COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its Own Motion as to the Propriety of the Rates and Charges Set Forth in the Following Tariffs: M.D.T.E. Nos. 14 and 17, filed with the Department on December 11, 1998, to become effective January 10, 1999, by New England Telephone and Telegraph Company d/b/a Bell Atlantic Massachusetts

D.T.E. 98-57

REPLY BRIEF OF AT&T COMMUNICATIONS OF NEW ENGLAND, INC.

Introduction.

AT&T Communications of New England, Inc. ("AT&T") submits this reply brief to respond to a number of issues addressed in the initial brief of New England Telephone and Telegraph Company d/b/a Bell Atlantic Massachusetts ("Bell Atlantic" or "BA-MA"). As emphasized in AT&T's initial brief, and as illustrated by the variety of issues raised in the initial briefs of other CLECs who have participated in this docket, the deficiencies in Bell Atlantic's proposed Tariff 17 are so numerous and significant that the Department should reject the tariff filing in its entirety and order Bell Atlantic to submit a revised tariff filing (a) that provides CLECs with complete and non-discriminatory rates, terms and conditions for all UNEs and interconnection arrangements which Bell Atlantic is required to make available, (b) that provides user-friendly tables that identify all charges that will apply to CLECs in various scenarios and (c) that is supported by properly documented TELRIC cost studies. AT&T is addressing here only certain issues raised in Bell Atlantic's initial brief. AT&T will not restate all of the concerns identified in its initial brief, upon which it continues to rely.

In this reply brief, AT&T will focus on misleading representations made by Bell Atlantic regarding the relationship between tariffs and interconnection agreements ("ICAs"), general tariff terms, Bell Atlantic's GRIP proposal and a number of aspects of Bell Atlantic's proposed collocation offerings. AT&T will not address issues regarding Bell Atlantic's Enhanced Extended Link ("EEL") offering in this reply brief as those issues have been thoroughly addressed in the initial briefs of AT&T and MCI WorldCom, Inc. and Bell Atlantic's initial brief adds nothing of significance to the debate.

Reply Argument.

BELL ATLANTIC SHOULD NOT BE PERMITTED TO USE TARIFF LANGUAGE TO AVOID ITS OBLIGATIONS UNDER APPROVED INTERCONNECTION AGREEMENTS.

Bell Atlantic appears to support the Department's policy that approved tariff language will supersede corresponding arbitrated language in an interconnection agreement. Bell Atlantic, however, has made clear that it is troubled by a scenario where negotiated ICA terms that it believes it should be able to rely upon, and wants to rely on, can be changed in the context of a tariff proceeding. Why does Bell Atlantic distinguish between these two situations? Because Bell Atlantic has a control advantage that allows it to propose tariff terms that will supercede arbitrated provisions that it does not like, but not supersede arrangements it finds acceptable in a particular situation where it has agreed to them. It is troubled by the prospect of negotiated provisions being raised for review in a tariff proceeding because in the particular situation in which it negotiated the provision, Bell

Atlantic found it acceptable and does not want tariff language to change it. There is no mystery to Bell Atlantic’s approach; it wants to be able to improve its position with respect to contracts with CLECs, but does not want CLECs to have the same opportunity to improve their position at the expense of Bell Atlantic.

AT&T Agrees With Bell Atlantic That Tariff Provisions Should Not Supercede Negotiated Terms Of Interconnection Agreements.
Bell Atlantic argues that it should be "entitled to the benefit of its bargain" with respect to negotiated ICA terms and argues that "tariff provisions should not supercede negotiated terms of interconnection agreements." For reasons outlined in its initial brief, AT&T agrees with this argument that the Department should revisit its statement on the MediaOne Arbitration decision in D.T.E. 99-42/43, 99-52 that tariff language could, at the discretion of the Department, supercede provisions in previously executed ICAs that were negotiated by the parties.

Bell Atlantic’s Own Logic Suggests That Tariff Provisions Should Not Supercede Arbitrated Terms Of Interconnection Agreements.
Similar logic to that Bell Atlantic relies on in arguing that tariff language should not impact negotiated provisions suggests that CLECs also should be "entitled to the benefit" of ICA provisions that were determined through lengthy and hard-fought arbitration proceedings mandated by the Telecommunications Act. Bell Atlantic had the opportunity to seek reconsideration in the arbitration proceedings, an opportunity it took advantage of on several occasions in the Consolidated Arbitrations, and should not be permitted what amounts to unlimited additional opportunities, with no time limitation, to seek further reconsideration by filing proposed tariff language. Bell Atlantic’s continued advocacy of the GRIP proposal explicitly rejected in the MediaOne arbitration illustrates the opportunity for abuse that the Department policy gives to Bell Atlantic.

Another example of how Bell Atlantic seeks to take advantage of this opportunity can be found at Part M, § 2.10.1, page 20, where Bell Atlantic identifies the charges it seeks to impose under the tariff for Call Usage Detail ("CUD") records. These charges were rejected by the Department in the Consolidated Arbitrations Phase 4-L Order dated October 14, 1999. Bell Atlantic moved for reconsideration and, in its Phase 4-O Order on Motions for Reconsideration, the Department clarified that Bell Atlantic may not recover its proposed Call Usage Detail Charges because such computer-related costs already are recovered through Bell Atlantic’s recurring rates and permitting a separate charge would amount to double-recovery of costs. Bell Atlantic has taken no steps to remove these charges from the tariff, and, if the charges had slipped through unnoticed and were approved, would be able to take the position that approval of the charges in the tariff supercedes the Department’s rejection of the charges in the prior arbitration proceeding. This result is completely unacceptable and highlights the need for CLECs, at a minimum, to be on clear notice of what Bell Atlantic is proposing in tariff filings and how it differs from Department arbitration decisions.

CLECs Should Not Bear The Burden Of Evaluating The Impact Of Routine Tariff Filings On Their Interconnection Agreements.
Bell Atlantic argues that it should not be required to notify CLECs of how proposed tariff provisions will impact existing ICAs. Instead, Bell Atlantic argues, each party should be required to follow what Bell Atlantic is doing and assess whether its ICA would be impacted. There are a number of problems with this argument. First, it is Bell Atlantic, and not the CLECs, who will know whether Bell Atlantic is trying to improve upon terms that were established through arbitration. If a change is hidden in a proposed tariff filing that, as Bell Atlantic acknowledges, CLECs "routinely face," it is far from certain that a CLEC even will realize that the tariff results in a change to its ICA. For example, assume a future tariff revision contains the CUD charges addressed above. Would the local service operations person who sees the seemingly modest proposed charges understand that they are inconsistent with the ICA and alert the lawyers? Not likely, because even if the ICA were reviewed for consistency, there would be nothing in the ICA concerning CUD charges because those charges were rejected in their entirety in the arbitration.

Further, if the Department itself is not alert to all terms of all ICAs, and all aspects of all arbitration decisions, and does not, sua sponte, determine that proposed tariff changes are "substantial and warrant investigation," then the CLECs will get no notice at all of proposed tariff changes, notwithstanding the fact that the changes could alter the terms of their ICAs. In such situations would the terms of the interconnection agreement change sub silentio while sitting in the CLEC's file cabinet? Would the CLEC discover the change only when Bell Atlantic notifies it on the next order that Bell Atlantic is no longer required to comply with a particular ICA provision?

If tariff language is to impact the terms of ICAs, and AT&T strongly urges the Department to reject this troubling general rule, Bell Atlantic must, at a minimum, provide notice to each impacted CLEC of exactly how the proposed language differs from the terms of the applicable ICA or from the related Department arbitration decision. If that is not done, Bell Atlantic should not be allowed to rely on the tariff language as superceding an arbitration decision.

The General Terms Contained In Part A Of The Proposed Tariff Are Not Reasonable.
Bell Atlantic is wrong when it states that the proposed tariff's general terms are reasonable and that "[t]hese terms and conditions have generally not been contested." AT&T and other CLECs have raised a number of concerns with the general terms and conditions of the tariff, as is evidenced in the initial briefs of the parties. AT&T will not revisit all of its concerns with the general tariff terms in this reply brief, but instead will focus on several issues raised by Bell Atlantic in its initial brief.

Bell Atlantic's Proposed Network Change Rights Are Not Reasonable.
The proposed tariff gives Bell Atlantic unfettered discretion to make network changes that can impact the quality of service CLECs are able to provide to their customers. In response to the concerns raised by CLECs, Bell Atlantic says that it "is willing to modify its proposal to include language that required BA-MA to provide CLECs with reasonable notice of network changes that may be service affecting." That is not good enough. Offering to provide notice that CLEC customers will be put out of service hardly solves the problem. Certainly, if CLECs were in a position to make network changes that could result in service disruptions for Bell Atlantic's customers, Bell Atlantic would be, and should be, screaming that it must be involved in the change process to protect its customers and its relationship with its customers.

AT&T is not suggesting that network changes never should be implemented, but merely that it must have some involvement in such changes that could affect its costs and the quality of its service to its own customers. AT&T has proposed that the tariff include a joint design process involving both the CLEC and Bell Atlantic where a network change will affect the CLEC's services to its customers, with recourse to the Department to resolve any dispute and to preclude any party from taking unreasonable positions. Bell Atlantic has no incentive to design network changes to reduce the impact on its competitors; indeed it has just the reverse incentive. A joint planning process would insure that (1) the change is in fact necessary, and (2) the network change is accomplished in a way that is least likely to impact CLECs negatively. Clearly, there is a planning process that Bell Atlantic itself must undertake in making network changes. Including the CLECs in that process when their interests are involved is reasonable and necessary.

Bell Atlantic's Decision To Omit Performance Standards From The Tariff Is Not Reasonable.
As discussed in AT&T's initial brief (Section III.B.4), Bell Atlantic's self-serving decision to exclude performance standards from the tariff is inappropriate. In its initial brief, Bell Atlantic confirms CLEC fears concerning the performance standards it will (or will not) be able to rely upon when it orders under the tariff. CLECs, Bell Atlantic says, would have to negotiate separately for performance standard, which might result in use of the performance standards established in the Consolidated Arbitrations, but could also result in use of "any performance structure established by BA-MA." Given Bell Atlantic's steadfast refusal

to incorporate the Consolidated Arbitrations performance standards in the tariff, it is far more likely that Bell Atlantic, which will have no incentive to negotiate reasonable performance standards, will insist on some other lesser performance standards it decides to establish rather than the Consolidated Arbitrations performance standards considered and approved by the Department (or any other performance standards approved by the Department as part of an "antibacksliding plan" to be implemented upon Bell Atlantic's Section 271 approval). Indeed, if the Department were to agree with Bell Atlantic that no performance standards apply to orders placed and service taken under Tariff 17, Bell Atlantic may argue that the Department's refusal to adopt such standards for the tariff supersedes the Consolidated Arbitrations award establishing those standards and therefore eliminates them from ICAs as well.

Bell Atlantic's Proposed Dispute Resolution Procedures Are Inadequate To Address Service-Affecting Disputes.
Bell Atlantic's proposal that the dispute resolution process established in D.P.U. 94-185, as described at page 15 of Bell Atlantic's initial brief, is sufficient to resolve disputes that may arise under Tariff is not reasonable because it does not address the need to resolve service-affecting disputes on an expedited basis. The process arrived at in D.P.U. 94-185 was not, as Bell Atlantic claims, the result of a Department investigation that "followed the passage of the [Telecommunications] Act." In fact, the investigation took place prior to passage of the Act, with only reply briefs and the Decision following passage of the Act. This distinction has some significance because it reveals that the D.P.U. 94-185 procedures, while well-intentioned, do not have the perspective of an actual competitive environment with real, as opposed to theoretical, concerns.

AT&T does not object to using the D.P.U. 94-185 dispute resolution procedures when addressing non-service-affecting disputes. Indeed, the non-service-affecting dispute resolution procedures in the AT&T ICA are quite similar to those arrived at in D.P.U. 94-185. However, when disputes have an effect on the ability of a CLEC to provide uninterrupted high-quality service to its customers, it is imperative that dispute resolution follow an expedited track. When the ability of a CLEC to provide service to its customers is at issue, the D.P.U. 94-185 dispute resolution procedures, which take upwards of five months to reach Department resolution, are wholly inadequate. In the case of service-affecting disputes, the Department should order that Tariff 17 incorporate the reasonable expedited procedures contained in Section of 16 C. of the General Terms and Conditions of the AT&T ICA and reproduced below:

(C) Service Affecting Disputes:

If a service affecting dispute arises between BA and AT&T during the Term of the Agreement, the following process, which shall be overseen by the Department, shall be followed to resolve such dispute. Any disputes over a matter that directly affects the ability of a Party to provide uninterrupted high-quality services to its customers shall be considered a service affecting dispute. However, in the sole discretion of the Party identifying the existence of the service affecting dispute, said dispute may be resolved in accordance with the general procedures/timeframes for a non-service affecting dispute, as described above. The Parties agree that disputes regarding collocation remedies in Exhibit A to Part III hereof shall not constitute service affecting disputes.

(1) Informal Negotiation of Service Affecting Dispute.

If the Parties have a service affecting dispute either Party may initiate the procedures set forth herein by providing notice of the existence of a service affecting dispute as set forth in Section 17 of the General Terms and Conditions of the Agreement. The petitioning party shall also serve the Department and the Inter-Company Review Board with a copy of the notice.

(a) The Parties shall have an initial 5 business day period beginning from the date on which either Party has provided written notice to the other Party identifying the existence of a service affecting dispute and seeking to resolve it, within which to resolve the dispute themselves through the Inter-Company Review Board, without mediation or arbitration as provided below, except as set forth in subsection (b) below. The Parties shall make a reasonable effort to meet as often as necessary but not less than once in an effort to resolve the dispute.

(b) The Parties may also mutually agree to other informal resolution processes for specific circumstances, including, but not limited to commercial mediation or arbitration prior to requesting the Department to initiate mediation or arbitration of a service affecting dispute between BA and AT&T.

(2) Formal Expedited Investigation/Arbitration of Service Affecting Dispute by the Department

If the Inter-Company Review Board is unable to resolve a service affecting dispute within 5 business days (or such other period agreed to in writing by the Parties) either Party may petition the Department for expedited consideration and disposition of such dispute pursuant to paragraph B(2)(c) above. There shall be no period of mediation. The other Party shall assent to such request for expedition. In addition, to the extent technically and operationally feasible, the Party against whom the complaint has been made, shall take immediate remedial action to correct the service affecting condition, without prejudice to its position on the merits of the dispute or its right to recover any costs incurred in implementing an interim solution. The staff person or arbitrator appointed by the Department shall issue and serve his or her decision and award on the Parties within 10 business days of the close of the investigation/arbitration. Such decision shall be submitted for approval by the Department, unless otherwise provided by the Department.

Bell Atlantic’s Refusal To Accept Liability For Its Own Gross Negligence Is Not Reasonable.
Gross negligence is an act or omission of an aggravated character as distinguished from a mere failure to exercise ordinary care. Bell Atlantic proposes that it be immunized from liability for interruptions in CLEC service that result from its gross negligence. In support of that proposal, Bell Atlantic emphasizes that other tariffs limit such liability to the more egregious willful misconduct standard. While that may be true, there is a critical distinction here that requires Bell Atlantic be responsible for its gross negligence. Unlike historic tariffs, Tariff 17 does not simply govern the relationship between a carrier and its customers; Tariff 17 involves a mandatory relationship between Bell Atlantic and its competitors, a relationship that Bell Atlantic has every incentive to make as difficult as possible for the competitors. Bell Atlantic simply cannot be permitted to engage in acts of gross negligence that will result in interruptions in CLEC service and drive retail customers back to the more reliable incumbent carrier. Thus, contrary to Bell Atlantic’s argument, it is not the terms of other tariffs "that are relevant to an analysis of equal or mutual obligations," but rather the terms of other agreements that govern the relationship between Bell Atlantic and its competitors. AT&T has proposed that the tariff include the same liability limitation standard as Section of 9.2 of the General Terms and Conditions of the AT&T ICA, which limits the liability of AT&T and Bell Atlantic to each other to acts of gross negligence or willful misconduct. This proposal is reasonable; Bell Atlantic’s self-serving proposal is not.

Bell Atlantic’s Initial Brief Offers No Reason To Adopt Its GRIP Proposal.
Bell Atlantic offers little in its initial brief on the GRIP issue that AT&T did not already address in its initial brief. Only a few points warrant additional AT&T comment.

Bell Atlantic’s Reliance on The New York Commission’s Decision in The Sprint Arbitration Is Misplaced.
In its initial brief, Bell Atlantic cited to a New York Public Service Commission ("NYPSC") decision that Bell Atlantic suggests supports its GRIP proposal in this

proceeding. As Bell Atlantic admits, however, the NYPSC did not in fact rule on GRIP at all. Moreover, the ruling that it did make is entirely consistent with AT&T's position that the GRIP proposal should be rejected in its entirety.

In Case No. 99-C-1389, Order Resolving Arbitration Issues, at 13-14 (January 28, 2000), ("NYPSC Decision") the NYPSC expressly refused to adopt Bell Atlantic's GRIP proposal. It stated:

The Commission declines to adopt Bell Atlantic-New York's GRIP proposal at this time. A full examination of the GRIP proposal will be conducted in Case 98-C-1357 and it would be improper to prejudge the results of that proceeding here.

The NYPSC ruled only that Sprint may not require Bell Atlantic to interconnect with Sprint's network at only one point. Under the NYPSC's ruling, Bell Atlantic may deliver its traffic to Sprint "at any technically feasible points it chooses to deliver traffic to Sprint, as long as Bell Atlantic-New York is willing to bear the costs of constructing and maintaining any such facilities."

The NYPSC's ruling is entirely consistent with AT&T's position in this case, because the NYPSC does not require Sprint to build out its network in order for Bell Atlantic to interconnect and deliver Bell Atlantic traffic to Sprint. On the contrary, the NYPSC requires Bell Atlantic to build the facilities necessary to reach and interconnect with Sprint's existing network. Moreover, the NYPSC Decision does not relieve Bell Atlantic from bearing the full cost of carrying its customers traffic to the destination end-user. If Bell Atlantic were to interconnect with the Sprint network at a point closer to the Bell Atlantic end-user originating the call, Sprint would still be entitled to charge reciprocal compensation to recover the cost of carrying that call all the way to the Sprint switch and out to the Sprint end-user. In short, while the NYPSC Decision allows Bell Atlantic to choose more than one point on the existing Sprint network to interconnect, it does not relieve Bell Atlantic of any cost responsibility for bringing the calls of its customers all the way to the destination end-user on the Sprint network.

The Fact That A CLEC May Establish A Single Interconnection Point In A LATA Is Not Relevant To The GRIP Issue.
Bell Atlantic's initial brief makes much of the fact that somehow it needs GRIP, because CLECs may establish a single interconnection point for the LATA. While it is true that CLECs may establish a single interconnection point in a LATA, it is not true that Bell Atlantic incurs any more "increased" costs as a result of the single interconnection point than the CLEC itself incurs. The right of a CLEC to establish a single interconnection point if it wants to, therefore, does not in any way rebut or undermine the analysis that AT&T presented in its initial brief. For CLECs which have a single interconnection point with Bell Atlantic, it is still true that, in the absence of GRIP, both Bell Atlantic and the CLEC have an incentive to negotiate the most efficient interconnection arrangement and it is still true that implementation of the GRIP proposal would shift all interconnection costs to the CLEC and eliminate any incentive Bell Atlantic would have to negotiate more efficient interconnection arrangements.

The foregoing conclusions are illustrated in the diagram attached at Tab A to this reply brief. In this diagram, it is assumed that the point of interconnection between the two networks is at Point "X," which is close to, or even collocated in the office of, BA Tandem 1. It is also assumed that no GRIP requirement is in place.

When Bell Atlantic Customer F calls CLEC Customer E, Bell Atlantic has a number of different choices for bringing the call to the point of interconnection. It could route the call from BA End Office 3 to BA Tandem 2, where it is switched and transported to BA Tandem 1, where it is switched again to the point of interconnection ("Alternative 1"). Alternatively, it could route the call to BA Tandem 2 and switch it there to a direct trunk to the point of interconnection ("Alternative 2"). Alternatively, it could establish a direct trunk from BA End Office 3 to the point of interconnection ("Alternative 3"). As volumes increase, Bell Atlantic would have an incentive to move from Alternative 1 to Alternative 2 and eventually to Alternative 3. In all cases, Bell Atlantic bears the cost of delivering the call all the way to Customer E.

Similarly, when CLEC Customer E calls Bell Atlantic Customer F, the CLEC bears all of the costs of delivering the call to Customer F. That means that, if it did not build or lease direct trunking, it would pay Bell Atlantic all the reciprocal compensation charges associated with (a) switching the call at BA Tandem 1, (b) transporting the call to BA Tandem 2, (c) switching the call at BA Tandem 2, (d) transporting the call to BA End Office 3 and (e) switching the call at BA End Office 3. As call volumes increase, this arrangement will become prohibitively expensive and the CLEC will have an incentive to build or lease trunks to deliver the calls to a point on Bell Atlantic’s network that is closer to Customer F.

Thus, in the absence of GRIP, both parties’ interests coincide. Both parties have an interest in eliminating the more expensive route alternative when volumes become significant enough to justify direct trunking. The parties may agree to bear their own costs for building trunks to transport directly their own customers’ calls all the way to the other carrier’s network (i.e., each party may agree to build its own one way trunks between BA End Office 3 and the interconnection point. Alternatively, the parties may agree to establish a meet point (somewhere between BA End Office 3 and the interconnection point) to which each side would build trunks. As even Bell Atlantic agrees, the specific interconnection arrangements would need to be negotiated for each situation.

If Bell Atlantic’s GRIP proposal were implemented, Bell Atlantic would have no incentive to agree to more efficient direct trunking as call volumes increase. The full cost of interconnecting the two networks would fall on the CLEC for traffic in both directions. Given the enormous capital demands already placed on CLECs in the nascent stages of local exchange competition, imposing the full cost of interconnection on them as well will likely delay the implementation of more efficient interconnection arrangements – interconnection arrangements that would be implemented more quickly if Bell Atlantic were sharing its portion of the cost. More importantly, it is an anticompetitive barrier to the entry and expansion of CLECs in the local exchange market.

Contrary To Bell Atlantic’s Contention In Its Initial Brief, Bell Atlantic’s "Increased" Costs Associated With Interconnecting In A Multi-Carrier Environment Are Unsupported and Unproven.

In light of the flaws demonstrated by Mr. Turner, and the admission made by Ms. Gorman, it is hard to believe that Bell Atlantic continues to argue in its initial brief that Bell Atlantic incurs "a significant incremental cost . . . for transporting local calls to a CLEC single location within the LATA." Indeed, Bell Atlantic’s claim that "Ms. Gorman relied on actual traffic distributions, as well as actual trunk mileage data for trunks originating from BA-MA’s end office and tandem to the CLEC’s POI" is almost laughable, given the record that has been developed in this case.

Mr. Turner states the issue succinctly in his testimony:

[T]he assumptions used by Bell Atlantic in developing its cost comparison are inaccurate and unsubstantiated. Moreover, these inaccurate and unsubstantiated assumptions are central to the cost differences for which Bell Atlantic is seeking redress.

AT&T will not restate all of the flaws of the Bell Atlantic cost study, but will address Bell Atlantic’s claim in its initial brief that "Ms. Gorman relied on actual traffic distributions, as well as actual trunk mileage data for trunks originating from BA-MA’s end office and tandem to the CLEC’s POI."

Bell Atlantic’s Traffic Distribution Assumptions Are Unsupported.

In its initial and in its first revised cost study, Ms. Gorman assumed that Bell Atlantic never requires a tandem to complete a local call. In other words, zero percent of calls within Bell Atlantic’s network are inter-office tandem routed calls. However, as Mr. Turner testified:

If this were actually the case, Bell Atlantic would not need any local tandems. Yet any efficient network architecture readily uses tandems. Bell Atlantic’s failure to use tandems effectively would cause it to significantly over-engineer its transport network to account for having no tandem routing options for network call flow.

Put another way, if Ms. Gorman’s assumption of zero percent tandem routed local calls were true (an assumption that she later backed away from), Bell Atlantic would need to build sufficient inter-office trunk capacity to handle peak flows between offices, even though such capacity would be required for only a limited period each day and year. These trunks would remain under utilized for most of the day and year. Such a network would be overbuilt and inefficient.

A lower percentage of tandem routed local calls has the effect of increasing the estimate of costs. Hence, if it is true that zero (or even a very low non-zero number) percentage of local calls is tandem routed, it is Bell Atlantic’s inefficiently engineered network that is causing a significant portion of the costs that Ms. Gorman estimates. Bell Atlantic should not be able to recover costs from its competitors which are really costs of an inefficiently engineered network.

It turns out, however, that the zero percent assumption was wrong. The Bench challenged Ms. Gorman on this assumption, noting that Bell Atlantic had asserted a different percentage in another proceeding. Ms. Gorman resisted the Bench’s suggestion that Bell Atlantic’s tandem routed percentage may be greater than zero even though her only basis for the zero percent was a zero assumption that had been used in cost studies from the 1980s that Bell Atlantic (then NYNEX or New England Telephone) had submitted to the Department in dockets during that decade. Indeed, she had made no attempt to find out what traffic studies might show about the percentage of tandem routed calls:

Q. In connection with the preparation of this analysis, did you speak with any engineers regarding traffic flows?

A. I spoke with my marketing organization, who provided me with the information I needed to conduct the study.

Q. I guess my question is, did you speak with anyone that indicated that they had knowledge of the results of recent traffic studies between end offices?

A. No, I did not.

Q. Are you aware whether any such studies have been done?

A. No, I am not.

However, after the close of hearings, and after opposing parties have no further opportunity to conduct discovery or cross-examination, Mr. Gorman finally spoke to someone and has revised her assumption of the percentage of tandem routed local calls from zero to 10% busy hour. She has no empirical basis for this new assumption, however. She admits that "[a]ctual data for determining the allocation of the universe of inter-office local calls is [sic] not available." Indeed, Ms. Gorman does not state how she knows that "approximately 90% of busy hour local interoffice traffic (between two end office switches) completes over the high usage trunk group connecting these switches, and 10% of the local traffic completes through the tandem" beyond an assertion that Bell Atlantic’s "current trunk design techniques" should produce this result and even this assertion is unsupported. She provides no information regarding the source of her trunk design information and the assumptions underlying it. Moreover, there is no evidence that this is an efficient design that, when assumed in her cost study, will ensure that Bell Atlantic is not attributing to interconnection costs costs that arise from an inefficiently designed network.

Ms. Gorman’s revised estimate (based, as it is, on an untested assumption of 10% tandem routed) was not even requested in DTE RR 104. Bell Atlantic’s non-responsive answer, in which it provides yet another revised cost estimate after the close of hearings when it cannot be tested, is yet another example of the procedural abuses of Bell Atlantic that have become all too common place in this proceeding. The revised estimate should be struck from the record. In any event, even if it is not struck, an estimate based on a study and assumptions submitted after the evidentiary phase of the proceeding is complete and without being subject to discovery and cross examination cannot constitute substantial evidence in support of an agency finding. If the Department were to make a finding or issue a ruling based on the validity of Ms. Gorman’s untested and unsupported cost "analysis" it would be subject to reversal on the ground that it is not based on substantial evidence.

Ms. Gorman’s Trunk Mileage Estimates Are Overstated And Improperly Applied.
Ms. Gorman developed her weighted mileage estimates from number-of- trunk based weights. She then used them to derive a cost estimate based on minute based rates. As Mr. Turner explains, this is an error that produces inflated cost estimates:

Bell Atlantic weighted this analysis with the number of trunks going across the circuit mileage. This is incredibly misleading. For example, interconnection between AYERMAPLDS0 (Ayer, MA, population 6,900) and BSTNMALB1MD (Boston, MA) is weighted as 7,918 "Total Mileage" and equals the trunk quantity (24) multiplied by the circuit mileage (329.92 miles). Twenty-four trunks is the minimum trunk capacity that would be installed by a CLEC. There may be virtually no traffic over these trunks. Contrast this with the interconnection between BSTNMABEDS9 (Boston, MA) and BSTNMACOGMD (Boston, Ma) that is weighted as 8,540 "Total Mileage." This is almost the same weighting as between Ayer and Boston. Yet, the Boston-to-Boston interconnection is for 384 trunks over 22.24 miles. These 384 trunks will have considerably more traffic on them per trunk than the 24 trunks that go between Ayer and Boston. As such, the weighting per trunk should be much greater on a per minute basis, but Bell Atlantic has not done the analysis this way.

Applying rates that are weighted by heavy traffic usage in Boston to mileage that is weighted by the greater length of trunks outside Boston is obviously going to produce a cost estimate that is substantially inflated.

Second, Ms. Gorman’s interconnection miles are overstated and make no sense. Mr. Turner’s prefiled testimony makes this clear:

If you look on a map between Ayer and Boston, for instance, you will find that the linear distance is approximately 30 miles. By car, this distance may be 35 miles. However, you would have to drive from Boston to Pittsfield and back (and then some) to get to the 329.92 miles that Bell Atlantic has included between Ayer and Boston. I have a considerable amount of experience with transport cost studies and I know that circuits do not travel in straight lines. However, many of the circuit distances Bell Atlantic is accounting for in this analysis appear extremely overstated. Just for example, Bell Atlantic shows the circuit distance from Gloucester to Boston as being 320.04 miles or Groton to Boston as being 308.87 miles. However, my favorite example may be the distance from Ayer to Quincy. To get from Ayer to Quincy, one most go through Boston (in a straight line). Remember that the distance from Ayer to Boston was 329.92 miles; however, the distance from Ayer to Quincy is only 232.29. This mileage is still outrageous. But, there is no way for these mileages to be reliable when the circuit distance from Ayer to Quincy, which would likely pass through offices in Boston, would be almost 100 miles shorter than the circuit distance from Ayer to Boston.

In summary, Bell Atlantic’s interconnection mileage study cannot be relied upon because it was not weighted properly (with interconnection minutes) and unreliably accounts for interconnection mileages.

To The Extent That Bell Atlantic Has Costs Associated With Interconnection In A Multi-Carrier Environment, It Should Recover Them In The Same Fashion That Its Competitors Do – Through The Rates It Charges Its End Users.

Bell Atlantic makes the argument that, because it did not contemplate the transport costs between BA-MA’s tandems and the CLEC interconnection point when it calculated its TELRIC rates, it should be allowed to recover such costs now from CLECs. Bell Atlantic claims that "there is no existing mechanism for recovery of these costs for traffic terminating from BA-MA’s network to the CLEC." Bell Atlantic’s claim is not only dead wrong; it also reflects the mentality of an unreconstructed regulated monopolist.

First, as AT&T has demonstrated through the testimony of Mr. Turner and the diagrams attached to its initial and reply briefs, CLECs bear precisely the same transport costs in the reverse direction, i.e., when the CLEC customer makes the call to a Bell Atlantic customer (his follows from the basic proposition that the carrier whose customer makes the call bears the cost). Second, given that all carriers bear the same "increased" transport cost associated with the interconnection of two networks and given that such costs are costs incurred as a result of each carrier’s customers making telephone calls, all carriers should recover those costs from their retail customers. Bell Atlantic’s complaint that "there is no existing mechanism for recovery of these costs" demonstrates a complete lack of understanding of the competitive market.

Bell Atlantic’s Proposed Collocation Terms Are Not Reasonable Or In Accordance With Department And Federal Guidelines.
As the initial briefs of AT&T and other CLECs emphasize, Bell Atlantic’s terms and conditions for the various collocation offerings are riddled with unreasonable and discriminatory provisions, improperly rely on discretionary ICB pricing and unsupported cost studies and are inconsistent with the requirements of the FCC and the Department. In fact, the problems with Bell Atlantic’s collocation proposals are so extensive that it would be a monumental task to identify each problem with specificity and AT&T has not attempted to do so. Instead, it has focused on the fundamental flaws with the proposal, flaws which support AT&T’s request that the tariff be rejected in its entirety and that Bell Atlantic be ordered to submit a revised tariff that addresses the numerous criticisms raised by AT&T and others.

AT&T will not revisit all of the problems with Bell Atlantic’s collocation proposals in this reply brief, but instead relies on the description of the deficiencies contained in its initial brief and notes that it agrees with the characterization of additional deficiencies identified in the thoughtful and well reasoned initial briefs of other CLECs. More specifically, AT&T supports the reasonable proposals contained in the initial brief of Rhythms Links, Inc. and Covad Communications Company regarding collocation intervals, collocation alternatives and in-place conversions from virtual to cageless physical collocation. In this reply brief, AT&T will limit its discussion of collocation issues to Bell Atlantic’s failure to comply with the Department’s Orders in D.T.E. 98-58, a proceeding that resolved certain collocation issues that Bell Atlantic is attempting to re-litigate in this docket.

Bell Atlantic Is Advocating Tariff Provisions That Are Inconsistent With The Department’s Resolution Of Issues in D.T.E. 98-58.
Bell Atlantic claims that its proposed Tariff 17 "reflects the Department’s order on collocation in D.T.E. 98-58, issued on July 30, 1999." That statement is inaccurate and misleading. The Department’s July 30, 1999 Order in D.T.E. 98-58 required a compliance filing, which Bell Atlantic originally made on August 13, 1999. In comments filed with the Department, AT&T and other CLECs took issue with a number of provisions in Bell Atlantic’s August 13, 1999 compliance filing. In response to those criticisms, Bell Atlantic filed revised tariff language on September 3, 1999 that addressed some, but not all of the CLECs’ issues. By Order dated September 17, 1999, the Department approved only certain portions of the August 13 and September 3 compliance filings and specifically withheld approval of certain proposed language that CLECs claimed was inappropriate. Although, as discussed below, it is not entirely clear which version of Bell Atlantic’s proposed collocation language currently is before the Department in this docket, Bell Atlantic appears to be advocating tariff language that does not even incorporate its September 3, 1999 revisions to the tariff and certainly is advocating that the Department adopt tariff language that was considered and not approved by the Department in D.T.E. 98-58.

The Tariff Language Filed In This Docket Appears To Be The Same As Bell Atlantic’s Original August 13, 1999 Compliance Filing And Improperly Does Not Include The Modified Language Approved By The Department In D.T.E. 98-58.
AT&T has had some difficulty even figuring out what language Bell Atlantic is proposing in this docket regarding the issues addressed in D.T.E. 98-58, but it appears that Bell Atlantic is advocating adoption of its original August 13, 1999 compliance filing language and has not incorporated the more reasonable provisions included in the September 3, 1999 that were approved by the Department. The September 3 submission was made by Bell Atlantic in response to criticisms by CLECs of its August 13 language. The September 3 language did address some, but not all, of the concerns raised by CLECs and the Department approved certain parts of the September 3 filing. Bell Atlantic should not be permitted to revert to its August 13 proposal.

One of the difficulties in figuring out what language Bell Atlantic is advocating is that the proposed language filed on September 3, 1999, and referred to by the Department in D.T.E. 98-58 as the "September 3 version," contains an "Issued" date of August 27, 1999 and an "Effective" date of September 26, 1999 (a copy of Bell Atlantic’s September 3, 1999 filing is attached to this reply brief at Tab B). The latest version of the collocation language at issue that AT&T shows as being filed in this docket also has an "Issued" date of August 27, 1999 and an "Effective" date of September 26, 1999, but is not the same as the September 3 version of the language. In fact, the most recent language filed in this docket appears to be simply a reproduction of the August 13 version of the language.

For example, the Part E, § 2.1.2 B. language filed in this docket provides that Bell Atlantic "will notify the CLEC if the application is incomplete" within five days of receipt of a collocation application. That is the same as the August 13 version. The September 3 version contains the proper language for this section, which provides that Bell Atlantic "if the CLEC’s application is not sufficient for the Telephone Company to process the request for space, will notify the CLEC, in writing, of the deficiencies" within five days. The Department’s September 17, 1999 Order regarding the compliance filings clearly specifies that it was approving "2.1.2.B (September 3 version)." The Department should order that Tariff 17 language include the version of the compliance filing language approved by the Department and not prior versions of the language that Bell Atlantic originally proposed.

The Department Should Not Approve Collocation Tariff Language That Was Considered And Not Approved in D.T.E. 98-58.
In the compliance filing phase of D.T.E. 98-58, the parties to that docket and this docket were permitted to, and did, file comments on the Bell Atlantic compliance filing and the Department subsequently approved certain portions of the compliance filing and not others. The Department specifically invited, with Bell Atlantic’s consent, the parties to D.T.E. 98-57 to participate in the compliance filing phase of the D.T.E. 98-58 proceedings because it was addressing the question of what tariff language would, and would not, be approved for inclusion in Tariff 17. The Department should not approve in this proceeding tariff language considered and rejected by the Department after soliciting comments from the parties. The Department should order Bell Atlantic to remove from Tariff 17 any language contained in its August 13 and September 3 compliance filings that was not approved by the Department. This will not be a difficult task as the Department explicitly identified by section and subsection the portions of the compliance filing that it was approving.

Perhaps the best example of language that was contested in D.T.E. 98-58, not approved by the Department, but still proposed by Bell Atlantic in this docket is the language in Part E, § 2.1.2 C. 3 that attempts to circumvent the Department’s Order that Bell Atlantic inform CLECs within 10 days of receipt of a collocation application whether collocation space is available. As AT&T argued in D.T.E. 98-58 (indeed, AT&T simply has reproduced its D.T.E. 98-58 comments on the compliance filing here):

In the July 30 Order, the Department ordered that:

If Bell Atlantic makes a determination that the CLEC’s application is complete or sufficiently complete, Bell Atlantic shall, within ten business days of receipt of the application, inspect the CO that is the subject of the application and inform the requesting CLEC in writing whether Bell Atlantic can accommodate the request for space.

July 30 Order at p. 15 (emphasis added). The Department determined that "ten business days is adequate for Bell Atlantic to inspect its CO and to inform the requesting CLEC whether physical collocation space is available." July 30 Order at p. 16.

Despite the unambiguous Department mandate that Bell Atlantic let CLECs know within ten business days following receipt of an application for space whether or not the request can be accommodated, in its proposed tariff language Bell Atlantic inserted a provision that would allow Bell Atlantic to take an additional twenty days to inform a CLEC whether a request can be accommodated. In Part E, Section 2.1.2, subpart C. of its proposed tariff language, Bell Atlantic properly included in the acceptable responses to be made to a CLEC within ten business days of an application for space: (1) a response that there is space available, and (2) a response that there is no space available. However, Bell Atlantic also provided itself with a third option that is not compliant with the Department’s order that Bell Atlantic complete a proper central office inspection and notify CLECs whether space is available within ten business days of receipt of an application. Bell Atlantic unilaterally grants itself a third option of notifying a CLEC within ten business days of receipt of a collocation application that:

There is no readily available space, however, the Telephone Company will determine whether space can be made available and will notify the CLEC within twenty business days. At the end of this period, the Telephone Company will provide the appropriate response (refer to Section 2.1.2B1 and 2.1.2B2).

Proposed Tariff, Part E., Section 2.1.2, subpart C.3. The practical effect of this provision is to give Bell Atlantic thirty days (rather than the ten days determined appropriate by the Department) to inspect the central office at issue and inform the CLEC that no space is available. In this way, the provision is directly at odds with the timeframes established in the July 30 Order and should be struck in its entirety.

In its September 17 Order in D.T.E. 98-58, the Department approved "2.1.2.C.1-2, 4 (September 3 version)." The Department, after considering AT&T’s argument, did not approve 2.1.2.C.3 of Bell Atlantic’s compliance filing. Yet, that section remains in the tariff language proposed by Bell Atlantic in this docket and Bell Atlantic continues to argue that the Department "should preserve the 20-day window for additional research on space availability."

Similarly, the Department, following comments by the parties challenging Bell Atlantic’s proposed central office tour restrictions, such as confidentiality agreements, contained in Part E, § 2.4.2 B, approved only the first sentence of Part E, § 2.4.2 B. The precision with which the Department designated which portions of the compliance filings would be approved illustrates just how thoroughly it already has reviewed the portions of the proposed tariff language contained in Bell Atlantic’s compliance filings. The Department should order that any provision contained in Bell Atlantic’s August 13 and September 3 compliance filings that was not approved by the Department in that docket not be included in Tariff 17.

Bell Atlantic’s Proposed Provisions For Billing And Collection Of Information Service Is Not Reasonable.

Bell Atlantic challenges AT&T’s assertion that the $0.02 Bell Atlantic proposed CLECs retain on the amount collected when a CLEC customer calls a Bell Atlantic information services number is inadequate. Bell Atlantic seemingly acknowledges the inappropriateness of that amount when it states that it is "willing to revise the tariff rate from $0.02 to $0.05." In fact, it appears from a review of Part C, Section 2.3.1 B. of the tariff that Bell Atlantic already has made that adjustment. Bell Atlantic has provided no cost-based support for the $0.05 figure, but apparently feels it is sufficient to argue that it is consistent with what it has agreed to in the past and is a great improvement over the equally baseless $0.02 figure. That Bell Atlantic initially proposed a number that is completely unreasonable and unsupported should not justify a higher number that still does not reflect the costs incurred by the CLECs in processing the calls and billing. At hearings, AT&T introduced evidence showing that the CLEC does "most of the heavy work" in processing such calls and that even the $0.05 Bell Atlantic is willing to share is not enough to cover the CLEC's cost. The amount a CLEC receives should be somewhere closer to $0.10. In light of the entire absence of cost-based support for Bell Atlantic's proposed number, AT&T proposes the number be adjusted to $0.08, a fair compromise between Bell Atlantic's proposal and the $0.10 that Mr. Jacobsen says is probably enough to cover the CLEC's costs.

BELL ATLANTIC'S SECOND ERRATA REPLY TO RECORD REQUEST 47 FURTHER CONFIRMS AT&T'S CONCERN THAT CLECS CANNOT DETERMINE FROM THE PROPOSED TARIFF WHAT RATES AND CHARGES WILL APPLY WHEN THEY ORDER UNBUNDLED NETWORK ELEMENTS FROM BELL ATLANTIC.

In its initial brief at Section III.A., AT&T highlighted its concern that the proposed tariff does not permit a CLEC to identify quickly and easily the charges it will have to pay by emphasizing that even Bell Atlantic cannot seem to figure out what charges apply in various scenarios. AT&T illustrated this point by noting Bell Atlantic's apparent difficulty in figuring out how to complete the rate application tables attached to Bell Atlantic's response to Record Request 47. Remarkably, after AT&T filed its initial brief Bell Atlantic provided further support for AT&T's point by filing a Second Errata Reply to its response to Record Request 47 in which it made substantial revisions to its prior attempts to complete the rate application table. Obviously, if Bell Atlantic has this much difficulty determining what charges apply under the tariff, and revises its conclusions on a weekly basis, a CLEC simply cannot determine the costs it will incur if it orders under the tariff. This result is unacceptable.

Bell Atlantic's latest representation as to how it intends to apply its charges was served on AT&T only two days before this reply brief is due. AT&T, therefore, reserves its right to file a supplemental reply brief, or additional testimony if necessary, regarding the substance of the Second Errata Reply to Record Request 47.

Conclusion.

For the reasons set forth in AT&T's initial brief, this reply brief and the briefs of other CLECs, the Department should reject Bell Atlantic's proposed Tariff 17 in its entirety and order Bell Atlantic to file a revised tariff that addresses the concerns raised by the participants in this docket.

AT&T COMMUNICATIONS OF NEW ENGLAND, INC.

Respectfully submitted,

____

Jeffrey F. Jones

Laurie S. Gill

Kenneth W. Salinger

Jay E. Gruber

Palmer & Dodge llp

One Beacon Street

Boston, MA 02108-3190

(617) 573-0100

Robert Aurigema

AT&T Communications of New England, Inc.

32 Avenue of the Americas, Room 2700

New York, NY 10013

(212) 387-5627

Dated: February 17, 2000.

An extra section break has been inserted above this paragraph. Do not delete this section break if you plan to add text after the Table of Contents/Authorities. Deleting this break will cause Table of Contents/Authorities headers and footers to appear on any pages following the Table of Contents/Authorities.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its Own Motion as to the Propriety of the Rates and Charges Set Forth in the Following Tariffs: M.D.T.E. Nos. 14 and 17, filed with the Department on December 11, 1998, to become effective January 10, 1999, by New England Telephone and Telegraph Company d/b/a Bell Atlantic Massachusetts

D.T.E. 98-57

REPLY BRIEF OF AT&T COMMUNICATIONS OF NEW ENGLAND, INC.

Jeffrey F. Jones

Laurie S. Gill

Kenneth W. Salinger

Jay E. Gruber

Palmer & Dodge llp

One Beacon Street

Boston, MA 02108-3190

(617) 573-0100

Robert Aurigema

AT&T Communications of New England, Inc.

32 Avenue of the Americas, Room 2700

New York, NY 10013

(212) 387-5627

Dated: February 17, 2000.