MCI WORLDCOM
Public Policy

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by New York Telephone Company (d/b/a Bell Atlantic - New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc., for Authorization To Provide In-Region, InterLATA Services in New York	)	Docket No. 99-295

COMMENTS OF MCI WORLDCOM, INC., ON THE APPLICATION BY BELL ATLANTIC - NEW YORK FOR AUTHORIZATION TO PROVIDE IN-REGION, INTERLATA SERVICES IN NEW YORK

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INTRODUCTION AND SUMMARY

The best evidence that a telecommunications market is irreversibly open to competition comes from the experience of actual competitors in that market, as the Federal Communications Commission ("Commission") has repeatedly emphasized. MCI WORLDCOM, Inc. ("MCI WorldCom") is one of Bell Atlantic-New York's ("BA-NY") largest competitors in New York. Its experience therefore is highly relevant to the Commission's consideration of BA-NY's application to provide in-region long-distance telephone service in the New York market. That experience shows that BA-NY for the most part provides reasonably effective service to MCI WorldCom, enabling it to serve both business and residential customers in New York. However, MCI WorldCom's progress is limited by five failures relating to BA-NY's operations support systems, the terms and conditions for leasing loops over which competitors can provide advanced services, and BA-NY's proposed performance remedies.

At the insistence of the New York State Public Service Commission ("NYPSC"), BA-NY has done much to open its local markets, and the proof is that a significant and growing number of New York residential and business customers for the first time have a choice of local carriers. MCI WorldCom serves New York's residential market principally through the "platform" of network elements leased from BA-NY, and serves business customers principally through MCI WorldCom's own facilities, which are interconnected to the BA-NY network. On the business side, MCI WorldCom has ****REDACTED**** switches, collocations in ****REDACTED**** central offices, and fiber serving over ****REDACTED**** customers, primarily within LATA 132. MCI

WorldCom is pleased to report that it has sold over **__REDACTED__** lines for residential customers throughout the State, saving New Yorkers over **__REDACTED__** so far this year.[1]

Although MCI WorldCom has not advertised its service, already over **__REDACTED__** customers have learned of that service by word of mouth and have called MCI WorldCom requesting service. But conditions in New York today make it difficult for MCI WorldCom to offer service fast enough to meet the demand.[2] MCI WorldCom's inability to compete in a way that fully captures the evident demand for its products is largely the result of remaining barriers to entry that should be addressed if local competition is to flourish in New York.

The substantial competition-affecting problems that remain are few, and could be quickly remedied. Indeed, most of them are already in the process of being resolved. But until these problems are addressed, MCI WorldCom will not be able to compete in New York at sustainable commercial volumes. In short, BA-NY should take the last steps to assure that the promise of the 1996 Act is finally fulfilled in New York.

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[1] See Joint Declaration of John G. Donoghue and Ronald J. McMurtrie ¶¶ 6-8 ("Donoghue & McMurtrie Decl."), appended as Tab E to these Comments.

[2] Id. ¶ 7.

In these Comments, MCI WorldCom shares its experience in New York. That experience shows that pure facilities-based competition is often possible in New York for medium and large business customers in the concentrated urban area of LATA 132. Elsewhere in the state, and for mass market residential and small business competition throughout the state, competitors remain dependent on BA-NY facilities. Competition using BOC facilities can open local markets, but only if three preconditions are present: First, there must be robust and scalable processes in place that enable competitors reliably to make use of those leased facilities. Second, competition using leased elements will develop fully only if the prices for those elements are cost-based. Finally, competition will be irreversible only with regulatory oversight and if a system of performance standards, measurements and remedies is in place that will adequately counteract the natural incentive of a Bell Operating Company ("BOC") to backslide and harm its competitors once it has won in-region interLATA entry.

In Part I of its Comments, MCI WorldCom demonstrates that, for all that it has accomplished, BA-NY needs to take five additional steps before MCI WorldCom can compete in New York with a reasonable prospect of commercial sustainability.

First, BA-NY's ordering Operations Support Systems ("OSS") require too much manual processing. Scalable OSS requires that the great majority of orders must flow through BA-NY's electronic systems without manual intervention. Otherwise, as the volume of orders increases, manual orders inevitably will overwhelm the staff assigned to process them, resulting in anticompetitive delays and high error rates.

Second, BA-NY has not so far been able to translate into practice the paper commitments it has made to Competitive Local Exchange Carrier ("CLECs") concerning change management for its OSS. It has not shown that it can provide timely notice and adequate documentation for new releases. Neither has BA-NY shown a willingness to consider CLEC input on suggested changes or the timing of new releases. MCI WorldCom also continues to be surprised by frequent unreported and unexplained systems outages. In addition, BA-NY has not yet demonstrated that it can provide the facilities and processes necessary for rigorous carrier-to-carrier testing of new releases.

Third, MCI WorldCom still does not have an adequate application-to-application pre-ordering interface that can be integrated with its ordering interface. Without this interface, MCI WorldCom is not able to interact efficiently with its potential new customers, and must undertake unnecessary manual efforts that inevitably result in errors and delay in provisioning new orders.

Fourth, BA-NY does not provide nondiscriminatory access to unbundled loops for advanced services. BA-NY has imposed high and unjustified, non-cost-based, non-recurring charges on competitors who wish to make use of digital subscriber line ("DSL") technology. In other respects as well, BA-NY deters competitors from making use of this powerful and forward-looking technology.

Finally, BA-NY's performance remedy plan is inadequate to give it sufficient incentive to continue to provide nondiscriminatory access to CLECs after BA-NY obtains section 271 authority in New York.

These problems can and should be addressed promptly. BA-NY has committed to address most of them. The NYPSC is currently reviewing the performance plans and the pricing for DSL loops. If these issues are fairly addressed, MCI WorldCom will have the opportunity to compete in New York on a commercially sustainable basis.

Part II describes the conditions that MCI WorldCom believes need to be present in New York to justify in-region long-distance entry. In New York, the "platform" is available at a cost that allows competitors to use it and with OSS that will work (once the problems discussed above are addressed). Additionally, CLECs have built their own facilities, particularly in LATA 132, demonstrating reasonable feasibility of entry to serve some large and medium business customers in these areas. And the number of collocations constructed throughout the state suggest that CLECs believe they can use their own switches to serve customers throughout the state. At the same time, credible third-party testing provides some comfort that OSS systems will function as promised, and the NYPSC has a proven track record opening the local market in New York to competition.

I. BA-NY SHOULD TAKE ADDITIONAL STEPS SO MCI WORLDCOM CAN COMPETE ADEQUATELY IN NEW YORK.

Section 271 of the Communications Act is designed to ensure that "BOCs have taken real, significant, and irreversible steps to open their markets" to local competition before they are permitted to enter the long-distance market in their own regions. MI Order ¶ 18;[3] see also DOJ

[3] In re Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, Memorandum Opinion and Order, 12 F.C.C.R. 20543 (1997) (hereinafter "MI

LA I Eval. at iii, 1-2;[4] DOJ LA II Eval. at 1.[5] Thus, to gain entry into the interLATA market in New York, BA-NY must prove that it has "fully implemented" all fourteen items of the competitive checklist set forth in section 271(c)(2)(B) of the Act. MI Order ¶ 105; see also LA II Order ¶ 50 (noncompliance with a single checklist item is sufficient to deny an application).[6] Both this Commission and the Department of Justice have recognized that the statutory requirement that a BOC "provide" access and interconnection, 47 U.S.C. § 271(c)(2)(A), means not only that a BOC must make each item legally available, on paper, but also that it must make each item practically available -- that the BOC must demonstrate that it is ready to furnish the item in quantities that competitors may reasonably demand, and at an acceptable level of quality. LA I Order ¶ 54[7]; SC Order ¶¶ 78, 81;[8] MI Order ¶¶ 107, 110; see also DOJ SC Eval. at 13 (each

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Order").

[4]Evaluation of the United States Dept. of Justice, In re Application of BellSouth Corporation, et al, for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 97-231 (filed Dec. 10, 1997) (hereinafter "DOJ LA I Eval.").

[5]Evaluation of the United States Dept. of Justice, In re Application of BellSouth Corporation, et al, for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121 (filed Aug. 19, 1998) (hereinafter "DOJ LA II Eval.").

[6]In re Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long-distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121, Memorandum Opinion and Order, 13 F.C.C.R. 20599 (1998) (hereinafter "LA II Order").

[7]In re Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Louisiana, CC Docket No. 97-231, Memorandum Opinion and Order, 13 F.C.C.R. 6245 (1998) (hereinafter "LA I Order").

[8]In re Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South

checklist item must "be genuinely available");[9] id. at 16 (BOC must demonstrate practical ability to provide UNEs with "satisfactory performance in commercial quantities"); DOJ Okla. Eval. at 75-76 (interconnection and access must be practically available in adequate quantities, and through automated systems that permit efficient ordering, installation, and billing).[10]

To judge whether these standards are met, and to ensure that the conditions BA-NY has put into place to win section 271 approval do not deteriorate once it is allowed to compete in long-distance, there must be adequate standards of performance, preferably enforceable through liquidated damages clauses. MI Order ¶ 22 (BOC must not only prove compliance with Act's requirements at time of application, but also that it can be relied on to remain in compliance). See also id. ¶¶ 204-206, 209; DOJ LA I Eval. at 31.

Carolina, CC Docket No. 97-208, Memorandum Opinion and Order, 13 F.C.C.R. 539 (1997) (hereinafter "SC Order").

[9]Evaluation of the United States Dept. of Justice, In re Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long-distance, Inc. for Provision of In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208 (filed Nov. 4, 1997) (hereinafter "DOJ SC Eval.").

[10]Evaluation of the United States Dept. of Justice, In re Application of SBC Communications, Inc., et al. to Provide In-Region, InterLATA Services in the State of Oklahoma, CC Docket No. 97-121 (filed May 21, 1997) (hereinafter "DOJ Okla. Eval.").

BA-NY has the burden of proving by a preponderance of the evidence that all of these criteria are satisfied as to each checklist item. LA II Order ¶¶ 51-59; SC Order ¶¶ 37, 57; MI Order ¶ 45. Critically, "paper promises" of future compliance are not enough. BA-NY has the burden of submitting evidence that proves it has the practical ability to satisfy those checklist items requested by CLECs. DOJ SC Eval. at 16 & n.28; LA II Order ¶¶ 51-59.

MCI WorldCom agrees that in fully complying with checklist obligations, "absolute-perfection" is not required. MI Order ¶ 278. Instead, the systems have to work well enough to permit CLECs to compete effectively for all classes of customers. A BOC has complied with the requirement that it fully implement a checklist item when competitors who need that item in order to compete are not, as a practical matter, impeded by the BOC. Such an analysis by its nature must be contextual. Imperfections that in one set of circumstances might have competitive consequences in another might not. As this Commission has held, the BOC's obligation is to furnish "the checklist item in the quantities that competitors may reasonably demand and an at acceptable level of quality." LA II Order ¶ 54. As the "reasonably foreseeable demand" (MI Order ¶ 110) for a checklist item might well vary from state to state depending upon the nature of the competitive arrangements in the state, so too the systems that are required to "fully implement" a particular checklist item might vary as well.

As a general matter, BA-NY claims not only to provide each checklist item in a manner sufficient to meet current demand and exceed current performance metrics, but also to be prepared to meet all future demand. See, e.g., Application by BA-NY for Authorization to Provide In-Region, InterLATA Services in New York at 10 ("BA-NY Br."). It also frequently

asserts that it provides a particular checklist item more efficiently to its competitors than it does even to its own comparable retail operation, and backs up many of these assertions with evidence of actual commercial performance, supported by rigorous third-party testing. See, e.g., id. at 12 (trunk provisioning); id. at 16 (installation of unbundled loops). As to many of these claims, MCI WorldCom has no experience with which to contradict BA-NY's prima facie case.[11]

As to other BA-NY claims, MCI WorldCom does have relevant experience. What that experience shows is that while BA-NY's practices often leave much to be desired and are far from perfect, in most instances today BA-NY is not stopping MCI WorldCom from offering local service to New York's business and residential customers. This application for that reason is very different from the previous section 271 applications filed by BOCs that have kept their local markets tightly shut. Indeed, New York's relatively open local market today is unique, even as compared to the local markets in other states within BA's territory.

At the same time, for all that it has accomplished, BA-NY has failed to satisfy five critical business requirements, which MCI WorldCom addresses seriatim:

[11]Neither does MCI WorldCom contest that BA-NY may properly proceed under sections 271(c)(1)(A) involving "Track A," and 271(d)(3)(B) involving section 272.

A. The Need for Adequate Flow-Through Order Processing.

1. Low Flow-Through Rates Are Inadequate. One of the most fundamental OSS business requirements is that a CLEC's orders must "flow through," that is, be "transmitted electronically through the gateway and accepted into [the BOC's] back office ordering systems without manual intervention." LA II Order ¶ 107. The Commission has found "a direct correlation between the evidence of order flow-through and the BOC's ability to provide competing carriers with nondiscriminatory access to the BOC's OSS functions." Id. This is so because flow-through rates directly affect the speed and efficiency with which CLEC orders and status notices are processed. See MI Order ¶ 196 ("[I]t is virtually impossible for orders that are processed manually to be completed in the same time as orders that flow through electronically."); LA II Order ¶ 108 (noting link between order flow-through and, inter alia, a BOC's "failure to provision orders in a timely manner" and "failure to provide order status notices electronically").

A BOC must process orders with an "equivalent level of mechanized processing" that exists for the BOC's retail customers. SC Order ¶ 105. If a BOC is unable to show that the flow-through rates for CLEC orders submitted electronically are "substantially the same as" the flow-through rates for the BOC's retail orders, then the BOC has failed to achieve parity. LA II Order ¶ 116; see also id. ¶ 109 (stating that a substantial disparity in flow-through rates "on its face" shows a lack of parity).

Because BOCs enjoy high flow-through rates at retail, the parity standard generally requires flow-through rates in excess of 95% for residential orders, and more than 80% for business orders. See SC Order ¶ 104 (finding BOC retail flow-through of 97% for residential

orders and 81% for business orders, and stating that CLECs should have equivalent access); LA II Order ¶ 109 (96% for residential orders; 82% for business orders). The Commission has specifically found that flow-through rates of 60% are not adequate. See MI Order ¶ 174 (39% of electronic resale orders processed manually).[12]

Consistent with these obligations, BA-NY promised the NYPSC in its Pre-Filing Statement that it would provide "CLECs with the information necessary to format and process their electronic requests so that these requests flow through the interfaces, the transmission links, and into [BA-NY's] legacy systems as quickly and efficiently as possible." BA-NY Pre-Filing Statement at 30 (BA-NY App. C, Tab 403). In addition to providing a list of order types that it promised would flow-through, BA-NY also committed "to continue to modify its OSS systems to flow through all but the least frequently requested types of orders at rates which are at parity with

[12]BellSouth employed a different methodology for calculating flow-through rates in its second 271 application for Louisiana than had been used by BOCs previously. LA II Order ¶ 110 n.360. Specifically, BellSouth excluded rejected orders from the total number of orders from which the flow-through percentage is calculated, which should yield a higher percentage of flow-through. Id. BA-NY also excludes rejected orders from the calculation of flow-through rates.

the rates at which analogous orders provided by [BA-NY's] own retail operations flow through." Id. at 31.

Unfortunately, BA-NY is not currently meeting these flow-through requirements for its competitors. The flow-through rates for MCI WorldCom for electronic residential orders in May, June, July, and August were ****REDACTED****,****REDACTED****,** **REDACTED***, and ****REDACTED**** respectively.[13] Thus, despite showing some recent improvement, BA-NY is still dropping fully a third of MCI WorldCom's orders to manual handling. Moreover, the vast majority of MCI WorldCom's orders during these months were simple residential orders, not the sorts of complex orders that might reasonably require manual processing.[14] Id. ¶ 104.

[13]See Joint Declaration of Sherry Lichtenberg and John Sivori ("Lichtenberg & Sivori Decl."), appended as Tab A to these Comments, ¶ 104. BA-NY's flow-through rate for CLECs in the aggregate for these periods was 50.51%, 54.48%, 54.36%, and 59%. Id. ¶ 104 n.9. Although BA-NY does not report flow-through rates on a CLEC-specific basis, MCI WorldCom calculated BA-NY's order flow-through rate for MCI WorldCom using BA-NY's reported carrier-to-carrier data for MCI WorldCom as described in the declaration. Id.

[14]BA-NY's comparison of CLEC order flow through and its own retail order flow

through, see BA-NY Joint Decl. Miller & Jordan ¶¶ 56-59 (BA-NY App. A, Vol. 2), shows only a correlation between CLEC and retail flow through of order types. It does not attempt to evaluate the different conditions under which these order types do or do not flow through. However, BA-NY flow-through rates are inadequate precisely because its systems cannot process orders under many different conditions, even if the order types themselves are designed to flow through (i.e. where orders involve company blocking, certain features, partial migrations, contractual arrangement, pending orders, and multiple listings). Id. ¶ 112.

Recently, BA-NY has promised to correct the flow-through problem in large part by the end of the year. Id. ¶ 107. MCI WorldCom welcomes these commitments. Competing at full commercial volumes while significant percentages of its simple POTS orders are being processed manually injects commercial insecurity and is not sustainable in a fully competitive environment. See Donoghue & McMurtrie Decl. ¶ 13.

2. BA-NY, and Not the CLECs, Is Responsible for BA-NY's Inadequate Flow-Through Rates. BA-NY is responsible for the unacceptable level of manual processing. As its own affiants explain, when BA-NY sampled UNE-platform orders from August 23-26 (all CLECs), September 1-10 (all CLECs), and September 15-21 (MCI WorldCom orders only), the consistent result was that the leading cause of manual processing was the design of BA-NY's back-end systems. The results were as follows:

Dates	Number of Orders Handled Manually Sampled by BA-NY	Orders Handled Manually Because of BA-NY System Design	Orders Handled Manually Because of BA-NY System Error	Orders Handled Manually Because of CLEC Error
Aug. 23 - Aug. 26	486	57.61%	8.02%	34.36%
Sept. 1 - Sept. 10	349	65.90%	5.44%	28.65%
Sept. 14 - Sept. 21	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**

BA-NY Joint Decl. Miller & Jordan ¶ 59 (BA-NY App. A, Vol. 2). Thus, of the orders being processed manually, 65.63%, 71.34%, and **REDACTED** were dropped to manual handling for reasons solely attributable to BA-NY, not CLEC error.[15] Lichtenberg & Sivori Decl. ¶ 105.

[15]In addition to the samples relied upon by BA-NY, the NYPSC Staff also conducted its

own study, looking at approximately 3,850 error messages. BA-NY found that 13 error messages accounted for 88% of the orders that dropped to manual processing: 22% were attributable to BA-NY errors; 46% to BA-NY systems design; and 32% to CLEC errors. There is evidence, therefore, that BA-NY errors are responsible for even more of the dropped orders than BA-NY's suggests. See Lichtenberg & Sivori Decl. ¶ 105 n.10.

The main orders that are dropping to manual due to the design of BA-NY's systems are orders involving Company Initiated Blocking, orders for Call Forwarding II, orders for the Ringmate feature, orders migrating less than all of a multi-line customer's lines, orders when a customer contract exists on the account, orders placed when a pending order already exists in BA-NY's system, and orders for accounts with more than one listing. Id. This lack of flow through is a system-design error that must be remedied if BA-NY is to provide flow-through processing for simple UNE-platform orders for basic POTS service at acceptable rates. In its Pre-Filing Statement, BA-NY specifically promised to flow through five of these order types (i.e., customer/company initiated blocking, Call Forwarding II, Ringmate, partial migrations, and contractual agreements on accounts). BA-NY Pre-Filing Statement at 31 & Apps. 2, 3. BA-NY should carry through on its promises and take the steps necessary to make these orders flow through.

In an affidavit filed October 8, 1999, BA-NY committed to do just that, and agreed to modify its systems design to provide greater flow-through, including flowing through six of the seven order types that today are causing much of the problem. See Joint October Reply Affidavit of Stuart Miller, Sean J. Sullivan and Arthur Zanfini on Behalf of BA-NY (NYPSC Oct. 8, 1999). BA-NY has proposed a three-phase approach. BA-NY proposes for Phase I to provide flow-through for BA-NY retail blocking by October 30, 1999. Id. ¶ 12. The remaining orders are scheduled to flow through either by December or by June 2000.[16] MCI WorldCom welcomes

[16]For Phase II, BA-NY would address Call Forwarding II, Ringmate, partial migrations, and accounts with additional listings by December 18, 1999. Id. ¶ 13. For Phase III, BA-NY would make contract accounts flow through in the second quarter of 2000. Id. ¶ 14.

BA-NY's renewed efforts to provide adequate flow-through of order processing. It is important to its business that these improvements be accomplished.

Systems-design issues and processing errors are not, however, BA-NY's only contribution to the flow-through problem. Even for those orders dropping to manual due to CLEC errors, BA-NY bears significant responsibility. This is so because the two primary causes for CLEC errors are: (1) CLEC typographical errors in rekeying pre-ordering information from BA-NY's GUI into CLEC orders, which are the inevitable result of BA-NY's failure to provide a working EDI-based interface for pre-ordering, see BA-NY Joint Decl. Miller & Jordan ¶ 59 (citing errors in entering directory listings); and (2) BA-NY's failure to provide clear, accurate, and complete business rules for its interfaces, see id. (citing errors in formatting contact telephone numbers).

As to the first, this Commission has consistently recognized that the failure of a BOC to provide CLECs with fully automated processes will result in errors, and it has rejected the notion that CLECs are to blame for delays and errors occurring as the result of having to rekey pre-order information. SC Order ¶ 157; LA II Order ¶ 96. Such errors are the result of the fact that "competitors' access to [the BOC's] pre-ordering operations support systems is more conducive to errors than is the case for [the BOC's] retail operations." SC Order ¶ 157. This is precisely the case here.

As for BA-NY's inadequate business rules, BA-NY asserts that a significant number of orders are dropping to manual processing because the CLECs are not adhering to two BA-NY business rules: first, CLECs failing to enter the appropriate telephone number in the "local

contact" field[17]; and second, CLECs improperly populating the new billing telephone number field for new customers.[18] However, MCI WorldCom is unable to locate either of these business rules in the documentation provided by BA-NY. It has asked BA-NY to provide a citation to its rules, so it can correct these errors, but BA-NY has so far declined to respond to this request. See Lichtenberg & Sivori Decl. ¶ 111. These appear, then, to be BA-NY documentation errors, not CLEC errors, and BA-NY should work with the CLECs to provide the appropriate documentation.

3. The KPMG Report Did Not Address Real-World Flow-Through Rates. BA-NY's poor flow-through percentages are not contradicted by KPMG's test results. KPMG tested the capability of BA-NY's systems to process for the most part perfectly formatted orders (e.g., orders formatted to flow through whether or not the formatting rules actually appeared in BA-NY's interface documentation) for those order types that were designed for flow-through processing (e.g., orders without Ringmate) and under the specific conditions necessary for flow-through (e.g., accounts without blocking). Id. ¶ 113. MCI WorldCom does not contest that,

[17] See Lichtenberg & Sivori Decl. ¶ 111 (referring to Error Code IDV; CBR FID has invalid DA (local contact tel # formatted incorrectly)).

[18] See id. (citing Error Code FORM:EU TAG: DN (New BTN info invalid on new line)).

under these circumstances, BA-NY could achieve a high flow-through percentage. The problem is that this flow-through percentage does not -- and was not intended to -- reflect the percentage of real-world CLEC orders that BA-NY is actually able to process on a fully automated, flow-through basis. The problems with BA-NY's systems are not problems the test was designed to capture.

4. Variability in MCI WorldCom Ordering Should Not Affect BA-NY's Ability to Process Orders and Return Timely Status Notices. The Commission should also reject BA-NY's implication that the task of processing MCI WorldCom UNE-platform orders and returning timely status notices has been made more difficult by variability in MCI WorldCom's ordering patterns. See BA-NY Miller & Jordan Decl. ¶¶ 45, 49.[19] Variability in ordering volumes should not adversely affect BA-NY's ability to process orders. Variability is the rule, not the exception, in competitive markets where, for example, advertisements or promotions stimulate demand for short periods. So long as the orders that are being sent for processing are designed to flow through BA-NY's systems, even dramatic fluctuations in ordering patterns should not affect flow-through order processing. Lichtenberg & Sivori Decl. ¶ 115. Only if the volumes significantly exceeded the stated capacity of BA-NY's systems, which is most certainly not the case here,[20]

[19]MCI WorldCom has not held orders in order to "batch" them and test BA-NY's ordering processes; MCI WorldCom's normal ordering processes occur with the customers on the line. Lichtenberg & Sivori Decl. ¶ 118. It does place orders with BA-NY 24 hours per day/7 days per week, and order volumes do fluctuate, as a result of systems changes, breakdowns or customer demand. Id. ¶ 119.

[20]In most cases, the ordering volumes that concern BA-NY are around **__REDACTED__** orders a day, and in only one case did the volume reach **__REDACTED__.** Lichtenberg & Sivori

could variability in ordering patterns affect flow-through rates and, thereby, order processing performance. The Commission has already expressly rejected the argument that a BOC is entitled to notice from CLECs of "spikes" in ordering volumes, holding that a BOC "should be able to handle, without receiving advance notice from competing carriers, volumes of orders that fall within its stated capacity." MI Order ¶¶ 195, 198.

5. Inadequate Flow-Through Rates Prevent Sustainable Competition. BA-NY's poor flow-through rates cannot be excused because it has managed nevertheless to provision manually the relatively low volume of orders placed by CLECs today. Manual processing -- even if effective at low order volumes -- is not a viable substitute for fully automated order processing at parity with that enjoyed by BA-NY, because as order volumes increase to competitive levels, BA-NY will not be able to compensate for its lack of flow-through with manual processing. Lichtenberg & Sivori Decl. ¶ 120.

The Commission made just this point in its Michigan Order. Ameritech contended that it could address its order processing problems by increasing its capacity to process ordering manually. The Commission rejected this argument, saying that "we do not believe that substantial and continued reliance on manual capacity as a long-term solution to the ordering and

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Decl. ¶ 117. These are well within reasonable ordering volumes. In order to begin to compete effectively against BA-NY in the local markets, MCI WorldCom alone will have to be able to send a minimum of ****REDACTED**** orders per day. Id.

provisioning of resale services is consistent with the requirement that there be equivalent access." MI Order ¶ 196.

In fact, BA-NY's failure to provide proper flow-through for ordering is already having real-world consequences. First, manual processing means that it takes longer for MCI WorldCom to receive FOC and reject notices. As the Commission has stressed, "[t]imely return of a FOC notice is critical because it informs the competing carrier of the status of its order." LA II ¶ 120. And, "[t]imely delivery of order rejection notices directly affects a competing carrier's ability to service its customers, because such carriers are unable to correct errors and resubmit orders until they are notified of their rejection by [the BOC]." Id. ¶ 118. The permitted intervals for both FOCs and rejects are much greater for manually processed orders than flow-through orders: electronically processed FOCs and rejects must be returned in 2 hours; manual FOCs and rejects are allowed 24. Lichtenberg & Sivori Decl. ¶ 122.

Moreover, BA-NY has failed to meet even the longer intervals allowed for processing manual FOCs and reject notices. Id. ¶ 122-123. This is hardly surprising. The unacceptably high volume of orders falling to manual is already putting too much stress on BA-NY's manual processes. Under the Carrier-to-Carrier Guidelines in New York, BA-NY must return 95% of its manual FOCs within 24 hours. Id. ¶ 122. For May, June, and July, BA-NY fell well below that standard.[21] A similar standard exists for reject notices, and for these same months BA-NY's on-

[21]For May, June and July, BA met the interval only for ****REDACTED****, ****REDACTED****, and ****REDACTED**** for MCI WorldCom orders, respectively. Id. ¶ 122 (citing BA-NY Carrier-to-Carrier Reports, MCI Performance, Ordering - UNE POTS/Special Services, Order Confirmation Timeliness Metric OR-1-04 (% On Time LSRC < 10 Lines)).

time percentages for MCI WorldCom rejects was deficient.[22] Although BA-NY was able to improve manual processing of status notices for MCI WorldCom in August in anticipation of the filing of its section 271 application, it still failed to meet the 95% on time standard.[23] These business arrangements are unacceptable.

The failure of BA-NY's automated systems affects the growth of MCI WorldCom's business. As a result of the flow-through problems, in conjunction with the absence of the EDI pre-ordering interface, and other problems discussed in these Comments, MCI WorldCom would be unable to sustain its competitive position in an open market in which there are other competitors and in which BA-NY would be seeking vigorously to win (and win back) customers.

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[22]The percentages for the three months were ****REDACTED****, ****REDACTED****, and ****REDACTED****. Id. ¶ 122 (citing Reject Timeliness Metric OR-2-04 (% On Time LSR Reject < 10 Lines)).

[23]BA-NY processed ****REDACTED**** of manual FOCs and ****REDACTED**** of manual reject notices within 24 hours. Id. ¶ 123. BA-NY showed less improvement for the CLECs overall, however. For CLECs in the aggregate, in August BA-NY processed only 87.7% of manual FOCs, and 82.9% of manual rejects, on time. Id. (citing CLEC Aggregate Performance, Ordering - UNE POTS/Special Services, Order Confirmation Timeliness Metric OR-1-04 (% On Time LSRC < 10 Lines) and Reject Timeliness Metric OR-2-04 (% On Time LSR Reject < 10 Lines)).

The volumes of orders that BA-NY would have to process in such an environment would quickly swamp its manual processes. Donoghue & McMurtrie Decl. ¶ 16. BA-NY may be able to hire sufficient staff in the months before its federal section 271 application to process **REDACTED** orders per day and provision those orders within four days. But BA-NY has not proved that this fix will continue to work in a fully competitive environment. As BA-NY itself has acknowledged, this is a problem that must be corrected. See supra p. 13.

B. BA-NY Should Follow Appropriate Change Management Practices.

"The change management process governs all aspects of the CLEC/BA relationship. All changes to documentation, interfaces, business rules and other functions are subject to the time frames, tracking, logging and coding of the change management process." KPMG Final Report, at VII-3 (BA-NY App. C, Tab 916). BA-NY can inflict substantial costs on CLECs simply by making changes to its systems and interfaces without providing adequate and timely notice and documentation of the changes. Donoghue & McMurtrie Decl. ¶¶ 11-12. In its Pre-Filing Statement, BA-NY pledged to provide the technical support necessary to adhere to reasonable change management processes, including adequate notice and documentation, during the development and implementation of new systems. BA-NY Pre-Filing Statement at 30. If CLECs are to succeed as competitors in local markets, BA-NY must keep its pledge.

The rules for change management are set out in the TeleCom Industry Services Change Management Process (May 22, 1998), and subsequent supplements. BA-NY also has established a change control forum where representatives from BA-NY and CLECs meet regularly to discuss upcoming changes to systems and interfaces as well as change management procedures

themselves.[24] On paper, this is a reasonably adequate change management process. Unfortunately, BA-NY has not yet shown that it can comply with its own rules. This is not a new problem, although there are some new signs that BA-NY finally is trying to address it. There have been problems with BA-NY's change management for years.[25] KPMG too is critical of many of these same change management practices.[26] Examples in four areas will suffice:

1. Notice and Documentation. In its Final Report, KPMG expressed concern with BA-NY's ability to provide timely notice and documentation of system changes.[27] KPMG was especially critical of BA-NY's failure to provide adequate documentation to CLECs, finding that "[d]ocumentation regarding proposed changes has not been provided to CLECs on a timely and consistent basis," and that "BA's compliance on Type 4 (BA initiated changes) did not

[24] See BA-NY Miller & Jordan Decl. ¶¶ 98-100 (outlining rules for implementing major new releases and industry standard changes).

[25] Lichtenberg & Sivori Decl. ¶ 127 (citing Aff. of R. Sampson on behalf of MCI, dated November 1997, ¶¶ 39-42, 45-54 (discussing change management problems associated with MCI WorldCom's ordering interface for resale) (BA-NY App. C, Tab 178); Supp. Aff. of R. Sampson on behalf of MCI, dated January 1998, ¶¶ 12-13, 15-16 (same) (BA-NY App. C, Tab 296)).

[26] See id. ¶ 128 (citing KPMG Exception Report 6). In Exception Report 6, KPMG identified a number of deficiencies, including problems with BA-NY's notice and tracking procedures. KPMG closed Exception 6, but has made clear that it is not satisfied with BA-NY's change management. July OSS Technical Conf. Tr. at 3498-99 (BA-NY App. C, Tab 885).

[27] Id. ¶ 129 (citing KPMG Final Report, at VII-3). KPMG gave BA-NY only qualified approval for meeting basic notice requirements because BA-NY had failed to provide timely notice for 4 of the 20 releases observed by KPMG from January to June 1999, KPMG Final Report, Table VII-1.9, at VII-10, and because BA-NY had in several instances adjusted its implementation schedules without notifying the CLECs, id., Table VII-1.8, R1-6, at VII-8.

consistently meet the established intervals."[28] KPMG concluded that the quality of BA-NY documentation never reached the level "required by a CLEC in a production environment."[29]

[28]KPMG Final Report, Table VII-1.8, R1-6, at VII-8. BA-NY provided timely documentation in only 3 of 19 instances from January to June 1999. Id., Table VII-1.9, at VII-10.

[29]Id. at II-8; see also KPMG Final Report, Table IV-1.9, P1-4, at IV-19 (finding that "Bell Atlantic's documentation was not sufficiently complete and accurate to allow KPMG to create successfully EDI order and pre-order transactions").

MCI WorldCom has suffered the business consequences of these poor practices. For example, the development of EDI for pre-ordering was slowed by BA-NY's failure to provide timely and adequate documentation, causing needless delays in the implementation of that necessary interface. Lichtenberg & Sivori Decl. ¶ 133. Despite BA-NY's claims that it has corrected these problems, BA-NY Joint Decl. Miller & Jordan ¶ 102, statistics show that BA-NY still is not providing timely notice or documentation. In August, BA-NY failed to satisfy the Carrier-to-Carrier Guidelines standard of 95% on-time performance for change management notice and documentation requirements.[30] While BA-NY's performance is improving, it has yet to establish a pattern of compliance with basic change management notice and documentation rules.

2. CLEC Input Into Systems Changes. BA-NY does not give the CLECs adequate opportunity to provide input on new releases. For example, until very recently, BA-NY initiated changes were given priority over CLEC initiated changes as a matter of course. Under pressure from the NYPSC, a new procedure is now in place, pursuant to which a committee of BA-NY

[30]BA-NY managed to provide timely notice for BA-NY initiated changes only 88% of the time. Moreover, BA-NY provided timely documentation for these changes only 75% of the time. Lichtenberg & Sivori Decl. ¶ 134 (citing BA-NY Carrier-to-Carrier Report for August, CLEC Aggregate Performance, Operation Support System/Billing, Change Notification Metric PO-4-01 (% Notices Sent on Time - BA Orig.) and Change Confirmation Metric PO-4-01 (% Notices Sent on Time - BA Orig.) (BA-NY App. A, Vol. 3, att. D, exh. D)).

and CLEC representatives prioritize changes based on merit, not based on their sponsorship. But this procedure has not been in place long enough to evaluate. See Lichtenberg & Sivori Decl. ¶¶ 135-137.

Similarly, BA-NY does not give CLECs the opportunity to participate in the decision about when to make a systems change. For example, when BA-NY announced the release of a new pre-order function called "Live Wire," CLECs unanimously requested that BA-NY postpone the release because of concerns that the change would delay the CLECs' own OSS development. BA-NY refused, and Live Wire was implemented on BA-NY's schedule. As a result, MCI WorldCom's development of its EDI interface for pre-ordering was significantly set back. Id. ¶ 136.

Finally, in this regard, BA-NY does not adequately consider the impact of its planned system down time on CLECs. On several weekends recently, BA-NY has disabled critical pre-ordering and trouble administration functions. Id. ¶ 141. MCI WorldCom concentrates its telemarketing efforts on weekends, when people are at home. In addition, MCI WorldCom gets more repair and maintenance calls on weekends. BA-NY must consult more closely with CLECs on outages or provide alternatives for CLECs so they are not taken completely out of business. Id.

3. Treatment of Emergency Outages. BA-NY also has a poor track record handling unplanned or emergency outages. Id. ¶ 138. BA-NY fails to monitor its interfaces adequately so that it can provide immediate notice of outages and establish workaround procedures to keep affected CLECs in business. Its August data shows that it provided timely notice of emergency

changes only 70% of the time.[31] Although ordered to do so by the NYPSC, BA-NY has yet to provide data for the metric measuring the average amount of time it takes BA-NY to notify CLECs of an outage, once BA-NY becomes aware that its systems are down.[32]

In addition, BA-NY often fails to provide explanations for outages. Lichtenberg & Sivori Decl. ¶ 140. BA-NY must inform MCI WorldCom of the results of its evaluations because, without an explanation, MCI WorldCom cannot take any steps to see that the troubles are not repeated. Additionally, even if the problem lies solely on the BA-NY side of the interface, MCI WorldCom needs to be able to track and record the causes for these outages so that it can help BA-NY to identify and resolve recurring problems. This is particularly important today given the instability of the EDI interface for pre-ordering. Nonetheless, BA-NY has not yet provided an explanation for more than half of these outages. Id.

[31]BA-NY Carrier-to-Carrier Report for August, CLEC Aggregate Performance, Operation Support System/Billing, Change Notification Metric PO-4-01 (% Notices Sent on Time - Emergency Maint.) (BA-NY App. A, Vol. 3, att. D, exh. D).

[32]Id. at Average Notification of Interface Outage Metric PO-5-01 (Average Notice of Interface Outage).

For the same reason, BA-NY must provide adequate help desk support for CLECs. KPMG found, however, that BA-NY does not provide a single, consistent procedure for obtaining assistance from its help desks and the result is "confusion and delay" for CLECs and their customers. See KPMG Exception Report 45 (BA-NY App. C, Tab 535). KPMG also found "significant deficiencies in the quality" of BA-NY's help desk documentation. KPMG Final Report, at IV-226. KPMG remains "not satisfied" because the documentation does not adequately provide contact list and help desk numbers, thus requiring CLECs to call "multiple sources before resolution steps can be initiated." Id., Table IV-9.7, P9-16, at IV-220-21. KPMG concluded that "these errors resulted in significant delays" in interface development and in completing pre-ordering and ordering transactions. Id. at IV-226. MCI WorldCom's experience corroborates these failures. Id. ¶ 144. In addition, MCI WorldCom has found that BA-NY's help desk representatives often lack the necessary expertise to answer questions or respond to problems. Id.

4. BA-NY's Test Environment. Finally, BA-NY has not been able to operate a working testing environment for improvements to its OSS. As KPMG concluded, any company doing business with BA-NY "would need to have a sound testing process in which to make sure that they were able to update their technology in a predictable and rigorous fashion." July OSS Technical Conf. Tr. at 3474. BA-NY itself has acknowledged it is "necessary to perform carrier-to-carrier testing" and pledged "to engage in and provide full cooperation for such carrier-to-carrier testing." BA-NY Pre-Filing Statement at 32. Nevertheless, BA-NY has not yet demonstrated that it can conduct adequate carrier-to-carrier testing with CLECs.

During the third-party testing, KPMG evaluated BA-NY's Quality Assurance ("QA") testing environment and found that BA-NY's internal QA facilities "[did] not provide a carrier-to-carrier testing environment . . . that adequately resembles its production environment for pre-ordering and ordering." KPMG Exception Report 21, at 1. It concluded that the test environment created significant impediments to CLEC testing.[33] Lichtenberg & Sivori Decl. ¶ 146. In response, BA-NY just recently implemented a new permanent testing environment. While KPMG notes that while BA-NY's permanent plan appears on paper to be an improvement, it expressed concern that it had no opportunity to test the environment and that "a track record of full implementation . . . has not been established."[34] Neither has MCI WorldCom yet had the opportunity to complete a full cycle of testing, including moving the tested software into production. Id. ¶¶ 153-155.

[33]MCI WorldCom's experiences in attempting to develop and test the EDI interface for pre-ordering confirm KPMG's assessment. MCI WorldCom attempted to conduct testing with BA-NY for its pre-ordering interface from November 1997 to March 1999, without success. After repeated requests for test bed data and a stable test environment in which to work, BA-NY finally suggested that MCI WorldCom abandon its QA environment altogether. MCI WorldCom agreed, and all MCI WorldCom pre-ordering testing from that time forward was conducted in a production environment. Id. ¶ 147.

[34]KPMG Final Report, Table VII 2.4, R2-7, at VII-26; see also id. at II-8; July OSS Technical Conf. Tr. at 3471-72.

C. BA-NY's Pre-Order Interface Is Inadequate.

1. The Importance of Pre-Ordering OSS. Pre-ordering is the process by which a CLEC gathers and verifies the information needed to place an order for local service. LA II Order ¶ 94. It is the first step in creating an order for local service, so any delays or errors made at the pre-ordering stage ripple through the process, causing delays and rejected orders down the line. It is also the first exposure that new customers have to the CLEC, which makes it all the more important that the process run smoothly. See Donoghue & McMurtrie Decl. ¶ 15. As the Commission has recognized, meeting customer expectations for speed, efficiency and accuracy is a critical element to achieving and sustaining a competitive position in the market. See LA II Order ¶ 105 (a CLEC should not "appear to be a less efficient and responsive service provider than its [ILEC] competitor").

The Commission also has acknowledged the fundamental importance of five pre-ordering subfunctions: (1) customer service record ("CSR") information; (2) street address validation; (3) telephone number information; (4) due date information; and (5) services and feature information. See LA II Order ¶ 94; SC Order ¶ 147; LA I Order ¶ 47.

Access to these functions must be provided via an application-to-application interface for two reasons. First, an application-to-application interface is needed in order to conduct the pre-ordering process in real-time or near real-time. Real-time processing is important because the pre-ordering process occurs while the customer is on the line with the CLEC, and any failure or delay in these communications has an immediate negative impact on the CLEC's ability to provide quality service in a timely and efficient manner. Lichtenberg & Sivori Decl. ¶ 52.

Second, an application-to-application interface for pre-ordering is needed because, without it, the CLEC is unable to integrate the pre-ordering and ordering functions with each other or with its back end systems and databases. In New York, without use of an application-to-application pre-order interface, CLECs must use BA-NY's proprietary graphical user pre-order interface ("GUI"). When using the GUI, the CLEC representative must access the customer's pre-ordering information via the GUI and then rekey the information into the CLEC's systems and databases for the CLEC's internal use and to complete the order. Id. ¶ 53. Such manual intervention has a negative impact on a CLEC's ability to reach commercial volumes of orders. "[T]he additional costs, delays, and human errors likely to result from [not having an integrated pre-ordering/ordering interface] ha[ve] a significant impact on a new entrant's ability to compete effectively in the local exchange market and to serve its customers in a timely and efficient manner." LA II Order ¶ 96 (internal quotation and citation omitted); see also id. ¶¶ 94-100 (discussing importance of integrated pre-ordering and ordering functions).[35]

[35]The industry standards bodies have recognized CLECs' need for application-to-application interfaces to be able to conduct timely and accurate pre-ordering inquiries without having to rekey the information into their systems and so that they can integrate the pre-ordering function with their back end systems and databases. See Lichtenberg & Sivori Decl. ¶ 23.

Another prerequisite to integrating the pre-ordering and ordering functions is access to parsed CSR information and parsed address validation responses.[36] Id. ¶ 54. Only with parsing can a CLEC control the presentation of the information to its sales and customer service representatives, load the information efficiently into its databases, or use the information to automatically populate its service orders. Id.

2. The Continued Unavailability of Most Pre-Order Subfunctions. Unfortunately, MCI WorldCom still does not have application-to-application access to most of the pre-ordering subfunctions in New York. Responding to delays by BA-NY in developing these interfaces, MCI WorldCom devoted its resources to working with BA-NY at least to have in place working CSR and address validation subfunctions this year, and to develop the remaining subfunctions early next year. Lichtenberg & Sivori Decl. ¶ 56. In September 1999, MCI WorldCom was finally able to move a parsed CSR subfunction into production, but the other basic pre-ordering inquiries, including address validation, telephone number selection and reservation, due date availability, and service and feature availability, remain accessible only through BA-NY's cumbersome GUI. Id.

[36]Unless the CSR and customer address information is parsed into identifiable fields (e.g., street number, street name, etc.), the only way to transfer the information to the CLEC systems or to automatically populate orders with the information is to retype the data manually. Id. ¶ 54.

In its application, BA-NY inaccurately claims that by July 1998 it had implemented the EDI-based interface for pre-ordering. BA-NY Joint Decl. Miller & Jordan ¶ 21. Moreover, according to BA-NY, the interface fully satisfies the Commission's requirement because it permits CLECs to integrate pre-ordering and ordering functions with their own systems. Id. ¶ 22. BA-NY's claims are not supported by the record.

BA-NY trumpets the fact that KPMG was able to construct an EDI-based interface for all five central pre-ordering subfunctions. BA-NY Br. at 41 n.36. But this does not show that BA-NY has provided the documentation and support necessary for MCI WorldCom or any other CLEC to build these interfaces for use in a production environment. Leaving aside the fact that BA-NY showed favoritism to KPMG during the development of its test interface,[37] Lichtenberg & Sivori Decl. ¶ 57-59, the interface eventually built and used in the third-party testing was not as

[37]Even KPMG was unable to build its testing interface using BA-NY's documentation, but instead was forced to use a "trial and error" approach. Id. ¶ 60.

robust as is required in a production environment.[38] Nor did KPMG attempt to design the sophisticated transport and security necessary for the interface in production. Id. ¶ 59.

3. Continuing Problems with the CSR Subfunction. The EDI interface for pre-ordering that MCI WorldCom has established with BA-NY for parsed CSRs remains unstable; does not return responses in competitive time frames; and is limited to certain order types.

Since putting the parsed CSR interface into production on September 3, MCI WorldCom has experienced periodic failures of the interface. Id. ¶ 61. MCI WorldCom and BA-NY have not determined the causes for many of the outages, but they continue to work to stabilize the interface. Id.

Even when the interface is up and running, BA-NY is not providing parsed CSR responses in competitive time frames. Under the Carrier-to-Carrier Guidelines, BA-NY is required to provide pre-ordering responses of less than or equal to BA-NY's retail response times plus four seconds, which generally requires CSR response times of about five seconds. While BA-NY claims to meet this standard for unparsed CSRs, BA-NY Joint Decl. Miller & Jordan ¶ 32, MCI WorldCom is experiencing substantially longer intervals -- between 15 and 20 seconds -- for

[38]KPMG did not attempt, for example, to integrate the pre-ordering and ordering functions or to integrate those functions with any back end systems. KPMG's pre-ordering and ordering tests were separate and distinct. Id. ¶¶ 58, 97.

parsed CSRs. This is unacceptable. See Lichtenberg & Sivori Decl. ¶ 62. MCI WorldCom has agreed to depart from the "parity plus four seconds" standard of the NYPSC, and has indicated to BA-NY that if it could receive parsed CSRs within 10 seconds it would still be able to function, at least for the time being, in a competitive environment, so long as BA-NY committed to making improvements until a more appropriate interval was possible. Until BA-NY has proven that it can meet this 10-second standard, MCI WorldCom will not be able to make adequate competitive use of this critical pre-order subfunction. Id. ¶ 63.

Finally, MCI WorldCom just recently learned that BA-NY's parsed CSR capability does not cover all product and service orders. BA-NY cannot provide parsed CSRs, for example, for ISDN orders. This is not a limitation described in any BA-NY business rule, and at present BA-NY has not met its burden of proving that it provides parsed CSRs for all order types, as it had previously represented. Id. ¶ 64.

4. Absence of Address Validation Subfunction. Street address validation is the other EDI pre-order subfunction that MCI WorldCom and BA-NY have agreed to put into production by the end of the year. This is the subfunction that validates each customer's service address against the address that BA-NY holds in its customer address database. Without a complete and valid service address, MCI WorldCom cannot reserve a telephone number for the customer, schedule a due date for service, or create a service order. Id. ¶ 48.

MCI WorldCom today is forced to operate without an application-to-application address validation subfunction. Id. ¶ 65. As a result, MCI WorldCom representatives today do not even attempt address validations for new customers because it is simply too unwieldy and time-

consuming to try to use the address validation process available on the GUI.[39] For customers migrating from BA-NY, MCI WorldCom obtains their valid service addresses from their CSRs. New customers, however, do not have a CSR. Despite the importance of validating these addresses, MCI WorldCom does not do so today. In order to avoid the delays and problems associated with using the GUI, MCI WorldCom relies on special software that validates the addresses using listings from the post office, rather than actual service addresses. While far from ideal, this approach at least avoids having to use the GUI.[40] MCI WorldCom cannot adequately increase sales and expand its entry into the local markets in a sustainable fashion so long as it is forced to rely on such splintered and manually intensive processes.[41] Id. ¶ 66.

[39]Between ****REDACTED**** and ****REDACTED**** percent of MCI WorldCom's UNE-P residential customers are migrations from BA-NY. The other ****REDACTED**** to ****REDACTED**** percent are new orders for service. Id. ¶ 65 n.6.

[40]MCI WorldCom's current practice for reserving telephone numbers using the GUI shows how cumbersome the process is. To reserve a telephone number for a new customer, the MCI WorldCom sales representative puts the customer on hold while he contacts a second MCI WorldCom representative who is trained on the GUI, and the second representative then accesses the GUI and reserves the telephone number. The original sales representative then keys the number into MCI WorldCom's systems, returns to the customer, and completes the pre-ordering process. Id. ¶ 66.

[41]Additionally, even when MCI WorldCom is able to implement BA-NY's address validation function via EDI, that functionality is deficient in at least one important respect: BA-NY's new address validation function does not provide partial address matching capability. Since new customers do not have telephone numbers, however, address validation must be accomplished using the address provided by the customer, which in many cases will not match perfectly the address in BA-NY's database. With partial address matching, a CLEC can submit a partial address, and BA-NY returns several possible complete addresses. BA-NY's systems should be able to use partial matching to determine and validate addresses. Id. ¶ 67.

None of these problems are insolvable. But taken together, these and other difficulties[42] show that BA-NY needs to complete the job it started and provide CLECs with a proven, working, industry standard pre-order interface. Until it does, MCI WorldCom will remain hampered in its ability to compete in the mass markets at full commercial volumes.

D. BA-NY Should Provide Advanced Services Loops.

Competitors need access to loops capable of functioning with digital subscriber line ("DSL") technology. That technology enables customers to obtain high-speed access over existing copper telephone lines to corporate networks and the Internet, among other uses. See Declaration of Annette Guariglia at ¶ 3 n.1 ("Guariglia Decl.") (appended at Tab B). Nearly 90 percent of present and future growth in the telecommunications industry is expected to involve data traffic. See id. ¶ 21. Unfortunately, BA-NY has imposed both price and non-price barriers to competitors' access to DSL-capable loops.

[42] See Lichtenberg & Sivori Decl. ¶¶ 70-82.

BA-NY's DSL pricing will be examined by the NYPSC for the first time in a proceeding that is not expected to be completed until the end of the year.[43] BA-NY's current, unilaterally-imposed, tariffed rates for DSL-capable loops are not cost-based and are so prohibitively high as to thwart competition for data services. These anticompetitive DSL prices constitute a significant barrier to competition.

[43] See Guariglia Decl. ¶ 4.

Under BA-NY's current DSL offering, the cost of pre-qualifying, ordering, conditioning and provisioning just one two-wire DSL-capable loop of less than 18,000 feet may exceed $1,500. See id. ¶ 19. For longer two-wire DSL-capable loops, the cost of pre-qualifying, ordering, conditioning and provisioning a single loop may exceed $4,000. See id. ¶ 20. These prices are based largely on high, non-cost-based charges for conditioning loops, i.e., removing bridged taps and load coils.[44] In addition, CLECs (other than MCI WorldCom, which is exempt pursuant to its interconnection agreement) are subject to special charges for constructing alternative copper facilities in order to offer DSL services to a customer served by BA-NY's integrated digital loop carrier ("IDLC") facilities, because of limitations BA-NY imposes on the availability of such loops.[45] These construction charges are currently imposed on an individual case basis (Guariglia Decl. ¶ 6 n.6) which raises concerns about unreasonable prices, transaction costs from protracted negotiations, and CLECs' inability to plan for such costs. Moreover, because BA-NY will not replace its up-to-date IDLC facilities for its own retail customers, these are costs that only a CLEC -- and never BA-NY -- is forced to incur. BA-NY therefore can

[44]BA-NY charges CLECs $945.39 per loop for removing multiple bridged taps and $1,814.49 per loop for removing load coils from a loop shorter than 27,000 feet. See Guariglia Decl. ¶ 17. See also BA-NY's Proposed Revisions to NY P.S.C. 916 Tariff (effective Sept. 9, 1999), section 5.5.2 (BA-NY App. D, Tab 206). BA-NY also imposes excessive charges for pre-order OSS functions involving DSL. For example, its charge for an "Engineering Query," which is required virtually any time a CLEC wishes to offer a DSL-based service that is different from the limited DSL services BA-NY offers to its own customers, is $123.67 per loop plus an additional $81 of supplemental charges. See Guariglia Decl. ¶ 15.

[45]See id. ¶¶ 6 n.6, 14 n.17; Joint Supplemental Affidavit Update of Donald E. Albert, Julie A. Canny, George S. Dowell, Karen Maguire and Patrick J. Stevens on Behalf of BA-NY-New York, NYPSC, Case 97-C-0271, ¶¶ 26, 28 (June 7, 1999) (BA-NYApp. C, Tab 755).

exploit a significant price advantage over its competitors. These non-cost-based charges make it difficult for CLECs to compete with BA-NY to provide New York State customers with DSL service.

BA-NY also imposes important non-price restrictions on leasing DSL-capable loops that result in DSL services being unavailable to MCI WorldCom and other CLECs on terms and conditions that are nondiscriminatory.

In two recent orders,[46] the Commission has issued rules governing the deployment of DSL. It has ordered that:

> (i) ILECs may not deny a request for an unbundled loop for the provision of ADSL service (free of loading coils, bridged taps and other electronic impediments) on the ground that it does not itself offer advanced services over the same loop, see Advanced Service Order and NPRM ¶ 53;
>
> (ii) ILECs must provide requesting carriers with fully functional conditioned loops, including loops provisioned through remote concentration devices such as digital loop carriers, see id. ¶ 54;
>
> (iii) ILECs may not relegate new entrants to slower and more cumbersome pre-ordering processes designed to obtain information about whether a loop is capable of supporting DSL-based services, see id. ¶ 56.

The Commission recently has stated that in the UNE Remand proceeding it concluded that in most circumstances competitors may not get unbundled access to DSL-equipped loops or a

[46] See In re Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Memorandum Opinion and Order, an Notice of Proposed Rulemaking 13 F.C.C.R. 24011 (1998) ("Advanced Services Order and NPRM"); In re Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 F.C.C.R. 4761 (1999).

combination of elements including DSL equipment.[47] Such a ruling makes it even more important that BA-NY provide competitors DSL-capable loops so that they can use those loops to create their own DSL service offerings.

Despite the NYPSC's efforts during the past few months to work with carriers to resolve outstanding issues associated with BA-NY's DSL offering, significant problems remain, and BA-NY's DSL offering fails to comport with the FCC's rules. See Guariglia Decl. ¶ 3.

BA-NY is not currently offering competitors DSL-capable loops when loops are served by IDLC, on the ground that it is not offering its own retail customers this choice. See id. ¶ 6, BA-NY Joint Decl. Lacouture & Troy ¶ 77 (BA-NY App. A, Vol. 1). If it is technically feasible for CLECs to provide DSL service to customers over IDLC loops, however, they should be allowed to do so.

Additionally, the pre-ordering processes introduced by BA-NY to provide CLECs with DSL loop qualification information are inadequate and delay a CLEC's ability to provide DSL

[47]FCC Press Release, FCC Promotes Local Telecommunication Competition (Sept. 15, 1999) (http:\www.fcc.gov\Bureaus\Common_Carriers\News_Releases\1999\nrcc9066.html). CLECs are entitled to DSL equipment when they are unable to install their own equipment, as will often be the case, for example, when a customer is served with an IDLC loop.

services to its customers. See Guariglia Decl. ¶ 7. BA-NY offers CLECs two tiers of access to loop qualification data. First, CLECs can electronically access a mechanized loop qualification database specifically designed for BA-NY's limited ADSL/HDSL retail offering. Second, CLECs can request that BA-NY manually research and provide additional loop make-up information. Id.

BA-NY's mechanized loop qualification database provides only loop make-up information relevant to the limited DSL services that BA-NY offers its own retail customers. As a result, it is not sufficient for CLECs, who have different and broader DSL service needs. See id. ¶¶ 8-10. Specifically, the database fails to provide CLECs with any of the following critical information: (1) loop length including bridge taps for loops over 18,000 feet in length; (2) the length of the loop without bridged taps; (3) the location and number of bridged taps; (4) the loop wire gauge; (5) spectrum management information; and (6) the presence of load coils, digital loop carriers, repeaters, Digital Added Main Lines ("DAMLs") and pair gain devices. See id. ¶ 9.[48]

Because each DSL technology has different parameters and its own unique loop requirements,[49] without this information a CLEC cannot determine what type of DSL service is appropriate for a particular customer. See id. ¶¶ 10-11. But most of this information is not

[48]Some of this loop data is contained in a BA-NY internal database called LFACS, but BA-NY refuses to provide CLECs with electronic access to this database, or indeed any direct access to this database, and is unwilling to transfer the information contained in the LFACS database to the mechanized loop qualification database. See id. ¶ 15 n.18.

[49]For example, ADSL can only be offered to customers served by loops up to 18,000 feet in length, while SDSL and IDSL can be provisioned on loops up to 20,000 feet and 26,000 feet in length, respectively. Also, IDSL can be provisioned on loops with repeaters and digital loop carriers while all other forms of DSL require "clean" copper loops from end to end (i.e., no load coils, repeaters, digital loop carriers, and minimal bridged taps). See id. ¶ 10.

contained in BA-NY's mechanized loop qualification database, and the only way a CLEC can access the critical missing information is through BA-NY's manual processes, even though it must always pay to use the mechanized database, whether it uses it or not. Id. ¶¶ 11-12. This is highly discriminatory both because of the costs and delay inherent in using BA-NY's manual systems.[50]

In New York, BA-NY can efficiently provide DSL-based services, but its competitors cannot. Correction of these problems will enable CLECs to compete effectively against BA-NY, as well as to provide DSL services more broadly to residential and small business customers whom BA-NY chooses not to serve. This is a problem that must be addressed.

E. BA-NY's Performance Remedies.

[50]In almost all instances, CLECs seeking to provide DSL service which is different than BA-NY's retail service will have to request that BA-NY conduct an expensive and time-consuming "Engineering Query" in order to obtain most of the loop make-up information it needs to provide DSL services to customers. BA-NY provides a less extensive (and less expensive) manual process called a "Manual Loop Qualification," but this process provides so little information as to be virtually useless. See id. ¶¶ 13-15.

A final overarching problem challenging MCI WorldCom's local business in New York today is BA-NY's failure to implement a performance remedy plan that will adequately prevent backsliding. A strong performance plan is important today and will become even more critical after BA-NY takes the final steps necessary to complete the opening of its local markets to competition. Although BA-NY rightfully emphasizes that "facilities-based competition is particularly well-established," BA-NY Br. at 56, at least in New York City, that method of entry works primarily for large and medium-sized business customers in one very high-density geographic area, and CLECs cannot rely exclusively on their own facilities to serve residential and small business customers in most geographic areas.[51] See Beard & Mayo Decl. ¶¶ 37-41. That is why it is still true in New York that "the ability of new entrants to use unbundled network elements, as well as combinations of unbundled network elements, is integral to achieving Congress' objective of promoting competition in the local telecommunications market." See MI Order ¶ 332.

[51] See Donoghue & McMurtrie Decl. ¶¶ 17-20; Declaration of T. Randolph Beard & John W. Mayo at ¶¶ 37-41 ("Beard & Mayo Decl.") appended at Tab G.

Until facilities-based competition has grown to the point where CLECs have other options for connecting to their customers if they encounter discrimination from BA-NY, the Commission cannot rely solely on the market to protect against backsliding, and post-entry regulatory safeguards constitute a vital bulwark to protect the competitive gains that have been achieved in New York. See Beard & Mayo ¶ 42.[52] As the Commission has recognized, systems must be in place to insure that BA-NY's commitments to providing parity service to CLECs are enforced through remedies sufficiently severe to constitute a genuine deterrent after BA-NY enters the long-distance market, and without the need for lengthy regulatory proceedings. See MI Order ¶ 394. It is therefore unfortunate that the performance plan that BA-NY has proposed is inadequate to provide a sufficient deterrent to discriminatory conduct.

Performance plans have three components: First, the plan must set standards. Second, the plan must effectively measure performance to determine if it meets the standards. Third, it must

[52]The rapidly increasing technological complexity of the nation's telecommunications infrastructure both provides increased opportunities for a BOC with substantial market power to discriminate against its local and long-distance competitors and makes this discrimination more difficult to detect. See Declaration of Robert A. Mercer ¶¶ 17-20 ("Mercer Decl."), appended at Tab G.

provide for remedies when the BOC's performance falls short. With a few exceptions,[53] BA-NY has agreed to both appropriate standards and measurements. Unfortunately, BA-NY's remedy system is inadequate.

[53] See Declaration of Karen Kinard ("Kinard Decl."), appended at Tab D (discussing deficiencies in several performance measures including pre-order response time, firm order confirmations, and completion notices).

The amended Performance Assurance Plan ("PAP")[54] and the amended Change Control Assurance Plan ("CCAP")[55] are inadequate to their purpose; they are toothless and riddled with loopholes.[56] The plans work as follows:

> The PAP's "Mode of Entry" provision aggregates BA-NY's performance on selected performance metrics for each of four modes of entry -- resale, UNE, interconnection, and collocation. See PAP, at 5-8. The PAP makes a maximum of $75 million annually available for Mode of Entry remedies (doubling to $150 million if a special remedy provision is triggered). See id. at 2-3.[57]
>
> The PAP's "Critical Measures" provision provides remedies for deficient performance on eleven specific metric categories; $75 million is the maximum remedy available for Critical Measures remedies. See id. at 3, 9-11.
>
> The PAP's "Special Provisions" address three categories of service quality: UNE flow-through, UNE ordering, and hot cut performance. Separate dollar amounts are available for two of the three Special Provisions. See id. at 11-13.

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[54]Joint Decl. of Dowell & Canny BA-NY App. A, Vol. 3, att. C, exh. 1).

[55]Id., att. C, exh. 2.

[56]MCI WorldCom recently filed extensive comments on the PAP and CCAP with the NYPSC. See Comments of MCI WorldCom, Inc. In re Notice of Proposed Rulemaking, the Amended Performance Assurance Plan, and the Amended Change Control Assurance Plan for BA-NY - New York, Case Nos. 97-C-0271 & 99-C-0949, at 3 (filed Oct. 4, 1999).

[57]The NYPSC has the authority to reallocate the amounts provided under the plans.

> Finally, the CCAP provides $10 million in remedies for substandard performance on four metrics relating to change management, with an additional $15 million in remedies available from amounts allocated to the Mode of Entry categories. See CCAP, at 1-3.

Collectively, this scheme suffers from two deficiencies. First, the plans contain maximum remedy amounts that provide inadequate incentives to prevent discrimination. Second, the plans improperly limit and distort remedy calculations through a flawed and overly complex scoring system.

1. The Plans' Remedy Levels Should Be Increased. For the remedy plans to be effective, the remedy amounts[58] that BA-NY is required to provide for subpar performance to CLECs must be equal to or greater than the benefits that BA-NY would receive over time from providing such poor performance, adjusted to account for the probability that the plans will not detect all instances of discrimination. See Joint Declaration of George S. Ford and John D. Jackson, ¶¶ 4-21, appended at Tab C.

The PAP and CCAP proposed by BA-NY in theory provide maximum annual remedy amounts of $269 million.[59] This amount is insufficient to deter BA-NY from providing non-parity

[58]The plans do not even provide for cash payment to CLECs, only bill credits. This aspect of the plans is an additional limitation on their effectiveness, in that CLECs can never be compensated for amounts over that which they have ordered from BA-NY. Moreover, CLECs who are driven out of the market by BA-NY's discrimination (or whose market entry is limited as a result of BA-NY's failures) would never receive compensation under the plans.

[59]The $269 million maximum annual remedy amount assumes that extraordinarily deficient service by BA-NY with respect to all of the "Mode of Entry" components of the plans for an entire year triggers the doubling of the Mode of Entry ceiling from $75 million to $150 million. See PAP at 8. As discussed below, due to the many sub-caps incorporated in the plans, as well as the multiple layers of forgiveness incorporated into the scoring system, it is extremely unlikely that BA-NY would ever face any remedies that even remotely approach the $269 million annual ceiling.

service to CLECs. It represents only 3 percent of BA-NY's total annual revenues and 8 percent of its annual cash flow. Based on BA-NY's profit margin for local exchange service (exclusive of access services) and the historical rate at which AT&T lost market share following divestiture, the annual remedy level should be significantly higher. See Ford & Jackson Decl. ¶ 44.

Even if $269 million represented a sufficient remedy amount, the plans' byzantine designs make it extremely unlikely that BA-NY would ever pay the maximum annual amount. The plans use many intermediate caps on credits to limit the amount BA-NY would owe. These include both monthly caps and separate caps on the credit due under the several service quality provisions.[60] BA-NY would have to provide virtually across-the-board discriminatory service before reaching the inadequate maximum annual remedy amounts.[61] While the plans give the

[60]For example, although the PAP allocates $75 million annually to the "Mode of Entry provisions," the plan puts only $1,354,167 per month at risk in remedy payments for interconnection trunks. See PAP 8. BA-NY could decide to target competitors' request for trunks, thereby totally disrupting facility-based and UNE-based competition, and yet only have to provide a maximum of $16.25 million in bill credits.

[61]Several different features of the scoring system also give layer upon layer of forgiveness to BA-NY, allegedly to account for the minimal probability that deficient performance reporting is the result of random variation in the data and does not represent actually deficient performance.

NYPSC authority to reallocate the remedy amounts among provisions of the plans, the monthly caps remain in place.[62] In addition, the need for regulatory action to reallocate the caps undermines the purpose of having a self-executing remedy plan.

2. The Design of the Scoring System Allows Discrimination to Go Unremedied. The scoring system of BA-NY's performance plans suffers from design defects that render it inadequate to prevent BA-NY discrimination.

See Ford & Jackson Decl. ¶ 36.

[62] See PAP at 4.

First, the plans determine remedy amounts primarily by aggregating performance provided to all CLECs, instead of basing remedies on deficient service provided to individual CLECs.[63] Aggregation "averages out" targeted discrimination and permits BA-NY to discriminate against a particular competitor while providing adequate service to others. See Ford & Jackson Decl. ¶¶ 65-66. In addition, aggregation among CLECs skews remedies in favor of CLECs with the most usage, as opposed to CLECs who have experienced the most discriminatory service. Basing remedy amounts on harms to individual CLECs would help preserve competition, because greater payments would then flow to CLECs who had been most injured by BA-NY's actions (and who

[63]BA-NY has included only one provision, the "Individual Rule," that calculates remedy amounts for Critical Measures on the basis of deficient performance provided to individual CLECs. See PAP at 10. The Individual Rule comes into effect only when, for a month in which CLECs on the average have received parity service under the Critical Measures portion of the PAP, a particular CLEC has received subpar service for at least two months. See id. at 10 & n.12. Thus, BA-NY can target a CLEC for discrimination in any one month, for example in a month in which the CLEC launches a wide scale marketing promotion, without invoking this rule.

will therefore have incurred the most costs in attempting to correct or compensate for the deficient service).

Second, the remedies do not increase with the severity of the discrimination. For example, the scoring methodology does not distinguish between a delay in provisioning a UNE of 2 days and a delay in UNE provision of 30 days. Ford & Jackson Decl. ¶ 67.

Third, the aggregation of remedies in the Mode of Entry provision, as well as the elimination of many metrics from the plans altogether, limit the plans' effectiveness. Self-executing remedy plans must "ensure compliance with each standard."[64] Yet here, BA-NY must comply with only a limited number of metrics, and the metrics monitored through the Mode of Entry provision are aggregated with other metrics. The plans' aggregation of metrics means that BA-NY could readily average out or mitigate deficient performance on selected metrics with adequate performance on others. Per-measure remedies with escalating amounts for the magnitude and duration of the specific deficiency are necessary to compel BA-NY to provide adequate performance.

Fourth, the caps on remedies for "Mode of Entry" provisions mean that gross failures of performance would result in only limited remedies. For example, even a complete cessation of collocation would cause BA-NY to pay a maximum of $5 million annually under these provisions. Also, because the remedies are compartmentalized, by focusing its discrimination on initial

[64] In re Applications of NYNEX Corporation, Transferor, and BA-NY Corporation, Transferee, for Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries, File No. NSD-L-96-10, Memorandum Opinion and Order, 12 F.C.C.R. 19985, ¶ 194 (1997) (emphasis added).

functionalities such as pre-ordering or ordering, BA-NY could undermine its competitors without being penalized for the later, downstream functions that the CLEC cannot perform at all due to its initial injury.

Finally, BA-NY has omitted relevant performance metrics from its list of eleven "Critical Measures." An effective remedy plan would include all of the metrics established by the NYPSC, omitting only a few diagnostic measures.[65]

Collectively, these problems undermine the deterrent effect of the plans. BA-NY's plans are not the "appropriate, self-executing enforcement mechanisms" contemplated by this Commission. MI Order ¶ 394.

[65] At a minimum, the list of Critical Measures should be expanded to include the metrics in the "Joint Remedies Proposal" previously submitted by AT&T and MCI WorldCom. See Attachment 3 to the Ford & Jackson Decl. at att. A (Tables C and D).

II. THE PUBLIC INTEREST TEST.

A. The State of Local Competition.

The public interest test requires "an assessment of whether all procompetitive entry strategies are available to new entrants," and whether "the BOC has undertaken all actions necessary to assure that its local telecommunications market is, and will remain, open to competition." MI Order ¶¶ 386-387 (footnote omitted). In Part I, MCI WorldCom explained five significant issues that affect MCI WorldCom's present ability to compete in New York, especially for residential and small-business customers. BA-NY's successful resolution of these issues will protect post-entry the enormous gains that have been made to date. These same concerns apply with equal force as the Commission considers whether it would be in the public interest to grant this application.

Most competition in New York depends upon CLECs' use of BA-NY facilities. Although facilities-based CLECs have gained a significant 16% market share in Manhattan,[66] facilities-based CLECs still have a very small share of the total local market in New York State. CLECs' market share of loops (not including leased loops), for example, appears to be under 5 percent. See Beard & Mayo Decl. ¶ 35.[67] Facilities-based competition is practically non-existent outside of Manhattan. See id. ¶¶ 37-41.

[66]Beard & Mayo Decl., Table 1.

[67]MCI WorldCom's experience from terminating long-distance calls to BA-NY, other ILECs, and CLEC customers in New York State supports that conclusion. MCI WorldCom's terminating access minute data for June indicates that CLECs served only 3.8 percent of the local exchange market in New York State while ILECs served 95.8 percent (wireless carriers served the remaining 0.4 percent). See id. ¶ 36.

Accordingly, in addition to competitive pricing, there must be functioning OSS that enables CLECs to use leased facilities and resold services. And, because for the foreseeable future CLECs will continue to need to rely on BA-NY facilities, there must be a system of effective performance remedies to prevent backsliding. See id. ¶¶ 8-18 (market forces alone insufficient to guard against discrimination); Mercer Decl. ¶¶ 82-121 (describing opportunities for BOCs to engage in non-price discrimination).

These concerns about post-entry backsliding also apply to BA-NY's ability to discriminate against IXCs in the provision of access services to interexchange carriers. As the dominant local carrier, BA-NY controls critical aspects of access, involving such matters as PIC changes, the availability of CPNI information, and the critical databases relating to operator services, directory assistance and directory listings upon which IXCs rely. BA-NY has ample opportunity to engage in discriminatory practices that could benefit its long-distance affiliate. See Kinard Decl. ¶¶ 26-31. The protections in the Act against discriminatory treatment need to be implemented through regulatory mechanisms that are not yet in place. With the imminent prospect of BOC interLATA entry, the FCC should move promptly to implement an effective system of performance standards and self-executing remedies for exchange access services to assure that BOCs do not act on their incentive to favor their own long-distance subsidiaries in the provision of those services.[68]

[68]Some forms of discrimination against IXCs may not be able to be deterred or remedied through a self-executing performance plan. As to those, the IXCs the BOCs may well need to consider private dispute resolution systems to supplement an FCC complaint process that may be ill-suited to handle these kinds of disputes.

OSS and performance remedies are only two of the factors that the Commission should consider in evaluating whether local competition is well-established and here to stay. There are hundreds of interrelated facts that are relevant to the question whether the market is irreversibly open. The adequacy of implementation of any one condition should not be viewed in isolation.

Reviewing the relevant factors, although important final steps remain incomplete, MCI WorldCom believes that the basic pieces are in place to ensure that New Yorkers increasingly will enjoy benefits from competition. The primary factors on which MCI WorldCom relies are these:

> Substantial facilities-based competition and associated investment exists in New York, primarily in the New York metropolitan area. That investment includes extensive fiber rings, numerous switches, and loops to hundreds of buildings. Although large business customers have been the primary beneficiaries of these investments, CLECs in limited circumstances use their own facilities to serve smaller businesses and residential customers as well.
>
> Collocation has been completed in 175 end offices serving 85% of BA-NY's residential lines. See Lacouture & Troy Decl. ¶ 29. CLECs have been able to serve customers effectively from these collocation sites using facilities purchased both from access tariffs and under local interconnection agreements.
>
> BA-NY has made the platform available at rates that -- while not perfect --permit CLECs to offer competitively priced retail service without paying access charges to BA-NY, and the NYPSC is reexaming those rates to assure that they are competitive.
>
> BA-NY has implemented electronic OSS for most key functions needed to support CLEC growth. These systems have been subjected to extensive and thorough third-party testing closely supervised by the state commission, and the results have been positive, with a few exceptions.
>
> BA-NY has made firm, enforceable commitments to introduce specific improvements on a defined timetable to its systems that currently function adequately but need to be upgraded as competition develops.
>
> The NYPSC has demonstrated time and again that it is procompetitive, proactive, and effective. It has made clear its continued commitment to the success of local competition, both by pushing BA-NY to do the additional work remaining to be done, by enforcing

BA-NY's existing obligations, and by devoting the agency resources necessary to this challenging task.

When these factors are considered in their totality, New York is ahead of any other state in BA's own region -- and indeed in the country. In no other state does this combination of procompetitive conditions exist. Some states are closer than others, but regrettably BOCs in many states have chosen not to take the steps needed to comply with the requirements of sections 251 and 271. MCI WorldCom hopes that these market-opening steps that BA-NY has already taken in New York are promptly implemented in other states so that MCI WorldCom can carry out its plan to provide cost-effective, innovative local service to residential and business customers throughout the country.

B. The State of the Long-Distance Market.

There can be no serious question about the highly competitive nature of the long-distance market. As Chairman Kennard recently stated, "in the long-distance arena, the marketplace is competitive and robust."[69] BA-NY's claim that the long-distance market is currently characterized by limited competition is belied by its own refusal to compete in the long-distance market outside of its region.

Long-distance prices are low and falling.[70] Contrary to the claims of BA-NY's experts, prices have fallen net of access of charge reductions. See Beard & Mayo Decl., att. 3, ¶¶ 17-20.

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[69]Oral Testimony of William E. Kennard, Chairman, FCC, Before the Senate Commerce Comm., 1999 WL 332555, at 2 (May 26, 1999).

[70]See Beard & Mayo Decl., Att. 3, ¶ 16 (noting 70% decline in calling rates since divestiture).

In addition, the widespread availability of discount calling plans has lowered long-distance prices even further. Even low-volume long-distance callers are well served by the current state of competition. Flat rate plans for less than ten cents per minute are available with no monthly fees or minimum calling requirements, and dial-around plans are available for callers who make only infrequent long-distance calls. Id. ¶¶ 21-23. Hundreds of long-distance companies are flourishing in the long-distance market, both as resellers and facilities-based carriers. Long-distance competition is strong, and the Commission need not reconsider its conclusion that the principal focus of the public interest inquiry ought to be on local, not long-distance, competition.

CONCLUSION

In sum, New York has taken important steps in opening its market, and MCI WorldCom looks forward to continued progress on remaining issues so that New York's consumers finally can enjoy the full benefits of sustainable competitive local telephone service.

Respe