



STATE OF NEW JERSEY

Board of Public Utilities

*Two Gateway Center
Newark, NJ 07102*

TELECOMMUNICATIONS

IN THE MATTER OF THE BOARD'S)
INVESTIGATION REGARDING THE)
STATUS OF LOCAL EXCHANGE)
COMPETITION IN NEW JERSEY)

SUMMARY ORDER

DOCKET NO. TX98010010

(SERVICE LIST ATTACHED)

BY THE BOARD:

This Summary Order memorializes in summary fashion the action taken by the Board of Public Utilities (Board) at its September 29, 1999 public agenda meeting with respect to access to unbundled network elements. The Board will shortly issue a more detailed Order in this matter which fully sets forth discussion of the issues as well as the reasoning which underlies the Board's determinations.

I. BACKGROUND

On July 22, 1998, the Board issued in Docket No. TX98010010 its Report entitled "Status of Local Telephone Competition: Report and Action Plan" (the Report). The Board concluded in the Report there was no significant statewide "resale-based" or "facilities-based" local landline residential competition due to inadequate Operations Support Systems (OSS) and access to Unbundled Network Elements (UNEs). In order to address these issues, the Board in the Report's Action Plan created a Technical Solutions Facilitations Team (TSFT) to serve as an impartial forum for the resolution of certain generic issues, including OSS and access to UNEs, in a collaborative, efficient and effective manner. Report at 104. The Board also set a schedule for the determination of whether it had the legal authority to order combinations of UNEs (the so-called UNE Platform, or UNE-P). Id. at 101, 105. In addition, the Board directed the TSFT to attempt to negotiate the implementation of access to UNEs following the Board's determination of the jurisdictional issue, and advised that if no negotiated resolution is reached through the TSFT process, it would act to resolve the issue of access to UNEs shortly after the conclusion of TSFT discussions. Id. at 105. On October 22, 1998, the Board found it had the authority under State law to order the provision of UNEs, in combination, including the UNE-platform and directed the TSFT to commence negotiations to determine whether UNE-P, collocation or some other method or combination of methods should be implemented. Order, I/M/O The Investigation Regarding Local Exchange Competition for Telecommunications Services, et al., Docket Nos. TX95120631 et al. (October 22, 1998). As a result, the Board referred to the TSFT the issues of how best to employ the various methods of access to UNEs in order to foster competition. The TSFT conducted several negotiation meetings from October 1998 through

January 1999 to which no agreement could be reached. Failing an agreement on these issues, the Board directed the TSFT to bring a recommendation to the Board.

Following the TSFT negotiations referred to above, Staff proposed to the Board an interim resolution on the issue of access to UNEs at the Board's April 28, 1999 Agenda meeting. The Staff proposal was based on the earlier submissions of interested parties as well as positions of parties taken during TSFT negotiation sessions. The Staff proposal was released for comments by Secretary's Letter dated April 29, 1999.

In response to Staff's UNE-P recommendation, the following parties filed comments:

ACI Corporation (ACI);
Advantage New Jersey (ANJ);
AT&T Communications of New Jersey (AT&T);
Bell Atlantic-New Jersey (BA-NJ);
Cablevision Lightpath (Cablevision);
Citizens Action (CA);
Competitive Telecommunications Association (CompTel);
COVAD Communications Corporation (Covad);
LTC Consulting (LTC);
MCI Worldcom (MCI);
Ratepayer Advocate (RPA);
Sprint Communications Company LP (Sprint); and
Telecommunications Resellers Association (TRA).

II. SUMMARY OF POSITIONS

The Competitive Local Exchange Carriers (CLECs) generally argued that the Staff recommendation does not go far enough to "jump-start" local competition because of the numerous restrictions placed on the availability of UNE-P and Extended Loops. In support of their contention, they cited both the Act and the FCC's rules as not permitting the imposition of such restrictions. Moreover, several CLECs criticized the interim nature of the recommended proposal as introducing unnecessary uncertainty into the process. In addition, the CLECs averred that the recommended collocation rates are not sufficiently supported and are contrary to the FCC's First Report and Order and Further Notice of Proposed Rulemaking, I/M/O Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket 98-147, FCC 99-48 (Released March 31, 1999) (hereinafter, Advanced Services Order). BA-NJ, on the other hand, commented that the recommendation will put it at a major competitive disadvantage and that statewide UNE-P for business accounts is unwarranted. BA-NJ asserted that the collocation options contained in the Staff proposal are a starting point but must be revised due to the FCC's Advanced Services Order.

III. SUMMARY OF STAFF MODIFICATIONS

In response to the comments, Staff recommended several modifications that will provide access to unbundled network elements consistent with the goal of the previous Staff recommendation and determinations of the Board, specifically to jump-start mass marketing to residential and small business customers.

- (1) Extend the availability of UNE-P to CLECs for the provision of Plain Old Telephone Service and BRI-ISDN services, without restrictions, to include

business customers with two (2) and three (3) lines per location. When combined with the original recommendation for the availability of UNE-P for such services for residential and single line business customers, the platform is available to CLECs to serve customers who represent approximately 80% of the access lines in the state.

- (2) Modify the definition of "small business" customers from 2-10 lines, to 4-10 lines per location and to allow for review to ensure compliance;
- (3) The two (2) collocator exemption will be increased to three (3) collocators and will be further modified to include a grandfather clause for existing customers in the event a third collocator enters a central office after UNE-P is already provided;
- (4) The extended loop proposal is modified to require that BA-NJ provide essentially the same options as are available in New York, including concentration and fewer restrictions as requested by CLECs, and the definition is modified to comport with the FCC definition;
- (5) Clarifies and expands the requirements and information that BA-NJ must offer and/or provide to CLECs for advanced services;
- (6) Deletes references to glue charges;
- (7) Requires availability of UNE-P and extended loops 60 days after release of this order;
- (8) Includes clarification language;
- (9) Directs the TSFT to reconvene to attempt to resolve certain open collocation and advanced services issues; and
- (10) Directs BA-NJ to abide by all requirements in the FCC's Advanced Services Order and to follow the collocation prices required by the Board. In addition, product descriptions for UNE-P and extended loops and tariff and compliance filings for all requirements contained herein must be filed and will be effective on an interim basis subject to comments by interested parties, and full review by the Board.

Based upon the record in this matter, including comments received, the TSFT discussions and other submissions by the parties, the Board is satisfied that the Staff recommendation, as a whole, provides incentives needed to encourage CLECs to enter the local telephone market in New Jersey, will help jump-start competition to residential and small business customers and will eliminate access to unbundled elements as a barrier to such competition. Therefore, the Board HEREBY ORDERS the following:

UNE-Ps For CLECs

1. Not later than 60 days from the date of this order BA-NJ shall provide UNE-P to CLECs for Plain Old Telephone Service ("POTS") and BRI-ISDN services for residential customers.

2. Not later than 60 days from the date of this order BA-NJ shall provide UNE-P to CLECs for Plain Old Telephone Service ("POTS") and BRI-ISDN services for business customers with one (1), two (2), or three (3) lines per location.
3. Not later than 60 days from the date of this order and except as provided in Paragraph 9 below, BA-NJ shall provide UNE-P to CLECs for 4-10 lines per location small business customers for POTS and BRI-ISDN services. BA-NJ shall not be required to provide UNE-P to CLECs for Centrex, PBX, and PRI-ISDN. CLECs will be subject to review to ensure compliance with these line restrictions. If violations are found, the Board may impose fines as authorized by law.
4. BA-NJ shall not restrict the availability of UNE-P for Plain Old Telephone Service ("POTS") and BRI-ISDN services for all residential customers and for business customers with one (1), two (2), or three (3) lines per location.
5. BA-NJ shall continue to provide UNE-P and all other network element combinations required hereunder for all residential customers and business customers with one (1), two (2) or three (3) lines per location until the Board determines that one or more reasonable, nondiscriminatory, efficient, alternative means of network element combination is available.
6. For as long as collocation space is not available in a particular central office, BA-NJ shall provide UNE-P to CLECs for POTS and BRI-ISDN services for all customers in that central office.
7. BA-NJ shall provide UNE-P to CLECs at least 90 days prior to BA-NJ's 271 filing with the FCC, but in no event later than 60 days from the date of this order.
8. Where fewer than three collocators are present in a central office, BA-NJ shall provide UNE-P to CLECs for business customers with 4-10 lines per location only as described in number 3 above. If three or more collocators are present in a central office, BA-NJ shall not be required to provide UNE-P to CLECs for business customers with 4-10 lines per location.
9. Once a UNE-P eligible central office reaches the three collocator threshold, BA-NJ must notify CLECs that they will only be able to continue to obtain UNE-P for business customers with 4-10 lines per location, subject to the provisions of paragraphs 3 and 8, for a six month transition period. Thereafter, existing UNE-P lines may be retained, but no new orders for UNE-P will be accepted.
10. UNE-P shall be available for all residential customers and business customers with one (1), two (2), or three (3) lines per location from every BA-NJ Central Office, regardless of whether collocators are present.
11. BA-NJ shall provide any combination of elements for all residential customers, business customers with one (1), two (2) or three (3) lines per location, and small business customers, as described in paragraph 3 above, to CLECs at the generic rates established in Docket No. TX95120631, except as otherwise provided herein.

12. BA-NJ shall continue to provide UNE-P and all other combinations of elements required herein until the Board determines that one or more reasonable non-discriminatory, efficient, alternative means of network element combination besides UNE-P is available.
13. Unless otherwise determined by the Board, a Board review shall commence four (4) years after the effective date of this Order to determine whether one or more reasonable non-discriminatory, efficient, alternative means of network element combination besides UNE-P is available.
14. BA-NJ shall file a product description of the platform offerings described herein including rates, no later than 30 days from the date of this Order, certified to be in conformance with this Order. Such filing shall become effective on an interim basis based upon the certification of BA-NJ. The filing shall be subject to comment by interested parties and final approval by the Board.

Access Fee Relief For CLECs Providing Local Telephone Service
Utilizing the Unbundled Network Element Platform

15. Originating Access Fees shall not be charged by BA-NJ to a CLEC that is providing service on a Platform basis for the origination of toll services.
16. Terminating Access Fees shall not be charged by BA-NJ to a CLEC that is providing service on a Platform basis.

Collocation Arrangements For CLECs

17. BA-NJ shall provide collocation to CLECs, at a minimum, through the following methods: (1) all methods adopted or permitted by the FCC or approved by the Board; (2) SCOPE - Secured Collocation Open Physical Environment; (3) Shared Cages; (4) Smaller Cages; (5) Physical; (6) Virtual, and (7) Cageless collocation, with appropriate security measures as defined in the FCC's March 31, 1999 Order in CC Docket No. 98-147 (FCC 99-48).
18. Absent an agreement on rates for provisioning of collocation arrangements, collocation charges shall be flat rates. BA-NJ may require a non-refundable deposit of $\frac{1}{2}$ the flat rate with a six (6) month binding forecast and a two (2) year, non-binding estimated forecast in order to ensure provisioning of requested collocation arrangements in parity with the provisioning of other CLEC requests.
19. Absent an agreement on rates, on an interim basis and until further Board order, BA-NJ shall provide, at a minimum: (1) a single bay of up to 15 sq. ft. for \$5,250; (2) a SCOPE arrangement for \$5,900; (3) 25 sq. ft. cages for \$18,000; and (4) 100 sq. ft. cages for \$35,000. These rates approximate the average projected cost identified in the TSFT by BA-NJ to construct those facilities. In order to further spur deployment of CLEC collocation facilities, BA-NJ shall provide collocation in New Jersey at rates equal to the lowest comparable rate in the entire Bell Atlantic region for orders received with the required forecast and

deposit. BA-NJ shall provide such rates for a period of nine (9) months after the offer was made in another part of the Bell Atlantic region.

20. Within seven (7) days of the date of this Order, BA-NJ is directed to file revisions to its currently pending Collocation Tariff (at Docket No. TT99050370) to reflect the minimum collocation arrangements set forth in Paragraph 17 and the interim rates set forth in Paragraph 19 above, certified that it is in conformance with this Order. This revised tariff shall become effective on an interim basis, based upon the certification of BA-NJ. The interim tariff shall be subject to comment by interested parties and further review and final approval by the Board. Such Board review shall ensure compliance with the Board's generic December 2, 1997 Order (at Docket No. TX95120631) and the FCC's Advanced Services Order (CC Docket No. 98-147).

Extended Loops For CLECs

21. Not later than 60 days from the date of this Order, BA-NJ shall provide extended loops¹ to CLECs throughout the BA-NJ service territory. BA-NJ shall not restrict the availability or use of extended loops except (A) for extended loops with unbundled loops of less than DS1 capacity, the requesting CLEC shall be required to collocate or share collocation with another CLEC in at least one BA-NJ central office in each LATA, and (B) for extended loops with unbundled loops of DS1 and DS3 capacity: (1) the requesting CLEC shall be required to collocate or share collocation with another CLEC in at least one BA-NJ central office in each LATA; (2) the requested extended loop must connect to a CLEC local switch or collocation facility and must be used primarily (greater than 50%) to transmit local exchange traffic; and (3) the extended loop shall not be used as a substitute for special access service, and an officer of the CLEC shall semi-annually certify that the provided extended loop is not being used as a substitute for special access.
22. BA-NJ shall provide concentration dedicated terminal equipment inside of its central office in a virtual collocation arrangement for CLECs who request it. The CLEC requesting concentration arrangements will be responsible for all installation and surveillance of the concentration facilities. The concentration arrangements described herein shall be dedicated to one CLEC.
23. BA-NJ shall file a product description of the extended loop offerings described herein, including rates, no later than 30 days from the date of this Order, certified to be in compliance with this Order. Such filing shall become effective on an interim basis, based upon the certification of BA-NJ. The filing shall be subject to comment by interested parties and final approval by the Board.
24. BA-NJ shall provide extended loops to CLECs as required herein at least 90 days prior to BA-NJ's 271 filing with the FCC, but in any event no later than 60 days from the date of this Order.

¹ "Extended loop" is defined herein to mean the combination of an unbundled loop, multiplexing/concentration equipment and unbundled transport.

Streamlined Access to Advanced Services Facilities For CLECs

25. BA-NJ shall make xDSL compatible unbundled loops available for CLEC services. These loops may only be used by CLECs to provide services that will not cause unreasonable interference in the network consistent with the provisions of law and applicable regulations. The TSFT shall be directed to continue to facilitate CLEC and ILEC negotiations in this regard and shall periodically report to the Board on any additional action steps that may be advisable.
26. BA-NJ shall make xDSL compatible loops available to a requesting CLEC at the generic rates previously set by the Board for 2- wire and 4-wire loops, as applicable, unless and until BA-NJ can make a showing, subject to comment by interested Parties, that the cost is different for such loops.
27. BA-NJ shall make available to CLECs information in an electronic format to allow CLECs to determine whether a given loop that is entered into the database is qualified or could be qualified to provide advanced services. The database will be populated and made available to the CLECs in the following manner: as BA-NJ performs loop qualification evaluations for its own retail purposes, it will enter the results of that evaluation into the database for use by CLECs. For a specific loop, that data consists of the total metallic loop length, including bridged tap and a "yes/no" qualification indicator based on BA-NJ's technical specifications (hereinafter referred to as "Basic Data"). BA-NJ shall process such CLEC requests for qualification on a first-come-first-served basis, at parity with its own requests. BA-NJ shall develop a priority list of central office qualification priorities to be available in the pre-qualification database in consultation with the CLECs and the TSFT.
28. In addition to this Basic Data, which is currently made available through the existing ADSL loop pre-qualification database, no later than March 31, 2000, the database will be enhanced to be capable of providing the following additional information (hereinafter referred to as "Enhanced Data"): (1) the existence of T1 circuits in the same binder group; (2) the presence of a Digital Added Main Line (DAML) serving the customer location; (3) the presence of load coils; and (4) the presence of Digital Loop Carrier (DLC). Access to wire gauge must be provided through electronic means as well by means of a chart of standard loop design posted on the web site to allow CLECs to determine likely cable gauge based on loop length. Beginning no later than March 31, 2000, such Enhanced Data will be entered into the database pursuant to loop-by-loop requests by CLECs, to the extent that any such Enhanced Data is available from existing BA-NJ engineering records. In addition, if at any time BA-NJ uses Enhanced Data or any other available loop make-up information that is applicable to xDSL loop qualification for its own retail purposes, such data shall immediately be entered into the database and made available to CLECs. As BA-NJ provides manual loop qualification reviews, as described in Paragraph 29 below, all the individual loop characteristics data associated with the manual review, such as bridged taps, shall be loaded into the advanced services database at the time of the manual review.

29. In a central office for which data is not electronically available, the information shall be made available within three (3) business days, upon request, through a Local Service Request (LSR) or substantially similar process.
30. BA-NJ shall perform Basic Loop Conditioning within BA-NJ's currently established unbundled loop intervals. This follows the availability of loop qualification data (3 business days) and a CLEC request, where appropriate facilities exist and where Special Construction Loop Conditioning is not required. Basic Loop Conditioning, as used herein, refers to the removal of load coils and excessive bridged tap on loops less than 18k ft. Special Construction Loop Conditioning, as used herein, refers to the removal of load coils, the removal of bridged taps, and the addition of ISDN electronics on loops over 18k ft.
31. BA-NJ shall file a compliance filing for access to advanced services facilities, including rates for loop qualification and loop conditioning, and unbundled loop conditioning intervals, no later than 30 days from the date of this order, certified to be in compliance with this Order. Such filing shall become effective on an interim basis, based upon the certification of BA-NJ. The filing shall be subject to comment by interested parties and final approval by the Board.
32. The comment period referenced in paragraphs 14, 20, 23 and 31 above is as follows: initial comments are due 20 business days from receipt of the filing and reply comments due 10 business days thereafter. BA-NJ shall provide simultaneous service to all parties on the attached service list, in the same manner as BA-NJ provides service to the Board.

COMPLIANCE FILING AND APPLICABILITY TO BA-NJ 271 RELIEF

On or before February 1, 2000 and on an ongoing basis as required by the Board, BA-NJ shall demonstrate to the Board through a compliance filing that each of the requirements contained herein and the provisions related to interconnection contained in the Board's Generic Order issued on December 2, 1997, have been met. BA-NJ shall be required to provide, at a minimum, UNE-P as described herein for residential, business customers with one (1), two (2) and three (3) lines per location, 4-10 line business customers, extended loops, concentration, xDSL capabilities and all other provisions as described in this Order. Should BA-NJ make a "271" relief application, BA-NJ shall demonstrate to the Board, through a compliance filing and subject to comment from all interested parties and Board review, that the requirements set forth herein and the requirements of any applicable FCC Order, have been met prior to the Board providing the FCC with verification of BA-NJ's compliance with checklist items related to access to network elements and interconnection. If the Board determines compliance, and network elements as then defined by the FCC are available to CLECs for all classes of customers, the checklist items concerning access to network elements and interconnection for purposes of BA-NJ's 271 filing, shall be deemed satisfied.

Local Transport Restructure

As a further pro-competitive measure, the Board HEREBY DIRECTS BA-NJ to implement a Local Transport Restructure for switched access service in New Jersey so as to provide for local transport access rates on a fixed per line basis. Although switched access rates in New Jersey are low, the implementation of a Local Transport Restructure will allow the carriers to benefit

from the efficiencies of purchasing facilities for transport instead of paying on a per minute of use basis. This revised structure should limit the growth in access payments that has been accelerating commensurate with the IXC's success in the intraLATA market and thus create more certainty for IXCs with respect to the level of this access expense as we move forward into a more competitive marketplace. The restructure should be similar to the structure in the interstate jurisdiction and the structure adopted throughout the rest of the Bell Atlantic region, and should be revenue neutral to BA-NJ and should not adversely affect any customer class. Within 7 days of the date of this Order, BA-NJ is DIRECTED to file a tariff revision which complies with the local transport restructure requirements above, certified to be in compliance with this order. Such filing shall become effective on an interim basis on October 1, 1999, based upon the certification of BA-NJ. The filing shall be subject to comment by interested parties and final Board approval. The comment period and service requirements contained in paragraph 32 above are applicable to this tariff revision.

DATED:
9/29/99

BOARD OF PUBLIC UTILITIES
BY:

(signed)
HERBERT H. TATE
PRESIDENT

(signed)
CARMEN J. ARMENTI
COMMISSIONER

(signed)
FREDERICK F. BUTLER
COMMISSIONER

ATTEST:

(signed)
MARK W. MUSSER
SECRETARY

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