

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 24, 1999

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman
Thomas J. Dunleavy
James D. Bennett
Leonard A. Weiss

CASE 98-C-0690 - Proceeding on Motion of the Commission to Examine Methods by Which Competitive Local Exchange Carriers Can Obtain and Combine Unbundled Network Elements.

CASE 95-C-0657 - Joint Complaint of AT&T Communications of New York, Inc., MCI Telecommunications Corporation, Worldcom, Inc. d/b/a LDDS Worldcom and the Empire Association of Long Distance Telephone Companies, Inc. Against New York Telephone Company, Inc. d/b/a Bell Atlantic-New York (BA-NY) Concerning Wholesale Provisioning of Local Exchange Service by New York Telephone Company, Inc. d/b/a Bell Atlantic-New York (BA-NY) and Sections of New York Telephone Company's Tariff No. 900.

CASE 94-C-0095 - Proceeding on Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market.

CASE 91-C-1174 - Proceeding on Motion of the Commission Regarding Comparably Efficient Interconnection Arrangements for Residential and Business Links.

ORDER REGARDING THE MULTIPLEXING COMPONENT
OF THE EXPANDED EXTENDED LINK

(Issued and Effective August 10, 1999)

BY THE COMMISSION:

INTRODUCTION

Bell Atlantic-New York (BA-NY) committed in its Pre-filing Statement^{1/} to providing an expanded extended link (EEL) to competitive local exchange carriers (CLECs). EELs are intended to give CLECs with network facilities access to unbundled local loops in many BA-NY local offices without the need to collocate in each BA-NY central office. Switch-based CLECs, relieved of the need for extensive collocation, could enter local markets more easily, making it more likely that residential and small business customers would experience the benefits of competition. On July 23, 1998, BA-NY filed proposed amendments to its P.S.C. No. 916 Telephone tariff designed to implement some of its Pre-filing commitments, among them, the EEL offering.

^{1/} Case 97-C-0271, Pre-filing Statement of Bell Atlantic-New York, filed April 6, 1998. The Pre-filing Statement sets forth certain commitments BA-NY agreed to fulfill in connection with an anticipated application to the Federal Communications Commission (FCC) to provide interLATA service in its service territory pursuant to Section 271 of the Telecommunications Act of 1996 (the Act).

On March 24, 1999, the Commission issued an order (March 24 Order) implementing the provisions of BA-NY's Pre-filing Statement. Due to the lack of a fully developed record regarding the issue, we declined to address the precise status of multiplexing (mux) and did not determine whether the mux was an unbundled network element (UNE). The March 24 Order, however, noted AT&T's objection to BA-NY's proposed treatment of the mux as a separate unbundled network element. AT&T purchases loop/mux configurations from BA-NY and connects these to its own transport facilities. Access to loop/mux combinations is restricted by BA-NY, according to AT&T, which cited BA-NY's refusal to connect a UNE loop to any mux that is also connected to interexchange access loops, a process called "commingling."^{2/} In reaction to BA-NY's refusal to "commingle," AT&T requested that the Commission declare the mux an interface between network elements, not an unbundled network element. AT&T contended that, "[u]sing a mux with a loop does not result in a combination of UNEs." (AT&T EEL Comments, p. 6).

Further comment from interested parties focused on the need for, and the implications of, treating the mux as a separate network element. Comments from three parties, BA-NY, AT&T of New York, Inc. (AT&T), and e.spire Communications, Inc./Intermedia Communications, Inc. (Joint Commenters) were received.

SUMMARY OF COMMENTS

AT&T

^{2/} These loop/mux configurations currently carry largely interexchange access traffic; AT&T wants to make use of these existing facilities to carry increasing amounts of local traffic.

AT&T contends that the mux is a network interface, not an unbundled network element. Therefore, combining a local loop with a network interface mux does not result in an unbundled network element combination. In the alternative, AT&T argues that even if the mux were an unbundled network element which combined with the local loop formed a combination of elements, under FCC rules it would be unlawful for incumbent local exchange carriers (ILEC) to separate elements already combined.

AT&T asserts that the Telecommunications Act of 1996 (the Act) does not restrict UNE use to exchange access traffic incidental to local traffic carried by a CLEC. Therefore, AT&T claims that any attempt by BA-NY to restrict connection of a UNE loop to an "access" mux or transport serving access traffic contravenes the intent of the Act and would result in service disruption when a CLEC ordered a new UNE loop or converted an existing loop to UNE pricing. AT&T maintains that BA-NY's position prevents CLECs from commingling UNE loops on an access mux, thereby requiring CLECs to pay the access price for that mux so long as any of the circuits connected to the mux carried access traffic. AT&T asserts that this violates the Act which requires ILECs to offer multiplexing at the UNE price if the CLEC has made the purchase out of a UNE tariff or contract provision." (AT&T Mux Comments, p. 24).

AT&T also objects to application of a lower maintenance and repair standard for UNE DS1^{3/} and higher speed loops than the standard applied to comparable loops purchased out of an access

^{3/} DS is the acronym for digital signal, as opposed to analog signal. DS1 loops have a higher capacity than DS0 loops and are used to service business customers with six or more lines and special access traffic.

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tariff, claiming that circuit restoration after an outage would be performed within seven hours under BA-NY's UNE standard rather than four hours under the access standard. AT&T argues this practice would greatly retard competition for business customers, typically served by high speed local loops, since CLECs using BA-NY UNE loops to serve these customers would be forced to offer a lower grade of service. AT&T urges the Commission to direct BA-NY to provide maintenance and repair functions for high speed UNE loops at the same level as that provided for comparable access loops. AT&T notes that the issue of any increased costs associated with this approach could be raised in the ongoing Second Network Elements Proceeding.^{4/}

Joint Commenters

Based on the mux rate already set using a total element long run incremental cost (TELRIC) study, the Joint Commenters urge the Commission to treat the mux as a UNE. The Joint Commenters also contend that since the mux is an unbundled network element, BA-NY must abide by the decision reached by the Supreme Court in AT&T Corp., et al. v. Iowa Utilities Board, et al., 524 U.S.____ (1999), which reinstated FCC Rule 315(b) requiring BA-NY, as an ILEC, to provide existing combinations of unbundled network elements.

Bell Atlantic-New York

BA-NY contends that the mux is not an element subject to the unbundling and pricing obligations of Sections 251 and 252

^{4/} Case 98-C-1357, Second Networks Element Proceeding, is an ongoing proceeding dealing with, among other matters, the price charged for unbundled network elements.

of the Act. It states that since the FCC has not declared the mux to be an element, unbundled access to the mux cannot be required under the necessary and impair standard of Section 251(d)(2) of the Act. BA-NY maintains that CLECs may convert special access circuits to an EEL arrangement only if the circuit's use conforms to the use restrictions set forth in the March 24 Order.

BA-NY responds to AT&T's objections concerning maintenance and repair standards by arguing that special access services are premium services, priced at contributory levels; therefore, higher time-to-restore (TTR) performance levels are appropriate for access service. In addition, BA-NY contends that the Act does not require the same level of service for UNEs as it does for special access.

DISCUSSION

Section 251(c)(3) of the Act requires ILECs to provide, among other things, "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable and nondiscriminatory." Section 251(d)(2) of the Act further provides:

In determining what network elements should be made available for purposes of ... (c)(2) ... the Commission shall consider, at a minimum, whether (A) access to such network elements as are proprietary in nature is necessary; and (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services it seeks to offer. (emphasis added).

In Iowa, the Supreme Court concluded that the FCC had not adequately considered whether an element was "necessary" and whether its absence would "impair" local competition in establishing the FCC=s list of required network elements and remanded the matter to the FCC. The FCC has not yet made a determination as to whether the mux or other network components are network elements that must be provided by ILECs on an unbundled basis.

In the absence of an FCC determination that multiplexing equipment must be offered as UNEs, we look to the Pre-filing Statement where BA-NY committed it would provide multiplexing to CLECs. The Pre-filing Statement obligates BA-NY to provide EEL combinations of the loop and transport elements (including multiplexing where required),^{5/} as well as other "lesser" combinations of network elements.

The question presented here is whether a loop/mux network configuration is an EEL arrangement, some other lesser combination of elements, or a single element (the loop) combined with an interface component (the mux).

The function of the mux is to aggregate or disaggregate signals for transmission over a transport facility. Because this function is integrally related to transport functionality, we find that multiplexing is a transport functionality. Therefore, loop/mux configurations should be considered EELs, subject to the conditions governing EELs set forth in the March 24 Order and our subsequent Order clarifying the primarily local standard. The

^{5/} At the time BA-NY executed the Pre-filing Statement, it had no affirmative obligation to combine UNEs; its offering to provide the EEL under certain circumstances was intended to

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alternative determination, that the mux is a UNE subject to access and unbundling requirements, would require a showing, not made here, that the mux comports with the necessary and impair standard. As we noted in the March 24 Order, in the event that the federal rules are modified to mandate unrestricted access to EEL combinations, any tariff criteria for access to EELs at UNE prices will be re-examined.

AT&T's concern about being prohibited from commingling has been obviated by BA-NY's statement that it will permit access and UNE loops to be connected to the same mux, i.e. "commingled."^{6/} BA-NY shall continue to commingle access and UNE loops unless otherwise permitted.

Finally, there is no technical reason that BA-NY cannot apply the same service standards in the case of high-speed UNE loops and access loops. Therefore, BA-NY will be directed to provide maintenance and repair of high speed UNE loops (DS1 and above) at parity with current access standards, if requested to do so by competitive carriers. If BA-NY claims additional costs associated with applying access service standards to UNE loops, it should address that issue in the current phase of the UNE proceeding.

The Commission orders:

1. The combination of the local loop and multiplexing feature shall be considered an expanded extended link and shall be subject to the conditions that the Commission has established

foster local competition.
^{6/} Case 98-C-0690, et al., BA-NY's Reply Comments. April 29, 1998, p. 6.

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for expanded extended links (EELs).

2. Bell Atlantic-New York is directed to file revised tariffs within ten (10) days of the issuance of this order to provide for maintenance and repair of the DS-1 and above loops at parity with current access standards. The amendments shall take effect upon ten (10) days' notice.

3. Newspaper publication is waived pursuant to Section 92(2) of the Public Service Law.

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3. These proceedings are continued.

By the Commission,

(SIGNED)

DEBRA RENNER
Acting Secretary