48) hour interval specified herein will be such a potentially massive and continuing investment in new systems and personnel at substantial expense as to be unreasonable or to outweigh the benefit of the shortened interval." PA Final Order, p. 60.

requests but not in the TGSR format. MCI WorldCom is negotiating with ILECs to use an Access Service Request (ASR) for ordering inbound trunks from ILECs to CLECs because (1) it ensures more accurate orders than when ILECs retype TGSR information into an ASR sent in response, and (2) it significantly reduces the response interval. BA has never explained what information would be missing from an ASR to preclude it from responding to such requests in 10 days. In addition, it should be easier for BA to measure the time elapsed between receipt of an electronically submitted ASR and return of a FOC than from receipt of a TGSR to return of an ASR. A system already exists for measuring the interval between receipt of an ASR and return of a FOC for outbound (CLEC-to-BA) trunk orders, and these date and time stamps are handled using a single electronic system. In contrast, the measurement from TGSR to ASR would require BA to measure when an email is received on one computer and map it to the issuance of an ASR on a different system, likely requiring manual intervention that could create errors.

Just as it does with other confirmation and rejection processes, BA should adhere to set benchmarks for responding to trunk resizing requests from CLECs to BA, no matter the method of sending a request (be it a faxed or emailed TGSR to which BA responds with an ASR, or a faxed or electronically submitted ASR to which BA responds with a FOC). Revised metric OR-1, at Appendix A, p. A7, incorporates this approach.

In addition to the question of what ordering methods should be tracked, the performance metric must define specifically what responses from BA end the interval. For example, there are at present no guidelines governing when BA may pose a query rather than rendering a substantive response, although a query provides the CLEC with no indication of when or if new trunks will be added and does not

permit the CLEC to plan or to communicate with its customers who are to be negatively impacted by a lack of adequate inbound capacity. MCI WorldCom believes that BA should be able to request any additional information in plenty of time to render an answer within the specified 10 day interval. Permitting a query to satisfy the interval would create an incentive for BA to pose needless questions whenever it is in danger of otherwise missing the required interval for a FOC. To avoid this potential for gamesmanship, this Department should require queries to be made by the fifth day after a request is made and define legitimate queries as only those made when the information submitted to BA by the CLEC, whatever its form, is clearly insufficient for BA to make an evaluation. MCI WorldCom's proposed metric takes this approach. See Appendix A, p. A7.

Likewise, there are no definitions of the circumstances that justify ILEC denial of inbound trunk requests, which after all are necessary for BA to fulfill its statutory obligation to provide nondiscriminatory interconnection, under Section 251(c)(2). CLECs are in the best position to judge when their customers, especially large capacity customers such as ISPs and businesses, are on the verge of generating increased inbound traffic. They are already required to forecast such changes well in advance. Therefore, the presumption against an ILEC second-guessing such a request should be quite high, making a rejection a rare occurrence. To ensure that BA does not issue unjustified denials of trunk requests, a denial should not be considered to satisfy the ten day interval. At a minimum, if a denial is to constitute satisfaction of the mandated interval, BA must be required to provide a CLEC with a complete justification for that denial, and rules must be established to cabin the circumstances in which BA may reject an inbound trunk augment request. To this end, MCI WorldCom proposes an

additional submetric, OR-1-20, to track the percentage of trunk augments that are refused, and the reasons for refusal. See Appendix A, p. A11.

OR-2 Reject Timeliness. As with Order Confirmation, MCI WorldCom advocates adopting the performance intervals adopted in Pennsylvania, rather than those found in New York. BA has previously justified its lengthy order processing intervals by the need to check facilities availability. However, order rejections do not require facilities checks, and thus there is no justification for making the response interval dependent on the number of requested lines. This Department should adopt the 48 hour intervals in place in Pennsylvania, see PA Final Order at p.63, which are generous; in California, ILECs are required to provide fully electronic rejections in 20 minutes, partially electronic rejections in 5 hours, and all other rejections except trunks in 10 hours. See Decision 99-08-020, Orders Instituting Rulemaking and Investigation on the Commissions's Own Motion into Monitoring Performance of Operations Support Systems, California PUC Rulemaking 97-10-016; Investigation 97-10-017 (August 5, 1999). Revised measure OR-2, found at Appendix A, p. A12, reflects this change.

OR-4 Timeliness of Completion Notification. Among BA's existing completion notice submetrics, there are several that cover Service Order Provision to Billing Completions (Average, % in One Day and % in Five Days). In New York, the FCC Consent decree adopted a three-day standard completion interval, which MCI WorldCom believes should be shortened to two days so that CLECs know quickly when completions may have erred out of BA's billing system, thus causing double billing

of the customer. MCI WorldCom has proposed this change in New York, and the revised metric found at Appendix A, p. A16, reflects this changed standard and alters the submetrics accordingly. The completion notice process is under continuing development, and all the metrics regarding billing completion may need to be revisited when BA begins to offer fielded completions.

Geographic disaggregation of reporting requirements *(affecting metrics PR-1; PR-2; PR-3; PR-4; PR-5; PR-6; PR-9, MR-2; MR-3; MR-4; MR-5).* Many of the provisioning and maintenance metrics adopted in New York require reports to be disaggregated by geographic area. This is necessary to ensure that differential performance between BA's retail operations and its service to CLECs is not disguised. For example, if BA's service to its own customers in metropolitan areas is faster than to its customers in rural areas, a state-wide aggregate will indicate an average time that is slower than the actual average time for the metropolitan areas alone. As more CLECs currently operate in metropolitan areas, such a standard would allow BA to offer competitors service that was significantly slower than that provided to BA retail customers in the same area, resulting in worse service to CLEC customers and thus harm to competition. Consequently, parallel to the geographic disaggregation required in New York, MCI WorldCom proposes that these important provisioning and maintenance metrics be reported in Massachusetts disaggregated into results for Boston, Springfield, and the remainder of the state, or by maintenance and provisioning areas. Revised metrics implementing these translations are found at Appendix A, pp. A18-A46.

Provisioning and Maintenance metrics for trunking *(including submetrics of PR-1; PR-2; PR-4; PR-5; PR-6; MR-2; MR-4; MR-5).* The New York measures use Feature Group D trunks provided to interexchange carriers as a retail analog for local trunks provided to CLECs. Because many of Bell Atlantic's emerging CLEC competitors are also interexchange carriers, however, this approach is fundamentally flawed. Using this measure permits Bell Atlantic to compare its performance supplying retail access trunks to IXCs including MCI WorldCom, AT&T, and Sprint with its service to those same companies as LECs, purchasing local trunks at wholesale. Consequently, this measure only indicates whether or not BA is discriminating equally against its competitors in local and long distance; it does not measure whether CLECs are receiving service at a level that is at parity with BA's performance for itself. Indeed, to MCI WorldCom's knowledge, Bell Atlantic is the only ILEC to propose using FGD trunks as the retail analog for local trunking metrics.

To guard against unremediated degradation of service for both long distance and local trunking, the appropriate retail analog for purposes of trunking metrics is dedicated trunks provided to non-carrier customers. MCI WorldCom's proposed revised versions of the metrics referenced above, attached at Appendix A, pp. A18-A46, incorporate this standard. If this standard is not adopted, the analog for trunking service provided to BA's CLEC competitors should at a minimum be altered to include only the provision of FGD trunks to BA's own long distance affiliate and any IXCs whose services BA may resell, rather than including service to BA's long distance competitors. This will ensure the discovery of any discrimination between BA's self-provision of trunks and its provision of

trunks to its competitors in both the local and long distance markets, once BA is permitted to offer long distance service.[7]

PR-2 Average Interval Completed. Because a CLEC cannot begin billing its new customer until it receives proper notice that the work requested of BA has been performed, the definition of work completion must include notification of the CLEC. This is particularly important in the context of UNE-P or other arrangements utilizing BA's switch, as the CLEC has no independent means of verifying that a customer's traffic is now directed to the CLEC network. Consequently, MCI WorldCom's revised version of this metric, attached at Appendix A, p. A22, revises the definition of the completion interval for POTS and Specials to require measurement from the date that BA receives a valid service request until the time that the CLEC is notified of work completion. This approach has been recommended by

[7]Events in New York should serve as a warning that to promote competition, the standard should not be parity in how competitors are treated in the long distance versus the local market. While BA-NY received 271 approval using IXC FGD trunks as the retail analog, the FCC's order indicates that interconnection trunking performance deteriorated over the months preceding BA-NY's 271 application to the FCC. (MCI WorldCom has found that BA's provision of FGD trunks for its long distance access traffic has been poor.) However, this performance still met the parity standard because retail performance toward IXCs was even worse and continued to deteriorate in the same time period. See FCC, 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 (December 22, 1999), ¶ 71 n.147. The resulting metric thus provides every incentive for BA not to improve its service on either the retail or wholesale side, but indeed to continue to downgrade its service after entry into the long distance market, at which point both its IXC customers and its CLEC customers will be its competitors.

the FCC in the NPRM (see ¶¶ 34, 44) and was adopted by the state commissions in both Michigan and Pennsylvania.[8]

PR-4 Missed Appointments. Likewise, MCI WorldCom cannot accurately communicate with its new customers if it does not know whether BA has met its scheduled appointments, even if they are complete. Consequently, the revised version of this metric, found at Appendix A, p. A29, redefines the order completion date as the date on which a CLEC is notified that BA has completed the order. Again, this change is in keeping with the measurement methodology adopted for BA in Pennsylvania, and by the Michigan commission, and is consistent with the FCC's tentative approach in its rulemaking proceeding. See supra.

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[8]The Pennsylvania PUC concluded:

> We agree with the ALJs relative to the interval issue. The notice period measured by this metric should be defined as terminating when notice is provided to the CLEC as opposed to when BA-PA actually completes an order. That is because there may be a gap of time between completion of a CLEC's request and notice to a CLEC that its request is completed which could prove harmful to competition. A metric measured from the notice to the CLEC, as opposed to mere installation, prevents that.

See PA Final Order, at p. 75.

The Michigan PSC came to the same conclusion:

> The Commission finds that for measuring the average completion interval and percent due dates not met, an order is not complete until notification is sent to the CLEC that installation has occurred. As the Commission noted in the October 2, 1998 order in Case No. U-11654, the consequences of slow notification can be significant. Notification, in most instances, should be nearly immediate, as it is with the company's own installations.

Opinion and Order, In the Matter of Ameritech Michigan's Submission on Performance Measures, Reporting and Benchmarks, Pursuant to the October 2, 1998 order in Case No. U-11654, Michigan PSC Case No. U-11830 (May 27, 1999), at p. 9.

PR-9 Hot Cut Loops. Ongoing discussions regarding loop provisioning and maintenance have produced and will continue to produce process changes that must be reflected in performance metrics. Because of revisions to the hot cut process, agreed upon in the ongoing loop collaborative in New York, metrics[9] contained in the February 29, 2000 New York filing no longer accurately address the process in use there or in Massachusetts. Carriers will be meeting on April 25, 2000, in New York to discuss the changes to the performance metrics necessitated by these process changes, and MCI WorldCom proposes that the Department revisit the affected measures as well, after those meetings have taken place.

MR-3 Missed Repair Appointments. For reasons similar to those applicable to provisioning, it is essential that CLECs receive timely notice when repair appointments are completed. Absent this information, the CLEC cannot effectively communicate with its customer, who may repeatedly call to report an ongoing problem. Unless the CLEC knows (1) whether BA has already completed its efforts to repair the problem, and (2) BA's findings, it cannot determine whether a customer's complaint indicates a new problem, a failure by Bell Atlantic to correct a problem in its system, or a problem that resides in the CLEC's own system. Consequently, to encourage BA to provide timely notice, the definition of a completed repair appointment must require that BA both remedy the problem and report that resolution to the CLEC within the committed time period. MCI WorldCom's revised metric, found at Appendix A, p. A40, adopts this methodology.

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[9]In addition to metric PR-9, the portions of metric PR-2 dealing with hot cuts will also require revision.

MR-4 Trouble Duration Intervals. As with the preceding proposed metric, it is imperative that CLECs receive notice from BA when BA considers a reported service problem, or "trouble," to be cleared, in order that the CLEC can confirm that a problem is resolved or take appropriate further steps to ensure its repair. Absent notice, the CLEC has no means of knowing that BA is no longer pursuing a fix. For this reason, the duration of network troubles must also be measured until the time that BA notifies the CLEC that a trouble is cleared. MCI WorldCom's revised metric, found at Appendix A, p. A42, adopts this methodology.

In addition, in reporting CLEC-specific data on Mean Trouble Duration, BA must be required to disaggregate its results by product more finely, revealing data for DS-0, DS-1, and DS-3 facilities. This is necessary so that out-of-parity treatment of CLECs, whose wholesale 4 wire facilities should be compared to BA's retail DS-1s, is not disguised. Otherwise, BA can offer service level agreements to high end retail customers that provide superior service, knowing that these results will be disguised by aggregation with services where outages of 24 hours or more are within the parameters for service response time to which CLECs have agreed. This change is also included in revised metric MR-4, at Appendix A, p. A42.

B. The Department Should Adopt Additional Performance Metrics to Address Specific Problems Experienced in New York and to Otherwise Remedy Gaps in that Plan

1. The Department must implement new ordering metrics, addressing the notice problems found in New York

As this Department is aware, subsequent to BA-NY's receipt of approval to enter the long distance market in New York, problems with notices associated with various stages of the ordering and installation process reached crisis proportions. Tens of thousands of order acknowledgments, Firm Order Confirmations (FOCs), and Notices of Completion (NOCs) were simply never sent by BA to their CLEC customers, leaving CLECs and their end user customers in the dark about the status of critical work. Ironically, BA was not accountable for this massive service failure under the performance remedies plan in New York, because notices that were never sent at all were not counted in the measures for the timeliness of notices. In response to complaints, the FCC negotiated a consent decree with BA-NY under which the New York company will pay between $3 and 27 million, and which instituted measures intended to prevent such a problem from recurring and again falling through the cracks. To ensure that the Massachusetts plan adequately scrutinizes this potential trouble area, MCI WorldCom proposes several performance measures -- including two that are new and others that are similar to those in the FCC consent decree and that require performance levels consistent with other measures in the plan -- be added to the final Massachusetts plan.

OR-7 Acknowledgment Completeness. If a CLEC must wait until the interval for receipt of a FOC passes to determine that its order was never properly received by BA, its customers are needlessly inconvenienced by the delay in their receipt of service. To avoid this problem, BA must acknowledge every Local Service Request that it receives so that a CLEC can determine whether an order has been lost and requires resubmission. This metric tracks whether BA is in fact meeting this obligation. See Appendix B, p. B1.

OR-8 Acknowledgment Timeliness. As a complement to the preceding measure, this metric measures the timeliness with which BA fulfills its obligations to acknowledge receipt of service orders. See Appendix B, p. B2.

OR-9 Order Confirmation/Rejection Completeness. To remedy another of the basic problems encountered in New York – BA's months-long failure to send thousands of order confirmations or rejections – this measure tracks the percentage of local service requests received by BA for which either a FOC or a rejection was returned within 3 business days. See Appendix B, p. B3.

OR-10 Percent Missing Notifier Trouble Ticket PONs Cleared within 3 Business Days. The measures described above directly incentivize BA to provide required notices in a timely fashion. When a CLEC does not receive an anticipated notice, however, the experience in New York demonstrates that an additional incentive is required to ensure that problems are timely remedied

through the trouble ticket procedure. MCI WorldCom proposes create this incentive by tracking the frequency with which BA responds in a timely fashion to a trouble ticket asserting a missing notice problem. See Appendix B, p. B4.

OR-11 Resubmission Rejection. Where no notices are received for a given order, BA often requests that a CLEC resubmit that order. If a CLEC complies and resubmits the order, it may receive a rejection notice indicating that the submitted order duplicates an order already in the system. Such a rejection establishes that the lack of notice is a result of BA having lost the order in its own system, and not of a CLEC error in submitting the original order. This metric tracks the frequency of such rejections. See Appendix B, p. B5.

2. Other new metrics

The notice crisis in New York vividly pointed out weaknesses in the New York performance measures. To avoid problems in the future in Massachusetts, MCI WorldCom also proposes some other new measures to fill gaps in the New York plan. A number of these metrics have already been adopted in Pennsylvania as part of the performance assurance plan applicable to BA there.

OR-12 Percent Loss Notifications Returned Within X Minutes. In addition to the critical tracking measures regarding orders placed by new customers requesting service from a CLEC, CLECs must be able to track accurately when their customers migrate to other carriers. Where the CLEC uses a delivery method employing the ILEC's switch, such tracking is nearly impossible. Receiving such

"loss notifications" over EDI (as has been requested in the change management process) will enable CLECs to automate the stoppage of their own billing. Without these regular updates, customers will be billed by both the CLEC losing the business and by the carrier winning the business. Such double billing will certainly harm the reputation of the CLEC from whom the customer has migrated and may also damage the customer's relations with the new carrier. BA, by controlling the update process, may then sour a customer's relations with two different CLECs, increasing the likelihood of recapturing the customer's business. To remedy this, the proposed new metric, found at Appendix B, p. B6, tracks the percentage of loss notifications sent to a CLEC within a certain period of time.

MR-6 Percent Response Commitments Met On Time. Problems will inevitably arise in local service, and in the systems through which CLECs interact with BA. It is essential that CLECs be able to count on timely resolution of these problems when they are brought to the attention of BA's help desks. Unfortunately, initial measures in New York and Pennsylvania assess only how quickly help desk staff answer the telephone. See PO-3 Contact Center Availability. No reports are made of BA's ability to solve problems within the time frames that its personnel promised to the complaining CLEC. (Such time frames may be set by contract, business rules, or oral promise in an initial phone contact, and will vary based on the severity of the issue.) Unfortunately, in MCI WorldCom's experience, receiving an answer from a help desk has been a slow and frustrating experience. Indeed, in New York, KPMG found that help desks took between 6 and 11 days to respond to most questions. See KPMG Final Report (August 19, 1999). Although BA has passed a retest by KPMG after adopting internal benchmarks of answering 90% of severity 1 trouble tickets in 24 hours, and 90% of severity 2

tickets in 48 hours, there is currently no monitoring or enforcement of this service level. The proposed metric, see Appendix B, p. B7, which MCI WorldCom urges this Department to adopt, fills this important gap and sets a series of benchmarks for BA responses based on the severity of the problem. The FCC's recent consent decree sets a three-day response standard for CLEC help desk trouble tickets regarding missing notices, but MCI WorldCom believes this measure should be expanded to cover all types of troubles reported to BA's wholesale provider help desks.

NP-5 NXX Updates. The Pennsylvania commission has adopted a measure to determine on a quarterly basis the percentage of NXX updates installed by the Local Exchange Routing Guide effective date. See PA Final Order, p. 126. Errors in loading such updates by ILECs have delayed MCI WorldCom switch launches and caused problems for new customers, including failure to receive incoming calls and the rating of outgoing calls as toll rather than as part of basic exchange service. To guard against such problems, the Department should adopt this measure as well. See Appendix B, p. B9.

BI-4 Percent Billing Errors Corrected in X Days. Although existing billing measures report the accuracy and timeliness of both Daily Usage Feeds and Carrier Bills, an additional measure is required to ensure that when errors are found by CLECs, BA corrects them. For CLECs to bill their own customers accurately, and thus to maintain positive business relationships as well as cash flow, it is essential that erroneous DUFs be promptly corrected. Likewise, if carrier bills are not promptly corrected, billing disputes between the CLEC and BA itself will drag out, creating financial uncertainty

and hardship for CLECs. The current billing accuracy metric focuses on the size and frequency of errors, but can be manipulated by ILEC delays in making such adjustments until after a parity result is recorded or even indefinitely. The proposed new metric creates incentives for BA to remedy any billing errors, setting differing standards depending on whether the error implicates end users or the CLEC itself, and depending upon the jeopardy posed to the end users bill. See Appendix B, p. B10.

OD-3 DA Database Update Accuracy. Pennsylvania has also adopted a new metric to track the accuracy of changes to the directory assistance database. This measure permits the Department to monitor BA fulfillment of its obligation under item vii of the 271 checklist, 47 U.S.C. § 271(c)(2)(B)(vii), by ensuring that directory listings for CLEC customers are provided at parity with those for BA's own customers. The proposed metric is found at Appendix B, p. B11.

General Standards *(GE-1, GE-2, GE-3)*. Although the New York plan contains measures GE-1 (Directory Proofs) and GE-2 (Poles, Ducts, Conduit and Rights of Way), these measures provide only disclaimers of Bell Atlantic's abilities to provide relevant data. The Pennsylvania commission has adopted three general performance measures of substance with regard to miscellaneous 271 checklist obligations. See PA Final Order, pp. 127-33. MCI WorldCom proposes that in place of the General Standards found in the New York plan, the Department adopt measures GE-1, GE-2, and GE-3, attached at Appendix B, which are analogous to the general standards adopted in Pennsylvania. These are explained below.

GE-1 Directory Listing Verification Reports. This replacement for the New York measure of the same number ensures that BA will provide in a timely fashion reports that allow a CLEC to verify (and thus to correct) any directory listings for the CLEC's customers. Accurate directory listings are critical for customers, particularly business customers, and thus a CLEC that is unable to guarantee accurate directory listings will undoubtedly lose business to an ILEC that can.[10] This performance metric, attached at Appendix B, p. B12, thus permits the Department to judge BA's continuing compliance with item viii of the section 271 checklist, 47 U.S.C. § 271(c)(2)(B)(viii).

GE-2 Poles, Ducts, Conduit and Rights of Way. This replacement for the New York measure of the same number assesses BA's fulfillment of item iii of the 271 checklist, 47 U.S.C. § 271(c)(2)(B)(iii), by ensuring that BA provides timely responses to access requests at parity with its own retail operations, and with its service to its own affiliates, including after long distance entry, its 272 affiliate. See Appendix B, p. B13; PA Final Order, p. 131. This metric has also been adopted in Pennsylvania.

GE-3 Bona Fide Request Responses. This new metric indicates whether BA is providing timely responses to requests for access to UNEs and combinations not currently available in tariffs or interconnection agreements. UNEs are fundamental to the establishment of competition, and this

[10]See FCC, Memorandum Opinion and Order in the Matter of the BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121 (October 13, 1998), at ¶ 257.

measure provides information for the Department to assess whether BA is conforming to its contractual obligations to provide prompt responses to these critical requests. See Appendix B, p. B14.

III. The Department Must Adopt Stringent, Self-Effectuating Remedies

A. The Department should adopt a remedies plan using a combination of benchmarks and statistical determinations of parity that is sensitive to the severity and duration of discrimination and makes discriminatory conduct an uneconomical choice

Where the reports on the performance measures adopted by this Department indicate discriminatory service, a self-effectuating plan of remedies must be available both to compensate CLECs for the harm they have suffered and to deter future ILEC discrimination. MCI WorldCom proposes that this Department adopt a plan similar to that found in the proposed decision of the Administrative Law Judges in Pennsylvania, in Pennsylvania Public Utility Commission, Docket No. P-00991643 (August 6, 1999), the key features of which are summarized in Appendix C.

Such a plan relies on benchmarks for some measures and on statistical methods to identify discriminatory treatment for those measures in which parity is measured by relation to a retail analog. Specifically, a modified z-score for a particular metric of less than -1.645 indicates discriminatory

treatment, invoking remedies.[11] Likewise, any performance below a benchmark will call for remedies under the plan.

Remedies under the plan are sensitive to severity, duration, and scope. Where discrimination is detected, the plan provides for the immediate payment of a compensatory remedy to the affected CLEC. Where discrimination is demonstrated to affect the entire CLEC industry, BA will be obligated to pay an additional penalty to a central fund for the benefit of the public, whose service is the one that ultimately suffers. There is no monetary cap on the amounts payable under the plan, which are based on BA's revenues from the affected service, with penalties increasing if problems are sustained. CLECs are to receive direct payments of remedies as soon as monthly reports indicate that discrimination has occurred. Any disputes over the amount due, including adjustments for force majeure or other exogenous events, shall be resolved by seeking refunds through a waiver process administered by the Department; no payments shall be withheld. Moreover, BA shall be required to report its monthly results within 25 days of the end of the relevant period and should be subject to substantial administrative fines payable to the Department if it is late.

This plan is straightforward and workable, creating real remedies for individual CLECs whose business is harmed by BA discrimination as well as remedies for the public for widespread discrimination. By setting both per occurrence and per measure penalties, it gives sufficient teeth to the

[11] A z-score value of -1.645 indicates a 95% certainty of discrimination, with a 5% chance that nondiscriminatory BA behavior will be wrongly counted as discriminatory (a Type 1 error). At this same level, there is a greater chance -- possibly as much as 15% -- that discriminatory behavior by BA will go undetected (a Type 2 error).

plan to motivate BA compliance, while making it readily apparent to BA how to reduce liability should it arise.

B. Alternatively, the Department can build an effective remedies plan using benchmarks based on historical performance.

Both New York and Pennsylvania have adopted remedy plans using the z-score methodology, and MCI WorldCom believes that the z-score methodology provides an accurate and workable method of detecting discrimination. Because of concerns by some regulators that the statistical methodology underlying the plan is too complex, however, MCI WorldCom has also been working to develop an alternative remedy plan that may be less onerous to administer. This plan, known as the Simplified Measurement of Performance and Liability (SiMPL) plan, remains a work in progress, but MCI WorldCom has introduced a version in state proceedings in California in response to regulators' concerns about the complexity of the z-score statistical method. As this Department's consolidated arbitration plan has not employed a statistical methodology, MCI WorldCom also brings to this Department's consideration its SiMPL plan, a non-parametric test based on the establishment of benchmark values for parity-based measures, using historical data.

In its remedies structure, the SiMPL plan has much in common with the plan proposed above, establishing self-effectuating cash payments due upon the detection of apparent discrimination. Such remedies are of two types, with first and less severe levels of discrimination resulting in per occurrence penalties payable to the individual CLEC affected, and more prolonged, severe, or systematic discrimination resulting in the payment of additional per measure penalties to a state fund. The amount of penalties due is tied to BA's incentive to retain profits (via provision of local, long distance, and new

advanced services), not to arbitrary caps. Again, any exceptions to the ordinary course of payments because of exogenous events such as extraordinary weather or other disasters would be handled by a waiver process resulting in the refund of remedies automatically paid, if appropriate.

The work-in-progress SiMPL plan included with this filing at Appendix D explains the basic methodology of this alternative approach to discrimination detection and remedies, but it does not attempt to establish the specific benchmark values for each measure that would be used to implement the plan in Massachusetts, nor does it contain recommended remedy amounts. Should the Department decide to pursue this course, it would be straightforward to establish those initial values on the basis of the historical performance data that the Department has collected over the course of the past year. Using historical data to set a parity benchmark has the advantage for both BA and for CLECs of creating a firm expectation in advance of a month's performance, allowing BA to plan in order to satisfy that standard and allowing CLECs to answer customer questions about the service that they can expect. Promises about future performance simply cannot be made under a system of constantly rolling parity, in which what was required of BA is not known for a given month until after that month is over. At the same time, benchmarks based on historical performance retain the elements of parity, as they are based on BA's actual retail performance, which, for its own business purpose, should not fluctuate greatly from month to month.

IV. Conclusion

For local competition to exist, Bell Atlantic's performance of tasks and services necessary for CLEC business must be carefully monitored, and discriminatory performance must be quickly rebuffed with substantial, self-effectuating remedies. MCI WorldCom urges the Department to build on the foundation erected in New York and other Bell Atlantic states to ensure that real alternatives for both residential and business local service can grow and thrive in Massachusetts.

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