

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Bell Atlantic-New York	)	
Authorization Under Section 271	)	File No. EB-00-IH-0085
of the Communications Act to Provide	)	Acct. No. X32080004
In-Region, InterLATA Service	)	
In the State of New York	)	

**ORDER**

**Adopted: March 9, 2000**

**Released: March 9, 2000**

By the Commission: Commissioner Tristani dissenting and issuing separate statement.

1. The Commission has been conducting an investigation into potential violations by New York Telephone Company (d/b/a Bell Atlantic-New York) (Bell Atlantic) of section 271 of the Communications Act of 1934, as amended, in connection with lost or mishandled orders for unbundled network elements electronically submitted by its local service competitors.<sup>1</sup>

2. The Commission and Bell Atlantic have negotiated the terms of a Consent Decree that would terminate the Commission's investigation. A copy of the Consent Decree is attached hereto and is incorporated by reference.

3. We have reviewed the terms of the Consent Decree and evaluated the facts before us. We believe that the public interest would be served by approving the Consent Decree and terminating the investigation.

4. Based on the record before us, and in the absence of material new evidence relating to this matter, we conclude that there are no substantial and material questions of fact as to whether Bell Atlantic possesses the basic qualifications, including its character qualifications, to hold or obtain any FCC licenses or authorizations.

5. The Consent Decree imposes reporting requirements on Bell Atlantic to measure its progress in resolving its treatment of electronically submitted orders. These measurements

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<sup>1</sup> See Letter from David H. Solomon, Chief, Enforcement Bureau to Edward D. Young, III, Sr. Vice President-Regulatory, Bell Atlantic Network Services, Inc. dated February 7, 2000.

were based on extensive consultation with the New York Public Service Commission (New York PSC). We have worked closely with the New York PSC on this matter and intend to continue to work closely with it on Bell Atlantic-related section 271 enforcement issues.

6. The performance measures we use here, and the related voluntary payment provisions, are a carefully tailored enforcement response to the specific difficulties experienced by Bell Atlantic in complying with a statutory checklist element that is a condition of its section 271 authorization to provide long distance service in the State of New York.<sup>2</sup> Under the Consent Decree, expiration of these provisions is directly tied to Bell Atlantic's performance. The Consent Decree does not amend Bell Atlantic's section 271 authorization, modify any of the conditions of that authorization, or impose any requirements on any other carriers or states. The Consent Decree is for settlement purposes only, and does not constitute either an adjudication of the merits or a factual or legal finding regarding any compliance or noncompliance by Bell Atlantic with the requirements of the Communications Act, as amended. Nor do the terms of the Consent Decree provide any basis for assessing another BOC's compliance with section 251 or section 271 of the Act. In addition, nothing in the Consent Decree shall limit the Commission's authority to consider any complaint that may be filed pursuant to section 208 or section 271 of the Communications Act, as amended, or to take any action in response to such complaint. Furthermore, if material facts change, such as Bell Atlantic failing to correct the problems for a sufficient period of time, or Bell Atlantic's performance deteriorates, the Commission may issue an order requiring Bell Atlantic to show cause as to why the Commission should not suspend or revoke Bell Atlantic's authority to provide long distance service.

7. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 271(d)(6) of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 271(d)(6), that the Consent Decree, incorporated by reference in and attached to this order, is hereby ADOPTED.

8. IT IS FURTHER ORDERED that the Secretary SHALL SIGN the Consent Decree on behalf of the Commission.

9. IT IS FURTHER ORDERED that the above captioned investigation IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

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<sup>2</sup> 47 U.S.C. § 271(c)(2)(B)(ii).

Before the
Federal Communications Commission
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In the Matter of )
New York Telephone Company )
(d/b/a Bell Atlantic-New York) ) File No. EB-00-IH-0085
) Acct. No. X32080004
)
)
)
)

CONSENT DECREE

I. INTRODUCTION

1. The Federal Communications Commission (the "Commission" or the "FCC") and New York Telephone Company, doing business as Bell Atlantic New York ("Bell Atlantic," "BA-NY," or the "Company") hereby enter into this Consent Decree for the purpose of terminating an investigation by the Commission into whether Bell Atlantic violated section 271 of the Communications Act of 1934, as amended, 47 U.S.C. § 271, and a condition of Bell Atlantic's authorization to provide long distance service in New York State, regarding Bell Atlantic's obligation to provide unbundled network elements to competing providers of local telephone service. The investigation focused on Bell Atlantic's problems associated with lost or mishandled orders for unbundled network elements electronically submitted by its local service competitors.

II. BACKGROUND

2. As a Bell Operating Company ("BOC"), Bell Atlantic is prohibited from providing long distance (or "interLATA") services originating in its in-region states without first complying with conditions designed to open its local telephone markets to competition under section 271.

1 Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404, (December 22, 1999) (Bell Atlantic New York 271 Order), appeal pending sub nom. AT&T Corp. v. FCC (D.C. Cir. filed Dec. 27, 1999) (No. 99-1538).

2 See Letter from David H. Solomon, Chief, Enforcement Bureau to Edward D. Young, III, Sr. Vice President-Regulatory, Bell Atlantic Network Services, Inc. dated February 7, 2000 ("Feb. 7 Solomon Letter" or "data request"). For purposes of this Consent Decree, a "lost" order is a competitor's order that Bell Atlantic is unable to locate in its internal systems and subsequently directs the competitor to resubmit the order. A "mishandled" order is a competitor's order that Bell Atlantic has received but failed timely to send one or more required notices to the competitor regarding the status of the order.

3 See 47 U.S.C. § 271; U S WEST Communications, Inc. v. FCC, 177 F.3d 1058, 1059 (D.C. Cir. 1999), cert. denied, 2000 WL 220276 (U.S. Feb. 28, 2000) (No. 99-869).

## ATTACHMENT A

BA-NY will implement three new performance measurements – Percent Missing Notice Trouble Ticket PONs Closed within Three Business Days; Percent Order Confirmations/Rejects Sent within Three Business Days; and Percent Service Order Processor (SOP) to Bill Completion within Three Business Days – which are defined below. BA-NY will report its performance with respect to these measurements to the Commission weekly, supported by a sworn statement by a corporate officer. BA-NY will begin collecting information for the new measurements on the Saturday following the Effective Date of the Consent Decree. BA-NY will also report its performance with respect to two Additional Metrics – Percent Confirmation Timeliness-Total LSRs and Percent Resubmission Rejection – both of which are defined in Attachment A. BA-NY also will begin collecting data for these Additional Metrics as defined on the Saturday following the Effective Date of the Consent Decree. Because the measurements reflect performance that may occur up to three business days following the last day of the week reported on, the Reporting Period for a week will close the following Wednesday. Each report will be provided no later than 3:00 p.m. of the third business day following the close of the Reporting Period. Such reports shall be posted on BA-NY's website.

The data that will be reported for each of the measurements will be collected, as defined below, for events that occur during the week being reported. For example, with respect to the new Percent Missing Notice Trouble Ticket PONs Closed within Three Business Days measurement, for the Reporting Period beginning March 18, BA-NY will collect data for PONs on Trouble Tickets submitted during the week beginning March 18, and will report the percentage of those trouble tickets closed within three business days. For the first two weeks for which BA-NY provides reports, BA-NY will measure all of the EDI Interface platforms used by CLECs to submit orders. After the first two weeks, BA-NY will measure and report only with respect to the EDI Interface platform using the new NetLink software.

## Bell Atlantic Weekly Performance Reporting - Definitions

<b>% Missing Notifier Trouble Ticket PONS Cleared within 3 Bus. Days</b>	
<b>Definition:</b>	The percent of EDI missing notifier trouble ticket PONS cleared within 3 business days from the day of receipt of the trouble ticket. The elapsed time begins with receipt at the Bell Atlantic Systems Support Help Desk of a trouble ticket for EDI missing notifiers (i.e., order acknowledgement, order confirmation, order rejection, work completion, and billing completion notices) with the PONS in questions enumerated with the appropriate identification. The ticket is considered cleared when Bell Atlantic has either requested the CLEC to resubmit the PON or communicated the current status of the PON and provided the delayed status notifier to the CLEC. Tickets received after 5 PM and trouble ticket clearances sent after 5PM will be considered effective on the following business day. Performance shall be counted for the week in which the trouble ticket was received.
<b>Exclusions:</b>	<ul style="list-style-type: none"> <li>• The PONS shall be considered to be timely cleared if Bell Atlantic provides the status notifier after 3 business days at the request of the CLEC or because of CLEC system capacity or availability.</li> <li>• Out of sequence notifiers. This type of ticket indicates that the CLEC has received one or more notifiers for a PON but not in the sequence expected.</li> </ul>
Numerator	Denominator
Number of EDI missing notifier trouble ticket PONS in denominator cleared within 3 business days after receipt.	Total number of EDI missing notifier trouble ticket PONS submitted within the calendar week.

<b>% Order Confirmations/Rejects Sent Within 3 Business Days</b>	
<b>Definition:</b>	The percent of orders confirmed or rejected by Bell Atlantic within 3 business days of receipt as a percent of total LSRs received. Note: This is a measure of completeness not timeliness. Order confirmation/reject timeliness standards are 95% within a range of 2 hours to 3 business days – depending on order type. Source: Master PON File
<b>Exclusions:</b>	<ul style="list-style-type: none"> <li>• Cancelled Orders</li> <li>• LSRs that were Supplemented prior to confirmation or rejection.</li> <li>• Front end rejects (negative 997's) that would not be eligible for confirmation or rejection.</li> </ul>
Numerator	Denominator
Total LSR Confirmations plus Rejections sent within 3 business days of LSR submission.	Total LSRs received during the calendar week.

## Bell Atlantic Weekly Performance Reporting - Definitions

<b>% SOP to Bill Completion Within 3 Business Days</b>	
<b>Definition:</b>	The percent of orders provisioning complete in SOP that have BCN notices within 3 business days. Source DCAS PON Master File. The start time is when physical completion of the order has been entered into SOP. The end time is when the billing completion notice is time-stamped in DCAS.
<b>Exclusions:</b>	<ul style="list-style-type: none"> <li>• Complex resale orders.</li> </ul>
Numerator	Denominator
Total number orders in denominator for which billing completion notices are time-stamped in DCAS within 3 business days of SOP completion.	Number of SOP Completed Orders during the calendar week.

<b>% Confirmation Timeliness – Total LSRs</b>	
<b>Definition:</b>	The percent of all Confirmed LSRs that are confirmed within standards established in the NY Carrier to Carrier Guidelines. This represents the weighted average of all 12 LSRC measurements reported for Resale and UNE under the Carrier to Carrier Guidelines in effect on March 8, 2000.
<b>Exclusions:</b>	<ul style="list-style-type: none"> <li>• Same as Carrier to Carrier Guidelines</li> </ul>
Numerator	Denominator
Total Orders confirmed within established standard (standard varies by order type).	Total confirmed orders (includes all order types for resale and UNE).

<b>% Resubmission Rejection</b>	
<b>Definition:</b>	The percent of PONs resubmitted at Bell Atlantic's request which are not rejected by Bell Atlantic's ordering systems and interfaces as being duplicative of PONs already in Bell Atlantic's systems.
<b>Exclusions:</b>	<ul style="list-style-type: none"> <li>• None</li> </ul>
Numerator	Denominator
Total PONs resubmitted at Bell Atlantic's request during calendar week that are not rejected by Bell Atlantic's systems as duplicative of PONs already in Bell Atlantic's systems.	Total PONs resubmitted at Bell Atlantic's request during the calendar week.

To obtain authorization to provide in-region, interLATA services in a particular state under section 271, a BOC must demonstrate, among other things, that it has fully implemented the 14-point “competitive checklist” set forth in section 271 in a manner that is nondiscriminatory.<sup>4</sup>

3. On September 29, 1999, Bell Atlantic filed with the Commission its application to enter the interLATA market in the State of New York. After analyzing the record, the Commission determined that Bell Atlantic had satisfied the requirements of section 271 and granted its application.<sup>5</sup> Bell Atlantic began providing interLATA service in New York State on January 5, 2000.

4. As a condition of its authorization to provide long distance service in New York, Bell Atlantic is required to provide competitors nondiscriminatory, unbundled access to certain piece parts or “elements” of its network.<sup>6</sup> Specifically, checklist item 2 set forth in section 271 requires Bell Atlantic to provide nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).<sup>7</sup> Section 251(c)(3) requires an incumbent local exchange carrier (“ILEC”) to provide nondiscriminatory access to network elements “on an unbundled basis.”<sup>8</sup>

5. The Commission previously determined that access to operations support systems (“OSS”)<sup>9</sup> functions “falls squarely” within an ILEC’s duty under section 251(c)(3).<sup>10</sup> As the

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<sup>4</sup> 47 U.S.C. §§ 271(d)(3)(A)(i), (ii) (requiring full implementation of the competitive checklist); 271(d)(3)(B) (requiring that implementation be carried out in accord with section 272, including section 272(c) nondiscrimination requirements). The additional requirements for section 271 authorization are discussed in the *Bell Atlantic New York 271 Order* at ¶¶ 17-20. In order to meet the nondiscrimination standard of section 271(c)(2)(B)(ii), the Commission has held that a carrier must provide the function at issue to its competitors in substantially the same time and manner as it provides that function to its retail operations. If there is no retail analogue, however, as in these circumstances, the carrier must demonstrate that it provides access to such function “sufficient to allow an efficient competitor a meaningful opportunity to compete.” See *Bell Atlantic New York 271 Order* at ¶¶ 86, 160, and 187.

<sup>5</sup> *Bell Atlantic New York 271 Order* at ¶ 454.

<sup>6</sup> See *Bell Atlantic New York 271 Order* at ¶ 44; 47 U.S.C. § 271(c)(2)(B)(ii).

<sup>7</sup> 47 U.S.C. § 271(c)(2)(B)(ii).

<sup>8</sup> 47 U.S.C. § 251(c)(3).

<sup>9</sup> OSS encompasses a variety of systems, databases, and personnel used by an ILEC to provide service to its customers. See *Bell Atlantic New York 271 Order* at ¶ 83.

<sup>10</sup> *Bell Atlantic New York 271 Order* at ¶ 84 (citing *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 FCC Rcd 20599, at 20653-54 (1998); *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 Carolina*, CC Docket No. 97-208, Memorandum Opinion and Order, 13 FCC Rcd 539, at 586 (1997); and *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 FCC Rcd 20543, at 20628 (1997) (*Ameritech Michigan Order*)).

Commission stated in the *Bell Atlantic New York 271 Order*, the nondiscriminatory provision of OSS is an integral aspect of the BOC's obligation to provide access to unbundled network elements as required by checklist item 2.<sup>11</sup> Moreover, the Commission has previously determined that "without nondiscriminatory access to the BOC's OSS, a competing carrier 'will be severely disadvantaged, if not precluded altogether, from fairly competing' in the local exchange market."<sup>12</sup> Thus, Bell Atlantic must provide requesting carriers nondiscriminatory access to OSS functions in order to comply with section 271(c)(2)(B)(ii), and such nondiscriminatory access is a fundamental condition of Bell Atlantic's approval to provide long distance service in New York.

6. Bell Atlantic provides requesting carriers an application-to-application interface based on Electronic Data Interface ("EDI") protocol for pre-ordering and ordering functions.<sup>13</sup> This critical component of Bell Atlantic's OSS offering allows competing carriers the ability to place orders for service with Bell Atlantic by interfacing directly with Bell Atlantic's ordering system. When Bell Atlantic receives a competing carrier's local service order over an EDI interface, Bell Atlantic is supposed to respond over the same interface with an acknowledgement of receipt of the order<sup>14</sup> and either an order confirmation notice (stating when the requested service will be provisioned) or an order rejection notice.<sup>15</sup> These electronic notices are important to the competing carrier because they provide information about, and the status of, a given order.<sup>16</sup> Additionally, when Bell Atlantic completes the provisioning or installation of the requested service, it sends two separate order completion notices to the competing carrier.<sup>17</sup> Bell Atlantic first sends a "work completion" notice indicating that the work associated with provisioning the order has been completed. Bell Atlantic then sends a "billing completion" notice indicating that the order is recorded as completed in Bell Atlantic's billing systems.<sup>18</sup> The receipt of the billing completion notice signals that Bell Atlantic has successfully transferred the customer to the competing carrier, which can then begin billing the customer without fear of double-billing. These electronic notifications are central to a finding of nondiscriminatory access to Bell Atlantic's OSS because they provide an efficient carrier information necessary to a

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<sup>11</sup> *Bell Atlantic New York 271 Order* at ¶ 81.

<sup>12</sup> *Bell Atlantic New York 271 Order* at ¶ 83.

<sup>13</sup> *Bell Atlantic New York 271 Order* at ¶ 159.

<sup>14</sup> See Letter from Edward D. Young, III, Sr. Vice President-Regulatory, Bell Atlantic Network Services, Inc. to David H. Solomon, Chief, Enforcement Bureau dated February 14, 2000, at 2. Bell Atlantic has requested confidential treatment of some of the information contained in its submission pursuant to sections 0.457 and 0.459 of the Commission's rules and, on February 17, 2000, submitted a redacted version of the letter and attachments. 47 C.F.R. §§ 0.457, 0.459. This Consent Decree cites to and relies on only the non-confidential portions of Bell Atlantic's submission from its February 17, 2000 letter. See Letter from Dee May, Director, Federal Regulatory, Bell Atlantic to David H. Solomon, Chief, Enforcement Bureau dated February 17, 2000 (*Bell Atlantic Response to Interrogatories and Document Requests*).

<sup>15</sup> *Bell Atlantic New York 271 Order* at ¶ 159.

<sup>16</sup> *Id.*

<sup>17</sup> *Bell Atlantic New York 271 Order* at ¶ 187.

<sup>18</sup> *Id.*

meaningful opportunity to compete.<sup>19</sup>

7. On February 7, 2000, the Commission's Enforcement Bureau began an investigation into Bell Atlantic's compliance with sections 251 and 271 and the condition in its long distance authorization that it provide competitors nondiscriminatory, unbundled access to network elements by issuing interrogatories and document requests.<sup>20</sup> Evidence submitted by Bell Atlantic in this investigation suggests that Bell Atlantic's performance in providing order acknowledgements, confirmation and rejection notices, and order completion notices for UNE-Platform local service orders deteriorated following Bell Atlantic's entry into the New York long distance market.<sup>21</sup> Data submitted by Bell Atlantic indicates that the problem appears most acute for January and early February of this year. Specifically, Bell Atlantic indicates that it received trouble tickets from competing carriers in November 1999 regarding 33,000 orders; 60,000 in December 1999; and more than 86,000 in January 2000. For the first eleven days of February 2000, Bell Atlantic reports receiving trouble tickets regarding another 48,000 orders.<sup>22</sup>

8. In February and early March 2000, Bell Atlantic implemented hardware and software changes, and instituted revised manual and electronic procedures, designed to improve performance in processing orders and timely sending required status notifiers. Bell Atlantic takes the position that these changes fully address and correct the problem of lost and mishandled orders. Preliminary reports indicate that these changes may be succeeding in improving the situation, particularly with respect to carriers that have migrated to an EDI system that uses new

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<sup>19</sup> *Bell Atlantic New York 271 Order* at ¶¶ 160, 187. In Bell Atlantic's response to Interrogatory 4, it explains that Bell Atlantic does not provide acknowledgements, confirmation notices, rejection notices, work completion notices or billing completion notices to Bell Atlantic's own local retail service customers or service representatives who take orders from its local retail service customers. Thus, Bell Atlantic has no retail analogue for this OSS function. In the absence of a retail analogue, the standard is whether Bell Atlantic provides competitors access to this function "sufficient to allow an efficient competitor a meaningful opportunity to compete." *Id.*; see also *Bell Atlantic New York 271 Order* at ¶¶ 160, 187.

<sup>20</sup> See Feb. 7 Solomon Letter.

<sup>21</sup> "UNE-Platform" is a combination of network elements (unbundled loop, switching, and shared transport) that provides competitors with the ability to package and market services in ways that differ from the BOC's existing service offerings. See *Bell Atlantic New York 271 Order* at ¶ 230; *Ameritech Michigan Order*, 12 FCC Rcd 20543, at 20628; see also *Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, at ¶¶ 272-74 (rel. Nov. 5, 1999). Competing carriers are using UNE-Platform as the primary vehicle to provide competitive local service to residential and small business consumers in New York State.

<sup>22</sup> See Attachment 2 at *Bell Atlantic Response to Interrogatories and Document Requests*. In addition, Bell Atlantic submitted updated data on February 23, 2000 indicating that it received trouble tickets regarding an additional 28,133 orders between February 12-19, 2000. See Attachment 2A to Letter from Edward D. Young, III, Sr. Vice President-Regulatory, Bell Atlantic Network Services, Inc. to David H. Solomon, Chief, Enforcement Bureau dated February 23, 2000. Bell Atlantic submitted still further information indicating that it received trouble tickets regarding an additional 18,454 orders between February 20-23, 2000. See Attachment 2A to Letter from Leslie A. Vial, Regulatory Counsel, Bell Atlantic Network Services, Inc. to Bradford M. Berry, Deputy Bureau Chief, Enforcement Bureau dated February 25, 2000; see also Letter from David H. Solomon, Chief, Enforcement Bureau, to Edward D. Young, III, Sr. Vice President-Regulatory, Bell Atlantic Network Services, Inc. dated February 22, 2000.

software developed by Bell Atlantic. At this point, however, there is no record data demonstrating that any improved performance will be sustained over the long run.

9. As a matter of corporate policy, BA-NY represents that it is committed to providing CLECs with nondiscriminatory access to its OSS, allowing them to offer local service in “substantially the same time and manner” as BA-NY.

### III. DEFINITIONS

10. For purposes of this Consent Decree, the following definitions shall apply:

- (a) The “FCC” or the “Commission” means the Federal Communications Commission and all of its divisions, including the Enforcement Bureau.
- (b) “BA-NY” or the “Company” means New York Telephone Company, doing business as Bell Atlantic-New York.
- (c) “Parties” means BA-NY and the FCC.
- (d) “Order” or “Adopting Order” means an order of the FCC adopting this Consent Decree without change, addition, or modification.
- (e) “Final Order” means an order that is no longer subject to administrative or judicial reconsideration, review, appeal, or stay.
- (f) “OSS” or “operating support systems” means systems used by BA-NY to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing as defined in the First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 F.C.C. Rcd 15499, ¶ 514, nn. 1244-1247.
- (g) “CLEC” means a competing local exchange carrier.
- (h) “EDI” or the “EDI Interface” means an application-to-application interface using electronic data interchange protocol provided by BA-NY enabling CLECs to obtain access to BA-NY’s OSS.
- (i) “Week” means a period beginning at 12:01 a.m. Saturday and ending at 12:00 midnight the following Friday.
- (j) “Aggregate Performance” means the numerical average of the reported performance for the new performance measurements described in Attachment A for the relevant period.
- (k) “Investigation” means the data request issued by the Enforcement Bureau to Bell Atlantic on February 7, 2000 and any informal complaints, ex partes, or other information received by the Commission related to the issues addressed there (excluding information received in, or in connection with, any formal complaint

proceeding) prior to the date of the Adoption Order.

- (l) "Effective Date" means the date on which the Commission adopts the Adopting Order.

#### **IV. AGREEMENT**

11. BA-NY and the Commission agree that this Consent Decree does not constitute either an adjudication of the merits or a factual or legal finding or determination regarding any compliance or noncompliance by BA-NY with the requirements of the Communications Act, as amended, including sections 251 and 271 thereof, arising out of any alleged actions or failures affecting BA-NY's interfaces and systems or the access to OSS provided by BA-NY to CLECs. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, the Company does not admit any noncompliance, violation, or liability associated with or arising from such alleged actions or failures, including any problems or failures described in the introductory paragraph of the data request, or in any informal complaints, ex partes, or other information received by the Commission on or before the Effective Date of this Consent Decree. Indeed, BA-NY expressly denies any such noncompliance, violation, or liability.

12. In express reliance on the covenants and representations contained herein, the Commission agrees to terminate the Investigation at such time as the Commission releases an order adopting this Consent Decree.

13. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between BA-NY and the Commission of the Investigation. In consideration for the termination of this Investigation in accordance with the terms of this Consent Decree, BA-NY agrees to the terms, conditions, and procedures contained herein.

14. This Consent Decree applies only to orders sent and status notices returned using the EDI Interface.

15. BA-NY represents that it is committed to providing CLECs with nondiscriminatory access to its OSS, allowing them to offer local service in "substantially the same time and manner" as BA-NY. To ensure that BA-NY is providing such nondiscriminatory access, BA-NY agrees to implement the measurement reporting system set forth in Attachment A. For any week in which BA-NY's Aggregate Performance meets or exceeds 90%, BA-NY will have no obligation to make a voluntary payment. If BA-NY's Aggregate Performance falls below 90% for two consecutive weeks (either the first two weeks for which BA-NY reports, or two consecutive weeks following a week in which BA-NY incurs no obligation to make a voluntary payment), BA-NY will, within three business days, make a voluntary payment to the United States Treasury of four million dollars (\$4,000,000). If BA-NY's Aggregate Performance continues below 90% for a third consecutive week, BA-NY will, within three business days, make an additional voluntary payment to the United States Treasury of eight million dollars (\$8,000,000). If BA-NY's Aggregate Performance continues below 90% for a fourth consecutive week, BA-NY will, within three business days, make an additional voluntary payment to the United States Treasury of twelve million dollars (\$12,000,000). With respect to each of these voluntary payments, instead of making such voluntary payment, BA-NY may choose voluntarily to suspend enrolling additional subscribers, and not to market or promote its interLATA service to customers in New

York, until its Aggregate Performance has met or exceeded 90% for two consecutive weeks. If BA-NY's Aggregate Performance on the new measurements, or its performance on the Additional Metric, falls below 90% for any week as a result of force majeure, Acts of God, strikes, commercially unreasonable actions by wholesale customers, or other causes beyond BA-NY's control, BA-NY shall have the right to seek the Commission's agreement that no voluntary payment will be due for that week and that the week's Aggregate Performance can be adjusted to remove the effect of such cause.

16. BA-NY will make a voluntary contribution to the United States Treasury in the amount of three million dollars (\$3,000,000) within 10 calendar days after the Commission Order adopting this Consent Decree becomes final. Payment should be paid by check or money order drawn to the order of the Federal Communications Commission. Reference should be made on the check or money order to "Acct. No. X32080004." Such remittances must be mailed to: Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois, 60673-7482.

17. The Commission agrees that, based on the facts developed in its Investigation and in the absence of material new evidence related to this matter, it will not use the facts developed in the Investigation through the date of this Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceedings, formal or informal, or to take any actions on its own motion against the Company concerning the matters that were the subject of the Investigation. The Commission also agrees that, based on the facts developed in the Investigation, and in the absence of material new evidence related to this matter, it will not use the facts developed in this Investigation to institute on its own motion any proceeding, formal or informal, or take any action against BA-NY with respect to its basic qualifications, including its character qualifications, to be a Commission licensee or with respect to compliance with the Commission's rules and policies. Consistent with the foregoing, nothing in this Consent Decree limits the Commission's authority to consider any complaint that may be filed pursuant to section 208 or 271 of the Communications Act, as amended, 47 U.S.C. §§208, 271, and to take any action in response to such complaint.

18. The Company waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Order adopts the Consent Decree without change, addition, or modification.

19. The Company's decision to enter into this Consent Decree is expressly contingent upon issuance of an Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition, or modification.

20. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

21. If the Commission, or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Adopting Order, neither BA-NY nor the Commission will contest the validity of the Consent Decree or Adopting Order, and the Company will waive any statutory right to a trial *de novo*.

22. Any violation of the Consent Decree or the Adopting Order will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

23. The Parties agree that this Consent Decree will terminate if BA-NY meets either paragraph A. or B., below:

A. If BA-NY's Aggregate Performance for the new measurements set out in Attachment A meets or exceeds 95% for each week for a consecutive four-week period with no individual measurement falling below 90% for any week, and, in addition, BA-NY's performance on the first Additional Metric described on Attachment A (% Confirmation Timeliness – Total LSRs) also meets or exceeds 90% for each week for the four-week period, and, in addition, BA-NY's performance on the second Additional Metric described on Attachment A (% Resubmission Rejection) also meets or exceeds 95% for each week for the four-week period, then BA-NY's obligations under this Consent Decree shall terminate.

B. If BA-NY's performance for each new individual measurement set out in Attachment A meets or exceeds 90% for each week for twelve consecutive weeks, and, in addition, BA-NY's average performance on the first Additional Metric described in Attachment A (% Confirmation Timeliness – Total LSRs) meets or exceeds 90% for each week for the twelve-week period, and, in addition, BA-NY's performance on the second Additional Metric described on Attachment A (% Resubmission Rejection) also meets or exceeds 95% for each week for the twelve-week period, then BA-NY's obligations under this Consent Decree shall terminate.

24. The Parties also agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which BA-NY does not consent) that provision will be superseded by such Commission rule or order.

25. This Consent Decree may be signed in counterparts.

FEDERAL COMMUNICATION COMMISSION

By: \_\_\_\_\_  
Magalie Roman Salas  
Secretary

BA-NY

By: \_\_\_\_\_  
Edward D. Young, III  
Senior Vice President - Regulatory