

ORDER NO. 73010

IN THE MATTER OF THE PETITIONS *
FOR APPROVAL OF AGREEMENTS AND *
ARBITRATION OF UNRESOLVED *
ISSUES ARISING UNDER SECTION *
252 OF THE TELECOMMUNICATIONS *
ACT OF 1996. *

BEFORE THE
PUBLIC SERVICE
COMMISSION
OF MARYLAND

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CASE NO. 8731

H. Russell Frisby, Jr., Chairman
Claude M. Ligon, Commissioner
E. Mason Hendrickson, Commissioner
Susanne Brogan, Commissioner
Gerald L. Thorpe, Commissioner

ISSUED: November 8, 1996

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INTRODUCTION

On July 18, 1996, the Commission instituted Case No. 8731 to consider various agreements and to arbitrate unresolved issues pursuant to the provisions of Section 252 of the Telecommunications Act of 1996 ("the Act").¹ Under the Act, both local exchange carriers and other telecommunications carriers are to attempt to negotiate agreements pertaining to interconnection, resale of telecommunications service, and access to unbundled network elements, which agreements must be submitted for approval to state regulators. If negotiations are unsuccessful or incomplete, the parties may petition for arbitration of unresolved disputes by state regulatory

¹ 47 U.S.C. Section 252.

authorities.

In instituting this proceeding, we noted that AT&T Communications of Maryland, Inc. ("AT&T") and Bell Atlantic-Maryland, Inc. ("Bell Atlantic") filed separate petitions pursuant to the Act on July 15, 1996. In addition, TCG Maryland ("TCG") filed a petition on July 17, 1996, and MFS Intelenet of Maryland, Inc. ("MFS") and Bell Atlantic filed a joint application for approval of an interconnection agreement and a joint petition for arbitration of an unresolved issue on that same date. We further noted that additional filings may be expected as parties to ongoing negotiations approach an impasse or reach an agreement. Subsequent petitions for arbitration were filed by MCI Telecommunications Corporation ("MCI") on August 27, 1996, and by Sprint Communications Company, L.P. ("Sprint") on September 19, 1996.

A prehearing conference was held in this matter on August 6, 1996, notice of which was published in newspaper advertisements. Following the prehearing conference, Order No. 72824, issued on August 12, 1996, determined the procedure to be followed with respect to the agreements and arbitrations that pertain to this matter. In that Order, we also granted party status in this case to Bell Atlantic; MFS; AT&T; Sprint; MCI; TCG; the American Communications Services of Maryland, Inc. ("ACSI"); the Cable Television Association of Maryland, Delaware and District of Columbia ("Cable TV");² the Office of

² Cable TV indicated at the hearings in this matter that it was an

People's Counsel ("OPC");and the Staff of the Maryland Public Service Commission ("Staff"). The Order further set out the procedural schedule in this case, including filing dates and hearing dates. We also determined that a separate phase of the proceeding would be established for receiving comments with respect to the Bell Atlantic/MFS agreement, which was the only agreement that had been submitted for approval by the Commission. However, this separate phase would have a consolidated procedural and hearing schedule with the arbitration proceeding.³

interested person, and did not participate in the panel discussions. ACSI has not significantly participated since the prehearing conference, and did not attend the hearings.

³ The separate phase of the Bell Atlantic/MFS agreement was designated as Case No. 8731, Phase (a), in which Order No. 72939, issued on October 9, 1996 approved the agreement between MFS and Bell Atlantic.

Prior to the scheduled hearing sessions, we issued a ruling on a Motion of TCG to Exclude Bell Atlantic's Cost Support Studies and to Initiate a Rulemaking. In that ruling, issued on September 26, 1996, we accepted the parties' statements that Bell Atlantic's cost studies are not in conformance with Federal Communications Commission ("FCC") standards, and therefore granted part of the TCG Motion that requested exclusion of Bell Atlantic's cost studies from consideration at this time.⁴ We also concluded that further consideration of all cost studies, including the Hatfield Model advocated by various competitive carriers, should be conducted sometime after the hearings scheduled in this matter.⁵ Accordingly, it was noted that the hearings and deliberations in this case will concentrate on the establishment of interim proxy rates for unbundled elements and any other pricing issues which depended upon the cost studies that were excluded. Also, to the extent other issues are not dependent upon the excluded cost studies, the parties were instructed to be prepared for full exploration of such issues. The parties were also directed to clearly specify any issues that remain in dispute and should be decided by the Commission. Pursuant to the schedule, hearings were conducted on October 7-11, 1996 under a

⁴ The FCC determined that cost studies must be based on a forward looking methodology known as "total element long-run incremental cost (TELRIC)."

⁵ Therefore, we will institute a Phase II of this proceeding to consider the appropriate cost studies to be utilized in setting permanent interconnection rates.

legislative format, with representatives of the parties commenting on unresolved issues under a panel format. Under this format, representatives of all parties interested in a specific issue appeared as joint panelists. Each party was offered an opportunity to comment on the specific issue, with questioning by the Commission to the panel members. The parties were also directed to file any final comments in this matter by October 22, 1996, as the decision on the earliest filed requests for arbitration is due on November 8, 1996.

Following the conclusion of the hearings, on October 15, 1996, the Court of Appeals for the Eighth Circuit granted a Stay of the Federal Communications Commission's First Report and Order pending judicial review.⁶ The Court specifically stayed certain FCC rules concerning pricing provisions and the "pick and choose" rule. By Order No. 72946 issued on October 16, 1996 in the instant case, the parties were directed to comment on the implications of the Stay Order, which comments were to be included in the final comments of the parties due October 22, 1996.

⁶ Iowa Util. Bd. v. FCC, No. 96-3321, (8th Cir., Oct. 15, 1996), the "Stay Order, in which the Court stayed certain provisions of the FCC's "First Report and Order," Re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 96-98, 95-185 (Aug. 8, 1996) (referred to as the "FCC Order").

DISCUSSION AND ANALYSIS OF ISSUES SUBMITTED FOR ARBITRATION

This proceeding concerns the Commission's duty to arbitrate disputed issues between Bell Atlantic-Maryland and other telecommunications carriers who desire to interconnect with the existing local network to provide competing local service. Under the Telecommunications Act of 1996, Congress seeks to open up local markets by imposing obligations on the current providers, such as Bell Atlantic, who are referred to as "incumbent local exchange carriers" ("ILECs"). The Act requires the ILECs to allow interconnection by competing local exchange carriers ("CLECs"). Also, ILECs must provide access to elements of the existing local network on an "unbundled basis." Further, they must sell to other carriers, at wholesale rates, any telecommunications service that the ILEC provides to its retail customers. The Act further requires ILECs to negotiate in good faith with other carriers seeking to enter the local market, and either party may petition state utility commissions if they are unable to reach a negotiated agreement. Final agreements, whether arrived through negotiation or arbitration, must be approved by the state commission. Furthermore, state commissions must reach a decision on "open issues" within nine months of the date the ILEC received the request to negotiate.

Accordingly, the decision in this case must be rendered by November 8, 1996 for the earliest filed

arbitrations. Furthermore, under Section 252(d)(1), we must set just and reasonable rates for interconnection, services and network elements based on costs, but not utilizing a rate-of-return or rate-based proceeding. The only successful agreement that has been presented to us for approval concerns the MFS/Bell Atlantic agreement, which was approved by Order No. 72939 in Phase (a) of this proceeding.

All unresolved issues that have been disputed by the parties to the various negotiations are therefore subject to this proceeding. By this Order, we intend to rule on all pending disputed issues that have been brought forward by the parties to be arbitrated. We also note, however, that it is incumbent upon the parties to have specifically presented the issues which they believe are in dispute and require resolution by the Commission, which we have repeatedly emphasized during the course of this proceeding. In this regard, we note that certain parties have indicated that "agreements in principle" or similar types of resolution have occurred with respect to various issues; however, those parties wish to retain authority to present such issues before the Commission at a later time. We believe that under the arbitration procedures envisioned by the Federal government, it is incumbent upon those parties with unresolved issues to clearly present such issues before us for resolution. Therefore, we will consider in this Order only

those issues that have been properly presented by the parties as remaining in dispute, and consider all other issues that have not been specifically presented to be resolved.

As noted above, however, MCI and Sprint have filed their requests for arbitration significantly later than the other petitioners. It also appears from their comments that they are still negotiating certain issues with Bell Atlantic. As noted, the decisions in this Order are intended to apply to all pending arbitrations, including those of MCI and Sprint. We do not discourage parties from further negotiation and agreement, but parties reaching further agreements after the date of this Order must submit such agreements for approval to the Commission, and if negotiating carriers such as MCI and Sprint believe issues have not been resolved in this Order, we direct that they specifically inform the Commission of any remaining disputes within 15 days of the date of this Order. In this filing, they shall state the specific issue in dispute, and the position of every party on that issue.

We will now consider those issues that have been presented by the parties as remaining in dispute in the negotiations between Bell Atlantic and the other carriers in this proceeding. Furthermore, as most issues were common among the various parties, and as an incumbent local exchange carrier (such as Bell Atlantic) is required to make available any interconnection service or network element provided under an agreement to any other requesting carrier under the same terms

and conditions,⁷ the resolution of disputed issues decided herein shall apply to all carriers who have not reached agreement on a specific disputed issue unless otherwise specifically noted in this decision.

⁷ The non-discriminatory provisions are contained in Section 252(i) of the Act, and are therefore not affected by the Court of Appeals for the Eighth Circuit Stay Order.

In making our decisions in this matter, we are aware that certain rules of the FCC have been stayed by court order.

However, we have based our decision on the record in this proceeding, the provisions of the Telecommunications Act (which statute was not affected by the court stay), and our authority under the Maryland Public Service Commission Law.⁸ We also note that in Case No. 8584, Phase II,⁹ we have addressed many of the issues regarding interconnection, and therefore rely upon our analysis and decision in that proceeding when applicable to specific disputes in the instant arbitration.

1. Unbundled Network Element Pricing

A. Unbundled Loops

The first issue that is disputed by the parties concerns unbundled network element pricing, especially with respect to pricing of unbundled loops, commented on by nearly all parties to this proceeding. The pricing issues concern the level of proxy rates that should be established pending the completion of cost studies that would be necessary to set permanent rates at some time in the future. The primary proposals that have been advanced in this proceeding concern an MFS proposal, a Staff proposal, and a Bell Atlantic proposal. The MFS proposal is based on loop-length, and sets three prices for various zones of the State, which range from \$7.80 for an urban loop, \$12.29 for a suburban loop, and \$20.25 for a rural

⁸ Md. Ann. Code, art. 78.

⁹ See Order No. 72348, 86 Md. PSC 467 (1995). Case No. 8584, Phase II will be referred hereinafter to "8584-II."

loop. The Staff proposal sets up four rate zones for unbundled loop costs, ranging from \$8.40 for the most urban to \$22.80 for the most rural zone. The Bell Atlantic proposal also establishes four zones, ranging from \$11.87 for the most urban zone to \$19.38 for the highest cost rural zone.

Bell Atlantic further recommends the Commission use rates it established in Case No. 8584-II. However, if the Commission desires to establish new proxy rates, Bell proposes new rates based on density zones that correspond to existing residence local usage rate groups. Bell Atlantic also claims that its proposal is the only one that matches loop counts with a database, and claims that its proposal is the easiest to administer and should be utilized at this time until permanent rates are set.

AT&T and MCI have expressed support for the Staff proposal as the best of the interim proposals until permanent rates are set, as AT&T contends that Staff's more closely matches the zones with their underlying costs compared to the MFS and Bell Atlantic proposals.

After considering the comments of the parties, we believe it is best to utilize the Bell Atlantic proposal with one modification. The record reflects that the Bell Atlantic proposal matches loop counts with the existing database, and will be easiest to administer. As the rates will be for

interim purposes only, and are expected to be revised when cost studies are completed, we believe the Bell Atlantic proposal appears the least disruptive and should be utilized. However, we believe that the Bell Atlantic proposal should be modified by re-assigning the Hagerstown, Cumberland and Salisbury areas to the A2 rate group, which modification conforms to the aspect of the MFS proposal that recognizes the more urban aspect of these areas. We recognize that re-assignment of these areas will alter the statewide average rate of \$13.36 contained in the original Bell Atlantic proposal, but find that for purposes of proxy rates, these three areas contain aspects of urban zones that should be fairly recognized in the rate structure of the unbundled loops. Therefore, we find the slight revenue reduction that Bell Atlantic will experience from this modification is necessary at this time, and this issue may also be revisited in our universal service proceeding.

B. Other Unbundling Issues

Other issues regarding unbundling of services that have been raised in this proceeding concern pricing for unbundled local switching, unbundling of the line port charges, and non-recurring charges for installation and service order charges for unbundled loops. In addition, Bell Atlantic raises issues of unbundling the network interface device (NID)¹⁰ and

¹⁰ The NID separates customer facilities from network facilities.

reciprocal duty of CLEC to unbundle network elements. MCI has also raised the issue of further sub-element unbundling.

(1). Local Switching and Line Port

With respect to the rate for unbundled local switching, Staff advocates using a proxy rate of \$0.003 per minute of use, which rate was set for local call termination in Case No. 8584-II. Furthermore, this rate falls in the mid-point of the FCC default proxy range of \$0.002 to \$0.004 per minute of use for unbundled local switching, while AT&T and MCI have argued for a rate set at the low end of this FCC default range. Bell Atlantic, while generally favoring retention of rates set in Case No. 8584-II, claims the \$0.003 per minute of use for local call termination should not apply to the unbundled local switching network element, as the latter includes not only the switching function but also the ability to use all vertical features in the switch at no extra charge.

Bell Atlantic therefore seeks establishing the rate at the upper end of the proxy range, recommending \$0.004 per minute of use.

With respect to the rate for unbundled line port, the FCC range of acceptable proxy is \$1.10 to \$2.00. Staff advocates a \$1.10 charge at the low end of the range, noting that it is similar to previously-established port rates of

\$1.19 for rate group A and \$1.02 for rate group B. In contrast, Bell Atlantic proposes selection of the middle of the proxy range, or \$1.55 per month, for setting a proxy rate.

For these elements, the unbundled switching rate and the rate for unbundled line port, we will generally accept the Staff proposals for the establishment of interim rates, as we believe Staff has most closely followed the existing rates established in Case No. 8584-II for similar-type services in making its recommendations. Accordingly, for purposes of setting proxy rates, we see no reason to depart from the \$0.003 per minute rate recommended by Staff, which was previously set for local call termination. We also note that this rate has been cited by the FCC as based on forward-looking economic cost studies,¹¹ and will retain it at this time. Similarly, we find the port charge of \$1.19 (for Rate Group A) and \$1.02 (for Rate Group B) should be utilized, as it conforms to the established tariffed port rates, and is based upon Case No. 8584-II.

(2). Non-recurring Charges

For non-recurring charges associated with unbundled network elements, such as installation and service order charges, we will also use the existing tariffed rates pending the review of cost studies, as these rates have undergone previous review by the Commission and there is insufficient

¹¹ FCC Order, at 812.

basis for other interim proxy rates at this time.

(3). NID

In regard to the NID, it appears that this element has been resolved in the Bell Atlantic/AT&T negotiation. These parties have agreed to allow direct connections to Bell Atlantic's NIDs in certain circumstances in return for indemnification by AT&T. This resolution appears reasonable and has been offered to other carriers, and will be accepted.

(4). Reciprocal Unbundling by CLECs

With respect to the reciprocal duty of CLECs to unbundle their network elements and offer them for resale, this issue was considered and discussed by the Commission in Case No. 8584-II, wherein we required new entrants to offer unbundled rate elements for resale.¹² Bell Atlantic and Staff favor continuation of this policy, while some CLECs (such as AT&T) oppose unbundling of their own networks. AT&T and other opponents premise their opposition on the fact that the FCC determined that non-incumbent carriers are not required to unbundle their services.

¹² 86 Md. PSC 467, 483 (1995).

We see no reason to depart from the decision in Case No. 8584-II, despite continued opposition from various CLECs. While the FCC places mandatory unbundling only on incumbent local exchange carriers,¹³ we believe it is in the public interest for competitive local exchange carriers to offer unbundled elements when appropriate, as this will promote intrastate competition and encourage efficiency if competing carriers purchase elements more cheaply than it would cost for them to provide the same service. The greatest efficiencies will then be achieved if companies are able to make such unbundled purchases from all available sources, including new entrants as well as Bell Atlantic. Therefore, unbundling by CLECs will promote competition and is in the public interest.

(5). Sub-element Unbundling

A final issue with request to unbundling concerns requests by MCI to direct further sub-element unbundling. For example, MCI requests that Bell Atlantic be required to unbundle its loop distribution plant at the feeder distribution interface, as well as unbundling of the AIN (Advanced Intelligent Network) platform, which provides advanced call processing capabilities.

From the record, it appears that this may be an issue under further negotiation between MCI and Bell Atlantic.

¹³ The FCC would require mandatory unbundling by a CLEC only in instances where its operations effectively result in its being the dominant, incumbent carrier.

Accordingly, at this time we will not accept the MCI proposal to direct such further sub-element unbundling. However, we do not foreclose that technological advancements and other developments may promote the appropriateness of further unbundling at some time in the future, and would expect this to occur on a case-by-case basis. However, both Bell Atlantic and Staff recommend against the MCI proposals at this time, with Bell noting the FCC will review the issue of sub-loop unbundling in 1997. Bell Atlantic further states it is willing to enter into a trial with MCI to determine the technical feasibility of sub-loop unbundling, and believes the parties should address these issues through the collaborative open network architecture (ONA) process. Similarly, it appears AIN access is also being studied by the FCC and industry groups, and we decline to order further unbundling of these items at this time, but encourage the parties to continue further discussion and review of these issues.

2. Interconnection Pricing

The issue of proxy rates for transport and termination of local traffic has also been contested in this proceeding. The most important issue concerning interconnection pricing involves the rate for termination of local traffic. This issue also arose in Case No. 8584-II. In

that decision, the Commission established \$0.003 per minute for calls terminated at Bell Atlantic's end offices and \$0.005 per minute for calls terminated at Bell Atlantic's tandem.¹⁴ Bell Atlantic urges retention of these rates on an interim basis pending development of cost studies to support a permanent rate.

With respect to the rates charged by CLECs to Bell Atlantic for termination of calls at the CLEC switch, Bell Atlantic proposes a "blended rate" that reflects the average rate charged by Bell Atlantic and the CLEC for call termination during the previous calendar quarter. Bell claims this will be higher than the \$0.003 per minute rate adopted by the Commission in Case No. 8584-II, and is based upon the methodology similar to that which has been agreed upon in the Bell Atlantic/MFS interconnection agreement. In contrast, the CLECs advocate payment by Bell Atlantic at the tandem rate of \$0.005 per minute. Staff proposes the rate Bell Atlantic pays a CLEC be based on the area served.

¹⁴ 86 Md. PSC 467, 480 (1995).

As the Commission has previously determined inter-connection prices payable to Bell Atlantic in Case No. 8584-II, we will retain these rates on an interim basis as it was the clear consensus of most parties, including CLECs, that such rates be maintained until new cost studies are completed.¹⁵ With respect to the rate payable to CLECs when Bell Atlantic terminates calls on a new entrants' network, we believe the Staff proposal is a fair and balanced approach wherein Bell Atlantic payments are based on the area served by the CLEC. Accordingly, a call terminating in a locus that serves a large area will require payment at the higher rate, which principle we will utilize in setting interim rates pending cost studies in this area.

3. Collocation Pricing

¹⁵ MCI differs from the other CLECs in that it advocates adoption of lower interim rates than those established in Case No. 8584, Phase II. MCI claims such rates were in excess of costs, and lower rates would promote competition.

TCG has also renewed its proposals for flat-rate pricing options, which was not accepted in Case No. 8584-II. In that decision, we noted that we would consider voluntary agreements which contain a flat-rate option, but would not mandate such an option as we desired to observe the operation of the markets to minutes of use rates. 86 Md. PSC at 480-481 (1995).

The Act requires that incumbent LECs provide rates, terms and conditions that are just, reasonable and non-discriminatory for physical collocation of equipment necessary for interconnection or access to unbundled network elements. Bell Atlantic proposes to use its currently effective interstate collocation tariff rates subject to any modification ordered by the FCC, until the cost studies are completed. Bell states it plans to file a mirror of these tariffs as its intrastate collocation tariff in the near future, and such tariffs will allow for physical collocation of the required facilities for interconnection for both interstate and intrastate traffic. TCG opposes the Bell Atlantic proposal for utilizing interstate tariffs, while MFS and Staff propose setting interim cross-connection rates based on an Ameritech cost study for such elements.

MFS proposed a \$0.21 interim rate based upon the Ameritech-Illinois tariff. Staff notes Bell Atlantic's interstate tariff does not contain a rate for a DSO ("Digital Signal-level

O") cross-connect, and proposed a rate of \$0.66 as a compromise between the MFS proposal and the Bell Atlantic proposal of \$1.12. Staff also noted that the rates for Bell Atlantic and Ameritech are difficult to compare as they contain different elements and options. TCG recommends that Bell Atlantic be required to provide an option for CLECs to purchase their own cable link and provide for their own installation of the equipment, which would essentially avoid the cross-connect rate as an issue as only a small maintenance fee would be involved.

TCG believes this maintenance fee would be readily resolvable between Bell Atlantic and the CLECs. Also, Bell Atlantic states it will comply with the results of the FCC's investigation of such rates.

With respect to the DSO cross-connect rate, we will utilize Bell Atlantic's proposal of \$1.12 per month rather than the rate proposed by MFS and Staff. We note the latter parties based their recommendations in whole or in part on the Ameritech costs, which costs are not relevant to Bell Atlantic's costs. We will accept Bell Atlantic's use of its interstate rates as a proxy for intrastate service, as we find there is no better method to utilize for interim proposes. In addition, we also accept TCG's recommendation to allow carriers to provide their own equipment to effectuate cross-connections,

although Bell Atlantic may supervise the installation and charge a fee for maintenance of the equipment.

4. Collocation Non-Pricing Issues

The issue with respect to placing of equipment in Bell Atlantic collocated space concerns restrictions on the type of equipment that may be collocated. Section 251(c)(6) of the Act requires ILECs to provide collocation of equipment necessary for interconnection or access to unbundled network elements. However, the FCC declined to require collocation of switching equipment, but has generally left it to state commissions to determine whether a particular piece of equipment is needed for interconnection and thus required to be collocated.

The CLECs have generally supported the right to place their own equipment, including switching equipment, in collocated offices as they indicate this will promote the ability to provide services and increase efficiency. MCI argues that Bell Atlantic essentially wants CLECs to have only a voice grade private line in collocated space, which will be less efficient and prohibit the provision of new services by the new entrants. AT&T stresses that most local calls never leave the switch, and that efficiency will be increased if remote switching equipment is placed in Bell Atlantic offices by new entrants so that such calls will not have to go to a central office for completion.

Bell Atlantic objects to the proposals to allow

remote switching equipment in collocated offices, as it notes the FCC has not required collocation of such equipment. In addition, Bell Atlantic raises constitutional issues regarding the physical occupation of its property by other carriers, and also raises concerns regarding the availability of space in such offices. Bell Atlantic acknowledges that the FCC requires collocation of equipment necessary for interconnection or access to unbundled elements, and states it will allow equipment to be located that performs no switching functions, such as equipment that will allow combining of traffic to the Bell Atlantic network.

Staff's position essentially supports Bell Atlantic's interpretation that the FCC does not require unlimited access of new entrants' equipment in collocated offices, as Staff supports reasonable restrictions at this time. That is, Staff would require collocation of equipment that performs concentration of traffic or access to unbundled elements, but would not require collocation of remote switching equipment for switching purposes as the FCC has not determined the necessity of such equipment for the provision of local services at this time.

After considering this issue, we believe that if space is available in an ILEC office, then the new entrants should generally be allowed to place whatever equipment they desire that would be most efficient and would best meet their needs, including remote switching equipment, as long as such

equipment is compatible with the existing network. While we recognize the placement of such remote switching equipment has not been mandated by the FCC, it is clear that competing carriers believe such equipment would promote efficiency. Therefore, Bell Atlantic should not be able to prohibit competing carriers from placing the type of equipment which will provide more efficient service to the public at large.

With respect to Bell Atlantic's allegations that such a directive raises constitutional questions concerning improper taking of private property, we see no significant difference in requiring Bell Atlantic to provide for collocation of switching equipment compared to transmission equipment that it does not contest on a constitutional basis. Also, we do not require Bell Atlantic to provide such collocation if physical space is not available, as in such cases virtual collocation may still be offered. In this decision, we do not in any way change the principles regarding physical or virtual collocation. However, as Bell Atlantic is required by Federal mandates to provide physical collocation in its facilities when space is available, and such collocation is necessary for the advancement of the interconnected phone network system to properly work, Bell Atlantic should not be allowed to inhibit the type of equipment that best suits the competitors needs. Therefore, as the new entrants contend the provision of switching equipment is

necessary for achieving greater efficiencies on their systems, we will require such collocation as long as space is available.

This requirement will promote the goals of competition, promote efficiency, and is in the public interest.

5. Meet-Point Interconnection and Billing

The issue to be resolved concerning meet-point billing involves the appropriate assessment of the residual interconnection charge (RIC) when two carriers are involved in the completion of a third party interexchange call. This situation arises when one local exchange carrier terminates an interexchange carrier's traffic at its tandem and another company provides termination to the end user. TCG argues that it should get 100 percent of the RIC, as it believes any payment to Bell Atlantic would actually be a subsidy. Bell Atlantic believes that the RIC should be divided 75 percent/25 percent in favor of the carrier providing end office services, which would normally be Bell Atlantic. This split should be set as an interim rate until the FCC has completed its analysis of cost functions in this area. Staff, noting the Commission distinction between rates for end office and tandem office interconnection, proposes a split of 60 percent to the end office and 40 percent to the tandem provider.

In its final written comments, TCG also notes a recent decision by the Pennsylvania Public Utility Commission in which the recommendation of the administrative law judge was

accepted to allow TCG to collect the RIC charge where it provides tandem switching and transport.¹⁶ Furthermore, TCG recommends that where it and Bell Atlantic each provide the tandem function, they share the RIC equally. TCG urges the same results by this Commission.

¹⁶ Recommended Decision, A-310213F0002, at 12-13, September 12, 1996.

At this time, we will accept the Bell Atlantic proposal to divide the RIC 75/25 percent in favor of the carrier providing end office services. This issue has also arisen in Case No. 8715¹⁷ and our decision in this case to accept the 75/25 percent split conforms to our ruling in the "price cap" proceeding.

6. Other Interconnection Issues

Other interconnection issues that have arisen in this proceeding concern points of interconnection between carriers, financial responsibility for provision of facilities to interconnection points, and rules on interconnection trunking arrangements.

Sprint has also raised the concern that it should be allowed to designate at least one point of interconnection on the Bell Atlantic network within local calling areas for the purpose of routing local traffic, rather than requiring interconnection at each tandem or end office to terminate calls to the entire local calling or toll areas of Bell Atlantic. Staff supports Sprint's position.

With respect to points of interconnection, MCI requests that it be permitted to select the location of the interconnection point from any point of the ILEC network that is technically feasible. Bell Atlantic states it is going to enter into negotiations to identify interconnection points

¹⁷ Case No. 8715, Re the Inquiry into Alternative Forms of Regulating Telephone Companies, Order No. 73011 at p. 94 (November 8, 1996).

other than those specifically ordered by the FCC.

Section 251(c)(2) of The Telecommunications Act requires ILECs to provide interconnection at any technically feasible point.¹⁸ Also in Case No. 8584-II, the Commission determined

¹⁸ 47 U.S.C., 251(c)(2). See also FCC Order, at 209-212.

extensive guidelines governing points of interconnection.¹⁹ We reaffirm our policy expressed in Case No. 8584-II, and believe that it and the Federal provisions should be dispositive of all issues concerning points of interconnection. Therefore, in accordance with the Act and our guidelines, Bell Atlantic shall allow such interconnection at any technically feasible point, and we expect good faith efforts by all parties when determining points of interconnection. Under these policies, and our policy regarding collocation expressed earlier allowing carriers to collocate the equipment of their choice, we specifically allow carriers to interconnect with each other at collocated offices if technically feasible.

With respect to financial responsibility for facilities leading up to an interconnection, Sprint proposes that Bell Atlantic be responsible for constructing its fair share of facilities involved in interconnection between the network of Bell Atlantic and a CLEC such as Sprint. Sprint has proposed that Bell Atlantic be responsible for providing 50 percent of the interconnection facilities or build to Bell Atlantic's wire center boundary, whichever is less.

Bell Atlantic opposes the Sprint recommendations that have Bell Atlantic sharing financial responsibility for facilities leading to an interconnection point, as Bell Atlantic believes every carrier should be responsible for

¹⁹ 86 Md. PSC 467, 493-494 (1995).

bringing its own facilities to the interconnection point on the other carrier's network. In those instances of mid-span interconnection arrangements, Bell Atlantic proposes that cost-sharing be based on the percent of physical facilities provided by each carrier and the percent utilization of those facilities by each carrier, with these arrangements limited to local traffic exchange only.

We note that a carrier currently has a choice of various interconnection points with respect to connection with the ILEC network. We therefore agree with the principle advocated by Bell Atlantic, that every carrier should be responsible for bringing its own facilities to the interconnection point on the other carrier's network. In the instance of mid-span meet arrangements, we believe the Bell Atlantic proposal for cost-sharing based on percent of physical facilities provided by the carrier and utilization of such facilities is fair and reasonable, as an ILEC should not have to bear costs for an interconnection that is for the purposes of a CLEC. We also believe this conforms with our general policy to place financial responsibility on the entity responsible for the costs.

With respect to rules on interconnection trunking arrangements, it appears this issue has been resolved in the

final positions of the parties, as the parties support the Commission decision in Case No. 8584-II.²⁰

²⁰ This issue was raised by Sprint in the course of this case, but in its final comments, it advocates support for the Commission's decision in Case No. 8584, Phase II. (Sprint final comments at p. 4). Bell Atlantic also considers the Commission's decision in Case No. 8584, Phase II as consistent with FCC directives, and states no additional action is necessary. (Summary of positions of Bell Atlantic, at p.49).

7. Dark Fiber

"Dark fiber" refers to fiber optic cable that has been installed in the network but does not have a connection to transmission electronics, and is therefore not in use. Both AT&T and MCI propose that to the extent Bell Atlantic has excess capacity, which they consider dark fiber to be, it should be available for lease by other parties. MCI and AT&T essentially consider dark fiber to be an element that should be "unbundled" and available for lease by the competing carriers.

Bell Atlantic disagrees with the position that dark fiber should be available for lease as an unbundled element of the network, and notes that the FCC specifically did not mandate unbundling of dark fiber as a network element. Bell Atlantic further states that since it is not in use, it is not in fact a telecommunication service. Also, the Telecommunications Act governing the provision of network elements covers only those elements that are in service and used in the network. In addition, Bell Atlantic questions whether this issue was properly before the Commission, as it believes no party to this proceeding properly presented the issue of dark fiber in their respective petitions for arbitration.

Staff notes that the FCC declined to address unbundling of dark fiber, and recommends that the Commission

not mandate unbundling of dark fiber as a general policy, but may use a case-by-case analysis of any requests for its provision.

In reviewing the arguments and comments regarding this issue, we believe that whether MCI or AT&T specifically presented this issue in their arbitration petitions, the record has been fully developed during the course of this proceeding, and it would be in the public interest to address this issue at this time. However, in reviewing the merits of this issue, we disagree with AT&T and MCI that Bell Atlantic should be required to provide this as a service to competing carriers, as Bell Atlantic installs its facilities based on forecasted growth and includes spare capacity for future use by its own services. The record is also clear that dark fiber is not necessary for the provision of services by competing carriers.

We therefore see no reason to mandate provision of this service, since it is not necessary for the provision of telephone service by the competing carriers and may be needed by Bell for its own purposes in the future.

8. Resale of Wholesale Rates

Perhaps the most important issue to be determined in this proceeding concerns the appropriate wholesale discount that resellers should receive when they purchase retail telecommunications services from Bell Atlantic for resale. Furthermore, unlike many of the other pricing issues in this

proceeding, this issue does not depend upon the cost studies that have been rejected in this case. However, the establishment of wholesale rates has been guided by directives from the FCC which provide that such wholesale rates be established upon calculations of avoided costs that the incumbent carrier will no longer incur in the provision of the wholesale service. Bell Atlantic submits that its cost study was consistent with the FCC Order which has now been stayed by the Eighth Circuit Court of Appeals. Bell Atlantic also contends that the FCC over-reached its authority and would require Bell Atlantic to offer services for resale at a wholesale price below a retail price less avoided costs. Therefore, in its final position submitted in this case, Bell Atlantic asks the Commission to consider its avoided cost proposal as an interim ceiling rate pending the final disposition of this matter by the Court. If the FCC Order is overturned, Bell Atlantic suggests that the Commission may want to consider appropriate adjustments to the discount rate following the Court's decision.

In this case, the discount rates proposed by the parties vary from 12.03 percent advocated by Bell Atlantic (for those resellers who choose to use Bell Atlantic's directory assistance and operator services platform)²¹ to 26.7 percent

²¹ Bell Atlantic proposes a discount of 14.18 percent for AT&T and other resellers who choose their own directory assistance and operator services

advocated by AT&T. MCI has proposed a wholesale discount rate of 22.62 percent, based on a methodology which it states was deemed by the FCC as a suitable model for calculating an acceptable default discount rate. Staff has proposed various options for our consideration with respect to the wholesale discount rate. Initially, Staff proposed a single rate of 20.78 percent. In its reply comments, Staff proposed a modified rate, based on other parties comments, of 20.48 percent. In its final posthearing brief, Staff noted that the wholesale rates proposed before the Commission were based in large part on FCC guidelines that have been called into question by the Stay Order. Staff therefore independently calculated a new wholesale discount, using an avoided cost model and avoiding costs attributable to marketing, billing, collection and other costs. This calculation does not rely on the percentages and guidelines established in the FCC Order. In determining this calculation, Staff has reviewed the comments of AT&T and Bell Atlantic on percentages of cost which will be avoided for specific accounts, and has accepted certain accounts recommended as avoided by other parties, rejected others, and proposed compromises for other specific items. Staff's conclusions calculate a new discount of 16.63 percent for resellers not providing their own operator and directory assistance services and 19.87 percent for resellers who provide

platform.

such services, rather than rely on Bell Atlantic.

Based on the record, we find that the wholesale discount rate that should be applied in this proceeding is 19.87 percent, as calculated by Staff for resellers who provide their own operator and directory assistance services. We note that the Staff methodology has carefully reviewed the positions of the other parties in this proceeding, and believe Staff provides an unbiased analysis which does not favor either Bell Atlantic as an incumbent provider or any of the new entrants who favor larger discounts than those recommended by Bell Atlantic. We further note with approval that the Staff analysis does not depend on the FCC guidelines that have been stayed at this time, but is in effect an independent analysis that considered all relevant factors and comments with respect to specific cost items of Bell Atlantic that may be avoided when Bell Atlantic provides service as a wholesaler rather than a retailer. Accordingly, we will accept the Staff recommendation for determining the wholesale discount. However, we do not accept a dual discount which provides a lesser discount for resellers who do not provide their own operator and directory assistance services. Instead, we believe the provision of operator and directory assistance services should be a separately-tariffed charge that Bell Atlantic may impose upon other carriers who require such

services. We therefore direct Bell Atlantic to develop and file such a charge for these services, which shall be subject to acceptance by the Commission.

9. Interim Number Portability (INP)

The Commission has established Case No. 8704 to investigate long-term solutions to number portability in Maryland. In this case, however, several of the CLECs advocate that interim measures be taken with respect to cost recovery for number portability. However, these proposals vary greatly, ranging from a large discount advocated by Sprint, to each carrier bearing its own costs, recommended by MCI and also Staff.

The record also reflects that Bell Atlantic has reached agreement on this issue with both AT&T and MFS. These agreements each provide for tracking the amount of usage of ported numbers by these carriers, with retroactive payment of a rate based upon the usage, once an appropriate rate has been established by the Commission. The main difference between the two agreements is that MFS provides for certain payments to be made prior to the "true up" procedure, while the AT&T agreement does not provide for payment of funds until the rate has been established.²²

As we already have a proceeding in place to

²² Apparently, MFS prefers the AT&T approach to this issue at this time.

investigate issues of number portability, we believe the agreement reached by Bell Atlantic/AT&T is an eminently proper, fair and reasonable resolution at this time. Accordingly, parties are to track usage for ported numbers, and once a rate has been established, payment will be made based upon the established rate plus interest. Furthermore, we direct the consideration of this issue be handled in Case No. 8704 in an expeditious manner.

10. Directory Listings

The primary issue in dispute with regard to directory listings concerns the price, if any, that Bell Atlantic may charge for directory listings of new entrants' customers. Several of the CLECs in this proceeding, such as MCI, TCG, and Sprint, believe no charge should be rendered by Bell Atlantic as they contend there are in fact benefits to Bell Atlantic in publishing a complete directory, which benefits counteract the costs that are involved. Accordingly, these parties essentially state they will forego compensation for providing their customers' names to Bell Atlantic, and would allow Bell Atlantic to keep advertising revenues and other benefits in exchange for free listings of their customers and free distribution of directories.

AT&T proposes that a wholesale discount should apply

to directory listings services as AT&T contends it is part of the phone service. Other CLECs have expressed support for this approach.

Bell Atlantic and Staff note that directory listing issues were addressed in Case No. 8584-II, wherein the Commission approved a \$0.29 per month primary listing charge.²³

In addition, Bell Atlantic proposes an alternative option of a \$5.00 non-recurring fee rather than the monthly charge.

We believe the issue of payment for directory listings was fully litigated in 8584-II, and we reaffirm the principle that Bell Atlantic does incur costs with respect to publishing of the directory for which it should be compensated.

Accordingly, we do not accept the position of those new entrants who believe such service should be provided for free.

If these carriers wish to uphold their directory obligations by arranging to have their customers listed in the Bell Atlantic directory, Bell Atlantic must be able to recover its costs and is entitled to compensation. Accordingly, we reaffirm the \$0.29 monthly charge established in Case No. 8584-II, while we will also accept the \$5.00 one time charge as an alternative option to be offered to new entrants for this service.

With respect to AT&T's proposal that wholesale discounts be provided for directory services such as additional

²³ 86 Md. PSC 467, 491 (1995).

listings and non-published and non-listed numbers, we note that Staff and MCI support the provision of a wholesale discount for these services. In opposition, Bell Atlantic disputes that such services are in fact "telecommunications services" and notes the Commission has approved tariffs for these specific services. As noted by Staff, however, there is agreement that the primary listing is a "telecommunications service," and non-published or non-listed numbers are merely variations of the provision of the primary listing. We further agree with Staff that these services should be offered at a wholesale rate, although Staff notes that the avoided costs may differ for these services. Accordingly, we find that these additional directory services (including additional listings, non-published and non-listed numbers) shall be subject to the wholesale discount determined in this proceeding (19.87 percent) as an interim measure, and Bell Atlantic is directed to file further cost data on these items when the cost information regarding permanent rates is filed.

Another disputed issue regarding directory listings concerns billing of yellow pages advertising by Bell Atlantic to customers of the new entrants. Apparently, some CLECs believe that Bell Atlantic should be restricted from directly billing CLEC customers as they oppose contact by Bell Atlantic with their customers. In addition, questions of use of billing

inserts by Bell Atlantic have also been raised.

In our opinion, Bell Atlantic is entitled to bill any party from which it is entitled to receive compensation for service, and we reject the prohibitions on direct billing proposed in this case. However, advertising inserts that go beyond the actual bill can lead to unfair advantages to a particular company, and we believe it to be a reasonable restriction to prohibit this practice.

11. Dialing Parity

MCI seeks to have this proceeding address issues of intralata toll-dialing parity. Bell Atlantic indicates that it will be filing an implementation plan required by the FCC, and believes review of that plan will encompass issues necessary to achieve presubscription consistent with the Act and FCC requirements.

We believe that this issue is premature and decline MCI's request that it be addressed here.

12. Operator Services and Directory Assistance

The primary issue with respect to this subject concerns identification of directory assistance and operator service functions. During the hearings, MCI and Sprint requested removal of branding by Bell Atlantic for CLEC customers. This issue has been settled by Bell Atlantic and AT&T. Under their agreement, Bell Atlantic will provide the

capability to route directory assistance and operator service calls to the platform of AT&T's choice. Bell Atlantic is studying various technical solutions to provide this capability, and has committed to implement this arrangement for AT&T in the second quarter of 1997. Bell Atlantic indicates that it will implement this resolution for any other CLEC as long as it is given adequate notice. It appears that this resolution may also be satisfactory to MCI and Sprint, so that this issue may be settled among all parties. In any event, we find the Bell Atlantic/AT&T resolution to be fair and reasonable, and may be used by Bell Atlantic with respect to other carriers to fully resolve this issue.

13. Access to Poles, Ducts, and Rights-of-Way

This issue concerns non-discriminatory access to poles, ducts, and rights-of-way by competing carriers. MCI has proposed certain specific time frames in which Bell Atlantic must respond to requests for such access. We see, however, no reason to alter existing procedures which govern such requests for access. Accordingly, we decline to direct any new rules or regulations, as Bell Atlantic should continue to provide access to poles, conduits and rights-of-way in conformance with applicable federal statutes, regulations and prior procedures.

14. Performance Standards and Penalties

All parties agree that the Telecommunications Act requires that interconnections shall be equal in quality, and access shall be non-discriminatory. However, for purposes of implementing equal access with regard to interconnection and assuring that such interconnection is non-discriminatory among carriers, several of the new entrants favor establishment of performance standards and penalties to ensure that their customers are treated fairly by Bell Atlantic. MCI also recommends a procedure called "mediation plus" wherein it proposes that Bell Atlantic and MCI mediate their disputes on performance implementation and report back to the Commission, with provisions for compensation if standards of performance have not been met.

As pointed out by Bell Atlantic, the existing FCC complaint procedures may include recovery of damages, while our existing procedures include filing of those complaints which this Commission has authority to resolve. The record further reflects that Bell Atlantic and TCG have reached agreement on these issues. The agreement foregoes pursuit of penalties for failure to meet standards, while also providing access to reports by TCG and subsequent filing of complaints if the parties cannot agree on resolutions.

We believe existing procedures and remedies are sufficient, and do not see the necessity for any further performance standards or penalties than those already offered

parties under both federal and state procedures. Therefore, we reject the requests for establishment of additional standards and penalties.

With respect to MCI's "mediation plus" proposal, MCI recommends a process wherein Commission staff members would mediate MCI's negotiations with Bell Atlantic with respect to remaining issues in dispute.²⁴ MCI claims that its experience in other states shows that a level of staff involvement greatly assists the negotiation process, and MCI further requests the Commission allow it to present any remaining issues that are not successfully resolved through negotiations in a filing on December 6, 1996.

We decline to adopt MCI's mediation plus proposal advocated in this proceeding. As noted above, we intend the instant Order to resolve all issues in dispute among parties. We do recognize that MCI and Sprint are apparently still engaging in negotiations with Bell Atlantic. Accordingly, we have directed the parties to specifically inform the Commission of any remaining disputes within 15 days of the date of this Order and to indicate the position of every party on each

²⁴ As noted above, MCI's concluding date for arbitration is not the November 8, 1996 deadline applicable to certain other parties. Rather, MCI's arbitration window terminates on December 26, 1996, so that MCI indicates it is still negotiating issues with Bell Atlantic.

remaining disputed issue. It is from this filing that we would anticipate resolving any remaining disputes, although we encourage the parties to settle any remaining issues in accordance with the policies expressed in this order. We also note that Staff has indicated its availability to assist parties in resolving any remaining disputes. We believe this assistance can be accomplished on an informal basis without the necessity of adopting MCI's mediation plus procedures. Therefore, the parties may feel free to request informal Staff assistance with respect to remaining disputes. Parties may also present issues to Staff and request a non-binding recommendation. Staff may also submit a report on any remaining issues with its recommendations to the Commission, and may very well in fact be directed by the Commission to report its findings and recommendations on any such issues. If issues remain and have not been resolved following these steps, the Commission would then expect to render a final decision on disputed matters.

15. Repair Problems

Several carriers object to Bell Atlantic repair technicians leaving repair cards with CLEC customers after a repair call. Also, objection has been expressed to Bell Atlantic announcing at the beginning of 611 repair calls that Bell Atlantic is involved in the repair. These issues have been withdrawn by most carriers (except MCI and Sprint), as

most of the CLECs support the resolution of this issue in the Bell Atlantic/AT&T agreement. The agreement provides that all carriers, including Bell Atlantic, will establish a company specific toll-free or ordinary telephone number to receive repair calls, and that the 611 number will be phased out. Also, the parties have agreed to joint development and use of a neutral "leave behind" card when technicians make repair visits to customers, with only Sprint opposing such cards.

We believe the resolution by Bell Atlantic and AT&T, which has been accepted by most of the other carriers, is reasonable and should be adopted for both repair calls and "leave behind" cards. Therefore, to the extent parties have not resolved this issue with Bell Atlantic, we will utilize the AT&T/Bell Atlantic resolution as fair to all parties.

16. Notice of Bell Atlantic Agreements

Some parties have questioned the availability of agreements reached by Bell Atlantic with other carriers or individual case-based agreements that Bell Atlantic reaches with specific customers. AT&T specifically raises the issue of access to customer-specific contracts and notes that agreements for access have been reached in neighboring states with their respective Bell Atlantic companies. It appears that this issue has been largely resolved, as AT&T indicates that it is not

interested in customer-specific information. Furthermore, agreements filed with the Commission are not foreclosed for review, but are in fact open for review by other parties. However, it appears that Bell Atlantic and AT&T may differ on availability of customer-specific contracts for resale.

In regard to availability of customer-specific contracts for resale, the Act requires that telecommunications services must be made available for resale at wholesale rates.²⁵

Furthermore, ILECs are prohibited from placing unreasonable or discriminating conditions or limitations on the resale of telecommunications. However, a state commission may prohibit a reseller from offering a service to a different category of subscribers if the service is available at retail only to a category of subscribers.²⁶ Therefore, resale of customer-specific contracts is permissible, if provided on the same terms and conditions (excepting price), and any disputes with respect to availability of specific contracts or restrictions on resale of specific contracts may be brought to the Commission's attention on a case-by-case basis.

²⁵ 47 U.S.C., 251(c)(4)(A).

²⁶ 47 U.S.C., 251(c)(4)(B).

CONCLUSION

In conclusion, we find that the parties may file interconnection agreements with the Commission in conformance with our decisions on the issues presented to us for arbitration noted above.

ORDERED PARAGRAPHS

IT IS, THEREFORE, this 8th day of November, in the year Nineteen Hundred and Ninety-six, by the Public Service Commission of Maryland,

ORDERED: (1) That telecommunications companies may file interconnection agreements in conformance with the findings of this Order.

(2) That carriers currently negotiating agreements with Bell Atlantic-Maryland, Inc. specifically inform the Commission of any remaining disputes within 15 days of the date of this Order, in accordance with the provisions of this Order.

(3) That a Phase II of this case is hereby instituted to review cost studies in accordance with the provisions of this Order.

(4) That Bell Atlantic-Maryland, Inc. shall develop and file a tariff for operator and directory assistance services, which shall be subject to approval by the Commission.

Commissioners