Investigation by the Department on its own motion into the propriety of the Resale Tariff of New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts, filed with the Department on January 16, 1998, to become effective February 14, 1998.

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I. INTRODUCTION

On January 16, 1998, New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts ("Bell Atlantic") filed with the Department of Telecommunications and Energy ("Department") a wholesale tariff for the resale of its retail services, for effect February 15, 1998. The proposed tariff, which was filed pursuant to a Department directive,[(1)] included the interim resale discounts adopted in Phase 2 of Consolidated Arbitrations[(2)] and a set of proposed terms and conditions. Along with this filing, Bell Atlantic submitted a petition to establish a permanent resale discount based on an avoided cost study different from that used to develop its current resale discount. The Department docketed its investigation of the proposed tariff and the petition to establish a permanent resale discount as D.T.E. 98-15.

The Department suspended the proposed tariff until August 15, 1998. At the Department's request, Bell Atlantic withdrew and refiled its resale tariff on July 8, 1998, with an effective date of August 7, 1998. The Department suspended the refiled tariff on July 9, 1998 until September 18, 1998. Only Phase I[(3)] was affected by these suspensions and the accompanying statutory deadlines for completing the Department's investigation.

On March 23, 1998, the Department conducted a public hearing in order to allow interested persons an opportunity to comment. The Department granted the following petitions for intervention: AT&T Communications of New England, Inc. ("AT&T"), Cablevision Lightpath - MA, Inc., CTC Communications Corp. ("CTC"), MCI Telecommunications Corporation ("MCI"), MediaOne Telecommunications of Massachusetts, Inc. ("MediaOne"), RCN/BecoCom, L.L.C. ("RCN"), RNK, Inc., Sprint Communications Company, L.P. ("Sprint"), the Telecommunications Resellers Association ("TRA"), and XCOM Technologies, Inc.

II. PROCEDURAL HISTORY

On March 27, 1998, AT&T filed its Motion to Expand the Scope of the Proceeding ("AT&T Motion on Scope") to establish permanent unbundled network element ("UNE") rates, and its Motion to Strike ("AT&T Motion to Strike") specific sections of Bell Atlantic's proposed tariff pertaining to non-recurring charges and operations support system ("OSS") charges. Bell Atlantic responded to these motions on April 15, 1998. No other party filed a response.

On April 16, 1998, AT&T filed its Motion to Stay the procedural schedule pending a Department ruling on the AT&T Motion on Scope. The Department granted the Motion for Stay on April 24, 1998. On May 29, 1998, the Department issued an Order on AT&T's Motion on Scope and Motion to Strike. Interlocutory Order on Resale Tariff of Bell Atlantic, D.T.E. 98-15 (May 29, 1998) ("May Order").

In the May Order, the Department divided this proceeding into three phases: (1) Phase I would cover the investigation of Bell Atlantic's proposed resale tariff; (2) the Department would determine permanent resale discounts in Phase II; and (3) Phase III would

encompass the investigation and adoption of permanent rates for UNEs, reciprocal compensation, and interconnection. This last phase would be divided into two parts, the first would consider the "appropriate methodology to use in setting UNE rates," and in the second part, the Department would "adopt a cost study based on the methodology determined in Part 1." May Order at 4.

A. Phase I

On September 17, 1998, the Department issued an Order in Phase I approving Bell Atlantic's July 8, 1998, resale tariff. Investigation of Resale Tariff of Bell Atlantic, D.T.E. 98-15 (Phase I)(September 17, 1998) ("Phase I Order"). On October 7, 1998, AT&T filed its Motion for Reconsideration of Phase I Decision and for Extension of Judicial Period. These motions will be addressed in a separate Order.

B. Phase II

On September 29 and October 1, 1998, the Department conducted evidentiary hearings in Phase II of this proceeding. Bell Atlantic sponsored the testimony of two witnesses: William E. Taylor, senior vice president of National Economic Research Associates, Inc.; and Margaret Mary Degnan, manager of service costs in the finance department of Bell Atlantic. AT&T also sponsored the testimony of two witnesses: Janusz A. Ordover, professor of economics at New York University; and Douglas K. Goodrich, chief financial officer, transactions segment, consumer markets of AT&T. CTC sponsored the testimony of one witness, Daniel Kelly, senior vice president of HAI Consulting, Inc. Bell Atlantic, AT&T, and CTC (joined by TRA) filed briefs on October 13, 1998, and reply briefs on October 23, 1998.

C. Phase III

On September 24 and 25, 1998, the Department held evidentiary hearings on Phase III, Part 1 of this proceeding. AT&T sponsored the testimony of Dr. Ordover; Bell Atlantic presented the testimony of Michael J. Anglin, director of economic costs for Bell Atlantic-Massachusetts, and Dr. Taylor; and MCI sponsored the testimony of August H. Ankum, economist and telecommunications consultant. Briefs were filed by Bell Atlantic, AT&T, MCI, and RCN on October 14, 1998.

Together with its initial brief, Bell Atlantic filed a Motion to Adopt Permanent UNE Rates ("Bell Atlantic Motion"). In this motion, Bell Atlantic argues that the parties agree that the Federal Communications Commission's ("FCC") Total Element Long Run Incremental Cost ("TELRIC") method is the appropriate framework within which to establish permanent UNE rates (Bell Atlantic Motion at 2). Bell Atlantic argues no party presented or suggested any other method during this phase of the proceeding (id.). Moreover, Bell Atlantic contends that because the Department's decision in Phase 4 of Consolidated Arbitrations[(4)] was based on TELRIC, and because no compelling circumstances have occurred warranting a reconsideration of those rates since that Order

was issued, the Department should make the interim UNE rates permanent (Bell Atlantic Motion at 3-5).

In response to Bell Atlantic's motion, the Department heard oral argument on October 29, 1998, from Bell Atlantic, AT&T, and MCI. All parties agreed that the FCC's TELRIC is the correct method to use in setting permanent UNE rates, but the hearing officer denied Bell Atlantic's motion at the conclusion of the argument (Tr. at 38). The hearing officer did so because granting Bell Atlantic's motion at that time would have decided issues the parties had a reasonable expectation of litigating, based upon the schedule set forth in the May Order (Tr. at 37). The hearing officer further determined that the record was insufficient to decide these issues in the summary fashion as suggested by Bell Atlantic (id.). The Department did not issue an order in Phase III, Part 1, as all parties agreed that the FCC's TELRIC method should be used (Tr. at 39). A schedule for completing Phase III, Part 2 was set by a conference call with the parties and the hearing officer on November 6, 1998.

On January 25, 1999, the United States Supreme Court issued its decision in AT&T Corp. v. Iowa Utilities Board, Nos. 97-826 et al., slip op. (S.Ct. January 25, 1999) ("AT&T"). In this ruling, the Supreme Court held, among other things, that the FCC does have jurisdiction to design a pricing method for interconnection and UNEs.[(5)] AT&T at 17. The Court found that the implementation of the FCC's pricing method by states, in which states "determin[e] the concrete result in particular circumstances," was sufficient to constitute the establishment of rates for purposes of section 252(c)(2).[(6)] Id. at 16.

After that ruling, the hearing officer suspended the procedural schedule and requested comments from the parties as to the effect of AT&T on D.T.E. 98-15. Bell Atlantic, AT&T, MCI, CTC/TRA, and MediaOne filed initial comments on February 9, 1999. Bell Atlantic, AT&T, MCI, CTC/TRA, and RCN filed reply comments on February 16, 1999.

III. POSITIONS OF THE PARTIES

A. Bell Atlantic

Bell Atlantic argues that the AT&T decision renders Phases II and III moot and that the Department should terminate this proceeding (Bell Atlantic Comments at 3). According to Bell Atlantic, the Department applied the FCC's cost and price rules for both the resale discounts and UNEs in Consolidated Arbitrations (id.). Moreover, Bell Atlantic argues that the application of the FCC's cost and price rules was litigated fully and resolved by the Department in the Consolidated Arbitrations proceeding (id. at 4).

Bell Atlantic argues that its entire direct case in Phase II was based on the fact that the FCC's avoided cost rules were not in effect because those rules had been invalidated by the Eighth Circuit (Bell Atlantic Reply Comments at 2). Therefore, according to Bell Atlantic, the Department cannot decide Phase II on the record before it. Rather, Bell Atlantic contends that the Department may either adopt the discounts set in Consolidated Arbitrations or reopen Phase II so that Bell Atlantic may present another case using the

FCC's reinstated cost rules (id.). Bell Atlantic argues that in advocating that the Department should continue with Phase III of this proceeding, AT&T's and MCI's comments ignore the Department's stated rationale for reopening the issue of pricing for UNEs, which was to coordinate rates between wholesale services and UNEs (id. at 3).

If the Department determines that Phase III should continue, Bell Atlantic contends that it is entitled to resubmit its cost study in Phase II to account for reinstatement of the FCC's method (id. at 4 n.3). Bell Atlantic disagrees with the way the Department applied the FCC's cost rules in setting the interim discount rates in the Phase 2 Order. However, if Phase III is closed and not relitigated, Bell Atlantic states that it will not seek to reopen Phase II (id.).

Bell Atlantic argues that relitigation of Phases II and III could preclude the possibility for a speedy review of its section 271 application (Bell Atlantic Comments at 5).[(7)] Finally, Bell Atlantic argues that the TELRIC rates established by the Department in Phase 4 of Consolidated Arbitrations would have been designated as "permanent" in that Order had the FCC's rules not been invalidated by the Eighth Circuit (Bell Atlantic Reply Comments at 4).

- AT&T

According to AT&T, the due process rights of parties that did not participate in Consolidated Arbitrations would be "improperly and unfairly sacrificed" if the Department made those interim rates permanent in this docket (AT&T Comments at 5). Moreover, AT&T argues that the method of Bell Atlantic's 1996 cost study is flawed and is, at any rate, outdated (id.). Specifically, AT&T contends that the 1996 cost study: does not account for recurring expense savings from the Bell Atlantic-NYNEX merger; uses data from as early as 1994; accounts only for technologies deployed before 1996; relies on misrepresentations regarding the availability of deep switch discounts; fails to employ an accurate cost of capital; and fails to account for substantial changes in the telecommunications industry since 1996 (id. at 5-6). As proof of the shortcomings in Bell Atlantic's 1996 cost study, AT&T notes that the interim UNE rates set in Consolidated Arbitrations are "substantially and inexplicably higher" than comparable rates adopted elsewhere in the region (id. at 6).

AT&T argues that the following deficiencies in the 1996 cost study must be remedied: the cost of capital, fill factor, and switch price methods; assumptions made with respect to the most economically efficient technology deployed at Bell Atlantic's wire centers; cost savings from the Bell Atlantic/NYNEX merger; acknowledgment of the rapid evolution of the telecommunications industry; outdated data; and UNE rates that are significantly higher than those set in other New England states (id. at 7-15).

Finally, AT&T argues that the Department must review information that has become available only since it adopted the interim rates and that this review must precede any decision on permanent UNE rates. Otherwise, the Department would "deny Massachusetts consumers the benefits of fair competition . . . by making it uneconomic

for competing carriers to enter the market and begin the process of replicating pieces of the local exchange network that [Bell Atlantic] had the luxury of constructing as a regulated monopolist" (AT&T Reply Comments at 3).

- MCI

MCI argues that the AT&T decision does not mandate termination of D.T.E. 98-15 (MCI Comments at 2). Recognizing that significant disagreement continues among the parties with respect to how to implement the FCC's TELRIC, MCI argues that the Department should proceed with Phase III, Part 2 (id. at 3). Like AT&T, MCI details the specific areas of Bell Atlantic's 1996 cost study that should be revisited. These areas include: vendor discounts for switches; changes in cost of capital; merger savings; and four-year old data (id. at 4, MCI Reply Comments at 1).

In response to Bell Atlantic's argument that its section 271 application will be held hostage if the Department proceeds with Phase III, MCI argues that Bell Atlantic is so far away from meeting the fourteen-point checklist that it has little hope of earning the right to provide interLATA service in Massachusetts any time soon (MCI Reply Comments at 2).

- CTC/TRA

The joint comments of CTC/TRA address only the disposition of Phase II of this proceeding (CTC/TRA Comments at 1). According to CTC/TRA, the discounts proposed by Bell Atlantic in Phase II of DTE 98-15 must be rejected because Bell Atlantic ignored the appropriate FCC rules (CTC/TRA Comments at 2). CTC/TRA argue that the discount levels suggested by their witness in the Phase II hearings should be adopted because they are consistent with the FCC's pricing method, and that the Department's interim rates should not be controlling without the possibility of review (CTC/TRA Reply Comments at 2).[(8)]

E. MediaOne

In light of the AT&T decision, MediaOne asserts that a Department investigation to set permanent rates for all UNEs at this time could be considered premature because the full extent of an ILEC's obligations has yet to be redefined (MediaOne Comments at 2).[(9)] MediaOne argues that the interim rates can remain in place and apply to the affected parties pending resolution of the outstanding issues relating to the scope of an ILEC's future UNE obligations (id.). MediaOne contends that, as noted in the May Order, there are compelling reasons for setting permanent UNE rates and wholesale rates at the same time; therefore, closing both phases of this proceeding makes the most sense (id.). If the Department suspends this investigation (pending resolution of the FCC's UNE obligations), MediaOne argues that the Department must make clear that Bell Atlantic's current obligations to interconnect and provide UNEs at agreed-upon rates pursuant to signed interconnection agreements remain in place (id.).

F. RCN

RCN argues that the Department's calculation of UNE rates must ensure: that they do not include any of Bell Atlantic's embedded costs; that Bell Atlantic presents a "scorched node" network cost study; and that a permissible method of calculating common costs is used (RCN Reply Comments at 2). RCN argues that the Department should continue as planned with Phase III, Part 2 of this proceeding because the rates set in Consolidated Arbitrations were "always considered interim rates subject to a more thorough cost analysis," and that "it would be much more efficient to start the process with a clean slate using the best available information and the understanding of local competition issues that have evolved since the fall of 1996" (id. at 2 n.2). In order to fulfill the requirements of the 1996 Act and to promote the development of local competition, RCN contends that the Department "has a clear obligation to assure compliance with all applicable rules using the best available information" (id. at 3).

IV. ANALYSIS AND FINDINGS

The issue before the Department is "whether, given the Supreme Court's AT&T decision reinstating the FCC's pricing rules, it is reasonable and appropriate for the Department to make permanent the interim resale discounts and UNE rates and to terminate the remainder of this investigation. For the reasons discussed below, we find that it is reasonable to do both.

We remind the parties of our reasons for opening Phases II and III. We briefly recapitulate the rationale adopted and process followed in setting "interim" rates in Consolidated Arbitrations. The Telecommunications Act of 1996 ("Act") permits parties unable to reach an interconnection agreement through voluntary negotiations to petition the Department to arbitrate any open issue.[(10)] As a result of receiving a number of such petitions in 1996, the Department commenced the proceeding known as Consolidated Arbitrations.

The parties to Consolidated Arbitrations agreed in an October 21, 1996 hearing that the rates the Department would approve in both the Phase 2 Order and the Phase 4 Order would be designated as "interim." This agreement was necessary to "ensure a timely completion of this arbitration" because of the Eighth Circuit's stay of certain FCC regulations, including the cost and price rules.[(11)] Phase 2 Order at 4.

The arbitrator in Consolidated Arbitrations requested and received briefs from the parties on the appropriate status of the rates determined in that proceeding (e.g., whether the rates should be deemed interim subject to reconciliation, should be deemed interim not subject to reconciliation, or should be deemed something else altogether). Id. at 5. The parties and the arbitrator determined that Consolidated Arbitrations would go forward using the FCC's cost and price methods and noted the lack of a record to support using any alterative methods for resold services and UNEs. Id. at 8. In the Phase 2 Order, the Department expressed its intention to conduct further investigations into the continued appropriateness of the FCC's methods that the Department had used in Consolidated

Arbitrations. Id. at 8; see also, Brooks Fiber Communications, Inc./NYNEX, D.P.U. 97-70, at 7-8 (1997). This review was to have been performed in the instant proceeding, specifically, in Phases II and III of this docket.

The primary reason for opening Phases II and III was to put in place permanent rates, so that carriers entering or operating in the market would be able to make informed decisions about entry and expansion strategies.[(12)] The Act obliges state commissions to be mindful of this commercial consideration. See 47 U.S.C. § 252(d). In opening Phase II in response to a Bell Atlantic petition, the Department recognized that Bell Atlantic as well as CLECs had a right to relitigate the interim resale discounts because they were based on an FCC method that had been stayed (and then vacated) by the Eighth Circuit. See May Order at 3. Similarly, in deciding to relitigate the UNE rates in Phase III, we also recognized the right of carriers to challenge the interim UNE rates that were based on a similarly-invalidated method. Id. Concerning the timing of the two investigations, we noted in the May Order that unless these two rates are set at approximately the same time, CLECs' decisions concerning entering the market in Massachusetts could be affected by regulatory uncertainty. May Order at 3. As AT&T noted in its Motion on Scope, if the Department merely established permanent resale rates without addressing UNE rates, it could be creating a competitive advantage for some entrants to the marketplace (AT&T Motion on Scope at 5).[(13)]

The fundamental premises for relitigating the rates would be that the FCC's avoided cost and TELRIC methods did not control and could be improved upon by exercise of Department discretion. AT&T reinstated the FCC's methods and, in doing so, circumscribed Department discretion to deviate from those methods.[(14)] As pointed out by Bell Atlantic: "[b]ut for the fact that the FCC rules had been stayed (and later voided) by the 8th Circuit, those concurrently established rates would have been the Department's permanent rates" (Bell Atlantic Reply Comments at 2). The interim rates were fully litigated and were correctly based on the FCC's methods.

Nevertheless, the CLECs assert that Bell Atlantic's 1996 cost study is seriously flawed in terms of its method, and is outdated (AT&T Comments at 5, MCI Comments at 4, RCN Reply Comments at 2). We do not agree. The Department approved a cost study for Bell Atlantic that was consistent with the FCC's TELRIC method in our Phase 4 Order.[(15)] The CLECs argue that because certain information contained in Bell Atlantic's 1996 cost study on UNE rates may not be the most recent information available to Bell Atlantic in March, 1999, the rates in that 1996 cost study are necessarily suspect. The claim that more current data exist today is likely always to be true for any telecommunications cost study performed several years ago. However, the UNE cost study is by its very nature "forward looking." Accordingly, the Department concludes that it can withstand short-term anomalies in Bell Atlantic's costs.

As noted above, AT&T argues that the due process rights of parties that did not participate in Consolidated Arbitrations would be "improperly and unfairly sacrificed" if the interim rates are made permanent (AT&T Comments at 5). AT&T's is a jus tertii[(16)] argument, and its standing to assert the rights of an absent third party is not established.

Putting aside the question of whether AT&T has standing to argue on behalf of certain unnamed carriers, nothing in this Order, or any previous Department order, precludes a carrier not a party to Consolidated Arbitrations from petitioning the Department to modify policies, including rates, determined in those proceedings. The Department will review such petitions in the same light as it does any petition for modification of existing Department policies. However, because the Department fully and fairly litigated the current rates, a petitioner would have a high burden to overcome to persuade the Department to modify the current resale discounts and UNE rates.

Absent some compelling circumstance, the Department will only undertake a review of the resale discounts and UNE rates every five years. Bell Atlantic notes that the five-year period is coterminous with the terms of many of its existing contracts with CLECs (Bell Atlantic Brief at 18). In addition, AT&T's own witness supports a five-year review, assuming current rates are properly calculated.[(17)] As discussed above, we have found that the FCC's methods are accurately incorporated into these rates. Accordingly, we determine that a five-year period between Department reviews is reasonable. The Department might perform a review of these rates at shorter intervals upon a convincing demonstration that technological or regulatory change has affected Bell Atlantic's costs to such an extent that, unless the rates are modified, carriers will be improperly disadvantaged.

In summary, the Department finds that it correctly applied the FCC's avoided cost and TELRIC methods in Consolidated Arbitrations. We find further that the parties to that proceeding fully litigated how the Department was to implement those methods. Because no compelling or significant regulatory or technological change has occurred since December, 1996, that would cause us to conduct an out-of-cycle (i.e., less than five years) review of the Phase 2 Order and Phase 4 Order, we decline to protract these investigations. The benefits of doing so do not outweigh the costs. For the reasons stated above, we determine that the resale rates contained in the Phase 2 Order and the UNE rates contained in the Phase 4 Order shall be in effect until December 2001.

V. ORDER

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

ORDERED: That Bell Atlantic's Motion to Adopt Permanent UNE Rates is hereby GRANTED; and it is

FURTHER ORDERED: That the resale discount rates contained in the Phase 2 Order of Consolidated Arbitrations be made permanent; and it is

FURTHER ORDERED: That absent a significant technological or regulatory change that substantially affects Bell Atlantic's costs to the detriment of other carriers, the

Department will review the resale and UNE rates set forth in Consolidated Arbitrations approximately every five years following the date the Phase 2 Order and Phase 4 Order in Consolidated Arbitrations were issued; and it is

FURTHER ORDERED: That Phases II and III of this investigation are hereby closed.

By Order of the Department,

Janet Gail Besser, Chair

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

FURTHER ORDERED: That absent a significant technological or regulatory change that substantially affects Bell Atlantic's costs to the detriment of other carriers, the Department will review the resale and UNE rates set forth in Consolidated Arbitrations approximately every five years following the date the Phase 2 Order and Phase 4 Order in Consolidated Arbitrations were issued; and it is

FURTHER ORDERED: That Phases II and III of this investigation are hereby closed.

By Order of the Department,

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

1. See Local Competition, D.P.U. 94-185-C (1997).

2. Consolidated Arbitrations, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 (Phase 2 Order)(December 2, 1996) ("Phase 2 Order").

3. See page 2 below for an explanation of the three phases in this docket.

4. The Department established the interim UNE rates in Phase 4 of Consolidated Arbitrations. Consolidated Arbitrations, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94

(Phase 4)(December 6, 1996) ("Phase 4 Order").

5. The issue of the reasonableness of the FCC's pricing method was not before the Court. AT&T, Nos. 97-826 et al., slip op. at 6 n.3 (S.Ct. Jan. 25, 1999).

6. Section 252(c)(2) directs state commissions to "establish any rates for interconnection, services, or network elements" according to the pricing standards set forth in section 252(d) when arbitrating open issues and imposing conditions upon the parties to the agreement. 47 U.S.C. § 252(c)(2).

7. In order to provide in-region interLATA services, Bell Atlantic must apply for and receive approval pursuant to the provisions of the Telecommunications Act of 1996 commonly referred to as "section 271." 47 U.S.C. § 271.

8. The discount levels advocated by the CTC/TRA witness are higher than the resale discounts contained in the Phase 2 Order: 27.68 percent for resellers using Bell Atlantic operator services versus the interim rate of 24.99 percent (CTC/TRA Reply Comments at 2).

9. The Supreme Court vacated rule 47 CFR § 51.319, which sets forth a list of UNEs that ILECs must make available to requesting CLECs. Although the ILECs' obligation to make UNEs available to CLECs is a requirement of the Act, the specific UNEs that ILECs must make available remains uncertain because of the AT&T decision (MediaOne Comments at 1).

10. 47 U.S.C. § 252.

11. On October 15, 1996, the Eighth Circuit Court of Appeals stayed temporarily, pending final review, the operation and effect of the FCC's pricing rules. Iowa Utilities Board v. FCC, 109 F.3d 418 (8th Cir.), motion to vacate stay denied, 117 S. Ct. 429 (1996). After the issuance of the Phase 2 Order and Phase 4 Order, the Eighth Circuit vacated the FCC's pricing rules on July 18, 1997, in Iowa Utilities Board v. FCC, 120 F.3d 753 (1997).

12. Continuing interim rates can, and in our judgment, would cause considerable, unwarrantable, commercial uncertainty. For this reason, we decline to suspend our decision to make these rates permanent until a court rules on the reasonableness of the FCC's rules, as argued by MediaOne (MediaOne Comments at 2).

13. For this reason, we reject the argument of CTC/TRA that regardless of what the Department decides with respect to UNE rates, the Department should continue with Phase II and adopt as permanent the discounts advocated by their witness (see CTC/TRA Reply Comments at 2).

14. We note that new challenges are being made to the validity of those rules, this time on the grounds that the rules do not provide adequate compensation to ILECs.

15. We note that reconsideration was sought on some issues and addressed in Consolidated Arbitrations, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 [(2-A)(February 5, 1997)][(2-B, 4-B)(May 2, 1997)][(4-A)(February 5, 1997)][(4-C)(June 27, 1997)][(4-D)(June 27, 1997)].

16. Right of a third party (Black's Law Dictionary).

17. During the September 24, 1998 hearing, AT&T's witness, Dr. Ordover, testified that since the Department is "comfortable with revisiting the price caps in Massachusetts every five years . . . that's the right place to start . . ." (Tr. 1, at 60). He continued that this period for review "may depend on the extent to which there are substantial . . . shocks to the system . . . [or] [t]here's a great deal of technological change" (id.). Finally, he states that he "certainly [does] not recommend that every year [the carriers] get together in Boston and rehash [UNE rates]" (id.).