

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held July 20, 2000

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
Nora Mead Brownell
Aaron Wilson, Jr.
Terrance Fitzpatrick, Statement attached

Joint Petition of NEXTLINK Pennsylvania, Inc.
RCN Telecommunications Services of Pennsylvania,
Inc., Hyperion Telecommunications, Inc., ATX
Telecommunications, Focal Communications
Corporation of Pennsylvania, Inc., CTSI, Inc., MCI
Worldcom, e.Spire Communications, and AT&T
Communications of Pennsylvania, Inc., for an
Establishing a Formal Investigation of Performance
Standards, Remedies, and Operations Support
Systems Testing for Bell Atlantic-Pennsylvania, Inc.

P-00991643

OPINION AND ORDER

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BY THE COMMISSION:

I. MATTER BEFORE THE COMMISSION

Before the Commission for consideration are the Pennsylvania Carrier-to-Carrier Guidelines Performance Standards and Reports (February 1, 2000 Metrics) filed by Bell Atlantic-Pennsylvania, Inc.¹ (BA-PA) on January 31, 2000. The February 1, 2000 Metrics were filed in compliance with our Performance Metric Order (*PMO*) entered on December 31, 1999, and Secretarial Letter issued on January 13, 2000. *See Joint Petition of Nextlink, et al.*, Docket No. P-00991643 (entered December 31, 1999).

A. Brief Background²

On March 10, 1999, NEXTLINK Pennsylvania, Inc. (NEXTLINK), RCN Telecom Services of Pennsylvania, Inc. (RCN), Hyperion Telecommunications, Inc., (Hyperion), ATX Telecommunications Services, Ltd. (ATX), Focal Communications Corporation of Pennsylvania (Focal), CTSI, Inc. (CTSI), MCI WorldCom, Inc. (MCIW), e.Spire Communications (e.Spire), and AT&T Communications of Pennsylvania, Inc. (AT&T) filed the Joint Petition commencing this proceeding. The Joint Petition requested that an on-the-record proceeding be commenced to address two (2) issues: (1) Operations Support Systems (OSS) Testing; and (2) Performance Measures, Standards, and Remedies. By Opinion and Order entered on April 30, 1999 (*April 30, 1999 Order*), we granted limited relief, directing only that the Performance Measures, Standards, and Remedies issues be resolved on-the-record before a presiding Administrative Law Judge (ALJ). In compliance with the April 30, 1999 Order, on May 14, 1999, BA-PA filed its proposed *Pennsylvania Carrier-to-Carrier Guidelines*

¹ We take official notice of the corporate name change to Verizon Pennsylvania, effective August 1, 2000.

² A comprehensive History of the Proceeding may be found in the *PMO* (*PMO*, pp. 4-5).

Performance Standards and Reports (proposed PA Carrier-to-Carrier Guidelines), setting forth its initial proposal for Performance Measures and Standards.

The Recommended Decision of ALJs Louis G. Cocheres and Larry Gesoff was issued on August 12, 1999, to which the parties duly filed Exceptions and Reply Exceptions.

By our *PMO*, we granted, in part, and denied, in part, the Parties' Exceptions. We further directed BA-PA to file, within fifteen (15) days, revised PA Carrier-to-Carrier Guidelines. (*See PMO*, p. 179, Ordering Paragraph No. 4). On January 10, 2000, BA-PA requested an extension of time until January 31, 2000, to file its Compliance Guidelines. A Secretarial Letter was issued on January 13, 2000, wherein we granted BA-PA's request.

On January 18, 2000, BA-PA filed a Petition for Reconsideration. On the same date, MCIW filed its Petition for Reconsideration. In their separate Petitions, BA-PA and MCIW each seek, among other things, reconsideration and/or clarification of our ruling regarding certain metrics. Various Parties filed responses to BA-PA and MCIW's Petitions. By our Order adopted on January 27, 2000, we granted BA-PA and MCIW's respective Petitions, pending Commission review of, and consideration on, the merits. On July 21, 2000, our Opinion and Order on the merits was duly entered. (Reconsideration Order)

On January 31, 2000, BA-PA filed its *February 1, 2000 Metrics*.³ On February 14, 2000, AT&T filed "Exceptions" (AT&T Exc.). On March 8, 2000, BA-PA filed its Reply to AT&T's Exceptions (BA-PA Reply), and MCIW filed a letter in

³ In our *PMO*, we directed BA-PA to file "revised" Guidelines. BA-PA mislabeled the filing as "Interim" Guidelines. The filing is not properly characterized as Interim Guidelines and shall hereafter be called *February 1, 2000 Metrics*.

support of AT&T's Exceptions. By letter filed on April 3, 2000, AT&T requested that the Commission reject BA-PA's *February 1, 2000 Metrics*.

To remove any procedural ambiguity with regard to the timeliness of the Exceptions and responses thereto, we state as follows. The *PMO* provided that the record in this proceeding would be marked closed upon receipt of the Compliance Filing from BA-PA. (*PMO*, p. 182). Clearly, it was not our intent to preclude the filing of Exceptions to the Compliance Filing, and responses thereto. Accordingly, given the scope of this proceeding, we will waive, to the extent necessary, all applicable regulations and pronouncements, so as to permit full consideration of the Exceptions and Reply Exceptions.

II. PRELIMINARY CONSIDERATIONS

A few observations are warranted regarding our approach in addressing the Compliance Filing. First, the purpose of a compliance review process is to ensure that a filing comports with the terms of an underlying Commission Order. As such, a Compliance Filing is not the proper forum in which to seek modifications to an underlying Commission Order. This is true even when no objection has been filed to a proposed modification.

We note that within this Opinion and Order, any metric that we do not expressly address has been duly considered and found to be in compliance with our *PMO*. Likewise, any exception to the Compliance Filing that is not specifically addressed shall be deemed to have been considered and denied without further comment.

Finally, we note here that the Commission has taken a very aggressive pro-competitive stance in regard to the appropriate performance assurance plan necessary to ensure that all competitors are treated with parity, i.e., that BA-PA treats each CLEC as it treats its own retail operations. However, we would also caution that if it appears that any party is abusing the system or using it for anything other than a mechanism to ensure pro-competitive behavior, this Commission will react swiftly and take appropriate action to deal with such abuse.

III. PERFORMANCE REPORTS

A. Disaggregation

BA-PA was directed to disaggregate on the basis of Competitive Local Exchange Carrier (CLEC)-specific, service-specific and state-specific measurements. (*PMO*, p. 18). BA-PA must also report the service quality delivered to all BA-PA affiliates and subsidiaries (CLEC and non-CLEC) which order services, Unbundled Network Elements (UNEs), or interconnection. BA-PA is reminded that certain metrics require additional reporting requirements, as stated in our *PMO*. These additional reporting requirements were discussed in the individual metric sections of our *PMO*. With regard to the format for these reports, BA-PA is directed to file its monthly performance reports electronically, using the EXCEL 5.0 format, in addition to adhering to the filing requirements of its paper document.⁴

B. Procedures

The following procedures will govern the provisioning of reports to the CLECS. BA-PA is to notify the CLEC annually of the availability of the report. The first annual notification should occur within twenty (20) days of the date of entry of this Opinion and Order. The CLEC must request the report only once and will thereafter receive the monthly report until that CLEC notifies BA-PA differently.⁵ A notice that the reports are available shall be posted on the Commission's web site as well as included in the CLEC handbook. We also encourage CLECs to develop their own performance

⁴ We note that BA-PA has filed CLEC aggregate performance reports for the months of February 2000 (filed on March 31, 2000); March 2000 (filed on April 26, 2000); April 2000 (filed on May 25, 2000); May 2000 (filed on June 26, 2000); and June 2000 (filed on July 26, 2000).

⁵ All CLEC requests which were made prior to the first annual notification shall be deemed in compliance with these procedures.

tracking reports using the same format as BA-PA's monthly reports. This will facilitate Commission analysis of the BA-PA reports for accuracy, completeness and service quality.

BA-PA is instructed to file revised monthly performance reports within forty-five (45) days from the date of entry of this Opinion and Order which conform to our directives to the extent the actual raw data is available for the months of February, March, April, May, June and July, 2000. For those months that the actual raw data is not available, BA-PA must, within ten (10) days of the date of entry of this Opinion and Order, notify the Bureau of Fixed Utility Services (FUS) and provide an explanation as to why the raw data is no longer available. All future monthly reports filed after the date of this Order shall conform to the specifications ordered by the Commission. We remind the Parties that, in our *PMO*, we declined to impose financial incentive payments for failure to properly file monthly performance reports. Instead, we relied on BA-PA's assertion that it would furnish timely and accurate reports. Accurate reporting is a vital component to the performance standard review process and to a proper review of BA-PA's performance.

IV. PERFORMANCE MEASUREMENTS AND STANDARDS

The Performance Metrics as outlined in our *PMO* contain eight (8) categories of performance measurements: Pre-Ordering; Ordering; Provisioning; Maintenance & Repair; Network Performance; Billing; Operator Services and Databases; and General. Each measurement category contains a number of “metrics,” which total 44 metrics. Each of the 44 metrics contain one (1) or more “submetrics,” which total 159 submetrics.

In this Opinion and Order, the *February 1, 2000 Metrics* will be reviewed and considered categorically.

A. Pre-Ordering Metrics

1. PO-1 - Response Time OSS Pre-Ordering Interface

This metric measures pre-order response time between BA-PA and CLECs. There were four (4) aspects to this metric: Web Graphic User Interface (Web GUI) Standard, OSS Response Time, Time Outs, and Report Dimensions. (*PMO*, p. 34).

In the *PMO*, we determined as follows: (a) BA-PA is to provide Metric PO-1 at parity plus seven (7) seconds for the first year after the effective date of the February 1, 2000 Metrics, at which time the standard will shift to parity plus four (4) seconds; (b) the performance measure for this metric may be simulated using EnView for the first year and, thereafter, must be based upon actual performance unless BA-PA proves during the first year that measuring actual performance is not technologically feasible; (c) BA-PA may exclude from the measurement of pre-order query response times, those queries where the response is 330 seconds or longer; and, (d) with regard to

report measurements, data for Pennsylvania and Delaware may be combined, but data for other relevant states must be provided on a state specific basis.

In its Exceptions, AT&T voices its overall objection that BA-PA has modified language pertaining to this metric in unauthorized respects. AT&T raises several points in opposition to BA-PA's filing.

First, AT&T argues that BA-PA includes a definition of rejected queries which incorrectly presumes that a rejected query is caused by an error committed by the sender. In fact, states AT&T, BA-PA does not know and cannot validate that the processing failure was not on its side of the OSS interface. (AT&T Exc., p. 4).

Second, AT&T points out that the filing fails to note the restriction on BA-PA's use of the parity-plus seven (7)-second standard for only the first year. After the first year, BA-PA must adhere to the parity plus four (4)-second standard. (AT&T Exc., p. 4). Also, it is pointed out that the filing does not mention a separate one (1)-year limit on using the EnView software for measuring this performance standard. After one (1) year, BA-PA must use actual data to measure this metric. (AT&T Exc., pp. 4-5).

Additionally, AT&T points out that BA-PA's report dimensions incorrectly exclude state by state reports for Bell Atlantic-South (BA-South) states, in addition to excluding a combined Pennsylvania-Delaware (PA-DE) report. (AT&T Exc., p. 5).

Finally, AT&T states that there is language in BA-PA's filing which proposes to delay implementation until April 2000. This unilateral postponement was not discussed in the underlying proceedings, and should be rejected. (AT&T Exc., p. 5).

In addressing BA-PA's response, we shall dispose of the issues attendant to its filing.

(a) Definition of Rejected Queries

BA-PA notes that, in the June 14, 1999⁶ version of its proposed PA Carrier-to-Carrier Guidelines, the following statement was used to define "rejected queries".

Errors are incomplete or invalid requests and are rejected.
Errors are reported in Metric PO-1-07.

In its filing in response to our *PMO*, the definition is "clarified" as follows:

"Rejected Queries – A "Rejected Query" is a query that cannot be processed by BA's pre-ordering system due to incomplete or invalid information submitted by the sender, resulting in an error message to the sender.

BA-PA explains that AT&T's objection is incorrect. AT&T's position is that BA-PA's revised definition presumes that a rejected query is caused by an error committed by the sender when BA-PA does not, in fact, know and cannot validate that the processing failure was not on its side of the OSS interface. BA-PA argues that it, in fact, knows that the rejected query is caused by an error committed by the sender and that the revised definition was adopted from the New York Carrier-to-Carrier Service Quality Measurements and Standards (*New York Guidelines*). (BA-PA Reply, p. 3). BA-PA

⁶ BA-PA's June 14, 1999 Guidelines were filed as BA-PA's Statement 1.1.

further states that this definition is “in substance” the same as the original definition: “incomplete or invalid requests” as compared to “incomplete or invalid information submitted by the sender.” (*Id.*)

BA-PA notes:

[I]t more clearly reflects the manner in which the measurement is performed. BA-PA’s EnView robot submits a query request that intentionally contains incomplete or invalid information (i.e., an “incomplete or invalid request”, “incomplete or invalid information submitted by the sender”) and measures the time that it takes for an error message response to be received. It is this intentional submission of incomplete or invalid information by the “sender,” the En View robot, that assures that the query will be rejected and an error message received, so that the response time can be measured.

(BA-PA Reply, pp. 3-4).

We shall direct BA-PA to revise its definition consistent with that which was contained in the June 14, 1999 proposed PA Carrier-to-Carrier Guidelines, which were, by implication, adopted in our *PMO*. While the clarification proposed by BA-PA may be substantiated as a result of the EnView operational protocols, we find that proposing such a clarification at the compliance phase of the proceeding is improper.⁷ Consequently, we shall grant AT&T’s Exception on this point. BA-PA’s clarification finds no support in the record before this Commission and must be rejected in its presentation during this compliance phase.

⁷ We have discussed the significance of the New York proceedings in our deliberations of the instant proceeding. (*See PMO*, p. 7). We have concluded that mere reference to what transpired in New York, without adequate reference to the record in Pennsylvania, was not a course we elected to take.

(b) The Web GUI Standard⁸

BA-PA acknowledges that the standard for Web GUI pre-order response time as parity plus-four (4) seconds will not become effective for another year. Therefore, it found no need to include it in the *February 1, 2000 Metrics* at this time. (BA-PA Reply, p. 4). However, BA-PA will include a reference to the Commission directives with regard to the new standard if we conclude that such reference is appropriate at this time. *Id.* BA-PA does argue that the new standard for Web GUI should not become effective without further Commission review.

On consideration of the positions of AT&T and BA-PA, we will direct BA-PA to file revised Metrics that provide that the standard will become parity plus four (4) seconds as stated in our *PMO*. The pertinent language provides as follows: “We further note the absence of any dispute concerning the EDI standard of parity-plus four (4) seconds. Accordingly, the standard *shall* shift to parity plus four (4) seconds at the one (1) year point.” (*PMO*, p. 37). (Emphasis supplied). Contrary to BA-PA’s arguments, AT&T is correct in noting that the standard shift is to become effective on or after one (1) year. Our directive did not connote retaining the standard of parity-plus seven (7) seconds until the conclusion of a subsequent Commission proceeding. The standard shift is to be self-effectuating unless BA-PA first seeks and obtains an exemption and/or waiver prior to this time.

(c) OSS Response Time

BA-PA’s position concerning the one (1)-year limit for moving to actual measurement for this metric is essentially the same as discussed above. BA-PA, argues

⁸ BA-PA discusses the parity-plus four (4)-second standard in conjunction with the one (1)-year limit on using EnView. We shall continue to address these metrics separately, noting that the arguments of BA-PA are substantially the same for both.

that the one (1)-year transition to measuring this metric based on actual performance measurements, *unless* BA-PA proves, during the first year, that measuring actual performance is not technically feasible, should not be self-effectuating. BA-PA argues:

The use of the EnView measurement methodology is reflected throughout Metrics PO-1 and PO-2. For instance, the “Methodology” sections of these metrics describe in detail how EnView will be used to measure pre-order query response times and OSS interface availability. Similarly, the measurement formulae in the Metric PO-1 Sub-metrics count “simulated” transactions. Before, “actual” measurement can be introduced, the metrics will need to be revised to replace these references to EnView with references to the new measurement methodology.

Moreover, adopting “actual” measurement without further Commission review may leave Metric PO-1 without an effective performance standard. One of the principal reasons why BA-PA uses EnView measurement is because BA-PA at present has no means of “actual” measurement of BA Retail OSS response times. It is uncertain whether BA-PA will in the next year be able to develop a means for “actual” measurement of BA Retail OSS response times. If BA-PA is not able to implement “actual” measurement of BA Retail OSS response times, then a “Parity with BA Retail” standard may no longer be feasible, since there will not be any measured BA Retail response times to which CLEC response times can be compared. The Commission would then have to consider adoption of new standards for Metric PO-1, presumably standards that simply specify allowed intervals for CLEC pre-order query response times.

Automatic effectiveness of “actual” measurement is also inconsistent with the Commission’s decision to consider during the first year the *Guidelines* are in effect whether implementation of such measurement is feasible. Since the Commission has provided opportunities for review of the “actual” measurement methodology in its July and September 2000, and January 2001 review sessions, there is

no need to introduce the new measurement methodology “automatically,” without further Commission review.

(BA-PA Reply, pp. 5-6) (Notes omitted).

The clear and unambiguous language of the *PMO* does not support BA-PA’s position regarding our intent relative to the transition to actual measurement. We were very definite in our conclusion that “the performance measure for this metric may be simulated using EnView for the first year. Thereafter, the metric *must* be based on actual performance *unless* BA-PA proves, during that first year, that measuring actual performance is not technically feasible.” (*PMO*, p. 39). (Emphasis supplied). While our *PMO* acknowledged the possibility that BA-PA would need additional time to develop the capacity to measure OSS response time based on actual measurements, we provided the utility with the time needed to make the necessary technological changes to accommodate actual measurements. We were not content with the continued use of simulated measurements. BA-PA clearly has the burden of coming forward with a request to obtain an exemption and/or waiver from the direction in the *PMO*. We agree with AT&T and direct BA-PA to conform this metric to our *PMO*. Until proven technically infeasible, BA-PA has the obligation to self-effectuate the requirement that measurements of actual performance commence on or before one (1) year after the effective date of the instant February 1, 2000 Metrics.

(d) State-by-State Reports for Other States

AT&T points out that the *PMO* clearly states that data for Pennsylvania and Delaware may be combined. However, the data for the other relevant states must be reported on a state-specific basis. (*PMO*, p. 43). The *PMO* additionally noted BA-PA’s “reluctance” to provide the data for the other relevant states.

In the filing submitted in response to our *PMO*, BA-PA does not adhere to this directive. BA-PA states that it “had interpreted the Commission’s decision as simply rejecting BA-PA’s proposal for combined BA South States reporting and instead requiring BA-PA to report data that included only data for Pennsylvania/Delaware.” (BA-PA Reply, pp. 6-7). BA-PA later provides:

If as AT&T argues the Commission’s Order does require “state-by-state” reports for jurisdictions other than Pennsylvania, the Order exceeds the Commission’s jurisdictional power. The Commission has jurisdiction over BA-PA and can require it to report data about BA-PA’s performance for CLECs in Pennsylvania. However, the Commission does not have jurisdiction over the Bell Atlantic telephone companies that operate outside of Pennsylvania and does not have the authority to require them to prepare service quality reports for the Commission or to require that these reports be on a “state-by-state” basis.

(BA-PA Reply, p. 7).

In our *PMO*, we adopted the ALJs’ recommendation relative to the disaggregation of data for pre-order response times. (*PMO*, p. 42). Because of the nature of Pennsylvania and Delaware facilities, we permitted the reporting of data for these states on a combined basis. We do not, as is suggested by BA-PA, consider our directive that this metric track data for each state in BA-PA’s service territory to amount to the assertion of jurisdiction over BA-PA affiliates over which we do not have jurisdiction. This directive was to insure that BA-PA is treating the CLECs equally relative to the service provided in other states. (*Id.*). Clearly, BA-PA’s Report Dimensions category does not reflect the directive in the *PMO* relative to this metric. We agree with the observations of AT&T and shall direct BA-PA to revise its Geography designation to reflect the reporting directives of our prior *PMO*.

In its Reply, BA-PA states that “it is willing to report available data for New Jersey on a state specific basis and for the District of Columbia, Maryland, Virginia, and West Virginia on a combined four-jurisdiction basis.” (BA-PA Reply, pp. 7-8). BA-PA notes that it “objects to any attempt by the Commission to require its affiliated companies in other jurisdictions to report pre-order query response time data on a “state specific” basis when they do not report pre-order query response time data on a “state specific” basis as part of their standard business operations.” (BA-PA Reply, p. 8). These are arguments previously considered in the *PMO*. We have previously stated that “data for the other relevant states must be reported on a state-specific basis, notwithstanding BA-PA’s reluctance to provide such data.” (*PMO*, p. 43). We continue to require this. To the extent the data is not available on a state-specific basis, our prior *PMO* provides a mechanism by which BA-PA can demonstrate the need for revision.

2. PO-2 - OSS Interface Availability

This metric measures the availability of BA-PA’s OSS, *i.e.*, EDI and Web GUI, to CLECs, for responding to customer inquiries. (*PMO*, p. 43).

In our *PMO*, we adopted the ALJs’ recommendations on reporting, logs, and outages. The measurement should be based on actual data within one (1) year. We also shorten the Non-Prime Time period to 12:01 AM to 6:00 AM Monday through Saturday, and all day Sundays and holidays. (*PMO*, p. 46).

In its Filing, BA-PA excludes state-by-state reporting from the Report Dimensions for this metric. BA-PA proposes that separate measurements will be performed and reported for Pre-Ordering EDI, Pre-Ordering Web GUI, Maintenance Web GUI, and Maintenance Electronic Bonding.

AT&T filed objections to this proposed filing. AT&T challenges BA-PA's proposed exclusion of state-by state reporting. Second, AT&T notes that BA-PA's reliance on the EnView system for measuring Electronic Bonding (EB) OSS Interface availability was limited to one (1)-year. (AT&T Exc., pp. 6-7). AT&T argues that language must be expressly included in the metric so that BA-PA's actual measurement requirement automatically takes effect in one (1) year.

BA-PA responds to AT&T's position by noting: (1) the adoption of the EnView measurement methodology for the first year that the Guidelines are in operation, in effect, rejected the ALJ's recommendation for CLEC-specific reporting as EnView measures OSS interface availability based on simulated pre-order queries that EnView submits through the interface and does not measure availability of the interfaces as to any particular CLEC; and (2) that the ALJ's recommendation should not be construed as requiring state-by-state reporting, but state-specific, *i.e.*, Pennsylvania-specific, reporting. (BA-PA Reply, pp. 9-10).

On review of the Report Dimensions statement in the *February 1, 2000 Metrics* filed in response to our *PMO*, we agree with the observations of AT&T. BA-PA is required to modify this metric to reflect data for relevant states, other than Pennsylvania, and to include language that will, unless good cause is shown, self-implement, actual measurements for this metric after one (1) year. The question regarding this metric involved the issue of using EnView, as compared to the EB interface. (*PMO*, p. 44). Consequently, even though BA-PA points to an incongruity regarding the ability of this methodology to engage in CLEC-specific data, it has been clearly this Commission's intent to have such data provided for surveillance purposes. Therefore, AT&T's Exception is granted consistent therewith.

3. PO-4 - Timeliness of Change Management Notice

This metric measures the timeliness and accuracy of BA-PA's notifications to the CLECs of changes to its interfaces due to technological, systemic, and feature enhancement/innovation. (*PMO*, p. 48).

We adopted, in our *PMO*, BA-PA's proposal to report separately the timeliness of each of the five (5) types of change management notifications with the standard of 95% within prescribed time frames applied to the total submetric for purposes of the incentive provisions. (*PMO*, pp. 49-50).

In its Filing, BA-PA proposes to exclude from measurement within this metric changes for which it and the CLECs agreed to waive the minimum notice interval.

AT&T comments that the *PMO* approved the language contained in BA-PA's original proposed Guidelines. Notwithstanding, states AT&T, BA-PA has apparently made certain unauthorized changes to the version filed in response to the *PMO*.

First, AT&T argues that the newly proposed definition of the change management notice is misleading, incomplete and circular. (AT&T Exc., p. 8). This definition appearing at page 17 of the *February 1, 2000 Metrics* under review states:

The percentage of interface affecting changes requiring change management notices (i.e. notices scheduling interface affecting changes) for which notice is provided in accordance with the applicable minimum notice interval specified in the Performance Standards.

Second, AT&T observes that the *PMO* contained no exclusions. AT&T further states that no exclusions were proposed in the PO-4 metric presented by BA-PA

during the proceedings. (AT&T Exc., p. 9). Finally, AT&T complains that BA-PA inappropriately “hard wired” specific time intervals for each type of change management notice (Type 1 – Type 5) into this metric. (AT&T Exc., pp. 9-10). AT&T argues that the metric language approved in the *PMO* appropriately cross-referenced, but did not explicitly prescribe, the intervals applicable to each type of change management notification. Given that these intervals may change and evolve over time, AT&T argues that BA-PA’s new language be rejected, and BA-PA be directed to revert back to the language of the *PMO*.

BA-PA responds that the definition proposed in the subject *February 1, 2000 Metrics* accurately reflects the appropriate way to perform the measurements. BA-PA states that there is no assumption that notice will be provided in a timely manner, but that its definition provides for measurement, for each interface affecting change, of whether notice of that change was timely provided. (BA-PA Reply, p. 12). BA-PA’s position is that, if CLECs consent to waive a standard in this, or in any other metric, the metric should not apply. BA-PA posits that, if there is a question as to whether CLECs have agreed to waive a notice interval, it can be addressed by the Commission when BA-PA claims the waiver. (BA-PA Reply, p. 13). BA-PA also responds that it does not object to incorporation of its practices by reference in place of fixed intervals stated in the metric if this is acceptable.

On consideration of the issue, we note that our *PMO* approved the metric as proposed by BA-PA in its June 14, 1999 filing. (*PMO*, p. 50). In its proposal for this metric, BA-PA defined this metric as “the percent of change management notices sent according to prescribed notification standards within the prescribed timeframes”. We find no basis for BA-PA’s subsequent modifications to the definition and direct BA-PA to revise its definition consistent with that proposed and adopted.

We further agree with AT&T that BA-PA has improperly inserted the subject exclusion into this metric. BA-PA must conform its filing to the *PMO*.

Specific time intervals for the individual change management notice were not assigned in our *PMO*. Rather, BA-PA indicated that prescribed timeframes would be provided later. (*See* BA-PA St. 1.1, pp. 20-22). Upon consideration, we shall grant AT&T's Exception and direct BA-PA to remove its proposed specific time intervals and revert back to the language of the *PMO* to incorporate, by reference, intervals for the respective change management notice type. (*See PMO*, pp. 49-50).

4. PO-5 – Average Notification of Interface Outage

This metric measures the timeliness of BA-PA's notice of interface outages to the CLEC to advise the CLEC that the platforms it uses to access OSS are unavailable. (*PMO*, p. 50).

We implemented a standard that required BA-PA to report all outages within twenty (20) minutes. We also rejected BA-PA's proposal to exclude from this measurement outages less than fifteen (15) minutes. (*PMO*, p. 51-52).

BA-PA reports a performance standard of not more than twenty (20) minutes. In the Report Dimensions section, BA-PA has deleted reporting for BA South States.

AT&T argues that BA-PA's compliance language for this metric omits any mention of a requirement that it report interface outages not only for Pennsylvania, but also for each of the other states in BA-South, *i.e.*, the former Bell Atlantic region prior to the Bell Atlantic-NYNEX merger. (AT&T Exc., p. 10). AT&T continues that this disaggregated reporting is imperative to enable Pennsylvania CLECs to detect whether

interface outages are disproportionately affecting them as compared to CLECs operating in other BA-South states. *Id.*

BA-PA responds that, contrary to AT&T's claim, neither the Commission's *PMO* nor the ALJs' Recommended Decision require BA-PA to report timeliness of notice of interface outage data for states other than Pennsylvania. (BA-PA Reply, p. 14).

On review of this issue, we conclude that similar to the concern in PO-2, BA-PA made a modification in its *February 1, 2000 Metrics* which was not authorized by the final determination in the *PMO*. In the *PMO*, we granted the Exception of AT&T, which was directed solely to the concern of removing the "less-than-fifteen (15)" exclusion from this metric. (*PMO*, p. 51). We, therefore, adopted the ALJs' recommendation in all other respects. That is, the ALJs agreed with BA-PA that no changes be made to this metric. *Id.* As conceded by BA-PA at page 14 of its Reply, to the extent the metric had originally provided for combined BA-South states' reporting, any subsequent modification is unauthorized. BA-PA is directed to revise this metric consistent with the language consistent with the June 14, 2000 version of its PA Carrier-to-Carrier Guidelines as pertains to BA-South states reporting. The Exception of AT&T is granted, to the extent consistent with this directive.

B. Ordering Metrics

1. OR-1 - Order Confirmation Timeliness and OR-2 Order Reject Notices

Metric OR-1 measures the time in which BA-PA provides a CLEC with confirmation of a CLEC service order. (*PMO*, p. 52). Without an order confirmation, CLEC customers are not assured of whether and when service will be provided. *Id.*

In our *PMO*, we separated this metric into three (3) categories for discussion as follows: (1) Standard, (2) Hourly Intervals, and (3) BA to CLEC Trunk Requests. In addressing the applicable performance standard, we noted that there is no comparable retail operation, in that BA-PA does not provide order confirmations to itself. Accordingly, we required BA-PA to provide order confirmation within the time frames specified below for hourly intervals, meeting the performance criteria contained in the metric 95% of the time. (*PMO*, pp. 52-54).

With regard to the hourly intervals, we directed that the maximum interval for order confirmation for any electronic order containing less than ten (10) lines shall be forty-eight (48) hours. For electronic orders over ten (10) lines, we adopted the ALJs' recommendation that the BA-PA seventy-two (72)-hour interval be used. The ALJs' recommendations on order intervals were used in all other respects.

Finally, we adopted the ALJs' recommendation to include BA to CLEC interconnection trunks in measuring and reporting this metric on an interim basis. (*PMO*, pp. 52-57).

Metric OR-2 measures the time that it takes BA-PA to reject a CLEC service order. The Parties' positions on this issue parallel those for Metric OR-1. In disposing of this issue, consistent with our analysis of Metric OR-1, we directed: a performance standard of 95%; a maximum hourly interval of forty-eight (48) hours; and BA-PA's implementation of the measurement of BA to CLEC interconnection trunks as part of this metric on an interim basis. (*PMO*, pp. 57-59).

In addressing Metrics OR-1 and OR-2, BA-PA's *February 1, 2000 Metrics* properly reflected our directives with regard to: (1) the 95% performance standard; (2) the modification to forty-eight (48) hours as the permissible hourly interval for electronically submitted orders of less than ten (10) lines and order reject notices; and

(3) seventy-two (72) hours as the permissible hourly interval for electronically submitted orders of more than ten (10) lines (OR-1 only).⁹

Similarly, our directive that BA-PA measure performance with regard to BA-PA to CLEC trunks on an interim basis, was implemented through a new, separate metric, NP-7, Timeliness of Response to Request to Order BA to CLEC Trunks.

Finally, BA-PA also included the following exclusion:

“For flow-through orders, Service Order Processor (“SOP”) scheduled downtime: 10 PM to 6 AM each Day.”

(*February 1, 2000 Metrics*, pp. 16 and 23).

AT&T excepts to BA-PA’s Compliance Filing, claiming that it fails to comply with our *PMO* in several respects. First, AT&T notes that BA-PA has proposed, for the first time, to exclude from this metric all flow-through orders submitted each day between the hours of 10:00 p.m. through 6:00 a.m., claiming that the Service Order Processor (SOP) will be scheduled for downtime those days. AT&T emphatically notes that there has been no opportunity for procedural due process in that there has been no prior notice of this proposed restriction.

AT&T also objects to BA-PA’s failure to include in this metric BA to CLEC interconnection trunks, as directed in our *PMO*. (AT&T Exc., pp. 12-13).

In its Reply, BA-PA takes the position that this exclusion simply states the obvious: that it cannot process new orders during the period each day when the SOP is down. BA-PA notes that the confirmation and reject notice interval for flow-through

⁹ In addressing the Petitions for Reconsideration, we modified Metric OR-2 to parallel the time frames we established in Metric OR-1. BA-PA will now have to

orders is only two (2) hours. BA-PA sees no resulting harm to the CLECs, stating instead that the CLECs are not barred from submitting orders during the period that the SOP will be down, but that any orders received during this period will be held until processing resumes. (BA-PA Reply, p. 16).

Finally, BA-PA addresses AT&T's contention that BA-PA has failed to include in these metrics the Commission's directive applicable to BA to CLEC trunks. BA-PA notes that in direct response to, and compliance with, the *PMO*, they have added a new metric, NP-7, which measures BA-PA responsiveness to a CLEC's request that BA-PA order BA to CLEC trunks from the CLEC. (BA-PA Reply, pp. 17-18). BA-PA states that they placed the directed measurement in a separate metric in order to avoid confusion between the existing measurements in Metrics OR-1 and OR-2 and the new measurement. BA-PA observes that the existing measurements in Metrics OR-1 and OR-2 measure BA-PA's provision of confirmation and reject notices to CLECs in response to their orders for BA-PA-provided CLEC to BA trunks. BA-PA states that "the new measurement is of the timeliness of BA-PA's response to a CLEC request that BA-PA order from the CLEC, CLEC provided BA to CLEC trunks." (BA-PA Reply, pp. 17-18).

With regard to BA-PA's modification to exclude SOP availability between 10:00 p.m. and 6:00 a.m., we agree with AT&T that such revised language is inappropriate in a compliance filing. Although we contemplated a flexible process through which changes necessitated by real experiences could quickly be incorporated into this framework, at this stage of the proceeding there has been no opportunity for the Parties to be heard with regard to the need to shut down SOP operations for an extended period of time on a daily basis. Additionally, the purpose of a Compliance Filing is to demonstrate compliance with the terms of a Commission order. Accordingly, we shall

incorporate this change in the filing pursuant to this Opinion and Order.

grant AT&T's Exception and direct BA-PA to modify its *February 1, 2000 Metrics* accordingly.

With regard to the issue of whether BA-PA has properly implemented the measurement of BA to CLEC interconnection trunks in reporting this metric, we are satisfied that the separate metric contained in NP-7, when coupled with Metrics OR-1 OR-2, is directly responsive to, and in compliance with, our intent in this regard. Accordingly, we deny the AT&T Exception on this issue.

2. OR-4 - Timeliness of Completion Notification

This metric measures the timeliness of delivery of notices from BA-PA to the CLECs that CLECs' orders for service have been completed. (*PMO*, p. 59).

BA-PA proposed that compliance be measured from completion of an order in BA-PA's CRIS and that the standard for this metric be 97% completed by the next business day at noon. The dispute concerns to the appropriate time interval for metric compliance measurement purposes. We directed BA-PA to: (1) provide notice within thirty (30) minutes of the time of completion of an order in the work force administration system (WFAS); (2) maintain a log of notice times; and (3) provide notice which is triggered from the moment of installation. (*PMO*, pp. 60-61).

BA-PA defines the completion notification response time as the elapsed time between the actual order completion in the WFAS and the distribution of the order completion notification. For multiple orders generated from a single CLEC request, the measure is taken between the completion of the last order associated with the request and the distribution of the completion notification. With regard to UNE Hot Cut Loop Orders, BA-PA adds that the measurement is taken from completion of the physical cutover work to when a telephone call is placed by BA to the CLEC notifying the CLEC

of completion of the physical cutover work. In the Performance Standard section, BA-PA replaces the previous standard for Submetric OR-4-02, 97% by next business day at noon, with a new standard of 95% within 30 minutes of WFAS completion.

AT&T excepts to two (2) aspects of BA-PA's filing. First, AT&T objects to BA-PA's proposed reduction of the performance standard from 97% to 95%. AT&T points out that BA-PA voluntarily proposed the 97% standard which the Commission approved in its *PMO*. Secondly, AT&T objects to BA-PA's revised language describing the completion notification response time. AT&T urges the Commission to reject BA-PA's revised language, or alternatively to, direct BA-PA to clarify the revised language. (AT&T Exc., p. 15).

In response, BA-PA explains that it did not voluntarily suggest the 97% standard but rather Commission staff, during the collaborative process, suggested this standard. BA-PA adds that because the Commission did not specify what percentage of completion notices must be provided within thirty (30) minutes after order completion in its WFAS, it proposed the 95% standard to be consistent with the Commission's general directive that the appropriate objective for benchmark standards is 95%. (BA-PA Reply, pp. 19-20).

We direct BA-PA to file revised language to describe the completion notification response time in a manner consistent with our disposition of this issue in the *PMO*. The language contained in the compliance filing was not previously adopted by the Commission in the *PMO* and is improperly offered at this time.

We further find that BA-PA's proposal of a 95% standard does not comply with the 97% standard for this metric established in the *PMO*. In the revised Compliance Filing required in accordance with this Opinion and Order, BA-PA must make the proper adjustments to this metric.

3. OR-6 - Order Accuracy

This metric measures BA-PA's accuracy in processing CLEC orders and the accuracy of Local Service Request Confirmations (LSRCs). We adopted the ALJs' recommendation and directed BA-PA to provide this service at parity with its retail operations. (*PMO*, p. 65).

In the Definition Section of this metric, BA-PA mentions that two (2) dimensions will be measured: (1) measurement of orders without BA-PA errors (OR-6-01); and (2) a measurement focused on the percentage of fields that are populated correctly (OR-6-02). BA-PA also states that LSRC accuracy will be measured (OR-6-03). As performance standards, BA-PA feels that submetrics OR-6-01 and OR-6-02 would have a standard of 100% of orders without BA-PA errors, and Submetric OR-6-03 requires that no LSRC is present due to BA-PA error.

No Exceptions or objections were filed to BA-PA's filing for this metric. We note that in its Petition for Reconsideration, BA-PA sought modification of our *PMO* ruling regarding this metric. By our *Reconsideration Order*, previously referenced, we have addressed BA-PA's arguments and adjusted the standard to 95%. BA-PA shall conform the 95% metric to this standard in the filing due pursuant to this Opinion and Order. For purposes of compliance, we find that BA-PA's filing for this metric complies with our *PMO*.

C. Provisioning Metrics

1. PR-2 - Average Interval Completed

This metric measures the time between the order application date and the actual work completion date. (*PMO*, p. 68). We concluded that, for this metric, order

completion should be defined as the time that BA-PA actually notifies the CLEC of the order completion, not merely the time that the order is completed. We determined that the performance standard for UNEs should be comparable to the parity standard governing resale and interconnection orders. We further directed that this metric be initially calculated for diagnostic purposes only. Finally, we directed that with the commencement of the three (3)-tier financial incentives process established in our *PMO*, this metric be calculated for remedies. (*PMO*, pp. 68-70).

BA-PA defines this metric as the average number of business days between the order application date and the completion date. BA-PA adds the new language, which purports to define completion date as it concerns CLECs and BA-PA retail. The completion date for CLECs is defined by BA-PA in this metric as: (1) the date on which BA-PA transmits the notice of work completion to the CLEC, if the CLEC is ready to receive notice of work completion; or (2) the date on which BA-PA is ready to transmit the notice, if the CLEC is not ready to receive notice of work completion.

In its Exceptions, AT&T contends that BA-PA's proposed new language purporting to define the completion date does not comply with the Commission's directive. AT&T takes the position that, in the absence of any record evidence that the CLECs are not in a position to receive BA-PA's types of notifications, BA-PA's proposed new standard language, which allows it to exclude certain data based on the contention that it was ready to transmit the notification and a CLEC was not ready to receive such notification, should be stricken. AT&T urges the Commission to reject BA-PA's proposed new language in this metric. (AT&T Exc., pp. 15-16).

We agree with AT&T. BA-PA's proposed definition of the completion date reaches beyond our directive regarding this metric. In our *PMO*, we neither directed nor authorized BA-PA to include separate and qualifying definitions of the completion date for Metric PR-2. We conclude that BA-PA's proposed definition of the completion

date does not comply with our *PMO* and should be stricken. We direct BA-PA to file a revised Metric PR-2.

2. PR-5 - Facility Missed Orders

This metric measures BA-PA's failures, due to lack of BA-PA facilities, to meet installation commitments, which it has made to CLECs. (*PMO*, p. 74). We determined that cancelled orders should be excluded from the metric. (*PMO*, pp. 74-75).

BA-PA lists the performance standard for this metric as parity with BA-PA's retail operations.

In its Exceptions, AT&T argues that BA-PA failed to include BA to CLEC interconnection trunks within this metric. (AT&T Exc., p. 16).

In response to AT&T's objections, BA-PA asserts that the measures in PR-5 and PR-6 reflect its performance with regard to BA to CLEC trunks. BA-PA adds that consistent with the *PMO*, it has implemented Metric NP-7 which measures BA-PA's responsiveness to a CLEC's request that BA-PA order BA to CLEC Trunks from the CLEC. BA-PA submits that CLEC Trunks, as applied to Metrics PR-4, PR-5, PR-6, PR-8, MR-2, MR-4 and MR-5, are defined in the Guidelines Glossary to include BA-PA network facilities connecting BA-PA to CLEC trunks to the BA-PA network. (BA-PA Reply, p. 18). BA-PA explains that BA to CLEC trunks are ordered by BA-PA from the CLECs and provided by the CLECs to BA-PA. (BA-PA Reply, p. 18, fn. 55). For this reason, BA-PA adds that there are no CLEC orders for BA-PA to confirm or reject for BA to CLEC trunks. (BA-PA Reply, p. 18). As such, there is no performance to be measured for trunks provided by CLECs. (BA-PA Reply, p. 18).

BA-PA also proposes in its *February 1, 2000 Metrics* the creation of a separate metric, Metric NP-7, to measure BA to CLEC interconnection trunk data. In view of BA-PA's proposed new metric and the definition of CLEC trunks as outlined in the Glossary of the *February 1, 2000 Metrics*, we conclude that BA-PA has complied with our directive to measure BA to CLEC Trunks for this metric. We will, however, require BA-PA to modify its filing for this metric to refer to the Glossary's definition in this metric.

3. PR-6 - Installation Quality

This metric measures the percentage of lines, circuits, and trunks installed where a BA-PA network trouble has been found within thirty (30) days (or seven (7) days for POTS) of the completion of the original service order. (*PMO*, pp. 75-76). In our *PMO*, we declined to immediately impose a Hot Cut metric similar to Metrics PR-6-04 and PR-6-05, as recommended by the ALJs. Instead, we directed that BA-PA implement and comply with a separate Hot Cut requirement when a Hot Cut metric is finalized in New York. (*PMO*, pp. 75-78).

For this metric, BA-PA reports that a performance standard of parity with BA-PA retail. BA-PA has also expanded its Report Dimensions section to include BA Affiliate Aggregate and Bell Affiliate Specific.

AT&T argues in its Exceptions that this metric, as reported by BA-PA, does not comply with the Commission's directive. Specifically, AT&T contends that BA-PA failed to include BA to CLEC interconnection trunks in this metric.

BA-PA responds that it does, in fact, measure for this metric its performance with regard to BA to CLEC trunks. (BA-PA Reply, p. 23).

For the same reasons stated in our discussions for Metric PR-5, we find this metric, based on the filing, is consistent with our *PMO*.

4. PR-7 - Jeopardy Reports

This metric measures the percentage of specified orders that are completed or canceled with a jeopardy condition, *i.e.*, BA-PA knows, in advance of a committed installation due date, that the due date will not be met. (*PMO*, p. 78). We directed that this metric include resale, UNEs, and interconnection trunks. (*PMO*, pp. 78-80).

In the definition section of this metric, BA-PA has added the following new language:

Except as otherwise requested by a CLEC, a CLEC will be provided with order jeopardy notices. Jeopardy notices will be posted twice daily on the BA Web server for a CLEC to retrieve.

BA-PA has added resale and UNEs in the Performance Standards section of this metric. In this section, BA-PA has also added interconnection trunks and the following new language:

Where BA knows the jeopardy condition at least two days before the due date, the jeopardy notice will be given at least two days before the due date.

AT&T argues that BA-PA has improperly established an unauthorized description of the Definition of this metric. AT&T adds that BA-PA's proposed new language fails to clarify: (1) how a CLEC should request that it not be provided with order jeopardy notices; (2) whether each CLEC will be able to access only its own jeopardy notice; or (3) whether it will be able to view all CLECs' jeopardy notices. AT&T maintains that BA-PA's proposed changes to this metric should be supported, at a

minimum, by published business rules which clearly explain how a CLEC may access its own jeopardy notices. AT&T urges the Commission to reject BA-PA's proposed language. (AT&T Exc., pp. 17-18).

Citing that the *February 1, 2000 Metrics* need not contain all details of the practice associated with the business activities measured, BA-PA would agree to removing the two (2) sentences. BA-PA anticipates changes in its procedures for providing jeopardy notices to CLECs. If additional language is needed after these changes become effective, BA-PA will seek Commission approval. (BA-PA Reply, p. 24).

We direct BA-PA to delete the two-(2) new sentences in the Definition section of this metric. We agree with AT&T that the procedures demonstrating how a CLEC would request that it not be provided with order jeopardy notices or how a CLEC would access its jeopardy notices from the BA-PA web server are lacking. While we also agree with BA-PA that all details of the business practices governing a measured activity need not be listed in the guidelines, a CLEC should be provided with published business rules which may relate to a given metric. For this reason, after BA-PA has implemented the anticipated changes in its business procedures which are published for the CLECs regarding this metric, it may submit a request for the Commission to consider proposed new language in this metric. In all other aspects, we find that this metric complies with our *PMO*.

5. PR-8 - Open Orders in A Hold Status

BA-PA was directed to implement newly-proposed measures to track the number of open orders in a hold status, on a disaggregated basis, by order type, and the number of days an order has been in hold status. (*PMO*, p. 83).

In the Definition section, BA-PA states that this metric will measure the number of open orders that have been in a hold status for more than thirty (30) or ninety (90) days. An open order is defined as a valid order that has not been completed or canceled. As proposed by BA-PA, an open order in hold status includes: (1) open orders that have passed the originally-committed completion date due to BA-PA reasons; and (2) open orders that have not been assigned a completion date due to BA-PA reasons. The performance standard for this metric is parity with BA-PA retail orders.

AT&T argues that the proposed language in this metric is incomplete. AT&T notes that open orders, as proposed by BA-PA, are limited only to valid orders in hold status because of BA-PA's failure to meet a scheduled completion date or because BA-PA has not yet assigned a completion date to the orders. This definition, according to AT&T, presumes that BA-PA has received and processed all valid orders. AT&T contends that BA-PA should be directed to include within this metric, a means of validating and reconciling the number of valid orders for which it has records with the number of valid orders that CLECs have successfully transmitted to BA-PA for processing. AT&T proposes that this measurement include all valid open orders. (AT&T Exc., p. 19).

In response, BA-PA maintains that the metric as proposed complies with the Commission's directive. According to BA-PA, AT&T's proposal would expand the function of this metric beyond its original scope and result in the "perpetual audit of the whereabouts of every order received from CLECs." BA-PA urges us to accept the metric, as proposed in the filing, and reject AT&T's proposal. (BA-PA Reply, p. 25).

Upon consideration, we conclude that the Definition section, as proposed by BA-PA, is unnecessarily restrictive. AT&T's contention that a valid order not accepted by BA-PA's OSS would not be detected in this metric, as proposed, is well taken. This metric must include all valid open orders, *i.e.*, valid CLEC transmitted orders

which fail in an acknowledgment of receipt of order or in rejection notices. This means reconciliation would serve to help verify that BA-PA's OSS is properly receiving and acknowledging orders.

We therefore, grant AT&T's Exceptions and direct BA-PA to revise its proposed definition to also include a means of validating and reconciling the number of valid orders for which it has records with the number of valid orders that CLECs have successfully transmitted to BA-PA for processing.

6. PR-9 - Hot Cuts

In BA-PA's *PA Carrier-to-Carrier Guidelines*, BA-PA offered this metric to measure the percentage of service orders where network trouble was reported and found between the submission of the service order and the completion of the service order. (*PA Carrier-to-Carrier Guidelines*, p. 86). In our *PMO*, we adopted the ALJs' recommendation not to adopt Metric PR-9, as proposed in the *PA Carrier-to-Carrier Guidelines*, for the reason that Hot Cuts are reported separately in PR-4, PR-5 and Submetrics PR-6-04 and PR-6-05.

In its *February 1, 2000 Metrics*, BA-PA has offered PR-9 as a Hot Cut Metric which measures the percentage of UNE loop Hot Cut¹⁰ orders completed within the cut-over window.

AT&T notes that the Hot Cut metric contained in the instant filing does not include all of the performance standards and definitions of submetrics already contained in the New York metric. AT&T maintains that, in accordance with the Commission's

¹⁰ A Hot Cut is the instantaneous conversion of subscribers from their existing local telephone company to a new local telephone company.

directive, BA-PA should be required to implement a Pennsylvania Hot Cut metric which contains the same terms and conditions contained in the New York metric.

BA-PA states that the New York metric was actually finalized after the filing of the *February 1, 2000 Metrics*. For this reason, BA-PA contends that its Pennsylvania Hot Cut metric is not the same as the finalized New York Hot Cut metric. BA-PA asserts that it will file a revised Hot Cut metric that is substantially the same as the New York metric.

In our *PMO*, we directed BA-PA to include in its Compliance Filing, the Hot Cut metric finalized in New York. We further concluded that, if the Parties do not agree that the filed Hot Cut metrics are consistent with the New York metric, the Parties may petition the Commission for review of the BA-PA Hot Cut metric. (*PMO*, pp. 77-78).

Consistent with our *PMO*, we direct BA-PA to circulate, at the same time as it files in compliance to this Opinion and Order, its Hot Cut Metric proposals to the CLECs. The CLECs and BA-PA shall have thirty (30) days to advise the Commission whether they have reached agreement. If the Parties cannot agree, they may petition for abbreviated resolution.

D. Maintenance & Repair Metrics

1. MR-1 - Response Time OSS Maintenance Interface

This metric measures the response times for maintenance transactions, *i.e.*, the time between a CLECs submission of a query and the receipt of a response. (*PMO*, p. 85).

We directed that this metric be implemented on a CLEC-specific basis and that a standard of parity plus four (4) seconds be used for EB, and parity plus seven (7) seconds be used for Web GUI. Additionally, we stated that the standard of parity plus seven (7) seconds for Web GUI may be revisited in our post-January 1, 2001 investigation, if not sooner. Finally, we adopted the ALJs' recommendation that the CLEC-specific and state-specific results be reported for this metric. (*PMO*, pp. 86-87).

In accordance with our directive, BA-PA has appropriately modified the Performance Standards section of this metric so that parity with BA-PA retail plus not more than seven (7) seconds be used for Web GUI and parity with BA-PA retail plus not more than four (4) seconds be used for EB. BA-PA also modified the definition to this metric to state that response times will be measured and reported separately for Web GUI and EB. (*February 1, 2000 Metrics*, p. 59).

Also, BA-PA has complied with our directive that CLEC-specific and state-specific results be reported for this metric. As such, BA-PA has expanded the Report Dimensions of this metric so that it now includes "CLEC Specific," "BA Affiliate Aggregate," and "BA Specific" dimensions in addition to the originally proposed "BA Retail" and "CLEC Aggregate" dimensions. (*February 1, 2000 Metrics*, p. 59).

Under the Methodology section of this metric, BA-PA proposes that the actual response times that are reported by the caseworker be used for BA-PA retail representatives. For CLEC representatives, BA-PA has listed, with no clarifying explanations, that “Create Trouble” includes only CLEC basic “Create Trouble” transactions. Consistent with this modification, BA-PA filed to excluded CLEC complex “Create Trouble” transactions that cannot be performed by BA-PA retail. (*February 1, 2000 Metrics*, p. 59).

In its Exceptions, AT&T argues that, while BA-PA’s compliance language incorporates the Commission’s directive, it has also introduced an entirely new issue that was not presented during any prior phase of this proceeding. This new issue involves a new exclusion for CLEC complex “Create Trouble” transactions that cannot be performed by BA-PA retail. AT&T asserts that no explanation or rationale is offered for this proposed exclusion and that, in the absence of prior Commission approval of the proposed exclusion, it must be rejected. (AT&T Exc., pp. 21-22).

In response to AT&T’s Exceptions, BA-PA argues that the Commission should reject AT&T’s proposal to delete this exclusion as simply one more attempt by AT&T to skew the measurement data to guarantee that it will collect Performance Assurance Plan payments from BA-PA. In support of this argument, BA-PA alleges that the maintenance systems that it makes available to CLECs contain the capability to perform complex “Create Trouble” transactions that is not available in BA-PA Retail maintenance systems. BA-PA argues that, because the CLEC complex “Create Trouble” transactions require longer query response times than CLEC basic “Create Trouble” transactions, including them in measurements that are compared to BA-PA retail basic “Create Trouble” transaction response times would create an unfair “apples-to-oranges” comparison. Therefore, in order to avoid such an unfair comparison, BA-PA has proposed, in its Compliance Filing, to exclude CLEC complex “Create Trouble” transactions from measurement. BA-PA asserts that this same exclusion was considered

by the New York PSC and included in the New York *Guidelines*.¹¹ (BA-PA Reply, p. 26).

Our review of the Compliance Filing indicates that BA-PA's proposal is not consistent with our *PMO* in that, as AT&T appropriately notes, it introduces an entirely new issue that was not presented during any prior phase of this proceeding. BA-PA's proposal is not appropriate in a compliance filing. However, this matter may be addressed during the technical conference that will be convened in January, 2000. BA-PA is directed to conform this metric to our *PMO*.

2. Metric MR-2 - Trouble Report Rate

This metric measures the initial, direct or referred, customer service troubles reported, when the trouble disposition is found to be in the network. (*PMO*, p. 87).

We determined that the ALJs correctly adopted AT&T's position which would add the parity with BA-PA retail standard for Submetric MR-2-05, for the percentage of trouble reports that were either "Tested OK" (TOK) (Disposition Code 7), "Found OK," (FOK) (Disposition Code 8), or "CPE-related" (CPE) (Disposition Code 13). We concluded that, by properly coding the disposition of trouble reports into these three (3) categories, BA-PA will not be able to artificially reduce the number of problems attributed to its own network. (*PMO*, p. 90). We further stated that the establishment of Submetric MR-2-05 (and Submetric MR-3-03) as the standard recommended by the ALJs is appropriate to preclude BA-PA from including matters in this category which are under its control. (*PMO*, p. 90). Finally, we adopted the ALJs'

¹¹ See *Order Establishing Additional Inter-Carrier Service Quality Guidelines and Granting in Part Petition for Reconsideration, Clarification and Stay*, NY PSC Case 97-C-0139, pp. 10-11 (November 5, 1999).

recommendation that the level of disaggregation for this metric should mirror available products. (*PMO*, p. 89).

BA-PA has amended the Exclusions section of this metric by including Submetric MR-2-04 to the originally proposed Submetrics MR-2-01, MR-2-02 and MR-2-03. This amendment excluded reporting of TOK, FOK and CPE troubles.

Additionally, under the Performance Standards section of this metric, BA-PA has added some minor clarifying text for Submetrics MR-2-01, MR-2-02 and MR-2-03. With regard to Submetric MR-2-04 in the Performance Standards section, BA-PA has replaced the phrase “remedies calculation” with “Performance Assurance Plan Payments” to refer to the incentive plan which we directed in our disposition on pp. 158-159 of our *PMO*. With regard to Submetric MR-2-05 in the Performance Standards section, BA-PA has stricken language that previously indicated that no standard would be applicable to this submetric and that it is not included in the remedies calculation.

Under the Report Dimensions section of this metric, BA-PA has revised “BA CLEC Affiliate” to “BA Affiliate Aggregate” and also expanded the dimensions so that it now includes “BA Affiliate Specific” in addition to the originally-proposed “BA Retail,” “CLEC Aggregate” and “CLEC Specific”.

BA-PA has also mirrored all available products at the disaggregate sub-levels of Submetrics MR-2-01, MR-2-02, MR-2-03, MR-2-04 and MR-2-05. In the Calculation section of Submetric MR-2-05, BA-PA deleted the disposition codes 07 (TOK), 08 (FOK), and 13 (CPE), with no clarifying explanations.

In its Exceptions, AT&T argues that BA-PA inexplicably proposed the deletion of Disposition Codes 07 (TOK), 08 (FOK), and 13 (CPE) in Sub-

metric MR-2-05. (AT&T Exc., p. 22). AT&T asserts that the deletion of these three (3) disposition codes must be rejected because it does not comply with the Commission's *PMO*. Furthermore, AT&T argues that this change is a bad idea because unless all relevant disposition codes are counted in this submetric, the data collection and measurement will be incomplete.

In response to AT&T's Exceptions, BA-PA submits that it had deleted references to Disposition Codes 07, 08 and 13 from its *February 1, 2000* because it no longer uses these codes and that these codes have been replaced by other codes. BA-PA states that the TOK and FOK troubles formerly covered by Disposition Codes 07 and 08 are now jointly covered by Disposition Code 09 and that the CPE troubles formerly covered by Disposition Code 13 are now covered by Disposition Code 12, as set out in Appendix F of the *February 1, 2000 Metrics*. (BA-PA Reply, pp. 26-27).

We agree with AT&T that Submetric MR-2-05 is important because it reveals whether there is a disparate number of CLEC-reported troubles that are being closed with a disposition code correlating to no trouble found, as compared to BA-PA's retail operations.

BA-PA's proposed modification to the disposition codes does not comply with our *PMO* directive and is, therefore, rejected. In our *PMO*, we specifically directed BA-PA to report intervals associated with trouble reports that are coded as CPE-related, Tested OK and Found OK. (*PMO*, p. 90). BA-PA should file a revised Metric MR-2, consistent with the standards established in our *PMO*.

Based on the foregoing, AT&T's Exception on this issue is granted, to the extent consistent with this Opinion and Order.

3. MR-3 - Missed Repair Appointments

This metric measures the percentage of network troubles that are not repaired and cleared by the date and time committed to by BA-PA. (*PMO*, p. 90).

We adopted AT&T's position on this metric and recommended that BA-PA report the intervals associated with trouble reports that are coded as CPE, TOK, or FOK and that the level of disaggregation for this metric mirror available products. (*PMO*, p. 91).

In its Compliance Filing BA-PA made minor clarifications to the Definition section of this metric. With regard to the performance standard to this metric, BA-PA included Submetric MR-3-03 in the parity with BA retail measures.

Under the Report Dimensions section of this metric, BA-PA has replaced "BA CLEC Affiliate" with "BA Affiliate Aggregate."

BA-PA has also mirrored all available products at the disaggregate sublevels of Submetrics MR-3-01, MR-3-02 and MR-3-03 for this metric. In the Calculation section of Submetric MR-3-03, BA-PA deleted the Disposition Codes 07 (TOK), 08 (FOK) and 13 (CPE), with no clarifying explanations

For the same reasons described above concerning Metric MR-2, AT&T asserts that BA-PA's proposed elimination of Disposition Codes 07, 08, and 13 from Submetric MR-3-03 must be rejected. (AT&T's Exc., p. 23).

BA-PA's response to AT&T's Exception on this metric is the same as previously argued above concerning Submetric MR-2. (BA-PA Reply, pp. 26-27).

We adopt the same disposition for this metric that we adopted in our disposition concerning Submetric MR-2, above. BA-PA is directed to conform this metric to the *PMO*.

4. MR-4 - Trouble Duration Intervals

This metric measures trouble duration, *i.e.*, the intervals that it takes BA-PA to complete a repair. (*PMO*, p. 92).

We directed that, consistent with our disposition of Metric MR-2, BA-PA must report the intervals associated with trouble reports that are coded as CPE, TOK, or FOK. We also adopted the ALJs' recommendation that: (1) this metric also report BA-PA to CLEC interconnection trunk data; (2) this metric measure from the time of the trouble report to the time at which BA-PA sends the CLEC notice that the trouble had been cleared; and (3) the level of disaggregation for this metric mirror available products. (*PMO*, pp. 92-93).

Consistent with our directive, BA-PA has filed Submetric MR-4-09 (Mean Time to Clear CPE/TOK/FOK) to this metric. BA-PA submits, in the definition of MR-4-09, that CPE/TOK/FOK trouble reports include CPE troubles (Disposition Code 12) and TOK and FOK troubles (combined in Disposition Code 09).

BA-PA has also included in the Definition section of this metric, a Trouble Clear Date and Time definition.

BA-PA's Compliance Filing for this metric also mirrors all available products at the disaggregate sublevels of Submetrics MR-4-01, MR -4-02, MR-4-03, MR-4-04 and MR-4-05.

AT&T is of the opinion that BA-PA's definition of "Trouble Clear Date and Time" for this metric is "convoluted" and does not comply with the Commission's *PMO*. AT&T argues that BA-PA has created a completely unnecessary two (2) part definition of Trouble Clear Date and Time as it relates to CLECs that is rife with interpretational problems that will impede full and fair data collection for this metric. (AT&T Exc., p. 23).

For the same reasons previously described above concerning Metric MR-2, AT&T asserts that BA-PA's proposed elimination of Disposition Codes 07, 08, and 13 from Submetric MR-4-09 must be rejected. (AT&T's Exc., p. 24).

Finally, AT&T observes that BA-PA also erred by failing to comply with the Commission's directive in the *PMO* that required BA-PA to include the measurement of BA to CLEC trunks in this metric. Therefore, AT&T submits that this omission must be corrected. (AT&T Exc., p. 24).

BA-PA states that AT&T's Exception about the proposed language in the definition of "Trouble Clear Date and Time" for CLECs is similar to AT&T's argument about similar language in Metric PR-2. BA-PA makes the same response it made above in response to AT&T in Metric PR-2. (BA-PA Reply, p. 27).

BA-PA also argues that its proposed language in the definition is not novel. Rather, it is substantially the same language that the Commission allowed for Metric BI-1, which measures the timeliness of provision of the daily usage feed (DUF). (BA-PA Reply, p. 28).

With regard to AT&T's argument that BA-PA has failed to comply with the Commission's directive that required BA-PA to include the measurement of BA-PA to CLEC trunks in this metric, BA-PA responds that AT&T is wrong because, as BA-PA

has discussed under Metrics OR-1 and OR-2, it does measure its performance with regard to BA-PA to CLEC trunks in Metric MR-4. (BA-PA Reply, p. 28). In its discussion at Metrics OR-1 and OR-2 of its Reply, BA-PA notes that, in response to the Commission's instruction, BA-PA added a new metric, Metric NP-7, which measures BA-PA's responsiveness to a CLEC's request for BA-PA to CLEC trunks. Furthermore, BA-PA asserts that it has defined "CLEC Trunks" in the Glossary of the *February 1, 2000 Metrics* as follows:

As used in Metrics PR-4, PR-5, PR-6, PR-8, MR-2, MR-4 and MR-5, "CLEC Trunks" includes: . . . BA network facilities connecting BA to CLEC Trunks to the BA Network.

BA-PA's proposed definition reaches beyond our directive regarding this metric. In our *PMO*, we neither directed nor authorized the inclusion of this definition change. BA-PA is directed to revise this metric in accordance with this determination.

With regard to the AT&T assertion that BA-PA's proposed elimination of Disposition Codes 07, 08, and 13 from Submetric MR-4-09 must be rejected, we adopt the same disposition for this metric that we adopted in our disposition concerning Submetric MR-2, above. BA-PA shall conform its revised filing to our *PMO* on this issue.

With regard to AT&T's argument that BA-PA has failed to comply with the Commission's directive that required BA-PA to include the measurement of BA-PA to CLEC trunks in this metric, we agree with BA-PA's implementation of our directive by creating a separate metric, Metric NP-7, for the measurement of BA-PA to CLEC interconnection trunk data.

Therefore, we shall grant AT&T's Exceptions to the extent they are consistent with these determinations.

5. MR-5 - Repeat Trouble Reports

This metric measures the percentage of all trouble cleared, which is then followed by additional trouble (found to be network trouble) within thirty (30) days. A repeat trouble is one in the same line, circuit or trunk as the previous (original) trouble. (*PMO*, p. 94).

We directed that, consistent with our disposition of Metric MR-2, BA-PA must report the intervals associated with trouble reports that are coded as CPE, TOK, or FOK. We also adopted the ALJs' recommendation that: (1) BA-PA count the thirty (30)-day period for repeat trouble from the date that the trouble is reported cleared to the CLEC; and (2) the level of disaggregation for this metric mirror available products. (*PMO*, pp. 94-96).

Consistent with our directive, BA-PA has revised the definition of this metric to state that Submetric MR-5-02 includes the percent of all trouble reports cleared that have an additional "repeat" trouble report within thirty (30) days, that are closed as CPE/TOK/FOK. BA-PA's Compliance Filing for this metric also mirrors all available products at the disaggregate sublevels of Submetrics MR-5-01 and MR-5-02.

AT&T argues that for the same reasons it provided concerning Metric MR-2, BA-PA's proposed elimination of Disposition Codes 07, 08 and 13 from Submetric MR-5-02 must be rejected. (AT&T Exc., p. 24). In addition, AT&T again asserts that BA-PA erred by failing to include the measurement of BA-PA to CLEC trunks in this metric as ordered by the *PMO*, pp. 3, 179. (AT&T Exc., p. 25).

In response to AT&T's Exceptions concerning the elimination of certain disposition codes, and the failure to include measurement of BA to CLEC trunks, BA-PA proffers the same arguments previously referenced. (BA-PA Reply, pp. 26-28).

We determine that the change in disposition codes would warrant a modification to the *PMO* in a manner inconsistent with the limitations of the compliance review process.

With regard to AT&T's assertion that BA-PA failed to comply with the *PMO* by failing to include the measurement of BA to CLEC trunks in this metric, we grant AT&T's Exceptions, and, consistent with our prior action regarding Metric MR-4, we direct BA-PA to include the measurement of BA to CLEC trunks in this metric.

Finally, we note that BA-PA has not included anywhere in its Compliance Filing for this submetric that the thirty (30)-day period for repeat trouble is counted from the date that the trouble is reported cleared to the CLEC. Therefore, we shall grant AT&T's Exception on this matter and direct BA-PA to modify the definition to this submetric to include this clarification.

E. Network Performance Metrics

1. NP-1 - Percent Final Trunk Group Blockage

This metric measures blockage on trunks, *i.e.*, the percentage of final trunk groups that exceed the applicable blocking threshold. CLEC customers cannot receive calls from BA-PA customers if trunks are blocked. (*PMO*, p. 96).

We concluded that trunk blockage should not be measured against a standard and subject to penalties. We also concluded that, because common trunks carry

both retail and CLEC traffic, there will be parity with retail on common trunks. However, for individual trunks, we required BA-PA to provide an explanation (and action plan if necessary) on individual trunk group blocking for two (2) consecutive months. We also directed that an individual trunk group not be blocked for three (3) consecutive months. For percent final trunk group blockages, we directed that BA-PA file a service inquiry report whenever performance is less than 3% for three (3) consecutive months (*i.e.*, whenever a trunk group blockage is greater than 3% for three (3) consecutive months). (*PMO*, p. 99).

BA-PA has excluded the “Performance Assurance Plan Payments” for Submetrics NP-1-01, NP-1-02 and NP-1-03. Additionally, for Submetric NP-1-04, BA-PA also excluded this submetric from the “Performance Assurance Plan Payments” and replaced the existing language with the following: “For individual trunk groups carrying traffic between BA and a CLEC, BA will provide an explanation (and an action plan if necessary) on individual trunk group blocking for two (2) months consecutively. An individual trunk group should not be blocked for three (3) consecutive months.”

AT&T argues that BA-PA has completely ignored the Commission mandate that BA-PA file a service inquiry report whenever a trunk group blockage is greater than 3% for three (3) consecutive months. Therefore, AT&T requests that the Commission direct BA-PA to correct this failure by including appropriate language. (AT&T Exc., p. 25).

BA-PA states that it did not include this sentence in the metric because the language appeared to be duplicative of the following language that is already included in the metric. “BA will provide an explanation (and an action plan if necessary) on individual trunk groups blocking for two (2) months consecutively.” (BA-PA Reply, p. 29).

BA-PA also argues that the meaning of the language is not clear but that it would not object to adding language to the metric to reflect what it believes was the Commission's intent (*i.e.*, that BA-PA file with the Commission a report whenever a trunk group blocks for three (3) consecutive months). (BA-PA Reply, p. 29)

We agree with AT&T that BA-PA failed to include appropriate language in this metric as required by the *PMO*. (*PMO*, p. 99). Accordingly, BA-PA shall conform this language to the *PMO*.

2. NP-6 - NXX Updates

This is a new metric. We adopted the ALJs' recommendation that requires BA-PA to develop a quarterly performance measurement to measure the loading and testing of NXXs by the Local Exchange Routing Guide (LERG) effective date at parity with BA-PA's retail operations. (*PMO*, pp. 134-135).

BA-PA has adequately complied with our directive to include this metric. BA-PA will measure and report this metric on a calendar quarterly basis and will include it in the Performance Assurance Plan Payment calculations for the final month of the quarter. The calculation will be based on the number of NXX updates in the reporting period that were installed by the LERG effective date divided by the total number of NXX updates in the reporting period. BA-PA has not filed any exclusions for this metric.

No Exceptions or objections were filed to BA-PA's filing for this metric. This metric complies fully with our directive. Accordingly, we shall permit this metric to become effective as filed.

3. NP-7 - Timeliness of Response to Request to Order BA to CLEC Trunks

As explained in other sections of this Order, in various sections of our *PMO* (OR-1, OR-22, MR-4 and MR-5), we directed BA-PA to report BA to CLEC interconnection trunk data in order to detect whether delays in BA-PA's placement of orders for BA to CLEC interconnection trunks are problematic (*i.e.*, if BA-PA underestimates the BA to CLEC trunk needs, then the CLEC-bound traffic from BA-PA's end-users may be blocked). (*PMO*, pp. 53-56, 92-93). In summary, we adopted the ALJs' recommendation "that BA-PA implement the measurement of BA to CLEC interconnection trunks as part of this metric on an interim basis . . . to the following metrics: OR-2, PR-5, PR-6, MR-2, MR-4, MR-5, and NP-1."

Again, as previously explained in other sections of this Order, in lieu of including this metric in each of the metrics affected by our *PMO* determinations, BA-PA has proposed to place the measurement of BA to CLEC interconnection trunks in a separate metric in order to avoid confusion between the existing measurements in the affected metrics (OR-2, PR-5, PR-6, MR-2, MR-4, MR-5, and NP-1). Therefore, BA-PA has filed a new metric, NP-7, which will measure BA-PA's responsiveness to a CLEC's request for BA to CLEC trunks. (*February 1, 2000 Metrics*, p. 78).

No Exceptions were filed on this specific metric. This metric complies fully with our directive. As such, we shall permit this metric to become effective as filed.

F. Billing Metrics

1. BI-1 - Timeliness of Daily Usage Feed

This metric measures the interval, or the number of days, from the creation of a message to the date that the usage information is made available on BA-PA's Daily Usage Feed (DUF). (*PMO*, p. 102). We directed that this metric include usage information for UNE ports and platforms, and be measured in four (4) calendar days. Reporting for this metric should be CLEC-specific. (*PMO*, p.104).

BA-PA indicates that this metric will be measured in percentage of usage records transmitted within three (3), four (4), five (5) and eight (8) business days. UNEs and resale services will be reflected in one (1) report. In the Definition section, BA-PA proposes the following language:

The DUF includes categories 10-xx-xx (unrated usage), 11-xx-xx (Meet Point billing records), and 01-xx-xx (special rate usage).

In accordance with our directive, BA-PA states that the performance standard for Submetric BI-1-02 is 95% of DUF in four (4) business days. BA-PA has also amended the Report Dimensions to include "BA Affiliate Aggregate" and "BA Affiliate Specific."

AT&T objects to BA-PA's newly proposed definition of DUF. This definition by implication, according to AT&T, excludes many other relevant categories of DUF. AT&T argues that this definition does not comply with the Commission's directive and should be rejected. (AT&T Exc., p. 26).

BA-PA responds that its new definition was not intended to limit the types of usage data provided on DUF under Metric BI-1. BA-PA offers to revise the definition as follows:

The usage records on the DUF that will be measured under this metric include, but are not limited to, categories 01-xx-xx (rated usage), 10-xx-xx (unrated usage), and 11-xx-xx (access usage).

(BA-PA Reply, pp. 29-30).

We reject BA-PA's newly proposed definition of DUF as an unauthorized modification of our directive. In our *PMO*, we did not direct BA-PA to implement a new definition of DUF.

We direct BA-PA to exclude this definition in a revised Metric BI-1. In all other aspects, this metric complies with our directive.

2. BI-2 - Timeliness of Carrier Bill

This metric measures the timeliness of bills sent to carriers. We directed that this metric be implemented with a ten (10)-day interval and on a CLEC-specific basis. (*PMO*, p. 104).

BA-PA defines this metric as the percentage of CRIS paper carrier bill and CABS paper carrier sent to the carrier, unless the carrier requests special treatment within ten (10) business days of the bill date. BA-PA represents the performance standard as 98% in ten (10) business days.

In its Exceptions, AT&T claims that BA-PA's definition of this metric does not comply with the Commission's directive. AT&T argues that the Commission adopted the ALJs' recommendation that BA-PA's proposed definition should be either

clarified or omitted. According to AT&T, BA-PA's definition, as proposed in the *February 1, 2000 Metrics*, fails to identify the procedures under which a CLEC may request different or special treatment other than sending the carrier bills to the CLEC. AT&T suggests that this lack of clarification may become problematic because bills whose transmission is delayed at the request of the billed carrier are excluded from this metric. (AT&T Exc., p. 27).

In reply, BA-PA submits that, during the proceeding, AT&T only proposed deletion of the footnote that stated, "Sent to carrier, unless other arrangements are made with the CLEC."¹² BA-PA maintains that AT&T never requested the deletion of the phrase "unless the carrier requests special treatment" from the definition section of this metric. BA-PA explains that this metric complies with the Commission's directive and that AT&T's objection is unwarranted. (BA-PA Reply, p. 30).

In our *PMO*, we adopted the ALJs' recommendation that alternative arrangements should be indicated in the exclusions section of the metric. (*PMO*, pp. 106-107). We conclude that BA-PA's deletion of the subject footnote is appropriate and complies with our directive. As such, we further find that the phrase "unless the carrier requests special treatment" which indicates an alternative arrangement, should not be contained in the Definition section of this metric, consistent with our *PMO*. We determine that, in its revised filing for this metric, BA-PA should delete that phrase. We, therefore, deny AT&T's Exceptions and further conclude that, in all other respects, this metric is in compliance with our directives.

¹² See footnote 56 in BA-PA's *February 1, 2000 Metrics*.

3. **BI-3 - Billing Accuracy**

This metric measures by dollar amount the billing adjustments BA-PA makes for errors in CLEC bills, *i.e.*, the percentage of carrier charges on BA-PA bills adjusted for billing errors. (*PMO*, p. 107). We concluded that order activity post-completion discrepancies (PCDs) should be included in this metric. We declined to attach remedies to this metric. (*PMO*, pp. 108-109).

BA-PA proposes a new Submetric BI-3-03, which it describes as the percentage of billing adjustments which are excluded charges adjusted due to billing errors resulting from order activity PCDs. BA-PA adds that Performance Assurance Plan Payments and Submetric BI-3-03, or charges adjusted due to billing errors resulting from order activity PCDs, are excluded from this metric. BA-PA further states that no standard would apply to Submetric BI-3-01, and the performance standard for Submetric BI-3-03 is parity with BA-PA's retail operations.

In its Exceptions, AT&T maintains that BA-PA failed to include a submetric that measures the number of individual bill charges that require adjustment. AT&T asserts that BA-PA proposed such a measurement during the litigation of this proceeding. AT&T also objects to BA-PA's proposal to exclude Submetric BI-1-01 from the performance assurance calculations. Referencing its Answer to BA-PA's Petition for Reconsideration, AT&T argues that the exclusion of any billing submetric from remedies should be contingent upon whether BA-PA incurred a payment due to a miss of the Metric OR-4¹³ for a given measurement period. AT&T urges the Commission to direct BA-PA to file a revised Metric BI-3 reflecting this contingency and its inclusion in the calculation of remedies to Metric OR-4-Order Accuracy. (AT&T Exc., pp. 28-29).

In response, BA-PA counters that it was required by the New York PSC to include a metric that measured the frequency of bill error adjustments, and it offered to adopt the New York metric in Pennsylvania. BA-PA adds that, because the ALJs did not expressly adopt its proposal in the Recommended Decision, the proposal was, by implication, rejected. BA-PA proffers that it would be inappropriate to include a metric that the ALJs rejected. (BA-PA Reply, p. 31).

Upon consideration, we find that BA-PA has improperly proposed PCDs discrepancies as an excluded measurement for this metric. In our *PMO*, we acknowledged that service order errors are measured under Metric OR-6. To avoid the possibility of double penalties, *i.e.*, single incidence resulting in violation of Metric OR-6 and Metric BI-3, we concluded that double penalties would not apply in this instance. In short, PCDs will be measured in this metric, but no remedies will apply for PCDs in this metric.

We also disagree with BA-PA's characterization of the ALJs' recommendation regarding its proposal to measure the number of individual charges that are adjusted. Although the ALJs recommended adoption of the AT&T's proposal to attach remedies to this metric, there is no indication of the ALJs' express rejection of BA-PA's offer to measure the number of adjusted individual charges. (R.D., pp. 154-157). In our *PMO*, we agreed, in part, with BA-PA's objections to the ALJs' recommendation to include remedies in this metric. By implication, we adopted all other aspects of the ALJs' recommendation, which would include acceptance of BA-PA's offer to measure the number of individual charges that are adjusted.

¹³ OR-4 pertains to the timeliness of BA-PA's notices to CLECs that orders for service have been completed.

We grant AT&T's Exceptions to the extent consistent with this disposition and, accordingly, we direct BA-PA to modify this metric in its filing in compliance with this Opinion and Order.

4. BI-5 - Accuracy of Mechanized Bill Feed

This metric measures the accuracy of the mechanized bill feed for CRIS bills. (*PMO*, p. 112). Similar to our finding for Metric BI-4, we directed that a 95% performance standard apply to this metric and that BA-PA have six (6) months from the effective date of the revised guidelines to implement this metric. (*PMO*, p. 113).

The only new provisions added to this metric are reflected in the Report Dimensions section. BA-PA properly adds "BA Affiliate Aggregate" and "BA Affiliate Specific." We note that no Exceptions were filed to this metric. Upon review, we find that this metric complies with our directive.

5. BI-6 - Completeness of Usage Charges

This metric measures the completeness of BA-PA usage charges shown on the CRIS paper bill. We conclude, as we did for Metrics BI-4 and BI-5 that this metric should be implemented six (6) months after the effective date of the revised guidelines. (*PMO*, pp. 115-116).

BA-PA proposes to exclude Submetric BI-6-02 which it defines as a usage charge that accrued prior to the last two (2) billing cycles and whose billing was delayed because of an order activity PCDs. In the Definition section, BA-PA has deleted the following language, "For BA Retail, BA may elect to perform this measurement by using a statistically valid sampling methodology." In the Performance Standard section of this metric, BA-PA indicates that no financial incentives would apply to Submetric BI-6-01.

BA-PA also proposes Submetric BI-6-02 that represents the percentage completeness of usage charges excluding order activity PCD-delayed charges. The performance standard for Submetric BI-6-02 is parity with BA retail.

No Exceptions were filed to BA-PA's proposed metric. BA-PA's proposed deletion raises some concern. BA-PA explains that it removed the statement because it is developing a billing system which will produce a more complete measurement of its retail results. (BA-PA Reply, p. 34). While BA-PA still uses the CRIS billing system to bill its retail customers, Bell Atlantic is using a new billing system in states other than Pennsylvania. BA-PA maintains that it will revise the metric to reflect the new billing system, when appropriate. (BA-PA Reply, p. 34).

BA-PA's proposed deletion of the subject statement in the Definition Section is improper. A Compliance Filing is not the proper venue to make modifications, which have not been previously authorized or sanctioned by the Commission. BA-PA is directed to file a revised metric consistent with our directive.

6. BI-7 - Completeness of Fractional Recurring Charges

This metric measures the completeness of BA-PA fractional recurring charges shown on the CRIS paper bills provided to CLECs. (*PMO*, p. 116). We directed BA-PA to implement this metric six (6) months after the effective date of the revised guidelines. (*PMO*, p. 117).

As mentioned in our discussion of Metric BI-6, BA-PA proposes to delete the following language from the Definition section, "for BA retail, BA may elect to perform this measurement by using a statistically valid sampling methodology." BA-PA also proposes to exclude Submetric BI-7-02 which is defined as a fractional recurring charge that accrued prior to the last two (2) billing cycles and whose billing was delayed

because of an order activity PCD. The performance standard for Submetric BI-7-01 is parity with BA-PA retail. For Submetric BI-7-02, BA-PA states that there is no standard and that the submetric is not included in the Performance Assurance Plan Payments.

AT&T objects to BA-PA's deleted language in this metric. According to AT&T, this deletion results in the parity with BA-PA retail standard being based solely upon evaluating CRIS paper bill completeness fractional recurring charges. AT&T proffers that, because BA-PA does not use CRIS paper bills for retail billing, it may later claim that there is no relevant retail parity measurement to compare against the CLECs' experience. AT&T emphasizes that the measurement should be based on the completeness of BA-PA fractional recurring charges as shown on retail customers' bills. (AT&T Exc., pp. 29-30).

In response, BA-PA offers the same justifications articulated in our discussion in Metric BI-6. (BA-PA Reply, p. 34).

Accordingly, for the same reasons given in Metric BI-6, we reject BA-PA's proposed deletion. We direct BA-PA to make the appropriate adjustment for this metric in a revised Compliance Filing.

BA-PA may, however, conform this metric in the filing pursuant to this Opinion and Order, to BI-3 and BI-8 with respect to PCDs, consistent with our July 21, 2000, Order disposing of the Petitions for Reconsideration.

7. BI-8 - Non-Recurring Charge Completeness

This metric measures the completeness of BA-PA non-recurring charges shown on the CRIS paper bills provided to CLECs. (*PMO*, p. 8). We directed BA-PA to implement this metric six (6) months after the effective date of the revised guidelines.

We also determined that double penalties would not accrue as a result of this proceeding for violation of the same metric. (*PMO*, p. 119).

BA-PA has amended the Exclusions section for this metric to include Submetric BI-8-02 which it defines as a non-recurring charge that accrued prior to the last two (2) billing cycles and whose billing was delayed because of an order activity PCD. Similar to its proposed filing for Metrics BI-6 and BI-7, BA-PA has, in this metric, deleted the language giving it the option of using a statistically valid sampling methodology to perform this measurement.

No Exceptions were filed to this metric. We find that this metric does not comply with the *PMO*. (*PMO*, p. 119). BA-PA is directed to file a revised Metric BI-8, consistent with our directive.

G. Operator Services and Databases

1. OD-1 - Operator Services – Speed of Answer

This metric measures the speed with which BA-PA answers a CLEC's customer's calls for operator services and directory assistance. (*PMO*, p. 120). We determined that no performance standard would be applied to this metric for the first six- (6) months after the effective date of the revised guidelines. We directed BA-PA to implement this metric at parity with BA-PA retail operator tool and directory services to ensure that 95% of the calls are answered within thirty (30) seconds. (*PMO*, pp. 121-122).

BA-PA indicates that, during the initial measurement period, no standard and remedy would apply to this metric. After the initial measurement period of six (6) months, BA-PA states that no standards or remedies apply to Submetrics OD-1-01 and

OD-1-02 and that Submetrics OD-1-03 and OD-1-04 have a performance standard of 95% within thirty (30) seconds. Under the Report Dimensions section, BA-PA indicates that the geography for this metric will not be measured and reported for the state of Pennsylvania but rather for each BA-PA operator service center and BA-PA directory assistance center serving CLECs' Pennsylvania customers. BA-PA also proposes new Submetrics, OD-1-03 which measures the percentage of operator services calls answered within thirty (30) seconds, and OD-1-04 which measures the percentage of directory assistance calls answered within thirty (30) seconds.

In its Exceptions, AT&T argues that BA-PA failed to incorporate the parity with BA-PA retail standard after six (6) months in this metric. AT&T submits that the metric should be modified to correct this omission. (AT&T Reply, p. 30).

BA-PA counters that the performance standard for the metric is consistent with the Commission's definition of parity, which it stated as equaling 95% of the rate of service BA-PA provides to its comparable retail operations. According to BA-PA, a metric which contains both a parity requirement as well as 95% benchmark standard would be contrary to the Commission's practice of requiring a benchmark standard only when a parity standard cannot be used, because there is no meaningful opportunity for a comparison of service performance to CLECs with service performance provided to BA-PA retail. (BA-PA Reply, pp. 35-36).

During litigation of this proceeding, BA-PA maintained that there was inherent parity for these services because calls for operator services and directory assistance centers from CLEC and BA-PA customers are served without discrimination from the same queue. (BA-PA St. 1.1, App. B, pp. 100-101; BA-PA R.B., pp. 22-23). BA-PA later excepted to the ALJs' recommendation, arguing that the standard should be parity with retail, not an objective standard. (BA-PA Exc., pp. 77-78).

In our *PMO*, we relied on BA-PA's representation that these services were in fact being provided at parity with retail operations. We determined that this "standard" would be appropriate for the first six-(6) months of implementation of the revised guidelines. Contrary to BA-PA's assertion, we determined that, after the six (6) months, BA-PA was required to provide these services at parity with its retail operations and achieve a standard of 95% of the calls being answered within thirty (30) seconds. We therefore, grant AT&T's Exception and direct BA-PA to modify this metric in its revised Compliance Filing pursuant to this Opinion and Order.

2. OD-2 – Line Information Data Base Routing and Operator Service-Directory Assistance Platforms

This metric measures the speed with which BA-PA responds to CLEC inquires to Line Information Data Base (LIDB), Routing, and Operator Services-Directory Assistance (OS/DA) platforms. We directed BA-PA to implement this metric and enlarge it to include the Master Street Address Guide (MSAG), E911, Automatic Location Identifier (ALI), Directory Assistance and 911 updates, NXX Loading and testing and directory listings. (*PMO*, p. 123).

BA-PA's filing for this metric includes the MSAG, 911/E911 ALI databases and directory listings. BA-PA states that all services except the MSAG have a performance standard of parity with BA-PA retail.

AT&T asserts that BA-PA failed to include the formulas for this metric. AT&T urges the Commission to direct BA-PA to submit the missing formulas to afford all Parties the opportunity to review and comment on the information. (AT&T Exc., p. 31).

BA-PA responds that, while the Commission directed it to broaden the metric to include additional measurements, the Commission did not specifically direct BA-PA to perform these measurements under this metric. (BA-PA Reply, p. 37).

We share AT&T's concern. We note that all other metrics were submitted with accompanying measurement calculation and report dimensions. Both are noticeably absent from this metric. To avoid any further undue misinterpretation of our directive regarding this metric, we direct BA-PA to implement and to perform the measurements for this metric in accordance with the standards approved in our *PMO*. BA-PA's amended Metric OD-2 should mirror, as appropriate, the format of other metrics filed by BA-PA in its filing in compliance with this Opinion and Order. As such, we grant AT&T's Exceptions consistent with this disposition.

3. OD-3 - Directory Assistance Data Base Update Accuracy

In our *PMO*, we directed BA-PA to implement a new metric to measure the percentage of total directory assistance data base updates that are completed without error. (*PMO*, pp. 124-125).

BA-PA proposes to exclude Submetric OD-3-02, which governs directory assistance data base errors resulting from service order errors or PCDs. BA-PA reports no standard for Submetric OD-3-01 and parity with BA retail for Submetric OD-3-02. For methodology, BA-PA indicates that the measurement will be performed using statistically valid samples.

AT&T excepts to BA-PA's filing for this metric, arguing that BA-PA has improperly proposed an exclusion for PCDs. AT&T explains that Metric OD-3 is a measurement of the timeliness of a CLEC's request to update data bases to correct post-completion errors. AT&T contends that this metric, contrary to BA-PA's rationale,

confirms whether BA-PA timely updates data bases to correct PCDs and, as such, does not constitute a basis to exclude PCDs from this metric. (AT&T Exc., pp. 31-32).

BA-PA disagrees with AT&T's contention. BA-PA points out that it excludes service order errors from the measurement to which a standard and remedy payment would apply for the same reason in other metrics. BA-PA takes the position that it should not be penalized under this metric for an error that is subject to penalty under Metric OR-6, Order Accuracy. (BA-PA Reply, p. 38).

BA-PA should not be subject to double penalties for the same violation of a metric was made clear in our *PMO*. Unlike in other metrics where that possibility is a likelihood, BA-PA's proposed exclusion of PCDs for this metric is unwarranted. We agree with AT&T that because this metric is designed to confirm whether BA-PA timely updates its data bases to fix post completion activity errors, it is not necessary for BA-PA to exempt PCDs from this metric. As such, we grant AT&T's Exceptions consistent with this disposition and direct BA-PA to modify its filing for Metric OD-3, accordingly.

V. PERFORMANCE ASSURANCE PLAN

A. Introduction

In our *PMO*, we implemented an incentive plan to assure BA-PA's proper performance of the measures and standards. We emphasized that our goal in this regard was not to penalize but to provide incentives for BA-PA to comply with the performance measures and standards. In summary, we adopted a three (3)-tier incentive plan which, in our view, properly balanced the CLECs' expectation of nondiscriminatory access to BA-PA's network with BA-PA's obligation to provide CLECs with nondiscriminatory access to its network and its entitlement to receive compensation for services properly and timely provided. (*PMO*, pp. 144-158).

In addition to adopting a reasonable incentive plan, we directed that no incentive payment will apply or accrue for three (3) months after the effective date of the metrics. For the three (3) succeeding months, we provided for an escalation of the application of remedies under our incentive plan. At the end of the sixth month, the full amount of the applicable remedy would apply. (*PMO*, pp. 168-169).

B. BA-PA's Performance Assurance Plan

BA-PA filed a Performance Assurance Plan (Assurance Plan) in which it purports to outline the financial incentive plan adopted in our *PMO*. At the outset, BA-PA indicates that it will use two (2) methods to gauge its compliance. First, for measurements with a parity standard with its own retail operations, BA-PA states that it will conclude that its performance for a CLEC has not achieved a parity standard if the

Z value is less than -1.645.¹⁴ For measurements using a benchmark performance standard, BA-PA proposes that it should be judged as missing the benchmark if its performance for a CLEC is not within 95% of the target. BA-PA also states that it will calculate whether it met the applicable parity or benchmark standard only if there are ten (10) or more observations in the month for BA-PA and for the CLEC. While BA-PA will report its performance for a measurement having less than ten (10) observations, BA-PA proposes that it will not calculate whether the applicable standard was met. BA-PA reports that it will only use the modified Z or t test if there are thirty (30) or more observations for BA-PA and the CLEC. BA-PA explains that if the number of observations is between ten (10) and twenty-nine (29) and BA-PA's performance for a CLEC is worse in absolute terms than BA-PA's performance for itself, it will perform a permutation test.¹⁵

BA-PA further describes the two (2) types of performance assurance payments it will make to CLECs under the Assurance Plan. BA-PA explains that under Tier I, it will provide a CLEC with a prorated credit for services the CLEC paid for but did not receive. Credits, in twenty-four (24)-hour increments equivalent to the amount of out-of-service conditions, will be listed on the CLEC's bill the month after the credit is computed. BA-PA reports that under Tier II, it will provide an affected CLEC with an automatic liquidated damages payment if BA-PA misses the performance standard for a submetric for two (2) or more consecutive months. BA-PA asserts that, if it misses the performance standard for the same submetric for four (4) or more consecutive months, in addition to making an automatic payment of \$4,000, it will file a report with the Commission explaining the nature of the problem and its efforts to correct it. BA-PA asserts that, while the Commission may order it to pay up to \$25,000, BA-PA may argue

¹⁴ See pages 136-143 of our *PMO* for our discussion of the statistical methodology defining the Z score.

that no Tier II payments, or a lesser amount, are appropriate and request return of any payment. (Assurance Plan, p. 4).

BA-PA claims that it is entitled to put Tier II payments in escrow rather than paying it to a CLEC in the following five circumstances: (1) lack of independence or clustering data; (2) CLEC action; (3) *force majeure* events; (4) exogenous events; and (5) statistical invalidity. BA-PA proposes that it will notify the Commission of its intention to escrow the payment within five (5) days from the occurrence of the event, *i.e.*, hurricane or snow storm or five (5) days from its calculation of its performance revealing a statistical invalidity or clustering problem. Within five (5) days of receiving notice of BA-PA's intention, the affected CLEC may contest, through the Abbreviated Dispute Resolution process, BA-PA's announcement to withhold payment. Under BA-PA's Plan, if an affected CLEC fails to take action within the proscribed five (5) days, the escrowed payment will revert to BA-PA. (Assurance Plan, p. 6).

BA-PA also proposes that it will provide both credits and payments as billing adjustments. BA-PA submits that, if a CLEC's bill for a month is lower than the billing adjustment, it will roll over the billing adjustment to the next month. (Assurance Plan, p. 6).

AT&T argues that BA-PA's Assurance Plan fails to comply with the Commission's *PMO* for several reasons: (1) BA-PA's Tier I proposal is inconsistent with the Commission's directive; (2) BA-PA's proposal to provide billing adjustments is contrary to the *PMO*; (3) BA-PA's filing does not make remedies available for all disaggregated metrics and submetrics as provided for in the *PMO*; and (4) BA-PA's proposal, that it will calculate whether it has met the applicable standard only if there are

¹⁵ BA-PA defines a permutation test as a way of calculating whether BA-PA met a performance standard when a sample size is relatively small and the distribution is not "normal." (Assurance Plan, p. 4, fn.4).

ten (10) or more observations in a month for BA-PA and for the CLEC, is inconsistent with the *PMO*.

Initially, AT&T contends that BA-PA improperly proposes that billing credits will be issued to the affected CLEC only after the out-of-service has existed for twenty-four (24) hours or more. AT&T cites that the Commission specifically directed BA-PA to provide a bill credit when BA-PA fails to provide parity service. AT&T explains that, under BA-PA's proposal, BA-PA could fail to provide parity service without ever putting a CLEC or its customers out of service for twenty-four (24) hours. AT&T adds that, under BA-PA's proposal, BA-PA could fail to provide parity service and retain the CLEC's payment for service simply because the out-of-service did not exist for twenty-four (24) hours. BA-PA should be directed, in AT&T's opinion, to revise its filing to indicate that it must remit a bill credit representing the portion of the CLEC's wholesale bill associated with that metric whenever BA-PA fails to meet the standard associated with a metric as defined in the *PMO*. (AT&T Exc., pp. 32-38).

AT&T also objects to BA-PA's proposal that billing adjustments will be provided to CLECs as both credits and liquidated damages. AT&T notes that, during the litigation of this proceeding, BA-PA offered the same proposal. AT&T explains that BA-PA's proposal was squarely rejected by both the ALJs in their Recommended Decision and later by the Commission's adoption by implication of the ALJs' recommendation in the *PMO*. Remedies, AT&T adds, must be paid to the CLECs, as directed by the Commission, and not provided as bill credits. (AT&T Exc., pp. 39-40).

AT&T argues that the Commission directed BA-PA to establish performance metrics on a disaggregated basis that were wholesale service-specific, Pennsylvania-specific, geographic region-specific, and CLEC-specific. According to AT&T, BA-PA claims for the first time that its remedies calculation will be aggregated at the state level and combined for all product categories and modes of entry. AT&T

maintains that this approach was not authorized in the *PMO* and was specifically rejected by the ALJs in their Recommended Decision. AT&T further explains that:

[B]ell's interpretation should be rejected because failure to impose remedies at the disaggregated level would run completely contrary to the entire purpose of imposing remedies in the first place. As the Commission has stated repeatedly, its remedies plan is designed to "incentivize" Bell to provide parity service to CLECs and to "prevent back-sliding." In the Commission's words, "This matter should not be about penalties. It should be about performance." Order at 158. Bell's aggregated approach in this "compliance" filing, however, provides a very real incentive to poor performance. For example, Bell could consistently fail to provide parity service in UNE ordering, but provide "perfect" service for resold lines, and get away with the poor performance within the overall "total." This is obviously inconsistent with the Commission's goal of preventing non-discrimination and could allow the Company to "selectively" comply with its non-discrimination obligations for wholesale service elements that are the least important to unaffiliated CLECs.

(AT&T Exc., p. 42).

AT&T urges the Commission to reject BA-PA's proposal to calculate remedies only at the statewide and total wholesale service basis and direct BA-PA to submit a revised Compliance Filing in accordance with the disaggregated remedies plan outlined in the *PMO*. (AT&T Exc., p. 43).

AT&T also disagrees with BA-PA's proposal not to measure performance for benchmark metrics where there are less than ten (10) observations in the month for BA-PA and for the CLEC. Arguing that BA-PA's proposal is contrary to the Commission's directive, AT&T points out that:

But the PUC Order clearly stated that Bell could avoid measuring when there were 10 or fewer observations for parity metrics using the modified Z score. PUC Order at 143. There is no reason to create a minimum sample size for benchmark metrics because the analysis does not involve the application of the modified Z score and that is precisely what the ALJs found. In the portion of the ALJs' Recommended Decision ruling on issues related to benchmark metrics that stated that "[a]s indicated by AT&T, sample size is not a factor with a benchmark performance metric because the modified Z-score formula is not used. This Recommended Decision was adopted by implication by the PUC Order, a fact that Bell chose to ignore.

(AT&T Exc., p. 44) (Emphasis in original) (Footnotes omitted).

AT&T further points out that the proposal to use "permutation analysis" for samples of between 11 and 29 was never approved by the Commission or the ALJs and should be rejected. (AT&T Exc., p. 44).

In our *PMO*, we adopted, as a general proposition, the ALJs' recommendation that BA-PA be required to disaggregate on the basis of CLEC-specific, service-specific, and state-specific measurement. (*PMO*, p. 18). We also noted that, if the circumstances and evidence supported a modified position regarding disaggregation with respect to an individual metric, we would address the issue within the context of the discussion of that metric. (*PMO*, p. 18). We find that BA-PA's filing which purports to calculate remedies only at a statewide and total wholesale service basis is contrary to our *PMO*. Accordingly, we reject BA-PA's proposal on this issue.

We further find that BA-PA's proposed limitation that a twenty-four (24) hour out-of-service condition must exist before a CLEC may receive a return of its out-of-pocket payment on a prorated basis is not consistent with our directive. In our *PMO*, we established a three (3)-tiered incentive plan designed to economically deter BA-PA

from providing disparate service to CLECs through the imposition of financial consequences if BA-PA fails to provide such service as directed by the Commission, as well as shield CLECs from having to pay for service not received or inadequately rendered. Nowhere in our *PMO* did we conclude that an out-of-service condition of twenty-four (24) hours would serve as a condition precedent to trigger BA-PA's obligation to return the CLEC's out-of-service payment for any service not received by the CLEC or its customer. However, our policy as set forth in our *PMO* is that recovery cannot occur unless a CLEC can support a claim of out of pocket expenses.

We also reject BA-PA's proposal to render billing adjustments as both bill credits and liquidated damages. In our *PMO*, we concluded that Tier II and Tier III financial incentives would flow back to the CLEC. We note that the ALJs initially rejected BA-PA's billing adjustment proposal. While the Commission modified the ALJs' recommendation with respect to the actual amount of financial incentives which would result from a violation of a metric, we agreed with the ALJs' recommendation to reject BA-PA's proposal to offer bill credits and adjustments for a metric violation. We find that BA-PA's proposal to issue billing adjustments as bill credits and liquidated damages is inconsistent with our directive. We, therefore, require BA-PA to submit a check to CLECs on a monthly basis as reimbursement in lieu of bill credits.

On the issue of sample size, we note that the ALJs recommended the adoption of ten (10) as the minimum sample size, which could be used with the modified Z score. We adopted the ALJs' recommendation and concluded that a sample size of less than ten (10) would constitute a statistically invalid measurement. (*PMO*, p. 143).

AT&T's challenge to BA-PA's proposal on this issue is well taken. BA-PA's proposal to use only the modified Z score if there are thirty (30) or more observations for BA-PA and the CLEC is not consistent with our *PMO*. Similarly, we did not authorize BA-PA to calculate whether the applicable parity or benchmark

standard is met only when ten (10) or more observations in a month for BA-PA and the CLEC are present. With respect to a benchmark performance metric, the Z score is not used and as such sample size is not a determining factor. The sample size factor, as expressed in our *PMO* refers to parity metrics. We direct BA-PA to revise its filing accordingly.

VI. CONCLUSION

We grant, in part, and reject, in part, AT&T's Exceptions to BA-PA's *February 1, 2000 Metrics* and Assurance Plan, consistent with our discussion herein. We find that BA-PA's *February 1, 2000 Metrics*, in part, do not comply fully with our *PMO*. We further direct BA-PA to revise its *February 1, 2000 Metrics* and Assurance Plan in accordance with our disposition herein. BA-PA shall file its revised *February 1, 2000 Metrics* within thirty (30) days of entry of this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by AT&T Communications of Pennsylvania, Inc. to Bell Atlantic-Pennsylvania, Inc.'s *February 1, 2000 Metrics* and Assurance Plan, are granted, in part, and denied, in part, consistent this Opinion and Order.
2. That the Compliance Filing of Bell Atlantic-Pennsylvania, Inc. is accepted, in part, and rejected, in part, consistent with this Opinion and Order.
3. That Bell Atlantic-Pennsylvania, Inc. is directed to file a revised Compliance Filing, consistent with this Opinion and Order, within thirty (30) days of the date of entry of this Opinion and Order.
4. That Bell Atlantic-Pennsylvania, Inc. is directed to file its OSS performance reports in accordance with the directives in this Order to include: (1) service quality on a CLEC aggregate basis; (2) service quality disaggregated based on CLEC-specific, service-specific, and state-specific measurements; and (3) service quality

delivered to all BA-PA affiliates and subsidiaries which order services, UNEs or interconnection from BA-PA.

5. That Bell Atlantic-Pennsylvania, Inc. is directed to file revised monthly performance reports which conform to our directives, to the extent the actual raw data is available, for the months of February, March, April, May, June and July, 2000, within forty-five (45) days of the date of entry of this Opinion and Order. For those months that the actual raw data is not available, Bell Atlantic-Pennsylvania, Inc. must, within ten (10) days of entry of this Opinion and Order, notify the Bureau of Fixed Utility Services (FUS) and provide an explanation as to why the raw data is no longer available. All future monthly reports filed after the date of this Order shall conform to the specifications ordered by the Commission.

6. That, in addition to paper filings normally provided to the Commission, all OSS performance reports shall also be provided in electronic format, using EXCEL 5.0.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: July 20, 2000

ORDER ENTERED: