



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL
TEN FRANKLIN SQUARE
NEW BRITAIN, CT 06051

DOCKET NO. 99-03-21 APPLICATION OF BELL ATLANTIC - PROPOSED TARIFF
FOR UNBUNDLED NETWORK ELEMENTS -
REBUNDLED SERVICE

May 17, 2000

By the following Commissioners:

Jack R. Goldberg
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DECISION

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DECISION

I. INTRODUCTION

A. SUMMARY

Bell Atlantic New York (BA-NY) filed with the Department on March 3, 1999, a limited set of proposed tariff offerings for bundled unbundled network elements (UNEs). BA-NY states that the proposed filing is consistent with the Department's requirements and policies that may need to be changed pursuant to the Third Report and Order in CC Docket No. 96-98, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996. (Third Report and Order).

The Department will require BA-NY to provide through interconnection agreements, all UNE combinations that are technically feasible which are currently offered in New York and are not included in the proposed Connecticut tariff. These combinations should be offered under the same terms and conditions as in New York. Also new CLEC-requested combinations that are currently deployed in BA-NY's network shall be offered as quickly as possible. The Department will also require CLECs to file five potential UNE combinations that are consistent with the Third Report and Order and which the CLECs require to be tariffed for provision of local exchange service. BA-NY will have ten days from submittal to file comments to the Department as to why the requested combinations can not be provided. The Department has also determined that the proposed tariff will only be applicable to residential and small business for a period of five years.

Regarding the proposed rates the Department has determined it appropriate to adopt for Connecticut the rates and charges approved by the NYPSC. If any rate elements are changed for New York, the Department will require BA-NY to file the revised rates in Connecticut within 10 business days after they become effective in New York.

B. BACKGROUND

In the July 8, 1998 Decision in Docket No. 98-02-01, DPUC Investigation into Rebundling of Telephone Company Network Elements, the Department of Public Utility Control (Department) concluded that making a limited set of bundled unbundled network elements' (UNE) offerings, available to qualified certified local exchange carriers (CLEC) for their use was consistent with the intent of Public Act 94-83, An Act Implementing the Recommendations of the Telecommunications Task Force, not in conflict with strictures contained in the Telecommunications Act of 1996 (Telcom Act) and in the interest of promoting local exchange competition.¹ In the August 17, 1998 Decision in Docket No. 98-02-01, the Department ordered the New York Telephone Company Bell d/b/a Bell Atlantic - New York (BA-NY or Company), to submit to the Department, no later than March 3, 1999, a limited set of proposed tariff offerings for

¹ The Department subsequently refined its opinion on this issue in its Decision in Docket No. 98-10-16, DPUC Investigation into the Construction and Pricing of Telephone Company Unbundled Network Elements, issued on March 11, 1999.

formal consideration, modification and subsequent adoption.² On March 3, 1999, BA-NY complied with that requirement.

C. CONDUCT OF THE PROCEEDING

By Notice of Hearing dated July 28, 1999, a public hearing in this matter was held on September 8, 1999, at the offices of the Department, Ten Franklin Square, New Britain, Connecticut 06051. By Notice of Close of Hearing dated April 12, 2000, the hearings in this matter were closed.

The Department issued a draft Decision in this docket on April 18, 2000. All parties and intervenors were provided an opportunity to file written comments to and present oral argument on the draft Decision.

D. PARTIES AND INTERVENORS

The Department recognized the New York Telephone Company, d/b/a Bell Atlantic New York, 1095 Avenue of the Americas, New York, New York, 10036; Office of Consumer Counsel, Ten Franklin Square, New Britain, Connecticut 06501; AT&T Communications of New England (AT&T), 32 Avenue of the Americas, New York, New York 10013; MCI WorldCom, Inc. (MCIW), 200 Park Avenue, New York, New York 10166; and Sprint Communications Company, L.P. (Sprint), 401 9th Street, N.W., Washington, DC 20004 as parties to this proceeding.

E. THIRD REPORT AND ORDER

On August 8, 1996, the Federal Communications Commission (FCC) adopted its Decision in CC Docket No. 96-98, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (First Report and Order), implementing the local competition provisions of the Telcom Act. In that order, the FCC established rules governing the obligations of incumbent local exchange companies (ILEC) to open their local networks to competition pursuant to the requirements of § 251 of the Telcom Act. In part the order adopted rules implementing the network unbundling requirements of §§ 251(c)(3) and 251(d)(2) of the Telcom Act. Section 251(c)(3) of the Telcom Act also imposed a duty on all ILECs to provide to competitors access to network elements on an unbundled basis. Section 251(d)(2) of the Telcom Act provides that, in determining which network elements should be unbundled under § 251(c)(3), the FCC shall consider, "at a minimum, whether -- (A) access to such network elements that are proprietary in nature is necessary; and (B) the failure to provide access to such network element would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."

² In the July 8, 1998 Decision in Docket No. 98-02-01, BA-NY and the Southern New England Telephone Company (SNET) were directed to file with the Department, no later than September 3, 1998, proposed residential and small business tariffs with supporting information that conformed with Federal Communications Commission requirements for proposed network combinations requested by competitive local exchange carriers. However, in the August 17, 1998 Decision, that date was extended to March 3, 1999.

In the First Report and Order, the FCC applied its interpretation of the “necessary” and “impair” standards of § 251(d)(2) to the unbundling requirements of § 251(c)(3) of the Telcom Act. The FCC also determined that a requesting carrier’s ability to offer service is “impaired” or “diminished in value” if “the quality of the service the entrant can offer, absent access to the requested element, declines” or if “the cost of providing the service rises.”

After addressing the “necessary” and “impair” standards, the FCC adopted rule 51.319, which sets forth the network elements that ILECs were required to make available to requesting carriers on an unbundled basis. Section 51.319 of the FCC’s rules required ILECs to offer unbundled access to the following network elements: (1) local loops; (2) network interface devices; (3) local switching; (4) interoffice transmission facilities; (5) signaling networks and call-related databases; (6) operations support systems; and (7) operator services and directory assistance. Section 51.317 of the FCC’s rules allowed states to impose additional unbundling requirements pursuant to the FCC’s interpretation of § 251(d)(2) of the Telcom Act.

Following adoption of the Local Competition First Report and Order, ILECs and state commissions filed various challenges to the FCC’s rules that were subsequently consolidated in the United States Court of Appeals for the Eighth Circuit Court (Eighth Circuit). The Eighth Circuit, among other holdings, rejected the ILECs’ argument that, in determining which elements were subject to the unbundling requirements, the FCC had not properly applied the “necessary” and “impair” standards of §251(d)(2) of the Telcom Act. Accordingly, the Eighth Circuit upheld § 51.319. The Eighth Circuit decision was then appealed to the US Supreme Court (Court) wherein the Court granted several parties’ requests to review the Eighth Circuit’s decision.

In its January 25, 1999 opinion, the Court reversed the Eighth Circuit’s decision on this issue, stating that section 51.319 should be vacated, and remanded the matter for further proceedings. While the Court affirmed that the FCC has jurisdiction to implement the local competition provisions of the Telcom Act, including the unbundling requirements in § 251, it also concluded that the FCC had not adequately considered the “necessary” and “impair” standards of the Telcom Act’s § 251(d)(2). The Court found in part, that the FCC in deciding which elements must be unbundled, did not adequately take into consideration the “availability of elements outside the incumbent’s network.” The Court also faulted the FCC’s “assumption that *any* increase in cost (or decrease in quality) imposed by a denial of a network element renders access to that element ‘necessary,’ and causes the failure to provide that element to ‘impair’ the entrant’s ability to furnish its desired services. . .” In addition, the Court criticized the FCC’s interpretation of § 251(d)(2) of the Telcom Act because it “allows entrants, rather than the FCC, to determine” whether the requirements of that section are satisfied.

In its Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Adopted September 15, 1999, and Released on November 5, 1999 (Third Report and Order), the FCC responded to the Court’s decision. In particular, the FCC revised the standards under which the unbundling obligations of § 251(c)(3) of the Telcom Act are determined by providing substance to the “necessary” and “impair” standards and developing a limiting standard

that is rationally related to the goals of the Telcom Act. The FCC also considered the availability of alternative network elements outside the incumbent's network in its development of these standards.

Therefore, in light of the above, the FCC directed that the following network elements be unbundled in its Third Report and Order: Loops, Subloops, Network Interface Device, Circuit Switching, Packet Switching,³ Interoffice Transmission Facilities, Signaling and Call-Related Databases, and Operations Support Systems. Network elements determined not to be unbundled included Operator Services and Directory Assistance, and Shared Transport where Circuit Switching is not unbundled. Additionally, given the pendency of litigation in the Court of Appeals for the Eighth Circuit, the Third Report and Order declined to define the enhanced extended link as a separate network element, nor does it address whether an incumbent LEC must combine network elements that are not already combined in the network.

II. SCOPE OF THE PROCEEDING

By the June 18, 1999 Notice of Proceeding and Scope (Scope), the Department stated that this proceeding was initiated to examine BA-NY's March 3, 1999 submission. The Department also indicated that it would investigate BA-NY's proposal to determine the extent to which the Company's proposed UNE bundles:

- comply with the rules of construction for wholesale pricing adopted by the Department and the FCC;
- satisfy the filing requirements specified by the Department in Docket No. 98-02-01 UNE-RS;
- do not represent specific bundled offerings sought by CLECs and not required by the Department to be offered under the terms and conditions set forth in Docket No. 98-02-01;
- promote the development of local exchange competition and improve the competitive capabilities of CLECs;
- enhance the relative attractiveness of residential and small business local exchange markets to CLECs; and
- evidence any bias in pricing, terms and/or conditions that afforded an unwarranted competitive advantage to resellers vs. facilities-based providers.

Scope, pp. 1 and 2.

³ Specifically, ILECs must offer unbundled access to packet switching only in limited circumstances in which the incumbent has placed digital loop carrier systems in the feeder section of the loop or has its digital Subscriber Line Access Multiplexer in a remote terminal.

In issuing the Scope, the Department maintained that it was sufficient to meet the statutory obligations of the Department and protect the interests of all affected parties. The Department also indicated that it would not, in the conduct of this proceeding, examine the legal questions currently before the Eighth Circuit or the current work being undertaken in this area by the FCC. Additionally, the Department indicated that should the FCC or the Eighth Circuit issue rulings and/or rules that materially differ from those currently employed by the Department for purposes of constructing proposed bundled UNE offerings that are the subject of this proceeding, it would entertain motions from the parties to modify the Scope and schedule to ensure consistency with federal requirements. Scope, pp. 1 and 2. No such motions from the parties were received by the Department.

III. APPLICANT'S EVIDENCE

BA-NY claims that its proposed filing introduces rates and regulations for: (a) the Platform, which consists of a single specific link and a single specific switch port, combined with each other, and with any other network elements that may be ordered or used by a CLEC in order to provide service to an end-user customer through such a link and port; and (b) Transport Options (combinations of switching, interoffice transport, and other element functionalities, including various forms of shared transport). BA-NY Brief, p. 2.

The Company claims that its proposed tariff was drafted and filed prior to the issuance of the Third Report and Order and therefore, while the proposed tariff is consistent with the Department's requirements and policies, certain changes to the proposed tariff may be necessary to have it conform to the requirements of that order. Because some of these changes may require adding new provisions to the tariff or significantly modifying existing language (and because the Third Report and Order does not in any event take effect immediately), BA-NY asserts that it should be given a reasonable opportunity to redraft the tariff language to conform to that FCC order, if and to the extent those changes become effective.

BA-NY contends that pursuant to the Decision in Docket No. 98-02-01, its proposed tariff provides that the UNE network combinations will be offered only for a period of five years from the effective date of the instant tariff unless otherwise ordered by the Department. BA-NY claims that although the Third Report and Order did not adopt a specific sunset provision for incumbents' unbundling requirements, the FCC indicated that it expects the list of UNEs that meets the standards of §251(d)(2) of the Telcom Act will change over time. The FCC intended to reexamine the national list of network elements that are subject to the unbundling obligations of the Telcom Act every three years; accordingly, BA-NY recommends that the Department change its five-year sunset period to three years.⁴ BA-NY also suggests that at the end of the three year period, the Department could then review the tariff in light of the FCC's own reconsideration of its unbundling requirements, and determine whether the tariff should be reinstated, and if so, whether any modifications may be required.⁵

⁴ Third Report and Order, ¶¶148-152.

⁵ MCW disagrees. According to MCIW, a number of factors requires the elimination of the sunset provision altogether. MCIW claims that the U.S. Supreme Court concluded that the FCC reasonably

Another general feature of the proposed tariff according to BA-NY is that it is limited to serving arrangements for residential and small business customers. The Company states that this limitation is based on the Department's specific orders. BA-NY notes that while the FCC's regulations do not provide for such a limitation, it should be addressed in the tariff-revision process.

Additionally, BA-NY claims that the proposed Platform is limited to combinations of two-wire analog or digital links with corresponding switch ports. BA-NY also claims that the Third Report and Order defined high-capacity loops as unbundled elements, and therefore, ILECs would be required to offer high-capacity loop/port combinations to the extent those elements are currently combined in the incumbents' network. BA-NY states that this issue could be addressed when it amends its tariff.

BA-NY further maintains that the FCC also recognized a limited exception to the unbundling requirement for switching capability which applies under certain circumstances to switches that are both: (a) in federal Density Zone 1 and in one of the top fifty Metropolitan Statistical Areas (MSA). BA-NY notes that its two wire centers that serve the Company's Greenwich/Byram customers are in the New York MSA but are not Density Zone 1 offices. BA-NY therefore concludes that they do not meet the Third Report and Order test and that this exception is not relevant to its Connecticut combination offerings.

The Company also contends that the Third Report and Order concluded that ILECs are not required to provide unbundled access to Operator Services/Directory Assistance (OS/DA). The Company notes that although its proposed tariff does not intend to offer OS/DA as an unbundled element, it will provide access to OS/DA services for use in connection with shared transport. However, there is no requirement that it base the charges on total element long run incremental costs (TELRIC), since the services are not subject to the unbundling requirements of § 251(c)(3) or pricing requirements of § 252(d) of the Telcom Act. Accordingly, BA-NY reserves the right to propose market-based prices for its OS/DA services used in connection with its transport options. If and when BA-NY files revised rates for OS/DA services in New York, the Company commits to making a parallel filing in Connecticut.

Moreover, BA-NY maintains that in its Draft Decision in Docket No. 98-02-27, DPUC Investigation into the Provision of Shared Transport, the Department declined to require SNET to offer extended loops and concluded that issues concerning the provision of these loops should be resolved through intercarrier negotiations. BA-NY

omitted a facilities-ownership requirement, and determined that the Telcom Act imposes no such limitation. According to MCIW, by withdrawing UNE combinations, competitors would be compelled to install their own facilities, which the Telcom Act does not require, and would effectively create a barrier to competition which that act forbids. MCIW also claims that while UNE combinations may provide some CLECs with a transitional mechanism for facilities-based competition, combinations should remain indefinitely as an independent vehicle for competitive entry. Additionally, MCIW argues that the five-year limitation does not take into account other factors that may significantly impact the pace of competition and the speed at which competitors build their own facilities. Finally, MCIW notes that there is no evidence that such a short period of time is sufficient to achieve the Department's objective of robust facilities-based competition in Connecticut. MCIW Reply Brief, pp. 6 and 7.

argues that even if extended loop offerings were required, it would be consistent with the Department's rulings in Dockets Nos. 98-02-01 and 98-10-16 to limit such offerings to ensure that the extended loop would be used solely for the provision of basic residential and small business services, rather than as a means of increasing CLEC margins on large-volume toll and data services. BA-NY contends that the Third Report and Order appears to require provision of extended loops terminating at collocation arrangements in certain limited circumstances, and subject to issues being considered in a further rulemaking proceeding.

Furthermore, BA-NY claims that the Third Report and Order rejects certain arguments that had been offered by CLECs to support an extended loop requirement. In particular, the FCC declined to reinstate its vacated rules requiring ILECs to combine elements that are not "ordinarily combined" in their networks. BA-NY also claims that the FCC declined to modify its prior determinations that loops and transport are separate elements. In light of the above, BA-NY states that the FCC concluded only that ILECs may not separate loop and transport elements that are currently combined and purchased through the special access tariffs. Based on this conclusion, BA-NY maintains that the FCC questioned whether an ILEC would be required to convert special access services to extended loop arrangements to the extent that the special access terminates on entrance facilities between an incumbent LEC's serving wire center and an interexchange carrier's point of presence. According to BA-NY, this issue is the subject of a further Notice of Proposed Rulemaking

BA-NY also argues that nothing in the Third Report and Order or in any other applicable regulation overturns the Department's determination in Docket No. 98-02-27 that extended loop issues should be resolved through intercarrier negotiations. BA-NY therefore concludes that no extended loop offering be included in its proposed tariff. Rather, such offerings should be made the subject of intercarrier negotiations and, if necessary, arbitrations pursuant to the Telcom Act.

While noting that the Third Report and Order requires subloop unbundling, BA-NY argues that as a practical matter, CLECs would only use subloop unbundling to access the distribution portion of the loop, which is not directly connected to the incumbent's central office or to any other network element, other than the NID. Accordingly, the availability of subloops as a stand-alone element would not expand the range of existing combinations that would be available to a CLEC. To the extent that the revised version of Rule 319 modifies the descriptions of any of the required elements, BA-NY asserts that it should be given a reasonable opportunity to make conforming modifications to the components described in the tariff. BA-NY Brief, pp. 4-11.

Relative to the CLEC-requested UNEs permitted by the July 8, 1998 Decision in Docket No. 98-02-01, BA-NY states that the proposed tariff does not include various offerings requested by any CLEC. For example, BA-NY claims to not include extended loops equipped with GR-303 technology. According to BA-NY, GR-303 technology permits loop concentration. "Concentration" refers to the number of voice-grade or two-wire digital loops that can be assigned to a single DS1 facility in a digital loop carrier system. By assigning each of the 24 DS0 channels within the DS1 only as is needed (i.e., only when a loop not yet assigned to a channel goes off-hook), and by "de-

assigning” the channel when it is no longer needed, the DS1 facility can handle more than 24 loops. BA-NY maintains that significant technical and operational problems, including service quality and network security issues, would be created by any attempt to share GR-303 equipment by connecting them to multiple carriers’ switches. BA-NY therefore concludes that the only feasible way to give carriers access to the Company-provided GR-303 concentrators is on a dedicated basis which would significantly increase the cost to the CLEC.

Some CLECs have requested extended loops equipped with Digital Subscriber Line Access Modems (DSLAM). BA-NY states that DSLAMs are used in the provision of Asymmetric Digital Subscriber Line (ADSL). According to BA-NY, the Third Report and Order makes it clear that ILECs are not required to provide access to DSLAMs, either as a stand-alone element or as part of a loop. BA-NY claims that the Third Report and Order defined a DSLAM as part of the “packet switching” network element, and the FCC has declined to require unbundling of packet switching in that order. Additionally, DSLAMs are specifically excluded from the “attached electronics” included in the FCC’s definition of a “local loop.” Therefore, BA-NY concludes that pursuant to the Third Report and Order, DSLAMs are neither a component of a loop, nor elements subject to § 251(c)(3) of the Telcom Act unbundling requirements.⁶

Regarding other combinations requested by the CLEC’s, BA-NY asserts that MCIW’s list of requested combinations included the Platform with the signaling function provided by CLEC SS7 facilities (instead of BA-NY). BA-NY claims that this arrangement raises significant and unresolved operational and technical issues. According to the Company, CLECs can interconnect with BA-NY’s SS7 signaling network via links connecting its Signaling Transfer Points (STP) to the CLEC’s STPs or switches. BA-NY states that its STPs provide a gateway screening function that is used to protect the Company’s signaling network against undesirable messages as well as unauthorized access to databases and other facilities and services. BA-NY states that these functions are performed only at the BA-NY STPs, because it is the only viable point of signaling interconnection. BA-NY also states that the MCIW proposal would entail infeasible interconnection between BA-NY switches and CLEC signaling facilities, and therefore, the Company should not be required to provide this combination.

BA-NY further notes that in Docket No. 98-02-01, AT&T requested certain combinations that could not be physically connected. Aside from technical feasibility

⁶ MCIW disputes BA-NY’s assertion that DSLAMs have been properly omitted from its UNE combination offerings. MCIW states that the Company has declined to tariff its proposed loop-DSLAM-dedicated transport combination, even though BA-NY does not dispute its applicability to the residential and business markets and concedes that the combination is technically feasible. MCIW therefore urges the Department to require BA-NY to provide such functionality in conjunction with the relevant UNE combination as proposed by MCIW. Additionally, MCIW argues that DSLAMs are critical to the provision of advanced services and a functionality of packet switching, which the FCC has determined qualifies as a network element. MCIW suggests that the Department require BA-NY to provide CLECs with the specified loop-dedicated transport segment and permit CLECs to place their own DSLAMs in BA-NY’s remote terminals. Finally, MCIW notes that BA-NY did not dispute that other combinations submitted by MCIW’s subsidiaries are suited to the residential and small business markets. Accordingly, MCIW urges the Department to review the UNE combinations it has requested and require BA-NY to include in its tariff these combinations as well as those combinations included in BA-NY’s New York tariff that are relevant to these market segments. MCIW Reply, Brief, pp. 5 and 6.

issues, BA-NY argues that these are not existing combinations within the scope of the FCC's Rule 315(b). According to BA-NY, AT&T's "Loop/Network Combination" in effect requests UNE platform minus switching. In the opinion of BA-NY, AT&T seems to require a combination between a NID and interoffice transport, without any loop or switch in between. Lastly, BA-NY notes that AT&T requested a "Local Network Interconnection Combination" that provides for the interconnection of an AT&T switch with the ILEC network for the purpose of termination of Reciprocal Compensation calls. BA-NY claims that this is not a combination of UNEs, but rather relates to an obligation that is governed by separate provisions of the Telcom Act, including those related to the transport and termination of local traffic. BA-NY Brief, pp. 11-15.

Furthermore, BA-NY argues that the Department has already concluded that it will not require combinations of elements that are not subject to the FCC's unbundling requirements. BA-NY recommends that the Department continue to resist CLEC requests that go beyond those requirements. BA-NY asserts that no showing has been made in this proceeding that any elements beyond those on the FCC's list meet the statutory necessity and impairment standards which apply to State commissions. BA-NY Brief, p. 15.

Relative to pricing, BA-NY notes that the Department indicated in Docket No. 98-10-16 that rates for combinations would be based on the pricing constructs it has established in its prior proceedings for UNEs and wholesale services (i.e., based on avoided costs). BA-NY asserts that this construct should produce UNE combinations for eligible services that generally equate to the sum of the prices of their respective UNE components adjusted for any duplicate cost reflected in the composite UNE combination by the aggregation of the individual element prices. BA-NY observes that the Department indicated that it would accept the cost studies ultimately approved by the New York Public Service Commission (NYPSC) as the basis for its filing in this proceeding.

BA-NY claims that its proposed prices conform to the Department's pricing standards because they are based on the UNE prices approved by the NYPSC. However, BA-NY states that the NYPSC is currently undertaking a review of network element costs and rates. To the extent that any rate element proposed in the instant tariff is changed in that proceeding, BA-NY commits to filing the revised rate in Connecticut. Since these rates have already been contested by MCIW, AT&T, Sprint, and numerous other parties and have been determined by the NYPSC to conform to TELRIC pricing principles, the Company suggests that there is no need nor basis for re-examining BA-NY's New York cost studies in this Docket. Additionally, BA-NY claims that its proposed Network Combination recurring charges are the sum of the NYPSC-approved charges for the elements corresponding to the constituent combination. BA-NY asserts that neither the Company nor the NYPSC has identified any aspect in which the recurring cost for provisioning a combination is any different from the sum of the recurring costs for provisioning individual elements. In the case of non-recurring charges however, BA-NY notes that instances have been identified in which the non-recurring cost applicable to the combination is less than the sum of the non-recurring costs applicable to individual elements. These situations are reflected in the proposed tariff. BA-NY Brief, pp. 15-18.

Moreover, BA-NY contends that the proposed tariff's terms and conditions track those filed in New York. BA-NY notes however, that some minor changes to the New York terms and conditions have been necessary in order to modify cross-references to the NYPSC, its orders, and its regulations. BA-NY states that if the requirements of the tariff were to take effect, the Company would provide access to pre-ordering, ordering, and other operations support functions through various automated systems accessible via dedicated line, dial-up connection, or the Internet. BA-NY maintains that CLECs already use these automated systems to order UNE products in New York. BA-NY Brief, p. 18

BA-NY argues that the proposed tariff complies with the FCC's wholesale pricing rules. According to BA-NY, while reserving all of its objections to TELRIC pricing, the Company proposed rates and charges have been determined by the NYPSC to conform with TELRIC requirements. To the extent that TELRIC requirements are ultimately modified by the Eighth Circuit, BA-NY reserves the right to seek appropriate modifications to rates and charges filed in this proceeding. BA-NY also maintains that the proposed tariff satisfies the requirements identified by the Department in Docket No. 98-02-01. In the opinion of BA-NY, the proposed tariff includes all of the offerings requested by CLECs, except for certain combinations not required under the Department's orders or FCC requirements. Moreover, BA-NY argues that the combinations set forth in the proposed tariff will provide new options to CLECs and to that extent, will promote the development of local exchange competition. BA-NY also asserts that the combinations in the proposed tariff will make it easier for CLECs to serve residential and small business markets and provide other means for competitors to enter the Connecticut market and compete for residential and small business customers without the need for their own infrastructure investment. BA-NY contends that the proposed tariff would enable a competitor to access network combinations, and obtain resale-like functionality at TELRIC-based rates, in contrast to the avoided cost standard applied to the development of the resale discount. Finally, BA-NY argues that the proposed tariff is not biased with respect to the manner in which a CLEC provides service. BA-NY notes that combination offerings offer CLECs an advantage over resellers by enabling them to obtain resale-like functionality at TELRIC rates. This advantage, according to BA-NY, is an inevitable consequence of the FCC's TELRIC rules and its rules relating to combinations. Subject to that fact, however, the tariff does not impose any bias for or against a particular class of CLEC. BA-NY Brief, pp. 18-20.

III. POSITIONS OF PARTIES

A. MCI WORLDCom, INC.

While noting that BA-NY's proposed tariff provides CLECs with considerably more UNE combination offerings than SNET, MCIW claims that the Company's proposal falls short of providing the combinations that CLECs require to effectively and efficiently provide facilities-based local exchange service in Connecticut. MCIW argues that the majority of the partial UNE combinations requested by its subsidiaries are comprised of some subset of the individual UNEs adopted by the FCC in its First Report and Order. MCIW maintains that each of the proposed combinations is technically feasible and would significantly extend its ability to provide facilities-based local exchange service to customers in the relevant markets in Connecticut. MCIW also

argues that the availability of these combinations would permit it to offer to residential and small business customers the type of advanced telecommunications services currently contemplated by SNET, as well as other enhanced services.

MCIW contends that the Department's requirement that CLECs limit their proposals solely to the UNEs resident in the universe of technology currently used in the ILEC's network is contrary to FCC orders. MCIW asserts that this Decision improperly and impermissibly restricts CLECs to the capabilities of the incumbent. MCIW also asserts that BA-NY is required to provide all features and functions of network elements necessary for new entrants to offer services that compete with those offered by BA-NY as well as new services. According to MCIW, the FCC emphasized that for effective competition to develop, competitors must have access to ILEC facilities in a manner that allows them to provide the services that they seek to offer. MCIW states that since provisioning of network elements is likely to result in new services, it should be obvious that the ILEC must provide even those capabilities which it currently does not utilize. Otherwise no new services could be developed. MCIW therefore concludes that CLECs should not be disadvantaged or handicapped in their ability to effectively offer local exchange service on the basis of BA-NY's claims that it does not currently utilize certain capabilities or technologies. MCIW Brief, pp. 6 and 7.

MCIW also claims that the majority of its proposed UNE combinations submitted in accordance with the Department's Decision in Docket No. 98-10-16, are comprised of some subset of the individual UNEs adopted by the FCC. MCIW states that there can be no dispute that the FCC requires the incumbent to provide local loops to requesting carriers on an unbundled basis. MCIW also states that there can be no dispute that BA-NY is required to provide MCIW with dedicated interoffice transmission facilities that provide telecommunications between ILEC wire centers or requesting telecommunications carriers, or between ILEC switches or requesting telecommunications carriers. MCIW claims that BA-NY has acknowledged that in particular cases the local loop-transport combination is a contiguous UNE combination currently assembled in BA-NY's network in Connecticut. MCIW argues that the omission of loop-transport combinations from BA-NY's tariff cannot be justified. MCIW cites as an example the enhanced extended link (EEL) which is a combination of the local loop, local transport and, where required, multiplexing. MCIW notes that BA-NY committed to provide an EEL offering to CLECs in New York earlier this year.⁷ MCIW

⁷ BA-NY claims that in the Supplemental Order to the Third Report and Order, the FCC concluded that pending resolution of the Fourth Further Notice Proposed Rule Making, interexchange carriers (IXC) may not convert special access services to combinations of unbundled loops and transport network elements, whether the IXCs self-provide entrance facilities (or obtain them from third parties). BA-NY states that this constraint will not apply if an IXC uses combinations of unbundled loop and transport network elements to provide significant amounts of local exchange service, in addition to exchange service, to a particular customer. According to BA-NY, the FCC's recognition that it may be appropriate to restrict the use of extended loops for purposes other than the provision of local service is consistent with the Department's recognition in Dockets Nos. 98-02-01 and 98-10-16 that the unrestricted availability of element combinations is more likely to impair the growth of true facilities-based competition than to stimulate it. BA-NY also states that the exception to the FCC's interim restriction, applicable where the CLEC uses the extended loop to provide significant amounts of local exchange service, raises implementation questions that are best addressed in the context of specific, focused, actual situations (i.e., in the real-world environment presented by inter-carrier negotiations, rather than through the consideration of abstract questions in the tariff review process). BA-NY

states that as noted in an Opinion in March 1999, the NYPSC stated that this arrangement permits CLECs with at least some network facilities to gain access to unbundled local loops in many central offices without the need to collocate in each BA-NY central office.

Additionally, MCIW contends that BA-NY has not tariffed the unbundled loop, digital loop carrier equipment with concentration capability, and dedicated transport combination requested by MCIW's subsidiaries. According to MCIW, in its Third Report and Order, the FCC found that some loops, such as integrated digital loop carrier are equipped with multiplexing devices, without which, it cannot be used to provide service to end users. Because excluding such equipment from the definition of the loop would limit its functionality, the FCC has included attached electronics within the loop definition. MCIW notes that while GR-303 concentration capability has not yet been included by the FCC as a functionality or capability of the loop, such capability is currently deployed by Bell Atlantic in New York and, therefore, MCIW sees no justification for its omission from BA-NY's Connecticut UNE combination tariff. Thus, MCIW urges the Department to require BA-NY to offer such capability in Connecticut in conjunction with the relevant UNE combination.

MCIW also contends that BA-NY has not tariffed a loop-DSLAM-dedicated transport combination. According to MCIW, BA-NY concedes that the combination is technically feasible and has not disputed its applicability to the residential and business markets. Accordingly, MCIW urges the Department to require BA-NY to provide such functionality in conjunction with the relevant UNE combinations as it has requested. In the alternative, MCIW suggests that the Department require BA-NY to provide CLECs with the specified loop-dedicated transport segment of this combination and permit CLECs to place their own DSLAMs in BA-NY's remote terminals. Although, the FCC declined to require incumbents to unbundle the packet switching network element, including the DSLAM functionality, MCIW asserts that the FCC carved out a limited exception for those carriers that are unable to install their DSLAM at the remote terminal or obtain spare copper loops necessary to offer the same level of quality for advanced services. MCIW maintains that BA-NY has acknowledged that such arrangement is technically feasible. Therefore, requiring the Company to provide CLECs with the specified loop-dedicated transport segment of this combination and to permit CLECs to place their own DSLAMs in BA-NY's remote terminals would not be inconsistent with federal law or the FCC regulations. MCIW Brief, pp. 6-10.

Finally, MCIW notes that BA-NY committed to providing UNE combinations less than the total platform (i.e., those that do not involve combining the Company's link with its port). Since BA-NY has agreed to provide the UNE-Platform in New York, MCIW requests that the Department require the same commitment in Connecticut. According to MCIW, BA-NY has provided little or no justification for the differences in offerings between the neighboring jurisdictions, nor has it suggested that such commitment would not be infeasible. MCIW concludes that such a commitment would not be only in the

concludes that no extended loop offering should be included in the Company's proposed tariff. Rather, such offerings should be made the subject of intercarrier negotiations and if necessary, subject to arbitration pursuant to the Telcom Act. BA-NY Reply Brief, pp. 5-7.

public interest, but in the interests of competition and consistent with the Department's Decisions in Docket No. 98-02-01 and Docket No. 98-10-16.

B. SPRINT COMMUNICATIONS, L.P. (SPRINT)

While noting BA-NY's statement that it may not be required to provide certain UNEs once the FCC concludes its review of those UNEs that meet the necessary and impair standard of the Telcom Act, Sprint contends that the Third Report and Order adopted rules which identify the UNEs that ILECs must make available to CLECs. In its Third Report and Order, Sprint claims that the FCC refined its definition of the necessary and impair standards and applied them to proprietary and non-proprietary elements under § 251(d)(2) of the Telcom Act. According to Sprint, the FCC determined that a standard national list of UNEs was necessary to encourage the rapid introduction of competition to the greatest number of markets by introducing certainty, accelerating market entry, promoting efficiency and reducing the number of issue that states or courts have to consider. Sprint notes that the FCC also reaffirmed the requirement that ILECs provide unbundled access to six of the original seven network elements ordered previously in its First Report and Order.

Sprint contends that the Third Report and Order confirms that BA-NY is obligated to offer CLECs the elements specified in its UNE tariff, with the exception of OS/DA. Sprint also asserts that the Third Report and Order confirms that state commissions have the authority to impose additional unbundling obligations that are consistent with §251 of the Telcom Act and the national policy framework the FCC set forth in that order. Additionally, the FCC noted that a state commission's decision to remove elements from the national list would be inconsistent with the goals of the Telcom Act.

Moreover, Sprint asserts that Section 5 of PA 99-222, An Act Concerning Competition in the Telecommunications Industry, requires the Department to unbundle a telephone company's network, services and functions that are used to provide telecommunications services which the Department determines are in the public interest, are consistent with federal law and are technically feasible of being tariffed and offered separately or in combinations. Sprint argues that BA-NY's attempt to limit its UNE combination offering solely to the Platform combination contravenes the principles advanced in the Third Report and Order and the Department's directives. Therefore, Sprint recommends that the Department evaluate the conformity of BA-NY's UNE tariff filing with the Department's competitive goals and directives in light of the Third Report and Order and direct BA-NY to make available all the UNE combinations requested by CLECs that are technically feasible for BA-NY to provide. Sprint Brief, pp. 3-7.

IV. DEPARTMENT ANALYSIS

The instant docket was initiated by the Department to review the Company's proposed Platform tariff filed in accordance with the Department's July 8, 1998 Decision in Docket No. 98-02-01. In the opinion of the Department, the provision of rebundled UNEs for service is essential to the growth of competition in residential and small business markets in Connecticut. Access to network combinations will offer CLECs the ability to enter these markets through a facilities-based approach, rather than having to build their own extensive network facilities. After review of the Company's proposed

tariff, the Department finds that for the most part, BA-NY's provision of UNE combinations is in compliance with the requirements set forth by the FCC and the Department. In light of the recent Third Report and Order and Supplemental Order, BA-NY has admitted that certain language in its tariff must be modified.

The provision of extended loops through UNE combinations is of particular interest to MCIW and Sprint. As noted above, MCIW indicates that BA-NY committed to provide EEL to CLECs in New York. Similarly, MCIW recognizes that GR-303 concentration capability has not been included by the FCC as a functionality of the loop; however, such a capability is currently offered by BA-NY to CLECs in New York. According to BA-NY, the use of GR-303 equipment is technically feasible if the concentration capability is provided to CLECs on a dedicated basis. To accommodate the CLEC requests, the Department will require BA-NY to provide through interconnection agreements to those CLECs operating in Connecticut, all UNE combinations that are technically feasible which it currently provides in New York that have not been included in its proposed Connecticut tariff. The Department will also require that these UNE combinations be subject to the same terms, conditions and restrictions that are in effect in New York. Additionally, the Department will require BA-NY to offer any new CLEC-requested UNE combinations and capabilities (that are currently deployed in its networks) as quickly as possible.

Moreover, the Department will once again require interested CLECs to file five potential UNE combinations that are consistent with the Third Report and Order, which the CLECs require to be tariffed for their provision of local exchange service. BA-NY will then be required to submit a proposed tariff within six months of those requests. If the CLEC's requested UNE combinations are not technically feasible to provide, BA-NY should, within ten business days of the submittal by CLECs, submit written comments to the Department demonstrating why such combinations can not be provided. Based on BA-NY's submittal, the Department will act accordingly. Consistent with the July 8, 1998 Decision in Docket No. 98-02-01, the proposed tariff will be applicable only for use in serving residential customers and small business (non-PBX and non-Centrex) customers, and will only be available for a period of five years from their effective date.

For individual network elements that are beyond the scope of this proceeding and Docket No. 98-02-01, the Department notes that procedures have been established for the unbundling of additional network elements. See for example, the Department's September 1, 1995 Decision in Docket No. 94-10-02, DPUC Investigation of the Unbundling of the Southern New England Telephone Company's Local Telecommunications Network and the June 23, 1999 Decision in Docket No. 99-01-32, DPUC Investigation of the Southern New England Telephone Company's Bona Fide Request Process; therefore, CLECs seeking those UNEs should follow those procedures.

Regarding the Company's proposed UNE combination rates, the Department notes that BA-NY's proposed rates and charges have been previously approved by the NYPSC. The Department finds that the NYPSC's investigation included a review of a forward-looking incremental cost methodology that is consistent with Department and FCC standards. Furthermore, the NYPSC is currently undertaking a review of the network element costs and rates. In light of the previous and current review of BA-NY's

UNE prices by the NYPSC, the Department will accept the rates and charges as proposed for Connecticut. The Department believes that it is reasonable for BA-NY to have consistency between Connecticut and New York and has permitted the Company to offer various services in its Connecticut service territory that mirror those being offered in New York. See for example, the Department's June 9, 1999 Decision in Docket No. 99-03-32, Application of New York Telephone to Introduce Call Manager Package; the August 4, 1999 Decision in Docket No. 99-05-28, Application of New York Telephone to Amend ISDN Basic Service; and the December 29, 1999 Decision in Docket No. 99-11-06, Application of New York Telephone to Introduce Centrex Caller ID with Name. Additionally, should the NYPSC proceeding result in changes to the Company's Platform tariff, BA-NY has committed to revising its Connecticut tariff to reflect those changes. To the extent that any New York rate element(s) set forth in the Connecticut tariff are changed, BA-NY will be required to refile the revised rates in Connecticut within 10 business days after they are effective in New York.

Finally, the Department has indicated in its July 8, 1998 Decision in Docket No. 98-02-01, that network combinations should be offered for a period of five years. However, in light of the FCC's intent to reexamine the national list of network elements that are subject to the unbundling obligations every three years,⁸ BA-NY has requested that the five-year period be reduced to three years. In the opinion of the Department, CLECs without facilities depend on the availability of UNE combinations in order to effectively provide service to their customers. Removing UNE combinations before competition in residential and small business markets is established would undermine the CLECs without their own facilities. Therefore, the Department will adhere to the original five-year period for the provision of UNE combinations. At the end of five years, the Department will re-visit the need for UNE combinations and require BA-NY to modify its tariff, as needed.

V. FINDINGS OF FACT

1. BA-NY has employed the TELRIC methodology in support of its rebundled service offering.
2. BA-NY's proposed rebundled UNEs comply with Public Act 99-222.
3. The provision of extended loops (such as GR-303 technology) may be available to CLECs, but must be resolved through intercarrier negotiations.
4. BA-NY's cost studies have been reviewed and approved by the NYPSC.
5. The NYPSC is currently undergoing a review of BA-NY's network element costs and rates which is expected to be completed by the second or third quarter of 2000.
6. Network Combinations required in the instant tariff will be offered for a period of five years from the effective date of BA-NY's modified tariff.

⁸ Third Report and Order at ¶¶148-152.

VI. CONCLUSION AND ORDERS

A. CONCLUSION

BA-NY's proposed rebundled UNE tariff is approved subject to compliance with the following orders. BA-NY is encouraged to begin offering those UNEs defined by the FCC in its Third Report and Order as soon as possible. All network combinations currently offered in New York but not included in the proposed Company's Platform tariff filing must be made available in Connecticut through intercarrier agreements. For those requested UNEs required by CLECs for their provision of local service that are outside of the scope of Docket No. 98-02-01 and this proceeding, CLECs should follow the procedures outlined in the September 1, 1995 Decision in Docket No. 94-10-02 and the June 23, 1999 Decision in Docket No. 99-01-32.

B. ORDERS

For the following Orders, please submit an original and 12 copies of the requested material identified by Docket Number, Title and Order Number to the Executive Secretary.

1. No later than June 1, 2000, BA-NY shall submit to the Department revised tariffs with UNE non-recurring rates and charges that are consistent with the Third Report and Order and Section IV above. The effective date of the tariff shall be the date of this Decision.
2. No later than August 1, 2000, interested CLECs shall file with the Department, five potential unbundled network element combinations that they require be tariffed for their provision of local exchange service to residential and small business customers. These combinations must be consistent with the Third Report and Order.
3. No later than six months following the CLEC unbundled network element combination requests filed with the Department, BA-NY shall file proposed residential and small business tariffs with supporting information that conform with the requirements of the FCC in its Third Report and Order for the proposed network combinations requested by the CLECs in response to Order No. 2.
4. BA-NY shall file proposed amendments to its Connecticut rebundled UNE tariff with the Department no later than 10 business days following NYPSC approval. Said tariff amendments shall be filed with a proposed effective date that is no sooner than 21 days from the amendment's filing date.
5. All network combinations currently offered in New York but not included in the Company's platform tariff filing shall be made available in Connecticut through intercarrier agreements.

**DOCKET NO. 99-03-21 APPLICATION OF BELL ATLANTIC - PROPOSED
TARIFF FOR UNBUNDLED NETWORK ELEMENTS -
REBUNDLED SERVICE**

This Decision is adopted by the following Commissioners:

Jack R. Goldberg

John W. Betkoski, III

Linda Kelly Arnold

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Decision issued by the Department of Public Utility Control, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.

Louise E. Rickard
Acting Executive Secretary
Department of Public Utility Control

May 19, 2000

Date